Parliamentary Committees

Criminal Law Amendment Bill 2012

Report No. 3

Legal Affairs and Community Safety Committee

July 2012

Legal Affairs and Community Safety Committee

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Acknowledgements

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Abbreviations

Act	*Parliament of Queensland Act 2001*
Amnesty	Human Rights in Law Group of Amnesty International, Queensland-Northern New South Wales Branch
Bill	Criminal Law Amendment Bill 2012
CMC	Crime and Misconduct Commission
Committee	Legal Affairs and Community Safety Committee
Council	Sentencing Advisory Council
Criminal Code	*Criminal Code Act 1899*
Department	Department of Justice and Attorney-General
LNP	Liberal National Party
PLS	Prisoners' Legal Service Inc.
QHVSG	Queensland Homicide Victims' Support Group
QPS	Queensland Police Service
Society	Queensland Law Society
Supreme Court	Supreme Court of Queensland

Chair's foreword

This report presents a summary of the Legal Affairs and Community Safety Committee's (Committee) examination of the Criminal Law Amendment Bill 2012 (Bill).

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

Calling for submissions allowed the Committee to canvass a range of views to inform its inquiry.

On behalf of the Committee, I thank those organisations who lodged written submissions on this Bill. I also thank the Committee's Secretariat, the Department of Justice and Attorney-General and the Queensland Parliamentary Library.

I commend the report to the House.

Mr Ray Hopper MP

Chair

July 2012

Executive summary

The Criminal Law Amendment Bill 2012 (Bill) was referred to the Legal Affairs and Community Safety Committee (Committee) on 20 June 2012, and the Committee was required to report to the Legislative Assembly by 6 July 2012.

This report examines the Bill in terms of policy considerations and the application of fundamental legislative principles, namely, the rights and liberties of individuals and the institution of Parliament.

The Bill seeks to amend the *Criminal Code Act 1899* to: increase the non-parole period for multiple murders from 20 to 30 years imprisonment; insert a new minimum non-parole period of 25 years imprisonment for the offence of murder where the victim was a police officer, and increase the maximum penalty for serious assault of a police officer from 7 to 14 years imprisonment.

The Bill also seeks to amend the *Corrective Services Act 2006* to increase the non-parole period for murder from 15 to 20 years imprisonment.

Further, the Bill also seeks to amend the *Penalties and Sentences Act 1992* to abolish Queensland's Sentencing Advisory Council, and to amend the *Police Powers and Responsibilities Act 2000* to introduce a mandatory minimum penalty of $5,000 and a two year licence disqualification for the offence of evading police.

The Committee has carefully considered mandatory minimum non-parole periods, the abolition of the Sentencing Advisory Council, and the changes to the evade police offence in light of the content provided in submissions.

Recommendations

1 Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a statutory portfolio committee of the 54th Parliament of Queensland established on motion of the House on 17 May 2012. The Committee's primary areas of responsibility include:

- Department of Justice and Attorney-General;
- Department of Police; and
- Department of Community Safety.

Section 93(1) of the *Parliament of Queensland Act 2001* (Act) provides that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of the fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

The Criminal Law Amendment Bill 2012 (Bill) was referred to the Committee on 20 June 2012, and the Committee was required to report to the Legislative Assembly by 6 July 2012.

1.2 Inquiry process

On 21 June 2012, the Committee wrote to the Department of Justice and Attorney-General (Department) seeking advice on the Bill, and invited stakeholders and subscribers to lodge written submissions. The Committee also issued a media release announcing its inquiry.

The Committee received written advice from the Department on 25 June 2012 and 3 July, and received 11 submissions (see **Appendix A**).

1.3 Policy objectives of the Criminal Law Amendment Bill 2012

The primary objectives of the Bill are to:

1. Amend the *Criminal Code Act 1899* (Criminal Code) to:
    - Increase the non-parole period for multiple murders from 20 to 30 years imprisonment;
    - Insert a new minimum non-parole period of 25 years imprisonment for the offence of murder where the victim was a police officer and the offender did the act or omission that caused the police officer's death either: when the police officer was performing their duties and the offender knew or ought reasonably to have known that the victim was a police officer; or because the victim was a police officer; or because of, or in retaliation for, actions undertaken by the victim, or any other police officer, in the performance of their duty; and
    - Increase the maximum penalty for the offence of serious assault of a police officer from 7 to 14 years imprisonment where the assault: resulted in an injury amounting to bodily harm; involved the spitting on, biting or the application of a bodily fluid or faeces to the police officer; or involved the offender being, or pretending to be, armed with a dangerous or offensive weapon or instrument.
2. Amend the *Corrective Services Act 2006* to increase the non-parole period for murder from 15 to 20 years imprisonment.
3. Amend the *Penalties and Sentences Act 1992* to abolish Queensland's Sentencing Advisory Council.

4. Amend the *Police Powers and Responsibilities Act 2000* to introduce a mandatory minimum penalty of $5,000 and two year licence disqualification for the offence of evading police under section 754.[1]

The Explanatory Notes provide:

> *The Bill implements the Liberal National Party's pre-election commitments to introduce amendments to strengthen the sentences for evade police, murder, the murder of a police officer and serious assaults committed upon police officers.*[2]

The Explanatory Notes state that the penalty increases for the murder of a police officer and the serious assault of a police officer reflect the important role performed by police officers in maintaining civil authority and the dangers faced by them in performing their civic duties.[3]

The Explanatory Notes also provide:

> *Section 754(2) of the Police Powers and Responsibilities Act 2000 provides the offence of failing to stop a vehicle when the driver of the vehicle has been directed to do so by a police officer (an evade police offence). The rationale behind the creation of the offence was to create an alternative to pursuits and to ensure that a sufficient deterrent exists in light of the move towards a more restrictive police pursuit policy.*[4]

The Bill also includes amendments to repeal Part 12 of the *Penalties and Sentences Act 1992* to dissolve the Sentencing Advisory Council (Council). The Explanatory Notes state that the Bill 'dissolves the Council to enable a more efficient use of public resources by the rationalisation of law review functions across government.'[5]

Recommendation 1

The Criminal Law Amendment Bill 2012 be passed.

1 Criminal Law Amendment Bill 2012, *Explanatory Notes*, p. 1.
2 Criminal Law Amendment Bill 2012, *Explanatory Notes*, p. 2.
3 Criminal Law Amendment Bill 2012, *Explanatory Notes*, p. 2.
4 Criminal Law Amendment Bill 2012, *Explanatory Notes*, p. 2.
5 Criminal Law Amendment Bill 2012, *Explanatory Notes*, p. 3.

2 Examination of the Criminal Law Amendment Bill 2012

This section discusses the issues raised during the Committee's examination of the Bill.

2.1 Increase in mandatory minimum non-parole periods

The scope of the Supreme Court of Queensland (Supreme Court) submission is as follows:

> *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 contents 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 working or integrity of the courts, or has implications for their resources.*
>
> *The following submission is limited to such matters.*[6]

As such, the Supreme Court provided:

> *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 recognising 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 I have 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.*[7]

The Queensland Law Society (Society) stated that it has long maintained a strong stance against any form of mandatory sentencing:

> *Mandatory sentencing laws are unfair, unworkable and run contrary to Australia's international treaty obligations.*
>
> *The Society opposes the proposed legislation on the grounds that it unduly fetters judicial discretion. The removal of judicial discretion by the proposed mandatory sentencing scheme will greatly hinder the courts ability to bring about justice in individual cases. All cases consist of discreet facts and circumstances. There may be any number of contributing factors that lead to the commission of a crime. A mandatory sentencing scheme would be unable to take these factors into account. Mandatory sentencing laws are arbitrary, contravening the principles of proportionality and necessity because they do not allow consideration of either the seriousness of the offence or the circumstances of the offender. They have the potential to lead to serious miscarriages of justice, exacerbated by virtue of the fact that mandatory sentences, by definition, are not reviewable on appeal. It is our view that judges are in a better position to administer justice through judicial reasoning and*

[6] Supreme Court of Queensland, Submission 2, p. 1.

[7] Supreme Court of Queensland, Submission 2, p. 2.

comprehensive understanding of the offence and the circumstances surrounding its commission. Therefore, the Society maintains that sentencing decisions should rest with highly trained judicial officers.

The empirical evidence against mandatory [sentencing] *is well documented. There is a lack of cogent and persuasive data to demonstrate that mandatory sentences provide a deterrent effect. Furthermore, these schemes have consistently failed to achieve the stated objectives of deterrence and crime reduction in Queensland, New South Wales, other Australian State and Territory and international jurisdictions.*

We also note the compelling reasons for opposing mandatory sentencing:

- *To the extent that mandatory sentencing is perceived as a democratic response to the public perceptions of crime, the most appropriate response is to educate the public about sentencing, not to impose an inflexible and unfair sentencing regime. This is demonstrated by Australian and overseas research. A study published by Professor Kate Warner from the University of Tasmania asked jurors (who were fully informed about the facts of the case) to assess the appropriateness of the judge's sentence. More than half the jurors surveyed would have imposed a more lenient sentence than the trial judge imposed. When the jurors were informed of the actual sentence, 90% said that the judge's sentence was (very or fairly) appropriate.*[8]
- *In addition, mandatory sentencing encourages judges, prosecutors and juries to circumvent mandatory sentencing when they consider the result unjust. In some circumstances when an offender is faced with a mandatory penalty, juries have refused to convict. Furthermore, prosecutors have deliberately charged people with lesser offences than the conduct would warrant to avoid the imposition of a mandatory sentence. In effect, this shifts sentencing discretion from an appropriately trained and paid judicial officer to a prosecutor. This process is called 'de-mandatorising'.*
- *The inevitable increase in prison population as a result of the mandatory sentencing is one of many additional costs to the community without any commensurate benefit.*
- *Mandatory sentencing reduces the proportion of pleas of guilty, thus increasing court costs, court delays, prosecution costs, defence costs and the stress upon victims and other witnesses.*
- *Mandatory sentencing could impact disproportionately on the most marginalised members of society which include many Aboriginal and Torres Strait Islander people.*

Therefore the Society opposes the introduction of mandatory sentencing regimes for all offences.[9]

This reasoning is reflected in Human Rights in Law Group of Amnesty International Queensland-Northern NSW Branch (Amnesty), Submission 8.[10]

Amnesty submitted that the imposition of increased mandatory sentences and non-parole periods would not achieve purported goals stating that:

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8 Warner, K. Public judgement on sentencing: final result from the Tasmanian Jury Sentencing Study. Trends and issues in crime and criminal justice, Australian Institute of Criminology, February 2011; as cited by Queensland Law Society, Submission 1, p. 2.

9 Queensland Law Society, Submission 1, 28 June 2012, pp. 1-2.

10 Human Rights in Law Group of Amnesty International Qld-Northern NSW Branch, Submission 8, pp. 1-4.

> *The proposed mandatory sentences would not ensure that an appropriate punishment is given into reflect the severity of the offence. A fixed minimum punishment without reference to circumstance or severity is imposed by proposed legislation*
>
> *The proposed mandatory sentences would not be effective in protecting police or the general public. Such a course does nothing to remedy the causes of the offences and can potentially create a false sense of security, complacency and ignorance in the community.*[11]

Citing numerous sources, Amnesty submitted that detailed empirical studies demonstrate that crime rates are not decreased by the imposition of more severe punishments, but rather by the likelihood of being caught.

> *There is no evidence to support that the increase in the sentence and non-parole period would be effective in deterring further crime or protecting members of the public or police from further offence.' Amnesty add that a 'court determined sentence is likely more effective in protecting the community, having regard to the community context and the circumstances of the case, than the application of a legislated mandatory minimum that applies to all cases, without having any regard to mitigating circumstances.*[12]
>
> *INCorrections is also opposed to mandatory sentencing:*
>
> *We believe that mandatory sentencing removes the opportunity to sentence in proportion to the circumstances of the offence. Courts should be allowed to punish similar situations the same way and different situations with more or less severity. This is the job that judges are paid to do. Mandatory sentencing undermines the values that Australians hold dear: fairness, proportionality and respect for human dignity.*[13]

The work of the Sentencing Advisory Councils of Queensland and Victoria is also cited by INCorrections.[14]

The Committee notes that INCorrections Position Paper was endorsed by Prisoners' Legal Service Inc., (PLS),[15] Catholic Prison Ministry,[16] and Queensland Public Interest Law Clearing House Incorporated.[17]

Potts Lawyers submitted that '*the dispensation for justice needs to be fair. This involves a court imposing penalties that can accommodate the individual merits of a case. An approach that requires all penalties to be 'equal' (i.e. subject to a minimum) strikes at the very heart of this principle*.' [18] Potts Lawyers added:

> *Every citizen is entitled to expect equal access to justice and to be treated fairly. This does not translate into equal penalties.*
>
> *Every single criminal case, defendant and victim that come before the court have their own individual features. To suggest that it would be fair for every defendant charged with a particular type of offence to receive the same minimum punishment ignores this fundamental truth.*[19]

Potts Lawyers also noted the Council's finding regarding standard non-parole periods, and cited:

11 Human Rights in Law Group of Amnesty International Qld-Northern NSW Branch, Submission 8, p. 2.
12 Human Rights in Law Group of Amnesty International Qld-Northern NSW Branch, Submission 8, pp. 2-3.
13 INCorrections Position Paper June 2012, p. 1.
14 Prisoners' Legal Service Inc., Submission 4, pp. 1-2.
15 Prisoners' Legal Service Inc., Submission 4, p. 1.
16 Catholic Prison Ministry, Submission 6, p. 1.
17 Queensland Public Interest Law Clearing House Incorporated, Submission 7, p. 1.
18 Potts Lawyers, Submission 10, p. 1.
19 Potts Lawyers, Submission 10, p. 1.

> *… that there is limited evidence that standard non-parole period schemes meet their objectives, beyond making sentencing more punitive and the sentencing process more costly and time consuming. Added to this are the possible negative impacts of such a scheme on vulnerable offenders.*[20]

Citing the Sentencing Advisory Council (2011)(2012); Tonry (1990) cited in Brown (2001); and Lovegrove (2007), Potts Lawyers provide the following reasons why minimum standard non-parole periods should not be implemented:

- *Victims will be cross -examined more regularly*
- *A system already exists for fixing inadequate sentences if the Crown believes that a sentence that was imposed is inadequate*
- *A non-parole period system already exists*
- *Current sentences are not fundamentally inconsistent*
- *The scheme will not reduce crime*
- *An informed public does not significantly disagree with the Courts*
- *It will increase the intake for institutes of higher criminal education*
- *There are other ways to improve the system.*[21]

Aboriginal & Torres Strait Islander Legal Service (ATSILS) stated:

> *It is also especially concerning that youth are being treated in the same manner as adults. There is an utter failure to acknowledge and allow for the lower maturity levels and lack of life experience. There is a failure to acknowledge the general principle that considerations of punishment and general deterrence may be given less weight in favour of individual treatment aimed at rehabilitation, when sentencing a child.*
>
> *Young people convicted of murder will be incarcerated for even longer without any experience of life as an adult community member outside of a prison. This makes it extremely difficult for a person to integrate when they have never interacted in adult community life. Overall, it is suggested that lesser sentences with supervised release in the form of parole would be more appropriate than extended terms of imprisonment.*[22]

In response, the Department provided:

> *While the concerns expressed in submission 005* [ATSILS] *are acknowledged, the approach adopted in the Bill is consistent with the current approach to the punishment for the offence of murder with regards to young offenders. The approach is reflective of murder being the most heinous of criminal offences.*[23]

The Bar Association of Queensland (Bar Association) opposde the amendments proposed with respect to the Criminal Code of Queensland and the *Corrective Services Act 2006* for the reasons that follow.[24]

> *Since 1992, the punishment for murder in this State has been life imprisonment, which cannot be mitigated or varied. It is pertinent to observe that only Queensland, South*

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20 Sentencing Advisory Council, *Minimum standard non-parole periods, Final Report,* September 2011, p. xv; as cited by Potts Lawyers, Submission, pp. 1-2.

21 Potts Lawyers, Submission 10, pp. 2-6.

22 Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, Submission 5, pp. 4-5.

23 Letter from the Department of Justice and Attorney-General, 3 July 2012, p. 9.

24 Bar Association of Queensland, Submission 9, p. 2.

Australia and the Northern Territory have life imprisonment as the mandatory penalty for murder. In all other Australian jurisdictions the penalty for murder is left to the discretion of the Sentencing Judge, with the maximum being life imprisonment. It follows that Queensland already has a tougher sentencing approach to murder than does most other Australian jurisdictions.

The present position of course is that a person convicted of the murder of a single person is sentenced to the mandatory term of life imprisonment, and is not eligible to apply for parole until 15 years has been served. For those persons who commit two or more murders, they must serve at least 20 years before becoming eligible for release on parole and the Court may in fact increase the non-parole period beyond that mark. Further, it is the experience of our members that it is in practice rare for a convicted murderer to be released on attainment of the minimum non-parole period. Similarly, a person who has killed repeatedly is unlikely ever to be released, regardless of whether the minimum term to be served is 20 or 30 years.[25]

…

It cannot be doubted that there is no more serious offence known to our criminal law than murder. It is right that severe punishment is visited upon those convicted of that crime. However, it is quite erroneous to think that an increase to the minimum non-parole periods will promote community safety and protection. Nor will such an alteration offer police officers substantially greater protection than currently exists.

First, most murders are committed in the heat of the moment, whether that be a fit of passion, a drunken rage or some other highly, albeit temporary, raised emotional state. The prospect of punishment rarely enters into the thinking of such offenders. Likewise, a statutory formula for the fixing of the non-parole period could not be further from their consciousness.

The alteration to the non-parole period that the proposed legislation seeks to achieve is therefore most unlikely to have the stated object of protecting the community from such offences. The position may of course be different in the case of premeditated murders, but that is not the focus of the proposed amendments.

Secondly, an attack on a police officer during the execution of his or her duty as such has long been recognised by the Courts as a particularly aggravating feature that, if present in any particular case, will result in a much more severe sentence than would otherwise be imposed with respect to an attack on someone not engaged in law enforcement. The Association accepts, and fully endorses, such an approach in order to protect the lives and safety of police officers. That is because of the important work that they do in the protection of our community and the substantial risks to their own safety … in carrying out that work. The Association notes, however, that other workers such as ambulance officers, nursing and medical staff in emergency rooms, security guards, mental health workers and such like are also at risk of death or serious injury.

There is therefore no need for the proposed changes. The current sentencing regime adequately caters for the aggravating features which the legislation targets. There is no evidence at all to suggest otherwise. Nor is it the case that convicted murderers are being released prematurely or that any such release has put the community at substantially increased risk.

[25] Bar Association of Queensland, Submission 9, p. 2.

Thirdly, and closely allied to the point just made, legislative interference with the current non-parole floors will further undermine the judicial sentencing discretion. There is no warrant for doing so and the absence of appeals by the Attorney-General against the way in which that discretion has been exercised in the past underscores this point. If the Government wishes to legislatively entrench the importance that the protection of police officers has to the sentencing of offenders, the appropriate way to proceed would be to introduce that feature as a formal circumstance of aggravation but, at the same time, preserving the Court's discretion to sentence the offender in accordance with the justice of the case, subject only to the existing non-parole provisions.[26]

In reponse to this the Department provided:

The Bill delivers on the Government's commitment that Queensland's criminal laws provide strengthened protection to police officers acting in the performance of their duties, in particular its pre-election pledge to deal specifically with the murder of a police officer.

Police officers are unique in terms of the dangers faced by them in the line of duty. In contrast to other front line professional, police officers carry out duties that are inherently dangerous and vital to maintaining civil authority. Therefore, appropriate deterrents against fatal harm are justified.

To toughen the sentences for the offence of murder where the victim is a police officer, the Bill inserts, into to existing punishment regime for the offence of murder under section 305, a new and specific minimum non-parole period of 25 years imprisonment for the murder of a police officer where the offender did the act or made the omission that caused the police officers death:

- *when the police officer was acting in the performance of their duty and the offender knew or ought reasonably to have known that he or she was a police officer; or*
- *because the police officer was a police officer; or*
- *because of, or in retaliation for, the actions of the police officer or another police officer in the performance of their duty.*

Under section 1 of the Criminal Code, any circumstance surrounding an offence which renders an offender liable to a greater punishment than that to which the offender would be liable of the offence were committed without the existence of that circumstance, is a 'circumstance of aggravation'.

Under section 564(2) of the Criminal Code, if any 'circumstance of aggravation' is intended to be relied upon, it must be charged in the indictment and therefore becomes a matter that the Crown must prove beyond reasonable doubt.

Proposed new section 305(4) falls into this category. Therefore, those factors will be a question of fact for the jury to determine. It will be a matter for the Crown to prove these factors beyond reasonable doubt.[27]

In response to opposition to mandatory sentencing laws, including minimum non-parole periods the Department provided:

The offence of murder is the most heinous of criminal offences. Under the Criminal Code, the offence of murder already carries mandatory life imprisonment or the imposition of an

[26] Bar Association of Queensland, Submission 9, pp. 2-3.

[27] Letter from the Department of Justice and Attorney-General, 3 July 2012, pp. 12- 13.

indefinite sentence (under Part 10 of the Penalties and Sentences Act 1992). The court has no discretion to impose a lesser sentence.

Further, the Criminal Code, read in conjunction with the Corrective Services Act 2006, already prescribes the minimum non-parole periods for the offence of murder. That is, the minimum period an offender must spend in prison before they become eligible to apply for parole release.

The Bill therefore builds on the current mandatory punishment regime for the offence of murder in Queensland.

In June last year the Premier noted the regard that the Government has for judicial independence and the importance of the separation of powers in this State, and in doing so discussed some of the concerns regarding mandatory sentencing laws.

However, the Premier also clearly recognised the concern across the community that Queensland's sentencing laws do not reflect current community expectations.

To that end, the Government recognises that some offending is so heinous and presents such a risk to the safety of the community that the strongest legislative response is called for to ensure that adequate punishments are being handed down by the courts to these serious criminal offenders.

The offence of murder falls into this category of offending.

The Bill delivers on the Queensland Government's pre-election commitment that within its first 100 days of forming Government it would introduce reforms to toughen the sentences for murder. In particular the Government committed to:

- *increase the non-parole period for murder from 15 years to 20 years imprisonment;*
- *increase the non-parole period for multiple murders from 20 years to 30 years imprisonment; and*
- *introduce a new offence of murder of a police officer within a non-parole period of 25 years imprisonment.*

The Bill aims to ensure that the punishment for murder fits the severity of the crime and will promote community safety and protection from these serious offenders.

The pre-election commitment regarding the murder of a police officer is achieved by an amendment to section 305 of the Criminal Code to insert a new and specific minimum non-parole period for the murder of a police officer. The Bill does not include a residual discretion, as discussed in submission 002 (Supreme Court of Queensland), consistent with the existing approach to the punishment regime for murder under the Criminal Code, in particular where the offender commits more than one murder.[28]

2.2 Committee comment

In receipt of learned opinions, courtesy of submissions and advice, the Committee carefully considered a range of perspectives. On balance the Committee note that the amendments reflect the Liberal National Party's pre-election commitments to introduce amendments to strengthen the sentences in this Bill. Mandatory minimum non-parole periods are true to the policy objective of the Bill, and therefore, receive the Committee's assent.

[28] Letter from the Department of Justice and Attorney-General, 3 July 2012, pp. 2-3.

2.3 Clause 3: punishment for murder

Clause 3 amends section 305 (punishment for murder) to increase the minimum non-parole period for multiple murders (increasing from 20 to 30 years imprisonment) and to insert a new minimum non-parole period (a minimum of 25 years imprisonment) for the murder of a police officer.

The Department provided:

> *Section 302 (definition for murder) of the Criminal Code defines the offence of murder in Queensland. A person is guilty of murder if they unlawfully kill another in circumstances where the offender intends to cause the death of the person killed (or that of some other person) or if the offender intends to do to the person killed (or to some other person) grievous bodily harm.*
>
> *Once convicted, either by jury verdict or upon the offender's own plea of guilty, section 305 (punishment of murder) of the Criminal Code prescribes the punishment for the offence of murder. Under section 305, the offence of murder carries mandatory life imprisonment or the imposition of an indefinite sentence under Part 10 of the Penalties and Sentences Act 1992. The court has no discretion to impose a lesser sentence.*
>
> *Section 181(2) and (3) of the Corrective Services Act 2006 (in conjunction with section 305(2) of the Criminal Code) prescribes the minimum non-parole periods for the offence of murder (the minimum period an offender must spend in prison before they become eligible to apply for parole release).*
>
> *The Bill amends the Criminal Code and the Corrective Services Act 2006 regarding the current punishment regime for the offence of murder to increase the non-parole period for murder from 15 to 20 years imprisonment; and the non-parole period for multiple murders from 20 to 30 years imprisonment.*
>
> *The pre-election commitment regarding the murder of a police officer is achieved by an amendment to section 305 to insert a new and specific minimum non-parole period of 25 years imprisonment for the murder of a police officer where the offender did the act or made the omission that caused the police officer's death:*
>
> - *when the police officer was acting in the performance of their duty and the offender knew or ought reasonably to have known that he or she was a police officer; or*
> - *because the police officer was a police officer; or*
> - *because of, or in retaliation for, the actions of the police officer or another police officer in the performance of their duty.*
>
> *Pursuant to section 1 of the Criminal Code, any circumstance surrounding an offence which renders an offender liable to a greater punishment than that to which the offender would be liable if the offence were committed without the existence of that circumstance, is a 'circumstance of aggravation'. If any circumstance of aggravation is intended to be relied upon, it must be charged in the indictment (section 564(2) of the Criminal Code) and therefore becomes a matter that the Crown must prove beyond a reasonable doubt. Proposed new section 305(4) falls into this category. Therefore, whether the victim was a police officer acting in the performance of their duty etc will be a question of fact for the jury to determine. The legal onus rests on the Crown with the criminal standard of proof applying.*
>
> *The amendment gives effect to the Government's commitment that Queensland's criminal laws provide strengthened protection to police officers acting in the exercise of their duties.*

> *… the offence of murder attracts a penalty of mandatory life imprisonment in South Australia and the Northern Territory. Both South Australia and the Northern Territory set non-parole periods of 20 years for the offence.*
>
> *All other jurisdictions set a maximum penalty of life imprisonment for murder, meaning the court has discretion to impose any penalty up to and including the maximum penalty. Of these jurisdictions, non-parole periods are at the discretion of the sentencing judge except Western Australia and New South Wales where the minimum non-parole periods are fixed at 10 years and 20 years respectively.*
>
> *The only jurisdictions that currently provide specific provisions for the murder of a police officer are the Northern Territory and New South Wales.*
>
> *In the Northern Territory, a non-parole period of 25 years applies where the victim belongs to a range of professions, including a police officer.*
>
> *In New South Wales, a person convicted of murdering a police officer is subject to a mandatory sentence of life imprisonment without release on parole (excluded are offenders under 18 years or offenders with a significant cognitive impairment at the time, not being a temporary self-induced impairment, in which case a minimum non-parole period if 25 years imprisonment applies).*[29]

ATSILS does not oppose increasing the non-parole period for multiple murders, but suggested an increase to 25 years, not 30.[30]

The Society considered that proposed section 305(4)(b)(ii), which states the circumstance of the act or omission being made 'because the police officer was a police officer', *should be removed as it is vague. It appears that this circumstance has been included to cover situations in which a police officer is killed whilst not on duty. However, in our view, this circumstance is sufficiently covered by proposed section 305(4)(b)(iii), which states the circumstance of 'because of, or in retaliation for, the actions of the police officer or another police officer in the performance of the officer's duty'. The inclusion of the circumstance, 'because the police officer was a police officer', is an unnecessary duplication*.[31]

In response the Department provided:

> *The inclusion of new section 305(4)(b)(ii) was a deliberate drafting decision. Its inclusion in new section 305(4) is not duplicitous with the other limbs of that subsection and, with respect to submission 001, is clearly drafted.*
>
> *Limb (ii) specifically ensures that an offender, who kills a person for no other reason other than because they are a police officer, is captured by the amendment.*
>
> *This conduct would not be captured by limb (i) if, for example, the victim was not acting in the performance of their duties at the time the act or omission that caused their death was done or made, but rather they were off duty at that time (yet the offender killed that person for no other reason than because they were a police officer).*
>
> *Similarly this conduct would not be captured by limb (iii) if it could not be established that the conduct was done because of or in retaliation for anything done by the victim or any other police officer acting in the performance of their duties (yet the offender killed that person for no other reason than because they were a police officer; and they simply do not like police officers).*[32]

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29 Letter from the Department of Justice and Attorney-General, 25 June 2012, pp. 1-2.

30 Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd, Submission 5, p. 1.

31 Queensland Law Society, Submission 1, 28 June 2012, p. 3.

32 Letter from the Department of Justice and Attorney-General, 3 July 2012, p. 11.

2.4 Committee comment

The Committee noted that the amendment gives effect to the Government's commitment to strengthen Queensland's criminal laws relating to murder, and will provide strengthened protection to police officers.

2.5 Clause 4: serious assault of a police officer

Clause 4 sub clause (1) inserts a new maximum penalty of 14 years imprisonment for the serious assault of a police officer under section 340(1) of the Criminal Code, where:

- the offender bites or spits on the police officer or throws at, or in any way applies to, the police officer a bodily fluid or faeces;
- the assault causes bodily harm to the police officer;
- the offender is, or pretends to be, armed with a dangerous or offensive weapon or instrument.

Assaults upon police that involve the use of weapons, spitting, biting or otherwise causing bodily harm, including the transmission of disease, are designed to ensure the maintenance of civil authority.[33]

In all other circumstances, a person convicted of serious assault of a police officer under section 340(1) of the Criminal Code is liable to a maximum penalty of 7 years imprisonment.[34] Therefore, the proposed amendment seeks to double the penalty (from 7 to 14 years) for the serious assault of a police officer if any of the above circumstances are established.

The Department provided:

> *The penalty increase reflects the objective seriousness of such offending; the need for deterrence in structuring the appropriate sentence; and the important role performed by police officers in maintaining civil authority and the dangers faced by them in the discharge of their civic duties.*
>
> *The offence of serious assault in the Criminal Code covers a wide breadth of criminal conduct from: a verbal threat (where the offender has the present ability to effect the threat); a single punch or scuffle; blows causing bodily harm; and at the high end of the spectrum, biting and spitting where such assault carries with it risk of the officer contracting an infectious disease.*
>
> *Given the wide breadth of criminal conduct captured by section 340 of the Criminal Code, and the fundamental tenet that the maximum penalty must reflect the gravity of the offending and criminality involved, the Bill restricts the penalty increase to the more serious categories of assaults upon police officers.*[35]

The Society submitted:

> *…this amendment will have negative consequences for a person sentenced as a child under the Youth Justice Act 1992, because an assault against a police officer which falls in one of the circumstances which attracts the 14 year penalty will make the offence a 'serious offence' under section 8, Youth Justice Act 1992. These matters must be dealt with on indictment and not summarily. In our view, there will be a significant delay in the resolution of these matters, which increases the risk of high remand in custody rates. We consider that*

33 Criminal Law Amendment Bill 2012, *Explanatory Notes*, p. 4.

34 Criminal Law Amendment Bill 2012, *Explanatory Notes*, p. 6.

35 Letter from the Department of Justice and Attorney-General, 25 June 2012, p. 3.

this issue will particularly impact on Aboriginal and Torres Strait Islander children and young people.

In light of the over-representation of these young people in the criminal justice system, which has been the focus of research and the 2010 'Commonwealth inquiry into the high levels of involvement of Indigenous juveniles and young adults in the criminal justice system', the Society considers that the likely increases in both remand and imprisonment rates as a result of this amendment should be examined. We consider that provision should be made to ensure that children prosecuted under proposed section 340(1)(b) can still be dealt with summarily under the Youth Justice Act 1992. We consider that more appropriate sentencing mechanisms will then be available for children and young people. [36]

In response, the Department provided:

The Bill restricts the penalty increase to the more serious category of assaults upon police officers. The amendment is justified on the basis that it reflects the objective seriousness of such offending; the need for deterrence in structuring the appropriate sentence; and it recognises the unique position of police as a profession discharging inherently dangerous duties that are vital for maintaining civil authority.

Under section 8(1) of the Youth Justice Act 1992 a 'serious offence' for the purposes of the Youth Justice Act is defined to include an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years.

However, section 8(2)(b) provides that an offence is not a 'serious offence' if it is an offence, inter alia, that is the subject of a charge to which Criminal Code section 552A (Charges of indictable offences that must be heard and decided summarily on prosecution election) or section 552B applies.

Section 552A of the Criminal Code specifically applies to section 340 (Serious Assault) of the Criminal Code.

Therefore the amendment will not result in the offence being treated as a 'serious offence' under the Youth Justice Act for child offender as the offence of Serious Assault under section 340 of the Criminal Code is specifically excluded. [37]

The Society noted that, under the heading of 'Maximum penalty', proposed section 340(1)(b)(iii) states that one of the circumstances for which the 14 year penalty will apply is if:

(iii) the offender is, or pretends to be, armed with a dangerous or offensive weapon or instrument – 14 years imprisonment.

The phrase 'or pretends to be' broadens this provision to include situations where no actual weapon or instrument has been used. For example, the use of the words 'I have a knife' without the actual presence of one could potentially attract prosecution under this section We consider that it would be inappropriate to subject persons to a serious imprisonment sentence of 14 years on this basis. [38]

In response the Department provided:

The Department of Justice and Attorney-General considers it appropriate that the amendment captures an offender who is armed, or pretends to be armed, with a dangerous or offensive weapon or instrument. The high maximum penalty reflect the seriousness of such criminality.

36 Queensland Law Society, Submission 1, p. 3.

37 Letter from the Department of Justice and Attorney-General, 3 July, 2012, pp. 16-17.

38 Queensland Law Society, Submission 1, p. 3.

> *The approach adopted in the Bill is consistent with the existing approach under the Criminal Code to this circumstance of aggravation and the language used.*
>
> *For example, section 339(3) aggravated assault occasioning bodily harm, which carries a maximum penalty of 10 years imprisonment; section 352(3)(a) aggravated sexual assault, which carries a maximum penalty of life imprisonment, in each example, criminal liability extends to an offender who pretend to be armed.*
>
> *To delete the reference to 'pretends to be armed' for the purposes of section 340 would be anomalous.*[39]

ATSILS do not support increased penalties for the serious assault of a police officer. ATSILS submitted that the current maximum penalty for assault (7 years) is already adequate. An increase to 14 years would also be disproportionate in relation to other offences – including those committed against civilians, and submit that there would be no deterrent value.[40]

In response, the Department provided:

> *It is acknowledged that the offence of serious assault in the Criminal Code covers a wide breadth of criminal conduct from: a verbal threat (where the offender has the present ability to effect the threat); a single punch or scuffle; blows causing bodily harm; and at the high end of the spectrum, biting and spitting where such assault carries with it risk of the officer contracting an infectious disease.*
>
> *Given the wide breadth of criminal conduct captured by section 340 of the Criminal Code, and in recognition of the fundamental tenet that the maximum penalty must reflect the gravity of the offending and criminality involved, the Bill restricts the penalty increase to the more serious category of assaults upon police officers.*
>
> *The increased maximum penalty of 14 years imprisonment will apply in any of the following circumstances:*
>
> - *the offender bites, spits on or applies a bodily fluid or faeces to the police officer;*
> - *the assault involves bodily harm; or*
> - *the offender is, or pretends to be, armed with a dangerous or offensive weapon or instrument.*
>
> *In the absence of any of these circumstances an assault of a police officer pursuant to section 340 will attract a maximum penalty of 7 years imprisonment.*[41]

The Bar Association recognised the special vulnerability of police officers in the performance of their duties, but, without diminishing the force of that observation,[42] provided:

> *… police officers are not the only persons who are vulnerable to attacks during the course of their duty. In consequence, the proposed amendments would appear to elevate the need for protection of police officers above the need to protect all other categories of persons engaged in potentially dangerous contact with members of the public.*
>
> *That said, the current maximum for a serious assault of seven years' imprisonment is already a substantial penalty. The proposal to double that penalty would result in a situation where an offender convicted of that offence would be liable to the same penalty*

39 Letter from the Department of Justice and Attorney-General, 3 July 2012, p. 17.

40 Aboriginal and Torres Strait Islander Legal Service Inc., Submission 5, p. 2.

41 Letter from the Department of Justice and Attorney-General, 3 July 2012, pp. 14-15.

42 Bar Association of Queensland, Submission 9, p. 3.

that currently exists for grievous bodily harm. That would be an absurd result given the significant disparity in the character of offending between those two offences.

To develop that point a little further, there needs to be serious injury to constitute grievous bodily harm. That is reflected in the definition of grievous bodily harm in section 1 of the Criminal Code:

Grievous bodily harm means –

a. The loss of a distinct part of an organ of the body; or

b. Serious disfigurement; or

c. Any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health; whether or not treatment is or could have been available.

On the current proposal, the Parliament would rank an offence of bodily harm to a police officer at precisely the same level of seriousness in terms of offending as a grievous bodily harm to anyone else.

At the other end of the scale, if a person caused bodily harm to a police officer the maximum penalty would be 14 years but, if bodily harm was occasioned to anyone else, the maximum is half that period. Indeed, even if the offender in a non-police assault pretends to be armed with any dangerous or offensive weapon or instrument, or is in the company with one or more other persons, the maximum period of imprisonment that may be imposed is 10 years, still four years shy of the maximum now proposed under the Bill for objectively less serious offending.

It should go without saying that a rational and logical approach by the Parliament to the setting of maximum penalties should be taken at all times, and regard should in particular be had to penalties for comparable conduct. The new legislation abjectly fails to do this.

While it is important to protect police officers, it is also important to do so in a way that does not lead to incongruous results. It is also necessary to proceed in accordance with the principle that no one person in our community is more valuable or more worthy of protection than the other. As citizens was are all equal under the law. We urge you to do so.

The proposed amendments to the Criminal Code of Queensland to increase the non-parole floors for certain murders will not achieve the objectives set out in the Explanatory Notes. In any event, there is no proper justification for changing the current way in which such cases are disposed of by our Courts. Similarly, the proposal to double the existing penalty for certain serious assaults on police officers has, with respect, not been properly thought through.[43]

In response the Department provided:

The Bill does not alter the protection offered to other public officers under section 340, namely emergency services officers, child safety officers, nurses and doctors in hospitals, teachers in public schools, transit officers and corrective services officers.

The penalty increase which applies only to police officers reflects the prevalence of these forms of assaults against police officers as a profession. The amendment reflects the objective seriousness of such offending and the need for deterrence in structuring the appropriate sentence.

[43] Bar Association of Queensland, Submission 9, pp. 3-5.

> *The amendment recognises the unique position police as a profession discharging inherently dangerous duties that are vital for maintaining civil authority.*
>
> *The reform delivers on the Government's pre-election commitment to toughen the sentences for serious assaults committed upon Queensland police officers; specifically its pledge to double the maximum penalty for this offending.*
>
> *The amendment does not curtail the sentencing court's discretion to impose a penalty that appropriately reflects the circumstances of the particular case, which the Department of Justice and Attorney-General considers alleviated the concerns expressed in submission 005* [ATSILS] *regarding the impact of the increased maximum penalty upon disadvantaged offenders.*[44]

In relation to the extension of this offence to other professions, the Attorney-General and Minister for Justice, Hon Jarrod Bleijie MP, has indicated that he would also consider extending the new laws to cover assaults on other professions if there is a decline in serious assaults on police officers after implementing this policy.[45]

2.6 Committee comment

Mindful of the breadth of criminal conduct covered in section 340 (serious assaults), and the fundamental tenet that the maximum penalty must reflect the gravity of the offence, the Committee noted that the Bill effectively restricts the penalty increase to the more serious category of assaults upon police officers.

2.7 Clause 7: parole eligibility date

New subsection (2) provides that the prisoner's parole eligibility date is the day after the day on which the prisoner has served the following periods of time:

- 30 years imprisonment or longer time ordered, if section 305(2) of the Criminal Code applied on sentence (that is, in the case of multiple murders);
- 25 years imprisonment or the longer time ordered, if section 305(4) of the Criminal Code applied on sentence (that is, in the case of the murder of a police officer);
- 20 years imprisonment if the prisoner is otherwise serving a term of imprisonment for life for an offence of murder;
- Otherwise – 15 years imprisonment.[46]

The Queensland Homicide Victims' Support Group (QHVSG) stated:

> *We believe that a period of 20 years imprisonment, whilst substantial, is not commensurate with the level of community expectation associated with the term of imprisonment appropriate for the taking two or more human lives, … and that a 20 year period for two or more murders currently 'cheapens' the lives of our lost loved ones, denigrating the values place upon their lives in the eyes of the Courts to merely a 10 year penalty.*[47]

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44 Letter from the Department of Justice and Attorney-General, 3 July 2012, pp. 15-16.

45 Two strikes: State clamps down on child sex offenders, *Brisbane Times*, 18 June 2012.

46 Criminal Law Amendment Bill 2012, *Explanatory Notes*, p. 7.

47 Queensland Homicide Victims' Support Group, Submission 3, p. 1.

QHVSG also suggested that there is an incongruity between a penalty for drug offences and the penalty for the deliberate and intended taking of a life further traumatises our members for the rest of their lives.[48]

> *Whilst QHVSG fully supports the further amendment of the 15 year non-parole period for a single murder being increased to a period of 20 years, we feel that maintaining a difference for multiple murder (eg, the intended increase from 20 to 30 years non-parole period) propagates a repugnant negative perception of an offender 'getting a discount' for multiple murders, If anything, we feel the opposite should apply, with multiple murders attracting an even higher penalty.*
>
> *Accordingly, QHVSG fully supports the increase in non-parole periods for single murders from 15 to 20 years imprisonment yet believes no 'discount' should be given for multiple murders. It is the firm stance of QHVSG … that the criminal justice system should not 'give discounts' when the crime is the most serious of our statutes. We submit that the non-parole period for multiple murders should be in line with multiples of the 20-year period for a single murder (eg, 40 years for a double murder).*[49]

In response the Department provided:

> *Under section 305 of the Criminal Code the offence of murder carries mandatory life imprisonment (or the imposition of an indefinite sentence under Part 10 of the Penalties and Sentences Act 1992). The sentence cannot be mitigated or varied; that is, the court cannot impose a lesser sentence.*
>
> *It is accepted that even with such a heinous offence there may be subjective features particular to a case that warrants at least the prospect of parole eligibility.*
>
> *Accordingly a 'life prisoner', unless a lengthier period is otherwise ordered, is eligible to apply for parole after serving the prescribed minimum non-parole periods. This does not guarantee that parole will be granted.*
>
> *A sentence of life imprisonment goes well beyond the prescribed non-parole period. If paroled, an offender remains under supervision for the balance of the sentence; that is, for the whole of that person's natural life until their death. The legislation ensures a prisoner serves the whole sentence either in custody or under supervision.*
>
> *For these reasons, the Department of Justice and Attorney-General does not consider such a reform to lend itself to a simplistic mathematical equation.*[50]

2.8 Abolition of the Sentencing Advisory Council

The Bill proposes to amend the *Penalties and Sentences Act 1992* to dissolve the Sentencing Advisory Council. Upon repeal of Part 12, there will be no legislative basis for meetings or payment of Council members. To that end, clause 13 replaces section 15AH (relevant considerations before giving or reviewing guideline judgement) to remove the requirement that the Court of Appeal, when considering or reviewing a guideline judgment, is to notify the Sentencing Advisory Council and to consider the Council's written views. This amendment reflects the dissolution of the Council by the repeal of Part 12.[51]

Clause 14 omits section 15AI (Procedural requirements if court decides to give or review guideline judgment) to reflect the previous amendment – thus removing the requirement for the Court of

48 Queensland Homicide Victims' Support Group, Submission 3, p. 1.

49 Queensland Homicide Victims' Support Group, Submission 3, p. 2.

50 Letter from the Department of Justice and Attorney-General, 3 July 2012, p. 10.

51 Criminal Law Amendment Bill 2012, *Explanatory Notes*, p. 8.

Appeal to give a copy of any written views received from the Sentencing Advisory Council under subsection 15AH(1)(b) to the prescribed persons in subsection (2).[52]

Clause 17 omits Part 12 which establishes and provides for the functions, membership and proceedings of the Sentencing Advisory Council. Clause 19, proposed section 222 (dissolution of the Sentencing Advisory Council) further provides that on commencement of the section, the Sentencing Advisory Council is dissolved and that the Council members go out of office and that no compensation is payable to members.

The Society considered that the denial of compensation by legislation does not appropriately take into account the rights and liberties of individuals as is required under section 4(2), *Legislative Standards Act 1992*. The Society considered that this denial of compensation is inconsistent with the principles of natural justice.[53] This issue is also discussed at Part 3 of this Report.

The Supreme Court provided:

> *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.*[54]

Potts Lawyers submitted that the greatest error of the Bill is the decision to dissolve the Council.[55] Potts Lawyers provided:

> *The Council was created to 'help bridge any gap between community expectations, the courts and government on the complex issue of sentencing criminal offenders'.*[56] *During its operation it has played an important role in the justice system.*
>
> *The government has decided to dissolve the Council on the basis that it performed a function that the Queensland law Reform Commission can undertake and suggests that the government has failed to focus on the Council's achievements.*[57]

The Department provided:

> *To date, the main focus of the Council's work has been to provide advice to the Attorney-General on sentencing matters. This function effectively duplicates the law review functions of the Queensland Law Reform Commission. The Bill dissolves the Council to enable a more efficient use of public resources by the rationalisation of law review functions across government.*[58]

In relation to the proposed dissolution of the Council, Amnesty stated:

> *It is important to conserve government resources and avoid the duplication of processes within statutory bodies. The QLRC has limited resources and acts on references given to it by*

52 Criminal Law Amendment Bill 2012, *Explanatory Notes*, p. 8.
53 Queensland Law Society, Submission 1, p. 4.
54 Supreme Court of Queensland, Submission 2, p. 2.
55 Potts Lawyers, Submission 10, p. 7.
56 Potts Lawyers, Submission 10, p. 7, citing the Penalties and Sentences (Sentencing Advisory Council) Amendment Bill 2010, *Explanatory Notes*, p. 1.
57 Potts Lawyers, Submission 10, p. 7.
58 Letter from the Department of Justice and Attorney-General, 25 June 2012, p. 5.

the Attorney-General. If the government dissolves the Sentencing Advisory Council on the basis that the QLRC will be fully resourced and empowered to seek community views, report, and advise on all sentencing matters, and its recommendations have equal range and status to those of the Sentencing Advisory Council, the merging of the Council and QLRC may be productive.

The consequence of the dissolution of the Council must not be poorly considered increases in maximum or minimum sentences in order to satisfy political objectives. If the Committee and Parliament consider that such a consequence is at all likely, then the Council should not be dissolved.[59]

In its Position Paper, INCorrections stated:

This specialist advisory council provided vital research and consultation on important matters of sentencing policy, as well as acting in a pro active manner to inform the community about criminal justice. Their contribution to good governance should be recognised and continued.[60]

In response to submissions, the Department provided:

The purpose of the dissolution of the Sentencing Advisory Council is to achieve a more efficient use of limited public resources by rationalising law review functions across government.[61]

The purpose of the dissolution … is to avoid duplication of effort and achieve a more efficient use of limited public resources by rationalising law review functions across government.[62]

Any referrals to the Queensland Law Reform Commission on sentencing matters will be absorbed into the Commission's general programme of work.[63]

Similarly, any research or policy development work on sentencing issues undertaken by agencies of the Executive Government will be resources as part of their existing programme of work.[64]

The members of the Sentencing Advisory Council who are not public sector employees receive only sessional payments (for example, for meetings attended and special assignment fees) and payments for necessary and reasonable expenses incurred while travelling on approved Council business and to attend meeting. Upon the repeal of part 12 there is no legislative basis on which meetings could be held or members could be paid. The provisions in the Bill which expressly state that no compensation is payable to council members on the dissolution of the council reflect this.[65]

The provisions are simply inserted to ensure that there is no confusion about this issue.[66]

59 Human Rights in Law Group of Amnesty International Qld-Northern NSW Branch, Submission 8, p.4.
60 INCorrections Position Paper June 2012, at p.3.
61 Letter from the Department of Justice and Attorney-General, 3 July 2012, p. 20.
62 Letter from the Department of Justice and Attorney-General, 3 July 2012, p. 21.
63 Letter from the Department of Justice and Attorney-General, 3 July 2012, p. 21.
64 Letter from the Department of Justice and Attorney-General, 3 July 2012, p. 21.
65 Letter form the Department of Justice and Attorney-General, 3 July 2012, p. 23.
66 Letter from the Department of Justice and Attorney-General, 3 July 2012, p. 23.

2.9 Committee comment

The Committee acknowledges the work of the Council, and notes the capacity of the Law Reform Commission to contribute in this context.

2.10 Evade police offence

Clause 21 proposes to amend the offence of evading police, which is contained in section 754 of the *Police Powers and Responsibilities Act 2000*, by establishing a mandatory minimum penalty of $5,000 by way of a fine, and a two year disqualification from holding or obtaining a Queensland driver's licence.

The Department provided:

> *The Bill amends section 754 of the Police Powers and Responsibilities Act 2000, which creates an offence for failing to stop a vehicle when the driver of the vehicle has been directed to do so by a police officer in a police vehicle (an evade police offence). The offence was established to create an alternative to police pursuits and to ensure that a sufficient deterrent exists in light of the move towards a more restrictive police pursuit policy.*
>
> *The adoption of a more restrictive pursuit policy has resulted in a sustained decrease in the number of police pursuits. There has been a concomitant decrease in the number of deaths and injuries resulting from pursuits.*
>
> *In June 2011, the Crime and Misconduct Commission (CMC) released the report, 'An Alternative to Pursuit – A Review of the Evade Police Provisions'. As part of that review the CMC analysed the sentencing outcomes for the offence of evade police between July 2006 and June 2012.*
>
> *The CMC found that the most common penalty imposed during the relevant period was a fine and that fines ranged between $50 and $4,000. The most common fine imposed where an offender appeared on a single charge of evade police was $300. Where other charges were sentenced in addition to an evade offence, the most common fine imposed was $1,000. The CMC also found that a period of licence disqualification was only imposed in approximately one in every five cases.*
>
> *Such sentences are not commensurate with the risk posed by those who evade police.*
>
> *The Bill amends the offence for evading police by inserting a mandatory minimum penalty of $5,000 by way of fine and a two year disqualification from holding or obtaining a driver's licence.*
>
> *Mandatory disqualification periods already exist for a range of offences pursuant to section 86 Transport Operations (Road Use Management) Act 1995 (TORUM Act). For example, drink driving offences carry varying periods of disqualification depending on the alcohol reading involved.*
>
> *In 2010 the State Coroner released the report Police Pursuits – policy recommendations. In the context of recommending that mandatory licence disqualifications be considered for offenders who evade police, the Coroner highlighted the importance of ensuring that discrepancies in sentencing outcomes did not create an incentive to evade police.*
>
> *In this respect, an example of a drink driver is instructive. A person intercepted by police while drink driving can be certain that they will face a mandatory period of licence disqualification by virtue of the operation of section 86 TORUM Act. If the same person fails to stop for police, they would not be pursued, as pursuits are not permitted for traffic related matters under the current policy. Given that a period of licence disqualification is only imposed in approximately one in every five appearances for an evade offence, they*

would be statistically unlikely to receive a period of disqualification. Such an example serves to highlight the central importance of ensuring discrepancies in sentencing practice do not erode the deterrent effect of evade police provisions.[67]

The Society restated their opposition to any form of mandatory sentencing,[68] as discussed at Part 2.1 of this Report, and provided:

In terms of drafting, section 91, Transport Operations (Road Use Management) Act 1995 deems that the chief executive must be advised of persons disqualified from holding Queensland driver licences. To this end, we recommend inserting a further section similar to the wording contained in section 450H(2), Criminal Code 1899 which deals with 'licence disqualification where commission of offence is facilitated by licence or use of vehicle':

'A copy of the order shall be transmitted to the chief executive of the department in which the Transport Operations (Road Use Management) Act 1995 is administered by the officer or clerk having custody of the records of the court wherein the conviction was recorded.'[69]

ATSILS stated:

The setting of a minimum mandatory penalty and the imposition of a 2 year mandatory disqualification of licence period fails to understand or address the issues that have arisen in regard to this and other offences, such as 'Fail to stop for prescribed purposes'. Several practical suggestions were made by the Crime and Misconduct Commission (CMC) in regard to this provision, which would make it more user friendly to the police and the court.

We acknowledge that although mandating a sentence in the above mentioned terms would be relevant and harsh for a person who has a license and money or a job, the imposition of such a sentence on a person who has neither, will be irrelevant for that person. These prescribed penalties are unlikely to be relevant to many people who engage in evade police offences. The penalties prevent the Court from imposing a sentence that would take each offender's circumstances into account. Our organisation, Legal Aid Queensland and the Chief Magistrate have previously voiced views in this regard, to the extent that there may be unintended adverse consequences of such penalties. These included added incentive to evade police, further endangering community safety.[70]

Potts Lawyers submitted:

The specific penalty being altered applies to failing to stop a motor vehicle when directed by a police officer using a policy motor vehicle. This charge reaches well beyond those offenders involved in high-speed car chases.

A person who panics for fear they haven't paid a recent parking fine and drives three blocks before regaining their composure and pulling over, now faces the standard minimum penalty.

In reality any conduct involving a police chase traditionally encompasses more serious offending behaviour than failing to stop, such as dangerous driving. The penalties available for this criminal offence of dangerous driving allow for adequate punishment of offenders. Imposing significant penalties for arguably the least dangerous part of a police chase (i.e. the failure to stop) achieves no clear objective and punishes people who have not even participated in a "police chase".

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67 Letter from the Department of Justice and Attorney-General, 25 June 2012, pp. 3-4.

68 Queensland Law Society, Submission 1, p. 4.

69 Queensland Law Society, Submission 1, p. 4.

70 Aboriginal and Torres Strait Islander Legal Service (Qld) Inc., Submission 5, pp. 6-7.

> *Failing to pull over to the side of the road within a reasonable time, regardless of whether the person voluntarily desisted very shortly thereafter, will result in the blanket imposition of one of one of the largest fines handed down in the Magistrates Court and a two year licence disqualification.*
>
> *A person with no previous criminal or traffic history, and who was not speeding or driving erratically, faces losing a job that requires a licence and being unable to provide for their family.*
>
> *A person who drove with a blood alcohol reading of 0.149% faces a court which has more capacity to consider their individual circumstances.*
>
> *The government cites a need for "commensurate" penalties, but fails to recognise that such penalties can only be given by those who have access to all of the information concerning the offence, the impact on any victim and the surrounding circumstances, including the needs of the community.*[71]

The Crime and Misconduct Commission (CMC) made the following comments in relation to proposed clause 21 of the Bill:

> *Mandatory minimum fines*
>
> *In our 2011 report: 'An Alternative to Pursuit – A Review of the Evade Police Provisions' ('the Report'), we stated that the most common fine for an 'evade police only' charge was $300, compared with $1000 for those offenders who committed offences in addition to the evade police offence. We also stated that it is possible that charges tend to be at the non-compliance end of the offending spectrum, that is to say, a majority of offences appear to involve a simple failure to comply with a direction to stop.*
>
> *I have no doubt that you will have reflected on the risk, in the area of mandatory minimum penalty, of creating perverse incentives that result in unforseen consequences being promoted to take more extreme risks to evade police interception.*
>
> *Mandatory licence disqualification*
>
> *The CMC also considered mandatory licence disqualification for evade police offenders in the Report, at the State Coroner's request. After carefully weighing the arguments from key stakeholders and available evidence, no recommendation for mandatory licence disqualification was made.*
>
> *The CMC adopted this approach because there was no compelling evidence that licence disqualification would be effective either as a deterrent or an incapacitation strategy for evade police offenders.*[72]

In response the Department advised:

> *The offence was established to create an alternative to police pursuits and to ensure that a sufficient deterrent exits in light of the move towards a more restrictive police pursuit policy.*
>
> *The Bill delivers on the Queensland Government's commitment, within its first 100 days of forming Government, to toughen the sentences for evade police.*[73]

In response to the CMC's findings in the report, *An Alternative to Pursuit – A Review of the Evade Police Provisions*, the Department advised:

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71 Potts Lawyers, Submission 10, pp. 6-7.

72 Crime and Misconduct Commission, Submission 11, pp. 1-2.

73 Letter from the Department, 3 July 2012, p. 4.

> *The CMC found that the most common penalty imposed during the relevant period [July 2006 and June 2010] was a fine and the fines ranged between $50 and $4,000. The most common fine imposed where an offender appeared ion a single charge of evade police was $300. Where other charges were sentenced in addition to an evade offence, the most common fine imposed was $1,000. The CMC also found that a period of licence disqualification was only imposed in approximately on in every five cases.*
>
> *The Government does not consider such sentences to be commensurate with the risk posed by those who evade police.*[74]

In further response, the Department provided:

> *The Department notes the recommendation in submission 001* [QLS] *and will consult further with the Queensland Police Service and the Office of the Queensland Parliamentary Counsel regarding the TORUM (mechanism to notify the relevant authority).*
>
> *Engaging in a pursuit is one of the most dangerous activities in which police can become involved. Between June 2005 and July 2008, 10 people died in Queensland while police, who were attempting to intercept a vehicle, were directly engaged in a pursuit or soon after a pursuit was abandoned. The alternative to police officers engaging in a pursuit is to take enforcement action against those offenders who elect to evade them and fail to stop when directed.*
>
> *While the average number of pursuits has declined due to the application of restrictive pursuit policies and deference to public safety, this has seen nonimpact on the number of Evade Police offences being committed.*
>
> *From 2000-2007, the average number of pursuits recorded annually was 605. Following the introduction of a restrictive pursuit policy in 2008, the average number of pursuits for the period 2008-2001 recorded annually is now 309. The average number of pursuits has decreased 49 percent when compared to the previous seven-year average. Currently, only one in every 10 Evade Police offences results in a pursuit.*
>
> *Recorded offences of Evade Police have risen significantly, from 1284 in 2010, to 1799 in 2001, with 1135 in 2012 (1 January to 31 May 2012) and expected to reach 2733. While this increase may in part be due to previous under-reporting by police officers, the Queensland Police Service (QPS) believes that there is a growing awareness by offenders that police will not engage in pursuits when attempts to intercept fail.*
>
> *Two of the components which deter individuals from engaging in criminal behaviour are apprehension and adequate punishment. The Evade Police offence was developed as an alternative tool that does not require apprehension through pursuit. However, the offence can only operate effectively if its deterrent value is maintained through the imposition of sentences that reflect the inherently dangerous nature of the conduct involved.*
>
> *The proposed amendments ensure that sentences imposed on offenders who commit evade police offences reflect the inherently serious nature of the conduct and risks that it poses, and are in line with community expectations.*[75]

2.11 Committee comment

The Committee note that the Bill strengthens the consequences for the evade police offence, and considered these measures will provide further disincentives.

[74] Letter from the Department of Justice and Attorney-General, 3 July 2012, p. 4.

[75] Letter from the Department of Justice and Attorney-General, 3 July 2012, pp. 23-25.

2.12 Consequences of a reduction of guilty pleas

The Supreme Court provided:

> *One area requiring further research and active consideration of your Committee are the implications of proposed changes in the law on the rate of guilty pleas.*
>
> *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 trails. 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 son 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 punished*
>
> *These and other unintended consequences could be avoided by:*
>
> - *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;*
> - *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.*[76]

In respect of guilty pleas, the Supreme Court also provided:

> *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.*[77]

Amnesty stated that the *Penalties and Sentences Act 1992* places great emphasis on the reduction in tariff for an early guilty plea. '*There are many well known policy reasons for this course. However, the provisions of this bill in respect of the minimum mandatory sentences for offenders will result in all matters being taken to trial. There would be not incentive to do otherwise. This will not only add to the trauma of the victim's family and witnesses but could potentially result in enormous costs and time delays for the courts*.'[78]

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[76] Supreme Court of Queensland, Submission 2, p. 3.

[77] Supreme Court of Queensland, Submission 2, p. 4.

[78] Human Rights in Law Group of Amnesty International Qld-Northern NSW Branch, Submission 8, p. 3.

The Society also provided that '*mandatory sentencing reduces the proportion of pleas of guilty, thus increasing court cost, court delays, prosecution costs, defence costs and the stress upon victims and other witnesses.*'[79]

ATSILS[80] and Potts Lawyers[81] also submitted that there is a risk offenders are less likely to plead guilty.

2.13 Committee comment

The Committee notes the possible consequences of the proposed amendments on the courts and other criminal justice agencies. Accordingly, the Committee recommends the Attorney-General monitor and review the consequences of the proposed amendments, and report to Parliament within two years from commencement.

Recommendation 2

The Attorney-General monitor and review the consequences of the proposed amendments on the courts and other criminal justice agencies, and report to Parliament within two years from commencement.

2.14 Estimated cost for Government implementation

The Committee benefitted from the Supreme Court submission:

> *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 Department of Community Safety. … 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.*[82]

The Explanatory Notes stated that any costs will be met from existing agency resources.[83]

The Supreme Court urged the Committee to recommend that any cost not be borne by the courts and agencies which directly support them in the administration of justice.[84]

Amnesty commented that the cost of implementing the mandatory sentencing regimes, which will result in more persons in state custody over time, have not been properly disclosed to the public.[85]

In response the Department advised:

> *The Explanatory Notes to the Bill indicate that any costs in relation to the amendments will be met from existing agency resources. The allocation of resources will be determined through the normal budgetary processes.*

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79 Queensland Law Society, Submission 1, p. 2.

80 Aboriginal and Torres Strait Islander Legal Service Inc. Submission 5, p. 4.

81 Potts Lawyers, Submission 10, p. 2.

82 Supreme Court of Queensland, Submission 2, p. 2.

83 Criminal Law Amendment Bill 2012, *Explanatory Notes*, p. 3.

84 Supreme Court of Queensland, Submission 2, p. 2.

85 Human Rights in Law Group of Amnesty International Qld-Northern NSW Branch, Submission 8, p. 4.

The Department of Justice and Attorney-General notes the concerns expressed in submission 2 (Supreme Court of Queensland).

The amendments to increase the non-parole periods for the offence of murder will have a future impact on prisoner numbers with resulting costs to Queensland Corrective Services. However, the Department of Justice and Attorney-General does not anticipate that the reforms will significantly impact on prisoner numbers in the short to medium term and are not likely to begin to effect prisoner numbers for approximately two decades.[86]

2.15 Committee comment

The Committee acknowledges these submissions, however supports the Government's commitment to introduce amendments to strengthen the sentences for evade police, murder, the murder of a police officer, and serious assaults committed upon police officers.

[86] Letter from the Department of Justice and Attorney-General, 3 July 2012, p. 8.

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

3.1 Rights and liberties of individuals

This Bill amends the *Criminal Code* and the *Corrective Services Act 2006* regarding the punishment regime for the offence of murder. The Explanatory Notes state:

> *… the amendments potentially impact on the rights and liberties of individuals by requiring offenders to serve longer periods of actual incarceration before being eligible to apply for parole release and therefore arguably it punishes the offender to a greater extent than was authorised by the former law.*[87]

The Explanatory Notes justify the increases by stating that:

> *… the punishment for murder fits the severity of the crime and communicates the gravity of the offending.*[88]
>
> *The increase to the minimum non-parole periods will apply prospectively and will only capture offenders who commit the offence of murder on, or after, the date upon which the Bill commences.*[89]
>
> *The increase in the non-parole period for more than one murder has some retrospective effect in that only one offence must occur after commencement.*[90]

Doubling the maximum penalty for the offence of serious assault of a police officer in certain prescribed circumstances is addressed in the Explanatory Notes which state '*an increase to the maximum penalty for certain serious assaults will affect the rights and liberties of some individuals, the increase can be justified given the need to: deter this form of concerning conduct; protect police officers carrying out their duties; and ensure the maintenance of civil authority.*'[91]

The Bill amends the *Police Powers and Responsibilities Act 2000* to introduce a mandatory minimum penalty for the offence of evade police. The Explanatory Notes state:

> *While this potentially interferes with the rights and liberties of individuals, the amendment is justified and proportionate when considered against the background of the harm caused by those who evade police and the challenges associated with the enforcement of this offence.*[92]

3.2 Punishment for murder and murder of a police officer

The Department provided:

> *The Bill amends the Criminal Code and the Corrective Services Act 2006 regarding the punishment regime for the offence of murder. The amendments potentially impact on the*

87 Criminal Law Amendment Bill 2012, *Explanatory Notes*, p. 3.
88 Criminal Law Amendment Bill 2012, *Explanatory Notes*, p. 4.
89 Criminal Law Amendment Bill 2012, *Explanatory Notes*, p. 4.
90 Criminal Law Amendment Bill 2012, *Explanatory Notes*, p. 4.
91 Criminal Law Amendment Bill 2012, *Explanatory Notes*, p. 4.
92 Criminal Law Amendment Bill 2012, *Explanatory Notes*, p. 4.

rights and liberties of individuals by requiring offenders to serve longer periods of actual incarceration before being eligible to apply for parole release and therefore arguably it punishes the offender to a greater extent than was authorised by the former law.

However, the increases are justified to ensure that the punishment for murder fits the severity of the crime and communicates the gravity of the offending. The Bill aims to further promote community safety and protection from these serious offenders. Additionally, the increase to the minimum non-parole periods applies prospectively and will only capture offenders who commit the offence of murder on, or after the date upon which the Bill commences. However, the increase in the non-parole period for more than one murder has some retrospective effect in that only one offence must occur after commencement.[93]

The Society submitted:

Proposed s 305(4)(b) deals with the relevant circumstances under which the person being sentenced did the act or made the omission that causes the police officer's death. We consider that proposed s 305(4)(b)(ii) which states the circumstances of the act or omission being made "because the police officer was a police officer", should be removed as it is vague. It appears that this circumstance has been included to cover situations in which a police officer is killed whilst not on duty. However in our view, this circumstance is sufficiently covered by proposed s 305(4)(b)(iii), which states the circumstance of "because of, or in retaliation for, the actions of the police officer or another police officer in the performance of the officer's duty". The inclusion of the circumstance, "because the police officer was a police officer", is an unnecessary duplication.

Clause 5 of the Bill will function to make the changes to proposed s 305(2) retrospective in part. Section 4(3)(g), Legislative Standards Act 1992 specifically states that legislation should not "adversely affect rights and liberties, or impose obligations, retrospectively". We consider that the proposition in clause 5 breaches this principle without reasonable justification.[94]

Amnesty also commented in relation to the retrospective nature of the Bill:

Retrospective criminal laws offend against the most basic principles of the rule of law. It is essential to the fair operation of the criminal laws that citizens can ascertain illegality and consequences of an action at the time the action is made. In Polyukhovich v Commonwealth (1991) 172 CLR 501, Brennan J stated at [28] that "[a]t least since the time of Bentham and Mill, however, ex post factor criminal legislation has been generally seen in common law countries as inconsistent with fundamental principle under our system of government." The Australian Senate Standing Committee for the Scrutiny of Bills has recently opined that "liberal and democratic legal traditions have long expressed strong criticism of retrospective laws that impose criminal guilt" and "retrospectivity is generally considered to compromise basic 'rule of law' values".

If an act is made illegal or the punishment for it increased after it is done, then the result is manifestly unfair for those who incur the new and unforeseeable consequences of their actions. There is no "deterrent effect" justification in punishment for a retrospective crime. Aside from other problematic features of the proposed amendments, they are unfair, and an ineffective deterrent mechanism to the extent of their retrospective effect.[95]

93 Letter from the Department of Justice and Attorney-General, 25 June 2012, p. 5.

94 Queensland Law Society, Submission 1, p. 3.

95 Human Rights in Law Group of Amnesty International, Queensland-Northern NSW Branch, Submission 8, p. 3.

The Department responded:

> *Under the Criminal Code the offence of murder carries mandatory life imprisonment (or the impossition of an indefinite sentence under Part 10 of the Penalties and Sentence Act 1992). The court has no discretion to impose a lesser sentence. The Bill does not alter that legislative position.*
>
> *The Bill however increases the minimum non-parole periods applicable to the offenc eof murder, which potentially impacts on the rights and liberties of individuals by requiring offenders to serve longer periods of actual incarceration before being elgible to apply for parole release and therefore argualbe it punishes the offender to a greater extent than was authorised by the formwe law.*
>
> *The new minimum non-parole period for the murder of a police officer operates prospectivley and will only capture offenders who commit the offence of murder on, or after, the date upon which the Bill commences.*
>
> *It is acknowledged that the increase in the on-parole period for more than one murder operates with partial retrospective effect. However, for the higher minimum non-parole period to apply, one of the murders must be committed post commencement of the Bill. Therefore an offender who has a previous conviction for murder, is on notice upon the commencement of the bill that if they commit a further murder after that date they face an increased minimum non-parole period upon conviction.*
>
> *The adverse effect on the rights or liberties of this cohort of offenders is justified with reference to commnity protection.*[96]

3.3 Serious assault of a police officer

The Department provided:

> *The Bill amends the Criminal Code to double the maximum penalty for the offence of serious assault of a police officer in certain prescribed circumstances. Police perform an essential and unique role in maintaining civil authority. Their duties are frequently dangerous. Assaults upon police that involve the use of weapons, spitting, biting or otherwise causing bodily harm represent serious displays of contempt for civil authority. Additionally, acts of spiting, biting or applying faeces or bodily fluids are particularly degrading and carry with them concern of transmission of disease.*
>
> *While it might be argued that an increase to the maximum penalty for certain serious assaults will affect the rights and liberties of some individuals, the increase can be justified given the need to: deter this form of concerning conduct; protect police officers carrying out their duties; and ensure the maintenance of civil authority.*[97]

The Society noted:

> *… under the heading of 'Maximum penalty', only subsection (iii) contains the penalty of 14 years. We consider that, in the interest of clear legislative drafting, the penalty of 14 years should be enunciated in subsections (i) and (ii), or should be placed on the line below so that it is evident that the penalty applies to all three subparagraphs.*[98]

In response to the Society's query regarding the drafting style of amended section 340(1) of the Criminal Code, the Department provided:

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96 Letter from the Department of Justice and Attorney-General, 3 July 2012, pp. 18-19.

97 Letter from the Department of Justice and Attorney-General, 25 June 2012, pp. 5-6.

98 Queensland Law Society, Submission 1, p. 4.

The policy intention is clearly that the increased maximum penalty of 14 years imprisonment is to apply to all three subparagraphs.

This issue raised in submission 001 (Queensland Law Society), reflects a drafting preference. The Bill was drafted by the Office of the Queensland Parliamentary Counsel and progressed through the proper quality assurance controls. The Department of Justice and Attorney-General is satisfied that the Bill reflects modern drafting practices.[99]

3.4 Abolition of the Sentencing Advisory Council

The Department provided:

The members of the Council who are not public sector employees receive only sessional payments (for example, for meetings attended and special assignment fees) and payments for necessary and reasonable expenses incurred while travelling on approved Council business and to attend meetings. Upon repeal of Part 12 there is no legislative basis on which meetings could be held or members could be paid. The provisions in the Bill which expressly state that no compensation is payable to council members on the dissolution of the council reflect this.[100]

In its submission, the Society stated:

The Society considers that the denial of compensation by legislation does not appropriately take into account the rights and liberties of individuals as is required under s4(2), Legislative Standards Act 1992. We consider that this denial of compensation is inconsistent with the principles of natural justice.[101]

3.5 Evade police

The Bill introduces new mandatory offence provisions in relation to this offence. The impositon of a mandatory minimum penalty and mandatory licence disqualification acts to the detriment of individuals who come before the courts for sentencing for an evasion offence. It is possible that a person may receive a greater penalty than they would have when there was no mandatory minimum penalty. In addition they will now be disqualified from driving for two years.

The Department provided:

The Bill amends the Police Powers and Responsibilities Act 2000 to introduce a mandatory minimum penalty for the offence of evade police. While this potentially interferes with the rights and liberties of individuals, the amendment is justified and proportionate when considered against the background of the harm cause by those who evade police and the challenges associated with the enforcement of this offence.[102]

3.6 Juvenile offenders

A retrospective provision also exists for juvenile offenders convicted of murder.

The Scrutiny of Legislation Committee, in respect of the *Juvenile Justice Legislation Amendment Bill 1996*, commented as follows (*Alert Digest* 1996/6, p 4):

There is a general view that children have a lesser degree of culpability because they have not yet developed into adulthood. Because the moral culpability of children is generally

99 Letter from the Department of Justice and Attorney-General, 3 July 2012, p. 18.

100 Letter from the Department of Justice and Attorney-General, 25 June 2012, p. 6.

101 Queensland Law Society, Submission 1, p. 4.

102 Letter from the Department of Justice and Attorney-General, 25 June 2012, p. 6.

> *perceived to be less than that of adults, it would appear consistent for the sentences to be less.*
>
> *This may be the reason why international conventions suggest that the maximum sentences for children need to be less than those applicable for adults. This concept extends beyond the length of sentences to include the expectation that other procedures relating to children in criminal justice systems, for example, conditions in custody and parole provisions, should take cognisance of the fact that children are entitled to more favourable treatment.*

The view that children have a lesser degree of culpability has a strong foundation in the common law and finds expression in the Criminal Code, section 29. That section provides that a person under the age of 10 years is not criminally responsible for any act or omission and a person under the age of 14 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission the person had capacity to know that the person ought not to do the act or make the omission.

The Scrutiny of Legislation Committee also took the view that rights and liberties include those arising out of Australia's international treaty obligations[103]. Australia has ratified the *UN Convention on the Rights of the Child*.[104]

The issue of treatment of youths was also raised by ATSILS in Part 2 of this Report.

3.7 Committee comment

The Committee considered the rights and liberties that are potentially affected. The Committee notes the policy objectives of the Bill outweigh any potential issues of fundamental legislative principles.

[103] Scrutiny Committee *Annual Report 1998-1999*, para 2.13.

[104] This treaty entered into force for Australia on 16 January 1991, relevant articles include articles 9, 20, 37 and 40.

Appendices

Appendix A – List of Submissions

Sub #	Submitter
1	Queensland Law Society
2	Supreme Court of Queensland
3	Queensland Homicide Victims' Support Group
4	Prisoners' Legal Service Inc.
5	Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd.
6	Catholic Prison Ministry
7	Queensland Public Interest Clearing House Incorporated
8	Human Rights in Law Group of Amnesty International Queensland-Northern NSW Branch
9	Bar Association of Queensland
10	Potts Lawyers
11	Crime and Misconduct Commission

Appendix B – Table 1: Summary of Submissions

Policy or initiative	Submitter and No.	Issues raised in submission	Comments / other
Opposition to mandatory sentencing laws, including minimum non-parole periods.	001 – Queensland Law Society	The Submission notes that the Queensland Law Society (QLS) has long maintained a strong stance against any form of mandatory sentencing. Mandatory sentencing laws are considered to be unfair, unworkable and run contrary to Australia's international treaty obligations. The QLS considers that the proposed legislation unduly fetters judicial discretion and will greatly hinder the court's ability to bring about justice in individual cases. Mandatory sentencing schemes have the potential to lead to serious miscarriages of justice. The QLS considers that judges are in a better position to administer justice through judicial reasoning and comprehensive understanding of the offence and the circumstances surrounding its commission. The submission lists a number of arguments against a regime of mandatory sentencing.	The offence of murder is the most heinous of criminal offences. Under the Criminal Code, the offence of murder already carries mandatory life imprisonment or the imposition of an indefinite sentence (under Part I 0 of the *Penalties and Sentences Act* 1992). The court has no discretion to impose a lesser sentence. Further, the Criminal Code, read in conjunction with the *Corrective Services Act 2006,* already prescribes the minimum non-parole periods for the offence of murder. That is, the minimum period an offender must spend in prison before they become eligible to apply for parole release. The Bill therefore builds on the current mandatory punishment regime for the offence of murder in Queensland. In June last year the Premier noted the regard that the Government has for judicial independence and the importance of the separation of powers in this State, and in doing so discussed some of the concerns regarding mandatory sentencing laws. However, the Premier also clearly recognized the concern across the community that Queensland's sentencing laws do not reflect current community expectations. To that end, the Government recognizes that some offending is so heinous and presents such a risk to the safety of the community that the strongest legislative response is called for to ensure that adequate punishments are being handed down by the courts to these serious criminal offenders. The offence of murder falls into this category of offending. The Bill delivers on the Queensland Governments pre-election commitment that within its first I 00 days of forming Government it would introduce reforms to toughen the sentences for murder. In particular, the Government committed to: - increase the non-parole period for murder from 15 years to 20 years imprisonment; - increase the non-parole period for multiple murders from 20 years to 30 years imprisonment; and - introduce a new offence of murder of a police officer with a non-parole period of 25 years imprisonment. The Bill aims to ensure that the punishment for murder fits the severity of the crime and will promote community safety and protection from these serious offenders. The pre-election commitment regarding the murder of a police officer is achieved by an amendment to section 305 of the Criminal Code to
	002 – The Honourable Chief Justice of the Supreme Court of Queensland	The submission recognizes 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. The Chief Justice notes that he expressed reservation about the enactment of mandatory non-parole periods for certain offences in a submission to the Sentencing Advisory Council recently. It is noted that the courts and others have emphasises the importance of preserving the judicial discretion to ensure the punishment is just in all of the circumstances of the particular case. The submission notes that 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; such discretion to be exercised in carefully defined and truly exceptional circumstances. The submission notes that experience shows that offences which attract mandatory sentences rarely result in guilty pleas. Timely pleas of guilty are to be encouraged as the guilty are punished sooner and they have significant resource implications for the courts.	
	004 – Prisoners' Legal Service Inc. 006 – Catholic Prison Ministry 007 – Queensland Public Interest Law Clearing House Inc.	The three submissions each adopt a submission prepared by the In Corrections Group titled, *'INCorrections Position Paper June 2012* ', which considers the Criminal Law Amendment Bill 2012 and the Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012. Mandatory sentencing is opposed as it undermines the values	

Policy or initiative	Submitter and No.	Issues raised in submission	Comments / other
		that Australians hold dear: fairness; proportionality; and respect for human dignity. The submission notes that to sentence someone to life imprisonment is the most serious sanction in the sentencing hierarchy. It should not be applied indiscriminate! y. Mandatory life sentences prevent the court from taking into account the individual circumstances of the offence and there is no evidence to support that it will deter others from committing the same offence. Further, mandatory life sentences discourage guilty pleas. Increased sentences are an expensive and inefficient means of addressing the causes of crime.	insert a new and specific minimum non-parole period for the murder of a police officer. The Bill does not include a residual discretion, as discusses in submission 002, consistent with the existing approach to the punishment regime for murder under the Criminal Code, in particular where the offender commits more than one murder. The Bill also inserts a mandatory minimum fine and period of licence disqualification for an evade police office under section 754 of the *Police Powers and Responsibilities Act 2000.* The offence was established to create an alternative to police pursuits and to ensure that a sufficient deterrent exists in light of the move towards a more restrictive police pursuit policy. The Bill delivers on the Queensland Government's commitment, within its first 100 days of forming Government, to toughen the sentences for evade police. In June 2011, the Crime and Misconduct Commission (CMC) released the report, *'An Alternative to Pursuit - A Review of the Evade Police Provisions'*. As part of that review the CMC analysed the sentencing outcomes for the offence of evade police between July 2006 and June 2010. The CMC found that the most common penalty imposed during the relevant period was a fine and that fines ranged between $50 and $4000. The most common fine imposed where an offender appeared on a single charge of evade police was $300. Where other charges were sentenced in addition to an evade offence, the most common fine imposed was $1000. The CMC also found that a period of licence disqualification was only imposed in approximately one in every five cases. The Government does not consider such sentences to be commensurate with the risk posed by those who evade police.
	005 – Aboriginal and Torres Strait Islander Legal Service	The submission notes that focus on lengthy periods of incarceration on its own is unlikely to assist offenders with their rehabilitation while in prison and reintegration post-release. Punishment is but one part of incarceration and may protect the community during the person's sentence, however, if the community is to be protected in the longer term there needs to be a focus on placing that person in a position where they can function as a law abiding citizen once released. Quality training, counselling, rehabilitation, education and reintegration services for prisoners are more likely than lengthier sentences to assist a person's return to the community. The practical issues likely to arise from increasing already lengthy mandatory sentences include: a lack of any incentive for a person to plead guilty; a larger amount of appeals because the person feels that they have nothing to lose; and an increase in prisoner numbers and thus costs.	
	008 – Human Rights in Law Group of Amnesty International, Queensland-northern New South Wales Branch	The submission argues that the imposition of higher mandatory sentences and non-parole periods will not ensure that an appropriate punishment is given to reflect the severity of the offence and will have no effect in protecting police or the general public. It does nothing to remedy the causes of the offending, and can potentially create a false sense of security, complacency and ignorance in the community. There is no evidence to support that an increase in the sentence and non-parole periods will be effective in deterring further crime, or in protecting the community or police officers. Many murders are not calculated or premeditated but rather are crimes of passion, and so the actions of the offenders are unlikely to be affected by an increase in the punishment to which they may be exposed. The submission challenges the removal of judicial discretion from the sentencing process. The Legislature is not elected to,	

Policy or initiative	Submitter and No.	Issues raised in submission	Comments / other
		and is poorly qualified to override and intervene in the essential judicial role of sentencing. Article 9 of the Universal Declaration of Human Rights and Article 9 of the International Covenant on Civil and Political Rights prohibit arbitrary detention. The legislator takes on a grave and heavy responsibility in making judgements in Parliament to mandate that a second murder offence is more serious than the first, without reference to judicial hearing and process. The submission also notes that Article 10 of the UDHR states that all have the right to a fair and public trial by an independent and impartial tribunal. It is said that the proposed amendments are contrary to the independence of the judiciary and the principle of the separation of powers on which our democracy and access to human rights depends.	
	010 – Potts Lawyers	The submission is opposed to mandatory sentencing, including mandatory minimum sentences for the following reasons: - There is a real risk that defendant's who would otherwise have pleaded guilty will opt to take their chances at trial, rather than be subject to a mandatory minimum prison term; - A system already exists for fixing inadequate sentences if the Crown believes that the sentence imposed was inadequate, namely the appeal process; - Current sentences are no fundamentally inconsistent; - The scheme will not reduce crime; there is limited evidence that either general or specific deterrence in a sentencing context is effective in reducing offending; - An informed public does not significantly disagree with the sentences being imposed by the courts; - It will increase the exposure of individuals to criminal elements; and - There are other ways to promote public confidence in the criminal justice system.	
The resource implications of mandatory sentencing	002 – The Honourable Chief Justice of the Supreme Court of Queensland	The submission recognises 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. However the submission notes that there are other implications and provides the example of the increase in the non-parole period for murder from 15 years to 20 years which may have resource implications for the Department of Community Safety. The submission notes that it is hoped that any additional resources required to accommodate prisoners for longer periods will not be at the expense of the courts and	The Explanatory Notes to the Bill indicate that any costs in relation to the amendments will be met from existing agency resources. The allocation of resources will be determined through the normal budgetary processes. The Department of Justice and Attorney-General notes the concerns expressed in submission 002. The amendments to increase the non-parole periods for the offence of murder will have a future impact on prisoner numbers with resulting costs to Queensland Corrective Services. However, the Department of Justice and Attorney-General does not anticipate that the reforms will significantly impact on prisoner numbers in the short to medium term

Policy or initiative	Submitter and No.	Issues raised in submission	Comments / other
		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 submission suggests that the Legal Affairs and Community Safety Committee might recommend that such costs not be borne by the courts and agencies which directly support them in the administration of the justice system.	and are not likely to begin to effect prisoner numbers for approximately two decades.
	008 – Human Rights in Law Group of Amnesty International, Queensland-northern New South Wales Branch	The submission considers that the cost implications of the mandatory sentencing regimes, which will result in more people in State custody over time, have not been properly disclosed to the public. Incarceration of offenders is an expensive form of punishment. If the Bill proposes to introduce punishments that will increase expenditure in this area, its proponents have a duty to the public to properly justify the extent of that expenditure and why it is warranted.	
Clause 3 (Murder and the murder of a police officer) - The impact on young offenders.	005 – Aboriginal and Torres Strait Islander Legal Service	The submission is concerned that young people are being treated in the same manner as adults, which reflects an utter failure to acknowledge and allow for the lower maturity levels and lack of life experience. Young people convicted of murder will be incarcerated for even longer without any experience of life as an adult community member outside of prison.	While the concerns expressed in submission 005 are acknowledged, the approach adopted in the Bill is consistent with the current approach to the punishment for the offence of murder with regard to young offenders. The approach is reflective of murder being the most heinous of criminal offences.
Clause 3 (Murder) - Increasing the non-parole period for multiple murders from 20 to 30 years	005 – Aboriginal and Torres Strait Islander Legal Service	The submission does not oppose the logic of increasing the non-parole period for multiple murders but suggests that the increase should be five years (that is, a minimum non-parole period of 25 years) rather than 10 years.	The Bill implements the Government's pre-election commitment to adopt a tough, new approach to the handling of life sentences for murder through amendments to the Criminal Code and the *Corrective Services Act 2006*; specifically to increase the minimum non-parole period for multiple murders from 20 years to 30 years imprisonment. Further, the increase complements the insertion of a specific minimum non-parole period of 25 years imprisonment for the murder of a police officer.
Clause 3 (Murder) - There should be no 'discount' for multiple murders.	003 – Queensland Homicide Victims' Support Group	The submission notes that the members of the Queensland Homicide Victims' Support Group (the QHVSG) are eminently qualified to comment upon the proposed amendments concerning the punishment regime for the offence of murder, given that they feel that they serve greater sentences than the offenders responsible for the loss of their loved ones. While the submission supports the increase in the non-parole period from 15 years to 20 years imprisonment for a single murder, the QHVSG considers that maintaining a difference for multiple murders propagates a repugnant negative perception of an offender 'getting a discount' for multiple murders. The submission advocates that the non-parole period for more than one murder should be determined in multiples of 20 years; that is, a cumulative 20 year non-parole period for each victim (for example if an offender killed two people the non-	Under section 305 of the Criminal Code the offence of murder carries mandatory life imprisonment (or the imposition of an indefinite sentence under Part 10 of the *Penalties and Sentences Act 1992).* The sentence cannot be mitigated or varied; that is, the court cannot impose a lesser sentence. It is accepted that even with such a heinous offence there may be subjective features particular to a case that warrants at least the prospect of parole eligibility. Accordingly a 'life prisoner', unless a lengthier period is otherwise ordered, is eligible to apply for parole after serving the prescribed minimum non-parole periods. This does not guarantee that parole will be granted. A sentence of life imprisonment goes well beyond the prescribed non-parole period. If paroled, an offender remains under supervision for the

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		parole period would be 40 years).	balance of the sentence; that is, for the whole of that person's natural life until their death. The legislation ensures a prisoner serves the whole sentence either in custody or under supervision. For these reasons, the Department of Justice and Attorney-General does not consider such a reform to lend itself to a simplistic mathematical equation.
Clause 3 (The murder of a police officer) - The removal of the words, 'because the victim was a police officer' from *sub-clause 2*.	001 – Queensland Law Society	The submission advocates for the deletion of new section 305(4)(b)(ii), which provides for a minimum non-parole period of 25 years imprisonment for the offence of murder where the victim was a police officer and the offender who did the act or made the omission that caused the police officer's death *'because the victim was a police officer.* ' This limb is said to be too vague and unnecessary duplicitous when considered in light of sub-sections (b)(i) and (b)(iii).	The inclusion of new section 305(4)(b)(ii) was a deliberate drafting decision. Its inclusion in new section 305(4) is not duplicitous with the other limbs of that subsection and, with respect to submission 001, is clearly drafted. Limb (ii) specifically ensures that an offender, who kills a person for no other reason other than because they are a police officer, is captured by the amendment. This conduct would not be captured by limb (i) if, for example, the victim was not acting in the performance of their duties at the time the act or omission that caused their death was done or made, but rather they were off duty at that time (yet the offender killed that person for no other reason than because they were a police officer). Similarly this conduct would not be captured by limb (iii) if it could not be established that the conduct was done because of or in retaliation for anything done by the victim or any other police officer acting in the performance of their duties (yet the offender killed that person for no other reason than because they were a police officer; and they simply do not like police officers).
Clause 3 (The murder of a police officer) - Opposition to a specific minimum non-parole period for the murder of a police officer.	005 – Aboriginal and Torres Strait Islander Legal Service (ATSILS)	The submission notes that, while recognising the often extreme difficulties facing police officers, ATSILS cannot in principle support the amendment as it considers that all lives, regardless of occupation, should be valued equally. Further, police officers are aware of the risks entailed with their occupation and while they are to be commended for their courage, such risks are assumed by virtue of the role itself.	The Bill delivers on the Government's commitment that Queensland's criminal laws provide strengthen protection to police officers acting in the performance of their duties, in particular its pre-election pledge to deal specifically with the murder of a police officer. Police officers are unique in terms of the dangers faced by them in the line of duty. In contrast to other front line professionals, police officers carry out duties that are inherently dangerous and vital to maintaining civil authority. Therefore, appropriate deterrents against fatal harm are justified. To toughen the sentences for the offence of murder where the victim is a police officer, the Bill inserts, into the existing punishment regime for the offence of murder under section 305, a new and specific minimum non-parole period of 25 years imprisonment for the murder of a police officer where the offender did the act or made the omission that caused the police officer's death: - when the police officer was acting in the performance of their duty and the offender knew or ought reasonably to have known that he or she was a police officer; or - because the police officer was a police officer; or - because of, or in retaliation for, the actions of the police officer or
	009 – Bar Association of Queensland	The submission notes that Queensland already has a tougher sentencing approach to the offence of murder than does most other Australian jurisdictions. Further, it is the experience of its members that in practice it is rare for a convicted murderer to be released on attainment of the minimum non-parole period; and a person who has killed repeatedly is unlikely ever to be released regardless of whether the minimum term to be served is 20 or 30 years. The submission considers it erroneous to think that an increase to the minimum non-parole period will promote community safety and protection. Nor will such an alteration offer police officers substantially greater protection than currently exists.	

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		It is said that most murders are committed in the heat of the moment. The proposed punishment rarely enters into the thinking of such offenders, thus the amendment is unlikely to have the stated object of protecting the community from such offences. The submission states that an attack on a police officer in the performance of their duties has long been recognised by the courts as a particularly aggravating feature that will result in a more severe sentence than would otherwise be imposed with respect to an attack on someone not engaged in law enforcement. The submission accepts and fully endorses such an approach. The submission, however, notes that other front line officers are also at risk of death or serious injury, such as ambulance officers, nursing and medical staff in emergency rooms, security guards and mental health workers. The submission however considers that the current approach to sentencing adequately caters for the aggravating features which the legislation targets. The submission considers that legislative interference with the current non-parole provisions will further undermine judicial sentencing discretion. The submission indicates that if the government wishes to legislatively entrench the importance of protecting police officers when structuring the appropriate sentence then the way to proceed would be to introduce that feature as a circumstance of aggravation but, at the same time preserve the court's discretion to sentence the offender in accordance with the justice of the case, subject only to the existing non-parole provisions.	another police officer in the performance of their duty. Under section I of the Criminal Code, any circumstance surrounding an offence which renders an offender liable to a greater punishment than that to which the offender would be liable if the offence were committed without the existence of that circumstance, is a 'circumstance of aggravation'. Under section 564(2) of the Criminal Code, if any 'circumstance of aggravation' is intended to be relied upon, it must be charged in the indictment and therefore becomes a matter that the Crown must prove beyond a reasonable doubt. Proposed new section 305(4) falls into this category. Therefore, those factors will be a question of fact for the jury to determine. It will be a matter for the Crown to prove these factors beyond reasonable doubt.
Clause 4 (Serious Assault of a police officer) - The maximum penalty is disproportionate to the offending and when compared with other offences.	005 – Aboriginal and Torres Strait Islander Legal Service	The submission considers that the current maximum penalty applicable to the offence of Serious Assault is adequate. An increase of the maximum penalty to 14 years imprisonment will be disproportionate as compared with other Criminal Code offences, including those committed against civilians. The submission asserts that it is not uncommon, in the experience of the ATSILS, for an officer with poor people management skills to initiate circumstances such that an assault ensues; which is relevant to penalty (although does not excuse the criminality). The submission is concerned that many of the people who commit serious assaults are seriously disadvantaged (i.e. mentally ill, suffering from substance abuse and acting out of desperation) and that it is unlikely that they will comprehend the increase in the penalty.	It is acknowledged that the offence of serious assault in the Criminal Code covers a wide breadth of criminal conduct from: a verbal threat (where the offender has the present ability to effect the threat); a single punch or scuffle; blows causing bodily harm; and at the high end of the spectrum, biting and spitting where such assault carries with it risk of the officer contracting an infectious disease. Given the wide breadth of criminal conduct captured by section 340 of the Criminal Code, and in recognition of the fundamental tenet that the maximum penalty must reflect the gravity of the offending and criminality involved, the Bill restricts the penalty increase to the more serious category of assaults upon police officers. The increased maximum penalty of 14 years imprisonment will apply in any of the following circumstances: - the offender bites, spits on or applies a bodily fluid or faeces to the police officer;

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		As citizens we are all equal under the law. No person in our community is more valuable or more worthy of protection than the other.	- the assault involves bodily harm; or - the offender is, or pretends to be, armed with a dangerous or offensive weapon or instrument. In the absence of any of these circumstances an assault of a police officer pursuant to section 340 will attract a maximum penalty of 7 years imprisonment. Further, the Bill does not alter the protection offered to other public officers under section 340, namely emergency services officers, child safety officers, nurses and doctors in hospitals, teachers in public schools, transit officers and corrective services officers. The penalty increase which applies only to police officers reflects the prevalence of these forms of assaults against police officers as a profession. The amendment reflects the objective seriousness of such offending and the need for deterrence in structuring the appropriate sentence. The amendment recognises the unique position of police as a profession discharging inherently dangerous duties that are vital for maintaining civil authority. The reform delivers on the Governments pre-election commitment to toughen the sentences for serious assaults committed upon Queensland police officers; specifically its pledge to double the maximum penalty for this offending. The amendment does not curtail the sentencing court's discretion to impose a penalty that appropriately reflects the circumstances of the particular case, which the Department of Justice and Attorney-General considers alleviates the concerns expressed in submission 005 regarding the impact of the increased maximum penalty upon disadvantaged offenders.
Clause 4 (Serious Assault of a police officer) - The impact on juvenile offenders.	001 – Queensland Law Society	The submission considers that the amendment will have a negative consequence for a person sentenced as a child under the *Youth Justice Act 1992.* An offence that attracts a maximum penalty of 14 years imprisonment is a 'serious offence' under the Youth Justice Act, which must be dealt with on indictment and not summarily. The QLS considers that there will be a significant delay in the resolution of these matters, which increases the risk of higher remand in custody rates; and is likely to particularly impact upon Aboriginal and Torres Strait Islander children and young people. The QLS considers that the likely increases in remand and imprisonment rates as a result of the amendment should be examined. The QLS considers that the provision should be amended to ensure that children prosecuted under the amended section 340(1) can still be dealt with summarily as this will mean that more appropriate sentencing mechanisms will then be available to them.	The Bill restricts the penalty increase to the more serious category of assaults upon police officers. The amendment is justified on the basis that it reflects the objective seriousness of such offending; the need for deterrence in structuring the appropriate sentence; and it recognises the unique position of police as a profession discharging inherently dangerous duties that are vital for maintaining civil authority. Under section 8(1) of the *Youth Justice Act 1992* a 'serious offence' for the purposes of the Youth Justice Act is defined to include an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years. However, section 8(2)(b) provides that an offence is not a 'serious offence' if it is an offence, inter alia, that is the subject of a charge to which Criminal Code section 552A (Charges of indictable offences that must be heard and decided summarily on prosecution election) or section 552B applies. Section 552A of the Criminal Code specifically applies to section 340 (Serious Assault) of the Criminal Code.

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			Therefore the amendment will not result in the offence being treated as a 'serious offence' under the Youth Justice Act for child offender as the offence of Serious Assault under section 340 of the Criminal Code is specifically excluded.
Clause 4 (Serious Assault of a police officer) - The removal of the words '*pretends to be armed*'	001 – Queensland Law Society	The submission advocates for the removal of the words, *'pretends to be armed'* from the circumstances under which an offender convicted of serious assault of a police officer is liable to a maximum penalty of 14 years imprisonment. It is noted that the words broaden the provision to include situations where no actual weapon or instrument is used. The QLS considers it inappropriate to subject a person to a maximum penalty of 14 years imprisonment for such conduct.	The Department of Justice and Attorney-General considers it appropriate that the amendment captures an offender who is armed, or pretends to be armed, with a dangerous or offensive weapon or instrument. The higher maximum penalty reflects the seriousness of such criminality. The approach adopted in the Bill is consistent with the existing approach under the Criminal Code to this circumstance of aggravation and the language used. For example, section 339(3) aggravated Assault occasioning bodily harm, which carries a maximum penalty of 1 0 years imprisonment; section 352(3)(a) aggravated Sexual assault, which carries a maximum penalty of life imprisonment; and section **411** (2) Punishment for robbery where an aggravated robbery carries a maximum penalty of life imprisonment. In each example, criminal liability extends to an offender who pretends to be armed. To delete the reference to 'pretends to be armed' for the purposes of section 340 would be anomalous.
Clause 4 (Serious Assault of a police officer) - A query as to the drafting style of amended section 340(1) of the Criminal Code.	001 – Queensland Law Society	The submission notes that under the heading *'Maximum penalty',* only subsection (iii) contains the penalty of 14 years. The QLS considers, in the interest of clear legislative drafting, that the penalty of 14 years should be enunciated in subsections (i) and (ii) also; or should be placed on the line below so that it is evident that the penalty applies to all three subparagraphs.	The policy intention is clearly that the increased maximum penalty of 14 years imprisonment is to apply to all three subparagraphs. The issue raised in submission 001 reflects a drafting preference. The Bill was drafted by the Office of the Queensland Parliamentary Counsel and progressed through the proper quality assurance controls. The Department of Justice and Attorney General is satisfied that the Bill reflects modern drafting practices.
Clause 5 (the transitional application of the amendments to section 305 of the Criminal Code) - Partial retrospectivity.	001 – Queensland Law Society	The submission notes that the amendment to section 305(2) of the Criminal Code (per *clause 3 sub clause 1)* operates with partial retrospective effect, which is a breach of fundamental legislative principles that has not been sufficiently justified.	Under the Criminal Code the offence of murder carries mandatory life imprisonment (or the imposition of an indefinite sentence under Part 10 of the *Penalties and Sentences Act* 1992). The court has no discretion to impose a lesser sentence. The Bill does not alter that legislative position. The Bill however increases the minimum non-parole periods applicable to the offence of murder, which potentially impacts on the rights and liberties of individuals by requiring offenders to serve longer periods of actual incarceration before being eligible to apply for parole release and therefore arguably it punishes the offender to a greater extent than was authorized by the former law. The new minimum non-parole period for the murder of a police officer operates prospectively and will only capture offenders who commit the offence of murder on, or after, the date upon which the Bill commences. It is acknowledge that the increase in the non-parole period for more
	008 – Human Rights in Law Group of Amnesty International, Queensland-northern New South Wales Branch	The submission notes that retrospective criminal laws offend against the most basic principles of the rule of law. It is essential to the fair operation of criminal laws that citizens can ascertain illegality and consequences of actions at the time the action is made. If the act is made illegal or the punishment for it increased after it is done, then the result is manifestly unfair for those who incur the new and unforeseeable consequences of their actions.	

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			than one murder operates with partial retrospective effect. However, for the higher minimum non-parole period to apply, one of the murders must be committed post commencement of the Bill Therefore an offender who has a previous conviction for murder, is on notice upon the commencement of the Bill that if they commit a further murder after that date they face an increased minimum non-parole period upon conviction. The adverse effect on the rights or liberties of this cohort of offenders is justified with reference to community protection.
Clause 7 (Parole eligibility date for a prisoner serving life) - An increase from 15 years to 20 years for the offence of murder.	003 – Queensland Homicide Victims' Support Group	The submission fully supports the increase to the non-parole period for the offence of murder (that is, a single killing) from 15 years to 20 years imprisonment.	The stakeholder supports the amendment.
	005 – Aboriginal and Torres Strait Islander Legal Service	The submission does not oppose the increase. However, the submission advocates for the 20 years minimum non-parole period to apply 'in the absence of extenuating circumstances' - the court should retain the discretion to set the former (and lower) minimum non-parole period of 15 years in appropriate circumstances.	The Criminal Code, read in conjunction with the *Corrective Services Act 2006,* already sets the minimum non-parole periods for the offence of murder. The Bill therefore builds on the current mandatory punishment regime for the offence of murder in Queensland. As part of its pre-election commitments, the Queensland Government pledged to adopt a tough, new approach to the handling of life sentences for murder, in particular though the increase in the minimum non-parole period for the offence of murder (that is, a single killing) from 15 years to 20 years imprisonment. The Bill delivers on this election commitment and reflects the offence of murder is the most heinous of criminal offences.
Clause 17 (repeal of Part 12) - General comments about the abolition of the Sentencing Advisory Council	006 – Prisoners Legal Service Inc. 010 – Catholic Prison Ministry 011 – Queensland Public Interest Law Clearing House	The three submissions each adopt a submission prepared by the In Corrections Group titled, *'INCorrections Position Paper June 2012',* which considers the Criminal Law Amendment Bill 2012 and the Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012. It is considered that the Sentencing Advisory Council provided vital research and consultation on important matters of sentencing policy, as well as acting in a proactive manner to inform the community about criminal justice. Their contribution and good governance should be recognised and continued.	The purpose of the dissolution of the Sentencing Advisory Council is to achieve a more efficient use of limited public resources by rationalising law review functions across government.
	005 – Aboriginal and Torres Strait Islander Legal Service	The submission acknowledges the need for government cost-cutting, however considers the abolition of the Sentencing Advisory Council to be highly regrettable. ATSILS is disappointed with the dissolution of such a diverse and well qualified body which produced high quality work. It is considered that the Sentencing Advisory Council could have played a key role with regards to the proposed amendments.	
Clause 17 (repeal of Part 12) - The need to adequately resource the body that	002 – The Honourable Chief Justice of the Supreme Court of Queensland	The submission expresses appreciation for the research undertaken by the Sentencing Advisory Council in providing an informed basis to review current laws and practices.	The purpose of the dissolution of the Sentencing Advisory Council is to avoid duplication of effort and achieve a more efficient use of limited public resources by rationalising law review functions across

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takes over the research and community engagement functions performed by the Sentencing Advisory Council		The Chief Justice trusts that the Law Reform Commission and any other agency which undertakes research in this area will be adequately resourced to provide the Legal Affairs and Community Safety Committee, the courts and the community with information to enhance understanding of how sentencing laws operate in practice and how they might be improved.	government. Any referrals to the Queensland Law Reform Commission on sentencing matters will be absorbed into the Commission's general programme of work. Similarly, any research or policy development work on sentencing issues undertaken by agencies of the Executive Government will be resourced as part of their existing programme of work.
	008 – Human Rights in Law Group of Amnesty International, Queensland-northern New South Wales Branch	The submission notes that the Queensland Law Reform Commission (QLRC) has limited resources and acts on references given to it by the Attorney-General. If the government dissolves the Sentencing Advisory Council on the basis that the QLRC will be fully resourced and empowered to seek community views, report and advise on all sentencing matters, and its recommendations have equal range and status to those of the Sentencing Advisory Council, the merging of the Council and the QLRC may be productive.	
	010 – Potts Lawyers	The submission considers the greatest error of the proposed Bill to be the decision to dissolve the Sentencing Advisory Council. The decision fails to focus on the Sentencing Advisory Council's achievements and that it has been involved in extensive State-wide consultation in relation to a variety of issues, it has made presentations to the public and has educated a variety of professions involved in the criminal justice system. The submission notes that the Sentencing Advisory Council has brought together a variety of views and given a voice to the public, the legal profession, victims of crime and experts in a variety of areas. It has raised important issues and sought to undertake extensive research before making recommendations as to how our laws should be changed.	
Clause 19(the transitional provision for the abolition of the Sentencing Advisory Council) - The denial of compensation to the members of the Sentencing Advisory Council upon dissolution.	001 – Queensland Law Society	The QLS notes that new section 222 provides the transitional arrangements for the abolition of the Sentencing Advisory Council and considers the denial of compensation to Council members to be inconsistent with the principles of natural justice and thus a breach of fundamental legislative principles.	The Bill amends the *Penalties and Sentences Act 1992* to dissolve the Sentencing Advisory Council. The members of the Sentencing Advisory Council who are not public sector employees receive only sessional payments (for example, for meetings attended and special assignment fees) and payments for necessary and reasonable expenses incurred while travelling on approved Council business and to attend meetings. Upon the repeal of Part 12 there is no legislative basis on which meetings could be held or members could be paid. The provisions in the Bill which expressly state that no compensation is payable to council members on the dissolution of the council reflect this. The provisions are simply inserted to ensure that there is no confusion about this issue.
Clause 19 (Evade Police) - A mechanism to notify the relevant authority of	001 – Queensland Law Society	The submission notes, in terms of drafting, that section 91 of the *Transport Operations (Road Use Management) Act 1995* deems that the Chief Executive must be advised of persons disqualified from holding a Queensland driver licence. The QLS	The Department of Justice and Attorney-General notes the recommendation in submission 001 and will consult further with the Queensland Police Service and the Office of the Queensland

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a person's licence disqualification		recommends inserting a similar provision to that contained in section 450H(2) of the Criminal Code.	Parliamentary Counsel regarding this issue.
Clause 21((Evade Police) - Query as to the deterrent effect of the amendment. - Potential unintended consequences of the mandatory minimum fines. - Mandatory licence disqualification	005 – Aboriginal and Torres Strait Islander Legal Service	The submission acknowledges that police pursuits can lead to tragic consequences, however questions whether the amendment will reduce the number of pursuit scenarios. Instead, the submission advocates for a saturation public awareness campaign. The submission draws attention to the report of the Crime and Misconduct Commission titled, *'An Alternative to Pursuit: A review of the evade police provisions.* Further, the submission considers the mandatory penalty to be unjustified given the potential for 'agony of the moment' and possible temporary/fleeting actions by a member of the public. (The Department of Justice and Attorney-General understands the submission to be concerned with the possibility of capturing people not involved in a police pursuit but rather who briefly fail to stop). The mandatory nature of the penalty prevents the Court from imposing a sentence that would take each offender's circumstances into account. A further potential unintended consequence is the increased incentive to evade police, further endangering community safety.	Engaging in a pursuit is one of the most dangerous activities in which police can become involved. Between June 2005 and July 2008, 10 people died in Queensland while police, who were attempting to intercept a vehicle, were directly engaged in a pursuit or soon after a pursuit was abandoned. The alternative to police officers engaging in a pursuit is to take enforcement action against those offenders who elect to evade them and fail to stop when directed. While the average number of pursuits has declined due to the application of restrictive pursuit policies and deference to public safety, this has seen no impact on the number of Evade Police offences being committed. From 2000 - 2007, the average number of pursuits recorded annually was 605. Following the introduction of a restrictive pursuit policy in 2008, the average number of pursuits for the period 2008 - 2011 recorded annually is now 309. The average number of pursuits has decreased 49 percent when compared to the previous seven-year average. Currently, only one in every 10 Evade Police offences results in a pursuit. Recorded offences of Evade Police have risen significantly, from 1284 in 2010, to 1799 in 2011, with 1135 in 2012 (1 January to 31 May 2012) and expected to reach 2733. While this increase may in part be due to previous under-reporting by police officers, the Queensland Police Service (QPS) believe that there is a growing awareness by offenders that police will not engage in pursuits when attempts to intercept fail. Two of the components which deter individuals from engaging in criminal behaviour are apprehension and adequate punishment. The Evade Police offence was developed as an alternative tool that does not require apprehension through pursuit. However, the offence can only operate effectively if its deterrent value is maintained through the imposition of sentences that reflect the inherently dangerous nature of the conduct involved. In June 2011, the Crime and Misconduct Commission (CMC) released the report *An Alternative to Pursuit - A Review of the Evade Police Provisions.* As part of that review the CMC analysed the sentencing outcomes for the offence of evade police between July 2006 and June 2010. The CMC found that the most common penalty imposed on a single charge of evade police was a fine of $300. The CMC also found that a period of licence disqualification was only imposed in approximately one in every five cases. The proposed amendments ensure that sentences imposed on offenders who commit evade police offences reflect the inherently serious nature of the conduct and risks that it poses, and are in line with community expectations.
	011 – Crime and Misconduct Commissioner	The submission refers to its report of 2011 titled, *'An Alternative to Pursuit - A Review of the Evade Police Provisions* ' and notes that it stated that the most common fine for an evade police only charge was $300, compared with $1000 for those offenders who committed offences in addition to the evade police office. The report further indicated that it is possible that charges tend to be at the non-compliance end of the offending spectrum, that is to say, a majority of offences appear to involve simple failure to comply with a direction to stop. The submission states that no doubt the government will have reflected on the risk, in the area of mandatory minimum penalty, of creating perverse incentives that result in unforeseen consequences, such as offenders being prompted to take more extreme risks to evade police interception. Further, the submission notes that it considered mandatory licence disqualification for evade police offenders in its report of 2011 titled, *'An Alternative to Pursuit- A Review of the Evade Police Provisions'* and after carefully weighing the arguments from key stakeholders and available evidence, no recommendation for mandatory licence disqualification was made. The submission notes that this approach was adopted because	

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		there was no compelling evidence that licence disqualification would be effective either as a deterrent or an incapacitation strategy for evade police offenders.	
	010 – Potts Lawyers	The submission notes that the charge of evade police reaches well beyond those offenders involved in high-speed car chases. A person who panics for fear they have not paid a recent parking fine and drives three blocks before regaining their composure and pulling over, will face the mandatory minimum penalty. The amendment punishes people who have not even participated in a police chase; they risk losing their job which requires a licence and being unable to provide for their family. The submission says that a person who drives with a blood alcohol reading of 0.149% faces a court which has more capacity to consider their individual circumstances (the Department of Justice and Attorney-General understands this to be a challenge to the mandatory nature of the amendment).	
General comment about timeframes for consultation	- 001 - Queensland Law Society; - 002 - The Honourable Chief Justice of the Supreme Court of Queensland; - 003 - Queensland Homicide Victims' Support Group; - 004 - Prisoners' Legal Service; - 005 - Aboriginal and Torres Strait Islander Legal Service; - 007 - Queensland Public Interest Law Clearing House Inc.; - 008 - Amnesty International; and - 010 - Potts Lawyers	The submissions expressed concern regarding the truncated timeframe to make a submission to the Parliamentary Committee on the Bill.	The Bill implements the Government's pre-election commitments contained in its First 100 days action plan. The comments are noted regarding the truncated timeframes.