



QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

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visit us at www.qccl.org.au

Our Ref: TOG:VN

16 August 2010

Mr Michael Cope

QCCL

By email: mcope@mckayslaw.com

Dear Michael

RE: **CRIMINAL CODE AND EVIDENCE ACT**

Herewith the submission I have done on this for your attention.

Yours faithfully

QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

f **TERRY O'GORMAN**
VICE-PRESIDENT

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Watching them while they are watching you!



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Ms L Shephard
Assistant Director
Strategic Policy
Department of Justice and Attorney-General
GPO Box 149
BRISBANE QLD 4001

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Dear Ms Shepard

I refer to the Attorney's letter to Mr Cope of the QCCL dated 23 June 2010 enclosing proposed amendments to the Criminal Code and the Evidence Act arising from the QLRC report of jury directions.

The QCCL is opposed to the proposals 11-2, 14-1, 15-1 and 16-1.

Proposal 11-2 Trial Judge's Obligation to Give a Direction That is Not Requested

It is the Council's view that the current law should remain unamended namely that where the Queensland Court of Appeal or the High Court have indicated that particular directions should be given even if they are not requested.

We have read the QLRC's recommendations in their report in this regard and we disagree with the recommendations on this point.

Proposal 14-1 Lies

We object to the proposed amendments to the Evidence Act to the effect that with respect to conduct such as flight or concealment, a judge is not obliged to give a specific direction as to what inference the jury may draw from that evidence.

Edwards in the High Court made it clear that there are sound policy reasons for warnings to be given and it is our view that the law should remain unchanged in that regard.

Watching them while they are watching you!

Proposal 15-1 Delay

It is our view that the current law should remain in that it is often difficult for an accused to show specific disadvantages to the defence case occasioned by delay.

It is in our view axiomatic that delay causes difficulties for the defence particularly in terms of the inability to gather reliable evidence which the defence are able to do if a complaint is made very close to an alleged event.

We see no reason for a change in the current law and therefore oppose the proposal.

Proposal 16-1 Amendment of Section 632 of the Criminal Code

This amendment proposes that warnings to a jury about the unreliability of evidence must not use evidence such as “scrutinise with great care”.

The Council takes the view that it is bad enough that the law was changed some time ago to abolish the requirement for corroboration particularly in sexual offences.

The current law requiring the jury to scrutinise with great care certain categories of evidence in relation to specific offences has been derived over a long period of time by Appellate courts and it is our view that the law should remain unchanged.

Yours faithfully

QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

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TERRY O’GORMAN
VICE-PRESIDENT