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**SUBMISSION TO HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON LEGAL AND
CONSTITUTIONAL AFFAIRS**

***INQUIRY INTO THE CRIMES (CHILD SEX TOURISM)
AMENDMENT BILL 1994***

Miscellaneous Paper
MP 7A

Queensland Law Reform Commission
May 1994

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QUEENSLAND LAW REFORM COMMISSION

Submission to House of Representatives Standing Committee on Legal and Constitutional Affairs

Inquiry into the Crimes (Child Sex Tourism) Amendment Bill 1994

We are yet to receive a copy of the attachments to your letter of 6 May 1994 so are unfortunately unable to comment specifically on the Bill. The Commission's limited resources are also fully committed to its current projects. Nevertheless, we hope that the comments set out below may be of some interest during the examination of the Bill.

The Commission's interest in this Bill stems from its reference on *Consent to Medical Treatment of Young People*.

That reference has been divided into a number of distinct topics for the purposes of research and deliberations. One of those topics is *Female Genital Mutilation (FGM)*.

A Research Paper was published in December 1993 to assist the Commission in understanding the issues surrounding FGM. The paper was circulated to individuals and organisations with an interest or expertise in the issues raised, to verify the accuracy and significance of the information contained in the Research Paper and to seek suggestions as to the most appropriate approach to adopt.

A copy of the Research Paper has been forwarded to you under separate cover.

A concern of the Commission when preparing the Research Paper was that irrespective of the legality (under existing or proposed criminal laws/child protection laws) of the practice of FGM in Queensland, families might avoid possible sanctions by taking girls overseas for FGM. This seems to have occurred in the United Kingdom following the enactment of the *Prohibition of Female Circumcision Act 1985 (UK)*. At page 23 of our Research Paper, Hedley and Borkeno (*Child Protection and Female Genital Mutilation 1992*) are quoted as saying:

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There is evidence to show that if doctors or midwives cannot be found in the UK, families bring traditional circumcisers from abroad, or take their daughters abroad to have the operation performed.

One matter of interest to the Commission referred to in the Research Paper was (p.28):

The Commission will also be considering arguments for and against prohibiting the removal of a child from Queensland for the purposes of having female genital mutilation performed on the child elsewhere.

Interest in this matter was inspired, in part, by the foreshadowed *Crimes (Child Sex Tourism) Amendment Bill 1994*.

The vast majority of submissions to our Research Paper to date support prohibiting the removal of a child from Queensland for FGM.

A concern highlighted by one respondent which could be extrapolated to the legislation which is the subject of your review, was:

Whilst prohibition of removal of a child from Queensland for the mutilation is a positive step, how could it be policed without harassing innocent families.

A further submission suggested extending the prohibition against removal of children from the State (or Australia) to undergo FGM:

To preclude Australian residents travelling overseas in order to have such operations done to themselves or their daughters. [emphasis added]

Of obvious concern to the Commission in relation to prohibiting the removal of children from Queensland to another State or overseas for FGM (which could be extrapolated to the case of known or suspected paedophiles) will be:

the fear of intruding into the affairs of families who are planning to return to their country of origin simply for a holiday or for some other 'innocent' reason.

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- . the fear of labelling people as possible criminals by simply undertaking an examination of their reasons for travelling overseas.
- . the danger of prosecution 'in anticipation' of FGM being regarded as an answer to the problem, rather than resources and effort being put into altering attitudes and beliefs. Legislation alone will not prevent practices occurring (whether it be FGM or paedophilia); rather, it may drive the practices underground in the perpetrator's own State or country.

Most sincerely yours

[signed]

The Hon Mr Justice G N Williams
Chairman

11 May 1994