

Your Ref: Ms Ann Dalton

Quote in reply: 21000339/153 - Criminal Law Committee - Ms Binny De Saram

22 July 2011

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Dear Professor Mackenzie

QUEENSLAND SENTENCING ADVISORY COUNCIL CONSULTATION ON STANDARD NON-PAROLE PERIODS

Introduction

The Queensland Law Society takes this opportunity to make detailed submissions in response to the Council's consultation paper.

We commend the Council for the scholarly approach taken in the consultation paper. Its depth and balance is a very welcome (and might we add, refreshing) feature in the public debate on criminal justice reform.

We have examined the Terms of Reference issued to you last year by the former Attorney- General Mr Dick, asking the Council to examine and report on:

- the offences that a SNPP should apply to, and
- the appropriate length of the minimum SNPP for each of those offences identified.

We note that the Council has not been asked to advise the government on the appropriateness of introducing a SNPP scheme. Rather, the terms of reference appear to assume the introduction of such a scheme and ask the Council to report on aspects of how it should be implemented. That is a significant feature of this consultation, and a disappointing one. For reasons which we will discuss in the following

pages, many of which are fairly raised in your paper, it would have been more appropriate for the government to initiate public discussion on the *merits*, rather than the shape, of a SNPP scheme.

The Society's Position

The Queensland Law Society does not support the introduction of a SNPP Scheme, by whatever means one might be implemented.

The Society's long-held position is that the current sentencing regime in Queensland, having at its core a system of judicial discretion exercised within the bounds of precedent, is the most appropriate means by which justice can be attained on a case by case basis.

The Society has also had a long-held objection to any form of mandatory sentencing¹. We acknowledge that the Council seems very much alive to the need to maintain judicial discretion so that any SNPP regime, however applied, does not constitute a *de facto* mandatory sentencing regime. The Society nonetheless has real concerns with the notion of a SNPP scheme of any sort. Whatever care might be taken, the practical reality of the implementation of an SNPP scheme is that, in some cases at least, there will be an erosion of judicial discretion and a mandatory component of sentencing to be applied. The Society cannot support such an approach.

We also point to the fact that the SNPP schemes that have been introduced in other states could not be said, on any objective measure, to have been successful. The NSW regime in particular has been the subject of significant (and, we say, entirely valid) criticism. At this point in time the High Court is currently considering some aspects of the NSW scheme, including its constitutional validity. The NSW SNPP, which has been in place for some years now, is also the subject of a current review by the NSW Sentencing Council. The Victorian Government has recently announced the introduction of baseline sentences (an equivalent to SNPPs) and that matter is the subject of consideration by the Victorian Sentencing Advisory Council. In those circumstances, it is difficult to see why the Queensland Government feels a need to press ahead with this type of reform in advance of seeing the results of the significant work being done elsewhere in Australia. A more prudent approach would be to await the outcome of the High Court proceedings, as well as gaining the benefit of the interstate reviews, before determining our state's position.

With the Society's opposition to a scheme of this nature understood, and in keeping with the Society's position as a significant stakeholder in the criminal justice system, we will nonetheless provide detailed

submissions on the merits of the various options proposed in the paper, despite our fundamental opposition to such.

Community Views

The Society particularly welcomes the balanced and insightful views expressed in the consultation paper in relation to the difficulties in defining and capturing “*public opinion*”. For years the Society has been concerned that important legislative reforms in this state have been based on a political desire to meet “*public opinion*” in circumstances where that term has been understood by reference to the media’s construction of the concept. In the Society’s view, the only appropriate means of truly assessing public opinion is by way of qualitative research done to a professional standard.

In keeping with the findings reported in the consultation paper (Chapter 2) the Society’s believes that community members, *when they are properly informed*, are generally satisfied with sentencing outcomes. Much of the criticism of sentencing outcomes comes from people (including journalists) without a proper appreciation of either the facts or the purpose of sentencing. Our position accords with the recent Tasmanian study referred to in the consultation paper (page 35) which showed high levels of juror satisfaction with sentencing decisions, even those relating to sex and drug offences.

QUESTION:

1. What should be the primary purpose or purposes of a Queensland SNPP scheme?

The primary purposes of an SNPP scheme might reasonably be thought to include:

1. Ensuring penalties are commensurate with community expectations;
2. Promoting consistency and transparency in sentencing;
3. Assisting courts by providing guidance in sentencing.

While these are all worthy aims, the Society has genuine doubts about the utility of a SNPP scheme in achieving them.

¹ We would hope that the many compelling arguments against mandatory sentencing are so well known as to not need to be stated.

We have already noted the dangers of attempting to fashion sentences to meet so-called 'community expectations'. As noted above, the research does not bear out the suggestion that there is true dissatisfaction with sentences imposed among those aware of all the relevant facts of each case. Furthermore, the statistics suggest that successful appeals by the Attorney-General in relation to manifestly inadequate sentences are sufficiently rare that the vast majority of sentences must be regarded as sufficient (to the Court of Appeal at least).

Such appeal rates would also suggest that sentences are generally consistent. If consistency were a concern, it could be further enhanced with better data and more accessible use of comparative sentences (whether through the QGIS database or otherwise).

One area of possible improvement in the process that the Society does identify is in the issue of transparency. That would not necessarily be promoted by an SNPP scheme however. It would be better promoted by community education, the publication of sentencing reasons, and responsible media reporting (however unlikely that might be), rather than a SNPP scheme.

We also query the value of a SNPP scheme in 'acting as a guide' to courts in sentencing. The courts have a long and well established basis of sentencing by reference to the maximum penalties available and precedent cases. Section 9 *Penalties & Sentences Act* provides guidelines in relation to the sentencing of offenders in Queensland with a non-exhaustive list of subjective and objective factors to be taken into account at the time of sentencing.

The Queensland courts also now have the power to issue "*guideline judgments*". Their aim is to promote consistency in decision making by providing guidelines to assist judges in future cases. As a relatively new innovation to Queensland law, it has not been given a sufficient opportunity to determine its utility.

In the circumstances, we consider that the primary purpose of a SNPP scheme, if one were to be introduced, should be to promote consistency and transparency in sentencing. The Society believes there are better means available to assist courts in reaching the appropriate sentencing outcome (such as precedent cases, better databases, comparative statistics, guideline judgments, etc). Similar the Society does not favour any attempt to recast sentences in an effort to meet with community expectations, unless one can be satisfied that those community expectations have been determined on an accurate and justifiable basis, and not simply on the basis of the media's promotion of ignorant but populist reporting.

Whilst consistency and transparency are therefore the most appropriate goals of any SNPP scheme, the Society would pause to note that the aim must be consistency in procedure and approach, not consistency in result. To devise a scheme which provides for the consistency of results, without sufficient consideration of the individual merits of each case, is to lead to the very injustices that mandatory sentencing schemes involve. Such an approach must be rejected at all costs.

QUESTION:

2. What type of SNPP scheme should be introduced in Queensland:

- a defined term scheme (with the SNPP representing a set number of years), or
- a standard percentage scheme (with the SNPP representing a set proportion of the head sentence), or
- some other type of scheme?

We have carefully studied the schemes available in other jurisdictions, and the differences that exist, both in implementation and outcome, between defined term schemes and standard percentage schemes.

Upon considering the pros and cons of each, the Society is of the view that if a SNPP scheme were to be introduced in Queensland, a standard percentage scheme would be preferable to (or at least less objectionable than) a defined term scheme. We have considered the defined term scheme as it is currently applied in NSW, both in the matters raised in the consultation paper and also through the personal experiences of our own members and our discussions with interstate colleagues. It is fair to say that there is a great deal of concern and criticism (valid we say) about the operation of the NSW scheme.

We note that research would suggest that the NSW scheme has had some effect in increasing the length of the none-parole periods served, and overall length served, of offenders imprisoned in NSW (although not changing the overall incarceration rate for offenders, whether subject to the scheme or not). The first point to make in relation to such a finding is that there is no basis to suggest that a mere increase in sentence length, or non-parole length, has achieved any of the recognised aims of SNPP schemes, such as increasing public confidence, assisting courts, or increasing transparency and consistency. The sentencing consistency referred to in the consultation paper (page 51) seemingly concerns the consistency of outcome, not of process or approach. Consequently there is no basis to say that more just outcomes have been reached; simply that more similar sentences have been imposed. We note that there is no research that has specifically examined whether the scheme has improved community satisfaction.

Contrasted with those claimed successes of the scheme, our information (and as is fairly reflected in the consultation paper), is the scheme has brought with it enormous complications and difficulties to the sentencing process in NSW. For the reasons fairly identified in the consultation paper, the process in NSW is now complicated, unwieldy, and productive of unintended and unwelcome consequences (a number of which are set out in Chapter 8 of your paper).

The principal objection to a defined term scheme is that it more closely resembles a mandatory sentencing scheme, and has many of the same unwanted and undesirable consequences. The consistency that is achieved by such a scheme is a consistency of sentencing result only. For those who are caught by the scheme, matters of personal mitigation which would otherwise shape the ultimate sentence are overshadowed by the forced consistency imposed by the scheme. Such a scheme provides insufficient recognition of the many different types of offending behaviour that can be encompassed within a charge. There is a 'one size fits all' flavour to such a scheme which is fundamentally at odds with the notion of doing individual justice in each case.

By contrast, a standard percentage scheme, with the SNPP representing a set proportion of the head sentence, has less of these difficulties. Firstly, it still provides for complete judicial discretion in relation to the setting of the head sentence. It also has the advantage of being more familiar territory for Queensland practitioners who have experienced standard percentage schemes at least in relation to serious violent offenders in Queensland.

The principal advantage that some may argue a defined term scheme has over a standard percentage scheme is the provision of guidance to courts about the actual period of time of imprisonment that should be given for an offence of a particular level of seriousness. That is of little consequence, we would say. Similar guides can be obtained from the appropriate use of comparative sentences, statistical data, and guideline judgments if need be.

A standard percentage scheme would involve the continuation of Queensland's current approach of first determining the overall sentence before considering the non-parole period to be served (in contrast to the "bottom up" approach that is involved in the application of a defined term scheme).

QUESTION:

3. What forms of detention (if any) should be exempt from the application of a Queensland SNPP scheme?

4. How should a Qld SNPP scheme interact with court-ordered parole?

It is the Society's position that any scheme should only apply to adults who are jailed after having been found guilty upon indictment of a serious offence, and sentenced to a term of full-time imprisonment. Ideally it would only apply to repeat offenders.

A non-parole period regime effectively applies currently to offenders sentenced to life imprisonment in Queensland pursuant to s.181 of the *Corrective Services Act*. There seems little need to alter that current position.

We agree with the consultation paper's suggestion that because non-parole periods are not set for indefinite sentences, it is unlikely that an SNPP scheme would be relevant where an indefinite sentence is imposed.

The Society would also object to any inclusion of detention under mental health legislation as forming part of an SNPP scheme in Queensland.

The Society would also object to any application of a SNPP scheme which detracted from the certainty of release provided to prisoners by court-ordered parole. Particularly for shorter sentences, it is vital that prisoners are released on a known day without the complications and vagaries associated with parole applications.

QUESTION:

5. Should offences dealt with summarily (by the Magistrates Court) be excluded from the operation of a Queensland SNPP scheme?

The Society's firm view is that Magistrates Court proceedings should be excluded from any SNPP scheme. Given the jurisdictional limits and the penalties that can be imposed by magistrates, such a scheme would be particularly problematic if operating on a defined term basis.

Even if an SNPP scheme adopted a standard percentage basis, the Society's concerns about applying such a scheme to the Magistrates Court include:

- (a) Sentencing for such a scheme is likely to be slower and more complex, which would have particular impact on the Magistrates Court given the volume of work processed in that jurisdiction;
- (b) It is a jurisdiction with significantly more self-represented people, who would be at a significant disadvantage in their ability to make submissions in relation to the application of the scheme; and
- (c) In the Society's experience sentencing decisions by magistrates are not generally productive of the same level of "*community concern*" (at least as expressed through the media) as decisions in the superior courts.

QUESTIONS:

- 6. Should young offenders be excluded from the operation of a SNPP scheme?**
- 7. If so, how should a young offender be defined?**

The Society is strongly of the view that young offenders, *including* 17 year olds, should be excluded from the operation of any SNPP scheme. To do otherwise would be to run counter to the very principles of youth justice in Queensland's *Youth Justice Act 1992*. Any truly just system of criminal justice must recognise that youth and inexperience is a fundamental factor of mitigation in the assessment of wrongdoing. People of this age are simply more prone to offending based on misjudgement, ignorance, and lack of maturity and life experience. To have offences committed by such youths made the subject of a standard non-parole period scheme would be to effectively ignore that fundamental issue.

Society has long campaigned for 17 year olds to be regarded as children for the purposes of the criminal law in Queensland. The fact that Queensland is the only state to not do so is a matter of shame for this state. The exclusion of 17 year olds from a scheme (even if the law doesn't otherwise change about treating them as adults for the purposes of the criminal law) would signal the government's understanding that youth and inexperience are important features of mitigation.

QUESTIONS:

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| <p>8. Should SNPPs in Queensland apply to all offenders convicted of specified offences, or to repeat offenders only?</p> <p>9. If the scheme is limited to repeat offenders, how should this be defined (for example, further conviction for another scheme offence committed after the conviction for the first offence)?</p> |
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If a SNPP scheme were to be introduced in Queensland, the Society's preference would be that it apply only to repeat offenders, drawing on the recently introduced New Zealand provisions.

Given the Society's reservations generally about the introduction and impact of such schemes, our submission is that the scheme should be applied narrowly and in a focused manner to address those areas of greatest concern. It may well be that public disquiet in respect of sentencing outcomes is most obvious in circumstances where the courts are dealing with repeat offenders who are considered to have been given an inadequate sentence.

If the scheme were to be limited to repeat offenders, we consider that this would be best defined by a further conviction for another scheme offence of a like nature committed after the conviction for the first offence, with both offences having occurred after the implementation of the SNPP scheme (and the offender having been warned after the first offence of the likely application of the scheme if re-offending).

QUESTION:

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| <p>10. If a defined term SNPP scheme is adopted, what should a SNPP represent? For example:</p> <ul style="list-style-type: none">- a non-parole period for an offence in the mid-range of objective seriousness, or- a non-parole period for an offence in the low range of objective seriousness, or- a non-parole period for a typical example of the offence (based on factors relevant to the offence and the offender), or- other? |
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For reasons already stated above the Society would oppose the adoption of a defined term SNPP scheme. We see such a scheme as not only more difficult to implement, bringing with it most if not all of the logistical and practical difficulties that have been experienced in NSW, but also involving a scheme much closer to the implementation of mandatory sentencing, and more likely to be productive of unjust results in particular circumstances.

In particular we see great difficulties with the notion of having to define, for the purposes of a defined term scheme, where within the range of objective seriousness a particular SNPP penalty is thought to sit. We agree with the consultation paper's commentary that from the analysis conducted of NSW, the development of a defined term scheme based on a similar definition to that used in NSW would be difficult and complex for the courts to apply.

We do not see such difficulties as being limited to a scheme whereby SNPPs are defined precisely as they are in NSW, however. We would expect similar difficulties to apply regardless of whether one seeks to use the SNPP as a starting point or lower level example of offending. Whatever terminology is used, the very same issues would seem to arise.

QUESTION:

11. If a standard percentage SNPP scheme is adopted, should the SNPP represent a particular level or type of offending? If so, what level or type of offending should the SNPP represent?

We agree with the consultation paper's suggestion that a standard percentage model could possibly overcome many of the definitional problems experienced with a defined term scheme.

If a standard percentage scheme were to be adopted, we would see no need to indicate that the SNPP represents a particular level or type of offending. The flexibility that one gains from a standard percentage scheme is that the objective seriousness of the offending can be best reflected in the head term imposed. Further flexibility to ensure judicial discretion, and to ensure that justice is achieved in each case (without any flavour of mandatory sentencing) would be achieved by courts having appropriate discretion to determine a sentence should be outside the SNPP regime if sufficient reason exists. Those reasons are discussed later but might include pleas, mental ill health, or an aggregation of other significantly mitigating factors.

QUESTION:

12. How should courts be required to take the SNPP into account in sentencing?

The Society's view is that in cases where a SNPP would apply, then even then it should only be regarded as a starting point for the judges' consideration of appropriate sentence. From there, the judge can then weigh other factors individual to the case to impose a higher or lower non-parole period.

The Society's view is that for those cases which fall outside a SNPP scheme, the SNPP period should be essentially irrelevant (perhaps nothing more than a 'guidepost' or point of interest) – specifically, it should not be seen as the starting point in the determination of the sentencing outcome. To endeavour to use the SNPP prescription as a starting point would be to deny the importance and weight of the very factors which cause the sentence to fall outside the scheme in the first place. The SNPP figure would improperly dominate the sentencing process in cases where it is not meant to apply.

QUESTION:

13. If a defined term SNPP scheme is adopted, how should the SNPP levels be set?

For the reasons outlined above, the Society is entirely opposed to a defined term SNPP scheme being adopted at all. The consultation paper fairly and properly sets out a number of the difficulties associated with the implementation of an SNPP scheme. Our earlier submissions refer. The simple result of a defined term SNPP scheme is that their application leads to injustice in that such schemes promote consistency of result, regardless of individual circumstances. The same result being automatically applied for offenders with different circumstances must lead to injustices.

The very real difficulties noted in the consultation paper about the inability to find "*typical examples*" of certain types of offence (such as manslaughter) simply add weight to the position taken by the Society, that a defined term SNPP scheme should not be adopted.

QUESTIONS:

14. If a standard percentage SNPP scheme is adopted, how should the standard percentage (or percentages) be set?

15. If adopted, how should a standard percentage scheme interact with current parole provisions in Queensland? For example, should the scheme be confined to sentences of imprisonment over 3 years for serious violent offences (where no SVO declaration is made) thereby retaining the power for a court to set a court-ordered release date for sentences of 3 years or less?

If such a scheme were to be implemented, the Society's view would be that the appropriate basis would be to set the SNPP default percentage at 50% (where no SVO declaration applies), creating a statutory requirement that unless a court suspends a sentence in whole or part, the court would fix a non-parole period of 50% of the period of imprisonment for offences falling within the scheme.

Such a scheme might operate fairly if there were recognised factors enabling the court to depart from the SNPP figure (and thereby apply a lower or higher non-parole period) if the circumstances of a case require. Grounds for departure would obviously need to be properly identified to allow a court to vary the non-parole period either higher or lower.

The Society is interested in the Council's analysis of average non-parole periods actually served as being significantly higher than the non-parole period as sentenced. If that is reflective of individual and professional assessments being made by Corrective Services as to the rehabilitation of offenders, one might consider that to be a good thing. The Society's concern though is that the additional time served is more likely to be a product of a parole system bogged down by bureaucracy, delays, and inflexibility, rather than any fine-tuned analysis of the community's and individual's needs.

The Society considers it vital that the interaction between any scheme and current parole provisions be such that court-ordered parole, with a fixed release date, still be available to the same extent as it currently is in Queensland. The Society would not be supportive of any measures which decrease the certainty of offenders in terms of their release date, or place greater discretion in the hands of parole boards as to a prisoner's release date.

QUESTIONS:

- 16. If a defined term SNPP scheme is adopted, on what grounds should courts be permitted to set a longer or shorter non-parole period than the SNPP?**
- 17. If a standard percentage SNPP scheme is adopted, on what grounds should courts be permitted to set a longer or shorter non-parole period than the SNPP?**

The Society's view is that for justice to be achieved in every case, any scheme must be sufficiently flexible to allow, for defined reasons, a longer or shorter non-parole period. The starting point for any such departure can probably be found in the principles located in s.9 of the *Penalties & Sentences Act*. Other schemes seem to base the SNPP on a conviction after trial. Consequently, a plea of guilty should

be an immediate basis for possible departure from the scheme. Similarly, the factors contained in s.9 might similarly be regarded as proper bases upon which a higher or lower non-parole period might be applied.

We have already made clear the Society's view that a defined term SNPP scheme carries with it significantly more difficulty than a standard percentage scheme.

QUESTION:

18. What changes are required to the existing SVO provisions to ensure their complementary operation with a SNPP scheme if:

- a defined term SNPP scheme is adopted, or
- a standard percentage SNPP scheme is adopted?

For the reasons outlined in the consultation paper, the Society believes that a standard percentage scheme would operate more effectively with the existing SVO provisions than would a defined term scheme. In fact it seems that there would be little need to include declared SVOs within any SNPP scheme, as it currently operates satisfactorily as its own SNPP scheme. It could be included within the general scheme for the sake of cohesion, but there would otherwise be no reason to consider any wholesale amendment to the current SVO provisions.

QUESTION:

19. What criteria should be used to determine the offences to which a QLD scheme should apply?

The Society's view is that any SNPP scheme should only apply to offences that are already declared as being serious violent offences as outlined in Part 9A of the *Penalties and Sentences Act (Qld)*. As stated earlier, the Society believes that a standard percentage SNPP scheme is preferable and would operate more effectively within the list of offences in Part 9A of The Penalties and Sentences Act. Applying any SNPP to the existing SVO offences would be a far less confusing approach to the introduction of such a scheme.

On analysis of the offences currently included as being serious violent offences, the Society does not believe that it is necessary for all of those offences within Part 9A to be included. To this end the appropriate method of distinguishing them would be the maximum penalty. The appropriate maximum penalty that would enable a standard percentage SNPP to apply to a serious violent offence is one of 10 years or higher. Again this would impose a consistent regime and make it clear to the community that those serious violent offences that attract the higher maximum penalties will be subject to the SNPP scheme if found guilty after a trial.

20. Should consideration be given to setting a separate SNPP for specific types of conduct or should SNPP apply on an offence by offence basis.

The Society holds the view that any attempt to single out specific aspects or facts that would attract an SNPP would be unduly difficult and confusing. An SNPP scheme should not be used as a device to attract additional seriousness to types of offending that might be regarded as the flavour of the month in community concerns. Any SNPP scheme should attach to the offences themselves as suggested above being serious violent offences with high maximum penalties.

QUESTION:

21. To what offences should the scheme apply and should there be any exclusions or specific grounds of departure for these offences for example, in the case of carnal knowledge, should closeness in age between the offender and the victim be a basis for departing from the SNPP?

The Society's firm view is that Section 9 of The Penalties and Sentences Act provides appropriate guidelines for any grounds of departure from an SNPP being applied to an offence. The example provided in the question where both age of the offender and the victim be considered are appropriately listed as matters that the court must have regard to in Section 9. Therefore rather than descend into specific examples where any SNPP may be departed from, we can confidently leave such matters to the discretion of the court. The sentencing court may be directed to provide reasons for departing from any SNPP in the legislation so stakeholders can understand how the court arrived at the conclusion that the SNPP was not appropriate.

Sentencing is made more difficult where offenders have combinations of numerous types of offences and lengthy periods of pre-sentence custody (which may not be declarable but must be taken into account). Sentencing courts should have the power to depart from any SNPP not just for circumstances that we can easily identify, but also for unusual combinations of factors that might be unforeseen or unusual.

QUESTION:

- 22. What are the probable impacts on the Queensland Criminal Justice System of introducing an SNPP scheme?**
- 23. What are the most important issues for the Council to consider in modelling the possible impacts of an SNPP scheme?**

The potential impacts of an SNPP scheme are fairly traversed in Chapter 7 of the discussion paper. Greater complexity in the system, more appeals and further strains on the higher courts and DPP are inevitable as experienced in New South Wales. Other risks such as overcharging of offences, bail difficulties and pressure to enter a plea of guilty (to avoid an SNPP) would be greater with a defined term, particularly for offences which attract a wide range of sentences. The concern is that the default period of imprisonment may overwhelm the circumstances of the charge. By contrast a standard percentage regime has similarities to the existing consequences of being charged with a serious violent offence and if reasonable, would be less likely to overwhelm the process.

Clearly the wider the number of offences to which an SNPP applies, then the wider the impact will be on the criminal justice system, particularly if such a regime was imposed on less serious offences. The operation of an SNPP should be reserved exclusively for more serious offences. The modelling of any scheme must ensure that its use is carefully and independently monitored so that any impacts on the system and terms of imprisonment are intended and not incidental.

QUESTION:

- 24. Should a SNPP scheme apply only to offences committed on or after the date the scheme commences (prospectively), or to all offences sentenced on, or after, the commencement date whenever committed (retrospectively)?**

The Society is of the view that like any other significant changes to the criminal justice system those changes should apply only to offences that have been committed on or after the commencement date.

The imposition of a retrospective regime would potentially cause great unfairness to some defendants given that the Director of Public Prosecutions still has an ability to withhold a matter for up to 6 months while the indictment is prepared.

QUESTION:

25. Should a Queensland SNPP be monitored and evaluated if so what matters should be included as part of this monitoring and evaluation and how long should the scheme be permitted to operate before it is formally evaluated?

The Society repeats its objection to the implementation of any scheme however if a scheme is implemented then clearly it must be subject to a period of monitoring and evaluation at the end of that period.

The experience in other states has been that SNPP schemes increase the lengths of sentences and the number of appeals, particularly if the scheme imposed is unduly complex or interferes with the overall discretion of the court to fashion a sentence that is fair in all the circumstances. The impact of any SNPP scheme should be carefully monitored with statistics measuring the average length of sentences imposed for a period of 12 months after commencement. This can then be compared to the results of the immediate 12 months proceeding. Statistics should also be kept in relation to the volume of appeals lodged and successful appeals.

QUESTION:

26. Is the current system already adequately meeting the objectives of a Queensland SNPP scheme (transparency, consistency and sentence, ensuring that serious violent offenders and sexual offenders serve an appropriate period in prison, and providing courts with guidance in sentencing)?

The Society stands firm on the view that the current system of sentencing in Queensland is entirely appropriate and there is no need for an SNPP scheme to be imposed here. Consistency in sentence and

guidance to sentencing courts is met adequately by the Court of Appeal. If either party is aggrieved by any sentence imposed then they have an opportunity to appeal and those appeal precedents then promote consistency in approach to sentence.

General criticisms from members of the community regarding the lengths of sentences are often misguided and are the product of media campaigns manufactured to stir emotion, rather than promote an understanding of proper processes undertaken in the criminal justice system. Average terms of imprisonment imposed for particular offences are also misleading as averages do not take into account the circumstances relevant to each individual case.

There are many examples in Queensland criminal justice system where the title of an offence may be misleading as to the conduct that any offending may be constituted by. For example the charge of Rape departs from traditional understanding of the meaning of that term and can include many types of sexual misconduct, some far less serious than what would normally be expected from that charge. For offences such as rape a low average period of imprisonment might only reflect more convictions of less serious offending given the greater range of conduct, and therefore sentences, now appropriate for that charge.

QUESTION:

27. Should any changes to existing sentencing and parole provisions as they apply to offenders convicted of serious violent offences and sexual offences be considered? For example, are there any ways to improve the operation of the current SVO provisions, or the setting by the courts of parole eligibility dates more generally?

The Society does not believe that any changes to the existing sentencing and parole provisions as outlined in the *Penalties and Sentencing Act* is necessary. If a person is declared as a serious violent offender then it has a significant impact on the period of time that the offender must spend in custody. We repeat our position that a standard percentage SNPP scheme being fixed as 50% as a non-parole period for serious violent offences (where the offender has not been declared as a serious violent offender) enhances the seriousness of those charges and is entirely compatible with the existing system of sentencing SVO offences.

QUESTION:

28. Are there any other options that should be explored to support the objectives of a SNPP scheme including to ensure that serious violent offenders and sexual offenders serve an appropriate period of imprisonment and to promote public confidence in sentencing?

The promotion of public confidence in sentencing can only be achieved through better education of members of the public of how courts sentence. Presently the community receives its information regarding sentences from the various forms of the media who are not concerned with educating the public regarding sentencing principles. We hope that the Queensland Sentencing Advisory Council, in accordance with its functions under the *Penalties and Sentences Act 1992*, provides information to the community to enhance knowledge and understanding of matters relating to sentencing.

Yours faithfully

Bruce Doyle
President