

Queensland Police Union of Employees

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Mr John Robertson
Chair
Queensland Sentencing Advisory Council
GPO Box 2360
Brisbane QLD 4001

Email: [REDACTED]

28 January 2020

Dear Mr Robertson

Thank you for inviting the Queensland Police Union to respond to the Queensland Sentencing Advisory Council review in relation to penalties for assaults on police officers and emergency service workers.

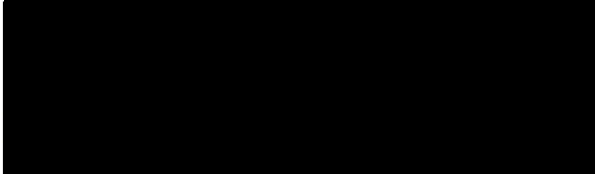
The QPU fully supports the review and appreciates the opportunity to express its views on sentencing. In this regard I have attached a submission addressing the terms of reference which I consider relevant to my membership.

While the QPU supports the use of mandatory sentences 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 [REDACTED] should you wish to discuss this matter further.

Yours faithfully,

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IAN LEAVERS
GENERAL PRESIDENT & CEO

Queensland Police Union Submission
Review of Penalties for Assaults on Police and Emergency Workers

The QPU has long advocated for mandatory or minimum sentencing in relation to assaults on police officers and other emergency service workers, including doctors, nurses and frontline health staff working in our Accident and Emergency units.

Police officers and emergency workers are often confronted with violent and aggressive individuals when performing their duties. Such officers are entitled to a safe work environment, and should expect to go home at the conclusion of their shifts, injury free.

The nature and range of assaults on police and emergency personnel extends from minor altercations, violent assaults, spitting and potentially infecting officers through exposure to bodily fluids, through to attempts to run them down with vehicles and murder in the most exceptional of cases.

It is the QPU's position that police and emergency workers deserve adequate legislative protection for simply doing their duty and serving the people of Queensland. This can only be achieved through a minimum sentencing range being imposed by statute.

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 *Penalties and Sentences Act 1992* ("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.

Minimum sentencing does not necessarily require an offender to serve a term of imprisonment. The use of community based orders as a minimum sentence for the offence of assault police under the *Police Powers and Responsibilities Act 2000*, s790, could be appropriate. The offence of serious assault under the *Criminal Code*, s340 as a matter of practice is reserved for the more serious and violent assaults on officers. The summary offence is used in the majority of cases.

The imposition of a requirement for an offender who commits an offence against s790 to undertake community service would act as a visible and ongoing deterrent to such offender. It would require the offender to pay back to the community.

In terms of the serious assault offence however, the QPU believes a minimum sentence which requires an offender to serve actual prison time should be prescribed by the statute.

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 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.

Such circumstances would extend to leaving the "home" only 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 ensure 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.

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 roll 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 for 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 roll 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.

Finally, the QPU believes the current definition of public officer in the Code is sufficient to cover individuals who are assaulted as a consequence of performing their duties, however is not opposed to the definition being expanded should there be reason to do so.