Parliamentary Committees

Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012

Report No. 2

Legal Affairs and Community Safety Committee

July 2012

Legal Affairs and Community Safety Committee

Chair	Mr Ray Hopper MP, Member for Condamine
Deputy Chair	Mr Peter Wellington MP, Member for Nicklin
Members	Miss Verity Barton MP, Member for Broadwater
	Mr Bill Byrne MP, Member for Rockhampton
	Mr Sean Choat MP, Member for Ipswich West
	Mr Carl Judge MP, Member for Yeerongpilly
	Mr Trevor Watts MP, Member for Toowoomba North
	Mr Jason Woodforth MP, Member for Nudgee
Staff	Mr Peter Rogers, Acting Research Director
	Mrs Sharon Hunter, Principal Research Officer
	Mrs Gail Easton, Executive Assistant
Technical Scrutiny Secretariat	Ms Renee Easten, Research Director
	Ms Marissa Ker, Principal Research Officer
	Ms Dianne Christian, Executive Assistant
Contact details	Legal Affairs and Community Safety Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3406 7307
Fax	+61 7 3406 7070
Email	lacsc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/lacsc

Acknowledgements

The Committee acknowledges the assistance provided by the Department of Justice and Attorney-General, and the Queensland Parliamentary Library.

Contents

Abbreviations iv

Glossary iv

Chair's foreword v

Executive summary vi

Recommendations vii

1. Introduction 1

1.1 Role of the Committee 1

1.2 Process 1

1.3 Policy objectives of the Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012 1

2. Examination of the Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012 3

2.1 Overview 3

2.2 Mandatory sentencing and increased non-parole periods 4

2.3 Current sentencing framework for child sex offenders 20

2.4 Committee comment 24

2.5 Commonwealth consistency 24

2.6 Schedule: 'serious child sex offences' 24

2.7 Committee comment 25

2.8 Multiple Strikes Legislation – Bravehearts 25

2.9 Misperceptions about child sex offenders 27

2.10 Consequences of a reduction of guilty pleas 29

2.11 Committee comment 31

2.12 Estimated cost for Government implementation 32

2.13 Committee comment 33

3. Fundamental legislative principles 34

3.1 Rights and liberties of individuals 34

3.2 Committee comment 34

3.3 Committee comment 37

Appendices 38

Abbreviations

Act	*Parliament of Queensland Act 2001*
Amnesty	Human Rights in Law Group of Amnesty International Queensland-Northern NSW Branch
ATSI	Aboriginal and Torres Strait Islander
ATSILS	Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd
Bar Association	Bar Association of Queensland
Bill	Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012
BRISSC	Brisbane Rape and Incest Survivors Support Centre
CALD	Culturally and linguistically diverse
CMC	Crime and Misconduct Commission
Commission	Commission for Children Young People and Child Guardian
Committee	Legal Affairs and Community Safety Committee
Council	Sentencing Advisory Council
Department	Department of Justice and Attorney-General
FLPs	Fundamental Legislative Principles
ICCPR	International Covenant on Civil and Political Rights
Society	Queensland Law Society
Supreme Court	Supreme Court of Queensland
PACT	Protect All Children Today Inc.
QAI	Queensland Advocacy Incorporated – *systems and legal advocacy for vulnerable people with disability*
QPS	Queensland Police Service
UDHR	Universal Declaration of Human Rights
UNCRC	United Nations Conventions on the Rights of the Child
Zig Zag	Zig Zag Young Women's Resource Centre Inc.

Glossary

Recidivism	The act of repeating an undesirable criminal behaviour; repeated or habitual relapse, as into crime

Chair's foreword

This report presents a summary of the Legal Affairs and Community Safety Committee's (Committee) examination of the Criminal Law (Two Strike Child Sex Offenders) 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, whether it 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 in order to inform its inquiry.

On behalf of the Committee I thank those individuals and 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

This report examines the Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012 (Bill) in terms of policy considerations and the application of the fundamental legislative principles, namely, the rights and liberties of individuals and the institution of Parliament.

The Bill amends the *Penalties and Sentences Act 1992* and the *Corrective Services Act 2006* to insert a new mandatory sentencing regime of life imprisonment, with a 20 year minimum non-parole period, for certain repeat child sex offenders.

The creation of the mandatory sentencing regime impacts on the rights and liberties of individuals. The new regime represents a significantly greater punishment than is authorised by the current law. A mandatory sentence that cannot be mitigated represents a significant abridgment of traditional rights. It is for this reason that the Legal Affairs and Community Safety Committee (Committee) carefully considered the arguments put before it in light of the policy objectives of the Bill.

Throughout its deliberations the Committee noted the Liberal National Party's pre-election commitment to toughen sentences for repeat child sex offenders.

Recommendations

Recommendation 1 **3**

The Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012 be passed.

Recommendation 2 **24**

The Attorney-General monitor and review the implementation of this legislation, and report to Parliament within two years from commencement.

Recommendation 3 **32**

The Attorney-General investigate the implications of forecast court delays: on child victims; and criminal justice agencies, and report to Parliament within two years from commencement.

Recommendation 4 **35**

Clause 8 – section 161E(2) be amended to provide that subsequent periodic reviews of indefinite sentences occur at intervals of not more than two years after the offender has served 20 years.

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 (Two Strike Child Sex Offenders) 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 Process

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

The Committee received written advice from the Department on 25 June and 3 July 2012. The Committee received 19 submissions (see **Appendix A**).

1.3 Policy objectives of the Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012

The primary objectives of the Bill are to:

1. amend the *Penalties and Sentences Act 1992* to insert a new mandatory sentencing regime of life imprisonment for certain repeat child sex offenders; and
2. amend the *Corrective Services Act 2006* to prescribe a minimum non-parole period of 20 years imprisonment for an offender sentenced to mandatory life imprisonment under the new repeat child sex offender sentencing regime in the *Penalties and Sentences Act 1992*.

The Bill implements the Liberal National Party's pre-election commitment to toughen the sentences for repeat child sex offenders. As stated by Hon Jarrod Bleijie MP, Attorney-General and Minister for Justice:

> *I am pleased to introduce the Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012. 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 imposed in any given case. Repeat child sex offending falls into this category. The bill delivers on the Queensland government's pre-election promise to toughen the sentences for repeat child sex offenders within our first 100 days of forming government. This government*

has listened to the community outrage about the sufficiency of sentences given to those who sexually offend against children, and we have acted.[1]

[1] Transcript of Proceedings, 20 June 2012 at p. 819.

2. Examination of the Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012

2.1 Overview

The Bill amends the *Penalties and Sentences Act 1992* and the *Corrective Services Act 2006* to provide a new mandatory sentencing regime of life imprisonment, with a 20 year non-parole period, for certain repeat child sex offenders.[2]

The Explanatory Notes also provided:

> *This new sentencing regime reflects that child sex 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 appropriate punishments are imposed.*
>
> *The new regime applies where:*
>
> - *an adult offender is convicted of a relevant serious child sex offence (as defined in the Bill);*
> - *such offence is committed after the commencement of the Bill;*
> - *the offender has a prior conviction as an adult for a relevant serious child sex offence (it does not matter whether the first offence was committed, or the offender was convicted of the first offence, before or after the commencement of the Bill); and*
> - *the second offence is committed after the conviction of the first offence.*
>
> *The court in sentencing the offender on that second occasion, must impose life imprisonment which cannot be mitigated or varied (the court may however impose an indefinite sentence under Part 10 of the Penalties and Sentences Act 1992).*
>
> *The new regime applies to the Criminal Code offences listed in new Schedule 1A to the Penalties and Sentences Act 1992 committed in relation to a child under 16 years and in circumstances where an offender convicted of the offence would be liable to imprisonment for life.*[3]

Recommendation 1

The Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012 be passed.

[2] Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012, *Explanatory Notes,* p. 1.

[3] Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012, *Explanatory Notes,* pp. 1-2.

2.2 Mandatory sentencing and increased non-parole periods

Clause 7 of the Bill inserts new Part 9B (sections 161D-161E) 'Repeat serious child sex offences' into the *Penalties and Sentences Act 1992*. These sections provide for a new mandatory sentencing regime of life imprisonment for certain repeat child sex offenders.

A new section 181A, which provides for the parole eligibility date for a prisoner who is serving a term of mandatory life imprisonment for a repeat serious child sex offence, is contained in Clauses 3 and 6 (amending the *Corrective Services Act 2006* and the *Penalties and Sentences Act 1992*). The new section 181A provides that the prisoner must serve a minimum of 20 years imprisonment before parole eligibility.

The term 'serious child sex offence' is defined in new section 161D and is a reference to one of a number of sexual offences listed in the new schedule 1A (Clause 10). '*It encapsulates all sex offences committed against a child under the age of 16 years which carry a maximum penalty of life imprisonment*.'[4]

As stated in the Explanatory Notes, the new regime represents significantly greater punishment than is authorised by current law. The Bill introduces mandatory sentencing that cannot be mitigated where an offender is convicted of a repeat serious child sex offence (Clause 7, section 161E). In addition, the Bill increases the non-parole period from 15-20 years (Clause 3, section 181A).

The Department provided:

> *The community outrage at the level of sentences imposed on people who sexually offend against children continues to be at a high level. Community concerns often centre on the sufficiency of sentences being imposed for this unlawful conduct. In 2003 and 2010 legislative amendments were made to the criminal law relating to child sexual offences in an attempt to reflect this outrage and to appropriately denounce such offenders.*
>
> *The 2003 amendments removed the application of the sentencing principle that imprisonment should only be imposed as a last resort, for offenders convicted of an offence of a sexual nature against a child under 16. These amendments also inserted specific factors to which the court must have primary regard in sentencing for these offences, and increased the maximum penalties for the offences of indecent treatment of a child under 16 and maintaining a sexual relationship with a child.*
>
> *In the January 2012 report of the Sentencing Advisory Council (SAC), Sentencing of child sexual offences in Queensland (the report), the impact of these amendments on sentencing child sexual offenders was considered. The report reflected that despite the 2003 amendments, the average sentence length for indecent treatment of a child under 16 decreased after 2003, while a small increase in average sentence length for maintaining a sexual relationship with a child that occurred after 2003 was not sustained beyond 2005. Additionally the report found that the 2003 amendments appear to have had little, if any, effect on the proportion of offenders receiving a term of actual imprisonment for the offences of maintaining a sexual relationship of a child, unlawful sodomy, indecent treatment of a child and unlawful carnal knowledge sentenced in the District Court.*
>
> *In 2010 the Penalties and Sentences Act 1992 was amended to embody the principle, well established in common law that, other than in exceptional circumstances, those who commit an offence of a sexual nature in relation to a child under 16 years must serve an actual term of imprisonment.*

[4] Transcript of Proceedings, 20 June 2012, p. 819.

> *These previous legislative attempts have done little to increase the level of punishment imposed by the courts for child sexual offences.*[5]

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 affect the institutional workings 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) provided that the Society has long maintained a strong stance against any form of mandatory sentencing. The Society submitted:

> *… 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 comprehensive understanding of the offence and the circumstances surrounding its*

5 Letter from the Department of Justice and Attorney-General, 25 June 2012.
6 Supreme Court of Queensland, Submission 5, p. 1.
7 Supreme Court of Queensland, Submission 5, p. 2.

commission. Therefore, the Society maintains that sentencing decisions should rest with highly trained judicial officers.

The empirical evidence against mandatory 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 & Torres Strait Islander people.*

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

In response, the Department provided:

The Bill implements the Government's announced policy. The policy recognises that child sex offending is so abhorrent to the general community that it requires a legislative response that ensures that the punishments handed down by the courts for such offences accord with the community's expectations.

While all child sexual offending is of great concern, the Bill recognises that the extreme legislative response in the form of mandatory sentencing must be limited to ensure against arbitrary and unjust results. The Bill achieves this by specifically limiting the application of the regime to nine separate listed sexual offences contained in the schedule to the Bill. The

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 4, pp. 1-2.

> *Bill then provides the further qualification that the scheme only applies where a listed offence is committed against a child under 16, and the offence is punishable by life imprisonment.*
>
> *For example, while the offence of carnal knowledge with or of children is captured, the regime will only apply to the life offences (that is where the child is under 12 years or is under the care of the offender). Therefore the regime will not [unjustly] capture 'young lovers'.*
>
> *Of crucial importance is that the regime will only apply to an offender who having been convicted of one of these offences as an adult, returns to court having subsequently committed a further such offence against a child.*
>
> *This carefully constructed approach ensures that the Bill captures the child sexual offenders of greatest concern to the community.*[10]

The Human Rights in Law Group of Amnesty International Queensland-Northern NSW Branch (Amnesty) provided that child sex offences are grave offences that must be met with appropriate deterrence and punishment, and noted the second reading speech does not note any instance or pattern of instances that call for legislation to remedy problems emerging in the courts. Amnesty consider that the imposition of mandatory life imprisonment with a non-parole period of 20 years would not achieve the stated purpose.[11] Amnesty submitted:

- *The proposed mandatory sentence would not ensure that an appropriate punishment is given to reflect the severity of the child sex offence. A fixed minimum punishment without reference to circumstance or severity is imposed by proposed legislation.*
- *The proposed mandatory sentence would not be effective in protecting children or the general public. The premise fallaciously suggests that the only way society can be protected is to lock offenders away and this does nothing to remedy the causes of the offences and can potentially create a false sense of security, complacency and ignorance in the community.*[12]

Amnesty also provided that empirical studies have repeatedly shown that crime rates are not decreased by the imposition of more severe punishments, but rather by the likelihood of being caught:[13]

> *There is no evidence to support that the increase in the sentence and non-parole period would be effective in protecting children and members of the public from further offence.*
>
> *Child sex offences are committed in a range of circumstances. It is a frequent occurrence that offenders have been victims and abused in childhood, and/or offenders are debilitated by mental or social dysfunction. Convicted child sex offenders must serve a sentence proportionate to the severity of their crime. A more effective response to their offence for reduction of re-occurrence is rehabilitation and treatment of their mental or social disorder,*

10 Letter from the Department of Justice and Attorney-General, 3 July 2012, pp. 3-4.

11 Human Rights in Law Group of Amnesty International Qld-Northern NSW Branch, Submission 12, p. 1.

12 Human Rights in Law Group of Amnesty International Qld-Northern NSW Branch, Submission 12, p. 1.

13 D Ritchie, 'Does Imprisonment Deter? A Review of the Evidence', Sentencing Advisory Council (Vic), April 2011, 2; D Brown, 'The Limited Benefit of Prison in Controlling Crime' (2010) 22(1) Current Issues in Criminal Justice 137, 140-1; Kadish S and Schulhofer S (eds), Criminal Law and its Processes (6th ed, Aspen Publishers, New Your (1995), p. 117; A Witte, 'Economic Theories' in Kadish S (ed), Encyclopedia of Crime and Justice (Free Press, New York, 1992), p. 206; as cited by Human Rights in Law Group of Amnesty International Qld-Northern NSW Branch, Submission 12, pp. 1-2.

> *which predisposes them to commit the offences. Mandatory lengthy periods of imprisonment will not solve mental and social dysfunction.*[14]

Amnesty also provided that mandatory minimum non-parole periods remove important sentencing discretion and have an unconstrained potential to create unintended injustice.[15]

Amnesty provided:

> *Child sex offences must be met with an apposite sentence. Such offences are committed in a range of circumstances, which may be considerably more or less mitigating than others. Where the courts retain discretion to sentence each individual on the facts of each case, they do so in accordance with the principles set out in the Penalties and Sentences Act, including the need to punish, deter and protect the community. The judgement and discretion of the courts, based on the facts, is far more likely to result in an appropriate sentence which is fair and relevant to the individual case. 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.*[16]

Amnesty also referred to Article 9 of the Universal Declaration of Human Rights (UDHR) and Article 9 of the International Covenant on Civil and Political Rights (ICCPR) which prohibit arbitrary detention. Amnesty stated:

> *A legislator takes on a grave and heavy responsibility and accountability, in making judgements in Parliament to mandate that a second child sex offence is more serious (as indicated by the more severe mandatory sentence) than the first, and that without reference to judicial hearing and process, the sentence on conviction, will be predetermined by the legislator.*[17]
>
> *UDHR Article 10 states that all have the right to a fair and public trial by an independent and impartial tribunal. The proposed legislation is contrary to the independence of the judiciary and the principle of separation of powers.*[18]

In response to the constitutionality considerations raised in these submissions, the Department provided:

> *The International Covenant on Civil and Political Rights (ICCPR) entered into force for Australia on 13 August 1980 prohibits arbitrary detention (Article 9) and provides that prison sentences must, in effect, be subject to appeal (Article 14).*
>
> *Under Australian constitutional law principles where a State law is inconsistent with a valid law of the Commonwealth, the Commonwealth law will prevail to the extent of the inconsistency. To date however, the Commonwealth has not implemented, in legislation, these International treaty obligations. Nor has the Federal Government evinced any intention to enact such legislation in the near future. That being the case, there presently is no issue with inconsistency with the Bill.*[19]

---

14 Human Rights in Law Group of Amnesty International Qld-Northern NSW Branch, Submission 12, pp. 1-2.

15 Human Rights in Law Group of Amnesty International Qld-Northern NSW Branch, Submission 12, p. 2.

16 Human Rights in Law Group of Amnesty International Qld-Northern NSW Branch, Submission 12, p. 2.

17 Human Rights in Law Group of Amnesty International Qld-Northern NSW Branch, Submission 12, p. 2.

18 Human Rights in Law Group of Amnesty International Qld-Northern NSW Branch, Submission 12, p. 2.

19 Letter from the Department of Justice and Attorney-General, 3 July 2012, p. 16.

Annette French, Submission 2, supports the proposed legislation and stated, '*we need to take as much precaution as possible to protect our children and grandchildren knowing that they are in a safe environment and these enhancements will further support this*.'[20]

Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS) submitted that they have long been opposed to mandatory sentencing and believe that sentencing discretion leads to a more equitable outcome.[21] ATSILS also submitted that mandatory sentencing will act as a disincentive, and will also lead to juries being less likely to convict an accused.[22] ATSILS also submitted:

> *Typically, mandatory sentencing regimes also have a tendency (albeit unintentionally), to have a disproportionately negative impact upon the most disadvantaged and marginalised members of society.*
>
> *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 administration task.*
>
> *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., … a larger amount of appeals, are also more likely, as the person has nothing to loose.*
>
> *… it is important that decisions* [are] *underpinned by independent research so as to … enhance public safety and protect children from sexual abuse. Although clearly well intended, there appears to be no such research for the proposed amendments.*
>
> *If the proposed amendment is a response to public comment and outrage at existing sentencing … 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.*[23]

The Commission for Children and Young People and Child Guardian (Commission) submitted:

1. *The Commission supports a strong approach to sentencing offenders who commit child sexual offences, particularly repeat offenders, and acknowledges the role appropriate sentencing plays in acting as both a punishment and a deterrent*
2. *The Commission strongly recommends that young offenders under 18 years of age be excluded from the operation of the Bill*
3. *The Commission recommends that judicial discretion in relation to sentencing be maintained as mandatory sentencing may have unintended consequences, particularly in relation to child victims, and*

---

20 Annette French, Submission 2, p. 1.

21 Aboriginal and Torres Strait Islander Legal Service, Submission 7, pp. 1-3.

22 Aboriginal and Torres Strait Islander Legal Service, Submission 7, p. 3.

23 Tasmanian Law Reform Institute, *Sentencing: Final Report No 11* June 2008, p. 44; K Richards, Australian Institute of Criminology, Misperceptions about child sex offenders, *Trends and Issues in Crime and Criminal Justice No. 429,* September 2011, p. 7; Queensland Sentencing Advisory Council, September 2011, *Minimum standard non-parole periods: Final Report*, p. 5; Dr K Gelb (Senior Criminologist – Sentencing Advisory Council Victoria), January 2007, *Recidivism of Sex Offenders Research Paper,* p. 20, as cited by Aboriginal And Torres Strait Islander Legal Service, Submission 7, pp. 1-5.

4. *The Commission recommends that if the proposed changes are introduced a comprehensive evaluation be undertaken to determine the effects of the changes, both intended and unintended.*[24]

The Commission also recognises the difficulties involved in balancing the community's right to safety and the right of offenders who have served their sentence, however, in light of the inherent vulnerabilities of children and young people and the social, emotional, and financial costs of child sexual abuse, the Commission is of the view that the emphasis needs to be on considering the rights, interests and wellbeing of the child victims, or potential child victims, of such offences.[25]

The Commission is concerned that offences committed by 17 year olds will be included in the 'two strike child sex offences' count, and more particularly, that if the second conviction occurs while a young person is 17, the young person will be mandatorily sentenced to life in prison.[26]

In response to the Commission's recommendation that the Bill exclude offenders under 18 years of age, the Department provided:

The regime does not apply to offenders under 18 years of age. It is unnecessary to specifically state this in the Bill. New section 161E contained in Clause 7 of the Bill states that the first and repeat offence must be committed by an 'adult'. It is not necessary to define an 'adult' as a person aged 18 years or more as the definition of 'adult' in section 36 of the Acts Interpretation Act 1954 applies. This defines 'adult' as an individual who is 18 or more.

The Penalties and Sentences Act 1992 (PSA) does not limit the meaning of 'adult' to the Youth Justice Act concept of a person aged 17 years or more – it merely excludes the application of the PSA to a child within the meaning of the Youth Justice Act 1992.[27]

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

- *child victims may be unwilling to report, or may be persuaded by other family members not to report repeat offences committed by a family member if they know the person, if convicted, will be sentenced to life imprisonment*
- *juries may be unwilling to find a person guilty for the same reason*
- *the additional cost of mandated life sentences may result in a reduction in the provision of rehabilitation programs directed towards reducing sexual offending against children and young people.*[28]

The Committee provided:

The Commission is of the view that judges should retain the discretion to be able to take into account a range of considerations when imposing a sentence. The Commission acknowledges that the offences encompassed in the Bill fall on the severe end of the offending spectrum and recognises that there is a clear need to deter potential offenders from engaging in offending behaviours.[29]

---

24 Commission for Children and Young People and Child Guardian, Submission 9, p. 1.
25 Commission for Children and Young People and Child Guardian, Submission 9, p. 1-2.
26 Commission for Children and Young People and Child Guardian, Submission 9, p. 2.
27 Letter from the Department of Justice and Attorney-General, 3 July 2012, p. 19.
28 Commission for Children and Young People and Child Guardian, Submission 9, p. 2.
29 Commission for Children and Young People and Child Guardian, Submission 9, pp. 2-3.

> *The Commission expressed a strong concern that children and young people may be less willing to report abuse against them if they know that the perpetrator will spend life in prison if found guilty. This is particularly likely to be the case if the person is a parent, relative or close friend. Children involved in child abuse matters where the abuser is a family member have often been reported as saying that they didn't want to get the person into trouble, they just want the abuse to stop. The Commission is concerned that children will feel less able to report abuse under the proposed changes and family members are much more likely to put pressure on children not to disclose abuse – leaving children nowhere to go but accept the abuse or take other actions such as leaving home.*[30]

The Commission is also concerned that juries may be less willing to find a person guilty if they know that the person will automatically be sentenced to life in prison. [31]

The Commission provided:

> *While the Commission acknowledges the importance of sentencing principles such as deterrence, punishment and especially community protection, the Commission also is of the view that effective and appropriate services and programs are necessary for offenders to produce longer term reductions in recidivism. In this regard, the Commission has some concerns that any costs of the amendments … are intended to be met from existing agency resources. If the proposed amendments impact on a considerable number of offenders, it is unclear how existing resources would provide for the increased number of offenders imprisoned over a longer term, both in relation to imprisonment costs and rehabilitation options. The Commission is concerned that necessary resources will be drawn from existing rehabilitation programs.*[32]
>
> *As the Commission noted in its submission to the former Sentencing Advisory Council in response to the Council's reviews of sentencing of child sexual offences in Queensland:*
>
> > *It must be acknowledged that offenders will be released from prison eventually, and research evidence indicates that it is likely to pose a greater risk to potential child victims in the community for such offenders to be released without having undertaken a rehabilitative program. Therefore, while the best interests of children is considered to be the priority consideration, there is also a strong need to consider the provision of effective and appropriate rehabilitation options for offenders, particularly young offenders, to assist in protecting the children and young people who may otherwise become victims of sexual offences.*[33]
>
> *While it is understood that there is evidence to suggest that mandated participation in such programs may not lead to real behavioural change,*[34] *and reliable evaluation of the effect of sex offender treatment programs on rates of recidivism is difficult to achieve and mixed results have been reported,*[35] *many studies have also demonstrated the effectiveness of*

30 Commission for Children and Young People and Child Guardian, Submission 9, p. 3.

31 Commission for Children and Young People and Child Guardian, Submission 9, p. 3.

32 Commission for Children and Young People and Child Guardian, Submission 9, p. 3.

33 Commission for Children and Young People and Child Guardian, Submission 9, p. 3.

34 Commission for Children and Young People and Child Guardian, Submission 9, p. 3, citing McSherry (2006), cited in Gelb (2007) *Recidivism of sex offenders research paper*, Sentencing Advisory Council, Melbourne, Victoria.

35 Commission for Children and Young People and Child Guardian, Submission 9, pp. 2-3, citing Schweizer and Dwyer (2003) *Sex crime recidivism: evaluation of a sexual offender treatment program*, Journal of Interpersonal Violence: 18(11): 1292-1310..

> *treatments, especially those delivered in the community, in reducing sexual offence recidivism and mitigating the effects of prolonged imprisonment.*[36]

The Commission also noted that research indicates that community-based treatment programs produce more long-term reductions on recidivism than institution-based treatment alone.[37] The Commission considers it important for effective interventions and rehabilitation programs to continue to be made available to all offenders.[38]

The Commission also recommends that if the proposed changes are introduced a comprehensive evaluation be undertaken to determine the effects of the changes, both intended and unintended.[39]

The Commission provided:

> *In the event that the proposed changes are introduced the Commission recommends that the effects be evaluated across a range of areas including the intended beneficial outcomes the Bill is designed to achieve, and across any of the areas identified … by the Commission as potential negative and unintended consequences.*[40]

In response, the Department provided:

> *This Bill represents a unique legislative approach to a serious problem. The CCYPCG comments are noted.*[41]

Zig Zag Young Women's Resource Centre Inc. (Zig Zag) was established in 1988 as an initiative of the Youth Advocacy Centre to respond to the needs of young women. Zig Zag provides two core services: a sexual assault support and prevention program; and a supported accommodation and assistance program.[42] Zig Zag strongly discourages mandatory sentencing and submitted 14 recommendations relevant to the sentencing considerations.[43]

The Brisbane Rape and Incest Survivors Support Centre (BRISSC) is a support service for women aged 15 years and older who have experienced sexual violence.

BRISSC provided:

> *The introduction of mandatory life sentencing is a significant amendment to the legislative responses to child sexual offences in Queensland. Our concerns in relation to such an amendment are:*
>
> - *A blanket mandatory sentencing does not take consideration of the circumstances of a case. While we believe that child sexual abuse is a heinous crime our concern is that if*

---

36 Commission for Children and Young People and Child Guardian, Submission 9, p. 4, citing Gelb (2007) *Recidivism of sex offenders research paper*, Sentencing Advisory Council, Melbourne, Victoria; MacGregor (2008) *Sex offender treatment programs: effectiveness of prison and community based programs in Australia and New Zealand*, Indigenous Justice Clearinghouse, Brief 3; Livevore (2004) *Recidivism of sexual assault offenders: rates, risk factors and treatment efficacy*, A report prepared for the Office of the Status of Women. Australian Institute of Criminology, Canberra.

37 Commission for Children and Young People and Child Guardian, Submission 9, p. 4, citing Altschuler, Armstrong and MacKenzie (1999) Reintegration, Supervised Release, and Intensive Aftercare. *Juvenile Justice Bulletin*, Office of Juvenile Justice and Delinquency Prevention; Stathopoulos (2010) *Measuring sexual offender recidivism*, Australian Centre for the Study of Sexual Assault Aware No. 25, Australian institute of Family Studies.

38 Commission for Children and Young People and Child Guardian, Submission 9, p. 4.

39 Commission for Children and Young People and Child Guardian, Submission 9, p. 4.

40 Commission for Children and Young People and Child Guardian, Submission 9, p. 4.

41 Letter from the Department of Justice and Attorney-General, 3 July 2012, p. 20.

42 Zig Zag Young Women's Resource Centre Inc., Submission 1, p. 2.

43 Zig Zag Young Women's Resource Centre Inc., Submission 1, pp. 2-4.

circumstances of individual cases were not taken into consideration it could result in unjust imprisonment …

- *We believe to avoid unjust imprisonment sentencing should have the ability to take into consideration:*
  - *The nature of the sexual offence*
  - *Harm to the victim*
  - *Offender culpability; and*
  - *Aggravating or mitigating factors.*
- *We also highlight that the Bill needs to take into consideration any unintended consequences. That before any significant change to sentencing is introduced it should be taken into consideration the effect that change would have on specific groups of people, particularly young women, Aboriginal and Torres Strait Islander people and people with intellectual disabilities.*
- *In relation to the impact of the victim it is our recommendation that the available research relating to the long term affects of child sexual assault be consulted. …*
- *In relation to Offender Culpability we are aware that there are particular behaviours that relate to serious sexual offenders, such as grooming of victims. Therefore it is our recommendation that the Sentencing Court adopts a position that the offenders culpability is deemed high where there is evidence of grooming, coercive and exploitative behaviour.*[44]

The Centre Against Sexual Violence Inc. (CASV) is an organisation funded to provide counselling and support to young women 12 and over in the Logan, Beenleigh and Beaudesert region who have been victims of child sex offences. CASV acknowledge that the Bill may contribute somewhat to the prevention and victimisation of our most vulnerable community members, children and stated '*the entire legal process and response to child sex offenders needs to be reviewed*'.[45]

CASV submitted:

… individual circumstances need to be taken into consideration around the nature of the child sex offence, including factors relevant to the offence's seriousness and the degree of power abuse and exploitation of the child. … Applying a blanket amendment of life imprisonment … on a second offence is not appropriate.

Economic advantage/disadvantage also play a significant role in an offender being held accountable for a child sex offence. While the opportunist offender from a disadvantaged background (i.e. Disability, ATSI, CALD, economic) is more likely to be apprehended and prosecuted whether guilty or not guilty, the sophisticated careful planned and large scale offence offenders are more likely to evade apprehension; and if this [prosecution] does occur, have the resources to defend their case and be acquitted.

The criminal justice system is imperative in the deterrence of sexual violence against children at an individual level. In addition, it is crucial that an integrated holistic approach is systematically applied to achieve prevention. Very few perpetrators are ever held accountable for their actions. The bulk of sophisticated offenders remain actively embedded

44 Brisbane Rape and Incest Survivors Support Group, Submission 13, pp. 1-2.

45 Centre Against Sexual Violence Inc, Submission 8, p. 1.

within the community because they are never convicted of a child sexual offence in the first place.[46]

Queensland Advocacy incorporated (QAI), provide systems and legal advocacy for vulnerable people with disability. QAI provided a detailed submission, including relevant domestic and international statistics, a referenced discussion of people with intellectual disabilities and sentencing and child sex offences, the prison experience for people with intellectual disabilities, and treatment options. Key points taken from their submission are respectfully summarised below:

- *We do not support the passing of 'one size fits all' sentencing, even for serious sex offences. Any mandatory sentencing law is contrary to fundamental legislative principles, removing the courts' discretion to weigh relevant circumstances, including offenders' intellectual disabilities.*
- *Portraying sex offenders as 'monsters' sells newspapers and boosts … ratings,*[47] *… but the reality is complex. Many criminal offenders … are people with intellectual disabilities; indeed people with intellectual disabilities are overrepresented in prisons, and overrepresented for sexual offences.*[48]
- *People with intellectual disabilities convicted of sex offences generally are more likely to have been victims of sexual and physical abuse, especially in childhood, and in institutional settings.*[49]
- *Many offenders with intellectual disabilities are individuals who have behaved inappropriately because of lack of knowledge about sexuality, or not knowing what behaviours are acceptable, reflecting the restricted life of the person with the disability, who may have been denied a sex education in the past or not provided avenues to pursue sexual interests in a safe and appropriate way.*
- *Once in jail, 'peer abuse' by one inmate against another is widespread and not recognised or dealt with.*[50] *Mental and physical abuse, disciplinary problems and the likelihood of regression in prison leads many prisoners with intellectual disabilities to spend their time in max security.*[51]
- *Imprisonment is likely to erode the living skills of people with disabilities, thereby increasing the challenges they will face on release.*
- *The likelihood of reoffending is determined more by a person's socio-economic circumstances after release than by the length of their term in prison.*[52]
- *Support and monitoring after release, not increasing time served, will deliver the best outcomes for both offenders and the community.*
- *Prisons are poorly equipped with the necessary resources for rehabilitation of offenders with intellectual disabilities.*

46 Centre Against Sexual Violence Inc, Submission 8, p. 1.

47 Queensland Advocacy Incorporated, Submission 14, p. 2, citing Soothill and Walby (1991), *media reporting of sex offending is all about sensationalism and titillation.*

48 Queensland Advocacy Incorporated, Submission 14, p. 2, citing Glaser (1991); Simon (1980).

49 Queensland Advocacy Incorporated, Submission 14, p. 2, citing Glaser (1991); Hayes (2005) (2009); Lindsay et al (2001).

50 Queensland Advocacy Incorporated, Submission 14, p. 2, citing Hayes (2005) 'A review of non-custodial interventions with offenders with intellectual disabilities, 17(1) *Current Issues in Criminal Justice* 69-78.

51 Queensland Advocacy Incorporated, Submission 14, p. 2, citing Cockram (2005).

52 Queensland Advocacy Incorporated, Submission 14, p. 2, citing Allan and Dawson (2004) *Trends and Issues in Crime and Criminal Justice*. Canberra: Australian Institute of Criminology.

- *Whilst there is a need for programs inside prisons which are more useful for people with intellectual disability, it is difficult to separate any benefits such programs may have from the negative effects of incarceration, including reduction of living skills and self-esteem, and increased feeling of alienation and identification with an offending culture.*
- *Prison programs, by their nature, are fragmented. They operate around the demands of the prison environment. The downfalls of in-prison programs undermine the basic rights of these people to receive a therapeutic response to their situation.*
- *The high return to prison rate for people with intellectual disability demonstrates the failure of imprisonment as a mechanism for individual or social change.*
- *When discharged from prisons, the negative effects of imprisonment combined with a lack of adequate monitoring and support, often exacerbates re-offending.*
- *Intellectual disability should be a key mitigating factor when sentencing child sex offenders.*
- *Mandatory minimum jail terms do not allow such mitigating factors to be taken into account. Mandatory minimums are likely to increase, not lessen the harm to communities.*[53]

In response to this submission, the Department provided:

> *The focus of this Bill is not only the punishment of child sexual offenders but also the protection of children from child sexual abuse. The effect that sexual abuse has on a child in not ameliorated by the intellectual impairment or the mental health condition of their abuser. The fact that a serious child sex offender suffers from intellectual impairment or a mental health condition does not mean that Queensland children do not deserve to be protected from their abuse.*
>
> *Section 18 of the Criminal Law Amendment Act 1945 makes provision for an offender whose mental condition prevents them from exercising control of their sexual instincts to have their condition recognised and be treated accordingly. The Bill does not affect the operation of the Criminal Law Amendment Act 1945.*[54]

Prisoners' Legal Service Inc. (PLS) is a community legal service that provides advice to prisoners and their families about matters relating to incarceration. PLS endorses the work of INCorrections, and as such, submits their Position Paper to assist the Committee's inquiry.[55]

> *INCorrections is 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.*[56]

The work of the Sentencing Advisory Councils of Queensland and Victoria is also cited by INCorrections.[57]

---

53 Queensland Advocacy Incorporated, Submission 14, pp. 1-3.

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

55 Prisoners' Legal Service Inc., Submission 6, p. 1.

56 Prisoners' Legal Service Inc., Submission 6, p. 1.

57 Prisoners' Legal Service Inc., Submission 6, pp. 1-2.

The Committee noted that INCorrections position paper also reflects the views of the Catholic Prison Ministry,[58] Queensland Public Interest Law Clearing House Incorporated,[59] and the Youth Affairs Network of Queensland Inc.[60]

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*.'[61] Potts Lawyers add:

> *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.*[62]

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

> *… 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.*[63]

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

1. *Victims will be cross -examined more regularly.*
2. *A system already exists for fixing inadequate sentences if the Crown believes that a sentence that was imposed is inadequate*
3. *A non-parole period system already exists*
4. *Current sentences are not fundamentally inconsistent*
5. *The scheme will not reduce crime*
6. *An informed public does not significantly disagree with the Courts*
7. *It will increase the intake for institutes of higher criminal education*
8. *There are other ways to improve the system.*[64]

The Bar Association of Queensland (Bar Association) strongly opposed the introduction of the new mandatory sentencing regime of life imprisonment, with a 20-year non-parole period, for certain repeat child sex offenders.[65]

---

58 Catholic Prison Ministry, Submission 10, p. 1.

59 Queensland Public Interest Law Clearing House Incorporated, Submission 11, p. 1.

60 Youth Affairs Network Queensland, Submission 18, p. 1.

61 Potts Lawyers, Submission 17, p. 1.

62 Potts Lawyers, Submission 17, p. 1.

63 Sentencing Advisory Council, *Minimum standard non-parole periods, Final Report,* September 2011, p. xv; as cited by Potts Lawyers, Submission 17, pp. 1-2.

64 Potts Lawyers, Submission 17, pp. 2-6.

65 Bar Association of Queensland, Submission 15, p. 1.

The Bar Association submitted:

> *It is a form of mandatory sentencing that has, time and time again, been demonstrated to lead to injustice in many cases and otherwise plays havoc with the proper administration of the criminal law. It is also quite inimical to the very rationale advanced for it in the Explanatory Notes …* [where it is] *said to be 'necessary'.*
>
> *The proposed mandatory sentencing regime will not operate as a deterrent, it may very well put at further serious risk victims of child sex offences and it will almost certainly erode community confidence in the criminal justice system.*[66]

The Bar Association provided extensive reasoning which is respectfully summarised below:

- Mandatory sentencing simply does not work, it does not reduce crime, it is a proposition that is otherwise insupportable when regard is had to experience in other jurisdictions;
- Mandatory sentencing is a 'one size fits all' approach that will promote inconsistency in sentencing;
- Consistency of sentencing is one of the purposes of the Penalties and Sentences Act 1992 (s3(c)) – that objective will be destroyed if the amendments pass;
- The proposed scheme will also be in direct conflict with the detailed sentencing guidelines under s 9, Penalties and Sentences Act 1992 – that provides statutory recognition of the need to sentence child sex offenders in accordance with the justice of the case;
- The feature that an offender has been previously convicted of an offence against a child has been treated as a serious aggravating circumstance and, as such, is reflected in a substantially increased penalty – see s 9(8), Penalties and Sentences Act 1992, - this is current practice with review provided by the Court of Appeal- thus removing judicial discretion is therefore completely unnecessary;
- The proposed scheme ignores the recourse the Attorney-General may have to the Dangerous Prisoners (Sexual Offenders) Act 2003 in order to keep dangerous offenders in detention – or subject to strict supervision – and then allows the Court to keep anyone so detained or supervised under regular review;
- The amendments will result in a repeat child sex offender receiving a comparable sentence to a person convicted of murder, notwithstanding the abhorrent nature of offences against children;
- Mandatory sentencing regimes exacerbate court delays – causing emotional, financial strain to victims, families, and criminal justice agencies;
- Violates international law obligations;
- Welfare of the child victim – some offenders may become motivated to kill and dispose of their victims in order to make detection of their crimes more difficult.[67]

The Bar Association also submitted:

> *Under the current proposal, an offender who has previously been convicted of a serious child sex offence is liable to mandatory imprisonment for life if he or she is convicted of a further serious child sex offence.*[68]

To illustrate, the Bar Association refer to *R v W* [1999] QCA 124.[69] In that case the brother and sister were aged 46 and 32 respectively.

66 Bar Association of Queensland, Submission 15, p. 1.
67 Bar Association of Queensland, Submission 15, pp. 1-3.
68 Bar Association of Queensland, Submission 15, p. 5.
69 Bar Association of Queensland, Submission 15, p. 6.

In response, the Department provided:

> *The submission suggests that in such a case where there is no suggestion of exploitation there is a limited community benefit in imprisonment. It is incorrect to assert that under the Bill these siblings would be sent to jail for 20 years. Clause 7 of the Bill in proposed new section 161D(a) makes it clear that the offence committed must be 'in relation to a child under 16 years'.*
>
> *It is also notable that the offender must be an adult (i.e. 18 years or older) when they commit the offence.*
>
> *Therefore to clarify, the Bill insofar as it would apply to siblings and the offence of incest, would only apply when a sibling of 18 years or older, commits an act of incest with a sibling younger than 16 years of age in addition to another serious child sex offence.*[70]

The Bar Association also referred to, and submitted a paper prepared by the Law Council of Australia, September 2001, *'The Mandatory Sentencing Debate'*, and paper prepared by the Law Institute of Victoria, *'Mandatory Minimum Sentencing'*, June 2011.[71]

The Queensland Police Service (QPS) believe there are a number of implications that arise out of the current proposal. QPS submitted:

> *I note the Explanatory Notes state there are no alternate ways of achieving the criminal reform. However, there is potential to identify and implement options to achieve the policy objective without recourse to legislative change. For example, further ongoing judicial education in relation to the impacts and effects of child sexual abuse may result in increased sentences, more reflective of community expectations, while retaining discretion based on the unique facts of each case.*[72]

QPS noted the following issues:

- *as the proposed 20 year non-parole period will apply for both murder and repeat child sex offences, an offender may consider killing the child victim to evade punishment under the rationale there is little incentive to leave a child witness alive;*
- *there may be a reduction in reporting of child sex offences, particularly where a witness makes a complaint with the aim of seeking a stop to the offending conduct rather than have the offender facing mandatory punishment. This is particularly relevant in relation to intra-familial offending which comprises a significant proportion of the complaints made;*
- *there is a likelihood more matters will be contested in court, leading to additional impact on victims being subject to more intense cross-examination, greater impact on courts, and possible delays in matters begin heard.*[73]

Protect All Children Today Inc. (PACT) also made a submission. PACT is a non-profit community organisation established as a service provider of court support as well as advocating for abused and neglected children/young people and their families. PACT expressed support for the initiative while acknowledging that careful consideration needs to be given to the likely effects of such reform:

- *given the lengthier sentences, offenders are less likely to plead guilty, which would result in more children and young people being required to give evidence in criminal courts.*

---

70 Letter from the Department of Justice and Attorney-General, 3 July 2012, pp. 17-18.

71 Bar Association of Queensland, Submission 15, p. 3.

72 Queensland Police Service, Submission 16, p. 1.

73 Queensland Police Service, Submission 16, pp. 1-2.

- *the likely increase in appeals, which may lead to children and young people having to give evidence on multiple occasions, which contravenes the principles of the Evidence Act.*
- *the increased number of court cases and appeals will result in lengthier delays for matters to be heard, adding further trauma for children and young children, especially over their formative years, again contravenes the Evidence Act.*
- *risk of increased motivation for the Defendant, or their sympathetic family members, to put undue pressure on a child or young person to change or withdraw their allegations.*
- *the resource impost that the initiative will have on the current judicial, legal and not-for-profit community sector as they may be required to support a child or young person for longer periods and multiple court appearances.*
- *possible jury reluctance to convict if they consider sentences are too harsh.*
- *the cost of housing serious child sex offenders for the duration of their lengthy sentences. Community supervision is cheaper to society and rehabilitation more effective.*
- *the deterrent effects of increased sentencing are statistically negligible. Research suggests that increased resourcing for Police (CPIU, Argos) and correlating increased apprehension of offenders, pose greater deterrence and is more effective.*
- *the need for therapeutic intervention to be available for first time offenders (whether housed in prison or the community) to reduce further recidivism.*
- *preventative programs should be enhanced to assist potential perpetrators prior to contact with the Criminal Justice System.*
- *alternatives such as education of children in protective behaviours is likely to lead to increased reporting and is more cost effective.*

Concern is expressed that the serious offences of carnal knowledge of children under 16, which arguably is a charge that has greater mitigating factors that should be considered on a case by case basis.

Consideration should also be given to the requirements of the Evidence Act, in relation to the Protection of Children (as outlined in the attached overview) to ensure that these are incorporated into any proposed legislation to protect children and young people in their dealings with the Criminal Justice System.[74]

In response to the submissions that oppose mandatory sentencing, the Department provided:

The Bill implements the Government's announced policy. The policy recognises that child sex offending is so abhorrent to the general community that it requires a legislative response that ensures that the punishments handed down by the courts for such offences accord with the community's expectations.

While all child sexual offending is of great concern, the Bill recognises that the extreme legislative response in the form of mandatory sentencing must be limited to ensure against arbitrary and unjust results. The Bill achieves this by specifically limiting the application of the regime to nine separate listed sexual offences contained in the schedule to the Bill. The Bill ten provides the further qualification that the scheme only applies where a listed offence is committed against a child under 16, and the offence is punishable by life imprisonment.

[74] Protect All Children Today Inc, Submission 19, pp. 1-2.

> *For example, while the offence of carnal knowledge with or of children is captured, the regime will only apply the life offences (this is where the child is under 12 years or is under the care of the offender). Therefore the regime will not [unjustly] capture 'young lovers'.*
>
> *Of crucial important is that the regime will only apply to an offender who having been convicted of one of these offences as an adult, returns to court having subsequently committed a further such offence against a child.*
>
> *This carefully constructed approach ensures that the Bill captures the child sexual offenders of greatest concern to the community.*[75]

In response to concerns raised regarding judicial discretion, the Department provided:

> *The creation of the mandatory sentencing regime brings with it an inevitable removal of judicial discretion.*
>
> *Withdrawal of judicial discretion through the prescription of mandatory life sentences and minimum non-parole periods is not without precedent. Queensland recognises the seriousness of the offence of murder through prescription of a mandatory life sentence and a minimum non-parole period.*
>
> *The prescription of mandatory life imprisonment with a 20 year minimum non-parole period for serious recidivist child sex offenders reflects that this form of repeat offending is among the most abhorrent in the community.*
>
> *Child sex offenders victimise one of the most vulnerable groups in the community. It is therefore incumbent upon the community to provide children with adequate protection from harm, as they are inherently ill-equipped to adequately protect themselves from such predation and exploitation. The impact of the new regime and associated impact on judicial discretion must be balanced against the need for community protection and the need to denounce repeat child sex offenders.*[76]

In response to PACT's submission regarding serious offences, and that greater mitigating factors should be considered on a case by case basis, the Department responded:

> *… the Bill specifically limits the application of the new mandatory sentencing scheme to nine separate listed sexual offences contained in a schedule to the Bill. The Bill then provides the further qualification that the scheme only applies where a listed offence is committed against a child under 16 and the offence is punishable by life imprisonment.*
>
> *For example, while the offence of unlawful carnal knowledge with or of children is captured, the scheme will only apply to the life offences (that is where the child is under 12 years or is under the care of the offender). Therefore the scheme will not unjustly capture 'young lovers'.*[77]

2.3 Current sentencing framework for child sex offenders

The current framework for sentencing child sex offences was recently included in a report by the Sentencing Advisory Council (Council), *Sentencing of Child Sexual Offences in Queensland*.[78] In that report, the Council clarified that '[with] *the exception of murder, Queensland does not currently have*

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

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

[77] Letter from the Department of Justice and Attorney-General, 3 July 2012(2), p. 3.

[78] *Sentencing of Child Sexual Offences in Queensland*, Final Report, January 2012, Sentencing Advisory Council available at http://www.sentencingcouncil.qld.gov.au/our-projects/child-sexual-offences/final-report

mandatory sentencing laws that require courts to impose a certain penalty for serious offences, such as child sex offences' and that the current approach is '*guided by the general purposes of sentencing, and the specific principles and factors set out in the Penalties and Sentences Act 1992*.'[79]

In relation to the sentencing of child sex offenders, the Council identified the following as relevant:

- *Pursuant to the serious violent offence provisions in part 9A of the Penalties and Sentences Act, in certain circumstances, an offender may be required to serve a minimum of 80 per cent of their imprisonment term (or 15 years, whichever is the lesser) before being eligible for parole. In instances where an offender is sentenced to 10 years or more imprisonment for a qualifying offence (which includes a child sexual offence), a court must declare the offender convicted of a serious violent offence, which triggers the minimum 80 per cent (or 15 years imprisonment) parole eligibility; where the offender is sentenced to more than 5 years but less than 10 years imprisonment, the court may declare the offender convicted of a serious violent offence, thereby requiring the offender to serve a minimum of 80 per cent of their imprisonment term before being eligible to apply for release on parole.*
- *Section 156A of the Penalties and Sentences Act requires a court in sentencing an offender for certain serious violent offences (which include child sex offences listed in Schedule 1) to order any sentence of imprisonment to be served cumulatively with any other term of imprisonment the offender is liable to serve if the offence was committed in certain circumstances (such as the offender committed the offence while on parole).*
- *Part 10 of the Penalties and Sentences Act provides the court with the power to impose an indefinite sentence for certain offences, including some child sexual offences. This power may be exercised in circumstances where the court is satisfied that the offender is a serious danger to the community and the court must take into account a range of factors when making this assessment.*
- *Court ordered parole provisions introduced by the Penalties and Sentences Act in 2006 provide the court with a range of powers governing when a court can set a parole release date or a parole eligibility date for an offender sentenced to a term of imprisonment. When sentencing an offender for a sexual offence, a court has the power to set only a parole period eligibility date, not a parole release date. Courts generally exercise their discretion to set a parole eligibility date, and in some cases are required to do so. However, if this discretion is not exercised, an offender convicted of a sexual offence is able to apply for parole after serving 50 per cent of their sentence.*
- *A separate post-sentence detention and supervision scheme exists for offenders serving a period of imprisonment for a serious sexual offence (including an offence of a sexual nature against children) under the Dangerous Prisoners (Sexual Offenders) Act 2003. This scheme is aimed at protecting the community by ensuring that offenders who pose a serious danger because of their risk of re-offending are either detained in custody or supervised in the community after the completion of their term of imprisonment.*
- *The personal details of offenders convicted of reportable child sexual offences are also required to be listed on the Australian National Child Offender Register (ANCOR). Offenders on this register are subject to ongoing reporting requirements under the Child Protection (Offender Reporting) Act 2004 and must keep police informed of their current whereabouts and other personal details, including address and employment details, internet use details, e-mail addresses and user names, car registration details and any*

[79] *Sentencing of Child Sexual Offences in Queensland*, Final Report, January 2012, Sentencing Advisory Council, pp. 2-3.

affiliations with clubs that have children as members or involve children in their activities.

- *Under the Child Protection (Offender Prohibition Order) Act 2008, a form of civil order known as a prohibition order may be made against certain offenders convicted of child sexual offences to prohibit them from engaging in certain conduct, such as associating with, or contacting other sex offenders, being in certain locations (such as near a school), living where children live, or engaging in certain types of employment. The court must be satisfied that, having regard to the nature and pattern of conduct recently engaged in by the offender, they pose an unacceptable risk to the lives or sexual safety of children in the community and the making of the order will reduce this risk. The conduct need not amount to a criminal offence. When a prohibition order is made, the respondent to the order is placed on the ANCOR register if they are not on the register already.*[80]

The Council also noted that in considering the adequacy of existing approaches and guidance, and range of options for improving current approaches to sentencing for offenders convicted of child sexual offences, it affirmed '*the critical importance of maintaining the court's discretion to respond to the individual circumstances of each case.*'[81]

In its view, the Council considered '*there is value in increasing the level of consistency in how sentencing remarks are structured and for resources to be made available to judicial officers to assist in exercising their sentencing discretion, including in sentencing for sexual offences against children*.'[82] This was reflected in its recommendation that consideration be given to the development of additional resources to be made available to judicial officers.[83]

As to the court's role in sentencing, the Council stated:

> *… sentencing courts are guided by the maximum penalties for these offences, comparative sentences and appeal court decisions. These sentencing considerations operate in conjunction with one another. Sentencing judges exercise their discretionary judgment in determining the weight to be given to individual considerations during the sentencing process, and the appropriate sentence to be imposed informed by submissions made by the prosecution and the defence.*[84]

<u>*Dangerous Prisoners (Sexual Offenders) Act 2003*</u>

As noted in the Council's report (as above), the current framework includes a scheme for the continued detention or supervised release of prisoners. This is contained in the *Dangerous Prisoners (Sexual Offenders) Act 2003.* Objectives of this Act are to ensure the adequate protection of the community and to provide continuing control, care or treatment of a particular class of prisoner to facilitate their rehabilitation.[85]

Under this Act, the Attorney-General may apply to the court for an order or orders under section 8 and a division 3 order in relation to a prisoner. The application must be made during the last six

---

80 *Sentencing of Child Sexual Offences in Queensland*, Final Report, January 2012, Sentencing Advisory Council, pp. 3-4.

81 *Sentencing of Child Sexual Offences in Queensland*, Final Report, January 2012, Sentencing Advisory Council, p. ix.

82 *Sentencing of Child Sexual Offences in Queensland*, Final Report, January 2012, Sentencing Advisory Council, p. 75.

83 *Sentencing of Child Sexual Offences in Queensland*, Final Report, January 2012, Sentencing Advisory Council, Recommendation 5, p. 75.

84 *Sentencing of Child Sexual Offences in Queensland*, Final Report, January 2012, Sentencing Advisory Council, p. 19.

85 *Dangerous Prisoners (Sexual Offenders) Act 2003*, section 3.

months of the prisoner's period of imprisonment.[86] If the court is satisfied there are reasonable grounds for believing the prisoner is a serious danger to the community the court must hear the application. In preparation, the court may order the prisoner to undergo examinations by two psychiatrists named by the court who are to prepare independent reports.[87] Each psychiatrist examining the prisoner must prepare a report that includes the psychiatrist's assessment of the level of risk that the prisoner will commit another serious sexual offence if released from custody; or if released from custody without a supervision order being made and the reasons for the psychiatrist's assessment.[88]

Division 3 applies if, on hearing an application for a division 3 order, the court is satisfied the prisoner will commit a serious sexual offence if the prisoner is released from custody; or if the prisoner is released from custody without a supervision order being made.[89]

On hearing the application, the court may decide that it is satisfied by acceptable, cogent evidence; and to a high degree of probability, that the evidence is of sufficient weight to justify the decision.[90]

In deciding whether a prisoner is a serious danger to the community the court may have regard to a range of relevant factors.[91] If the court is satisfied as required, the court may order that the prisoner be detained in custody for an indefinite term of control, care or treatment (continuing detention order); or that the prisoner be released from custody subject to the requirements it considers appropriate that are stated in the supervision order.[92]

In deciding whether to make an order, the paramount consideration is to be the need to ensure adequate protection of the community, and the court must consider whether:

- *adequate protection of the community can be reasonably and practicably managed by a supervision order; and*
- *requirements under section 16 (supervised release) can be reasonably managed by corrective services officers.*[93]

The Attorney-General has the onus of proving that a prisoner is a serious danger to the community.[94]

In his introductory speech, Hon Jarrod Bleijie MP, Attorney-General and Minister for Justice explained:

> *The bill provides that, in sentencing the offender for a second serious child sex offence, the court must impose life imprisonment, which cannot be mitigated or varied. Of course the court retains the discretion to impose an indefinite sentence under part 10 of the Penalties and Sentences Act, but the bill makes it clear that a sentence of life imprisonment must be set as the nominal sentence and the finite sentence under that regime. This government makes no apologies for this tough new sentencing regime. The amendments are necessary to condemn and denounce repeat child sex offenders. The bill aims to deter this cohort of offenders and to enhance community confidence in the sentencing process. The bill*

86 *Dangerous Prisoners (Sexual Offenders) Act 2003*, section 3.
87 *Dangerous Prisoners (Sexual Offenders) Act 2003*, section 8.
88 *Dangerous Prisoners (Sexual Offenders) Act 2003*, section 11.
89 *Dangerous Prisoners (Sexual Offenders) Act 2003*, section 13(1).
90 *Dangerous Prisoners (Sexual Offenders) Act 2003*, section 13(3).
91 *Dangerous Prisoners (Sexual Offenders) Act 2003*, section 13(4).
92 *Dangerous Prisoners (Sexual Offenders) Act 2003*, section 13.
93 *Dangerous Prisoners (Sexual Offenders) Act 2003*, section 13.
94 *Dangerous Prisoners (Sexual Offenders) Act 2003*, section 13(7).

> *recognises that the criminal justice system must operate to protect the most vulnerable members of our community-our children-from this most abhorrent offending.*[95]

2.4 Committee comment

The Committee noted the quality and quantity of submissions provided to assist its inquiry, and acknowledges that the Bill, and the policy implications it seeks to implement, represent a departure from current practice. Notwithstanding the merits of arguments advanced in submissions, the Committee noted that the Bill represents the Liberal National Party's pre-election commitment to toughen sentences for repeat child sex offenders and acknowledges that removing judicial discretion and increasing non-parole periods, affects that change.

The Committee noted the possibility of unintended consequences, as outlined in several submissions. To that end, the Committee recommends the Attorney-General monitor and review the implementation of these changes, and report to Parliament within two years from commencement.

Recommendation 2

The Attorney-General monitor and review the implementation of this legislation, and report to Parliament within two years from commencement.

2.5 Commonwealth consistency

Proposed clause 161E(2):

> *An offender who is convicted of a repeat serious child sex offence is liable to, despite any other penalty imposed by the Criminal Code, imprisonment for life, which can not be mitigated or varied under any law, or is liable to an indefinite sentence under part 10.*

The Society provided:

> *The Society is concerned with the phrase, 'which can not be mitigated or varied under any law'. In our view, this clause could be deemed invalid due to inconsistency under s 109, Commonwealth of Australia Constitution Act. In accordance with Australian constitutional law principles, where a State law is inconsistent with a valid law of the Commonwealth, the Commonwealth law will prevail to the extend of the inconsistency. Therefore, if a law of the Commonwealth domestically implements rights and obligations arising out of Australia's international treaty obligations with respect to arbitrary detention, this may give rise to invalidity.*
>
> *The Society also considers that an exception should be provided in proposed s 161E(2) for the courts to make the order subject the person being released sooner under exceptional circumstances parole under the Corrective Services Act 2006.*[96]

2.6 Schedule: 'serious child sex offences'

The Society noted that proposed Schedule 1A, which lists the offences considered as 'serious sex offences', includes 'owner etc permitting abuse of children on premises' (s 213, *Criminal Code Act 1899*):

> *Whilst the Society does not in any way condone the actions of a person convicted under s213, we consider that the nature of the offence is of a different order to the other offences*

95 Transcript of Proceedings, 20 June 2012 at p. 819.

96 Queensland Law Society, Submission 4, p. 3.

> *included in the list. The other offences all involve direct assaults on a child. Conduct under s 213 involves offending behaviour which is more similar in nature to that of accessorial liability, and we consider that the offence can be properly thought of as falling into a different category.*[97]

In response, the Department provided:

> *The 'two strike' policy is aimed at protecting children from the worst type of child sex offender. People that seek to either directly exploit children or permit the serious exploitation of children all fall within that category of offender.*[98]

2.7 Committee comment

The Committee acknowledged the nature of the offence prescribed in section 213 of the Criminal Code, is different to offences directly involving children, but remain mindful of the policy intent of the Bill, which is, in part, to toughen penalties for child sex offenders. This provision places new obligations on the owner etc of premises, and the Committee noted that this is within the scope of the Bill and the policy.

2.8 Multiple Strikes Legislation – Bravehearts

Bravehearts has been consistent in lobbying for a two strikes approach to dangerous sex offenders since 2008.[99] Bravehearts submit that the release of the *'Two Strikes and They're Out: Mandatory Sentencing for Child Sex Offenders'* was in response to continued frustration with the 'watering down' of the *Dangerous Prisoners (Sexual Offenders) Act 2003* by the courts.[100] Bravehearts stated:

> *It was clear that judges were continuing to release known, dangerous sex offenders into the community, irrespective of assessment of risk to children.*[101]

Bravehearts also stated:

> *The reality is that child sex offending is a compulsive, addictive behaviour that damages victims for life. High-risk offenders pose a continued danger to our communities as such we believe that a specific, targeted multiple strike legislation is an appropriate and justified response to these habitual/persistent child sex offenders.*[102]
>
> *The preponderance of opinion is that paedophilia is as much a part of one's orientation as anything else. At this point in time, paedophilia is seen as a disorder that should be treated. As we delve deeper into this issue, it seems that it is instead part of one's orientation. It can't be treated and so if one has this orientation, it is not a question of IF they will re-offend but WHEN they will re-offend.*[103]
>
> *The effectiveness of multiple strikes style legislation is a matter of great controversy. … Criticisms have been well documented.*[104]

97 Queensland Law Society, Submission 4, pp. 3-4.

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

99 Bravehearts, Submission 3, p. 2.

100 Bravehearts, Submission 3, p. 2.

101 Bravehearts, Submission 3, p. 2.

102 Bravehearts, Submission 3, p. 4.

103 Bravehearts, Submission 3, *Abstract,* position paper.

104 Bravehearts, Submission 3, p. 8; citing Austin, Clarke, Hardyman & Henry (1999); Beres & Griffith (1998); Brown (2001); Hinds (2005); Jones, Connelly & Wagner (2001); Morgan (2000); Pilsbury (2003).

Bravehearts provided a brief description of multiple strikes law:

> *Multiple strikes laws are a category of statutes initially enacted by state governments in the United States, beginning in the 1990s, to mandate long periods of imprisonment for persons convicted of a felony on three (or more) separate occasions.*
>
> *…*
>
> *The underlying philosophy of these laws is that any person who commits more than two felonies can justifiably be considered incorrigible and chronically criminal, and that permanent imprisonment is then mandated for the safety of society.*[105]

The effectiveness of multiple strikes legislation was discussed in Bravehearts (2009) position paper, '*Two Strikes and They're Out: Mandatory sentencing and child sex offenders*', which forms part of their submission.

Bravehearts categorise criticism of multiple strikes legislation into five main areas:

a. *These laws unfairly target vulnerable sectors of our communities, juveniles, Indigenous populations and do not deal with the underlying causes of offending behaviours.*
b. *Multiple strikes laws violate the basic principle of our criminal justice system, that of proportionality. The punishment should never be disproportionate to the crime. By taking discretion away from the courts, offenders will be unfairly and harshly punished.*
c. *The laws have not had a significant impact on reducing crime and making our communities safer.*
d. *Multiple strikes laws have had modest to little effect in deterring offenders.*
e. *Implementing multiple strike policies will overwhelm an already stretched system, resulting in huge increases in 'traffic' through the criminal justice system, over-filled prisons and subsequent increased financial costs.*[106]

Bravehearts suggest three main benefits to multiple strikes legislation:

1. *Justice Outcome: Justice is serviced for victims of crime as violent, career criminals are removed from communities.*
2. *Prevention Outcome. Crimes would ultimately be prevented as persistent offenders are detained.*
3. *Deterrence Outcome. For fear of incarceration, some persistent offenders may change their behaviours.*[107]

Bravehearts also submitted:

> *A number of jurisdictions in Australia have mandatory sentencing legislation in place for various offences. … The Northern Territory introduced provisions amending the Sentencing Act 1995 … . The Northern Territory have since repealed their legislation. Many concerns had been raised about the impact of these laws, specifically in respect to juvenile offending and its impact on the Indigenous communities.*
>
> …

105 Bravehearts (2009) position paper, 'Two Strikes and They're Out: Mandatory sentencing and child sex offenders', p. 5.

106 Bravehearts (2009) position paper, 'Two Strikes and They're Out: Mandatory sentencing and child sex offenders', pp. 8-9.

107 Bravehearts (2009) position paper, 'Two Strikes and They're Out: Mandatory sentencing and child sex offenders', p. 8.

> *In late 2006, the South Australian government announced a "two strikes and you're out" policy, under the Criminal Law (Sentencing) Act 1988 (section 20B) to allow courts to declare sex offenders as 'serious repeat offenders' after two convictions incurring heftier sentences and longer non-parole periods.*[108]

Bravehearts (Submission 3), Annette French (Submission 2), and PACT (Submission 19) support the proposed amendments to the *Penalties and Sentences Act 1992*.

2.9 Misperceptions about child sex offenders

The sexual abuse of children is of serious concern. The prevalence of child sexual abuse is difficult to determine. Price-Robertson et al (2010) state:

> *The term 'child sexual abuse' refers to a wide variety of behaviours, including both contact offences (eg fondling genitals, masturbation, oral sex, vaginal or anal penetration by a penis, finger or another object, fondling of breasts) and non-contact offences (eg voyeurism, exhibitionism and exposing the child to pornography).*[109] *Definitions of child sexual abuse adopted by researchers can influence the prevalence of abuse reported.*[110]

Sexual abuse of children has a range of very serious consequences for victims'.[111] Richards (2011) identifies five misperceptions about child sex offenders.[112]

All child sex offenders are paedophiles

The terms 'paedophile' and 'child sex offender' are used interchangeably. It is important to understand that the two terms have different meanings. The diagnostic criteria for paedophillia provide a helpful framework for understanding that not all child sex offenders are paedophiles and not all paedophiles are child sex offenders.[113] Richards provided:

> *Paedophiles are those individuals who are sexually attracted to young children; these individuals may or may not act on this attraction. … It is also important to recognise that not all child sex offenders feel driven or compelled to sexually abuse children. In fact, opportunity can play a key role in the commission of sexual offences against children. … Smallbone and Wortley's (2001) own research … found, for example:*
>
> - *a late onset of offending behaviour (37% were aged 31 to 40 years);*
> - *a low incidence of chronic sexual offending (less than one-quarter had previous convictions for sexual offences);*
> - *a high incidence of previous non-sexual offending (approximately 60% had convictions for non-sexual offences);*

---

108 Bravehearts (2009) position paper, 'Two Strikes and They're Out: Mandatory sentencing and child sex offenders', p. 7.

109 Price-Robertson, Bromfield and Vassallo (2010). The prevalence of child abuse and neglect. Melbourne: Australian Institute of Family Studies, as cited by Richards (2011) Misperceptions about child sex offenders, *Trends & issues in crime and criminal justice*. No. 429 September 2011, p. 1.

110 Price-Robertson, Bromfield and Vassallo (2010). The prevalence of child abuse and neglect. Melbourne: Australian Institute of Family Studies, as cited by Richards (2011) Misperceptions about child sex offenders, *Trends & issues in crime and criminal justice*. No. 429 September 2011, p. 1.

111 Richards (2011) Misperceptions about child sex offenders, *Trends & issues in crime and criminal justice*. No. 429 September 2011, p. 1.

112 Richards (2011) Misperceptions about child sex offenders, *Trends & issues in crime and criminal justice*. No. 429 September 2011, p. 1.

113 *Diagnostic and Statistical Manual IV* (APA 199: 572) as cited by Richards (2011) Misperceptions about child sex offenders, *Trends & issues in crime and criminal justice*. No. 429 September 2011, p. 2.

- *a low incidence of stranger abuse (94% abused their own child or a child they already knew);*
- *a low incidence of paraphillic interests (very small proportions could have been diagnosed with other sexually deviant interests such as voyeurism or sexual sadism).*[114]

These factors … challenge the view that 'most sexual offenders are dedicated, serial offenders driven by irresistible sexual urges', and suggest instead that the role of opportunity in child sexual abuse should be given more attention.[115] *… [While] child sex offenders are often depicted as predatory 'paedophiles' who have a persistent sexual interest in children, it is important to acknowledge that both predation and opportunity can lead to the sexual victimization of children.*[116]

Child sex offenders target strangers

Although parents often fear that strangers will abuse their children, it has been well-documented that most child sex offenders are known to their victims.[117] *… Despite an enduring fear of strangers abusing children, the evidence demonstrates that in the vast majority of cases, children's abusers are known to them. Importantly, however, male children are abused by strangers at a much higher rate than female children, with nearly one in five male victims of child sexual abuse indentifying a stranger as the offender (ABS 2005).*[118]

All child sex offenders were victims of sexual abuse themselves

Undoubtedly, a proportion of child sex offenders were abused themselves as children. It is very difficult, however, to accurately determine this proportion and results from studies varied substantially. … There are a number of potential explanations for these inconsistencies in prevalence rates. … Studies that aim to ascertain prevalence rates of childhood sexual abuse among offending populations usually rely on self-report measures, which require offenders both to tell the truth about, and accurately recall, their experiences as children. … It is, therefore, difficult to determine with accuracy the proportion of child sex offenders that have experienced child sexual abuse.[119]

Child sex offenders have high rates of recidivism

Two contrasting arguments have been made about child sex offenders' proclivity to reoffend. In public and media discourse, child sex offenders are often constructed as compulsive recidivists who are virtually certain to reoffend. For example, in a second reading speech to the Legislative Council of South Australia about the Criminal Law

---

114 Wortley, & Smallbone (2006) Applying situational principles to sexual offences against children, in Wortley & Smallbone (eds), Situational prevention of child sexual abuse. *Crime Prevention Series* 19. Monsey: Criminal Justice Press: 7-35; as cited in Richards (2011) Misperceptions about child sex offenders, *Trends & issues in crime and criminal justice*. No. 429 September 2011, p. 2.

115 Wortley, & Smallbone (2006) Applying situational principles to sexual offences against children, in Wortley & Smallbone (eds), Situational prevention of child sexual abuse. *Crime Prevention Series* 19. Monsey: Criminal Justice Press, p. 11; as cited in Richards (2011) Misperceptions about child sex offenders, *Trends & issues in crime and criminal justice*. No. 429 September 2011, p. 2

116 Richards (2011) Misperceptions about child sex offenders, *Trends & issues in crime and criminal justice*. No. 429 September 2011, p. 2

117 Richards (2011) Misperceptions about child sex offenders, *Trends & issues in crime and criminal justice*. No. 429 September 2011, p. 2

118 Richards (2011) Misperceptions about child sex offenders, *Trends & issues in crime and criminal justice*. No. 429 September 2011, p. 3.

119 Richards (2011) Misperceptions about child sex offenders, *Trends & issues in crime and criminal justice*. No. 429 September 2011, pp. 3-4.

(Sentencing) (Mandatory Imprisonment of Child Sex Offenders) Amendment Bill, one Parliamentarian described child sex offenders as 'beings of a subhuman category…[they are]… the least rehabilitatable people'.[120] *Conversely, in the criminological literature, the opposite is often posited – that child sex offenders have low rates of recidivism compared with other types of offenders. It is certainly the case that many studies of child sex offenders have found low levels of recidivism. Measuring sexual recidivism is, however, a challenging task and it is important to be aware of these studies. … The empirical literature therefore suggests that both the media's insistence that child sex offenders are compulsive recidivists and criminologists' counterargument that child sex offenders are unlikely to reoffend may be somewhat skewed.*[121]

By the time an offender is detected, he has victimized hundreds of children

In public discourse, including internet sites designed to combat child sex offending, it is frequently claimed that by the time a child sex offender is detected, he will have amassed a very large number of victims or committed a very large number of child sex offences. Bressington (2010), for example, drew on the claim that 'a child sex offender has probably committed 300 to 400 crimes against children before being caught' in her second reading speech to the Legislative Council of South Australia.[122]*This misperception has even permeated the academic literature on child sex offenders. … Given also the heterogeneity of child sex offenders, it is unlikely that on average child sex offenders have victimised hundreds of children before coming to the attention of authorities. This is, however, undoubtedly the case for a subset of child sex offenders.*[123]

An understanding of child sex offenders, based on the available evidence, is critical if child sexual abuse is to be prevented and responded to in effective ways. … Although sexual offending against children is a highly emotive issue, it is important that the empirical literature on this topic underpins any public policy response to child sex offenders… in order to ensure the implementation of approaches that are best placed to enhance public safety and protect children from sexual abuse.[124]

2.10 Consequences of a reduction of guilty pleas

The Supreme Court provided:

One area requiring further research and the 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

120 Bressington (2010) Hansard: Criminal Law (Sentencing) Mandatory imprisonment of Child Sex Offenders) Amendment Bill. Adelaide: Legislative Council of South Australia, as cited by Richards (2011) Misperceptions about child sex offenders, *Trends & issues in crime and criminal justice*. No. 429 September 2011, p. 4.

121 Richards (2011) Misperceptions about child sex offenders, *Trends & issues in crime and criminal justice*. No. 429 September 2011, pp. 4-5.

122 Bressington (2010) Hansard: Criminal Law (Sentencing) Mandatory imprisonment of Child Sex Offenders) Amendment Bill. Adelaide: Legislative Council of South Australia, as cited by Richards (2011) Misperceptions about child sex offenders, *Trends & issues in crime and criminal justice*. No. 429 September 2011, p. 5.

123 Richards (2011) Misperceptions about child sex offenders, *Trends & issues in crime and criminal justice*. No. 429 September 2011, pp. 5-7.

124 Richards (2011) Misperceptions about child sex offenders, *Trends & issues in crime and criminal justice*. No. 429 September 2011, p. 7.

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 trials. 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 [Bill] 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.[125]

The proposed "two strike" sentencing regime for child sex offenders is intended to reflect the heinous nature of child sex offending, the need to protect children from such offences and the need to punish the guilty. It would be unfortunate if such well-intentioned laws had unintended consequences for the victims of crime and the courts, through delays in the disposition of such cases and criminal cases in general.[126]

Amnesty submitted that '*the Penalties and Sentences Act 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*.'[127]

The Society also submitted 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.*'[128]

QPS provided:

The proposal removes the incentive for the offender to plead guilty, leading to more children being required to submit to extensive cross-examination by the defence. This may also result in an increase in the number of appeals against conviction, leading to further trauma to the victim child.

Research suggests approximately 90% of child sex offences are committed by family members or people known to the child. There is also extensive research that identifies child

125 Supreme Court of Queensland, Submission 5, pp. 2-3.

126 Supreme Court of Queensland, Submission 5, pp. 1, 3-4.

127 Human Rights in Law Group of Amnesty International Qld-Northern NSW Branch, Submission 12, p. 2.

128 Queensland Law Society, Submission 4, p. 2.

> *victims of sexual offences are ambivalent about reporting family or friends. There is also likely to be increased pressure on the child to not report the offence, or to recant the allegations.*
>
> *There is an assumption children are 'inherently unequipped to protect themselves from such predation' (Explanatory Notes, p. 3). The Queensland Government and non-government agencies provide a range of programs educating children and their parents about protective behaviours.*[129]

ATSILS[130], the Bar Association[131], and Potts Lawyers[132] have also submitted that there is a risk offenders are less likely to plead guilty.

In response to the issues raised in submissions, the Department provided:

> *The intention of the Bill is to provide protection to vulnerable children from serious sexual offending. The prescription of a mandatory life sentence for certain repeat offences will have the effect of protecting vulnerable children from offenders known to pose a danger to them.*[133]
>
> *It is intended that the significantly increased sanctions, signalling the community's extreme condemnation of this form of offending will, deter offending. Further it is intended that the provision of the regime will ultimately enhance community confidence in the criminal justice system.*[134]
>
> *The costs flowing from the Bill will be met from existing agency resources, the allocation of which will be determined through the normal budgetary processes.*[135]
>
> *It is not expected that the reforms will significantly impact on prisoner numbers in the short to medium term.*[136]

2.11 Committee comment

The Committee noted the significant reforms the Bill proposes to implement justify the forecast court delays. The Committee is mindful of the importance of timely access to justice and, to this end, has recommended that the Attorney-General monitor and review the practical implications of these amendments. In addition to its earlier recommendation (Recommendation 2), the Committee also recommends the Attorney-General investigate the implications of forecast delays on child victims, and the criminal justice system, and report to Parliament within two years from commencement.

---

129 Queensland Police Service, Submission 16, p. 2.

130 Tasmanian Law Reform Institute, *Sentencing: Final Report No 11* June 2008, p. 44; K Richards, Australian Institute of Criminology, Misperceptions about child sex offenders, *Trends and Issues in Crime and Criminal Justice No. 429,* September 2011, p. 7; Queensland Sentencing Advisory Council, September 2011, *Minimum standard non-parole periods: Final Report*, p. 5; Dr K Gelb (Senior Criminologist – Sentencing Advisory Council Victoria), January 2007, *Recidivism of Sex Offenders Research Paper,* p. 20, as cited by Aboriginal And Torres Strait Islander Legal Service, Submission 7, pp. 1-5.

131 Bar Association of Queensland, Submission 15, pp. 2-3.

132 Potts Lawyers, Submission 17, p. 2.

133 Letter from the Department of Justice and Attorney-General, 3 July 2012, p. 13.

134 Letter form the Department of Justice and Attorney-General, 3 July 2012, p. 13.

135 Letter from the Department of Justice and Attorney-General, 3 July 2012, pp. 8 and 12.

136 Letter from the Department of Justice and Attorney-General, 3 July 2012, pp. 8 and 12.

Recommendation 3

The Attorney-General investigate the implications of forecast court delays: on child victims; and criminal justice agencies, and report to Parliament within two years from commencement.

2.12 Estimated cost for Government implementation

The Supreme Court provided:

> *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. Mandatory life sentences will have resource implications. 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.*[137]

The Explanatory Notes stated that any costs will be met from existing agency resources.[138]

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.[139]

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.[140]

With regard to the estimated costs as outlined in the Explanatory Notes, the Bar Association provided:

> *The financial strain on the Legal Aid and DPP budgets, not to mention the increased costs to the Police and the courts, through the swollen number (and length) of contests will be incalculable. So, too will the effects be felt in the prison system where more prisoners will need to be housed, and for longer. Current estimates suggest the cost to the community for imprisoning one offender for one year is around $70,000. The Explanatory Notes assert that these amendments will be met out 'from existing agency resources'.*
>
> *The Association wonders how that can be … and whether the consequential costs … have been properly estimated.*[141]

ATSILS also noted that '*existing agency resources are expected to cope with any extra burdens associated with these amendments. … 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 is the main reason for the amendments*.'[142]

The Commission is concerned that necessary resources will be drawn from existing rehabilitation programs.[143]

---

137 Supreme Court of Queensland, Submission 5, pp. 1-2.

138 Criminal Law (Two Strike Child Sex offenders) Amendment Bill 2012, *Explanatory Notes*, p. 2.

139 Supreme Court of Queensland, Submission 5, p. 2.

140 Human Rights in Law Group of Amnesty International Qld-Northern NSW Branch, Submission 12, p. 3.

141 Bar Association of Queensland, Submission 15, p. 3.

142 Aboriginal and Torres Strait Islander Legal Service, Submission 7, p. 4.

143 Commission for Children and Young People and Child Guardian, Submission 9, p. 3.

QPS provided:

> *There are likely to be significant resource implications for other departments involved in the criminal justice system resulting from the implementation of this proposal. These would flow from the additional number of matters going to trial.*
>
> *The proposal is likely to impact on the effectiveness of the multiple regimes currently in place in relation to rehabilitation and supervision of offenders (for example, legislation relating to dangerous prisoners, serious violent offenders, and convicted sexual offenders).*[144]

The Department advised:

> *The costs flowing from the Bill will be met from existing agency resources, the allocation of which will be determined through the normal budgetary processes.*
>
> *It is not expected that the reforms will significantly impact on prisoner numbers in the short to medium term.*[145]

2.13 Committee comment

The Committee noted the Government's response.

144 Queensland Police Service, Submission 16, p. 2.

145 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' (FLPs) 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.

The Committee examined the Bill's consistency with FLPs. This section of the report discusses potential breaches of the FLPs identified during the Committee's examination of the Bill and includes any reasons or justifications contained in the Explanatory Notes and any comments provided by the Department.

3.1 Rights and liberties of individuals

Principles of natural justice

Mandatory sentencing laws arguably detract from natural justice protections because even though a person is made aware of the allegations against them and given an opportunity to address those at trial, they have no right to argue mitigating or other circumstances that might otherwise have impacted on the court's sentencing decision. Sentencing precedents, individual circumstances relating to the person' life (eg their health) or the particular circumstances of their crime are factors which might ordinarily be weighed by a court when determining an appropriate sentence. The use of mandatory sentencing regime removes a person's ability to argue such matters on their behalf.

Administrative powers are sufficiently defined and subject to review

Clause 8 of the Bill inserts a new section to provide that the first time an indefinite sentence under section 161E(2) must be reviewed is within six months after the offender has served 20 years.

The Society recommends that a requirement that the indefinite sentence must be reviewed at subsequent intervals of not more than two years from when the last review was made should be provided for:[146]

> *We consider that the provision of continuous review of an indefinite sentence is essential and the current drafting is not clear on subsequent review mechanisms. Although section 172, Penalties and Sentences Act 1992 allows prisoners on an indefinite sentence to apply to have their sentence reviewed at any time after the first review, the court can only give leave for this to occur if exceptional circumstances apply. In our view, this review provision is inadequate by itself and must be accompanied by regular review.*
>
> *Section 4(3)(a) of the Legislative Standards Act 1992 states that legislation should make 'rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.' Without sufficient review processes in place, we consider that this fundamental legislative principle may be breached without reasonable justification.*[147]

3.2 Committee comment

The Committee acknowledged the principles of natural justice and the need for administrative power to be sufficiently reviewed. The Committee accepts that an indefinite sentence must be reviewed at subsequent intervals of not more than two years.

146 Queensland Law Society, Submission 4, p. 3.

147 Queensland Law Society, Submission 4, p. 3.

Recommendation 4

Clause 8 – section 161E(2) be amended to provide that subsequent periodic reviews of indefinite sentences occur at intervals of not more than two years after the offender has served 20 years.

Retrospectivity which affects rights and liberties or imposes obligations

In relation to the creation of the mandatory sentencing regime, the Explanatory Notes stated:

> *The new regime represents significantly greater punishment than was authorised by the former law. A mandatory sentence that cannot be mitigated represents a significant abridgment of traditional rights. However, the effect on the individual must be balanced against the need for community protection. Child sex offenders victimise one of the most vulnerable groups in the community. It is incumbent on the community to provide adequate protection from harm to this group, as they are inherently unequipped to protect themselves from such predation.*
>
> *The new mandatory sentencing regime is necessary to: denounce repeat child sex offenders; provide adequate deterrence for this cohort of offenders; protect one of the most vulnerable groups of the community; and to enhance community confidence in the criminal justice system.*[148]

The Department provided:

> *While all child sex offending is serious and of great concern, limiting the regime to capture sex offences against children that carry a maximum penalty of life imprisonment effectively captures the more serious end of the spectrum of such offending and of greatest concern to the community. Further the approach ensures against unjust outcomes. For example, while the offence of carnal knowledge with or of children is captured, the regime will only apply to the life offences (that is where the child is under 12 years or is under the offender's care). Therefore the regime will not unjustly capture 'young lovers'.*[149]

In its submission, Bravehearts acknowledged:

> *One of our greatest challenges facing our criminal justice system is the, at times, conflicting goals of ensuring community safety and protection against the rights of individual offenders. It has always been Bravehearts' position that if people are a known danger to our children, it is the duty of those responsible for public safety to protect the community from those offenders.*[150]

The Explanatory Notes also addressed the partial retrospective effect of the Bill:

> *The new mandatory sentencing regime operates with partial retrospective effect to the extent that a serious child sex offence conviction that occurred before commencement of the Bill will be recognised as the 'first child sex offence' for the purpose of the new regime. However, the subsequent child sex offence that attracts the sentence of mandatory life imprisonment must be committed post-commencement of the Bill. The effect of the retrospectivity therefore is that a person who, prior to commencement, has a conviction for a relevant child sex offence will upon commencement of the Bill be within the ambit of the new regime, but only if they re-offend with a prescribed offence. Any adverse effect on the*

148 Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012, *Explanatory Notes*, pp. 2-3.

149 Letter from the Department of Justice and Attorney-General, 25 June 2012, p. 2.

150 Bravehearts, Submission 3, p. 2.

> *rights or liberties of this cohort of offenders is justified with reference to community protection considerations.*[151]

The Department provided:

> *The new mandatory life regime will have prospective application in that the regime will only apply where the second or repeat child sex offence is committed after commencement of the Bill. The first child sex offence however may be committed pre or post the commencement of the amendments. The regime therefore has a degree of retrospective effect.*
>
> *Capturing first offences committed before the commencement of the Bill will allow for a more immediate impact of the new regime and will therefore enhance the goal of community protection. Further, such an approach ensures that historical child sex offending is captured, provided the offender commits a further serious child sex offence after commencement of the Bill.*[152]

Citing common law principles and the Australian Senate Standing Committee for the Scrutiny of Bills, Amnesty stated that retrospective criminal laws offend against the most basic principles of the rule of law.[153]

The Bar Association submitted:

> *... the proposed legislation also has retrospective effect in that prior convictions for an offence listed in Schedule 1A will trigger the mandatory sentencing consequences.*
>
> *Reliance on repealed provisions* [Criminal Law Amendment Act 1997] *and/or giving a piece of legislation retrospective operation may be properly justified in some contexts as a legitimate exercise of the law-making function of Parliament. However, where as here the proposed amendments will otherwise abjectly fail to do what they are currently expressed to be intended to do, there can be no proper basis for such draconian provisions. That is, especially so when, into the bargain, great injustice will result from arbitrariness of this approach.*[154]

The Bar Association illustrated their reasoning with a range of examples.[155]

In response to retrospectivity issued raised in submissions, the Department provided:

> *The effect of the partial retrospectivity is that a person who, prior to commencement, has a conviction for a serious child sex offence will upon commencement of the Bill be within the ambit of the new regime, but only if the y subsequently commit another serious child sex offence. Similarly, a person who has committed a serious child sex offence prior to commencement but is convicted post-commencement will also fall within the ambit of the new regime should they subsequently commit another like offence. The adverse effect on the rights or liberties of this cohort of offenders is justified with reference to community protection.*[156]

---

151 Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012, *Explanatory Notes,* p. 3.

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

153 Senate Standing Committee for the Scrutiny of Bills, First Report of 2012, 8 February 2012, pp. 14-17; as cited by Human Rights in Law Group of Amnesty International Qld-Northern NSW Branch, Submission 12, p. 3.

154 Bar Association of Queensland, Submission 15, p. 5.

155 Bar Association of Queensland, Submission 15, pp. 5-8.

156 Letter from the Department of Justice and Attorney-General, 3 July, 2012, p. 19.

3.3 Committee comment

The Committee considered the retrospective nature of the proposed amendment and the policy the Bill effects. The Committee noted that, given the Bill implements the Liberal National Party's pre-election commitment to toughen sentences for repeat child sex offenders, the retrospectivity is justified.

Appendices

Appendix A – List of Submissions

Sub #	Submitter
1	Zig Zag Young Women's Resource Centre Inc.
2	Annette French
3	Bravehearts Inc
4	Queensland Law Society
5	Supreme Court of Queensland
6	Prisoners' Legal Service Inc.
7	Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd
8	Centre Against Sexual Violence Inc
9	Commission for Children and Young People and Child Guardian
10	Catholic Prison Ministry
11	Queensland Public Interest Law Clearing House Incorporated
12	Human Rights in Law Group of Amnesty International Queensland-Northern NSW Branch
13	Brisbane Rape and Incest Survivors Support Centre
14	Queensland Advocacy Incorporated
15	Bar Association of Queensland
16	Queensland Police Service
17	Potts Lawyers
18	Youth Affairs Network of Queensland Inc.
19	Protect All Children Today Inc.

Appendix B – Table 1: Summary of Submissions

Policy or initiative	Submitter and No.	Issues raised in submission	Comments / other
General submission about the Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012	002 – Annette French	The submission supports the Bill and acknowledges the regime as a measure that will enhance the protection of children.	The stakeholders strongly support the intent and substance of the Bill without amendment.
	003 – Bravehearts Inc.	The submission supports the Bill.	
	019 – Protect All Children Today Inc.	The submission supports the Bill while acknowledging that careful consideration needs to be given to the likely effects of such reform.	
Limited consultation period	001 – Zig Zag Young Women's Resource Centre Inc.	The submission noted that they 'received only 5 days notice' to respond to a Bill that introduces substantive change to the sentencing of child sex offences in Queensland. The submission seeks further time to allow key stakeholders to appropriately respond.	The Bill implements the Government's pre-election commitment to toughen sentences for repeat child sex offenders within 100 days of forming Government. The comments about the time constraints for responding are noted.
	007 – Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd	The submission noted that the pace at which the amendments are being progressed are at the expense of considered discussion and debate.	
	008 – Centre Against Sexual Violence Inc.	The submission noted that a well-considered and researched response was unable to be prepared in the limited consultation time afforded. For that reason the legal process and response to child sex offenders, which requires review, is outside the scope of the response provided.	
	012 – Amnesty International	The submission expresses the view that the consultation period is insufficient and not indicative of a bona fide consultation. The submission contends that because many social justice and human rights groups are voluntary, they won't be able to respond. The subject matter of the Bill warrants serious consideration. There is a risk of grave consequences if it is rushed.	
	013 – Brisbane Rape and Incest Survivors Support Centre (BRISSC)	The small timeframe impacted on BRISSC's ability to provide a detailed response. Future proposals should allow a timeframe that provides adequate time for broad community response to proposed changes.	
	017 – Potts Lawyers	The submission expresses concern about the truncated timeframe within which to make submissions to the Committee.	
	018 – Youth Affairs Network Queensland	The submission notes their surprise about the short consultation timeframe.	
Mandatory Sentencing	019 – Protect All Children Today Inc.	The submission expresses concern that the Criminal Code offence of unlawful carnal knowledge will fall within the ambit of the new mandatory life sentencing regime as arguably it is a charge that has a greater mitigating factors which should be considered on a case by case basis.	In response to this concern, the Department of Justice and Attorney-General notes that the Bill specifically limits the application of the new mandatory sentencing scheme to nine separate listed sexual offences contained in a schedule to the Bill. The Bill then provides the further qualification that the scheme only applies where a listed offence is committed against a child under 16 and the offence is punishable by life imprisonment. For example, while the offence of unlawful carnal knowledge

Policy or initiative	Submitter and No.	Issues raised in submission	Comments / other
			with or of children is captured, the scheme will only apply to the life offences (that is where the child is under 12 years or is under the care of the offender). Therefore the scheme will not unjustly capture 'young lovers'.
Opposition to mandatory Sentencing	004 – Queensland Law Society (QLS)	The submission indicates the QLS's opposition to any form of mandatory sentencing on the basis that it is unfair, unworkable and is contrary to Australia's International treaty obligations. The QLS also advances the following reasons for opposing mandatory sentencing: - mandatory sentencing reduces the proportion of guilty pleas, thus increasing resource costs; - it increases the prison population resulting in increased cost to the community without commensurate benefit - mandatory sentences could impact disproportionately on the most marginalised members of society which include many Aboriginal and Torres Strait Islanders; - an absence of evidence that mandatory sentencing deters crime**;** - mandatory sentencing encourages judges, prosecutors and juries to circumvent mandatory sentencing when they consider the result unjust.	The Bill implements the Government's announced policy. The policy recognises that child sex offending is so abhorrent to the general community that it requires a legislative response that ensures that the punishments handed down by the courts for such offences accord with the community's expectations. While all child sexual offending is of great concern, the Bill recognises that the extreme legislative response in the form of mandatory sentencing must be limited to ensure against arbitrary and unjust results. The Bill achieves this by specifically limiting the application of the regime to nine separate listed sexual offences contained in the schedule to the Bill. The Bill then provides the further qualification that the scheme only applies where a listed offences is committed against a child under 16, and the offence is punishable by life imprisonment. For example, while the offence of carnal knowledge with or of children is captured, the regime will only apply to the life offences (that is where the child is under 12 years or is under the care of the offender). Therefore the regime will not unjust capture 'young lovers'. Of crucial importance is that the regime will only apply to an offender who having been convicted of one of these offences as an adult, returns to court having subsequently committed a further such offence against a child. This carefully constructed approach ensures that the Bill captures the child sexual offenders of greatest concern to the community.
	006 – Prisoners' Legal Service Inc. 010 – Catholic Prison Ministry 011 – Queensland Public Interest Law Clearing House Inc. 018 – Youth Affairs Network Queensland	All four correspondents adopted the report entitled: *INCorrections Position Paper June 2012*. The paper opposes mandatory sentencing on the basis that it undermines the values that Australians hold dear: fairness; proportionality; and respect for human dignity. Further the report asserts that in regard to mandatory life sentences: - there is no evidence to support that it offers deterrence; and - courts are prevented from taking into account individual circumstances of the offence.	
	007-Aboriginal & Torres Strait Islander Legal Service (Old) Ltd (ATSILS)	The submission opposes the introduction of mandatory sentencing regimes because: - it can lead to gross injustice; - it can have a disproportionate negative impact on the most disadvantaged and marginalized members of society; and - it increases the cost to society because of the increase in the prison population and increase in the number of trials. The submission states that mandatory sentencing will act as a disincentive to: - those rightly accused of an offence pleading guilty; - prosecutors laying the appropriate charge or being overly generous in terms of charge "bargaining negotiations in order to avoid mandatory sentence related offences; and - juries actually convicting the accused. ATSILS submitted that if the amendments are a response to community outrage at existing sentencing in Queensland, then a community	

Policy or initiative	Submitter and No.	Issues raised in submission	Comments / other
		education process on sentencing may be a more appropriate response. ATSILS considers that 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 is underpinned by independent research to ensure that the most appropriate response to enhance public safety and protect children from sexual abuse.	
	008 – Centre Against Sexual Violence Inc.	The submission suggests that individual circumstances of an offence need to be taken into account. It also notes that economic and other disadvantage has a significant role in an offender being held accountable for a child sex offence. Specifically, the submission asserts that offenders with a disability, offenders with an indigenous background and offenders that are socially disadvantaged are more likely to be apprehended and convicted, than an offender with access to financial resources.	
	009 – Commission for Children and Young People and Child Guardian	The submission notes that mandatory sentencing may have unintended consequences such as juries being unwilling to convict if they know the offender may be sentenced to life imprisonment.	
	012 – Amnesty International	The submission states that the proposed mandatory regime will fail to appropriately reflect and punish the severity of a child sex offence. Additionally, it states that the Bill is ineffective in protecting the public because incarceration does nothing to remedy causes of offending and can potentially create a false sense of security, complacency and ignorance in the community. There is no evidence to suggest that more severe punishments deter crime. Many offenders were victims themselves or have mental or social dysfunction- rehabilitation and treatment are needed.	
	013 – Brisbane Rape and Incest Survivors Support Centre (BRISSC)	BRISSC is concerned with mandatory sentencing for the following reasons: - Mandatory sentencing does not take consideration of the circumstances of the case. While it recognised that child sexual abuse was a heinous crime, the concern is that if the circumstances of the individual cases not taken into consideration, it could result in unjust imprisonment. BRISSC cite an example where a teenager is in a relationship with someone who has not obtained the age of consent. - There may be some unintended consequences on young people, women, Aboriginal and Torres Strait Islander people and people with intellectual disabilities. BRISSC considered that to avoid unjust imprisonment sentencing should have the ability to take into consideration: - The nature of the sexual offence; - Harm to the victim; - Offender culpability; and - Aggravating or mitigating circumstances.	

Policy or initiative	Submitter and No.	Issues raised in submission	Comments / other
	015 – Bar Association of Queensland	The submission opposes the proposed mandatory sentencing scheme in the Bill for several reasons: - The experience of other jurisdiction shows that mandatory sentencing does not reduce crime - whether through deterrence or incapacitation while imprisoned; - Mandatory sentencing leads to inconsistency in sentencing and sentences that are disproportionate to the gravity of the offending; - The mandatory scheme is in direct conflict with principles of the *Penalties and Sentences Act 1992* (PSA); - The scheme unnecessarily replaces the judicial discretion with regard to repeat child sex offender notwithstanding that the PSA already reflects in section 9(8) that a previous conviction of an offence against a child is treated as a serious aggravating circumstance; and - The amendments don't recognise the recourse available to the Attorney-General pursuant to the *Dangerous Prisoners (Sexual Offenders) Act 2003* in order to keep dangerous offenders in detention;	
	017 – 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; - A statutory minimum non-parole regime already exists for serious violent offences; - Current sentences are not 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; - Increased prisoner numbers will increase the exposure of individuals to criminal elements; and - There are other ways to promote public confidence in the criminal justice system, for example by enhanced community engagement strategies.	
Resource Implications of a Mandatory scheme	005 – The Chief Justice of the Supreme Court of Queensland	The mandatory sentencing scheme will have resource implications to reflect accommodation of prisoners for longer periods. The submission asks that the committee recommend that such costs be borne not by the courts and agencies which directly support them in the administration of the justice system.	The costs flowing from the Bill will be met from existing agency resources, the allocation of which will be determined through the normal budgetary process. It is not expected that the reforms will significantly impact on prisoner numbers in the short to medium term.
	006 – Prisoners' Legal Service Inc.	All four correspondents adopted the report entitled: *JNCorrections*	

Policy or initiative	Submitter and No.	Issues raised in submission	Comments / other
	010 – Catholic Prison Ministry 011 – Queensland Public Interest Law Clearing House Inc. 018 – Youth Affairs Network Queensland	*Position paper June 2012.* The report contends that the increase in sanction for child sexual offences will represent great expense to the corrective services system. The report proposes that a better use of resources would be to examine what works in reducing the causes of crime and investing money to build a society that is engaged in prevention of crime.	
	007 – Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd	ATSILS submitted that the introduction of the amendments will lead to an increase in the already over populated prison population which is a cost to society with no apparent benefit. Further the amendments are likely to lead to more trials as offenders are less likely to plead guilty. This will lead to a high cost in time and resources as well as emotion suffered by the victim's family. In turn there will be more appeals following conviction and/or sentencing.	
	009 – Commission for Children and Young People and Child Guardian	The submission expresses the concern that additional incarceration costs may reduce rehabilitation budgets which aim at reducing recidivism.	
	012 – Amnesty International	The submission asserts that all relevant offences will go to trial. This will have associated enormous costs and time delays. The submission also notes that the cost of implementation has not been properly disclosed to the public. There is a duty to properly disclose and justify these costs.	
	015 – Bar Association of Queensland	The submission expresses the concern that the increase in trials and the loss of incentive to co-operate with authorities will lead to increased numbers of contested matters. In turn the cost of the increased numbers of trials and appeals will aid to an incalculable additional financial burden on the Office of the Director of Public Prosecutions, Legal Aid, Courts and Police budgets.	
Judicial Discretion	005 – The Chief Justice of the Supreme Court of Queensland	The submission highlights the importance of preserving the judicial discretion to ensure that the punishment is just in all of the circumstances of the particular case. The submission suggests that the objectives of the legislation could be achieved by laws which include a residual discretion to depart from what would otherwise be a mandatory sentence of mandatory non-parole period, with such discretion to be exercised in carefully-defined and truly exceptional circumstances.	The creation of the mandatory sentencing regime brings with it an inevitable removal of judicial discretion. Withdrawal of judicial discretion through the prescription of mandatory life sentences and minimum non-parole periods is not without precedent. Queensland recognizes the seriousness of the offence of murder through prescription of a mandatory life sentence and a minimum non parole period. The prescription of mandatory life imprisonment with a 20 year minimum non parole period for serious recidivist child sex offenders reflects that this form of repeat offending is among the most abhorrent in the community. Child sex offenders victimise one of the most vulnerable groups in the community. It is therefore incumbent upon the community to provide children with adequate protection from harm, as they are inherently ill-equipped to adequately protect themselves from such predation and exploitation. The impact of the new regime and associated impact on judicial discretion must be balanced against the need for community protection
	007 – Aboriginal & Torres Strait Islander Service (Qld) Inc.	ATSILS considers that sentencing discretion should vest with those best placed to arrive at a just and equitable outcome in all circumstances; namely the presiding judicial officers. ATSILS considers that the State's judicial officers who are steeped in experience, knowledge and wisdom should not be dispossessed of their sentencing discretion - namely the handing down of a just and equitable sentence that takes accounts of community expectations, aggravating circumstances etc.	
	008 – Centre Against Sexual Violence Inc.	The submission identifies that individual circumstances of the case that need to be able to be taken into consideration when sentencing include: - offence seriousness;	

Policy or initiative	Submitter and No.	Issues raised in submission	Comments / other
		- degree of exploitation involved; and - offender's cultural and economic background.	and the need to denounce repeat child sex offenders.
	009 – Commission for Children and Young People and Child Guardian	The submission states that Judges should retain the discretion to be able to take into account a range of considerations when imposing sentence.	
	012 – Amnesty International	The submission states that the mandatory life sentences prescribed by the Bill, with the loss of all judicial discretion, will inevitably indiscriminately result in injustice. The concern is expressed that the severity of a life sentence may be compounded by the negative stereotypical response of the community to child sex offenders. The submission asserts that the Legislature is not elected to override and intervene in judicial role of sentencing. The submission highlights that Australia is a signatory to treaties which prohibit arbitrary detention and provide the right to fair and public trial by an independent and impartial tribunal.	
Consequences of a reduction in guilty pleas	005 – The Chief Justice of the Supreme Court of Queensland	Experience shows that offences which attract mandatory sentences rarely result in guilty pleas. An increase in the rate of not guilty pleas for such offences will result in more trials. The consequences of more trials include: - additional judicial and other resources will be required; - delay in the timely disposal of matters such that innocent people may remain in custody for longer and the guilty will remain unpunished for longer. The submission opines that these consequence could be avoided by: - a careful assessment of the implications of the Bill on the rates of guilty pleas and the resource implications this would have for the courts, prosecuting authorities a, legal aid and other agencies; and - a commitment to provide the required resources.	As stated above, the costs flowing from the Bill will be met from existing agency resources, the allocation of which will be determined through the normal budgetary processes. It is not expected that the reform will significantly impact on prisoner numbers in the short to medium term.
	007 – Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd	ATSILS submitted that the introduction of the amendments will lead to an increase in the already over-populated prison population which is a cost to society with no apparent benefit. Further the amendments are likely to lead to more trials as offenders are less likely to plead guilty. This will lead to a high cost in time and resources as well as emotion suffered by the victim's family. In turn there will be more appeals following conviction and/or sentencing.	
	012 – Amnesty International	The Bill ignores the great emphasis the *Penalties and Sentences Act 1992* places on reduction in tariff for an early guilty plea with a consequence that all matters will go to trial. This will result in enormous costs to courts and time delays.	
Consequences to victims of the Bill	005 – The Chief Justice of the Supreme Court of Queensland	The submission expresses the concern that the new regime, underpinned by well-intentioned laws, may have unintended consequences for victims, through delay in the disposition of criminal cases in general.	The intention of the bill is to provide protection to vulnerable children from serious sexual offending. The prescription of a mandatory life sentence for certain repeat offences will have the effect of protecting vulnerable children from offenders known to
	006 – Prisoners' Legal Service Inc.	All four correspondents adopted the report entitled: *INCorrections*	

Policy or initiative	Submitter and No.	Issues raised in submission	Comments / other
	010 – Catholic Prison Ministry 011 – Queensland Public Interest Law Clearing House Inc. 018 – Youth Affairs Network Queensland	*Position paper June 2012*. The report contends that the safety of children should be the primary concern in sentencing child sex offenders. The Bill fails to protect children because: - increased sanctions will be a barrier to the disclosure and reporting of offences especially when offending occurs within the family; - Increased sanction can encourage more extreme action in order to conceal evidence such as intimidating or harming a witness; and - A mandatory sentence is likely to lead to a decrease in guilty pleas and drop in conviction rates.	pose a danger to them. It is intended that the significantly increased sanctions, signaling the community's extreme condemnation of this form of offending will, deter offending. Further it is intended that the provision of the regime will ultimately enhance community confidence in the criminal justice system.
	009 – Commission for Children and Young People and Child Guardian	There is particular concern victims may not wish to, or may be persuaded not to report especially given the offender may be a family member, when mandatory sentence is life. The submission notes that often the motivation of young people to report is to stop abuse not get offender in trouble.	
	012 – Amnesty International	The submission states that because the effect of the Bill will be that all accused will go to trial; victims will have to endure time delays for the hearing of matters and will also be required to give evidence. Child victims, who are already traumatised by the events constituting the offence, will be forced to testify about them at trials.	
	015 – Bar Association of Queensland	The submission expresses grave concern that a potential unintended consequence of the Bill could be that offenders, having nothing to lose, may be motivated to kill or dispose of their victims in order to avoid detection.	
	016 – Queensland Police Service	The submission expressed the following concerns: - Because the proposed 20 year non-parole period will apply for both murder and repeat child sex offences, an offender may consider killing the child victim to evade punishment on the basis that there is little incentive to leave a child witness alive; - There may be a reduction in reporting of child sex offences, particularly where a witness seeks to stop the offending conduct rather than have the offender facing a mandatory punishment; and - There is a likelihood that more matters will be contested in court, leading to additional impact on victims being subject to cross-examination.	
Disproportionate effect on Intellectually impaired persons	014 – Queensland Advocacy Incorporated	The submission does not support the mandatory sentencing scheme as it removes the courts' discretion to weigh relevant circumstances including offenders' intellectual disabilities. The percentage of intellectually disabled offenders dealt with for sexual offences is higher than the percentage for all offenders. The submission expresses the concern that many sex offenders suffer from mental infirmity or psychological problems, which are capable of diminishing the culpability of their conduct. These matters should not be ignored by a criminal justice system which aims to make the punishment	The focus of this Bill is not only the punishment of child sexual offenders but also the protection of children from sexual abuse. The effect that sexual abuse has on a child is not ameliorated by the intellectual impairment or the mental health condition of their abuser. The fact that a serious child sex offender suffers from intellectual impairment or a mental health condition does not mean that Queensland children do not deserve to be protected from their abuse. Section 18 of the *Criminal Law Amendment Act 1945* makes

Policy or initiative	Submitter and No.	Issues raised in submission	Comments / other
		fit both the crime and the criminal. The custodial environment is likely to be harsher for a person with a disability. For example imprisonment is likely to erode the living skills of people with disabilities and increase feelings of alienation. Moreover prisons are poorly equipped with the necessary resources for rehabilitation of offenders with intellectual disabilities.	provision for an offender whose mental condition prevents them from exercising control of their sexual instincts to have their condition recognised and be treated accordingly. The Bill does not affect the operation of the *Criminal Law Amendment Act 1945.*
	015 – Bar Association of Queensland	Intellectually impaired persons and persons with mental health conditions will be disproportionately affected by the legislation and their impairment and health conditions will not be able to be recognised appropriately by the court.	
Constitutionality	004 – Queensland Law Society	The submission opines that the Bill could be deemed invalid due to inconsistency with section 109, Commonwealth of Australia Constitution Act. The submission suggests that the Bill, in particular, the prescription of mandatory life imprisonment for a repeat child sex offender, that **'can not be mitigated or varied under any law',** could fall foul of a Commonwealth law that domestically implements rights and obligations arising out of Australia's treaty obligations with respect to arbitrary detention. This being the case this might give rise to invalidity.	The International Covenant on Civil and Political Rights (ICCPR) entered into force for Australia on l3 August 1980 prohibits arbitrary detention (Article 9) and provides that prison sentences must, in effect, be subject to appeal (Article 14). Under Australian constitutional law principles where a State law is inconsistent with a valid law of the Commonwealth, the Commonwealth law will prevail to the extent of the inconsistency. To date however, the Commonwealth has not implemented, in legislation, these International treaty obligations. Nor has the Federal Government evinced any intention to enact such legislation in the near future. That being the case, there presently is no issue with inconsistency with the Bill.
	012 – Amnesty International	The Bill should be amended to ensure it is in accordance with International human rights principles and Australia's obligations as a signatory to international treaties and conventions, in particular: the Universal Declaration of Human Rights (UDHR) and the International Covenant of Civil and Political Rights (ICCPR).	
	015 – Bar Association of Queensland	The submission asserts that the amendments may violate and undermine Australia's International Law Obligations set out in the United Nations International Covenant on Civil and Political Rights and the Convention on the Rights of a Child.	
Offence captured under the schedule of 'serious sex offences'	004 – Queensland Law Society	The QLS asserts that the offence of owner permitting abuse of children on premises' (section 213 Code) does not belong in the schedule of offences to be captured by the scheme. The QLS argues that the offences captured in the schedule involve criminal conduct where the offender directly assaults the child. Section 213 is the exception to this in that the criminal conduct sanction by that provision is more similar in character to that of accessorial liability and that therefore it falls into a different category.	The 'two strike' policy is aimed at protecting children from the worst type of child sex offender. People that seek to either directly exploit children or permit the serous exploitation of children all fall within that category of offender.
The Bill will inappropriately capture conduct that will result in injustice	015 – Bar Association of Queensland	The submission contends that the new regime would capture a repeat offence of incest such as was the case in *R v. W* [1999] QCA 124. In that case the brother and sister were aged 46 and 32 respectively. The submission suggests that in such a case where there is no suggestion of exploitation there is limited community benefit in imprisonment.	It is incorrect to assert that under the Bill these siblings would be sent to jail for 20 years. Clause 7 of the Bill in proposed new section 161D (a) makes it clear that the offence committed must be '*in relation to child under 16 years*'. It is also notable that the offender must be an adult (i.e. 18 years or older) when they commit the offence. Therefore to clarify, the Bill insofar as it would apply to siblings and offence of incest, would only apply when a sibling of 18 years or older, commits an act of incest with a sibling younger than 16 years of age in addition to another serious child sex

Policy or initiative	Submitter and No.	Issues raised in submission	Comments / other
			offence.
	008 – Centre Against Sexual Violence Inc.	The submission asserts that the provisions of the Bill will apply equally to the following hypothetical cases which involved vastly different culpability: - An 18 year old male engaged in a sexual relationship with a 15 year old girl; and - - A 40 year old offender engaged in carefully and deliberately sexually exploiting and violating a 12 year old child.	The first case example provided would not in fact be captured as an eligible offence under the new regime. Unlawful carnal knowledge of a child over 12 years but under 16 years is not within the offence regime contemplated by the Bill. This is because it does not carry a maximum penalty of life imprisonment. However unlawful carnal knowledge of a child 12 or under is punishable by life imprisonment. Therefore, presuming in the second example, that carnal knowledge formed part of the abuse, this conduct would fall under the auspices of the new regime. The Bill therefore recognizes the more serious offending but does not unjustly capture 'young lovers'.
The Bill's inclusion of the offences of Maintaining a Sexual Relationship with a Child and Rape will result in injustice	015 – Bar Association of Queensland	The submission asserts that the Bill will not allow a sentencing court to take into account the wide variety of circumstances which might constitute the offences of maintaining a sexual relationship with a child and rape.	The Bill targets recidivist offending. Therefore, it would not affect the hypothetical individual engaged in 'low level' conduct on only on occasion. It would apply to the offender who was not sufficiently chastened by their first conviction and goes on to commit a second serious sexual offence. This second offence points to a course of conduct which indicates the offender is a risk to children in the community and therefore a sentence which protects those children is entirely appropriate.
Retrospectivity	012 – Amnesty International	The Bill's partial retrospective effect offends against the most basic principles of the rule of law. If an act is made illegal or 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.	The effect of the partial retrospectivity is that a person who, prior to commencement, has a conviction for a serious child sex offence will upon commencement of the Bill be within the ambit of the new regime, but **only** if they subsequently commit another serious child sex offence. Similarly, a person who has committed a serious child sex offence prior to commencement but is convicted post-commencement will also fall within the ambit of the new regime should they subsequently commit another like offence. The adverse effect on the rights or liberties of this cohort of offenders is justified with reference to community protection.
	015 – Bar Association of Queensland	The retrospective effect of the Bill is not justified as the amendments will fail to achieve their objectives.	
Excluding application of the Bill to offenders under 18 years of age	009- Commission for Children and Young People and Child Guardian	The submission recommends that the Bill not apply to offenders under 18 years of age.	The regime does not apply to offenders under 18 years of age. It is unnecessary to specifically state this in the Bill. New section 161E contained in Clause 7 of the Bill states that the first and repeat offence must be committed by an 'adult'. It is not necessary to define an 'adult' as a person aged 18 years or more as the definition of' adult' in section 36 of the *Acts Interpretation Act 1954* applies. This defines 'adult' as an individual who is 18 or more. The *Penalties and Sentences Act 1992* (PSA) does not limit the meaning of 'adult' to the Youth Justice Act concept of a person aged 17 years or more - it merely excludes the application of the PSA to a child within the meaning of the *Youth Justice Act 1992.*

Policy or initiative	Submitter and No.	Issues raised in submission	Comments / other
Evaluation of the outcomes of the Bill	009 – Commission for Children and Young People and Child Guardian (CCYPCG)	The submission recommends that if the Bill is introduced, that the effects be evaluated across a range of areas including the intended beneficial outcomes the Bill is designed to achieve, and any unintended consequences.	This Bill represents a unique legislative approach to a serious problem. The CCYPCG comments are noted.