Queensland Government

Our ref: AG/11/06133; AG/11/06151; 542196/1

Your ref: Petitions

22 DEC 2011

Office of the
Attorney-General
Minister for Local Government
and Special Minister of State

Mr Michael Ries
Acting Clerk of the Parliament
Queensland Parliamentary Service
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Ries

Re: Petition No's 1718-11 and 1829-11

Thank you for your letter regarding petition number 1718-11 received by the Queensland Legislative Assembly on 1 December 2011 and petition number 1829-11 received by the Queensland Legislative Assembly on 30 November 2011, expressing concern about the perceived inadequacy of sentences imposed upon offenders convicted of serious, violent and/or sexual offences and concern that the penalties are not commensurate with community expectations.

The Queensland Government is committed to creating a safe community for all Queenslanders. The criminal justice system plays a vital role in protecting the community from crime.

This Government has a track record of being tough on crime.. Our crime rates are going down. The Queensland Police Service Statistical Review 2010/2011 reported that under this Government, the overall rate of crime has dropped by 30% in the last eleven years. The rate of property offences has almost halved (46%) and the rate of offences against the person has decreased by 25%.

The Australian Bureau of Statistic's 2011 Prisoner Characteristics report states that Queensland's rate of imprisonment is 157.8 per 100,000 of adult population. This is significantly higher than the Victorian rate of imprisonment of 108.5 per 100,000 of adult population.

It must be remembered that sentencing is one of the most difficult and complex functions performed by our courts. In addition to the nature and severity of the offence, the judge

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must balance a number of competing issues. These include the circumstances and consequences of the offence, as well as the offender's cooperation with the administration of justice and his or her character, age and other personal circumstances. The judge must consider the community's expectations, the need to deter the offender and others from future offending and the prospects for the offender's rehabilitation. Rehabilitation is not just for the benefit of the offender but also for the whole community by aiming to re-establish the person as a law-abiding citizen.

Maintaining judicial discretion in the sentencing process is vital to a fair and just criminal justice system because it allows the court to consider the subjective features of each case in order to set upon the appropriate penalty for each offender.

However, the Queensland Government recognises that sentences must also reflect community expectations. Accordingly, on 25 October 2010, the Government announced its intention to introduce a tough new regime of minimum standard non-parole periods for serious offences of violence and sexual offences.

On 20 December 2011, Queensland's Sentencing Advisory Council was asked to examine the appropriate offences to which a minimum standard non-parole period should apply and the appropriate length of the standard non-parole period for each of the offences identified.

The Sentencing Advisory Council provided its report titled, '*Minimum standard non-parole periods*' (final report) on 30 September 2011. The final report was tabled in Parliament on 11 October 2011 and made publicly available on the Sentencing Advisory Council website. The Government invited public comment on the recommendations contained in the final report; including comment from the key legal stakeholders and victims groups.

On 1 December 2011, this Government introduced amendments into Parliament, as part of the Law Reform Amendment Bill 2011, to implement this new sentencing regime of minimum standard non-parole periods for offenders who commit violent or sexual crimes. The new scheme will ensure that serious offenders spend appropriate periods in prison before being eligible to apply for parole release.

The Bill adopts the scheme as recommended by the Sentencing Advisory Council in its final report, *Minimum standard non-parole periods*'.

Under the proposed scheme an offender convicted of a serious offence and sentenced to five or more, but less than 10 years imprisonment must serve a minimum of 65% of their sentence in prison before being eligible to apply for parole unless the court is of the opinion that it would be unjust for them to do so. The new scheme will apply to over 50 offences, including serious sexual and violent offences like manslaughter, rape, armed robbery and child sexual offences.

In Queensland, the law already requires an offender sentenced to 10 or more years imprisonment for a serious offence to serve a minimum of 80% of their sentence in prison before being eligible to apply for parole. Therefore, this new sentencing regime will complement the existing laws targeting serious violent offenders.

The Queensland Government has undertaken a range of other initiatives designed to protect our community from violent and/or sexual offenders.

In 2003, this Government amended the Criminal Code and the *Penalties and Sentences Act 1992 (Qld)* to ensure that sentences imposed on child sex offenders reflect the significant physical and psychological consequences of these offences.

The maximum penalties which apply for the offence of indecent treatment of children under 16 were significantly increased. In relation to a child under 12 years, the maximum was increased from 14 to 20 years imprisonment and with regards to a child aged 12 years or over, the maximum was increased from 10 to 14 years imprisonment.

The *Penalties and Sentences Act 1992 (Qld)* was amended to change the principles that apply in relation to the sentencing of child sex offenders by removing the sentencing principle that imprisonment is a sentence of last resort in the case of such offences.

In 2010, this Government further amended the *Penalties and Sentences Act 1992 (Qld)* to provide that an actual term of imprisonment must be imposed on a child sex offender unless there are exceptional circumstances.

The *Dangerous Prisoners (Sexual Offenders) Act 2003*, introduced by this Government, allows the Attorney-General to apply to the Supreme Court for an order seeking the post-sentence preventative detention, or supervision, of prisoners serving sentences for serious sexual offences who pose a serious danger to the community upon release from prison.

The *Dangerous Prisoners (Sexual Offenders) and other Legislation Amendment Act 2010* made a number of reforms to Queensland's public protection legislation. The amendments enable judges to impose indefinite sentences for many more crimes, including torture, incest, maintaining a sexual relationship with a child and indecent treatment of a child under 16 years of age. The amendments also ensure that declared dangerous sexual offenders are subject to a mandatory supervision period of at least five years once they are released from prison. Declared dangerous sexual offenders also face the prospect of having their supervision orders extended, with the government able to apply for an extra period of supervision when an existing order expires.

Additionally, Queensland's tough regime of monitoring and supervising sexual offenders living in the community is to be further enhanced with the introduction of GPS technology to monitor them.

On 13 October 2011, the Criminal and Other Legislation Amendment Bill 2011 was introduced into Parliament and follows a recent review of child sex-related offences in the

Criminal Code to ensure Queensland's laws reflect community expectations and provide appropriate sanction for criminal activity. The Bill creates a new offence of 'grooming' to target those who engage in the grooming of a child to facilitate the procurement of the child for sexual activity. The Bill also increases the maximum penalties for the child exploitation material offences in the Criminal Code and also the offence of using the internet to procure a child under 16 to engage in a sexual act. A new circumstance of aggravation has been inserted into the offences of sodomy, unlawful carnal knowledge and indecent treatment of a child, to increase the maximum penalties where the offence is committed against a child with an impairment of the mind.

Additionally, the Sentencing Advisory Council has been asked to review the sentences imposed on offenders convicted of sexual crimes against children. The Council released an Issues Paper and a Research Paper on this topic on 8 November 2011 and called for public submissions. Consultation closed on 9 December 2011. The materials remain available on the sentencing advisory council's website: www.sentencingcouncil.qld.gov.au. The Council is due to report back to the Government on this issue on 31 January 2012.

The Sentencing Advisory Council has also been asked to review the sentences imposed on offenders convicted of the offence of armed robbery, in particular where the weapon used is a firearm or knife. This Government is concerned to ensure that the penalties imposed for such offending meet community expectations. The Council is due to report back by 31 July 2012.

In terms of the commission of violent offences upon our public officers, please be assured that the Queensland Government views this conduct very seriously. The Queensland Police Service, Queensland Fire and Rescue Service and Queensland Ambulance Service are made up of exceptional men and women doing an outstanding job in an often challenging and sometimes dangerous environment. This Government is keen to ensure that our officers, including emergency services personnel, carry out their duties with all reasonable and necessary protections.

Under section 340 of the Criminal Code, behaviour which would amount to a common assault, that is an assault where no bodily harm results, is deemed to be a serious assault in certain circumstances. The importance of this offence is that unlike common assaults, which are punishable by three years imprisonment, serious assaults have a higher maximum penalty of seven years imprisonment.

A person who assaults, resists or wilfully obstructs, a police officer acting in the execution of the officer's duties, commits the offence of serious assault. Therefore, if a person spits on an officer or pushes an officer they will be liable to a maximum penalty of seven years imprisonment, even where the officer has received no injury from the assault.

Further, in 2008, this Government amended the offence to confirm that assaults on front line officers, such as ambulance and fire service officers, also constitute a serious assault. This means that these offenders are also liable to a maximum penalty of seven years imprisonment.

Additionally, the offence of serious assault is complemented by a full range of assault offences in the Criminal Code. For example, where an injury or bodily harm is caused by the assault, other more serious offences can be charged, including assault occasioning bodily harm, wounding and grievous bodily harm.

The proposed new sentencing regime of minimum standard non-parole periods will apply to offenders convicted of serious assault.

I trust this information is of assistance.

Yours sincerely

PAUL LUCAS MP
Attorney-General,
Minister for Local Government
and Special Minister of State