

Your Refⁿ

Our Ref: JP:AB:Criminal Law

26 September 2006

PRIVATE & CONFIDENTIAL

Jonathan Curtis
Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Secretary

INQUIRY INTO THE *CRIMES AMENDMENT (BAIL AND SENTENCING) BILL 2006*

Thank you for the opportunity to provide comments in relation to the *Crimes Amendment (Bail and Sentencing) Bill 2006*. The amendments proposed in this Bill have been considered by our Criminal Law Section.

We recognize the importance of addressing violence and abuse in indigenous communities. As a matter of principle, we believe that unlawful behaviour in any form should be treated appropriately in accordance with the notion of the rule of law.

We believe, however, the proposed amendments to section 16 A of the *Crimes Act 1914* will be detrimental to the operation of the criminal justice system and will have a negative impact on the progress that has been made since the *Crimes Act* was amended by the *Crimes and Other Legislation Amendment Act 1994 (Cth)* to allow judges to take cultural considerations into account when passing sentence. In addition, the proposed amendments may impact adversely on not just Indigenous Australians, but also minority ethnic and religious groups with a unique cultural identity.

We strongly disagree with any reduction in the discretionary powers granted to Magistrates and Judges, as these decision makers, in order to administer fair and appropriate sentences, require sufficient options to appropriately deal with a myriad of underlying factual scenarios when making sentencing determinations.

We also believe that Magistrates and Judges operating in areas with indigenous communities should be given access to more varied options and resources for remand and sentencing of indigenous persons in the context of their local indigenous law and culture.

Rather than removing the current requirement that Judges take into account 'cultural background', as per section 16 A (m) of the *Crimes Act* in determining sentences, we suggest that the Government look at further developing, and making more accessible, the alternate sentencing options available and presently used by Magistrates in certain jurisdictions. In Queensland, these include Conditional Bail programs, including the Youth and Community Combined Action (YACCA) strategy projects at Aurukun, Palm Island, Murgon/Cherbourg and Brisbane, the Murri Court (which sits in Mt Isa and Townsville), and, for juvenile offenders, the use of referrals to drug assessment and education programs.

We fear that should cultural background be removed as a mandatory consideration in the sentencing procedure that successful and highly regarded projects such as these may be adversely affected, to the detriment of the indigenous population.

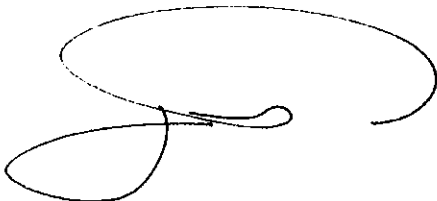
In the administration of justice there is an imperative for the community to have faith, trust and high regard for the legal system. As officers of that legal system, legal professionals strive to focus on delivering justice and equality, which goal is supported by an expansive legislative framework. The narrowing of scope of the legislative framework with respect to 'cultural background' may be seen to impact on the reputation of our legal system by legislatively imposing a set of values that may only reflect those of the more affluent parts of the Australian community.

Without recognising the fundamental human right of cultural identity our legal system may be negatively viewed by our international colleagues, which in turn may impact on our current relationships and future endeavours.

Again we reiterate that the removal of this consideration may tarnish any progressive relationships between the many and varied cultures within Australian society, and may also diminish our trust and faith in the Australian legal system.

Therefore, we submit that the amendments to s 16 A outlined in the proposed Bill not be supported by the Committee.

Yours faithfully,



Joe Pinder
President
Queensland Law Society