

Criminal Law Amendment Bill 2012

Explanatory Notes

Objectives of the Bill

The primary objectives of the Criminal Law Amendment Bill 2012 (the Bill) are to:

1. Amend the Criminal Code to:

- increase the non-parole period for multiple murders from 20 to 30 years imprisonment;
- insert a new minimum non-parole period of 25 years imprisonment for the offence of murder where the victim was a police officer and the offender did the act or omission that caused the police officer's death either: when the police officer was performing their duties and the offender knew or ought reasonably to have known that the victim was a police officer; or because the victim was a police officer; or because of, or in retaliation for, actions undertaken by the victim, or any other police officer, in the performance of their duty; and
- increase the maximum penalty for the offence of serious assault of a police officer from seven years imprisonment to 14 years imprisonment where the assault: resulted in an injury amounting to bodily harm; involved the spitting on, biting or the application of a bodily fluid or faeces to the police officer; or involved the offender being, or pretending to be, armed with a dangerous or offensive weapon or instrument.

2. Amend the *Corrective Services Act 2006* to increase the non-parole period for murder from 15 to 20 years imprisonment.

3. Amend the *Penalties and Sentences Act 1992* to abolish Queensland's Sentencing Advisory Council.

4. Amend the *Police Powers and Responsibilities Act 2000* to introduce a mandatory minimum penalty of \$5,000 and two year licence disqualification for the offence of evading police under section 754.

Reasons for the Bill

The Bill implements the Liberal National Party's pre-election commitments to introduce amendments to strengthen the sentences for evade police, murder, the murder of a police officer and serious assaults committed upon police officers.

The offence of murder is the most heinous of criminal offences. The increased non-parole period will ensure that the punishment of murder fits the severity of the crime and will promote community safety and protection from these serious offenders.

In particular, the amendments give effect to the Government's commitment that Queensland's criminal laws provide strengthened protection to police officers acting in the performance of their duties. The penalty increases for the murder of a police officer and the serious assault of a police officer reflect the important role performed by police officers in maintaining civil authority and the dangers faced by them in the discharge of their civic duties.

Section 754(2) of the *Police Powers and Responsibilities Act 2000* provides the offence of failing to stop a vehicle when the driver of the vehicle has been directed to do so by a police officer (an evade police offence). The rationale behind the creation of the offence was to create an alternative to pursuits and to ensure that a sufficient deterrent exists in light of the move towards a more restrictive police pursuit policy.

In June 2011, the Crime and Misconduct Commission (CMC) released the report, *'An Alternative to Pursuit – A Review of the Evade Police Provisions'*. As part of that review the CMC analysed the sentencing outcomes for the offence of evade police between July 2006 and June 2010. The CMC found that the most common penalty imposed on a single charge of evade police was a fine of \$300. The CMC also found that a period of licence disqualification was only imposed in approximately one in every five cases.

Such sentences are not commensurate with the risk posed by those who evade police.

The Bill includes amendments to repeal Part 12 of the *Penalties and Sentences Act 1992* to dissolve the Sentencing Advisory Council (the Council). The Council is an independent statutory body which was established in December 2010 with six statutory functions, namely:

- to provide its views on the giving or review of guideline judgments prepared by the Court of Appeal;
- if requested, provide advice to the Attorney-General on sentencing matters;
- to provide information to the community to enhance knowledge and understanding of matters relating to sentencing;
- to publish information relating to sentencing;
- to research and publish information about sentencing; and
- to seek the community's views on sentencing matters.

To date, the main focus of the Council's work has been to provide advice to the Attorney-General on sentencing matters. This function effectively duplicates the law review functions of the Queensland Law Reform Commission. The Bill dissolves the Council to enable a more efficient use of public resources by the rationalisation of law review functions across government.

Achievement of the Objectives

The Bill achieves the objectives by way of the proposed amendments to existing legislation described below.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the criminal law reform.

Estimated Cost for Government Implementation

Any costs in relation to the amendments will be met from existing agency resources.

Consistency with Fundamental Legislative Principles

The Bill amends the Criminal Code and the *Corrective Services Act 2006* regarding the punishment regime for the offence of murder. The amendments potentially impact on the rights and liberties of individuals by requiring offenders to serve longer periods of actual incarceration before being eligible to apply for parole release and therefore arguably it punishes the offender to a greater extent than was authorised by the former law.

However, the increases are justified to ensure that the punishment for murder fits the severity of the crime and communicates the gravity of the offending. The Bill aims to further promote community safety and protection from these serious offenders. Additionally, the increase to the minimum non-parole periods applies prospectively and will only capture offenders who commit the offence of murder on, or after, the date upon which the Bill commences. However, the increase in the non-parole period for more than one murder has some retrospective effect in that only one offence must occur after commencement.

The Bill amends the Criminal Code to double the maximum penalty for the offence of serious assault of a police officer in certain prescribed circumstances. Police perform an essential and unique role in maintaining civil authority. Their duties are frequently dangerous. Assaults upon police that involve the use of weapons, spitting, biting or otherwise causing bodily harm represent serious displays of contempt for civil authority. Additionally, acts of spitting, biting or applying faeces or bodily fluids are particularly degrading and carry with them concern of transmission of disease. While it might be argued that an increase to the maximum penalty for certain serious assaults will affect the rights and liberties of some individuals, the increase can be justified given the need to: deter this form of concerning conduct; protect police officers carrying out their duties; and ensure the maintenance of civil authority.

The Bill amends the *Penalties and Sentences Act 1992* to dissolve the Council. The members of the Council who are not public sector employees receive only sessional payments (for example, for meetings attended and special assignment fees) and payments for necessary and reasonable expenses incurred while travelling on approved Council business and to attend meetings. Upon the repeal of Part 12 there is no legislative basis on which meetings could be held or members could be paid. The provisions in the Bill which expressly state that no compensation is payable to council members on the dissolution of the council reflect this.

The Bill amends the *Police Powers and Responsibilities Act 2000* to introduce a mandatory minimum penalty for the offence of evade police. While this potentially interferes with the rights and liberties of individuals, the amendment is justified and proportionate when considered against the background of the harm caused by those who evade police and the challenges associated with the enforcement of this offence.

Consultation

Consultation with the following government departments and agencies occurred: the Department of the Premier and Cabinet; Queensland Treasury and Trade; the Department of Community Safety; and the Queensland Police Service.

Notes on Provisions

Part 1 Preliminary

Clause 1 establishes the short title to the Act as the *Criminal Law Amendment Act 2012*.

Part 2 Amendment of Criminal Code

Clause 2 provides that part 2 amends the Criminal Code.

Clause 3 amends section 305 (Punishment of murder) to increase the minimum non-parole period for multiple murders and to insert a new minimum non-parole period for the murder of a police officer.

Sub clause (1) amends subsection (2) to increase the minimum non-parole period for multiple murders from 20 years imprisonment to 30 years imprisonment.

Sub clause (2) inserts new subsection (4) to provide a specific minimum non-parole period of at least 25 years imprisonment for the offence of murder where the victim was a police officer at the time the act or omission that caused the person's death was done or made; and the person being sentenced did the act or made the omission that caused the police officer's death in the following circumstances:

- when the police officer was performing their duties and the person knew or ought reasonably to have known that the victim was a police officer; or
- because the victim was a police officer; or
- because of, or in retaliation for, the actions of the police officer or any other police officer in the performance of their duty.

The sentencing court must set a minimum non-parole period of at least 25 years imprisonment for such offenders.

Clause 4 sub clause (1) inserts a new maximum penalty of 14 years imprisonment for the serious assault of a police officer under section 340(1)(b) of the Criminal Code, where:

- the offender bites or spits on the police officer or throws at, or in any way applies to, the police officer a bodily fluid or faeces;
- the assault causes bodily harm to the police officer;
- the offender is, or pretends to be, armed with a dangerous or offensive weapon or instrument.

In all other circumstances, a person convicted of serious assault of a police officer under section 340(1)(b) of the Criminal Code is liable to a maximum penalty of 7 years imprisonment.

Sub clause (2) omits subsection 340(2A) given the circumstances provided are clearly an assault and highlighted in the amendments.

Clause 5 inserts a new Chapter 90 and new section 729, which deals with the transitional application of the amendments to section 305 to increase the non-parole period for multiple murders and to insert a specific non-parole period for the murder of a police officer. The amendment to section 305(2) operates with partial retrospective effect in that only one offence must have been committed after commencement. New section 305(4) operates prospectively.

New section 729 applies despite the *Acts Interpretation Act 1954* section 20C(3) and the Criminal Code section 11.

Part 3 **Amendment of Corrective Services Act 2006**

Clause 6 provides that part 3 amends the *Corrective Services Act 2006*.

Clause 7 amends section 181 (Parole eligibility date for prisoner serving term of imprisonment for life).

Sub clause (1) omits existing subsections (2) and (3) of section 181 and inserts a new subsection (2) which provides that the prisoner's parole eligibility date is the day after the day on which the prisoner has served the following periods of time:

- 30 years imprisonment or the longer time ordered, if section 305(2) of the Criminal Code applied on sentence (that is, in the case of multiple murders);
- 25 years imprisonment or the longer time ordered, if section 305(4) of the Criminal Code applied on sentence (that is, in the case of the murder of a police officer);
- 20 years imprisonment if the prisoner is otherwise serving a term of imprisonment for life for an offence of murder;
- Otherwise - 15 years imprisonment.

Sub clause (2) makes a consequential amendment to subsection (4).

Sub clause (3) renumbers section 181(4) to section 181(3), consequential to the substantive amendment in subclause (1).

Clause 8 inserts new part 5 into chapter 7A and new section 490A which deals with the transitional application of the amendment to section 181. It provides that the increased minimum non-parole periods for the offence of murder and for multiple murders (under section 305(2) of the Criminal Code) apply to a prisoner serving a term of life imprisonment for an offence of murder committed after commencement.

Part 4 **Amendment of Criminal Law Amendment Act 1945**

Clause 9 provides that part 4 amends the *Criminal Law Amendment Act 1945*.

Clause 10 amends section 18B (Parole orders under *Corrective Services Act 2006*) consequential to the amendment to section 181 of the *Corrective Services Act 2006* in clause 7.

Part 5 **Amendment of Penalties and Sentences Act 1992**

Clause 11 provides that part 5 amends the *Penalties and Sentences Act 1992*.

Clause 12 amends section 4 (Definitions) by omitting the definition of 'council'.

Clause 13 replaces section 15AH (Relevant considerations before giving or reviewing guideline judgement) to remove the requirement that the Court of Appeal, when considering giving or reviewing a guideline judgment, is to notify the Sentencing Advisory Council and to consider the Council's written views. The amendment reflects the dissolution of the Council by the repeal of Part 12.

Clause 14 omits subsection (3) from section 15AI (Procedural requirements if court decides to give or review guideline judgment) in recognition of the amendments to section 15AH. It removes the requirement for the Court of Appeal to give a copy of any written views received from the Sentencing Advisory Council under section 15AH(1)(b) to the prescribed persons in subsection (2).

Clause 15 sub clause (1) amends section 160A (Application of ss160B-160D) to include a reference to section 305(4) of the Criminal Code (that is, the new minimum non-parole period for the murder of a police officer) in the example given in subsection (4).

Sub clause (2) amends section 160A(5)(a), consequential to an amendment to the *Corrective Services Act 2006* in clause 7, to delete the reference to section 181(2) or (3) of the *Corrective Services Act 2006* and replace it with a reference to section 181(2).

Clause 16 amends section 171 (Review – periodic) consequential to the amendments to the Criminal Code and *Corrective Services Act 2006* regarding the punishment regime for the offence of murder.

The amendments to section 171 ensure that the first review of the indefinite sentence, where the nominal sentence is life imprisonment for an offence of murder, is to occur within 6 months after the offender has served:

- 30 years imprisonment if section 305(2) of the Criminal Code applied on sentence;
- 25 years imprisonment if section 305(4) of the Criminal Code applied on sentence; or
- Otherwise - 20 years imprisonment.

The position remains unchanged where the offender’s nominal sentence is life imprisonment for an offence other than murder; the first review must occur within 6 months after the offender has served 15 years imprisonment.

Similarly the position remains unchanged where the offender’s nominal sentence is other than life imprisonment; the first review must be within 6 months after the offender has served 50 per cent of the offender’s nominal sentence.

Clause 17 omits Part 12 which establishes and provides for the functions, membership and proceedings of the Sentencing Advisory Council.

Clause 18 inserts the new heading, ‘Division 1– Transitional provisions before Criminal Law Amendment Act 2012’ in Part 14.

Clause 19 inserts new Division 2 and new sections 221 and 222 into Part 14, which provide the transitional arrangements for the *Criminal Law Amendment Act 2012*.

New section 221 deals with the transitional application of the amendments to section 171.

Sub clause (1) provides that for section 171(2)(a)(i), as inserted by clause 16, the period of time an offender must serve before the indefinite sentence must be reviewed for a first time continues to be 20 years if section 305(2)

of the Criminal Code (as amended by clause 3) does not apply on sentence but that section as it existed before commencement applies on sentence.

Sub clause (2) provides that section 171(2)(a)(iii), as inserted by clause 16, only applies to an offender who is serving an indefinite sentence for an offence of murder committed after the commencement.

Sub clause (3) defines ‘amendment act’ and ‘commencement’ for the purpose of the section.

New section 222 provides that on the commencement of the section, the Sentencing Advisory Council is dissolved, the Council members go out of office and no compensation is payable to members because of this.

Part 6 Amendment of Police Powers and Responsibilities Act 2000

Clause 20 provides that part 6 amends the *Police Powers and Responsibilities Act 2000*.

Clause 21 amends the offence of evading police, contained in section 754 of the *Police Powers and Responsibilities Act 2000*, by establishing a mandatory minimum penalty of \$5000 by way of fine and a two year disqualification from holding or obtaining a driver’s licence.

Part 7 Amendment of Youth Justice Act 1992

Clause 22 provides that part 7 amends the *Youth Justice Act 1992*.

Clause 23 amends section 176 (Sentence orders – life and other significant offences) consequential to the amendments to section 305 of the Criminal Code which increase the non-parole period from 20 years to 30 years for multiple murders; and insert a specific non-parole period of 25 years imprisonment for the murder of a police officer.

Clause 24 inserts Part 11, Division 9 and new section 353. New section 353 deals with the transitional application of the amendments to section 305 of the Criminal Code to a child under section 176(6) of the *Youth Justice Act 1992*. It makes it plain that the amendment to section 305(2) of the Criminal Code operates with partial retrospective effect in that only one offence must have been committed after commencement. Section 305(4) of the Criminal Code operates prospectively.

New section 353 applies despite the *Acts Interpretation Act 1954* section 20C(3) and the Criminal Code section 11.

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