

Our Ref: Criminal Law Committee

8 November 2012

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](mailto:lacsc@parliament.qld.gov.au)

Dear Research Director

**WEAPONS AND OTHER LEGISLATION AMENDMENT BILL 2012**

Thank you for providing the Queensland Law Society with the opportunity to comment on the *Weapons and Other Legislation Amendment Bill 2012* (the Bill).

Due to the short time frame provided for this consultation, we have not been able to conduct an in-depth analysis of this Bill. We note it is possible that there are issues relating to unintended drafting consequences or fundamental legislative principles which we have not identified.

The Bill proposes to amend the recently revised *Weapons Act 1990* and to make consequential amendments to the *Corrective Services Act 2006* and the *Penalties and Sentences Act 1992* to introduce a new minimum mandatory non-parole period for the following offences:

- Possession of weapons;
- Unlawful supply of weapons; and
- Unlawful trafficking in weapons.

**1. The Society's position on mandatory sentencing**

The Society has long maintained its strong stance against any form of mandatory sentencing. In our view, mandatory sentencing laws are unfair, unworkable and run contrary to Australia's international treaty obligations.

The Society opposes the proposed legislation on the grounds that it unduly fetters judicial discretion. The removal of judicial discretion by the proposed mandatory sentencing scheme will greatly hinder the courts ability to bring about justice in individual cases. All cases consist of discreet facts and circumstances. There may be any number of contributing factors that lead to the commission of a crime. A mandatory sentencing scheme would be unable to take these factors into account. Mandatory sentencing laws are arbitrary, contravening the principles of proportionality and necessity because they do not allow consideration of either the seriousness of the offence or the circumstances of the offender. They have the potential to lead to serious miscarriages of justice, exacerbated by

virtue of the fact that mandatory sentences, by definition, are not reviewable on appeal. It is our view that judges are in a better position to administer justice through judicial reasoning and comprehensive understanding of the offence and the circumstances surrounding its commission. Therefore, the Society maintains that sentencing decisions should rest with highly trained judicial officers.

The empirical evidence against mandatory sentencing is well documented. There is a lack of cogent and persuasive data to demonstrate that mandatory sentences provide a deterrent effect. Furthermore, these schemes have consistently failed to achieve the stated objectives of deterrence and crime reduction in Queensland, New South Wales, other Australian State and Territory and international jurisdictions.

We also note the following compelling reasons for opposing mandatory sentencing:

- To the extent that mandatory sentencing is perceived as a democratic response to the public perceptions of crime, the most appropriate response is to educate the public about sentencing, not to impose an inflexible and unfair sentencing regime. This is demonstrated by Australian and overseas research. A study published by Professor Kate Warner from the University of Tasmania asked jurors (who were fully informed about the facts of the case) to assess the appropriateness of the judge's sentence. More than half the jurors surveyed would have imposed a more lenient sentence than the trial judge imposed. When the jurors were informed of the actual sentence, 90% said that the judge's sentence was (very or fairly) appropriate.<sup>1</sup>
- In addition, mandatory sentencing encourages judges, prosecutors and juries to circumvent mandatory sentencing when they consider the result unjust. In some circumstances when an offender is faced with a mandatory penalty, juries have refused to convict. Furthermore, prosecutors have deliberately charged people with lesser offences than the conduct would warrant to avoid the imposition of a mandatory sentence. In effect, this shifts sentencing discretion from an appropriately trained and paid judicial officer to a prosecutor. This process is called "de-mandatorising".
- The inevitable increase in prison population as a result of the mandatory sentencing is one of many additional costs to the community without any commensurate benefit.
- Mandatory sentencing reduces the proportion of pleas of guilty, thus increasing court costs, court delays, prosecution costs, defence costs and the stress upon victims and other witnesses.
- Mandatory sentences could impact disproportionately on the most marginalised members of society which include many Aboriginal & Torres Strait Islander people.

Therefore the Society opposes the introduction of mandatory sentencing regimes for all offences, including weapons offences.

## 2. Part 4, clause 8

The Society is concerned with one aspect of clause 8(e)(i), which deals with amendment of s 50, *Weapons Act 1990* in relation to possession of weapons. This clause states, "If the person unlawfully possesses a firearm and uses the firearm to *commit* an indictable offence..." In order to clarify the position, we consider that the clause should be reworded to state, "If the person unlawfully possesses a firearm and uses the firearm to commit *and is convicted of* an indictable offence..."

---

<sup>1</sup> Warner K, public judgement on sentencing: final result from the Tasmanian Jury Sentencing Study. Trends and issues in crime and criminal justice, Australian Institute of Criminology, February 2011.

**3. Part 4, Clause 15**

The Society is supportive of a broad interpretation of what a 'reasonable excuse' could constitute in the context of possession of a weapon. However, there could be scope to develop non-exhaustive legislative guidance to assist in clarifying the position.

Thank you again for the opportunity to provide comments to the Bill. If you require any further information with respect to this submission, please contact our Senior Policy Solicitor Ms Binari De Saram on (07) 3842 5885 or [b.desaram@qls.com.au](mailto:b.desaram@qls.com.au) or our Policy Solicitor, Ms Raylene D'Cruz on (07) 3842 5884 or [r.dacruz@qls.com.au](mailto:r.dacruz@qls.com.au).

Yours faithfully

Dr John de Groot  
**President**