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Mr John Robertson
Chair
Queensland Sentencing Advisory Council

Via electronic submission

4 June 2019

Dear Mr Robertson,

Thank you for inviting the Queensland Police Union to respond to the Queensland Sentencing Advisory Council on its papers: *Community Based Sentencing Orders*, *Imprisonment and Parole: Options Paper*.

The QPU fully supports a review of Queensland's sentencing regime and appreciates the opportunity to express its views on sentencing. In this regard I have attached a submission addressing the questions raised in the Council's paper.

Whilst addressed in the attached submission, I take this opportunity of drawing to your attention the QPU's view that home detention is a worthwhile sentencing option, and, in the Union's view, if implemented properly could be a realistic solution to prison and watchhouse overcrowding, and the default option for persons ordered to serve actual imprisonment. The QPU recognises there would need to be exceptions for certain offences, such as murder, offences of violence and sexual offences, where the community can only be properly protected through the actual incarceration of such offenders.

While the QPU supports the use of mandatory sentences for certain offences, and believes there is a need for mandatory sentencing for assaults on police and emergency services workers, it also recognises the need to maintain the courts sentencing discretions and that "one size does not necessarily fit all". In this regard the QPU believes a general provision should be enacted which allows a court to impose

an alternate sentence instead of a mandatory sentence where there are exceptional circumstances and imposing the mandatory sentence would cause an actual injustice.

I trust the QPU's submission is of some assistance, and I am available on 3259 1900 should you wish to discuss this matter further.

Yours faithfully,

IAN LEAVERS
GENERAL PRESIDENT & CEO

Queensland Police Union Submission
to the
Queensland Sentencing Advisory Council

The Queensland Police Union ("QPU") provides the following submission for consideration by the Council. For ease of reference, the QPU has adopted the discussion paper's reference numbers when replying to questions.

1 Sentencing Principles

The QPU generally supports the current structure of the *Penalties and Sentences Act* 1992 ("PSA"), section 9. Changes to this section would be needed should some of the below recommendations be adopted. The QPU has identified in the submission below the various changes it believes would be necessary, subject to each recommendation being adopted.

2 Mandatory Sentencing Provisions

The QPU believes there is a place for mandatory sentencing. In particular, it has long been QPU policy to seek Government commitment to introducing mandatory imprisonment for assaults on police officers and emergency service workers, including hospital staff and professionals.

The QPU does however recognise the importance of maintaining a discretion in the Courts to properly exercise their sentencing options and arrive at the most appropriate sentence for each individual. Particularly, the QPU recognises there will be cases where the imposition of a mandatory sentence would create a real injustice.

The Courts have adopted an exceptional circumstances test in some instances where the sentencing discretion requires departure from precedent or comparative sentences. A similar test is embodied in the PSA, s9(4)(b) for example.

The QPU would support a general provision in the PSA which provided that in sentencing an individual for an offence which contains a mandatory provision (other than one which cannot be mitigated, such as murder), the Court must impose such sentence unless there are exceptional circumstances which justify imposing an alternate sentence. Such provision should apply to all offences which contain a mandatory sentencing provision, whenever enacted.

3 Legislative Guidance on Use of CCOs and Imprisonment

There is already some degree of guidance on the use of probation, community service and orders for imprisonment. The QPU believes there is a clear need for such guidance to be statute based, as that allows the Courts to sentence according to the community's expectations, expressed through the Parliament.

The QPU also believes the existing framework where imprisonment is a matter of last resort, with the exception of certain offences, such as sexual offences and offences of violence, is an appropriate position.

The QPU believes community based orders should be able to be imposed on repeat offenders, and young offenders without requiring the consent of the individual. The use of probation and community service orders allows the Courts to impose a form of structure on an offender, but also to give them access to services and treatment which may address the underlying causes of their offending, and hence prevent repeat offending.

The introduction of legislative guidance which requires intervention through the use of community based orders for persons involved in drug crime, domestic violence and other offences of violence, or alcohol abuse as being a preferred initial sentencing option could well assist such offenders to develop the skills to address underlying issues in their lives and reduce the incidence of repeat offending.

4 Home Detention

The QPU strongly supports the use of home detention.

The QPU believes home detention should be a preferred alternative to actual imprisonment, especially where actual imprisonment is ordered as part of a suspended sentence. However, should it be implemented, the QPU believes it would require strict conditions to be first met.

Specifically, an sentence of home detention should be the preferred alternative to actual imprisonment. As such the QPU opposes any use of curfews, but instead believes an offender should be required to reside at a specified address and not depart that address unless in circumstances of real emergency or for purposes authorised by the sentencing Court or a supervising parole officer.

Such circumstances would extend to leaving the premises to:

- attend actual work;
- perform community service;
- attend to medical appointments;
- discharge specific parental responsibilities (such as taking children to school);
- attend training or other courses of study; or
- undertake grocery shopping or attend to other household needs.

The QPU also believes such individuals should be subject to regular monitoring, including being required to wear a GPS tracker. They should be required to abstain from the consumption of alcohol or dangerous drugs (other than those properly prescribed and disclosed to parole authorities).

The QPU believes there should be provision to allow police officers and parole officers to perform checks on such individuals to insure they are complying with the conditions of the home detention order, including by requiring them to provide breath, urine or blood samples for testing.

Any residence would need to be approved as being appropriate, and the QPU believes would need to require the express consent of other occupants before it can be used for home detention.

For home detention to be a viable option to actual imprisonment, the QPU recommends further restrictions would need to be imposed on an offender, and with their consent, other occupants. Those would need to extend to a general ban on the possession of alcohol and dangerous drugs at the premises, and a legislative power for parole officers and police officers to enter and search such premises at any time for the purposes of ensuring compliance, without the need for a search warrant.

There would also need to be a restriction on the number of persons who would be permitted to visit the premises or remain in the premises overnight.

Breaches of the conditions of home detention should administratively be punishable by requiring the offender to serve actual imprisonment for a set period not exceeding two weeks for each breach. Repeated breaches should be a criminal offence and/or grounds for applying to the Court to revoke the home detention order.

Clearly there would be certain offences for which a home detention order would not be appropriate. It is the QPU's view such offences would be those of a sexual nature (unless there were exceptional circumstances), and those involving violence to a domestic partner or another person who ordinarily resides with the offender. Additionally, instances where home detention orders have been previously breached may need to be considered before making such an order.

The ability to also impose community service as a condition of the home detention order would be supported by the QPU.

The Court would also need the ability to impose other conditions outside of a legislated list of requirements, such as limited access to the internet or computer systems for particular types of offenders.

It is the QPU's position the role out of home detention, including the commuting of certain appropriate current orders for actual imprisonment to home detention, has the ability to result in substantial savings to Government by reducing the actual number of prison beds required. Some of those savings could then be used to increase parole and police numbers to allow 24/7 random monitoring of persons on home detention. Such a scheme could operate similar to that already undertaken by police officers responsible monitoring reportable offenders, provided it was properly resourced and funded.

The QPU recognises there may be some resistance to this proposal on the basis homeless persons may not have access to this sentencing option. The QPU acknowledges that issue, but believes adopting such a policy position would allow funds which are presently spent incarcerating individuals would become available as a consequence of home detention. Those same funds could then be used for measures such as providing housing for the homeless and other similar social support services which can prevent the instance of criminal offending.

The use of Government owned housing may also be an option for housing homeless persons whilst serving a period of home detention. For example, it has long been Government policy to purchase homes which are in development corridors; which pending the role out of new infrastructure are rented to the public. For instance the Department of Main Roads owns a large number of residential property throughout Brisbane, which is held pending expansion of the Queensland road network.

It may also be economical for the Department of Corrective Services to acquire housing in major centres which could be used for home detention purposes, where a number of offenders could serve their time.

5 Suspended Sentences

The QPU supports the use of suspended sentences. It does not believe such sentencing options should be abolished, and believes legislative reform as discussed in the paper for coupling suspended sentences with community based orders is also appropriate.

The QPU believes any actual time served pursuant to a suspended sentence should be served as home detention in the first instance, subject to the exceptions the QPU has identified in its response to question 4.

6 Guidance on Setting the Operational Period

The QPU does not believe there is a legislative need to set guidance as to operational periods. The Appeal Courts are able to set, and have set, appropriate principles, and any alleged errors in sentence can be subject to appeal.

7 Power of Courts Dealing with Offender on Breach of a Suspended Sentence

The QPU supports the current legislative approach.

8 Breach Powers

The QPU supports Courts being given the power to activate (or otherwise deal with) suspended sentences imposed by superior courts, subject to the accused having a right to review any activation to the Court which originally imposed the suspended sentence.

The QPU believes this would be a more efficient approach and result in considerable savings in terms of court resources.

Again the QPU believes the default position for any actual imprisonment should be home detention.

9 Combined Suspended Sentence/Community Based Order

The QPU supports this position. Please see comments in relation to Question 5.

Questions 10 to 16

The QPU has no submissions in relation to these questions.

17 Sentencing disposition – Convicted, not further punished.

The QPU would support a legislative basis for convicting an offender and not further punishing them. The QPU does not believe there needs to be legislative guidance on

the circumstances as to when such an order should be made. The Courts have been properly making such orders for an extensive period of time,

18 Ability of Higher Courts to Deal with Breaches of a Magistrates Court CBO

The QPU believes the superior courts should have the express power to deal with breaches of Magistrate Court CBOs when sentencing for other offences. Again this seems a common sense approach and allows for a holistic sentence to be imposed. It will also save court time and resources.

19 Power of Lower Courts to Deal with Higher Courts CBO breach

The QPU supports the lower courts being given this power for the same reasons articulated in response to question 18, subject to an accused having a statutory right to review any lower court order to the court which made the original CBO in addition to any appeal rights.

20 Magistrates Courts Power to Deal with Breach of a CBO Imposed by a Magistrates Court on its own Initiative

The QPU supports the Magistrates Court being given such power, but believes the present section 123 should also remain.