
From: COTTON
Sent: Thursday, 24 November 2016 8:38 PM
To: MB_CriminalJustice
Subject: Criminal Justice Discussion Paper – Call for Submissions.

Justice Peter McClellan
Royal Commission into Institutional
Responses to Child Abuse.
GPO Box 5283
Sydney NSW 2001.
Dear Sir

24/11/2016

Re: Criminal Justice Discussion Paper – Call for Submissions.

I would like to submit the following thoughts for your consideration.

1. Section 316 of the Crimes Act 1900 NSW – Conceal serious indictable offence

I believe Section 316 is totally inadequate when dealing with CHILD SEX OFFENCES for a number of reasons. Firstly, the penalty of 2 years imprisonment certainly does not reflect the criminality of the offence nor does it reflect the community's expectation.

Further, the DPP should not require approval of the Attorney General in cases involving Ministers of Religion, nor should there be any consideration for offences disclosed "under confession".

For these reasons I believe that a new offence, SPECIFICALLY ADDRESSING CONCEALING CHILD SEX OFFENCES be created. Victoria already has a specific offence in operation and is known as "FAILURE TO DISCLOSE A CHILD SEXUAL OFFENCE" under Section 327(2) of the Crimes Act 1958 (Vic). Unfortunately the penalty for this offence is only 3 years and is also inadequate.

If new legislation specifically targeted at concealing child sex offences were introduced, the aught penalty significantly higher than that of Section 316 to reflect both the degree of criminality and community expectation. Further, new legislation ought be RETROACTIVE IN APPLICATION as many of these crimes are undetected for years and in some cases decades. It is only recently that we have begun to understand the gravity and life destroying effects of child sex abuse.

2. Crimes Legislation Amendment (Child Sex Offences) Bill 2015

The recently increased Standard Non Parole Periods associated with Crimes Legislation Amendment (Child Sex Offences) Bill 2015 are very welcome and I believe a good start *however* I would also like to put forward that these *new sentencing procedures also be made RETROACTIVE.*

I note the following 3 recent newspaper articles that suggest to me that Judges would like to have more appropriate sentencing at their discretion rather than being bound to the grossly inadequate sentencing procedures that were in effect at the time of the offence *when the gravity of these crimes were not fully understood.*

i) Darcy John O'Sullivan, AKA Brother Dominic 24/9/16

<http://www.theherald.com.au/story/4186175/paedophile-marist-brother-jailed-for-six-years/?cs=305>

In setting a non-parole period of three years, *District Court judge Kate Traill* stressed she had to impose a term that reflected the laws at the time the offences were committed. Judge Traill said "*the sentence does not represent an appropriate sentence for such offences if committed today*".

ii) DAVID O'HEARN 22/8/2016

<http://www.theherald.com.au/story/4110991/hunter-catholic-priest-like-a-standover-man/>

paedophile priest David O'Hearn sentenced to 18 years jail

JOANNE MCCARTHY 22 Aug 2016, 9:56 a.m.

NOTORIOUS Hunter paedophile priest David O'Hearn has been sentenced to 18 years jail for offences against boys in the 1980s and 90s.

Judge Richard Cogswell, who set a nine year non-parole period, said the sentence would have been longer if he had been able to use current sentencing standards rather than those that were in place at the time of the offences.

iii) Schoolteacher Michael Patrick Beh 2/10/16

<http://www.theherald.com.au/story/4201536/singleton-teacher-convicted/?cs=303>

Judge Ellis said he was also required to sentence Beh in "accordance with the sentencing principles that existed in 1989", when the sentencing regime was significantly more lenient.

“This is not an easy sentencing matter,” Judge Ellis said. “Because, on the one hand, sending this man into custody would certainly be a punishment to him.

“But on the other it seems to me to be in the long-term interests of the community to proceed in a way other than sending him into custody for a few months, that would only protect the community for the few months that he is in custody.

“If I place him on a suspended sentence for 18 months the community is likely to be protected for at least that period and, if in fact the rehabilitation is effective, the community would be protected for the balance of his life.”

Conclusion

In my opinion, if there is to be justice for the survivors, appropriate punishment for the perpetrators as well as less victims in the future we need to introduce new specific legislation with harsh penalties *but it needs to be applied retroactively.*

Thank you for the opportunity to put forward these suggestions.

Yours faithfully,

Pastor Bob Cotton

Maitland Christian Church inc

In fellowship with the

AUSTRALIAN CHRISTIAN CHURCHES

PO BOX 20 MAITLAND NSW 2320