



QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

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7 November, 2011

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

By Email: louise.shephard@justice.qld.gov.au

Dear Madam

Proposed minimum standard non-parole period scheme

I refer to the Attorney's letter of 20 October 2011 inviting the Qld Council for Civil Liberties (QCCL) to make a submission in relation to the Sentencing Advisory Council ('SAC') report *Minimum Standard Non-Parole Periods*.

This submission has been prepared by Andrew Sinclair, QCCL Vice-President.

I note your letter recites the Government's commitment to introducing legislation to implement a minimum standard non-parole period scheme into Queensland and invites comments and feedback bearing that in mind.

With respect, the Government made that commitment without the benefit of the SAC report and the QCCL makes this submission on the basis that as first law officer of the State, you should invite the Government to reconsider its policy in light of the contents of that report.

I also note that the QCCL was one of the widely consulted groups. The process was inclusive, informative, timely and a model for other agencies of Government to follow.

It was clear that the majority of stakeholders and participants in meetings attended by QCCL did not support any such scheme. Nor does the SAC itself.

I quote from page xiv:

Watching them while they are watching you!

The Terms of Reference request the Council's advice on key aspects of a Queensland SNPP scheme, not advice on the question of whether or not such a scheme should be introduced in Queensland. However, a number of comments have been directed at this issue over the course of the Reference, and the Council considers it appropriate to express its views on this matter. A majority of the Council does not support the introduction of a SNPP scheme in Queensland. In particular, a majority of the Council is concerned that there is limited evidence that SNPP schemes meet their objectives, beyond making sentencing more punitive and the sentencing process more costly and time consuming. Added to this are the possible negative impacts of such a scheme on vulnerable offenders.

And Page 20:

After closely examining the issues, a majority of the Council does not support the introduction of a SNPP scheme in Queensland. In particular, a majority of the Council is concerned there is limited evidence of the effectiveness of SNPP schemes in meeting their objectives, beyond making sentencing more punitive and the sentencing process more complex, costly and time consuming. It also risks having a disproportionate impact on vulnerable offenders, including Aboriginal and Torres Strait Islander offenders and offenders with a mental illness or intellectual impairment.

The Council is further concerned that there are possible policy tensions between the objectives of a Queensland SNPP scheme and the policy objectives of other Queensland and Commonwealth government initiatives including the National Indigenous Law and Justice Framework 2009–2015, the proposed Queensland Aboriginal and Torres Strait Islander Justice Strategy 2011–2014 and the National Disability Strategy 2010–2020; the potential of a SNPP to support the objectives of these strategies would appear to be limited. For example, one of the objectives of the National Indigenous Law and Justice Framework 2009–2015 developed by the Standing Committee of Attorneys-General Working Group on Indigenous Justice is to increase the use of effective diversionary options and other interventions for Aboriginal and Torres Strait Islander offenders; this includes a strategy to 'expand and implement the range of diversionary options and other interventions for Indigenous adults and youth: first-time offenders, offenders beginning to develop offending cycles, and habitual offenders'.

And Page 4:

The majority of the responses from legal practitioners and agencies working with victims and offenders strongly opposed the introduction of a SNPP scheme. This view was clearly evidenced during consultations, at roundtables and in submissions.

The consensus among these stakeholders was that there was no evidence to support the introduction of a SNPP scheme, and that more research was needed to provide an evidence base to support this policy decision before a SNPP scheme is introduced. Many participants expressed frustration that the Council was not asked to consider the merits of introducing a SNPP scheme. Many of these stakeholders also expressed the view that a SNPP scheme would be a form of mandatory sentencing, and improperly interfere with judicial discretion in sentencing. Of those who did provide comment on the structure of a SNPP scheme, should one be introduced, the majority favoured

a standard percentage scheme.

There would seem little point in establishing an expert and independent body which consults widely and then ignoring it.

Should the Government wish to do just that, the QCCL reminds it that the report also points out that:

1. There are in effect, already three forms of standard or minimum not parole periods in Queensland (Page xiv).
2. Legal practitioners and the Courts are concerned that the interpretation and application of such schemes is not straightforward (Page xix).
3. Some legal practitioners and victim support and advocacy groups suggested that SNPPs had failed to meet the scheme's objective of increasing transparency in sentencing on a number of counts. The comment was made that SNPPs have aided transparency in sentencing only insofar as any individual can look up the table of offences and determine the SNPP for a particular offence. In many cases the SNPP is not applied (Page 10).

The QCCL also suggests that:

4. Recommendations 19 should be implemented instead of the scheme.
5. Recommendation 22 should be implemented in advance of any scheme.
6. Recommendation 21 should be implemented by providing that the legislation is not simply reviewed, but is subject to an automatic sunset clause and allow any future Government the chance to consider the review before it acts to extend it.

Yours faithfully

Michael Cope
President
For and on behalf the
Queensland Council for Civil Liberties
7 November 2011