

Submission to the Queensland Sentencing Advisory Council

Penalties for Assaults on Public Officers

1. The Department of Environment and Science (**DES**) wishes to thank the Queensland Sentencing Advisory Council for the opportunity to make a submission in relation to the penalties for assaults on public officers.
2. The legislation administered by DES contains offence provisions relating to the obstruction and/or assault of DES officers, which will be the focus of this submission. DES is of the view that reform to these provisions should be considered to ensure that offenders are appropriately charged and penalised.¹
3. In summary, DES **submits** that:
 - the form of existing obstruct/assault provisions should be consistent across the Acts administered by DES;
 - the obstruct/assault provisions should have broader application, extending beyond assaults which occur when DES officers are executing statutory powers; and
 - the maximum penalties that attach to obstruct/assault provisions should be consistent across the Acts administered by DES and should be increased to include a period of imprisonment.

Question 11: Reform to existing offence provisions

Consistent form of existing offence provisions

4. The legislation administered by DES contains offence provisions regarding the obstruction of public officers. The form of these provisions varies across the Acts administered by DES.
5. Under a number of these provisions, the definition of 'obstruct' includes the act of 'assault'. If a person assaults a DES officer in the exercise or attempted exercise of a statutory power and/or duty, that person could be found to have committed an obstruct offence under the relevant Act.
6. In the case of section 86 of the *Forestry Act 1959*,² the acts of 'obstruct' and 'assault' are treated separately within the same section and accordingly, it is an offence to assault or obstruct a person performing duties or powers under that Act.
7. On the other hand, under section 482 of the *Environmental Protection Act 1994 (EP Act)*, it is an offence to obstruct an authorised person in the exercise of certain powers. However, the meaning of 'obstruct' does not include 'assault' and it is otherwise not an offence under the EP Act to assault a public officer.

¹ Assaults against DES officers are rarely dealt with under the obstruct/assault sections in the legislation administered by DES as these acts are more likely to be reported to the Queensland Police Service.

² *Forestry Act 1959* is jointly administered with the Minister for Agricultural Industry Development and Fisheries.

8. In practice, DES officers may undertake compliance and enforcement activities under several statutes on any given day. Accordingly, assaulting a DES officer in a national park could amount to an offence under the *Nature Conservation Act 1992 (NC Act)*. However, the same act may not constitute an offence in a marine park, under the *Marine Parks Act 2004*, where obstructing an inspector under that statute does not include the act of 'assault'.
9. DES submits that the form of the obstruct provisions should be broadly consistent across the Acts administered by DES and should include the act of 'assault'.

Broader application of existing offence provisions

10. The scope of certain obstruct/assault offences should cover a broader range of circumstances in which an offence is taken to have been committed, extending beyond assaults which occur when DES officers are exercising statutory powers.
11. For example, section 115 of the NC Act provides:

(1)A person must not obstruct a conservation officer in the exercise of a power under this Act, unless the person has a reasonable excuse.

(2)A person is taken to obstruct a conservation officer in the exercise of a power under this Act if the person—

(a)assaults...the officer or a person assisting the officer in the exercise of the officer's powers under this Act...

[our emphasis]

12. This provision excludes situations where a person is assaulted in the execution of public duties, but at the time of the assault, is not exercising a statutory power.³
13. This restricts the application of the offence provision and excludes a wide range of circumstances in which a DES officer could be assaulted. For example, if a conservation officer under the *NC Act* approaches a member of the public in a national park in the execution of his or her duties and is assaulted prior to exercising a power, the act of assault would not amount to an offence under section 115 of the NC Act.
14. Section 86 of the *Forestry Act 1959* has wider application and provides that an offence occurs when an authorised officer is executing powers or duties under that Act.
15. Similarly, obstruct/assault offences in other jurisdictions throughout Australia also demonstrate a wider scope, such as section 169 of the *National Parks and Wildlife Act 1974 (NSW)*.⁴

³ The following offence provisions administered by DES apply to situations where officers are assaulted and/or obstructed in the exercise of a power: section 482 of the *Environmental Protection Act 1994*, section 182 of the *Fisheries Act 1994*, section 91 of the *Marine Parks Act 2004*, section 827 of the *Water Act 2000*, section 243 of the *Waste Reduction and Recycling Act 2011*, section 194 of the *Recreation Areas Management Act 2006*, and section 77 of the *Wet Tropics World Heritage Protection and Management Act 1993*.

⁴ Section 169(2) of the *National Parks and Wildlife Act 1974 (NSW)* provides that *a person shall not: (a) assault...the Chief Executive, any other officer of the Service, an ex-officio ranger or honorary ranger, in the exercise of any of his or her powers, authorities, duties or functions under this Act or the regulations, the Wilderness Act 1987 or regulations under that Act or the Threatened Species Conservation Act 1995 or the regulations under that Act.*

16. Broadening the application of obstruct/assault provisions will ensure that assaults against DES officers are more likely to be caught by the offence provisions.
17. Therefore, DES submits that reform to the existing obstruct/assault provisions contained in the legislation it administers should be considered.

Consistent maximum penalties

18. DES submits that changes to the current maximum penalties that apply to offences that can be charged in circumstances where a public officer has been assaulted should be considered.
19. The maximum penalties that apply for the obstruct/assault provisions are inconsistent across the Acts administered by DES, ranging from a modest fine to imprisonment.
20. For example, the maximum penalty for an offence against section 827 of the *Water Act 2000*⁵ is 500 penalty units. On the other hand, under section 194 of the *Recreation Areas Management Act 2006 (RAM Act)*, the equivalent offence is 165 penalty units. Similarly, the maximum penalty for an offence against 115 of the NC Act is 165 penalty units, however, a custodial sentence of one year imprisonment is also available.
21. Accordingly, assaulting a DES officer in a national park in the exercise of a power could attract a period of imprisonment under the NC Act. However, if that officer moved only a short distance to exercise powers in a recreation area, the maximum penalty for an assault against that officer would be a modest fine under the RAM Act.
22. DES submits that the maximum penalty for these offences should be broadly consistent across the existing obstruct/assault provisions.

Increased maximum penalties

23. DES submits that the maximum penalties available for certain obstruct/assault offences are not appropriate to respond to assaults on DES officers and should be increased to reflect the penalties provided in other legislation for these offences.
24. DES employs large numbers of frontline officers who are responsible for managing and regulating the environment through conducting compliance and enforcement activities across Queensland.
25. DES holds a primary duty under the *Work Health and Safety Act 2011* to ensure the health and safety of its workers.
26. DES officers are often required to perform their statutory duties in situations which present additional risks to their health and safety, which includes the physical and psychological harm caused by obstruct/assault offences.
27. Circumstances which may increase the likelihood of these offences occurring, such as remote and isolated working environments, the requirement to enter private property, wearing departmental identifiers, issuing infringement notices and engaging with distressed stakeholders, impacts DES's ability to control risks to health and safety so far as is reasonably practicable.

⁵ DES administers Chapter 3 of the *Water Act 2000*, and to the extent relevant to Chapter 3, Chapters 5, 6 and 7; Chapter 8, Part 5, jointly is administered with the Minister for Natural Resources, Mines and Energy.

28. Whilst DES is unable to eliminate all risks associated with obstruct or assault offences, it has implemented controls to minimise risks to the health and safety of its workers.
29. Since 2016, there have been at least 42 recorded instances of physical assaults, verbal abuse and threats of violence against DES officers. These incidents have been dealt with in various ways, including by providing workplace supports to DES officers, conducting internal investigations to identify any risk control failures and potential corrective actions, as well as reporting the incident to the Queensland Police Service.
30. The need to deter offenders and others from committing assaults against DES officers is of high priority to protect the safety and security of officers and to ensure that they can conduct lawful duties without fear of being harmed. DES is of the view that the maximum penalties available for certain obstruct/assault offences administered by DES could be increased to more effectively deter assaults on public officers.
31. In 2009, the maximum penalty for the obstruct offence under the EP Act was increased from 100 penalty units to 165 penalty units. The maximum penalty of 100 penalty units was “...*not considered severe enough to reflect the seriousness of the offence*” and it was decided that “...*a penalty similar to that in the Nature Conservation Act 1992*”⁶ was appropriate.
32. Consistent with this approach, DES is of the view that, as a starting point, the maximum penalty for an obstruct/assault offence should be greater than 100 penalty units.⁷
33. In addition, DES submits that the maximum penalty for obstruct/assault offences should include a period of imprisonment, as this would increase the deterrence value of these offences.

⁶ Explanatory Note to the *Environmental Protection and Other Legislation Amendment Bill (No. 2) 2008*, page 65.

⁷ Obstruct offences against section 91 of the *Marine Parks Act 2004* and section 77 of the *Wet Tropics World Heritage Protection and Management Act 1993* carry maximum penalties of 100 penalty units. Similarly, an offence against section 86 of the *Forestry Act 1959* attracts a maximum penalty of 100 penalty units for a first offence and 200 penalty units for a second or subsequent offence against the same section.