

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

Explanatory Notes

Objectives of the Bill

The primary objectives of the Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012 (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*.

Reasons for the Bill

The Bill implements the Liberal National Party's pre-election commitment to toughen the sentences for repeat child sex offenders.

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.

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.

Achievement of the Objectives

The Bill achieves the objectives by way of the proposed amendments to existing legislation described below.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the criminal law reform.

Estimated Cost for Government Implementation

Any costs in relation to the amendments will be met from existing agency resources.

Consistency with Fundamental Legislative Principles

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 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.

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 rights or liberties of this cohort of offenders is justified with reference to community protection considerations.

Consultation

Consultation with the following government departments and agencies occurred: the Department of the Premier and Cabinet; Queensland Treasury and Trade; the Department of Community Safety; and the Queensland Police Service.

Notes on Provisions

Part 1 Preliminary

Clause 1 establishes the short title to the Act as the *Criminal Law (Two Strike Child Sex Offenders) Amendment Act 2012*.

Part 2 Amendment of Corrective Services Act 2006

Clause 2 provides that part 2 amends the *Corrective Services Act 2006*.

Clause 3 inserts 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 under new section 161E of the *Penalties and Sentences Act 1992*. The prisoner must serve a minimum of 20 years imprisonment before parole eligibility.

Part 3 Amendment of Penalties and Sentences Act 1992

Clause 4 provides that part 3 amends the *Penalties and Sentences Act 1992*.

Clause 5 amends section 4 (Definitions) to provide that the definition of 'serious child sex offence' is contained in new section 161D.

Clause 6 amends section 160A (Application of ss160B-160D) consequential to the insertion of new section 181A in the *Corrective Services Act 2006*.

Clause 7 inserts new Part 9B '*Repeat serious child sex offences*', which provides a new mandatory sentencing regime of life imprisonment for certain serious repeat child sex offenders.

New section 161D defines the term *serious child sex offence* as an offence listed in the new schedule 1A (or an offence that involved counselling or procuring the commission of an offence mentioned in schedule 1A) committed in relation to a child under 16 years and in circumstances in which an offender convicted of the offence would be liable to a maximum penalty of life imprisonment.

New section 161E sets out the circumstances under which an offender is convicted of a repeat serious child sex offence and the sentencing scheme to be applied.

Subsection (1) provides that an offender is convicted of a repeat serious child sex offence if the offender is convicted of a serious child sex offence (the repeat offence) committed by them as an adult; and before the offender committed the repeat offence, the offender was convicted of another serious child sex offence which was committed by them as an adult (the previous offence).

Subsection (2) provides that a person convicted of a repeat serious child sex offence under section 161E(1) is liable to either life imprisonment, which cannot be mitigated or varied under any law, or an indefinite sentence under Part 10 of the *Penalties and Sentences Act 1992*.

Subsection (3) provides that the sentence of life imprisonment, which cannot be mitigated or varied under any law, is the nominal sentence and the finite sentence for an indefinite sentence under Part 10 of the *Penalties and Sentences Act 1992*.

Clause 8 amends section 171 (Review – periodic) consequential to the insertion of the new sentencing regime for repeat serious child sex offenders in new Part 9B.

Subsection (4) is inserted into section 171 to provide that a court that imposes an indefinite sentence for which the nominal sentence is life imprisonment under new section 161E(2), or a court of like jurisdiction, must for the first time review the indefinite sentence within 6 months after the offender has served 20 years imprisonment.

Clause 9 inserts new Division 3 and new section 223 into Part 14, which provide the transitional arrangements for the *Criminal Law (Two Strike Child Sex Offenders) Amendment Act 2012*.

New section 223 deals with the transitional application of new section 161E, which provides a mandatory sentence of life imprisonment for certain serious repeat child sexual offenders.

Subsection (1) provides that new section 161E operates with partial retrospective effect in that it does not matter whether the previous offence was committed, or whether the offender was convicted of the previous offence, before or after commencement (however, the repeat offence, attracting the sentence of life imprisonment, must be committed after commencement and after conviction for the previous offence).

Subsection (2) provides that, for a previous offence mentioned in subsection (1) as having been committed before commencement, a reference in new schedule 1A to the provision to which the offence relates is taken to be a reference to the provision as in force at any time before the commencement.

Subsection (3) provides that the section applies despite the *Acts Interpretation Act 1954*, section 20C(3) and the Criminal Code, section 11.

Subsection (4) defines ‘commencement’ and ‘previous offence’ for the purpose of the section.

Clause 10 inserts new schedule 1A, ‘Serious child sex offences’, which lists the offences to which the mandatory life imprisonment sentencing regime in new Part 9B (Repeat convictions of serious child sex offences) applies.