

Our ref: Criminal Law Committee

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<sup>1</sup> 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.

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<sup>1</sup> *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.<sup>2</sup> The maximum penalty increases to imprisonment for life where a person enters the dwelling of another and commits an indictable offence in the dwelling.<sup>3</sup> 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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<sup>2</sup> *Criminal Code* s421(2)

<sup>3</sup> *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 (07) 3842 5884 or [r.dacruz@qls.com.au](mailto:r.dacruz@qls.com.au) or Graduate Policy Solicitor, Ms Jennifer Roan on (07) 3842 5885 or [j.roan@qls.com.au](mailto:j.roan@qls.com.au) for further inquiries.

Yours faithfully

Annette Bradfield  
**President**