



Queensland Sentencing
Advisory Council

Penalties for assaults on public officers

Final Report: Recommendations

August 2020

List of recommendations

The Council has made 13 recommendations, which are listed below.

Chapter 8 – Reforms to the offence of serious assault
<p>Recommendation 1: Retention of section 340</p> <p>Section 340 of the <i>Criminal Code</i> should be retained and redrafted to simplify its operation and narrow its focus to assaults on frontline and emergency workers while performing a function of their office, or because of this.</p>
<p>Recommendation 2: Statutory circumstances of aggravation</p> <p>Statutory circumstances of aggravation regarding assaults of frontline and emergency workers because of their occupation, housed in current offence provisions or separately in the <i>Criminal Code</i>, should not be created.</p>
<p>Recommendation 3–1: Frontline and emergency service workers under new section 340</p> <p>The categories of people captured within section 340 should be limited to the following in circumstances where the assault occurs in the performance of the functions of their office, or because of the performance of those functions:</p> <ul style="list-style-type: none">(a) police officers;(b) watch-house officers as defined under the <i>Police Service Administration Act 1990</i> (Qld);(c) a person appointed or employed under the <i>State Buildings Protective Security Act 1983</i> (Qld);(d) a corrective services officer under the <i>Corrective Services Act 2006</i> (Qld);(e) a youth justice staff member under the <i>Youth Justice Act 1992</i> (Qld);(f) an authorised officer under the <i>Child Protection Act 1999</i> (Qld);(g) a person appointed as an employee under the <i>Fire and Emergency Services Act 1990</i> (Qld), a volunteer of a rural fire brigade registered under the Act, a member of the State Emergency Service, or a volunteer engaged in an activity to support functions under that Act;(h) an ambulance officer under the <i>Ambulance Service Act 1991</i> (Qld);(i) a ‘health service provider’ as defined under the Health Practitioner Regulation National Law:<ul style="list-style-type: none">i. employed under the <i>Hospital and Health Boards Act 2011</i> (Qld); orii. providing health services under the <i>Private Health Facilities Act 1999</i> (Qld); oriii. delivering health services in either:<ul style="list-style-type: none">a. a prison; orb. a detention centre under the <i>Youth Justice Act 1992</i> (Qld);(j) any person acting in aid of a health service provider delivering a health service in the circumstances set out in paragraph (i), where the assault occurs in the course of his or her employment; or(k) a person employed or engaged by the Commonwealth or in another State to perform functions of a similar kind to those set out in paragraphs (a)–(i) and who are on duty in Queensland.
<p>Recommendation 3–2: Term ‘public officer’</p> <p>The term ‘public officer’ should not be used in the redrafted version of section 340, given the lack of clarity about the scope and meaning of this term and that it is separately defined for different purposes in section 1 of the <i>Criminal Code</i>.</p>
<p>Recommendation 4–1: Limiting section 340 to acts of assault</p> <p>The criminal conduct captured within section 340 should be limited to acts of assault on frontline and emergency workers. References to resisting and obstructing a police officer or public officer should be omitted.</p>
<p>Recommendation 4–2: Maximum penalty for section 199 (‘Resisting public officers’)</p> <p>The maximum penalty that applies to offences under section 199 of the <i>Criminal Code</i> (‘Resisting public officers’) should be increased from 2 years’ to 3 years’ imprisonment, taking into account that more serious resist and obstruct charges that might have been charged under section 340 may instead be charged under section 199.</p>

Recommendation 5: Repeal of sections 340(1)(c) and (d)

Subsections (1)(c) and (d) of section 340 should be repealed and the language used within them should not form part of any redrafted section 340 in response to Recommendation 3–1 of this review.

Recommendation 6: Assaults on vulnerable persons under sections 340(1)(g) and (h)

Subsections (1)(g) and (h) of section 340 should be relocated from section 340 to a new, standalone provision targeting assaults on vulnerable people.

Recommendation 7: New section title – ‘Assaults on frontline and emergency workers’

To enhance public understanding of the conduct falling within the scope of this section, and knowledge of relevant penalties that apply, section 340 should be retitled: ‘Assaults on frontline and emergency workers’. Such amendment should only be made if the Council’s recommendations regarding the repeal of subsections (1)(c) and (d) (Recommendation 5) and the relocation of subsection (1)(g) and (h) (Recommendation 6) are adopted. Alternatively, the section might be retitled: ‘Assaults on frontline and emergency workers and vulnerable persons’.

Recommendation 8–1: Penalty framework under section 340

The current penalty framework under section 340, which provides for an aggravated form of penalty in specified circumstances, should be retained and apply across all frontline and emergency workers as defined in the reformed section 340 offence.

Recommendation 8–2: Maximum penalties for serious assault (simpliciter and aggravated)

The current maximum penalty of 14 years for the aggravated form of assault under section 340, and 7 years otherwise, should be retained.

Chapter 9 – Summary assault and obstruct offences**Recommendation 9–1: Section 790 of the PPRA and sections 124(b) and 127 of the CSA**

The separate summary offences of assault or obstruct a police officer under section 790 of the *Police Powers and Responsibilities Act 2000* (Qld) and assault or obstruct a corrective services staff member under section 124(b) or 127 of the *Corrective Services Act 2006* (Qld) should be retained to provide an option to prosecution agencies to charge an offender with a less serious form of offence in circumstances where the seriousness of the assault or obstruction falls below that which would justify a prosecution proceeding as a section 340 serious assault or a section 199 obstruct public officer charge under the *Criminal Code*.

Recommendation 9–2: Maximum penalties for section 790 of the PPRA and sections 124(b) and 127 of the CSA

The current maximum penalties that apply to assaults charged under section 790 of the *Police Powers and Responsibilities Act 2000* (40 penalty units or 6 months’ imprisonment, or 60 penalty units or 12 months’ imprisonment if the assault or obstruction happens within, or in the vicinity of, licensed premises), and sections 124(b) (2 years’ imprisonment) and 127 (40 penalty units or one year’s imprisonment) of the *Corrective Services Act 2006* should be retained.

Recommendation 9–3: New summary offence of assault or obstruct under the *Summary Offences Act 2005*

A new summary offence should be introduced under the *Summary Offences Act 2005* (Qld), which establishes an offence of assault or obstruct a public officer (other than officers to which sections 790 of the *Police Powers and Responsibilities Act 2000* and 124(b) and 127 of the *Corrective Services Act 2006* apply) as a summary offence alternative to an offence being charged under section 340 or 199 of the *Criminal Code*. The objective of introducing this offence should be, over time, to replace the myriad summary offences that exist across the Queensland statute book that effectively target the same behaviour – assault and obstruct a public officer – many of which carry significantly different penalties despite the behaviour involving the same acts of assault and/or obstruction.

The maximum penalty that should apply to this new offence should be 100 penalty units, which is also the maximum fine that can be issued by a Magistrates Court under section 552H of the *Criminal Code*, or 6 months’ imprisonment.

Recommendation 9–4: Repeal of other assault and obstruct offences

Existing summary offences of assault and obstruct should be repealed over time as relevant legislation is reviewed and/or amended. Offences established under national laws or national scheme legislation should be exempted from this requirement.

Recommendation 9–5: Development of internal QPS guidelines to guide exercise of charging discretion

The Queensland Police Service should develop internal guidelines – to supplement the existing *Director’s Guidelines* of the Office of the Director of Public Prosecutions – that will advise officers about what factors might influence the charging discretion when deciding whether to prefer a section 340 offence or a summary charge. This could also address any matters that should not be taken into account in exercising this discretion. The intention of these guidelines should be to support the consistent and appropriate exercise of discretion across the state.

Chapter 10 – Reforms to the sentencing framework**Recommendation 10–1: New aggravating factor for assaults on public officers and other workers**

- (a) A new subsection, modelled on, and placed as part of, existing sections 9(9B) (regarding manslaughter of a child under 12 years), 9(10) (offender who has one or more previous convictions) and 9(10A) (domestic violence offences), should be added to section 9 of the *Penalties and Sentences Act 1992* requiring that when determining the appropriate sentence for an offender convicted of an offence to which subsections (2A) and (3) apply, a court must treat as an aggravating factor the fact that the offence occurred in the performance of the functions of the victim’s office or employment, or because of the performance of those functions or employment.
- (b) The aggravating factor should apply to two classes of victim within the provision, reflecting the NSW model in the *Crimes (Sentencing Procedure) Act 1999*, section 21A(2):
- i. frontline and emergency workers adopting the same definition as under the revised section 340 as set out in Recommendation 3–1; and
 - ii. other victims who are vulnerable because of their occupation. It could contain a non-exhaustive list of examples, such as bus drivers or other public transport workers, taxi drivers, rideshare drivers, health workers, or security officers, but should not be limited to public sector employees and should include volunteers.
- (c) The new section should also have words to the effect that its subject matter must be treated as an aggravating factor if the court considers that it can be reasonably treated as such, having regard to the particular circumstances of the individual case. This is consistent with the effect of sections 9(10) and (10A).
- It should also have an example of when it may not be reasonable to apply the aggravating factor – as was done with ‘exceptional circumstances’ in section 9(10A) – namely, when the offender’s behaviour giving rise to the charge was affected by his or her mental illness.
- (d) It should be made clear in drafting this new section that the court is not to have additional regard to the victim’s occupation in sentencing if that factor is an element of the offence. For example, such an offence would not apply to assaults charged under section 340 of the *Criminal Code*.

Recommendation 10–2: Relationship between new aggravating factor and section 9(3) of the PSA

A complementary amendment should be made to section 9(3) of the *Penalties and Sentences Act 1992* to recognise the new section as being a matter to which ‘the court must have regard primarily to’ equally with the other matters present in section 9(3).

Recommendation 10–3: No change to be made to principles under YJA

The amendments set out in Recommendations 10–1 to 10–2 above should not be mirrored in section 150 of the *Youth Justice Act 1992*, which sets out sentencing principles that apply in sentencing a child for an offence in recognition of the very different principles that apply to the sentencing of children, and their generally lower level of psychosocial maturity and capacity to regulate their behaviour.

Recommendation 11: Arrangements for summary disposition of charges under section 340

No change should be made to the current arrangements under 552A of the *Criminal Code*, which allows for serious assault charges under section 340, including those with aggravating factors, to be dealt with summarily on prosecution election.

Chapter 11 – Institutional responses

Recommendation 12–1: Review of Adult Restorative Justice Conferencing

As part of the development of an updated Adult Restorative Justice Conferencing model, the Queensland Government should consider opportunities to expand the use of restorative justice conferencing in Queensland to improve outcomes for victims and offenders – with specific reference to victims of assaults on public officers and other victims assaulted while at work.

Recommendation 12–2: Reinstatement of Adult Restorative Justice Conferencing as an option for police victims

The reinstatement of Adult Restorative Justice Conferencing as an option for offences involving police as victims should be considered, provided appropriate safeguards can be developed and implemented.

Chapter 12 – Enhancing community knowledge and understanding

Recommendation 13–1: Improving reporting capabilities on sentencing outcomes

The Queensland Government Statistician’s Office should explore ways for information to be captured that identify if the victim of an assault, or an assault-related offence, is a public officer assaulted while at work, or due to their status as a public officer, in a way that can be easily reported on to enable the future reporting of charges, offences and sentencing outcomes in a de-identified form. The victim’s occupation should be captured to enable the reporting of trends over time. This work should be undertaken in consultation with the Queensland Police Service, Court Services Queensland, WorkCover Queensland, and other public sector agencies that hold victim-specific data.

Recommendation 13–2: Enhancing access to sentencing remarks

Court Services Queensland and the Supreme Court Library should continue to work with the judiciary on strategies to make more District Court sentencing remarks publicly available.

Recommendation 13–3: Community awareness campaigns

Queensland public sector agencies should continue to run general community awareness campaigns that include information about the maximum penalties that apply to assaults on public officers.

Priority should be given to targeting campaigns at protecting officers most at risk of such assaults – including ambulance officers, hospital and other health workers and police.

These campaigns and relevant messaging should be shared with staff through internal communication channels, such as staff intranets, to communicate that assaults are never just ‘part of the job’ in order to encourage the reporting of assaults by staff to their managers and, where appropriate, to police. They might also be supported by resources identifying the most common penalties applied for offences sentenced under section 340 of the *Criminal Code*, and summary offence equivalents.