Legal Affairs and Community Safety Committee: Criminal Law Amendment Bill 2014

Submissions 1-12

001 – Protect All Children Today Inc.

002 – Don Willis

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004 – RSPCA

005 – Australian Wagering Council

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009 – Queensland Council for Civil Liberties

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011 – FamilyVoice Australia

012 – Queensland Law Society

Criminal Law Amendment Bill 2014
Submission 001

26 May 2014

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE Q 4000

Dear Sir/Madam

Re: Criminal Law Amendment Bill 2014

We refer to the letter from the Chair dated 12 May 2014 seeking submissions on the above-mentioned Bill by 6 June 2014.

Protect All Children Today Inc. (PACT) is a non-profit community organisation established in 1986 as a service provider of court support as well as advocating on behalf of children young people and their families.

PACT's Child Witness Support Program provides support for children and young people who are required to give evidence in the courts, either as victims of, or witnesses to, a crime.

Please note that much of the contents of this Bill are outside PACT's area of expertise and supporting children and young people. However, we offer the following comments in relation to the proposed amendments to the Criminal Law Amendment Bill 2014.

Part 5 - Clause 26 Amendment of s 229G (Procuring engagement in prostitution)
PACT is supportive of increased penalties in relation to the procurement of a child or person with impairment of mind for the purposes of prostitution. Authorities should prioritise the protection of these vulnerable people from sexual exploitation, due to their impaired capacity.

Part 9 - Clause 43 Amendment of Schedule (Dictionary)
We are very supportive of the amendments to the definition of serious sexual offence to include not only offences against a child, but also a fictitious person represented to the prisoner as a real person, whom the prisoner believe to be a child under the age of 16. This provision should dissuade the targeting and grooming of vulnerable children and young people, leading to enhanced protection of actual children and young people.

Part 10 - Clause 50 – Division 3A Use of audio visual links or audio links for expert witnesses
We welcome any initiatives that streamline current court processes. If the giving of expert evidence by audio visual mechanisms reduces the time taken to finalise child related court matters, it can only benefit the child victims and witnesses involved.

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Part 13 – Clause 74 282 BA Detention centre employees may provide services at boot camp centres

Whilst we appreciate the need for detention centre officers to be able to maintain good order and discipline, we believe that it would be more beneficial to motivate good behaviour through rewards. We express concern over the potential use of undue/unnecessary force due to misinterpretation of the imposed guidelines. Careful monitoring of the identified safeguards is vital to ensure that breaches do not result in serious harm or injury to vulnerable community members.

Please note, the above comments reflect PACT's child focussed philosophy, which is mandated by:

Convention on the Rights of the Child -

- **Article 3.1** *"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".*

- **Article 19** *"Children must be protected against all forms of physical and mental violence".*

Section 21 AA *of the Evidence Act 1997* – States that with respect to a child witness the court is*; "to require wherever practicable that an affected child's evidence be taken in an environment that limits, to the greatest extent practicable, the distress and trauma that might otherwise be experienced by the child when giving evidence."*

We greatly appreciate the opportunity to provide comment on the Criminal Law Amendment Bill 2014 and trust that our input has been of value.

Yours sincerely

Alexandra Marks
Chairperson

Jo Bryant
Chief Executive Officer

[redacted]

26 May 2014

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Sir

Re: *Criminal Law Amendment Bill 2014*

I write in response to the Committee's invitation to provide written submissions on the above mentioned Bill. I provide the following comments, observations and suggestions for the Committee's consideration.

1. Amendment to *Acts Interpretation Act 1954*

The Bill proposes to amend the *Acts Interpretation Act 1954* (Qld) (AIA Qld) by including new sections 34A and 34B to allow chairs and deputy chairs of Government tribunals and boards to choose their own preferred position title "*irrespective of what title is used in an Act*."[1] The Explanatory Notes to the Bill advise that the amendment is based on section 18B of the Commonwealth *Acts Interpretation Act 1901* (AIA Clth).[2]

The proposed amendment, which is intended to have effect for future appointments,[3] is being made in recognition of the issues raised by stakeholders arising from the decision to change the position title of "Chairperson" to "Chairman" under the *Crime and Misconduct and Other Legislation Amendment Bill 2014*.[4] Although the amendment is a welcome necessary step to clarify any potential ambiguity, the question remains whether it would be more appropriate for future Queensland legislation – as a matter of practice – to express chair/deputy chair position titles in gender-neutral terms so as to better enable position holders to then choose the particular designation applicable to their individual circumstances. At the Commonwealth level there are examples of statutes which have been drafted in this manner. For instance, section 7 of the *Infrastructure Australia Act 2008* (Clth) provides as follows:[5]

Constitution
Infrastructure Australia consists of:
(a) the Chair; and
(b) 11 other members.
Note: Section 18B of the Acts Interpretation Act 1901 deals with the title of the Chair.

[1] Explanatory Notes to the *Criminal Law Amendment Bill 2014*, p. 1; Queensland Parliamentary Hansard, 8 May 2014, *Criminal Law Amendment Bill*, Introduction, p. 1468
[2] Explanatory Notes to the *Criminal Law Amendment Bill 2014*, p. 12
[3] Queensland Parliamentary Hansard, 7 May 2014, Statement by the Attorney-General, p. 1342
[4] Ibid, p. 1342
[5] See: <http://www.austlii.edu.au/au/legis/cth/consol_act/iaa2008293/s7.html>

Another example is the now repealed *Australian Centre for Renewable Energy Act 2010* (Clth), s. 7, which provided as follows:[6]

Membership
The Board consists of the following members:
(a) the Chair;
(b) up to 6 other appointed members;
(c) the CEO.
Note: Section 18B of the Acts Interpretation Act 1901 deals with the title of the Chair.

It should be noted that the above gender-neutral chair position title references were enacted notwithstanding section 23 of the AIA Clth which provides that in any Act "*words importing a gender include every other gender*." This provision is similar to section 32B of the AIA Qld which provides that in an Act "*words indicating a gender include each other gender*." As section 23 of the AIA Clth does not impede or prevent the inclusion of gender-neutral chair position titles in Commonwealth legislation, so section 32B of the AIA Qld should not impede or prevent the inclusion of gender-neutral chair/deputy chair position titles as a standard feature in future Queensland legislation.

If the purpose of the proposed amendment is to allow chair/deputy chair position holders to choose their own preferred title irrespective of what title is used in an Act,[7] then this objective could be more readily facilitated if, as a matter of course, legislative references to chair/deputy chair position titles were drafted in gender-neutral terms. The above cited examples provide a model for how future Queensland legislation could be drafted in reference to gender-neutral chair/deputy chair position titles and illustrate how the link to the proposed new sections 34A and 34B could be made.

2. Amendment to the Queensland Criminal Code – serious animal cruelty

The Bill proposes to amend the Criminal Code to include a new indictable offence of serious animal cruelty carrying a maximum penalty of seven years imprisonment.[8] There has long been a need for an offence of serious animal cruelty to be established.[9] The Explanatory Notes to the Bill rightly point out that such offences are abhorrent with the proposed penalty justified given the moral importance of animals and society's obligation to protect them from suffering.[10]

However, the point should also be made that the proposed offence and penalty are necessary to dissuade those with the potential to "graduate" from serious animal cruelty offences to even more serious offences of violence against people. In this respect the animal welfare organisation PETA (People for the Ethical Treatment of Animals) has pointed out:

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[6] See: <http://www.austlii.edu.au/au/legis/cth/num_act/acfrea2010366/s7 html>
[7] Explanatory Notes to the *Criminal Law Amendment Bill 2014*, p. 1
[8] Ibid, p. 2
[9] From the departmental correspondence of 20 May 2014 it is noted that a similar offence to that which is proposed was included under the *Criminal and Other Legislation Amendment Bill 2011* but that the Bill lapsed when the Parliament was prorogued (see: <https://www.parliament.qld.gov.au/documents/committees/LACSC/2014/CLAB2014/cor-20May2014.pdf>).
[10] Explanatory Notes to the *Criminal Law Amendment Bill 2014*, pp. 2, 6

Acts of cruelty to animals are not mere indications of a minor personality flaw in the abuser; they are symptomatic of a deep mental disturbance. Research in psychology and criminology shows that people who commit acts of cruelty to animals don't stop there—many of them move on to their fellow humans. "Murderers … very often start out by killing and torturing animals as kids," says Robert K. Ressler, who developed profiles of serial killers for the Federal Bureau of Investigation (FBI).[11]

Accordingly, the amendment is necessary not only because it addresses a gap in the current law in dealing with serious offences of cruelty against animals[12] but also to deter those serious animal cruelty offenders with the potential to progress in the scale and severity of their offending to commit acts of violence against people.

I trust that the above comments, observations and suggestions will assist the Committee in its deliberations.

Yours faithfully

Don Willis

[11] See: <http://www.peta.org/issues/companion-animal-issues/companion-animals-factsheets/animal-abuse-human-abuse-partners-crime/>

[12] Explanatory Notes to the *Criminal Law Amendment Bill 2014*, p. 2

Queensland Police Union of Employees

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3 June 2014

Criminal Law Amendment Bill 2014
Submission 003

Legal Affairs and Community Safety Committee
Parliament House
Brisbane 4001

By e-mail: lacsc@parliament.qld.gov.au

Dear Chair

Re: QPU Submission on the Criminal Law Amendment Bill 2014

I write on behalf of the Queensland Police Union ("QPU") in relation to your invitation of 12 May 2014 to make a submission to the Committee in relation to the *Criminal Law Amendment Bill* 2014.

The QPU supports the Government's Bill and sees it as legislation designed to expand the rights of victims of crime and their families as well as improving community safety.

The proposed changes to the *Criminal Code* in terms of allowing the retrospective application of Chapter 68 will allow offenders who have otherwise escaped justice to be prosecuted for the most heinous of crimes.

These renewed prosecutions will only occur where technological advances and/or fresh evidence is able to be called to account for their alleged crimes. It is an amendment which ensures the families of murder victims are provided some measure of closure.

Importantly the amendments also ensure victims of crime are not further victimised through offenders being acquitted as a consequence of perjury or false evidence. This amendment strikes an appropriate balance between the legal rights and shields provided to suspects in our system of criminal justice whilst ensuring community expectations and the rights of victims are maintained.

The proposed amendments to the *Code* and the *Justices Act* in terms of alleging previous convictions as a circumstance of aggravation bring a degree of common sense to the rules of criminal procedure. The ability to serve a notice to allege previous convictions on the day of court, or with the provision of a court brief and criminal history will reduce the workload on operational police officers.

By allowing proof of service through a signed endorsement, such as that used on a notice to appear, rather than a sworn statement before a justice, is a much more efficient use of police resources. These amendments go a considerable way to reducing red tape associated with the pre-court processes required of officers.

The QPU fully supports the amendments to the *Bail Act* in relation to the surrendering of passports, where ordered, prior to allowing a defendant to leave custody. Such amendments appropriately recognise the community's expectation alleged offenders comply with the conditions of their bail, and remain within the jurisdiction pending the outcome of the charges against them.

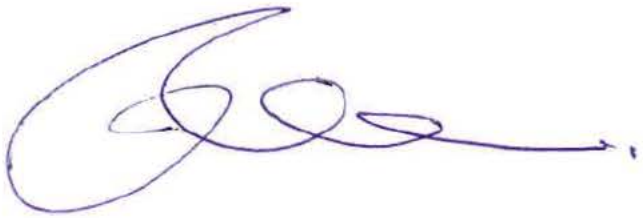
The expansion of the driver licence disqualification power of courts is also supported. Police often encounter situations involving the foolishness of a vehicle passenger by engaging in dangerous behaviours such as suddenly pulling on a driver's handbrake. These amendments will allow the Courts to remove such offenders' driving privileges as a consequence of their criminal actions, and can only enhance road safety.

While the QPU also supports the remaining amendments contained within the Bill, I would like to finally mention the proposed amendment to the Dangerous Prisoners legislation. The use of GPS ankle trackers for these convicted felons is the next best thing to keeping them incarcerated. By providing for mandatory jail terms for tampering with or removing the GPS tracker, the QPU believes the Government is further enhancing the safety of our community, and especially that of vulnerable people such as children.

The QPU commends the Bill to the Committee as being a significant step in enhancing the rights of crime victims and ensuring the safety of the Queensland Community.

I am available to address the Committee in respect to the Bill if my appearance would be of assistance in the Committee's deliberations. Otherwise I am available on 3259 1900 should the Committee have any questions in relation to the matters I have raised on behalf of the QPU.

Yours Faithfully



IAN LEAVERS
GENERAL PRESIDENT & CEO

Criminal Law Amendment Bill 2014
Submission 004

The Royal Society
for the Prevention of
Cruelty to Animals
Queensland Inc.

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6 June 2014

Mr Brook Hastie
Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000
By Email: lacsc@parliament.qld.gov.au

Dear Mr Hastie,

Re: Criminal Law Amendment Bill 2014

We write in response to the Committee's invitation to provide written submissions on the Criminal Law Amendment Bill 2014 ("the Bill"). We provide the following comments for the Committee's consideration.

1) <u>Amendment to the Criminal Code – Serious Animal Cruelty</u>

The new offence of serious animal cruelty would be a significant component within the framework of animal welfare legislation in Queensland, and the government introducing this offence should be unreservedly applauded. This legislation will place Queensland at the forefront of animal cruelty reform in Australia. **RSPCA strongly supports the introduction of this new offence of serious animal cruelty** and considers it to be a positive step towards meeting community expectations in relation to penalties and sentences for serious animal cruelty offences which are not adequately dealt with in the current legislation.

Unfortunately, the type of acts envisaged by this offence are particularly abhorrent and disturbing, and may involve offenders suffering from mental health conditions or with a proclivity to commit even more serious violent offences. It is important that such acts are dealt with as indictable offences, particularly while under the current legislation there is no express power for the Court to deal with people who have committed a summary offence and are deemed of unsound mind or unfit for trial.

The well-known established link between serious animal cruelty offences and violent offences against people further underpins community demand that serious animal cruelty offenders are dealt with in a way that ensures better safety outcomes for our community. As such it is entirely appropriate that these kinds of offences are indictable offences carrying a maximum 7 year penalty.

2) Consequential amendments to the Animal Care and Protection Act 2001 ("the Act"), the Justices Act 1886 and the Director of Public Prosecutions Act 1984

RSPCA Qld strongly supports the associated and consequential amendments which

a) ensure that the powers of inspectors under the Act apply to the new offence and that evidence obtained during the investigation can be used, subject to the rules of admissibility, in proceeding upon indictment;
b) ensure RSPCA Queensland inspectors can commence proceedings for the new serious animal cruelty offence (as well as section 468 of the Criminal Code) in the Magistrates Courts;
c) include provision for the making of interim prohibition orders at the court's initiative or on an application by the prosecution; and
d) allow the Director of Public Prosecutions to ask an inspector to assist with a matter that requires further investigation.

Enforcement of Animal Welfare Legislation

Throughout the history of animal welfare legislation, not only in Queensland, but in the other States of Australia, in the United States and the United Kingdom, it has long been recognised that the enforcement of animal welfare legislation is a specialised and unique field which is appropriately undertaken by animal welfare organisations.[1]

Specialised Knowledge

RSPCA Qld Inspectors have been enforcing Qld's animal welfare legislation since it was first enacted in 1925. In the 13 years that RSPCA QLD's Inspectors have been enforcing the Animal Care and Protection Act 2001, the reputation of RSPCA Qld Inspectors as professional, ethical and reliable enforcement officers, investigators and educators has continued to grow, and is now well-established within the Department of Agriculture, Fisheries and Forestry (DAFF), with the Queensland Police Service, and with members of the legal profession and judiciary who are directly aware of their work.

Animal cruelty investigations require a particular level of expertise. This is widely acknowledged by animal welfare and investigative bodies internationally and as such there are now established accredited animal investigation and forensic veterinary courses conducted world-wide.

RSPCA Inspectors have this high level of expertise in animal cruelty investigations, and employ best practice principles and techniques in their investigations particularly with respect to the gathering of electronically recorded evidence, forensic evidence, and the use of expert veterinary witnesses.

Victims of Animal Welfare Offences

In investigations of animal cruelty there is a need for the investigator to assume a duty of care for the animal involved. This requires experience in animal handling, knowledge of and an ability to source appropriate transport, and an ability to source and provide

[1] Anderson, Jerry L., The Origins and Efficacy of Private Enforcement of Animal Cruelty Law in Britain (August 15, 2012). Drake Journal of Agricultural Law, Forthcoming; Drake University Law School Research Paper No. 12–14. Available at SSRN: http://ssrn.com/abstract=2130132

veterinary treatment and day to day boarding and care. It is also essential to prosecutions that this transport, treatment and care is provided by experts who are aware of their responsibilities as witnesses and who are sufficiently qualified to provide the necessary evidence. This expert evidence is particularly significant in animal welfare offences where the victims themselves are unable to provide evidence. Unlike property offences, the subject of these offences are living beings that cannot be simply placed in storage indefinitely while court proceedings are determined.

Costs of Seized Animals

The ability to hold animals for evidence gathering purposes, and to make appropriate arrangements for their care while legal ownership is determined (a process which can take several years) is unique to RSPCA Qld, and the inability to do so can present significant difficulties for other agencies. Further, the costs associated with seized animals, is an inherent issue in animal welfare investigations and prosecutions, as Investigators are required to ensure that the welfare needs of the animal victim are met. This may require the Investigator to incur expenses from RSPCA and other veterinary practices for treatment, boarding and day to day care of animals, expenses which can amount to tens of thousands of dollars. There is a specific mechanism in place pursuant to section 189 of the Act for the recovery of these costs. RSPCA Qld are not willing to incur the costs of the boarding, treatment and care of the animals that are seized or held by other agencies (where payment is not made by the agency) where conduct of the matter and recovery of those costs (e.g. through a restitution order) is outside the control of RSPCA Qld and is not able to be claimed by RSPCA Qld under s189.

Prosecutorial Excellence

We are particularly proud of the fact that the reputation of RSPCA Qld Inspectors as highly-regarded prosecutors and model litigants has flourished in the last few years, and is also now well-recognised. RSPCA Qld has an established open and transparent prosecutorial process, including the DPP Prosecution Policy, and RSPCA Qld Inspectors must comply with DAFF Operational Procedures and Guidelines and Codes of Practice.

Since 2007, RSPCA Qld Inspectors have been represented by pro-bono Counsel in all but a couple of prosecuted cases, and Magistrates regularly acknowledge this pro-bono assistance, not only for the benefit provided to RSPCA Qld, but for the invaluable assistance provided to the Court. In the last few years, Counsel representing and advising RSPCA Qld pro-bono have included Mr Walter Sofronoff QC, Mr Michael Byrne QC, Mr Graeme Page QC, Ms Kerri Mellifont QC, Mr Jeffrey Hunter QC, Mr Tony Morris QC and Mr Stephen Keim SC. In the case of highly emotive or high public interest cases (for example, cruelty at a rodeo), we have been able to obtain independent advice from Senior Counsel to ensure the matter does not become controversial and that the best outcome is reached.

The success of RSPCA Qld prosecutions is evident in the results, which show a consistent increase in penalties over the last couple of years, ensuring that appropriate penalties and sentences are now being handed down which are in line with community expectations, particularly in relation to duty of care offences. Time is taken to ensure that our legal representatives work with defendants or their representatives to ensure where possible that submissions in relation to penalties and sentences are particularly appropriate to the circumstances of the defendant and the offence. This may include for example that recommendations are made to the court that no fine or community

service is appropriate (for example, in hoarding cases); or that psychiatric or psychological care be incorporated into probation orders; or that community service options are considered in place of fine options. Requests for court orders in relation to the keeping of animals are also often incorporated into our submissions to the court with respect to penalty, as this is often the most important outcome of a prosecution.

RSPCA Qld focus on a relatively low number of prosecutions per year – and all in the specialised field of animal neglect and cruelty. For each of these prosecutions a full brief is prepared and assigned to an experienced barrister to present in court. Even in the event of guilty pleas, RSPCA prosecutors ensure that Magistrates are presented with photographs or videos, veterinary statements, and any other relevant material that may assist in determining an appropriate penalty. This has been particularly effective in assisting the Court and improving court outcomes for animal welfare offences.

Interim Prohibition Order

RSPCA Qld supports this important amendment which will ensure that offenders will not be able to continue to deal with animals throughout protracted legal proceedings.

3) Conclusion

RSPCA Qld strongly supports the amendments in the Bill introducing the new offence of serious animal cruelty, and all of the associated and consequential amendments to the Act, the Justices Act 1886 and the Director of Public Prosecutions Act 1984.

RSPCA Qld would welcome the opportunity to speak at the public hearing of the Bill on Wednesday 25 June 2014, to answer any concerns that members of the Committee may have in relation to the amendments relating to the introduction of the offence of serious animal cruelty and the associated and consequential amendments. We would also strongly encourage the Committee to invite one of the pro-bono Senior Counsel who has regularly and recently represented RSPCA Qld to also address the public hearing, and we would be happy to provide you with the appropriate contact details if needed.

Kind regards,

Mark Townend
Chief Executive Officer
RSPCA QLD

Criminal Law Amendment Bill 2014
Submission 005

AUSTRALIAN WAGERING COUNCIL

SUBMISSION

Queensland
Criminal Law Amendment Bill 2014

5 June 2014

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AUSTRALIAN WAGERING COUNCIL

SUBMISSION: QUEENSLAND CRIMINAL LAW AMENDMENT BILL 2014

The Australian Wagering Council (AWC) welcomes the opportunity to comment on the Criminal Law Amendment Bill 2014 (**the Bill).**

The AWC's comments are confined to those that relate specifically to that section of Bill titled 'Chapter 43 Match-fixing' which introduces a range of new offences that prohibit match-fixing conduct in sporting events.

The long-term sustainability of the licensed online wagering and sportsbetting industry in Australia is reliant on the preservation of a lawful, transparent and responsible Australian betting market. The manipulation of sporting events and contingencies has the potential to cause disruption to the business activities of AWC members who rely on the assured integrity of sport and associated gambling activities to conduct their businesses.

Left unchecked, corruption and match-fixing conduct will make sport vulnerable to organised crime infiltration, will undermine public confidence in the honesty of lawful betting markets and will reduce the capacity of AWC members to deliver positive social and economic benefits to the State of Queensland.

The introduction of this Bill is critical in its timing given recent high profile domestic match-fixing incidents and reports of the world-wide extent of the manipulation of certain sports competitions for financial gain by the International Centre for Sport Security (ICSS)[1].

This Bill brings Queensland in line with NSW, South Australia, Victoria, the ACT and the Northern Territory in introducing nationally consistent offences and closes a legislative gap in the Criminal Code which currently does not include specific match-fixing and cheating in gambling offences.

About the AWC

The AWC is the peak industry body representing online wagering industry participants (including the betting exchange) licensed in Australia.

AWC members provide a recreational and social experience for over 2 million Australians balancing the legitimate right of customers to wager on online racing and sporting events with the provision of effective consumer protection and harm minimisation measures.

The following prominent independently operating companies in Australia are members of the AWC:

- Betfair Australia

[1] University Paris 1 Pantheon-Sorbonne and the International Centre for Sport Security, Protecting the Integrity of Sport Competition – the Last Bet for Modern Sport, May 2014, pg4

- bet365
- Betchoice (operating as Unibet)
- Ladbrokes.com.au (which includes Eskander's Betstar)
- Sportsbet (including its subsidiary IASbet.com)
- William Hill Group Australia (which includes Sportingbet, Tom Waterhouse.com and Centrebet).

This submission is written on behalf of all members of the AWC.

The Gambling Market

Despite the perception that sportsbetting is a huge part of gambling market, the Australian Gambling Statistics reported that in 2011/12 the sportsbetting component of Australia's $20,507.296 million total gambling expenditure was $396.730 million (which equates to just over 1.93%). [2] By way of comparison, in 2007/08, sportsbetting comprised 1.13% percent of Australia's then $18,100.055 million total gambling spend.

On a per capita basis, the Australian Gambling Statistics reported that expenditure on sports betting equated to $22.80 in 2011/12 whilst expenditure on racing was $161.99 per capita and expenditure on gaming (which includes casinos, gaming machines, keno, pools and lotteries) was $993.75 per capita. [3]

Whilst being only a relatively small percentage of total gambling in Australia, sportsbetting is experiencing growth as existing wagering customers substitute betting on racing with betting on sport and echo trends in other industries, with consumers migrating online.

As part of this shift towards online providers, Australians are continuing to access illegal offshore websites which offer sportsbetting together with various other prohibited gambling services. It has been estimated that Australians are spending around $1 billion annually in this offshore environment that does not accord with Australian regulations exposing those who like to gamble to significant risk from a consumer protection and harm minimisation perspective. In addition, all revenues are flowing directly offshore without any taxes or product fees being paid in Australia. Most importantly, these offshore operators do not share information with sporting bodies (as do members of the AWC and other Australian licensed operators), leaving Australian sport at a significant risk from an integrity perspective.

The AWC acknowledges the jurisdictional challenges that arise due to the global nature of the internet and the difficulties involved in enforcing any laws relating to online activities which originate overseas. However, the establishment of the six offences by this Bill is an important step in protecting the integrity of Australian sport and to achieving a lawful and transparent betting market.

AWC Support for the Provisions of the Bill

The AWC supports the provisions of the Bill and acknowledges the collaborative

[2] Australian Gambling Statistics, 29th edition, Government Statistician, Queensland Treasury and Trade 2014, Summary Table D Total Gambling Expenditure 2011–12, page 4
[3] Australian Gambling Statistics, 29th edition, Government Statistician, Queensland Treasury and Trade 2014, Summary Table E Per Capita Gambling Expenditure 2011–12, page 5

and positive approach taken by all governments across Australia to proactively introduce nationally consistent legislation in line with the *National Policy on Match-Fixing in Sport* objectives.

The ICSS highlighted the need for a cooperative approach reporting *'that combating manipulation requires cooperation between the sports movement, public authorities and betting operators.'* [4] The AWC will continue to take this approach and work cooperatively with government regulators, sports controlling bodies and law enforcements agencies to ensure the integrity of sporting contests and associated gambling activities is preserved.

The Bill will instill greater public confidence in the integrity of sporting outcomes and the expectation that having a bet on a sporting event will be unencumbered by corrupt influences.

The AWC notes that the Bill includes six distinct offences that are consistent with offences introduced in other Australian jurisdictions. The new offences will address match-fixing conduct if a person engages in match-fixing conduct (443A); facilitates match-fixing conduct (443B); offers or gives benefit or threatens detriment to engage in match-fixing conduct (443C), uses or discloses knowledge of match-fixing conduct (443D), encourages a person to not disclose match-fixing conduct (443E) and using or disclosing inside knowledge for betting purposes (443F).

Whilst supporting the provisions of the Bill, the AWC notes that the Explanatory Notes [5] associated with the Bill specifically makes reference to *'sports wagering licensees'* as being an example of those who will be captured under section 443D(1)(a) of the Bill should they have knowledge of match-fixing conduct or a match-fixing arrangement and accepts a bet on the event or contingency.

AWC members have a zero tolerance approach to corruption in sport. As sports wagering licensees, AWC members operate within a robust regulatory environment and the highly transparent nature of account-based online operations should be considered to be part of the solution to enhancing the ability to protect the integrity of sport – not part of the problem.

AWC members have a pivotal role to play in the detection and prevention of match fixing and corruption in sport. Encouraging customers to wager with Australian licensed account-based operators is one of the most effective ways of keeping Australian sport free of corrupt activities, which in turn, minimises the potential for cheating in gambling.

The Online Wagering Industry's Role in the enhancing the Integrity of Sport

As detailed extensively in the AWC's previous submission [6] to the Queensland

[4] http://www.theicss.org/astonishing-scale-of-betting-fraud-and-sport-corruption-confirmed-in-ground-breaking-scientific-report/
[5] Criminal Law Amendment Bill 2014 page 18
[6] AWC Submission to Queensland Parliament's Legal Affairs and Community Safety Committee in relation to the Criminal Code (Cheating at Gambling) Amendment Bill 2013, March 2014

Parliament's Legal Affairs and Community Safety Committee (attached as Appendix A), Australian-based licensed online account-based wagering and sportsbetting operators have the capacity to deliver enhanced sports integrity benefits when compared to cash-based, illegal and offshore operators. These include:

- Conducting regular audits of their customer databases to determine if prohibited participants (such as officials, administrators, coaching staff and players) have placed bets;

- Developing industry standards for information exchange with sports, governments and law enforcement agencies about unusual bets and suspicious betting patterns;

- Developing integrity agreements with sports controlling bodies to ensure binding agreement about the type of bets permitted by the sport and other integrity requirements as specified by that sporting body;

- Contributing a direct financial return by way of product fees to respective sporting organisations to fund measures to strengthen the fight against corruption, fraud, match-fixing and the manipulation of sports events;

- Identifying clients and any anomalies or suspicious volumes of bets transiting through their operations which alerts operators to possible manipulations. This allows for the quick identification and exposure of dishonest or deceptive behavior, information exchange with authorities, suspending suspicious betting and passing on relevant information to law enforcement agencies; and

- Fulfilling the mandatory requirement for stringent customer identity verification checks in line with the Federal Government's anti-money laundering and counter-terrorism body AUSTRAC and allow customers allow their identities and personal information (including betting details) to be disclosed to approved regulators as required.

Proposed legislative measures to strengthen the capacity to protect the integrity of sport and the gambling market.

The AWC also contends that further measures should be considered to strengthen the capacity of the online industry to protect the integrity of sport and the online sportsbetting market. These measures (which are also detailed in the AWC's previous submission at Appendix A) include:

- strengthening the deterrence and enforcement provisions in relation to unregulated and illegal websites. The ICSS Report reported that 80% of global sport betting is illegally transacted (and therefore invisible to regulators and investigators) and that US$140 billion annually is laundered through sport betting. The ICSS Report also identified that the *'clear responsibility is with countries and governments to disrupt and correct the vulnerability of sport betting to transnational organised crime.'*[7]

[7] http://www.theicss.org/astonishing-scale-of-betting-fraud-and-sport-corruption-confirmed-in-ground-breaking-scientific-report/

- amending the Interactive Gambling Act (IGA) (Cth) to permit licensed Australian-based sports-betting companies to offer online, in-play betting.[8] Achieving platform neutrality by permitting online in-play betting was identified in the recent IGA review[9] as a means to enhance the integrity of Australian sport. Currently, in-play betting using the internet is prohibited in Australia under the IGA but it does not prohibit Australian customers from accessing such services through unregulated offshore websites. In-play betting is also not prohibited using the telephone (through an operator) or at land-based venues such as TABs.)

- ensuring overly burdensome regulations are not imposed on licensed and reputable online Australian wagering and sportsbetting operators, such as onerous advertising restrictions. Such restrictions will result in the unintended consequence of putting licensed domestic wagering providers at a significant competitive disadvantage to offshore illegal operators who are beyond the reach of legislation (such as proposed by this Bill). Encouraging the creation of a competitive and transparent market will encourage Australians to bet with licensed and regulated Australian sportsbetting operators bringing sportsbetting turnover back onshore and in reach of this legislation.

Concluding Comments

The AWC appreciates the invitation from the Legal Affairs and Community Safety Committee to make this submission on Criminal Amendment Bill 2014 and, in doing so, provide its support for the Bill.

The AWC considers its introduction to be a timely and important measure to ensure the sustainability of a lawful and transparent online betting market across Australia and to discourage criminal activity in relation to match-fixing activities and cheating at gambling conduct.

The AWC acknowledges and supports Queensland's commitment to introducing nationally consistent legislation in line with the National Policy on Match-Fixing in Sport objectives.

[9] IGA Final Review 2013

AUSTRALIAN WAGERING COUNCIL

SUBMISSION

QLD Criminal Code (Cheating at Gambling) Amendment Bill 2013

March 2014

Australian Wagering Council
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AUSTRALIAN WAGERING COUNCIL

SUBMISSION: QUEENSLAND CRIMINAL CODE (CHEATING AT GAMBLING) AMENDMENT BILL 2013

1. INTRODUCTION

The Australian Wagering Council (**AWC**) welcomes the opportunity to make this submission to the Queensland Parliament's Legal Affairs and Community Safety Committee in relation to the introduction of the Queensland Criminal Code (Cheating at Gambling) Amendment Bill 2013 (**the Bill).**

In light of recent adverse reports of alleged incidents of corruption for financial gain, both domestically and internationally, the AWC acknowledges and applauds the collaborative and positive approach taken to creating a nationally consistent legislative framework to deal with cheating at gambling in sport by all state and territory jurisdictions.

As such, the AWC strongly supports the Bill, which amends the Criminal Code to protect the integrity of sport by prohibiting cheating at gambling in sport.

In doing so, the AWC notes the jurisdictional challenges that arise due to the global nature of the internet and the difficulties involved in enforcing any laws relating to online activities, which originate overseas. However, the establishment of criminal offences, which make match-fixing, race-fixing and other forms of gambling-related corruption in sport illegal in Australia, is an important and essential step in protecting the integrity of Australian sport.

The proposed legislative framework sets specific criminal penalties for four new offences in relation to corrupting the betting outcomes of events or event contingencies on which it is lawful to place bets and for other purposes.

New South Wales, Victoria, South Australia, the Northern Territory and the Australian Capital Territory have each passed legislation in this regard. This Bill will fulfill Queensland's obligations to do likewise to effectively deter those individuals or organized crime syndicates who may be tempted to or actively seek to engage in corrupt activities from doing so.

The Bill will instill greater public confidence in the integrity of sporting outcomes and will contribute to the expectation that gambling on sport will be unencumbered by corrupt influences.

In turning to the substantive provisions of the Bill it is noted that:

1. Queensland has not followed the New South Wales approach of distinguishing between the use of "corrupt conduct" information and "inside" information – the latter of which carries the lesser penalty in New South Wales of two years imprisonment.

2. The definition of "corrupt betting conduct" in the Queensland Bill is similar to that

used in the Victorian legislation in regards to corrupting the "betting outcome" (or in the Queensland case "outcome of betting") of an event or contingency.

Given the aborted prosecution in Victoria for alleged "court siding" at the Australian Open [1] the AWC would support the clarification by the Queensland Parliament that the meaning of "corrupt betting conduct" in the Bill refers only to conduct that affects the ultimate result or determination of a betting contingency, with that conduct being linked to the outcome of some element of the sporting event in question (for example, the winner of the first set in a tennis match, the last try scorer in a game of rugby union). A betting outcome is only corrupted where conduct occurs that distorts the result of the betting market upon which a wagering operator pays out.

In the Victorian case, the Office of Public Prosecution laid charges based on the belief that by placing wagers prior to a live score update/television pictures being made available to the public, a person has engaged in conduct that corrupted a betting outcome – presumably by taking better odds on a player than would be available after the result of an individual point/game had been broadcast. This was contrary to the intention of the legislation which seeks to prevent match or spot fixing.

2. ABOUT THE AWC

The AWC is the peak industry body representing the online wagering and sportsbetting industry in Australia.

The following prominent independently operating companies in Australia are members of the AWC:

- Betfair
- bet365
- Betchoice (operating as Unibet)
- Eskander's Betstar
- Ladbrokes.com.au
- Sportsbet (including its subsidiary IASbet.com)
- Sportingbet Group Australia (which includes Sportingbet, Centrebet and Tom Waterhouse.com)

AWC members provide a recreational and social experience for over 2 million Australians balancing the legitimate right of customers to wager on racing and sporting events (free of corruption and gambling-related cheating) with the provision of effective consumer protection and harm minimisation measures.

The regulated online wagering and sportsbetting industry employs more than 1000 Australians, pays in excess of $100 million in product fees per annum and over $100 million per annum in taxes.

[1] http://www.theaustralian.com.au/sport/tennis/courtsiding-tennis-betting-charge-dropped-against-british-man/story-fnbe6xeb-1226846823981

AWC members also make a significant investment into racing and sport through sponsorship of various sporting teams, sporting codes, race events and clubs in Queensland and around Australia.

The AWC was established in October 2012 to raise awareness amongst key stakeholders of the online wagering and sportsbetting industry's contribution to enhancing the integrity of racing and sport and to promoting responsible gambling.

Through policy leadership and advocacy, the AWC provides a united industry approach to issues that impact the continuing sustainability of the Australian-based licensed online wagering and sportsbetting operators.

In this regard, cheating in gambling has the potential to cause disruption to the business activities of AWC members who rely on the assured integrity of sporting events to conduct their business activities.

The Productivity Commission [2] identified that sportsbetting represented just 1.2 percent and racing 13.8 percent of Australia's $19 billion total gambling spend in 2008 – 2009. In comparison, 55 percent was spent playing the 'pokies' in clubs and hotels, 18.2 percent on casino gaming and 12 percent on lotteries, pools and keno. Whilst being only a relatively small percentage of total gambling in Australia, sportsbetting is experiencing growth at the expense of racing as existing wagering customers substitute betting on racing with betting on sport.

AWC members have a zero tolerance approach to corruption in racing and sport. Their business interests are closely aligned with those of government regulators, sports controlling bodies and enforcements agencies to ensure that sport is free of corruption and all forms and opportunities of cheating at gambling in sport are prohibited.

Left unchecked, corruption will devalue the integrity of sport, undermine public confidence in the honesty of the betting markets and reduce the ability for the industry to deliver positive social, recreational and economic returns back to the Queensland community.

The ability of Australian-based licensed online wagering and sportsbetting operators to deliver enhanced sports integrity benefits together with further measures which will strengthen the capacity to protect the integrity of sport and the gambling market are outlined in the remainder of this submission.

3. ABILITY TO DELIVER ENHANCED SPORTS INTEGRITY BENEFITS

3.1 The Transparency Of Account-Based Betting

Australian-based licensed online wagering and sportsbetting operators offer only account-based operations. Cash is not accepted - unlike traditional wagering platforms such as on-course bookmakers and physical TAB outlets. Such account-based technology provides AWC members with a complete audit trail on every bet placed on every event and provides for the immediate identification of customers.

[2] Australian Productivity Commission Report on Gambling 2010

AWC members have a mandatory requirement that every customer must meet stringent identity checks in line with the Federal Government's anti-money laundering and counter-terrorism body AUSTRAC. It is also a condition that all customers allow their identities and personal information (including betting details) to be disclosed to approved regulators as required.

The transparency of the account-based model thus avoids many of the risks associated with anonymous cash-based wagering and provides significant advantages in controlling and detecting attempts to corrupt the outcome of sport, launder money or to engage in cheating.

Local wagering providers are able to provide an "early-warning" for a sport if suspicious betting patterns are detected with many of the high profile investigations into betting-related sports corruption having been initiated by online wagering providers flagging concem about suspicious betting patterns.

Compliance programs are robust and systems are at the forefront of technology allowing AWC members to rapidly identify and expose any dishonest or deceptive behavior, suspend any suspicious betting and readily exchange relevant information to sports controlling bodies and law enforcement agencies. This capacity to move rapidly also protects the business continuity of AWC members and protects legitimate customers in the event of unusual betting patterns being identified.

Encouraging customers to wager with Australian licensed account-based operators is one of the most effective ways of keeping Australian sport and racing free of corrupt activities, which in turn, minimises any potential for cheating in gambling.

3.2 Commitment To Integrity

AWC members have a long-standing commitment to ensuring their integrity obligations are fulfilled to protect sporting outcomes in Australia.

These integrity obligations includes:

- Conducting regular audits of their customer databases to determine if prohibited participants (such as officials, administrators, coaching staff and players) have placed bets;
- Developing industry standards for information exchange with sports, governments and law enforcement agencies about unusual bets and suspicious betting patterns;
- Developing national integrity agreements with sports controlling bodies to ensure binding agreement about the type of bets permitted by the sport and other integrity requirements as specified by that sporting body;
- Entering into similar information sharing agreements in the case of a transgression of rules or suspicious behaviour with racing bodies around Australia; and
- Contributing a direct financial return by way of product fees to respective sporting organisations to fund measures to strengthen the fight against corruption, fraud, match-fixing and the manipulation of sports events;

3.3 Negotiating Integrity Agreements With Sports Controlling Bodies (SCBs)

Sports controlling bodies (**SCBs**) and Australian wagering operators share a mutual interest in protecting the integrity of Australian sport. AWC members work collaboratively with

sporting bodies to ensure that any areas of vulnerability or potentially fraudulent betting activity are identified to ensure the integrity of sport is enhanced.

Sportsbetting integrity controls have been strengthened with sporting codes in Australia implementing a number of progressive measures including the creation of integrity units together with policies and processes capable of monitoring and managing integrity concerns in their respective codes.

AWC members have entered into product fee and integrity agreements with the major SCBs to exchange information, advise of any suspicious betting patterns and to provide sports with a share of the revenue generated from betting on their events. The collaborative relationship between wagering operators and sporting control bodies can assist in uncovering alleged corruption with AWC members providing assistance to the sporting bodies in any investigations that may be undertaken.

SCBs that have signed agreements with AWC members include:

- The Australian Football League
- The National Rugby League
- The Australian Rugby Union
- Cricket Australia
- Football Federation of Australia
- Tennis Australia
- Netball Australia

These negotiated integrity agreements and product fee arrangements ensure sports controlling bodies have access to betting information and retain a central role in determining and controlling the number and types of betting markets that can be offered on their specific sport. This means the sport can veto bet types where they have identified that the result could be or perceived to be improperly manipulated.

3.4 Commitment To Education and Public Awareness

Given the serious nature of match-fixing offences and the maximum penalties that may now be imposed, it is also essential that those who bet on sport are acutely aware of their actions and responsibilities.

As such, AWC members have the online capacity to contribute to increasing awareness of the consequences of cheating by displaying relevant and up-to-date information prominently on their websites and via direct online communication to thousands of customers across all state and territory jurisdictions in Australia. Consumer protection measures, harm minimization tools and responsible gambling messages are currently delivered in such a manner using the online environment by AWC members.

AWC members ensure that their employees partake in training and education as to the seriousness of match-fixing offences and are aware of, and comply with all policies appropriately when identifying and dealing with incidences of suspected match-fixing and cheating in gambling.

With the majority of professional sporting codes in Australia being administered at a national level, education programs for athletes, administrators and other sporting participants will also be made more effective by the uniformity of the legislation across all jurisdictions.

4. STRENGTHENING THE CAPACITY TO PROTECT THE INTEGRITY OF SPORT AND GAMBLING IN SPORT

4.1 Providing Competitive Markets To Encourage Australians To Bet With Australian Operators

With the increasing proportion of wagering and sportsbetting being delivered through a global market (enhanced by the communication advances of the internet) it makes no sense from either a commercial or a social policy perspective, especially in protecting the integrity of sport, to force the re-direction of Australian gamblers to overseas gambling providers and SP bookmakers - who have limited concern about the protection of the integrity of Australian sport, contribute no tax revenue nor pay any product fees to sport.

As such, maintaining a competitive and a well-regulated online wagering market that encourages Australians to bet with reputable and licensed Australian-based online wagering operators is one of the most effective ways of ensuring Australian sport is free of corruption and match-fixing.

Industry data shows an overall decline in the percentage of wagering turnover estimated to be going offshore reduced from 37.7 percent in 2003 to 13.8 percent in 2011. This positive shift of turnover wagered by Australians from illegal, offshore websites to licensed, domestic wagering operators has been driven by the competition, innovation, improved product and promotional activities by Australian licensed wagering and sports betting operators.

Also of concern to licensed wagering operators is the proliferation of Australian SP bookmakers continuing to offer cash-based and illegal betting operations. For example, despite the huge risks, Port Botany dockworkers allegedly took $1 million in illegal bets with running SP bookmaking services on Sydney's waterfront. [3]

Having this wagering turnover onshore and with licensed and regulated wagering operators provides significant benefits to maintaining the integrity of racing and sports in Australia.

4.2 Permitting In-Play Betting To Strengthen The Integrity Of Sport

The final report of the Interactive Gambling Act 2001 (**IGA)** (Cth) Review[4] identified that the integrity of Australian sport would be greatly enhanced by amending the IGA in accordance with the IGA review recommendation to permit licensed Australian-based sports-betting companies to offer online, in-play betting.[5]

In-play betting using the internet is currently prohibited in Australia under the Interactive Gambling Act 2001 (**IGA)** (Cth) but it does not prohibit Australian customers from accessing such services through unregulated offshore websites. In-play betting is also not prohibited using the telephone (through an operator) or at land-based venues such as TABs.

The Final Report expressly recognised that Australians are betting in-play with unlicensed offshore operators and in doing so is putting the integrity of Australian sport at risk:

[3] The Sydney Morning Herald, 16 January 2013
[4] DBCDE's Final Report of the Review of the Interactive Gambling Act 2001, released on 13 March 2013, page 29

> *"It is already the case that major online gambling providers based overseas and unlicensed in Australia, are specifically targeting the Australian market. In doing so, they are also taking advantage of the opportunities to provide 'in-the-run' wagering services. This places these services at a distinct advantage over Australian based services, as well as potentially undermining the scope of Australian sports bodies from receiving payment for their products and putting the integrity of Australian sports at risk."* [6]

The Coalition of Major Professional and Participant Sports (COMPPS) also supports the introduction of online in-play betting from integrity of sport perspective with the CEO of Cricket Australia, Mr James Sutherland stating:

> *"It's very significant. The first thing for us is all about integrity. It's all about making sure that the public's faith in the game, the confidence in the game about it being a fair contest is the absolute priority and that's what we are focused on. When you talk about in-play betting, one of things that perhaps isn't so well understood is that people can bet in-play in Australia, but they do it offshore. So it follows that if it is something that people are able to do here in Australia, then we should create some sort of framework around it to make it protected and protect it from those who want to get to the game in a way that be inappropriate or reduce that faith in the fair contest. That's where COMPPS has come to a position of supporting inplay betting and working down that path with government and others to get the end result."* [7]

4.3 Support for Banning Micro-Betting Across All Wagering Platforms

AWC members do not offer betting on events that are open to manipulation and only offer betting markets on events and event contingencies where they are approved by a SCB.

Micro or exotic betting which involves placing a bet on an incidental aspect of a sporting contest was the source of "spot fixing" allegations involving the Pakistani cricket team and similar allegations in a 2013 National Rugby League (NRL) game.

The AWC supports the IGA Final Review recommendation, that micro-betting should be prohibited across all wagering platforms with the ban extending to telephone and physical retail outlets where micro-betting is currently permitted.

4.4 Providing Transaction Blocking and Internet Filtering Capacities

Amending the IGA to provide transaction blocking between Australian consumers and unlicensed online gambling service providers together with internet filtering facilities will better protect the integrity of betting on sport.

The IGA should be amended to provide a safe harbour for financial institutions that choose to voluntarily block financial transactions between Australian consumers and unlicensed online gambling service providers (or any intermediaries involved in such transactions) should be provided as part of their services to customers

[6] Department's Final Report on the review of the IGA, pages 112-113.
[7] James Sutherland, CEO Cricket Australia, 12 June 2012

The list of prohibited gambling service providers should be identified and published by the Australian Communications and Media Authority (**ACMA**) and should be drawn to the attention of financial institutions by the federal department with responsibility for the IGA.

Internet Service Providers (**ISPs**) should be required to implement Internet Protocol (**IP**) blocking for illegal/unregulated websites based on list of Uniform Resource Locators (**URLs**) provided by and updated by the ACMA.

4.5 Ensuring sustainability of Australia's licensed online wagering and sportsbetting industry.

The global nature of the internet means that should a wagering or sportsbetting product become prohibited or unviable, Australians are still able to access the same products online through risky unregulated overseas websites who have little regard for the integrity of sport and which are beyond the reach of legislation (such as proposed in this Bill), regulation, potential product fees and taxation revenues.

Imposing prohibitions or overly burdensome regulations on licensed and reputable online Australian wagering and sportsbetting operators, such as onerous advertising restrictions, is also highly likely to have the unintended consequences of putting licensed domestic wagering providers at a significant competitive disadvantage to offshore illegal operators

This in turn will compromise the integrity of Australian sport because unregulated offshore websites do not fall under the auspices of Australian regulators nor have integrity agreements with major sporting bodies that require licensed operators to monitor and report on betting activity that is directly linked to the integrity of sport.

The size and instances of illegal betting on cricket and other sports within countries, such as India and Pakistan, is evidence that the prohibition of gambling leads to very poor outcomes in respect of non-transparency and rampant corruption of both gambling and sport.

4.6 Strengthening Deterrence And Enforcement Provisions For Unregulated/Illegal Websites

The AWC supports strengthening the deterrence and enforcement provisions in relation to unregulated/illegal websites in the following ways:

- There should be provisions that allow for Directors or those acting for unregulated/illegal websites to be issued with a notice of contravention of the IGA.
- ACMA should publish the list of known and blocked illegal/unregulated websites including information about the dangers of illegal/unregulated websites and the placement of names of principals/directors of illegal/unregulated websites, which do not cease operation, should be placed on a movement alert list.
- ACMA should be responsible for administering civil penalties for the provision of prohibited gambling services hosted in Australia including:
    - Issuing civil (including pecuniary) penalties
    - Issuing take-down notices
    - Applying to the Federal Court for injunctive relief
    - Using discretionary powers to action complaints and investigations

5. CONCLUDING COMMENTS

It essential for the long-term sustainability of the Australian-based licensed online wagering and sportsbetting industry that a lawful, transparent and safe Australian betting market is preserved and the risk of match-fixing and associated fraudulent activity in sport and in gambling is limited.

The Criminal Code (Cheating at Gambling) Amendment Bill 2013 is strongly supported by the AWC and its members whose business objectives are closely aligned with those of government regulators, sports controlling bodies and law enforcements agencies to ensure sport is free of corruption and cheating at gambling in sport is prohibited.

The Bill will instill greater public confidence in the integrity of sporting outcomes and the integrity of the Australian sportsbetting market.

It will send a clear message to those individuals and organised crime syndicates who may be tempted to cheat at gambling in sport that any conduct which corrupts betting outcomes will not be tolerated.

It will create consistency of criminal offences across all states and territory jurisdictions to ensure fraudulent gambling-related activity will be prosecuted wherever it occurs in Australia.

Importantly, the increased assuredness of the integrity of sporting outcomes and the preservation of lawful betting markets will enhance the continued ability of the licensed wagering and sportsbetting industry to deliver positive social, recreational and economic benefits to Queensland and its residents.

MARCH 2014

MAGISTRATES COURT
OF QUEENSLAND
CHAMBERS OF THE CHIEF MAGISTRATE

Our reference: TC:mm
Your reference:

5 June 2014

Brisbane Magistrates Court
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Mr Ian Berry
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4001

Dear Mr Berry,

Criminal Law Amendment Bill 2014

Thank you for your letter of 12 May 2014 informing me of the committee public hearing and reporting dates; and inviting submissions.

I welcome the proposed amendments to the *Youth Justice Act 1992* (YJA) clarifying the permitted use and disclosure of information in a pre-sentence report. However, I suggest that these amendments and the recent amendments to the *Child Protection Act 1999* (CPA) and the *Childrens Court Act 1992* concerning open/closed court and publication prohibition orders could benefit from further clarification insofar as their interaction and relationship with confidentiality provisions of the CPA.

So far as applications to close the court under s.21D of the *Childrens Court Act 1992* and to make publication prohibition orders under s.299A of the YJA are concerned, it has come to my attention that there are differing views as to:

(1) the obligations on judicial officers so far as informing attendees about the publication prohibition provisions and penalties for breach – before dealing with each and every application under the YJA; and

(2) whether the confidentiality provisions (especially s.189) are breached if a member of the legal profession or an officer of a government department discloses to the court that an application is about to be made to (a) close the court; and/or (b) for a publication prohibition order because the child/young person is a person to whom the CPA is relevant.

As to (1) I propose that a simple reminder by the judicial officer that penalties apply for publication of identifying information should suffice.

As to (2) some people seem to be of the view that CPA provides for confidentiality of the status of the child/young person in care and therefore as a matter of course the

Childrens Court should close the court and prohibit publication in any case involving such a child/young person.

Others are of the view that making a publication prohibition order is unnecessary as s.189 CPA precludes publication anyway.

I have consulted with the President of the Childrens Court, Judge Michael Shanahan and with Childrens Court Magistrate Leanne O'Shea who support my view that these issues could benefit from clarification.

I have also brought these issues to the attention of the Attorney-General but neither of us have had an opportunity to discuss them any detail at this time.

As always, I am available to consult further on my proposals if you so require.

Yours sincerely

The Honourable Judge Tim Carmody QC
CHIEF MAGISTRATE

Cc Judge M Shanahan, President Childrens Court of Queensland; the Hon. Jarrod Bleijie MP, Attorney-General and Minister for Justice.

PJD:dgr

Criminal Law Amendment Bill 2014
Submission 007

BAR ASSOCIATION OF QUEENSLAND

6 June 2014

Mr Ian Berry MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

Email: *lacsc@parliament.qld.gov.au*

Dear Mr Berry

Re: Criminal Law Amendment Bill 2014

I refer to your letter dated 12 May 2014, seeking any submissions in relation to the *Criminal Law Amendment Bill* 2014 ("the Bill"). The Bar Association of Queensland (the Association) has reviewed the Bill and makes the following submissions.

Criminal Code Act 1899 – Double Jeopardy

The Association strongly opposes the retrospective operation of the existing double jeopardy exception regime.

On 25 October 2007 exceptions to the double jeopardy rule came into operation in Queensland. The exceptions were enacted as a legislative response to the High Court decision in *The Queen v Carroll* (2002) 213 CLR 635. These exceptions currently apply to acquittals that occurred after 25 October 2007. The Bill proposes to amend the *Criminal Code Act 1899* so that the exceptions apply regardless of when the acquittal occurred.

One of the essential characteristics of our criminal justice system is fairness to accused persons. The Association considers that any further erosion of the double jeopardy rule carries with it a serious potential for unfairness, if not oppression.

The key considerations underpinning the double jeopardy rule are:

a) to ensure that the administration of justice operates efficiently so that an accused person is not continually retried for the same or similar offences arising out of the same facts;
b) to avoid embarrassment to the Courts and a loss of confidence in the integrity of the criminal justice system that would be caused if a different verdict is reached at a retrial; and
c) to provide accused persons as well as the community with closure.

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Indeed, in *Carroll,* the High Court identified many of these features and then highlighted the following additional considerations:

a) the imbalance of power (and resources) between the prosecution and an accused;
b) the seriousness of a conviction for an accused;
c) the potential use of the prosecution as an instrument of tyranny; and
d) the importance of finality to the criminal justice system.

These above considerations are applicable to the amendments proposed under the Bill. The Association is, in addition, concerned that the effect of what is proposed will be to underwrite the pursuit of individuals by the State many years, if not decades, after they have been acquitted for an offence.

The Association therefore opposes the proposed amendment to Chapter 68 of the *Criminal Code* and urges you to reconsider the policy underlying the proposal in light of the considerations I have drawn to your attention.

Dangerous Prisoners (Sexual Offenders) Act 2003

The Bill contains an amendment to include a mandatory sentencing provision under the *Dangerous Prisoners (Sexual Offenders) Act 2003.*

The Association is staunchly opposed to mandatory sentencing.

Research into the effects of mandatory sentencing supports the conclusion that such sentencing regimes fail to reduce offending rates. Moreover, mandatory sentencing regimes have been found to increase the prison population, and in turn, the cost to the community of housing offenders.

The Association's position has always been, and remains, that sentencing judges must be equipped with an appropriately flexible discretion so as to avoid unjust outcomes. It is of vital importance to the avoidance of such injustice that sentencing judges be permitted to approach the sentencing task in a way that reflects not only the circumstances of the offending but also factors personal to each offender. This very point has been made in numerous judicial decisions, including *R v Jurisic* (1998) 45 NSWLR 209 at 221C where Chief Justice Spigelman said "*[t]he preservation of a broad sentencing discretion is central to the ability of the criminal courts to ensure justice is done in all the extraordinary variety of circumstances of individual offences and individual offenders*".

It follows that the Association is opposed to these proposed amendments and requests that they be re-formulated so as to remove their mandatory effect.

Youth Justices Act 1992

The Bill amends the *Youth Justice Act 1992* to enable youth detention centre officers to use a range of practices to maintain good order and discipline at a boot camp centre (such as restraint, seclusion and personal searches) and expose young offenders participating in a boot camp program to the potential use of force.

The Bill sets out the new section 282BA of *Youth Justice Act 1992.*

> ***282BA Detention centre employees may provide services at boot camp centres***
> *(1) The chief executive may enter into an arrangement with a boot camp centre provider for a detention centre employee to provide services (the **services**) to maintain good order and discipline at a boot camp centre.*
> *(2) A detention centre employee may only provide the services prescribed by regulation.*
> *(3) A detention centre employee providing the services is subject to the direction and control of the chief executive to the extent the detention centre employee is providing the services.*

The term "good order and discipline" is a term that has wide scope.

The explanatory notes state that the use of force will be subject to a number of careful safeguards, including the insertion of clear guidelines into the *Youth Justice Regulation* 2003.

> *The use of this force will be subject to a number of careful safeguards, including the insertion of clear guidelines into the Youth Justice Regulation 2003. These guidelines will prescribe the circumstances in which the use of force is approved, the purposes for which force may be used, the type and degree of force that may be used and other limitations such as the duration for which force may be used. Youth detention centre officers will also be required to record details of each episode in which force is used in a boot camp centre.*

These "guidelines" are essential to understanding the scope of disciplinary measures to be inflicted upon children.

Critically, these "guidelines" have not yet been published; the Association, therefore, cannot comment upon the adequacy, or not, of these guidelines and whether sufficient protective measures have been embedded into the Regulations.

Yours faithfully

Peter J Davis QC
President

Mr Graeme Page QC - Patron of BLEATS
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6 June 2014

Research Director
Legal Affairs and Community Safety Committee
Parliament House
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Submissions in relation the Criminal Law Amendment Bill 2014

on behalf of BLEATS

BLEATS (Brisbane Lawyers Advocating and Educating for Tougher Sentences) is a panel of more than 250 legal professionals in Queensland who provide pro bono legal representation and support to RSPCA Qld.

BLEATS was formed in 2007 and is currently in the process of incorporation. The organisation has set a new benchmark in Australia with respect to prosecution models for animal welfare offences, with several States across Australia forming similar organisations following the success of BLEATS.

RSPCA and their Inspectors are represented during each and every prosecution and all related appeals by an unparalleled list of experienced and expert legal professionals including Graeme Page QC, Michael Byrne QC, Walter Sofronoff QC, and Stephen Keim QC, as well as more than 100 other barristers on the panel.

We are pleased to provide submissions in support of the proposed amendments to the *Animal Care and Protection Act 2001,* the *Criminal Code1899 (Qld)* and the *Justices Act 1886 (Qld)* which pertain to the RSPCA and animal welfare offences.

Animal Care and Protection Act 2001 - Section 183 - Prohibition Order

These changes allow the court to impose an interim prohibition order upon the charging of a defendant rather than the conviction. They are in our view a welcome amendment to the Act.

In many prosecutions, particularly in relation to 'puppy farm'or 'hoarding' matters, defendants continue to accumulate animals in the months or years between commencement and finalisation of the prosecution. It is usually the case that their animals have been seized and are being held by RSPCA pending the outcome of forfeiture or prosecution proceedings.

It is counterproductive to the legal process and the welfare of animals when people who are charged with animal welfare offences, where prohibition orders are likely to accompany any conviction, continue to accumulate animals.

This results in further complications upon conviction of the defendants and further expenditure of resources for RSPCA in seizing and obtaining forfeiture orders in relation to the additional accumulated animals.

It may also arguably encourage defendants to delay proceedings while they continue to enjoy the benefits of owning the animals including exploiting them for financial gain.

There have been several notable cases in recent years where defendants have been able to fund their defence against animal welfare charges relating to 'puppy farming' by continuing to generate income from farming puppies.

Therefore these changes are both necessary and appropriate in order to ensure best practice management of animal neglect and cruelty matters.

In our view a further amendment is required to allow RSPCA to obtain prohibition orders by application to a court without the need to conduct prosecution proceedings against a person.

This would avoid the current situation where RSPCA are on occasion required to prosecute matters that would not otherwise be in the public interest in order to obtain prohibition orders.

Examples of these matters are cases where due to advanced age, mental health issues or other circumstances, people have demonstrated an inability to provide appropriate care for an animal, yet do not perhaps warrant prosecuting due to their personal circumstances.

***Criminal Code 1899* – Section 242 – Serious Animal Cruelty**

BLEATS welcome the implementation of this new offence which in our view is necessary in order to meet community expectations with respect to animal cruelty offending.

In particular, we view as a critical component of these amendments, the provisions allowing for investigation and enforcement by the RSPCA.

In our submission RSPCA Qld currently enjoys a reputation as a proficient and expert prosecutorial body in relation to animal welfare offences particularly since the inception of BLEATS.

Due to the number of prosecutions conducted each year the RSPCA are able to expend resources and expertise in relation to brief preparation that is not practicable for police due to time and resource constraints. Each prosecutorial brief, even for a plea of guilty, is prepared as a full brief of

evidence. On pleas of guilty the Court is assisted by photographs, video, veterinary statements and any other evidence necessary to support the prosecution and assist the Court.

RSPCA Qld have adopted as policy the *Office of the Director of Public Prosecutions – Director's Guidelines.* They have established a Prosecutions Committee comprising of senior members of the Inspectorate at RSPCA and legal professional from the community. The Committee reports ultimately to the RSPCA's government partner the Department of Agriculture, Fisheries and Forestry and their role is to approve and manage all RSPCA prosecutions.

The current RSPCA Qld Prosecution Policies and Procedures are sufficient and adequate to ensure compliance with procedural and legal requirements in relation to the prosecution of indictable offences.

Expertise required

The prosecution of animal welfare offences requires in our submission a level of particular expertise and the availability of resources which are not available to police in most circumstances. The offences are unique in that the 'complainants' are not human and require care and attention throughout and beyond the prosecution proceedings. RSPCA Qld are equipped to provide this care, which can be costly and labour intensive, including boarding, veterinary care, grooming, foster care and rehoming.

The investigation of animal welfare offences also requires an expertise in the gathering of forensic, photographic, video and other expert evidence peculiar to these offences. Prosecution briefs of evidence, even on a plea of guilty, routinely include evidence from experts including veterinarians, pathologists, animal behaviourists and breed and species experts.

Funding

Funding and economic considerations do not impact on RSPCA Qld decisions in relation to prosecutions. In all cases where prosecutions are appropriate and necessary, they are conducted regardless of the costs involved. This is a commitment of the CEO at RSPCA and possible due to the ongoing support of BLEATS.

The BLEATS panel provide pro bono legal representation to RSPCA in relation to prosecutions conducted. Each prosecution case is presented in court by a fully briefed barrister, instructed by solicitors, who is able to assist the court by providing expert legal advocacy and presentation of comprehensive facts and evidence. Magistrates often express their appreciation to BLEATS and compliment the RSPCA Qld on the presentation of their cases and their professionalism and ethics in dealing with the defendants and the court.

Yours faithfully

Graeme Page QC
Patron of BLEATS

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Criminal Law Amendment Bill 2014
Submission 009

The Secretary
Legal Affairs and Community Safety Committee

By Email: lacsc@parlaiment.qld.gov.au

Dear Sir/Madam

Criminal Law Amendment Bill

About the QCCL

The QCCL is a voluntary organisation established in 1967 to promote civil liberties.

Double Jeopardy

Whilst of course the rule against double jeopardy has already been substantially changed by the previous legislation, it is important when considering this Bill which makes those changes retrospective to remember why we had the rule against double jeopardy in the first place.

Finality

The rule against double jeopardy is a feature of one of the fundamental principles of our legal system, that is, of finality.

Whereas once an acquitted person could leave the court room with the prospect of rebuilding their life that is no longer the case. The prospect of their being charged again will hang over their head for evermore. Wrongful acquittals are quite different from wrongful convictions as they do not involve the unconscionable incarceration of an innocent.

Principled Assymetry

The rule against double jeopardy is not a rule designed to protect the guilty but to protect the innocent.

The Bill undermines the principled asymmetry which is at the heart of the criminal justice system. That principle reflects the proposition that the State with all its resources and powers should not be allowed to make repeated attempts to convict an individual of an alleged offence.

The state has many advantages over the Defendant in a criminal trial including greater resources and powers to conduct investigations.

The prosecution in a criminal offence starts from the advantage that many jurors will say "If there was nothing in this case the police would never have brought it."

The criminal justice system rectifies those imbalances by the presumption of innocence and placing the burden on the prosecution. In addition, this attempt to correct the imbalance is supported by the rule against double jeopardy.

This amendment compounds all these difficulties by making the changes to the law retrospective.

Carroll Case

Once again the decision in the *Carroll* case appears to be a motivator for these changes.

The Queensland Court of Appeal in the second *Carroll* case found that the "fresh" evidence presented at Carroll's perjury trial concerning the bite marks was not fresh at all but a re-interpretation of old evidence. The Court found the new confession evidence unreliable and attached no weight to it. The Court in fact ruled that that evidence should never have actually been allowed to go before the jury. In short, even if the double jeopardy rule did not exist, Carroll would still be free because the evidence upon which his perjury conviction was obtained would have been held inadmissible.

DNA and Other Technology

A lot of the impetus for this legislation flows from DNA. When the explanatory memorandum refers to advance in technology it is to DNA that it principally refers. But the reality is that DNA cannot be used to determinably prove someone's guilt. It can only be used determinably to establish someone's innocence.

It is the QCCL's submission that the justification for these laws based on the improvement of technologies is fundamentally flawed and dangerous. Are we to set aside the rights of individuals every time there is an advancement in technology? We did not change the law when fingerprints were introduced.

As DNA is now a standard investigatory technique in a few short years this retrospective provision will become redundant and yet an alteration of one of the fundamental principles of our legal system will remain on the statute books.

Retrospectivity

The Courts have traditionally opposed retrospective legislation for two reasons:

1. because of the uncertainty they create; and

2. they could be used to harm the disaffected or the disadvantage more easily.

The legislation is justified in the explanatory memorandum as a violation of the principle against retrospectivity on the basis that the distinction between persons acquitted before 25 October 2007 and after that date is arbitrary. It is not at all arbitrary. It represents the date when the law was changed. On the basis of this logic whenever the Parliament passes a law it ought to be retrospective because every change in the law will be arbitrary. And of course you only need to consider the vast uncertainty that would be caused to commerce by the making of every single law retrospective to see the stupidity of that proposition. The same level of uncertainty is being created here. At least under the existing law people who had obtained acquittals prior to the date of the passage of the current legislation knew those acquittals were safe and could lift their lives with certainty. Similarly people who had not obtained an acquittal at that date were also aware of the uncertainty attributable to that acquittal. But at least that uncertainty lived from the time the acquittal was acquired and was not imposed after the event.

It is our submission that to submit a person who is acquitted before this legislation was introduced to a further criminal trial is an abuse of power.

Miscarriage of Justice

It is the Council's submission that this government ought, if it is concerned with miscarriages in the justice system, to introduce a miscarriage of justice unit as previously recommended by the Fitzgerald inquiry to deal with the many people who are detained in our criminal justice system even though they are innocent. As we have previously noted, it is far more morally reprehensible to detain a person knowing that they are innocent or having good reasons to suspect they are innocent than to acquit a guilty person.

Amendments to Section 146A of the *Justices Act*

Whilst the Council is supportive of increasing the efficiency of the justices system, we are concerned about the potential for injustices that may be generated by these types of provisions. We would suggest that Section 147A of the *Justices Act* needs to be amended to insert a specific right of re-opening for situations where:

3. A written plea of guilty is made; and

4. The court is satisfied that the written plea was not delivered by the defendant; or

5. The written pleas was made in circumstances of duress or lack of capacity; or

6. Due to the decision of the court to bring the hearing of a matter forward the defendant had inadequate time to obtain legal advice or representation.

We trust this is of assistance to you in your deliberations.

Yours faithfully

Michael Cope
President
For and on behalf the
Queensland Council for Civil Liberties
6 June 2014

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Criminal Law Amendment Bill 2014
Submission 010

The Research Director

Legal Affairs and Community Safety Committee

Parliament House

George Street

BRISBANE QLD 4000

By email: lacsc@parliament.qld.gov.au

6 June 2014

Dear Colleague,

Re: Criminal Law Amendment Bill 2014

We welcome and appreciate the opportunity to make a submission in relation to the Criminal Law Amendment Bill 2014 ("the Bill").

PRELIMINARY CONSIDERATION: OUR BACKGROUND TO COMMENT

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

Our submission:

COURT MAY CONSIDER PREVIOUS INDICTMENT DESPITE NOTICE NOT BEING GIVEN

Clause 33 Amendment of s 564 (Form of indictment) of Criminal Code
insert—

(2A) Despite subsection (2), a relevant circumstance of aggravation may be relied on for the purposes of sentencing an offender for the offence charged in the indictment despite the relevant circumstance of aggravation not being charged in the indictment for the offence.

(5) In this section—
relevant circumstance of aggravation means a circumstance of aggravation that is a previous conviction of the offender.

Clause 58 Amendment of s 47 (What is sufficient description of offence) of Justices Act
(6) Section 47(6)—
omit, *insert—*

(7) Subject to subsection (2), the circumstance that the defendant has been previously convicted of an offence may be relied on for the assessment of penalty for a simple offence whether or not a notice has been served or given under subsection (5).

Clause 63 Insertion of new pt 11, div 7 into Justices Act
Part 11—
insert—

Division 7 Criminal Law Amendment Act 2014
281 Application of s 47
Section 47(7) and (8) applies to the sentencing of an offender for an offence whether the proceeding for the offence was started before, on or after the commencement of this section.

It is noted that the proposed changes are restricted to reliance by a sentencing court upon *prior convictions*. The rationale for such changes can be well appreciated and in our view, could not be said to be anything but reasonable.

DOUBLE JEOPARDY EXCEPTION REGIME APPLIES RETROSPECTIVELY

Clause 35 Amendment of s 678A (Application of ch 68) of Criminal Code
(1) Section 678A(1)—
omit, insert-
(1) This chapter applies if a person has been acquitted of an offence, whether before, on or after the commencement of this section.

(2) Section 678A(2) and examples, 'is'—
omit, insert—
was

Clause 36 Insertion of new ch 94 into Criminal Code
After section 732—
insert—

Chapter 94 Transitional provisions for Criminal Law Amendment Act 2014
733 Extended application of ch 68
Chapter 68 applies to a person acquitted of an offence—
(a) whether the person has been acquitted of the offence before, on or after the commencement of—
(i) chapter 68 on 25 October 2007; or
(ii) the *Criminal Law Amendment Act 2014,* section 35; and
(b) whether the circumstances supporting an order for a retrial of the person arose before, on or after the commencement of a provision mentioned in paragraph (a)(i) or (ii).

Chapter 68 (as it currently stands) in effect abrogates the former "double jeopardy" rule (at least in relation to offences punishable by life imprisonment). Given that on the general principle of the benefits associated with the "finality" of outcomes, we were opposed to the changes at the time – we are by virtue of same, opposed to the retrospectivity of such.

Whilst we are predominantly a "defence" law firm, we do pride ourselves on our objectivity, and thus we can well appreciate the rationale behind the existing abrogation of the double jeopardy rule – despite our opposition based upon the benefits of finality. However, making such retrospective is a breeding ground for uncertainty and potential unfairness. It might be all well and good for some to assume that such an application would not be made unless the Crown were confident of someone's guilt – but what of those instances where an acquitted individual, despite seemingly cogent evidence suggestive of guilt, is actually innocent? What of the trauma visited upon the family of victims of having old wounds re-opened?

Further, should the push for retrospectivity have as its genesis, a particular past case – we view legislative reform based upon such (but destined to apply broadly), is generally misconceived.

AMENDMENT TO YOUTH JUSTICE ACT

Clause 74 Insertion of new s 282BA into Youth Justice Act

After section 282B—
insert—

282BA Detention centre employees may provide services at boot camp centres

(1) The chief executive may enter into an arrangement with a boot camp centre provider for a detention centre employee to provide services (the ***services***) to maintain good order and discipline at a boot camp centre.

(2) A detention centre employee may only provide the services prescribed by regulation.

(3) A detention centre employee providing the services is subject to the direction and control of the chief executive to the extent the detention centre employee is providing the services.

We interpret clause 74 of the Bill as stipulating that where a detention centre employee is contracted to provide services at a boot camp, the services they may provide are confined to those set out in the Youth Justice Regulation 2003, namely:

1. Discipline a child under regulation 17(2);
2. Restrain a child under regulation of 20(1).
3. Separate the child in a locked room pursuant to regulation 22; and
4. Search a child pursuant to regulation 24.

We appreciate the need for this amendment. However our concern is whether this amendment goes so far as holding detention centre employees to the same level of accountability at a boot camp as they are at a detention centre? For example, the Regulations also provide that (<u>at a detention centre</u>):

1. Only in specific circumstances can a child be separated in a locked room (regulation 22) and a register of these instances must be kept (regulation 23);

2. Only in specific circumstances can restraint(s) be used (regulation 20) and a register of these instances must be kept (regulation 21); and
3. There are specific procedures regarding how a search is to be conducted and what can and cannot be done (regulation 25 to 27) and a register of when searches are conducted must be kept (regulation 28).

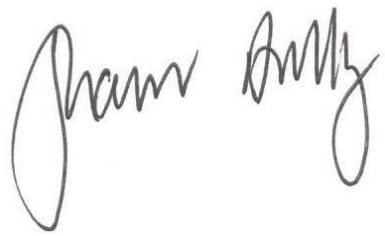
We submit that the Bill needs to go further so as to specifically hold detention centre employees to the same level of responsibility and accountability when providing 'services' at a boot camp, as they are at a detention centre. For example, perhaps proposed s 282BA(2) could read:

"A detention centre employee may only provide the services prescribed by regulation and in the manner prescribed by regulation".

We acknowledge that such might well have been the intended effect of the proposed draft – but raise this point out of an abundance of caution.

I close by once again thanking the Committee for this opportunity to have input into this very important area. If required, we would be only too pleased to provide additional information to the Committee.

Yours sincerely,



Shane Duffy
Chief Executive Officer

Submission

on the

Criminal Law Amendment Bill 2014

to the

Legal Affairs and Community Safety Committee

Parliament House
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Website: http://www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/current-inquiries/CLAB2014

by

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6 June 2014

Contents

1. Introduction

On 8 May 2014, the Attorney-General and Minister for Justice, the Hon Jarrod Bleijie, introduced the Criminal Law Amendment Bill 2014 into the Queensland parliament. It was said to represent "this government's ongoing commitment to **get tough on crime** in Queensland to make this state the **safest place to raise a family**."[1]

On the same day the bill was referred to the Legal Affairs and Community Safety Committee for consideration. Submissions on the bill are due on 6 June 2014.

This submission only addresses **clause 26 of the Bill, "Amendment of s 229G".**

The Criminal Law Amendment Bill 2014 proposes changing section 229G(2) of the Criminal Code to increase the sentencing severity from 14 to 20 years imprisonment for the offence of procuring engagement in prostitution, where the person procured is a child or a person with an impairment of the mind.

FamilyVoice Australia is a national Christian voice – promoting true family values for the benefit of all Australians. Our vision is to see strong families at the heart of a healthy society: where marriage is honoured, human life is respected, where families can flourish, Australia's Christian heritage is valued, and fundamental freedoms are enjoyed.

We work with people from all major Christian denominations. We engage with parliamentarians of all political persuasions and are independent of all political parties. We have full-time FamilyVoice spokesmen in all state capitals.

2. Misdiagnosis of the problem

The proposed solution, to increase the maximum penalty under s 229G(2), misdiagnoses the underlying problem and thereby proposes an ineffective solution.

The major case that triggered this proposed amendment was *R v GD, PK, Baxter & Barnes*, involving a girl younger than 12 being kept as a sex slave by her mother in a suburban home brothel for 8 years.[2] The child was repeatedly exploited as a child prostitute and for producing child pornography. This has "garnered significant public attention and denouncement."[3,4,5]

For such a serious crime, the sentence of only 9 years imprisonment with eligibility for parole after only 4 years seems inadequate. The accused pleaded *guilty* to four of the eight primary charges and was sentenced on that basis.[6] The light sentence may have been the result of an agreement to plead guilty in exchange for leniency.

Had the accused pleaded *not guilty*, the question of whether the prosecution could have achieved a successful conviction on the basis of the available evidence remains open. Merely increasing the maximum penalty would have no effect unless a conviction can be obtained.

3. The real problem

Illegal operators masquerade as sole operators

Queensland's Crime and Misconduct Commission (CMC) in 2011 reported that:

- many illegal operators masquerade as sole operators in their advertising
- there are an increasing number of migrant sex workers and migrant organisers working in this sector.[7] [emphasis added]

Sole operator prostitution is legal in Queensland. These operators don't need a licence, and are not governed by any of the conditions on a brothel, such as inspections.

Current laws flouted

The Human Trafficking Working Group, at the University of Queensland's School of Law, found that:

> *The spirit of the Prostitution Act 1999 (Qld), which is to draw as many of the illegal operators and workers as possible into the legal industry, has clearly failed.*
>
> *90% of prostitution remains unregulated in this state and most sex workers continue to work outside the regulated industry.*[8]

Clearly the great majority of prostitutes, pimps and madams would remain unaffected by any slight modifications to the law – and so would the children caught up in this exploitative trade.

Legalisation increases human trafficking

Queensland's current approach to prostitution law is sometimes described as partial legalisation or regulation. The CMC 2004 review[9] of the operation of Queensland's Prostitution Act 1999 found that the current model, among other things, led to:

- implied "normalisation" of prostitution and expansion of the industry,
- increased sex-trafficking of women and
- increased child prostitution.

A UN Save the Children report found that Victoria and NSW, which have legal brothels, were the two worst States for child prostitution.[10]

A 2012 international study examined the effect of legalising prostitution on human trafficking and found that, while demand is reduced for trafficked women because of a preference for legal women, the overall increase in growth of the industry dominates this, with the net effect of increasing human trafficking inflows.[11]

Legalisation increases sexual servitude

The fact that brothels are legal is used by traffickers to help recruit women for sexual servitude. For example, a Korean pimp was reported to have used this approach:

> *The broker lured the women, saying that they could work without risk, since prostitution is legal in Australia, and make big money. He introduced 25 women to brothels in Melbourne and Sydney since 2007.*[12]

Once the women arrive, pimps evade authorities by moving their captives from brothel to brothel and even interstate.

Legalisation disempowers police

The problems associated with a legal prostitution trade have a long history, as Professor Eileen Byrne's submission to the Queensland Criminal Justice Commission Inquiry into Prostitution Laws in 1991 shows:

> *In London, we found both in the 1960s and the late 1970s that only when there was a hard crackdown on brothels and other organised forms of prostitution, could we cut back the traffic in young boys and girls and help social welfare agencies to get young people aged 12-20 out of the system.* ***Public tolerance or a legal blind eye created increased traffic in the innocent and the vulnerable****...*
>
> *The rescue of the young is often less possible under a legalised prostitution system. Evidence not only from international committees of inquiry, but from social welfare agencies who work across European country boundaries, shows a consistent pattern in Europe of a poor history of police-welfare attitudes towards young prostitutes of under 18 who attempt to leave the system...*
>
> ***We could not have acted*** *to close the London brothels, break the syndicate and discover and rescue the girls,* ***without the sanction of the illegality of prostitution****. We must have the law on our side.*[13] *[emphasis added]*

In March 2011 Canberra police admitted they had limited ability to investigate children working in legalised brothels.

> *Canberra's prostitution laws leave police almost powerless to rescue children from sexual exploitation in brothels, according to the territory's police chief.*
>
> *More than two years after a 17-year-old girl died of a heroin overdose in a Fyshwick brothel, police say their ability to investigate children working in legal sex venues remains limited, weak and constrained.*
>
> *Authorities are also worried that they remain almost completely in the dark about what goes on in the city's illegal sex-for-sale operations*[14]

Implications for child exploitation

Children are inevitably caught up in the human trafficking and exploitation association with legal prostitution. Queensland's partial legalisation and regulation of the prostitution trade leads to an expansion of the trade and an increase in the number of children caught up in it.

Increasing the maximum penalty in section 229G(2) of the Criminal Code fails to address the underlying reason for the sexual exploitation of children.

4. A better approach to prostitution law

For Queensland to be a safe place for children, one of the factors that must be addressed is to minimise the risk of children being trafficked, procured or exploited in the prostitution trade or the associated child pornography industry.

The nexus between the exploitation of children and the exploitation of women in the prostitution trade should also be recognised. Where prostitution is legalised and normalised, as under the current law in Queensland, the number of prostitutes, pimps and madams expands and the number of children caught up in this expansion also grows.

In order to reduce the exploitation of children, the objective of prostitution laws must be to minimise the whole sex trade, with its procurement, trafficking and exploitation of women and girls.

The United Nations *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,* which came into force in 1951, targets the organised crime that controls this vicious trade: those who procure, traffic and exploit women and girls for the purpose of prostitution.[15]

More recently, in 1999 Sweden adopted a new approach to suppression of the prostitution trade, which was also adopted in Norway and Iceland a decade later and has become known as the *Nordic model*.[16] In addition to laws against pimping, procuring and operating a brothel, this model makes it illegal to buy sexual services but not to sell them.

Furthermore, the Swedish government developed programs for:

- *Prevention*, to reduce the risk of girls being enticed into the trade;
- *Exit*, to help prostitutes leave the trade – on the basis that the healthiest place for prostitutes is in *other* work; and
- *Client education*, to help clients (or "johns") understand the physical and psychological damage their actions cause the prostitutes. [17]

While no model can completely eliminate prostitution, the Nordic model has been shown to reduce the illegal trade and help women exit it. This model has recently been adopted by the European Parliament[18]

5. Conclusion

Increasing the maximum penalty in section 229G(2) of the Criminal Code is a step in the right direction, but this change is unlikely to have any significant effect on the safety of children in Queensland. The underlying systemic flaws of the partially legalised model need to be recognised and a different model adopted, such as the Nordic model.

The model that best protects women is one that helps them move out of the trade altogether.

Recommendation:

In order to minimise the risk of children being exploited through prostitution or the production of pornography, Queensland's system of partial legalisation and regulation of the prostitution trade should be replaced by the Nordic model which prohibits the purchase of sexual services as well as pimping, procuring and operating a brothel.

6. Endnotes

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[3] "Man on 99 child sex charges gets bail", *The Australian*, 25 October 2011.

[4] Jared Owens, "Child used as sex slave for years" , *The Australian*, 28 November 2011.

[5] Queensland Parliament, *Criminal Law Amendment Bill 2014: Explanatory Notes*, p 2, https://www.legislation.qld.gov.au/Bills/54PDF/2014/CriminalLawAB14E.pdf

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[7] Crime and Misconduct Commission, 'Regulating Prostitution: A follow-up review of the *Prostitution Act 1999*', 2011, p. 34

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[16] "Prostitution in Sweden", *Wikipedia*, http://en.wikipedia.org/wiki/Prostitution_in_Sweden

[17] Crime and Misconduct Commission, *Regulating Prostitution: An evaluation of the Prostitution Act 1999 (QLD),* 2004, http://www.cmc.qld.gov.au/research-and-publications/publications/crime/regulating-prostitution-an-evaluation-of-the-prostitution-act-1999-qld.pdf, p 35

[18] H. Osborne, "Nordic Model of Prostitution Approved by European Parliament", *International Business Times,* 26 Feb 2014, http://www.ibtimes.co.uk/nordic-model-prostitution-approved-by-european-parliament-1438009.

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Office of the President

Criminal Law Amendment Bill 2014
Submission 012

Our ref: 337 - 78

12 June 2014

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

By Post and Email to: lacsc@parliament.qld.gov.au

Dear Research Director

Criminal Law Amendment Bill 2014

Thank you for the opportunity to provide a submission on the amendments to the *Criminal Law Amendment Bill 2014* and for granting an extension until 12 June 2014. The Society commends the government for undertaking public consultation on the proposed Bill.

As there has been only a very brief opportunity to review the amendment to the Bill, an in-depth analysis has not been conducted. It is possible that there are issues relating to fundamental legislative principles or unintended drafting consequences which we have not identified. We request that the government extend the period by which to provide feedback and also extend the reporting date of the Committee, so that the Committee has a reasonable opportunity to consider the draft legislation and provide more useful and in-depth feedback which will hopefully assist in improving the quality of the legislation being passed. The members of the Society are in a unique position to provide informed feedback based on their extensive experience in practice.

With respect to the proposed amendments, we make the following comments on specific clauses in the Bill.

1. *Acts Interpretation Act 1954*

Clause 3

Clause 3 of the Bill seeks to amend the *Acts Interpretation Act 1954* to allow various government bodies and tribunals to choose their preferred title. We note that the Explanatory Notes do not provide the reasons for the proposed amendment and we request information on why this change is required.[1] We query whether this public expenditure is needed when a gender neutral option is currently in place. The Society supports the use of gender neutral titles and does not support the proposed change.

[1] Explanatory Notes, page 13.

2. *Animal Care and Protection Act 2001*

Clause 5 – amendment of s 115 (functions)

Clause 5 seeks to amend section 15 of the *Animal Care and Protection Act 2001* which deals with the functions of inspectors. Currently, inspectors may investigate and enforce compliance with the *Animal Care and Protection Act 2001*. The proposed amendment would allow the expansion of an inspector's functions to include, 'the investigation and enforcement of the new section 242 (Serious animal cruelty) and section 468 (Injuring animals) of the Criminal Code.[2] This will mean that RSPCA inspectors appointed under the Act can investigate and commence proceedings for indictable offences.'[3]

The Society does not support this provision. In our view, the expansion of inspectors' powers is inappropriate and the investigation and enforcement of these new offences should properly lie with police officers. Police officers are trained to investigate and prosecute such offences and must adhere to strict operational, ethical and legislative standards, including pursuant to the *Police and Responsibilities Act 2000*. We are concerned that RSPCA inspectors will not be appropriately trained or be required to operate under a similarly strict ethical, reportable and legislative framework.

We also note there is much debate currently regarding the apperance in Courts of non-lawyers. Like police officers, lawyers are also required to adhere to a strict ethical and legislative framework, including the obligations pursuant to the Australian Solicitors Conduct Rules.

Clause 6 – amendment of s 122 (power of entry)

Clause 6 seeks to amend section 122 of the *Animal Care and Protection Act 2001* which deals with powers of entry. The proposed amendment seeks to expand an inspector's powers of entry beyond the *Animal Care and Protection Act 2001* to include 'animal welfare offences' in all legislation. The Explanatory Notes state that this has been done to include the new section 242 of the Criminal Code.[4] While we understand the policy rationale for this proposed change, we note that these inspectors have broad powers of entry, including the ability to enter without an occupier's consent. We therefore suggest that a more prudent amendment would be to specify that an inspector's powers of entry apply only in relation to offences under the *Animal Care and Protection Act 2001* and the relevant Criminal Code provisions.

We would also appreciate if we could be advised of what training is intended to be provided to inspectors, and what accountability measures and standards will be in place. Finally, we seek to know if the exercise of such powers includes any disciplinary measures for the breach of the same.

3. *Criminal Code 1899*

Clause 26 – Procuring engagement in prostitution (s229G)

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[2] Explanatory Notes, page 13.
[3] Explanatory Notes, page 13.
[4] Explanatory Notes, page 14.

The proposed amendment seeks to increase the maximum penalty for this offence from 14 years to 20 years. The Society submits that substantial increases to penalties should only be undertaken on the basis of empirical evidence and research. There is, at present, a lack of evidence which establishes a strong link between increasing penalties and a reduction in the rates of offending.

Clause 27 – insertion of new pt. ch 25

Clause 27 proposes to include new section 242 which creates a new offence of serious animal cruelty.[5] Section 242 makes it an offence to:

> "Unlawfully kill, cause serious injury or prolonged suffering to an animal with the intention of inflicting severe pain or suffering on the animal. The new offence is a crime, carrying a maximum penalty of seven years imprisonment. A person is relieved of criminal responsibility if the conduct is authorised, justified or excused under the *Animal Care and Protection Act 2001* or another law, other than section 458 of the Criminal Code. Subsection (3) defines the phrase 'serious injury', borrowing in part from the definition of grievous bodily harm as defined in section 1 of the Criminal Code."[6]

The proposed section 242 is reproduced in the table below.

242 Serious animal cruelty

(1) A person who, with the intention of inflicting severe pain or suffering, unlawfully kills, or causes serious injury or prolonged suffering to, an animal commits a crime.

Maximum penalty—7 years imprisonment.

(2) An act or omission that causes the death of, or serious injury or prolonged suffering to, an animal is unlawful unless it is authorised, justified or excused by—

(a) the *Animal Care and Protection Act 2001*; or
(b) another law, other than section 458 of this Code.

(3) In this section— serious injury means—

(a) the loss of a distinct part or an organ of the body; or
(b) a bodily injury of such a nature that, if left untreated, would—

(i) endanger, or be likely to endanger, life; or
(ii) cause, or be likely to cause, permanent injury to health.

The Society is concerned about the inclusion of this provision and questions the effect that it may have on the professions of farming and the veterinary sciences. The potential impacts on agriculture, hunting and fishing in Queensland will need to be carefully considered. We suggest that further targeted consultation be undertaken to ensure that the defences available

[5] Explanatory Notes, page 16.
[6] Explanatory Notes, page 16.

are conducive to accepted industry practices. We also note that the conduct in the proposed offence is covered by other legislation.

If the government is minded to enact this provision we suggest that proposed section 242(2) be amended. Currently, proposed section 242(2) introduces strict liability which we do not consider is intended by the legislature. We suggest the clause be amended as follows:

> (2) An ***intentional*** act or omission that causes the death of, or serious injury or prolonged suffering to, an animal is unlawful unless it is authorised, justified or excused by—

The other unintended consequence is that the proposed section 242(2) would also make any serious injury to an animal unlawful unless it was authorised, justified or excused by law. Serious injury includes the loss of a distinct organ or part of the body. There is an enormous potential impact on standard animal husbandry practices; for example castration, tail docking, de-horning, and ear-marking.

Clause 29 - Amendment of s 398 (Punishment of stealing)

Section 398 of the *Criminal Code Act 1899* deals with stealing by looting and states, 'any person who steals anything capable of being stolen is guilty of a crime, and is liable, if no other punishment is provided, to imprisonment for **5 years**.' Item 13 of this section deals with punishment in special cases and is reproduced in the table below. The effect of item 13 is to essentially double the maximum penalty that may be imposed from five to 10 years.

13 Stealing by looting If— (a) the offence is committed during a natural disaster, civil unrest or an industrial dispute; or (b) the thing stolen is left unattended by the death or incapacity of the person in possession of the property; the offender is liable to imprisonment for **10 years**.

Clause 29 seeks to amend item 13, section 398 of the *Criminal Code Act 1899* to include a subsection to cover the situation of looting in a declared disaster area. Clause 29 is reproduced in the table below.

Amendment of s 398 (Punishment of stealing) Section 398, punishment in special cases, item 13— insert— (c) the offence is committed in an area that— (i) is a declared area for a disaster situation under the *Disaster Management Act 2003*; or (ii) was, immediately before the offence was committed, a declared area for a disaster situation under the *Disaster Management Act 2003*;

The Society notes our submission to the Committee dated 16 May 2013 on the *Criminal Code (Looting in Declared Areas) Amendment Bill 2013* (**enclosed**) and we reconfirm the views within. We wish to highlight that we do not support clause 29 and do not consider that an additional offence is required. In our view, the conduct contemplated by clause 29 is already appropriately covered in item 13, section 398 of the *Criminal Code Act 1899*.

Clause 33 – amendment of s 564 (form of indictment)

Clause 33 is reproduced below.

Section 564—

insert—

(2A) Despite subsection (2), a relevant circumstance of aggravation may be relied on for the purposes of sentencing an offender for the offence charged in the indictment despite the relevant circumstance of aggravation not being charged in the indictment for the offence.

(5) In this section—

relevant circumstance of aggravation means a circumstance of aggravation that is a previous conviction of the offender.

The Society does not support this provision. Proper disclosure by the prosecuting body should be made, including the information that is to be relied upon in sentencing the offender. This is integral to the principles of natural justice and procedural fairness. Given the current provisions of the *Penalties and Sentences Act 1992*, criminal history is a factor that is taken into account by the sentencing judge in any event. Therefore we seek clarification as to why this provision is required.

Clause 36 – proposed section 733

The Society does not support the proposal to retrospectively apply this provision. The Society is concerned that the double jeopardy exception will now apply retrospectively. We particularly note that section 4(3)(g) of the *Legislative Standards Act 1992* states that legislation should not "adversely affect rights and liberties, or impose obligations, retrospectively." The Society submits that it is not an appropriate answer to this breach of legislative standards to state that Queensland will otherwise be the only state which does not have a regime operating retrospectively.

An accused may have conducted his or her previous trial in a particular way (such as making a decision to give evidence or not) understanding that the law as it then stood provided that an acquittal prevented a retrial. It would be unconscionable for this to be altered by retrospective application of this provision. In this regard, we note that such an approach would not accord with the principles of natural justice and procedural fairness.

4. Dangerous Prisoners (Sexual Offenders) Act 2003

Clause 40 – replacement of 43AA (contravention of relevant order)

Proposed section 43AA(2) is reproduced in the table below

(2) If a released prisoner commits an offence against subsection (1) by removing or tampering with a stated device for the purpose of preventing the location of the released prisoner to be monitored, the released prisoner commits a crime.

Minimum penalty—1 year's imprisonment served wholly in a corrective services facility.

Maximum penalty—5 years imprisonment.

The Society is concerned with the proposed mandatory minimum penalty of 1 year imprisonment for this new offence. The Society has a longstanding objection to mandatory minimum penalties, which the Bill purports to introduce. The Society considers that maintaining judicial discretion is central to the effective functioning of our justice system.

Judicial officers are best placed to understand and assess all the individual circumstances of a matter before the Court and make an informed decision as to sentence.

Clause 41 – replacement of 43AC (proceedings for offences)

Proposed section 43AC Indictable offences that must be heard and decided summarily on prosecution election

This new section provides for a prosecution election to hear and determine a matter summarily.

The Society is strongly opposed to the removal of the fundamental right of an accused to elect to be tried by a jury of his or her peers, particularly because there has been no explanation given as to why such a change should occur.

We consider that the election should continue to be solely at the defendant's election, especially when a mandatory actual term of imprisonment is to be imposed upon a finding of guilt.

We are not aware of any inherent or systematic trend of defence lawyers currently electing to take matters on indictment where summary disposition would have been more appropriate. The cost of funding private representation, together with expected sentencing benefits of an early plea, promote the election of appropriate matters being dealt with in lower courts where possible.

We also note that it is particularly concerning that, given the current Legal Aid funding guidelines for indictable and summary matters, the prosecution election does not only carry the decision as to jurisdiction, but would also have consequences as to whether or not an accused person can access legal representation, and particularly counsel, to defend a charge. This may result in the overcrowding of the magistrates court lists and have non-legally qualified police prosecutors dealing with more serious matters.

Clause 42 - Insertion of new pt 9

Proposed section 65 - application of amended definition of serious sexual offence

Proposed section 65(1) is reproduced in the table below.

(1) For the purposes of this Act, the amended definition of serious sexual offence applies to include an offence mentioned in the amended definition that was committed before the commencement of the Criminal Law Amendment Act 2014.

The Society is concerned that the definition of serious sexual offence will apply retrospectively. The Society's stance against retrospective application of legislation has been noted above.

5. *Evidence Act 1977*

Clause 50 - insertion of new pt 3A, div 3A

Proposed section 39PB – Expert witnesses to give evidence by audio visual link or audio link

Proposed section 39PB(2) requires expert witnesses, 'to give the evidence to the court by audio visual link or audio link.' Whilst the Society understands and supports the objective, we consider that a default situation that an expert witness give evidence by audio

link is inappropriate. Although availability of good quality 'telepresence' systems is growing, it is not yet common and technological deficiencies will potentially impede the effective administration of justice. The Society considers that there are better ways of addressing the fundamental concern of costs of the justice system than the proposed amendment to the Act.

In our view, it my be more appropriate to require the parties to consider video or audio links and, having regard to such factors as:

- the nature and scope of their evidence;
- the potential impact of using audio or visual links, including how this would affect ability to assess credibility and reliability of the expert;
- the location of the court and the expert; and
- the availability and nature of telecommunication systems available

to either agree to the use of video conferencing for some or all experts or justify why it is inappropriate in that instance. This preserves a greater discretion than a default position. Another more cost-effective and practical solution would be a practice direction for civil and criminal matters as the appropriate way to address this issue. This will allow for a more responsive change to circumstances and technology than amending legislation in a piecemeal fashion.

We also question whether the test of "the interests of justice" (39PB(2)) would be sufficient to comfortably deal with a situation where one party wishes to call an expert who prefers to attend in person, and the other party consents. Simply because the parties consent, and the expert is prepared to come in person, will this be sufficient to satisfy an "interests of justice" test? We request further clarification on how proposed section 39PB(5) will operate.

6. Justices Act 1886

Clause 57 - amendment of s 39 (Power of court to order delivery of certain property)

This provision proposes to include RSPCA inspectors in the definition of public officer. The Society does not support this provision.

In our view, prosecutions are the duty of the Crown, that is, the Office of the Director of Public Prosecutions or police prosecutors, including the Police Prosecution Corps. We note that these State Government entities are subject to the strict legislative standards set out in the *Public Service Act 2008, Public Sector Ethics Act 1994* and the Code of Conduct for Public Service. We also note that RSPCA prosecutions are not subject to the complaints, oversight and disciplinary mechanisms of the DPP or Queensland Police Service such as the Crime and Misconduct Commission and Queensland Ombudsman. Lastly, there is also no compulsion for RSPCA prosecutions to follow the Office of the Director of Public Prosecutions' Guidelines that are designed to assist the exercise of prosecutorial decisions to achieve consistency and efficiency, effectiveness and transparency in the administration of criminal justice.

Therefore, we do not support the expansion of the prosecutorial functions of the RSPCA. The interests of justice and the public interest would best be served if existing Crown prosecutorial bodies were better resourced to prosecute charges of animal cruelty. This will ensure that the rights of all parties involved will be promoted and respected.

Clause 62 – amendment of s 222 (appeals to a single judge)

The Society is concerned with the proposal to permit the Attorney-General to appeal decisions dealt with by the Magistrates Courts on a summary basis. We do not support the proposal to

extend these appeal rights. The Society's general view is that decisions concerning whether a matter is appealed falls within the responsibilities of the Office of the Director of Public Prosecutions. It is our view that matters of appeals of this nature should remain with the Office of the Director of Public Prosecutions, thereby removing any suggestion of political interference in the criminal justice system, especially given the principles of the separation of powers.

Further, it is our understanding that Queensland is the only state in which the Attorney-General has standing to appeal indictable matters to the Court of Appeal. In other states, this is a power reserved for the Office of the Director of Public Prosecutions. We suggest this is an issue which may require further consideration to ensure consistency with other jurisdictions.

Clause 61 – Amendment of s 146A (Proceeding at the hearing on defendant's confession in absentia)

The Society notes that the Attorney-General has indicated that he proposes to introduce a 'plead guilty on-line service'. The Society's overarching concern is to ensure that persons who decide to utilise the on-line plea of guilty service do so having been fully informed of their rights, options, and the pros and cons of proceeding in this particular way. To that end, the Society considers the following issues must be addressed:

- that on-line material should make specific reference to the maximum penalties applicable for the offences to which people might plead guilty.
- Advice should be provided about both the meaning and effect of a plea of guilty.
- Guidance should be provided to people so that they understand that they should advise the Magistrate of any and all factors in their favour which they want the Magistrate to consider.
- Specific details of the quantum of the offender levy to be imposed should be provided.
- Caution should be exercised when considering whether this scheme should apply to young people and when deciding which offences to include in the proposal.

7. *Youth Justice Act 1992*

Clause 71 - insertion of new s 151A

Clause 71 proposes to introduce new section 151A which is reproduced below.

151A Permitted use and disclosure of information for pre-sentence report The chief executive may make information about a child, obtained under this Act or another Act, available to a person in order to assist the chief executive comply with section 151(1).

The Society is concerned about this provision. While we understand that this information is to be provided for the preparation of pre-sentence reports only (clause 72), we are concerned that this information might become publicly known given that the children's court may in some instances be an open court.

Clause 73 - Amendment of s 176B (Sentence orders—recidivist vehicle offences)

Clause 73 is reproduced in the table below.

(1) This section applies if, under section 206A(1), a court must make a boot camp (vehicle offences) order against a child.

The Society does not support this provision and notes our submission to the Committee dated 6 March 2014 on the *Youth Justice and other Legislation Amendment Bill 2014* - boot camp orders for vehicle offences (**enclosed**). We also note the Society's stance against mandatory sentencing regimes.

Clause 74 - insertion of new s 282BA

Cause 74 proposes to insert a new section 282BA which is reproduced in the table below.

282BA Detention centre employees may provide services at boot camp centres (1) The chief executive may enter into an arrangement with a boot camp centre provider for a detention centre employee to provide services (the services) to maintain good order and discipline at a boot camp centre. (2) A detention centre employee may only provide the services prescribed by regulation. (3) A detention centre employee providing the services is subject to the direction and control of the chief executive to the extent the detention centre employee is providing the services.

The Society does not support this new section and has serious concerns about proposed section 282BA(1) which would allow an employee of a boot camp centre provider to maintain good order and discipline at a boot camp centre. The Explanatory Notes state, that these employees may 'employ a range of practices such as use of force, restraint, separation and personal searches'.[7]

Page 29 of the Explanatory Notes state:

> Clear guidelines around the use of practices such as use of force, restraint, separation and personal searches will be prescribed in the *Youth Justice Regulation 2003*, as well as the obligation to record all instances of their use.[8]

Therefore, the guidelines and safeguards concerning the use of force, restraint, separation and personal searches in youth detention centres will be prescribed by regulation, as opposed to legislation.

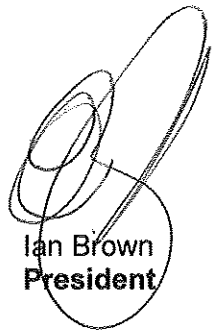
First, in our view, this proposal should be reconsidered noting the recommendations of the Child Guardian in relation to the use of separation at a Queensland Youth Detention Centre. Secondly, in line with our previous submissions, we do not support the inclusion of detailed material of this nature within Regulations. Regulations, by their nature are not subject to the same level of scrutiny as legislation and as such, the Society is concerned with this approach. Thirdly, if the proposal, as it stands proceeds, we respectfully submit that the proposed amendments to the regulation be released for public comment so that stakeholders can

[7] Explanatory Notes, page 28.
[8] Explanatory Notes, page 29.

provide their views on the legislative regime as a whole. In our view, this is essential when considering the serious nature of the proposed amendments.

If you require clarification of any of the issues of raised in this submission, please do not hesitate to contact our policy solicitors. We look forward to receiving a copy of the Committee's report.

Yours faithfully



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Office of the President

Amendment to the Youth Justice and Other Legislation Amendment Bill 2014
Submission 005

Our ref: 337 - 16

6 March 2014

The Research Director
Legal Affairs and Community Safety Committee
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By Post and Email to: lacsc@parliament.qld.gov.au

Dear Research Director

Youth Justice and other Legislation Amendment Bill 2014 - boot camp orders for vehicle offences

Thank you for the opportunity to provide a supplementary submission on the amendments to the *Youth Justice and other Legislation Amendment Bill 2014*. We understand that these amendments will be moved by the Honourable Attorney-General and Minister for Justice during consideration in detail of the Bill.

The Society commends the government for permitting public consultation on the proposed boot camp orders for vehicle offences flagged by the Attorney-General in his introductory speech. We are supportive of public consultation and consider it one of the key tenets of good law. We note that the Society flagged its concern about this proposal at the public hearing on the Bill on 3 March 2014. Unfortunately, we were not provided with the opportunity to discuss our issues in this public forum as the proposed amendments to the Bill were not before the Committee. We respectfully submit that a further public hearing be conducted so that relevant stakeholders may ventilate their views on this proposal.

We also note the limited time frame for comment, with draft legislation being provided on 4 March 2014 and comments due by 6 March 2014. As there has been only a very brief opportunity to review the amendment to the Bill, an in-depth analysis has not been possible. There may be issues relating to fundamental legislative principles or unintended drafting consequences which we have not identified. We urge the government to extend the period within which to provide comments and also extend the reporting date of the Committee, to ensure that the Committee has a reasonable opportunity to consider in detail the implications of the draft legislation before it.

With respect to the proposed amendments, we make the following comments on specific clauses in the Bill.

Clause 9B

This clause seeks to insert a new section 176B. This section proposes to introduce a mandatory boot camp order for young people who are recidivist vehicle offenders.

Proposed section 176B(3) states that:

> *(3) Without limiting section 175, the court must make a boot camp (vehicle offences) order for the child.*

The Society maintains its principled objection to mandatory sentencing. In our view, mandatory sentencing laws are unfair, unworkable and run contrary to the fundamental tenets of our justice system. The Society supports judicial discretion for sentencing in all criminal matters, particularly in youth criminal matters, in order to reflect the discrete facts of each case and each individual offender.

The Society also considers that there are difficulties with this proposal. Anecdotal evidence suggests that approximately 100 young people will be affected by these provisions. The mandatory sentencing regime will have a huge impact on these young people. The introduction of the boot camp (vehicle offences) order will result in young people being moved from environments which are known, familiar and secure, such as their homes and their schools, to unfamiliar and foreign surroundings. Also highly problematic is the removal of support networks for these young people, by virtue of the fact that they will be taken out of their home environment – such as access to family, positive school support networks and therapists with whom the child may have a pre-existing relationship. Compounding this concern is the fact that this will be done without the young person's consent and without judicial review.

In regard to consent, we note that this provision contravenes section 226(2)(c) of the *Youth Justice Act 1992*. This section mandates that, 'a child is an eligible child for a boot camp order if the child—consents to participating in a boot camp program.' In our view, mandatory participation in boot camps potentially diminishes the effectiveness of the program and may ultimately contribute little to reducing recidivism. If the young person is being forced to participate, they might not be engaged and therefore not fully participate in the program. As such, the boot camp order may have significantly reduced prospects of achieving its desired outcome.

The Society would be pleased to be involved in consultation with the government regarding the boot camp experience, particularly in relation to information from the trial thus far.

From a practical perspective, it might prove unworkable to continue to force a young person to complete a boot camp (vehicle offences) order. We particularly note that from the point of view of the young person, there might be cogent and persuasive reasons why they should not or can not participate in a boot camp program – for example, psychological, emotional, cultural reasons. These reasons should not be discounted and the well-being of the young person should be considered. In this regard, we note proposed section 176B(2) which states:

> *(2) Before sentencing the child, the court must—*
>
> *(a) order the chief executive to prepare a pre-sentence report; and*
> *(b) have received and considered the report.*

The Society requests clarification whether the court must make a boot camp order if, upon consideration of the pre-sentence report, it does not support the making of the boot camp order. The Queensland Law Society strongly supports the retention of judicial discretion in

these matters. We consider that s176B(3) should provide that "the court may make a boot camp (vehicle offences) order for the child."

We note that the court is not limited to making other sentencing orders (in section 175 of the *Youth Justice Act 1992*) in addition to the mandatory boot camp order. The Society is concerned that more appropriate sentencing options might be underutilised if boot camp orders were made mandatory.

We urge the government reconsider its decision to enact clause 9B.

Clause 9D

This clause purports to insert a new section 178B and deals with the combination of boot camp (vehicle offences) orders and other community based orders. This provision states that community based orders are suspended until the child has performed the boot camp order or the boot camp order has been discharged.

The Society does not support this provision for several reasons. First, it gives primacy to the status of the boot camp (vehicle offences) order over community based orders. Secondly, it will mean that these orders will be served cumulatively and not concurrently. As a result, the length of time of the community based orders will be increased, which might not be the intention of the court. For example, probation orders would arguably run for a longer period than anticipated by the court. Thirdly, there might be a disparity in sentencing for the same conduct, depending on when the young person was found guilty of the offences – that is, before or after the implementation of the amendments.

We provide the following hypothetical example. Young persons A and B committed two motor vehicle offences together and are placed on a community based order handed down prior to the implementation of the amendments. As a result of fingerprints found, young person A is identified after the amendments and found guilty of an offence of 'Unlawful Use of a Motor Vehicle' which occurred about the time of his earlier offences. A is therefore subject to a boot camp (vehicle offences) order and young person A's community based order is suspended until the completion of the latter order. In the case of young person A, the original sentencing court would not have had the ability to contemplate the extension in time of the community based order and also the fact that the order would be served cumulatively. In contrast, young person B's fingerprints are located on the door of a vehicle and she is found guilty of a charge of 'Entering Premises with Intent'. B receives a community based order. This order runs concurrently with her prior order as the court is mindful that it occurred at about the same time as her other offences. Consequently B's order is finalised three months before A's order despite the significant parity in their behaviour. The Society does not consider that this is an appropriate outcome. We hold the view that the effective extension of orders and the possibility of disparate orders is manifestly unjust and functions to undermine the intention of the judiciary.

Clause 10

The Society notes that the wording of the Regulation which will prescribe the areas for the purpose of a boot camp (vehicle offences) order has not been provided and we have had no opportunity to comment on this document.

In line with our previous submissions, we reiterate that it might not be prudent practice to prescribe the areas in which people reside, in this case Townsville, by regulation. Regulations are not subject to the same level of scrutiny and as such, the Society is concerned with this approach.

Clause 11

Proposed section 206A discusses boot camp (vehicle offences) orders.

Proposed section 206A(3) states:

> *(3) For this section, advice from the chief executive contained in the pre-sentence report that the child usually resides in an area prescribed for the purposes of a boot camp (vehicle offences) order is, unless the contrary is proved, sufficient proof that the child usually resides in that area.*

The Society is concerned about this provision and considers that there may be unintended consequences and unjust outcomes as a consequence of its application. For example, a young person might choose to relocate, during the inevitable remand period, to avoid the imposition of a boot camp (vehicle offences) order. This is problematic because young people may choose to relocate to unsafe environments, away from their family, in order to suggest that they no longer "usually reside" in a prescribed area for the purposes of a mandatory boot camp (vehicle offences) order. This might ultimately place young people at a greater risk of homelessness in the future. Compounding this issue is the possibility that well-resourced young people may have better access to alternative placements, assistance to enrol in other schools and the ability to establish networks to suggest where they "usually reside". This may result in penalties being imposed, not only on geographical location, but on the basis of economic and social resources. To avoid the provisions of the legislation it is also possible that matters may be set for trial to cause further delay to provide greater opportunity to establish a young person's usual residence outside the prescribed area which is undesirable from the perspective of State resources and matters resolving with in a child's sense of time (see Section 3 of the *Youth Justice Act 1992*) .

The Society also notes that this provision may have an inequitable impact on young people who are experiencing homelessness.

Clause 18A

This clause purports to insert a new section 246AA and deals with the court's power on breach of boot camp (vehicle offences) order.

Proposed section 246AA(4) states:

> *(4) If the court varies a boot camp (vehicle offences) order under subsection (1)(b), the court can not vary the details of the boot camp program.*

In our view, this is overly prescriptive and rigid and we consider that the court should have the ability to vary the details of the boot camp program. We query why this is not analogous to community based orders, where courts can impose certain conditions if it is appropriate - given the young person's circumstances or the circumstances of the offence. The Society requests information as to why this would not be a viable option.

Proposed section 246AA(5) states:

> *(5) The onus is on the child to satisfy the court it should permit the child this further opportunity.*

We are concerned with the reversal of the onus of proof in section 246AA(5). This reversal is contrary to the fundamental legislative principles as stated in section 4(3)(d) of the *Legislative Standards Act 1992*. This provision requires that legislation, 'does not reverse the onus of

proof in criminal proceedings without adequate justification'. While the Society notes that the onus of proof is reversed in other provisions of the Act, we do not support these provisions.

Clause 24

Clause 24 proposes insertion of a new section 367 in order to deal with the application of provisions about boot camp (vehicle offences) orders. This provision states:

> *(1) A court may make a boot camp (vehicle offences) order for a recidivist vehicle offender found guilty of a vehicle offence after the commencement.*
>
> *(2) Subsection (1) applies even if 1 or both of the following happened before the commencement—*
>
> *(a) the commission of the vehicle offence;*
> *(b) the start of the proceeding for the offence.*
>
> *(3) In this section— vehicle offence see section 206A(3).*

In relation to proposed section 367(2), we note that this provision relates to offences committed before the commencement of the amendments. In line with our stance against retrospective application of legislation, the Society does not support this provision. We note that retrospective provisions run contrary to section 4(3)(g) of the *Legislative Standards Act 1992*, which requires that legislation, 'not adversely affect rights and liberties, or impose obligations, retrospectively'. If the government is minded to proceed, we suggest that boot camp (vehicle offences) orders only be made available for recidivist vehicle offences that were committed after the commencement of the amendments.

Clause 26

Clause 26 states:

> *recidivist vehicle offender means a child who—*
>
> *(a) is found guilty of a vehicle offence (the relevant vehicle offence); and*
>
> *(b) has, on or before the day the child is found guilty of the relevant vehicle offence, been found guilty of 2 or more other vehicle offences (the other vehicle offences); and*
>
> *(c) committed the other vehicle offences within 1 year before or on the day the relevant vehicle offence was committed.*

With regard to clause 26(b), we note that this might include conduct in relation to the same vehicle on the same day. For example, a young person who steals a car, parks the car and then re-enters that same car may be found guilty of two or more vehicle offences. The Society considers that this behaviour would form part of the same course of conduct and should not be the subject of separate charges. Therefore, a young person who uses the same car at different times on the same day should not be charged with several offences. We suggest that this provision be amended accordingly.

Clause 31

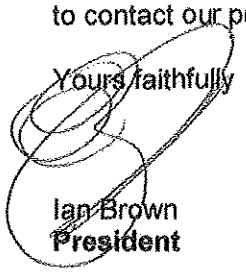
Clause 31 proposes the insertion of a new Part 4, Division 2. This clause states:

(6) Subsection (1) does not apply to the court when constituted by a judge exercising jurisdiction to hear and determine a charge on indictment.

The Society understands that this provision preserves the current position in the Childrens Court of Queensland, Supreme Court and Court of Appeal.

If you require clarification of any of the issues raised in this submission, please do not hesitate to contact our policy solicitors. We look forward to receiving a copy of the Committee's report.

Yours faithfully



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Office of the President

Criminal Code (Looting in Declared Areas) Submission 004

Our ref: 339-40, JR/RDC

16 May 2013

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

By post and email to: lacsc@parliament.qld.gov.au

Dear Research Director

Criminal Code (Looting in Declared Areas) Amendment Bill 2013

Thank you for providing Queensland Law Society with the opportunity to comment on the *Criminal Code (Looting in Declared Areas) Amendment Bill 2013* (the Bill).

Please note that in the time available to the Society and the commitments of our committee members, it is not suggested that this submission represents an exhaustive review of the Bill. It is therefore possible that there are issues relating to unintended drafting consequences or fundamental legislative principles which we have not identified.

We make the following comments for your consideration.

Clause 3 – Amendment of s398 (Punishment of stealing)

The Society is opposed to the introduction of new offences where the same conduct is covered under an offence which already exists in legislation. We consider the insertion of the special case 's13A Stealing by looting in a declared area' creates unnecessary duplication.

In his explanatory speech, Mr Carl Judge MP highlighted the new legislation would seek to address concerns arising from offences that occurred during flood and cyclone related disasters in 2011 and 2013. The Society considers that the current offence of stealing by looting[1] appropriately deals with the issue of looting at the time of a natural disaster. The section states:

> **13 Stealing by looting**
> If—
> (a) the offence is committed during a natural disaster, civil unrest or an industrial dispute; or
> (b) the thing stolen is left unattended by the death or incapacity of the person in possession of the property;
> the offender is liable to imprisonment for 10 years.

[1] *Criminal Code* s398(13)

The Disaster Operations Activities Reports by Emergency Management Queensland, State Disaster Coordination Centre indicate that between July 2008 and December 2012, there were approximately 17 declared disaster situations made under the provisions of the *Disaster Management Act 2003*. These declarations were made for both specific areas across Queensland and State-wide. Of these declared disaster areas, all but one arose from natural disasters, which included flooding, tropical cyclones, and extreme storms. The remaining declaration was made following an oil spill in coastal waters. The Society considers that under these circumstances, offences of looting were sufficiently covered by s398(13) of the *Criminal Code*. Section 398(13) also refers to stealing during civil unrest or an industrial dispute. The Society considers that these broad definitions in the most part cover the disaster events defined in s16 of the *Disaster Management Act 2003* that are likely to give rise to instances of looting.

Increased penalty

The current offence of stealing by looting carries a maximum penalty of 10 years imprisonment which is double the standard penalty for stealing. We consider this special case of punishment suitably reflects the community's denunciation of such an act and for the last five years has captured stealing offences committed in declared areas.

There may be some confusion within the public as to what constitutes the offence of 'stealing by looting' given the concept of 'looting' is often used to refer to a broad range of property crime. The definition of stealing refers specifically to the act of taking something capable of being stolen, for example where clothing is taken from the footpath outside a business. Where the criminal act is of a more serious nature, there are appropriate offences within the *Criminal Code* that prescribe a higher maximum penalty.

The Society does not consider it necessary to create an additional offence which carries a heavier term of imprisonment given the nature of the offending may not warrant the increase in penalty. Already, the *Criminal Code* covers offences which capture the type of offending that would cause community concern during a disaster. For example, any person who enters or is in any premises and commits an indictable offence in the premises faces a maximum penalty of 14 years imprisonment.[2] The maximum penalty increases to imprisonment for life where a person enters the dwelling of another and commits an indictable offence in the dwelling.[3] These offences carry heavier maximum penalties in line with community expectation. Where the circumstances of the case bear out charging an accused person with a more serious offence, the existing offences suitably reflect the scale of punishment afforded to the type of criminal behaviour.

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[2] *Criminal Code* s421(2)

[3] *Criminal Code* s419(4)

Thank you for providing the Society with the opportunity to comment on the Bill. Please contact our Policy Solicitor, Ms Raylene D'Cruz on [redacted] or [redacted] or Graduate Policy Solicitor, Ms Jennifer Roan on [redacted] or [redacted] for further inquiries.

Yours faithfully,

Annette Bradfield
President