Aboriginal & Torres Strait Islander
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Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

BY EMAIL: lacsc@parliament.qld.gov.au

Dear Colleagues,

RE: CRIMINAL LAW (TWO STRIKE CHILD SEX OFFENDER) AMENDMENT BILL 2012

We thank you for the opportunity to provide a submission on the abovementioned Bill. We do however note that due to time constraints (relating to the very minimal amount of time afforded within which to provide feedback), that it is entirely possible that important considerations might have gone unidentified (or insufficiently fleshed-out). Given the potential significance of the proposed amendments – such is disappointing.

Summary of Submission

Our Organisation has long opposed the introduction of mandatory sentencing regimes. Such is predicated upon our belief that sentencing discretion should vest with those best placed to arrive at a just and equitable outcome in all of the circumstances: namely, the presiding judicial officers. Such a view not only accords with our 'principles' on this subject, but also with our experiences in practice. There are numerous other sensible reasons to avoid mandatory sentences (please see below).

Organisational Background – a preliminary consideration

The Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd ("ATSILS") provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Our primary role is to provide criminal, civil and family law representation. We are also funded by the Commonwealth to perform a State-wide role in the key areas of: Law and Social Justice Reform; Community Legal Education and Monitoring Indigenous Australian Deaths in Custody. As an organisation which, for four decades has practiced at the coalface of the justice arena, we believe we are well placed to provide meaningful comment. Not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences. We trust that our submission is of assistance.

Organisational position on mandatory sentencing

As will be appreciated, the primary objective of the Bill relates to the establishment of a new mandatory sentencing regime (life imprisonment) for repeat child sex offenders (in relation to specified child sex offences). Allied to such is a proposal to amend the non-parole period for such offenders to a minimum of 20 years imprisonment.

Our Organisation has long maintained a strong stance against the imposition of any form of mandatory sentencing. Such sentencing regimes in our view can in many instances lead to gross injustice – and such has been evinced in practice. It is crucial that sentences are not imposed in what amounts to a factual vacuum – but are based upon the entire surrounding circumstances of any given sentencing process. This State's judicial officers – steeped in experience, knowledge and wisdom, should not be dispossessed of their sentencing discretion – namely, to hand down a sentence which is just and equitable in all of the circumstances (and which takes into account community expectations; aggravating circumstances etc). Further, mandatory sentencing will not in practice act as a deterrent.

Australia is also a signatory to various international treaty obligations – and in our respectful submission, mandatory sentencing regimes run contrary to such obligations.

Mandatory sentencing will also act as a disincentive to:

- Those rightly accused of such offences, actually pleading guilty. Such will not only increase the risk of offenders being found "not guilty" but will also lead to already traumatised children being subject to the rigors of the court process. Trials (rather than sentences) will also lead to a marked increase in public cost.
- Prosecutors laying the appropriate charge (or being overly-generous in terms of charge "bargaining" negotiations) - in order to avoid mandatory-sentence related offences – and thus contested hearings (and/or because of a view by the prosecutor that justice dictates a sentence other than life imprisonment).
- Juries actually convicting an accused. The reluctance of a jury to find an accused guilty in a situation where such will lead to a mandatory sentence of life imprisonment in well researched and documented.

Typically, mandatory sentencing regimes also have a tendency (albeit unintentionally), to have a disproportionately negative impact upon the most disadvantaged and marginalised members of a society. In Queensland, a significant proportion of our Organisation's client base would certainly fall within such a category. Further, mandatory sentencing would run the risk of an increase in an already overly-populated prison population – with no apparent community benefit (e.g. in terms of deterrent or rehabilitation or de-traumatising of victims or cost).

Imposing a life sentence and increasing non-parole periods for certain repeat child sex offenders

Although the amended provisions will capture some offenders, Australian and New Zealand research has found low rates of recidivism (10% or less for further sex offences) for sex offenders.[1]

As outlined above, mandatory minimum penalties for (sexual) offences are inappropriate in that they do not account for the different severity levels and circumstances of offences. This leads to injustice due to inflexibility, reduces the courts role in sentencing to simply that of an administrative task.

We note that existing agency resources are expected to cope with any extra burdens associated with these amendments. Clearly incarceration rates increase when people receive lengthier sentences. Funds for Corrections are already limited and often result in a reduction of rehabilitation programs for offenders. This also raises issues in regard to community safety on the prisoner's release, especially given that community safety is the main reason for the amendments.

The relevant amendments are likely to lead to more trials, as offenders are less likely to plead guilty, due to the lack of any incentive to do so. Therefore trials are more likely to proceed for these charges at a high cost in time and resources,[2] as well as emotions suffered by the victims' family. In turn, a larger amount of appeals,[3] are also more likely, as the person has nothing to lose.

It is well understood that sexual offending against children is a highly emotive issue, however it is important that decisions regarding responses to such offending such as sentencing is underpinned by independent research so as to ensure that they are the most appropriate response to enhance public safety and protect children from

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[1] Dr Karen Gelb (Senior Criminologist Sentence Advisory Council), January 2007, *Recidivism of Sex Offenders Research* Paper, p. 20 <http://www.sentencingcouncil.vic.gov.au/sites/sentencingcouncil.vic.gov.au/files/recidivism_of_sex_offenders_research_paper.pdf >

[2] Queensland Sentencing Advisory Council, September 2011, *Minimum standard non-parole periods: Final Report*, p. 5.

[3] Queensland Sentencing Advisory Council, September 2011, *Minimum standard non-parole periods: Final Report*, p. 5.

sexual abuse.[4] Although clearly well intended, there appears to be no such support for the proposed amendments.

At present, significant legislated controls exist for tracking released offenders, aimed at keeping the community safe. We note that those convicted would almost certainly come under the *Dangerous Prisoners (Sexual Offenders) Act 2003* and the *Child Protection (Offender Reporting) Act 2004*.

If the proposed amendment is a response to public comment and outrage at existing sentencing in Queensland for sex offenders, a community education process on sentencing might be a more appropriate response. Research shows that the general public have a poor knowledge of sentencing practices and that the public consistently underestimate the severity of sentencing practices. If the proposed amendments are enacted, there is unlikely to be any change in the public understanding of, and public confidence in, sentencing practices.[5]

We note the speed with which these amendments are being progressed. We view this as being at the expense of considered discussion and debate, which is valuable for obvious reasons, as well as ascertaining potential costs for such changes and for identifying any potential unintended consequences.

We wish you well in your deliberations and trust that our submission is of assistance. We would welcome the opportunity for further dialogue. I also acknowledge the assistance of Ms Fiona Campbell from our Cairns office.

Yours faithfully,
Shane Duffy Chief
Executive Officer

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[4] Richards, K., Australian Institute of Criminology, *Misperceptions about child sex offenders*, Trends and issues in crime and criminal justice No. 429, September 2011, p.7. <http://www.aic.gov.au/documents/9/A/6/%7B9A6BF515-76DF-4A03-940F-913610809387%7Dtandi429_002.pdf>

[5] Tasmanian Law reform Institute, *Sentencing: FINAL REPORT NO 11* JUNE 2008, p. 44. < http://www.law.utas.edu.au/reform/documents/completeA4.pdf >