PENALTIES AND SENTENCES (SERIOUS VIOLENT OFFENCES) AMENDMENT BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The amendments give effect to the Queensland National Liberal Coalition Policy on serious violent offences.

Reasons for the objectives and how they will be acheived

This legislation introduces into the *Penalties and Sentences Act 1992*, *Corrective Services Act 1988* and the *Criminal Code 1899* separate provisions for the punishment of serious violent offences. There are also provisions setting out guidelines for courts faced with deciding whether to order that a person serve the whole of a suspended term of imprisonment. Finally, there are included reforms of the evidentiary provisions in Part 10 "Indefinite Sentences".

Administrative cost to Government of implementation

On the basis of the offences listed in the schedule of serious violent offences, the Honourable the Minister for Police and Corrective Services has been able to provide broad estimates of changes in prisoner numbers which could result from this policy initiative.

As at 30 June 1996, a maximum of approximately 338 prisoners, out of a total prison population of 3538 could, potentially, be regarded as serious violent offenders. Just how many actually do become subjected to the new 80 % rule will depend on how many offenders convicted of the schedule

offences are sentenced to10 or more than 10 years imprisonment. The figures provided for the last three years are as follows:

Sentence (potential "serious violent offenders")	**no. at 30/06/94**	**no. at 30/06/95**	**no. at 30/06/96**	**% of all prisoners for '96**
5 to less than 10 years	450	616	583	16.5
10 years to less than life	237	282	**338**	**9.5**
TOTAL	687	898	921	26
ALL PRISONERS	2491	2870	**3538**	100

If all those 338 serving 10 years and more were treated as serious violent offenders, the daily state would increase by approximately 130 with additional annual recurrent costs of $5.0m. Capital costs would be absorbed in normal infrastructure development.

All of these figures assume that prisoners are granted parole when entitled to apply.

As the legislation will not be retrospective, the daily state would not increase to these levels overnight. The full extent of capital costs would be spread over about 15 years with the peak in about 10 years.

At the end of the day it unclear to what extent the policy will impact financially because, as anecdotal evidence has it, many of these types of prisoners are not granted parole when it would otherwise be available.

These estimates take into account also the discontinuation of remission for serious violent offenders.

It was not possible to provide the number of prisoners for each offence in the Schedule as the Queensland Corrective Services Commission (QCSC) stores offence information using a modified Australian National Classification of Offences (ANCO) coding system. These codes are used by all Australian correctional institutions, and as such, do not directly match specific Queensland offences.

The QCSC has matched Queensland offences with the ANCO codes to the best extent possible and has erred on the side of including, rather than excluding, ANCO offence types. The resulting data is thus more likely to over-count offenders on current available figures.

Further, the estimates are based upon an assumption that the increased time actually served by all serious violent offenders will increase from the 30% mark (when prisoners can generally gain access to community release schemes) to the 80% mark. However, as a general rule, release to work and other early release programs are not extended to the most violent offenders in any event. Therefore, one can infer the actual cost increases will be due to those prisoners serving, not the difference between 30% and 80% of their sentences, but the difference between 50% (when prisoners can generally become eligible to apply for parole) and 80%.

The proposal in respect of multiple murderers, if adopted, would have little or no impact on prisoner numbers. Life sentenced prisoners serve about 18 years on average before being granted parole. This is despite their eligibility to apply for parole after 13 years. The Bill also increases the eligibility date from 13 to 15 years.

Fundamental legislative principles

The only issue arising in relation to fundamental legislative principles concerns the potential for application of the new sentencing regime "retrospectively" to those prisoners who, before the commencement of this Act, were sentenced in relation to an offence in the schedule and who, after the commencement of this Act, are further sentenced to a cumulative term for another schedule offence, where the total term of imprisonment is or exceeds 10 years. It will also be irrelevant for the purposes of this Act whether the offence for which the person is being sentenced was committed before or after the commencement of this Act. Likewise, under section 206, a recommendation made before the commencement of this Act that a person be eligible to apply for parole earlier than is otherwise allowed by statute will be of no further effect if the person is later convicted of a serious violent offence.

These provisions are not retrospective in the true sense and their application to prisoners is wholly dependant upon subsequent further offending behaviour involving crimes of violence.

Consultation

There has been extensive consultation and cooperation with the Honourable the Minister for Police and Corrective Services.

NOTES ON PROVISIONS

Short Title: *Penalties and Sentences (Serious Violent Offences) Amendment Bill 1997*

Part 1—Preliminary

Clause 1 sets out the Act's short title.

Clause 2 provides for the commencement of the Act on a day to fixed by proclamation.

Part 2—Amendment of Penalties and Sentences Act 1992

Clause 3 provides that the *Penalties and Sentences Act 1992* is amended by this part.

Clause 4 amends section 3 (Purposes) by adding that the purposes of the Act include providing for a sufficient range of sentences for the appropriate punishment and rehabilitation of offenders and, in appropriate circumstances, ensuring that protection of the Queensland community is a paramount consideration.

Clause 5 amends section 4 (Definitions) by flagging the definition of "serious violent offence" at section 161A (When an offender is convicted of a serious violent offence).

Clause 6 amends section 9 (Sentencing guidelines) by omitting subsections (3) and (4) and providing that the principles mentioned in subsection (2)(a) (about imprisonment as a last resort) do not apply to the sentencing of an offender for any offence that involved use, counselling or procuring use of, or attempting or conspiring to use, violence against another person or that resulted in physical harm.

In sentencing such an offender, the court must have regard primarily to the risk of physical harm to any members of the community if a custodial sentence were not imposed, the need to protect any members of the community from that risk and a number of other specified factors.

Clause 7 amends section 147 (Power of court mentioned in s.146) by providing that, in deciding whether it would be unjust to order the offender to serve the whole of the suspended sentence, the court must have regard to whether the subsequent offence is trivial having regard to a number of specified factors, the seriousness of the original offence (including any physical or emotional harm done to a victim and any damage, injury or loss caused by the offender) and any special circumstance arising since the original sentence was imposed that makes it unjust to impose the whole of the suspended term of imprisonment.

Clause 8 inserts a new section 156A (Cumulative order of imprisonment must be made in particular circumstances). It will provide that, if an offender is convicted of a serious violent offence committed while a prisoner was serving a term of imprisonment, or on parole under the *Corrective Services Act 1988*, or on leave of absence or while serving a period of home detention, or while at large after escaping from lawful custody under a sentence of imprisonment, then a sentence of imprisonment imposed for the serious violent offence must be ordered to be served cumulatively with any other term of imprisonment the offender is liable to serve.

Clause 9 amends section 157 (Eligibility for parole) by providing that if an offender is convicted of a serious violent offence then the court that sentences the offender for that offence cannot make a recommendation under section 157 that reduces the period of imprisonment the offender must serve before being eligible for release on parole under the *Corrective Services Act 1988*, section 166(1)(c). Further the section will provide that no recommendation made under the section by any court can reduce the period of imprisonment that the offender must serve before being eligible for release on parole under the *Corrective Services Act 1988*, section 166(1)(c).

When read together with clause 16, prisoners serving a period of 10 or more years for a serious violent offence must serve a minimum of 80 % of the period before being eligible for release on parole whether or not a recommendation under the section had been made in relation to a previous sentence which subsequently becomes part of the total period to be served for the offences.

Clause 10 inserts a new part after section 161: "Part 9A—Convictions For Serious Violent Offences". The new sections will be sections 161A to 161D.

Section 161A (When an offender is convicted of a serious violent offence) will provide that an offender is 'convicted of a serious violent offence' if the offender is convicted on indictment and sentenced to 10 or more years imprisonment, as calculated under section 161C, for an offence under a provision mentioned in the schedule or for an offence of counselling or procuring the commission of, or attempting or conspiring to commit, an offence under a provision mentioned in the schedule or if the offender is declared by the sentencing court to be convicted of a serious violent offence under section 161B(3) or (4).

Section 161B (Declaration of conviction of serious violent offence) will provide that if an offender is convicted of a serious violent offence under section 161A(a), the sentencing court must declare the conviction to be a conviction of a serious violent offence as part of the sentence. This will assist the QCSC to identify prisoners who are to serve 80 % of their term or period of imprisonment before being eligible to apply for parole or community release. However, the failure of the sentencing court to make a declaration as required under the section does not affect the fact that the offender has been convicted of a serious violent offence.

Also, in subsection (3), if an offender is convicted on indictment of an offence mentioned in the schedule, or for an offence of counselling or procuring the commission of, or attempting or conspiring to commit, an offence under a provision mentioned in the schedule, and the offender is sentenced to 5 or more than 5 but less than 10 years imprisonment, then the sentencing court will have a specific discretion to declare the offender to be 'convicted of a serious violent offence' as part of the sentence.

Finally, in subsection (4), if an offender is convicted on indictment of an offence that involved the use of, counselling or procuring the use of, or conspiring or attempting to use, serious violence against another person, or that resulted in serious harm to another person and is sentenced to a term of imprisonment for the offence, then the sentencing court will have a general discretion to declare the offender to be convicted of a serious violent offence as part of the sentence even if the offence is not in the schedule and regardless of the sentence imposed.

Section 161C (Calculation of number of years of imprisonment) will provide in effect that an offender will be taken to be sentenced to 10 or more years imprisonment, or 5 or more but less than 10 years, whichever is the relevant specified period, if the offender is sentenced to the specified term for an offence in the schedule, or if the term of imprisonment to which the offender is sentenced is part of a period of imprisonment of 10 or more years or 5 or more years as the case may be. Also, whether the offender has been sentenced to the relevant specified period must be calculated as at the day of sentence.

For example, where a person has previously been convicted of an offence in the schedule and sentenced to a term of less than 10 years imprisonment and the person is subsequently convicted and sentenced for another offence in the schedule and the sentence is made cumulative so that the total period of imprisonment for schedule offences is 10 years or more, the person is to be taken to be convicted of a serious violent offence.

Section 161D (Sentence for serious violent offence cannot be remitted) will provide that the sentence of an offender convicted of a serious violent offence cannot be remitted under the *Corrective Services Act 1988*.

Clause 11 amends section 162 (Definitions) in Part 10 "Indefinite Sentences" by replacing the words "use, or attempted use, of" in the definition of "violent offence" with the words "use of, counselling or procuring the use of, or attempting or conspiring to use," consistently with the definition of serious violent offence.

Clause 12 amends section 164 (Counsel for prosecution to inform court) in subsection (2) by increasing, from 7 to 15 business days, the time within which the prosecution is to inform the court of an application under section 163 to impose an indefinite sentence.

Clause 13 replaces section 167(3) (Evidence) by providing that in deciding whether the offender is a serious danger to the community, the court may have regard to anything relevant to the issue contained in the certified transcript of, or any medical or other report tendered in, any proceeding against the offender for a violent offence.

Clause 14 inserts three new sections into Part 10 "Indefinite Sentences". The new sections will be sections 172A to 172C.

Section 172A (Distribution of reports) will provide that the court must, a reasonable time before the review is to take place, cause a copy of a report

ordered by it under section 176 (Registrar of court to give report) to be provided to the Director of Public Prosecutions, the offender's legal representative and to the offender, if the court has so directed. If the prosecution or the defence has caused a report about the offender to be prepared for the review, it must, a reasonable time before the review is to take place, file the report with the court and provide a copy of the report to the Director of Public Prosecutions or the offender's legal representative.

Section 172B (Disputed report) will provide that the Director of Public Prosecutions or the offender may file with the court a notice of intention to dispute the whole or any part of a report provided under section 172A. If such a notice is filed before the review is to take place, the court must not take the report or the part in dispute into consideration on the hearing of the review unless the party that filed the notice has been given the opportunity to lead evidence on the disputed matters and to cross-examine the author of the report on its contents.

Section 172C (Review hearing) will provide that on the hearing of a review under section 171 (Review - periodic) or 172 (Review - application by offender imprisoned), a court must give both the Director of Public Prosecutions and the offender the opportunity to lead admissible evidence on any relevant matter and, subject to section 172B (Disputed report), take into consideration any report in respect of the offender that is filed with the court and must have regard to any submissions made to it on the review.

Clause 15 amends section 176 (Registrar of court to give report) by omitting subsection (6) because the subject matter will now be dealt with in the new section 172B.

Clause 16 inserts a new section 206 (Transitional provisions for *Penalties and Sentences (Serious Violent Offences) Amendment Act 1997*) at the end of the Act. The section will provide that section 157(7)(b) applies to a recommendation made under section 157 (Eligibility for parole) even if the recommendation was made before the commencement of section 157(7).

For subsection 161C (2)(b), sentences of imprisonment imposed on the offender for offences mentioned in section 161C (1)(c) or (d) must be taken into account even if the sentences were imposed before the commencement of the new Part 9A.

In other words, when read together with clause 9 above, prisoners serving a period of 10 or more than 10 years imprisonment for a serious

violent offence must serve a minimum of 80 % of the period before being eligible for release on parole whether or not a recommendation under the section had been made in relation to a previous sentence which subsequently becomes part of the total period to be served for the serious violent offence or offences.

Clause 17 inserts a schedule of 'serious violent offences'. It is in 4 portions—*Criminal Code*, *Criminal Code* (Provisions repealed by *Criminal Law Amendment Act 1997)*, *Corrective Services Act 1988*, and *Drugs Misuse Act 1986*—each listing the offences under those Acts which will constitute serious violent offences if a prisoner is sentenced to serve, for example, 10 or more than 10 years imprisonment for such an offence.

Part 3—Amendment of Criminal Code

Clause 18 provides that the *Criminal Code 1899* is amended by this part.

Clause 19 amends section 305 (Punishment of murder) by providing that, if an offender is being sentenced on more than 1 conviction of murder, or on 1 conviction of murder and another offence of murder is taken into account, or on a conviction of murder and the person has on a previous occasion been sentenced for another offence of murder, then the court sentencing the offender must make an order that the offender must not be released from imprisonment until he or she has served a minimum of 20 or more specified years of imprisonment, unless released sooner under the *Corrective Services Act 1988*, section 166(4) because of special circumstances. This rule will apply whether the crime for which the person is being sentenced was committed before or after the conviction for the other offence of murder mentioned in the paragraph.

Part 4—Amendment of the Corrective Services Act 1988

Clause 20 provides that the *Corrective Services Act 1988* is amended by this part.

Clause 21 amends section 10 (Definitions) by inserting a definition of serious violent offence by cross-reference to section 4 of the *Penalties and Sentences Act 1992.*

Clause 22 amends section 61 (Leave of absence) by providing that the Queensland Corrective Service Commission (QCSC) must not grant leave of absence to a prisoner serving a term of life imprisonment on conviction of a serious violent offence unless the prisoner has served at least 15 years of that sentence. Other prisoners serving a term of imprisonment on conviction of a serious violent offence must have served at least 80% of the sentence imposed. An exception is provided for if the prisoner is released for medical or compassionate purposes and, in any case, is released under the control of a custodial correctional officer. In deciding whether or not to grant leave of absence to a prisoner, the commission must consider any recommendation of the court that sentenced the prisoner that the prisoner should not be released from imprisonment unless the prisoner has served a period of the sentence longer than that otherwise required by this section.

Clause 23 amends section 86 (Release of prisoner to home detention) by providing that the QCSC must not release a prisoner serving a term of life imprisonment on conviction of a serious violent offence unless the prisoner has served at least 15 years of that sentence. Other prisoners serving a term of imprisonment on conviction of a serious violent offence must have served at least 80% of the sentence imposed. As in clause 19, an exception is provided for if the prisoner is released for medical or compassionate purposes and, in any case, is released under the control of a custodial correctional officer. Again, in deciding whether or not to grant leave of absence to a prisoner, the commission must consider any recommendation of the court that sentenced the prisoner that the prisoner should not be released from imprisonment unless the prisoner has served a period of the sentence longer than that otherwise required by this section.

Clause 24 amends section 166 (Eligibility for parole) by providing that a prisoner is not eligible for parole—

(a) if the prisoner is serving a term of life imprisonment and the Criminal Code, section 305(2) applied to the prisoner on sentence—until the prisoner has served the period required under an order under the subsection, or, if no order was made, 20 years; or

(b) if the prisoner is serving a term of life imprisonment and the Criminal Code, section 305(2) did not apply to the prisoner on sentence—until the prisoner has served a period of 15 years; or

(c) if the prisoner is serving a term of imprisonment for a serious violent offence—until the prisoner has served the lesser of the following—

(i) 80% of the term of imprisonment to which the prisoner was sentenced; or

(ii) 15 years; or

(d) otherwise—until the prisoner has served half of the term of imprisonment to which the prisoner was sentenced.