

Appendix 1: Terms of Reference

TERMS OF REFERENCE

QUEENSLAND SENTENCING ADVISORY COUNCIL

PENAL TIES FOR ASSAULTS ON POLICE AND OTHER FRONTLINE EMERGENCY SERVICE WORKERS, CORRECTIVE SERVICES OFFICERS AND OTHER PUBLIC OFFICERS

I, Yvette D'Ath, Attorney-General and Minister for Justice, having regard to:

- the Queensland Government and community expectation that police officers and other frontline emergency service workers, corrective services officers and other public officers who face inherent dangers in carrying out their duties, should not be the subject of assault during the execution of their duties;
- the significance of police officers and other frontline emergency service workers, corrective services officers and other public officers needing to have confidence that the criminal justice system properly reflects the inherent dangers they face in the execution of their duty and the negative impacts that an assault in the course of their duties has on those workers, their colleagues and their families;
- the importance of the penalties provided for under legislation and the sentences imposed for assault of frontline public officers being adequate to meet the relevant purposes of sentencing under section 9(l) of the *Penalties and Sentences Act 1992* (Qld), including punishment, deterrence and community protection, while also taking into account the individual facts and circumstances of the case, the seriousness of the offence concerned and offender culpability;

refer to the Queensland Sentencing Advisory Council, pursuant to section 199(l) of the *Penalties and Sentences Act 1992* (PSA), a review of the sentencing options and penalties for assault of police officers and other frontline emergency service workers, corrective services officers and other public officers in the execution of their duty.

In undertaking this reference, the Queensland Sentencing Advisory Council will:

- consider and analyse the penalties and sentencing trends for offences involving assaults against police officers, corrective services officers and all other public officers that fall within the scope of section 340 of the Criminal Code in the execution of their duties, including the impact of the 2012 and 2014 amendments introducing higher maximum penalties, and determine if this is in accordance with stakeholder expectations;
- determine whether it is appropriate for section 340 of the Criminal Code to continue to apply to police officers and other frontline emergency service workers, corrective services officers and other public officers ('public officers') or whether such offending should be targeted in a separate provision or provisions, possibly with higher penalties, or through the introduction of a circumstance of aggravation;
- determine whether the definition of 'public officer' in section 340 of the Criminal Code should be expanded to recognise other occupations, including public transport drivers (e.g. bus drivers and train drivers);

- review section 790 of the *Police Powers and Responsibilities Act 2000* (Qld) and section 124(6) of the *Corrective Services Act 2006* (Qld) and similar provisions in other legislation to assess the suitability of providing for separate offences in different Acts targeting the same offending, including the impact of the lesser offences on sentencing for offences under section 340 of the Code, and whether the penalties imposed on offenders convicted of these offences reflect stakeholder expectations;
- examine relevant offence, penalty and sentencing provisions in other Australian and relevant international jurisdictions to address this type of offending and any evidence of the impact of any reforms;
- identify ways to enhance community knowledge and understanding of the penalties for this type of offending;
- have regard to any relevant statistics, research, reports or publications regarding causes, frequency and seriousness of offending against police officers and other frontline emergency service workers, corrective services officers and other types of public officers;
- consult with stakeholders, including but not limited to the Queensland Police Service, Queensland Ambulance Service, Queensland Corrective Services, Queensland Health, Queensland Fire and Emergency Service, the judiciary, legal profession, employee unions or any other relevant government department and agencies;
- advise on options for reform to the current offence, penalty and sentencing framework to ensure it provides an appropriate response to this form of offending; and
- advise on any matters relevant to this reference.

The Queensland Sentencing Advisory Council is to provide a report on its examination to the Attorney-General and Minister for Justice by **30 June 2020**.*

Dated the 2nd day of December 2019

YVETTE D'ATH

Attorney-General and Minister for Justice

Leader of the House

* Reporting date extended to 31 August 2020. Notified by the Attorney-General and Minister for Justice, Yvette D'Ath, on 29 April 2020.

Appendix 2: Preliminary submissions

No.	Person / Organisation
1.	Security Providers Association of Australia Limited
2.	Queensland Health
3.	Queensland Human Rights Commission
4.	Australian Lawyers Alliance
5.	Joint Submission – Australasian Railway Association, Bus Industry Confederation, Rail, Tram and Bus Union, TrackSAFE Foundation
6.	Goldlinc Pty Ltd – Gold Coast Light Rail
7.	Office of the Public Guardian
8.	Department of Communities, Disability Services and Seniors
9.	Queensland Fire and Emergency Services
10.	Not published
11.	Not published
12.	State Member for Morayfield, Mark Ryan, on behalf of a constituent
13.	Queensland Teachers’ Union
14.	Together Queensland, Industrial Union of Employees
15.	Name withheld
16.	Mark Griffin
17.	Not published
18.	Queensland Nurses and Midwives’ Union
19.	Office of the Information Commissioner Queensland
20.	Not published
21.	Sisters Inside
22.	Legal Aid Queensland
23.	Queensland Police Union of Employees
24.	Transport Workers’ Union (Queensland Branch)
25.	Not published
26.	Prisoners’ Legal Service
27.	Department of Justice Attorney-General
28.	Not published
29.	Bar Association of Queensland

30.	Office of Industrial Relations, Department of Education
31.	Queensland Corrective Services
32.	Department of Youth Justice
33.	Department of Housing and Public Works
34.	Queensland Law Society
35.	Queensland Advocacy Incorporated

Appendix 3: Summary of changes to section 340 of the *Criminal Code*

From	Beginning of dataset	From	08 December 2005	From	01 December 2008	From	29 August 2012	From	05 September 2014	
340(1)(a)	resist or prevent the lawful arrest	340(1)(a)	resist or prevent the lawful arrest	340(1)(a)	resist or prevent the lawful arrest	340(1)(a)	resist or prevent the lawful arrest	340(1)(a)	resist or prevent the lawful arrest	
340(1)(b)	police officer	340(1)(b)	police officer	340(1)(b)	police officer	340(1)(b)	police officer	340(1)(b)	police officer	
340(1)(b)(i)		340(1)(b)(i)		340(1)(b)(i)		340(1)(b)(i)	bites or spits, bodily fluid or faeces	340(1)(b)(i)	bites or spits, bodily fluid or faeces	
340(1)(b)(ii)		340(1)(b)(ii)		340(1)(b)(ii)		340(1)(b)(ii)	bodily harm	340(1)(b)(ii)	bodily harm	
340(1)(b)(iii)		340(1)(b)(iii)		340(1)(b)(iii)		340(1)(b)(iii)	armed with a dangerous or offensive weapon	340(1)(b)(iii)	armed with a dangerous or offensive weapon	
340(1)(c)	unlawfully assaults, resists, or obstructs, any person engaged in the lawful execution of any process against any property, or in making a lawful distress, while so engaged; or	340(1)(c)	unlawfully assaults, resists, or obstructs, any person engaged in the lawful execution of any process against any property, or in making a lawful distress, while so engaged	Break in time series	340(1)(c)	unlawfully assaults any person while the person is performing a duty imposed on the person by law	340(1)(c)	unlawfully assaults any person while the person is performing a duty imposed on the person by law	340(1)(c)	unlawfully assaults any person while the person is performing a duty imposed on the person by law
340(1)(d)	assaults, resists, or obstructs, any person engaged in such lawful execution of process, or in making a lawful distress, with intent to rescue any property lawfully taken under such process or distress; or	340(1)(d)	assaults, resists, or obstructs, any person engaged in such lawful execution of process, or in making a lawful distress, with intent to rescue any property lawfully taken under such process or distress		340(1)(d)	assaults any person because the person has performed a duty imposed on the person by law	340(1)(d)	assaults any person because the person has performed a duty imposed on the person by law	340(1)(d)	assaults any person because the person has performed a duty imposed on the person by law
340(1)(e)	assaults any person on account of any act done by the person in the execution of any duty imposed on the person by law; or	340(1)(e)	assaults any person on account of any act done by the person in the execution of any duty imposed on the person by law		340(1)(e)		340(1)(e)		340(1)(e)	
340(1)(f)	manufacture, trade, business, or occupation	340(1)(f)	manufacture, trade, business, or occupation	340(1)(f)	manufacture, trade, business, or occupation	340(1)(f)	manufacture, trade, or occupation	340(1)(f)	manufacture, trade, business, or occupation	
340(1)(g)	60 years or more	340(1)(g)	60 years or more	340(1)(g)	60 years or more	340(1)(g)	60 years or more; or	340(1)(g)	60 years or more	
340(1)(h)	guide dog, wheelchair or other remedial device	340(1)(h)	guide dog, wheelchair or other remedial device	340(1)(h)	guide dog, wheelchair or other remedial device	340(1)(h)	guide, hearing or assistance dog, wheelchair or other remedial device	340(1)(h)	guide, hearing or assistance dog, wheelchair or other remedial device	
340(2)		340(2)	corrective services officer	340(2)	corrective services officer	340(2)	corrective services officer	340(2)	corrective services officer	
(2AA)		340(2AA)		340(2AA)	public officer	340(2AA)	public officer	340(2AA)	public officer	
340(2AA)(i)		340(2AA)(i)		340(2AA)(i)		340(2AA)(i)		340(2AA)(i)	bites or spits, bodily fluid or faeces	
340(2AA)(ii)		340(2AA)(ii)		340(2AA)(ii)		340(2AA)(ii)		340(2AA)(ii)	bodily harm	
(2AA)(iii)		340(2AA)(iii)		340(2AA)(iii)		340(2AA)(iii)		340(2AA)(iii)	armed with a dangerous or offensive weapon	

Note: green text indicates when a new offence was introduced, red text indicates when an offence was repealed, and orange text indicates when a section was amended.

Appendix 4: Data tables

Table A4-1: Frequency of accepted WorkCover claims for assaults of public officers, by agency and occupation over time, 2014–15 to 2018–19

Reported Occupation	2014–15	2015–16	2016–17	2017–18	2018–19
Queensland Police Service					
Police Officer	488	572	708	570	726
Other/Unknown	10	7	14	9	16
Department of Justice and Attorney-General*					
Prison Officer	53	84	124	38	
Youth Worker	41	46	87	23	
Other/Unknown	13	3	17	3	3
Queensland Corrective Services*					
Prison Officer				59	105
Other/Unknown				5	15
Department of Child Safety, Youth and Women*					
Youth Worker				43	90
Prison Officer				1	19
Other/Unknown				12	28
Department of Communities Child Safety & Disability Services*					
Aged/Disabled/Residential Care Officer	25	29	32	10	
Other/Unknown	28	35	31	16	
Department of Communities Disability Services and Seniors*					
Aged/Disabled/Residential Care Officer				18	30
Other/Unknown				5	15
Department of Health					
Nursing Professionals	144	156	209	218	196
Nursing Assistant	45	72	74	70	63
Health Professionals	21	66	62	31	35
Medical Practitioners	3	7	7	6	2
Other/Unknown	61	105	71	90	72
Department of Education					
Teacher	224	205	259	291	347
Teacher Aide	104	113	120	161	204
Other/Unknown	41	50	39	80	83
Department of Transport and Main Roads					
Other/Unknown	2	10	12	14	17
Queensland Fire and Emergency Services					
Fire Fighter	0	1	1	1	0
Queensland Ambulance Service					
Ambulance Operative	32	47	47	29	44
Other					
Other/Unknown	4	12	9	3	10
Guards and Security Officers					
Department of Health	13	45	63	60	42
Department of Justice and Attorney-General*	3	3	16	10	
Queensland Corrective Services*				7	10
Queensland Police Service	1	0	2	3	4
Department of Transport and Main Roads	0	1	2	3	1
Department of Communities*				0	4
Other	3	8	0	0	0
Total	1,359	1,677	2,006	1,889	2,181

Source: WorkCover – unpublished data, 2014–15 to 2018–19.

Note: Guards and Security Officers are displayed separately as they appeared across many different agencies.

* Over the data period, some agencies were amalgamated, merged, or otherwise affected by Machinery-Of-Government changes. This is reflected by the missing values reported above.

Table A4-2: Summary of custodial penalties for 'acts intended to cause injury' offences carrying a 7-year maximum penalty (MSO)

Offence	Proportion of cases that received a custodial penalty	Length of custodial penalties (years)			
		Average	Median	Minimum	Maximum
Higher courts					
s 340 Serious assault (non-aggravated)* (n=61)	82.0	0.9	0.8 (10 days)	0.0	3.5
s 339(1) Assault occasioning bodily harm (n=701)	80.0	1.5	1.5	0.2	5.0
s 323 Wounding (n=398)	97.0	2.1	2.0	0.2	5.0
Lower courts					
s 340 Serious assault (non-aggravated)* (n=1,253)	54.5	0.6	0.5 (rise)	0.0	3.0
s 339(1) Assault occasioning bodily harm (n=8,144)	50.3	0.8	0.8 (5 days)	0.0	3.0

Data includes: adult offenders, offences occurring on or after 5 September 2014, cases sentenced 2014–15 to 2018–19.

Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

* Includes offences under the following sections: s 340(1)(b), s 340(1)(c), s 340(1)(d), s 340(2), s 340(2AA).

Table A4-3: Summary of custodial penalties for 'acts intended to cause injury' offences carrying a 14-year maximum penalty (MSO)

Offence	Proportion of cases that received a custodial penalty	Length of custodial penalties (years)			
		Average	Median	Minimum	Maximum
Higher courts					
s 340 Serious assault (aggravated)* (n=227)	93.0	1.1	1.0	0.1	5.0
s 320 Grievous bodily harm (n=572)	99.1	3.0	3.0	0.2	8.0
s 320A Torture (n=62)	100.0	5.4	5.2	1.2	10.0
Lower courts					
s 340 Serious assault (aggravated)* (n=1,280)	74.8	0.7	0.5	0.1	3.0

Data includes: adult offenders, offences occurring on or after 5 September 2014, cases sentenced 2014–15 to 2018–19.

Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

* Includes offences under the following sections: s 340(1)(b)(i/ii/iii) and s 340(2AA)(a/b)(i/ii/iii).

Table A4-4: Summary of custodial penalties for common assault and non-aggravated serious assault (MSO)

Offence	Proportion of cases that received a custodial penalty	Length of custodial penalties (years)			
		Average	Median	Minimum	Maximum
Higher courts					
s 340 Serious assault (non-aggravated)* (n=61)	82.0	0.9	0.8 (10 days)	0.0	3.5
s 335 Common assault (n=228)	41.7	0.7	0.5 (rise)	0.0	2.5
Lower courts					
s 340 Serious assault (non-aggravated)* (n=1,253)	54.5	0.6	0.5 (rise)	0.0	3.0
s 335 Common assault (n=9,103)	21.5	0.5	0.5 (rise)	0.0	2.5

Data includes: adult offenders, offences occurring on or after 5 September 2014, cases sentenced 2014–15 to 2018–19.

Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019.

* Includes offences under the following sections: s 340(1)(b), s 340(1)(c), s 340(1)(d), s 340(2), s 340(2AA).

Table A4-5: Restitution and compensation orders for serious assaults of a public officer

Offence	N (cases)	% (of all cases)	Average amount (by case)	Min	Max
340 All serious assault offences (n=7,912)	1,241	15.7%	\$781.70	\$10.00	\$14,500.00
340(1)(a) Intent to commit/resist arrest (n=158)	20	12.7%	\$778.70	\$24.70	\$2,500.00
340(1)(b) Police officer (n=4,945)	811	16.4%	\$722.70	\$10.00	\$5,000.00
340(1)(c)/(d) Performing/performed duty at law (n=247)	30	13.9%	\$533.33	\$100.00	\$1,000.00
340(1)(g) 60 years and over (n=1,413)	253	17.9%	\$850.00	\$30.00	\$14,500.00
340(2) Corrective services officer (n=225)	7	3.1%	\$550.00	\$250.00	\$1,500.00
340(2AA) Public officer (n=1,135)	138	12.2%	\$771.40	\$100.00	\$5,000.00

Data includes: adult and juvenile, lower and higher courts, sentenced 2012-13 to 2018-19.

Note: Each order within a case/offence summed to create a total amount (compensation and restitution) per case, and then averaged.

Appendix 5: Cross jurisdictional analysis: Australia and select international jurisdictions

Table A5 – 1: Examples of specific offences involving assaults on police—Australia, Canada, England and Wales and New Zealand

Jurisdiction	Provision	Nature of act/s constituting offence	Minimum penalty	Maximum penalty
AUSTRALIA				
Commonwealth	<i>Criminal Code</i> (Cth) s 147.1	Engaging in conduct causing harm to a Commonwealth public official etc with the intention of causing harm without that person's consent.	N/A	If the official is a judicial officer or Commonwealth law enforcement officer: 13 years Otherwise: 10 years
New South Wales	<i>Crimes Act 1900</i> (NSW) s 58	Assault, resist, or wilfully obstruct any officer (includes a constable or other peace officer) while in the execution of his or her duty.	N/A	5 years
	<i>Crimes Act 1900</i> (NSW) ss 60(1) and (1A)	(1) Assault, throw a missile at, stalk, harass or intimidate a police officer while in the execution of the officer's duty, although no actual bodily harm caused. (1A) As for (1), but occurs 'during a public disorder'.	N/A	(1) 5 years (1A) 7 years
	<i>Crimes Act 1900</i> (NSW) ss 60(2) and (2A)	(2) Assault a police officer while in the execution of the officer's duty, and by the assault occasion actual bodily harm. (2A) As for (2), but occurs 'during a public disorder'.	No – but in the circumstances listed in s 60(2), a SNPP of 3 years applies	(2) 7 years (2A) 9 years
Northern Territory	<i>Criminal Code</i> (NT) s 189A	Unlawfully assault a police officer (or emergency worker) in the execution of the officer's duty. If: (i) the commission of the offence involved the actual or threatened use of an offensive weapon (defined in s 1 of the Criminal Code); and	If Level 5 offence, and first time convicted of a 'violent offence', 3 months' actual imprisonment If Level 5 offence, and offender has previously been convicted of a 'violent offence': 12 months' actual imprisonment	7 years if victim suffers harm 5 years if victim does not suffer harm

Jurisdiction	Provision	Nature of act/s constituting offence	Minimum penalty	Maximum penalty
Queensland		(ii) the victim suffered physical harm as a result of the offence, it is a Level 5 offence for the purposes of the <i>Sentencing Act 1995</i> (NT). If the victim suffers physical harm as a result of the offence, and the offence is not a Level 5 offence, it is a Level 4 offence.	If Level 4 offence: (irrespective of previous): 3 months' actual imprisonment (<i>Sentencing Act 1995</i> (NT) ss 78CA, 78D, 78DA and 78DB) Exceptional circumstances exemption (ss 78DI, DG) – must still impose a term of actual imprisonment. Suspension or home detention can be ordered for some but not all of the order.	
	<i>Police Administration Act 1978</i> (NT) s 158	Resist a member in the execution of his duty or aid or incite any other person to resist a member in the course of his duty.	N/A	8 penalty units, or 6 months imprisonment
	<i>Criminal Code</i> (Qld) s 340(1)(b)	Assault, resist, or wilfully obstruct, a police officer while acting in the execution of the officer's duty, or any person acting in aid of a police officer while so acting. Aggravating factors: (i) the offender bites or spits on the police officer or throws at, or in any way applies to, the police officer a bodily fluid or faeces; (ii) the offender causes bodily harm to the police officer; (iii) the offender is, or pretends to be, armed with a dangerous or offensive weapon or instrument.	N/A, but court must make a community service order if offence committed in a public place while offender adversely affected by an intoxicating substance, unless court is satisfied the offender is incapable of complying because of any physical, intellectual or psychiatric disability.	7 years, or 14 years where aggravating factors
	<i>Police Powers and Responsibilities Act 2000</i> (Qld), s 790(1)(a)	Assault a police officer in the performance of the officer's duties Aggravating circumstances: Assault or obstruction happens within licensed premises, or in the vicinity of licensed premises: 60 penalty units or 12 months imprisonment	N/A, but court must make a community service order if offence committed in a public place while offender adversely affected by an intoxicating substance, unless court is satisfied the offender is incapable of complying because of any physical, intellectual or psychiatric disability.	40 penalty units or 6 months imprisonment 60 penalty units, or 12 months' imprisonment (aggravating circumstances)

Jurisdiction	Provision	Nature of act/s constituting offence	Minimum penalty	Maximum penalty
South Australia	<i>Criminal Law Consolidation Act 1935</i> (SA) s 20AA	Various conduct captured: (1) cause harm to a prescribed emergency worker (includes a police officer) acting in the course of official duties, intending to cause harm (s 20AA(1)) (2) cause harm to a prescribed emergency worker (includes police officer) acting in the course of official duties, and is reckless in doing so (s 20AA(2)) (3) assault a prescribed emergency worker (includes a police officer) acting in the course of official duties (s 20AA(3)) (4) hinder or resist a police officer acting in the course of official duties, causing harm (s 20AA(4)).	An offence under s 20AA(1), (2) or (4) is a 'designated offence' under s 96 of the <i>Sentencing Act 2017</i> (SA) which limits the availability of suspended sentences in particular circumstances – including where the person is being sentenced as an adult for a designated offence and in the 5 years prior to the offence date, and a court has suspended a sentence of imprisonment or period of detention for another designated offence, unless there are exceptional circumstances.	(1) Cause harm with intent to cause harm: 15 years (2) Cause harm recklessly: 10 years (3) Assault: 5 years (4) Hinder or resist police officer causing harm: 10 years
Tasmania	<i>Criminal Code</i> (Tas) s 114	(1) assault, resists or wilfully obstruct any police officer in the due execution of his duty, or any other person lawfully assisting; (2) assault, resist, or wilfully obstruct any person lawfully arresting or about to arrest any person.	N/A	21 years^
Victoria	<i>Crimes Act 1958</i> (Vic) s 31(1)(b)	Assault or threaten to assault, resist or intentionally obstruct an emergency worker (includes police officer) on duty or custodial officers on duty, knowing or being reckless as to whether the person is such a worker or officer.	N/A	5 years
	<i>Summary Offences Act 1966</i> (Vic) s 51(2)	Assault, resist, obstruct, hinder or delay an emergency worker (includes police officer) on duty, a custodial officer on duty or a youth justice custodial worker on duty.	N/A	60 penalty units or 6 months' imprisonment
Western Australia	<i>Criminal Code</i> (WA) s 318(1)(d)–(e)	Assault a public officer (includes police officer) who is performing a function of his office or employment or on account of his being such an officer or his performance of such a function (s 318(1)(d)). Assaults any person who is performing a function of a public nature conferred on him by law or on account of his performance of such a function)(s 318(1)(e)). Aggravated form: at or immediately before or immediately after the commission of the offence –	Yes – if adult commits offence in 'prescribed circumstances, including where offence committed against a police officer and officer suffers bodily harm; 6 months, or 9 months if aggravating circumstances which cannot be suspended. For offences committed by a 16 or 17-year-old offender (at time of offence),	7 years 10 years (aggravated)

Jurisdiction	Provision	Nature of act/s constituting offence	Minimum penalty	Maximum penalty
		<ul style="list-style-type: none"> (i) the offender is armed with any dangerous or offensive weapon or instrument; or (ii) the offender is in company with another person or persons. <p>Aggravated as to the maximum penalty (but does not enliven mandatory sentence): s 318(la): (temporary, for 12 months only from 4 April 2020) if:</p> <ul style="list-style-type: none"> (i) at the commission of the offence the offender knows that he/she has COVID-19; or (ii) at or immediately before or immediately after the commission of the offence the offender makes a statement or does any other act that creates a belief, suspicion or fear that the offender has COVID-19. 	3 months' imprisonment or youth detention	
OVERSEAS JURISDICTIONS				
Canada	<i>Criminal Code</i> (R.S.C., 1985, c. C-46) s 270	Assault a public officer or peace officer (including a police officer) engaged in the exercise of his or her duty.	N/A	5 years
	<i>Criminal Code</i> (R.S.C., 1985, c. C-46) s 270.01	As above and, in committing such assault the offender: <ul style="list-style-type: none"> (a) carried, used or threatened to use a weapon or imitation weapon; or (b) caused bodily harm to the officer. 	N/A	10 years
England and Wales	<i>Assaults on Emergency Workers (Offences) Act 2018</i> (UK) s 1	Common assault or battery against an emergency worker (includes a constable) acting in the exercise of their functions.	N/A	Fine, 12 months imprisonment, or both
	<i>Police Act 1996</i> (UK) s 89	Assault constable acting in the execution of his or her duty.	N/A	Level 5 fine, 6 months imprisonment or both
New Zealand	<i>Summary Offences Act 1981</i> (NZ) s 10	Assault a constable (or prison officer or traffic officer) acting in the exercise of his or her duty.	N/A	\$4,000 fine or 6 months imprisonment

Notes:

^ All crimes in Tasmania (subject to the provisions of the *Sentencing Act 1997* (Tas) or any other statute) carry a maximum penalty of 21 years: Criminal Code (Tas) s 389.

Table A5- 2: Examples of specific offences involving assaults of public officers — Australia, Canada, England and Wales and New Zealand

Jurisdiction	Provision	Nature of act/s constituting offence	Minimum penalty	Maximum penalty
AUSTRALIA				
Commonwealth	<i>Criminal Code</i> (Cth) s 147.1	Engaging in conduct causing harm to a Commonwealth public official etc with the intention of causing harm without that person's consent.	N/A	10 years, or 13 years if official is judicial officer or law enforcement officer
New South Wales	<i>Crimes Act 1900</i> (NSW) s 58 (Assault with intent to commit a serious indictable offences against certain officers)	Assault, resist, or wilfully obstruct any officer, being a constable, or other peace officer, custom-house officer, prison officer, sheriff's officer, or bailiff while in the execution of his or her duty.	N/A	5 years
	<i>Crimes Act 1900</i> (NSW) s 60A (Assault and other actions against law enforcement officers (other than police officers))	<ol style="list-style-type: none"> (1) Assault, throw missiles at, stalk, harass or intimidate a law enforcement officer (other than a police officer – includes correctional officers, probation and parole officers, juvenile justice officers, Crown prosecutors and DPP staff) although no bodily harm caused. (2) Assault law enforcement officer (other than a police officer) while in the execution of the officer's duty and occasion actual bodily harm. (3) Wound or cause grievous bodily harm to law enforcement officer (other than police officer) as for (2) where offender reckless as to causing actual bodily harm to that officer or another. 		<ol style="list-style-type: none"> (1) 5 years (2) 7 years (3) 12 years
	<i>Crimes Act 1900</i> (NSW) s 60E (Assaults etc at schools)	<ol style="list-style-type: none"> (1) Assault, stalk, harass or intimidate any staff (including volunteer: s 60D) of a school (or student) while the member of staff (or student) is attending a school, although no actual bodily harm is occasioned. (2) Assault occasioning actual bodily harm. (3) Wound or cause grievous bodily harm. 		<ol style="list-style-type: none"> (1) 5 years (2) 7 years (3) 12 years

Jurisdiction	Provision	Nature of act/s constituting offence	Minimum penalty	Maximum penalty
Northern Territory	<i>Health Services Act 1997</i> (NSW) s 67J (Obstruction of and violence against ambulance officers)	By an act of violence against an ambulance officer, intentionally obstruct or hinder officer when providing or attempting to provide ambulance services to another person/s (s 67J(2)). Intentionally obstruct or hinder (without act of violence) (s 67J(1)).		67J(2): 5 years 67J(1): 50 penalty units or 2 years imprisonment (or both)
	<i>Public Health Act 2010</i> (NSW) s 116 (Offence to obstruct or assault persons exercising their functions)	Assault an authorised officer exercising, or attempting to exercise, a function under the Act or regulations (s 116(2)) Intimidates or wilfully obstructs or hinders another person exercising, or attempting to exercise, a function under this Act or the regulations (s 116(1))		100 penalty units or 6 months imprisonment
	<i>Criminal Code</i> (NT) s 155A (Assault, obstruction etc of persons providing rescue, medical treatment or aid)	Unlawfully assault, obstruct or hinder a person who is providing rescue, resuscitation, medical treatment, first aid or succour of any kind to a third person (not specific to 'public officers')	Minimum of 3 months or 12 months actual custody (depending if person previously convicted of a 'violent offence' if: (a) an offensive weapon is used or threatened to be used; and (b) the victim has suffered harm as a result of the assault	5 years, or 7 years if the person endangers the life or causes harm to the third person
	<i>Criminal Code</i> (NT) s 189A (Assaults on emergency workers)	Unlawfully assault an emergency worker (includes member of the Fire and Rescue Service or Emergency Service, an ambulance officer or paramedic, a medical practitioner or health practitioner) in the execution of their duty. If: (i) the commission of the offence involved the actual or threatened use of an offensive weapon (defined in s 1 of the <i>Criminal Code</i> (NT)); and (ii) the victim suffered physical harm as a result of the offence, it is a Level 5 offence for the purposes of the <i>Sentencing Act 1995</i> (NT) (see s 78CA(1) of that Act)	If Level 5 offence, and first time convicted of a 'violent offence', 3 months' actual imprisonment (<i>Sentencing Act 1995</i> (NT) s 78D) If Level 5 offence, and offender has previously been convicted of a 'violent offence': 12 months' actual imprisonment (s 78DA) If Level 4 offence (whether or not offender previously convicted of a violent offence): 3 months' actual imprisonment	If victim does not suffer harm: 5 years If victim suffers harm [^] : 7 years

Jurisdiction	Provision	Nature of act/s constituting offence	Minimum penalty	Maximum penalty
Queensland		If the victim suffers physical harm as a result of the offence, and the offence is not a Level 5 offence for the purposes of the <i>Sentencing Act 1995</i> (NT), it is a Level 4 offence (see s 78CA(2) of that Act)		
	<i>Criminal Code</i> (Qld) s 340 (Serious assault)	Unlawful assault of a person performing a duty imposed on the person by law (s 340(1)(c)) or because the person has performed a duty imposed on the person by law (s 340(1)(d))	N/A	7 years
	<i>Criminal Code</i> (Qld) s 340(2)	Unlawful assault of a working corrective services officer (present at a corrective services facility in his or her capacity as a corrective services officer)	N/A	7 years
	<i>Criminal Code</i> (Qld) s 340(2AA)	Unlawful assault, or resist or obstruct public officer while performing a function of the officer's office, or because the officer has performed a function of the officer's office 'Public officer' is defined to include: (a) a member, officer or employee of a service established for a public purpose under an Act (such as the Qld Ambulance Service); (b) a health service employee; (c) an authorised officer under the <i>Child Protection Act 1999</i> ; and (d) a transit officer.	N/A, but court must make a community service order if offence committed in a public place while offender adversely affected by an intoxicating substance, unless court is satisfied the offender is incapable of complying because of any physical, intellectual or psychiatric disability.	7 years, or 14 years if: (i) the offender bites or spits on the public officer or throws at, or in any way applies to, the officer a bodily fluid or faeces; (ii) the offender causes bodily harm to the public officer; (iii) the offender is, or pretends to be, armed with a dangerous or offensive weapon or instrument.
	<i>Corrective Services Act 2006</i> (Qld) s 124 (Other offences)	Assault or obstruct staff member performing function or exercising a power or is in a corrective services facility (s 124(b))	N/A	2 years
	<i>Fire and Emergency Services Act 1990</i> (Qld) s 150C (Obstruction of persons performing functions)	Obstruct (including assault) an authorised person in the performance of a function under the act	N/A	100 penalty units, or 6 months imprisonment

Jurisdiction	Provision	Nature of act/s constituting offence	Minimum penalty	Maximum penalty
	<i>Police Powers and Responsibilities Act 2000</i> (Qld) s 655A(1)(a) (Offence to assault or obstruct watch-house officer)	Assault a watch-house officer in the performance of the officer's duties	N/A	40 penalty units or 6 months imprisonment.
South Australia	<i>Criminal Law Consolidation Act 1935</i> (SA) s 20AA (Causing harm to, or assaulting, certain emergency workers etc)	<p>Various conduct captured:</p> <p>(1) cause harm to a prescribed emergency worker acting in the course of official duties, intending to cause harm (s 20AA(1))</p> <p>(2) cause harm to a prescribed emergency worker (includes police officer) acting in the course of official duties, and is reckless in doing so (s 20AA(2))</p> <p>(3) assault a prescribed emergency worker (includes a police officer) acting in the course of official duties (s 20AA(3)).</p> <p>'Prescribed emergency worker' includes wide range of officers, including prison officers, community corrections officers, youth justice officers, a person performing duties in a hospital (including medical staff and security officers), paramedics/ambulance officers, and members of a fire service or emergency service.</p>	An offence under s 20AA(1) or (2) is a 'designated offence' under s 96 of the <i>Sentencing Act 2017</i> (SA) which limits the availability of suspended sentences in particular circumstances – including where the person is being sentenced as an adult for a designated offence and in the 5 years prior to the offence date, and a court has suspended a sentence of imprisonment or period of detention for another designated offence, unless there are exceptional circumstances.	<p>(1) Cause harm with intent to cause harm: 15 years</p> <p>(2) Cause harm recklessly: 10 years</p> <p>(3) Assault: 5 years</p>
Victoria	<i>Crimes Act 1958</i> (Vic) s 31(1)(b) (Assaults)	<p>Assault or threaten to assault, resist or intentionally obstruct an emergency worker on duty, youth justice custodial justice worker on duty, or custodial officers on duty, knowing or being reckless as to whether the person is such a worker or officer.</p> <p>'Emergency worker' includes ambulance officers, hospital emergency staff, fire and emergency services officers, volunteer fire fighters.</p>	N/A	5 years

Jurisdiction	Provision	Nature of act/s constituting offence	Minimum penalty	Maximum penalty
Western Australia	<i>Summary Offences Act 1966</i> (Vic) ss 51(2)–(3) (Assaulting, etc. emergency workers, custodial officers, youth justice custodial workers or local authority staff on duty)	Assault, resist, obstruct, hinder or delay an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker; or a member of staff of a local authority in the execution of the member's duty under the Act.	N/A	60 penalty units or 6 months imprisonment
	<i>Summary Offences Act 1966</i> (Vic) s51A 51A(1)–(3) (Assaulting registered health practitioners)	Assault of a registered health practitioner in a hospital or on hospital premises, or who is providing or supporting the provision of, care or treatment to a person other than in a hospital and knowing or being reckless as to whether the practitioner is a health practitioner.	N/A	60 penalty units or 6 months imprisonment
	<i>Criminal Code</i> (WA) s 318(1) (Serious assault)	<p>Assault of:</p> <ul style="list-style-type: none"> a public officer who is performing a function of his office or employment or on account of his being such an officer or his performance of such a function (s 318(1)(d)) any person performing a function of a public nature conferred by law or on account of his performance of such a function (s 318(1)(e)) person acting in aid of a public officer or other person referred to in para (d) or (e) (s 318(1)(f)); the driver or person operating or in charge of – <ul style="list-style-type: none"> (i) a vehicle travelling on a railway; or (ii) a ferry; or (iii) a passenger transport vehicle (s 318(1)(g)) an ambulance officer, or member of a FES Unit, SES Unit or VMRS Group, or member of officer of a private or volunteer fire brigade (s 318(1)(h)) person working in a hospital or who is providing a health service to the public (s 318(1)(i)) a contractor providing court security services or custodial services (s 318(1)(j)) 	<p>Yes – if adult commits offence in 'prescribed circumstances, where offence committed against range of workers providing public functions including a police officer, prison officer, youth custodial officer, or transport security officer, ambulance officer, fire or emergency services officer, person working in a hospital or providing a health service to the public, contracted court security or custodial services officer or prison officer; and the officer suffers bodily harm: 6 months, or 9 months if aggravating circumstances which cannot be suspended.</p> <p>For a 16 or 17-year-old offender, 3 months' imprisonment or youth detention.</p>	<p>7 years</p> <p>10 years (aggravated)</p>

Jurisdiction	Provision	Nature of act/s constituting offence	Minimum penalty	Maximum penalty
		<ul style="list-style-type: none"> a contract worker performing functions under the <i>Prisons Act 1981</i> (s 318(1)(k)). <p>Aggravated form: at or immediately before or immediately after the commission of the offence –</p> <ul style="list-style-type: none"> (i) the offender is armed with any dangerous or offensive weapon or instrument; or (ii) the offender is in company with another person or persons. <p>Aggravated as to the maximum penalty (but does not enliven mandatory sentence): s 318(la): (temporary, for 12 months only from 4 April 2020) if:</p> <ul style="list-style-type: none"> (i) at the commission of the offence the offender knows that he/she has COVID-19; or (ii) at or immediately before or immediately after the commission of the offence the offender makes a statement or does any other act that creates a belief, suspicion or fear that the offender has COVID-19. 		
OVERSEAS JURISDICTIONS				
Canada	<i>Criminal Code</i> (R.S.C., 1985, c. C-46) s 270 (Assault a peace officer)	<p>Assault a public officer or peace officer engaged in the exercise of his or her duty.</p> <p>Definitions of 'public officer' and 'peace officer' are broad and include, in the case of 'public officers', customs officers, member of the Canadian Forces, an officer of the Royal Mounted Police. 'Peace officers' include (in addition to police) justices of the peace, prison officers, fisheries officers, and registered aircraft pilots while the aircraft is in flight.</p>	N/A	5 years
	<i>Criminal Code</i> (R.S.C., 1985, c. C-46) s 270.01 (Assaulting peace officer with weapon or causing bodily harm)	<p>As above and, in committing such assault the offender:</p> <ul style="list-style-type: none"> (a) carried, used or threatened to use a weapon or imitation weapon; or (b) caused bodily harm to the officer. 	N/A	10 years

Jurisdiction	Provision	Nature of act/s constituting offence	Minimum penalty	Maximum penalty
England and Wales	<i>Assaults on Emergency Workers (Offences) Act 2018</i> (UK) s 1 (Common assault and battery)	Common assault or battery against an emergency worker acting in the exercise of their functions. 'Emergency worker' includes police, prison officers, person providing fire or fire and rescue services, person employed or engaged to provide search and/or rescue services, person employed or engaged to provide NHS health services and support services that involve face-to-face interaction with members of the public or people receiving such services.	Fine, 12 months' imprisonment, or both	
New Zealand	<i>Summary Offences Act 1981</i> (NZ) s 10 (Assault on police, prison or traffic officer)	Assault a constable, prison officer or traffic officer acting in the exercise of his or her duty.	N/A	\$4,000 fine or 6 months

Notes: ^ 'Harm' is defined in s 1A of the Criminal Code (NT) to mean: 'physical harm to a person's mental health, whether temporary or permanent': s 1A(1). 'Physical harm' is defined to include: 'unconsciousness, pain, disfigurement, infection with a disease and any physical contact that a person might reasonably object to in the circumstances, whether or not the person was aware of it at the time: s 1A(2). 'Harm to a person's mental health' includes 'significant psychological harm, but does not include mere ordinary emotional reactions such as those of only distress, grief, fear or anger': s 1A(3).

Table A5– 3: Examples of circumstances of aggravation that apply to assault and other offences against the person when committed against specific classes of workers – Australia

Jurisdiction	Provision	Aggravated form of offence	Minimum penalty	Maximum penalty
Northern Territory	<i>Criminal Code</i> (NT) s 174C (Recklessly endangering life)	Offence committed against a public officer who was, at the time of the offence, acting in the course of his or her duty as a police officer, correctional services officer or other law enforcement officer (s 174G).		14 years (cf 10 years if non-aggravated)
	<i>Criminal Code</i> (NT) s 174D (Recklessly endangering serious harm)	As above		10 years (cf 7 years if non-aggravated)
South Australia	<i>Criminal Law Consolidation Act 1935</i> (SA) s 5AA (Aggravated offences)	Aggravated offence if committed against: <ul style="list-style-type: none"> a police officer, prison officer, employee in a (youth justice) training centre or other law enforcement officer knowing victim to be acting in course of duty, or because of actions done or believed to have been taken (s 5AA(1)(c)) a community corrections officer or community youth justice officer knowing the victim to be acting in the course of their official duties (s 5AA(1)(ca)) in case of offence against the person, the victim was engaged in a prescribed occupation or employment (includes emergency work, performing duties in a hospital or in the course of retrieval medicine, passenger transport work, court security officer, animal welfare inspector) whether paid or volunteer, knowing the victim to be acting in the course of the victim's official duties (s 5AA(1)(ka)). 	N/A	Higher penalty applies to offences including: Unlawful threat to kill or endanger life: 12 years (s 19(1)) Unlawful threat to harm: 8 years (s 19(2)) Assault: 5 years (s 20(3)(d)) Assault causing harm: 7 years (s 20(4)(d)) Causing harm intentionally: 13 years (s 24(1)) Causing harm recklessly: 8 years (s 24(2))
Victoria	<i>Sentencing Act 1991</i> (Vic) s 10AA (Custodial sentence for certain offences against emergency workers etc)	Offence committed against an emergency worker on duty, a custodial officer on duty, or a youth justice custodial officer on duty.	Minimum NPP (some exceptions where 'special reason' exists) for following <i>Crimes Act 1958</i> s 15A (Causing serious injury intentionally in circumstances of gross violence): 5 years	Same maximum penalties as for non-aggravated offences

Jurisdiction	Provision	Aggravated form of offence	Minimum penalty	Maximum penalty
		'Emergency worker' includes police officer, ambulance officer, staff providing emergency treatment to patients in a hospital, a member of a fire or emergency service, a volunteer fire-fighter, emergency response workers.	<p>s 15B (Causing serious injury recklessly in circumstances of gross violence): 5 years</p> <p>s 16 (Causing serious injury intentionally): 3 years [or 3 years' detention for young offender 18 years or over, but under 21 if criteria met]</p> <p>s 17 (Causing serious injury recklessly): 2 years [or 2 years' detention for young offender 18 years or over, but under 21 if criteria met]</p> <p>Minimum sentence (unless 'special reason' exists) for following <i>Crimes Act 1958</i> offence:</p> <p>s 18 (Causing injury intentionally or recklessly): 6 months [or 6 months' detention for young offender 18 years or over, but under 21 if other criteria met]</p>	
	<i>Crimes Act 1958</i> (Vic) s 320A (Maximum term of imprisonment for common assault in certain circumstance)	<p>Common assault if:</p> <p>(1)</p> <p>(a) at the time of the assault, the offender has an offensive weapon readily available; and</p> <p>(b) the victim is a police officer on duty or a protective services officer on duty; and</p> <p>(c) the offender knows or is reckless as to whether the victim is a police officer or a protective services officer; and</p> <p>(d) the offender either allows the victim to see the weapon (or its shape) or tells or suggests to the victim they have a weapon readily available; and</p> <p>(e) the offender knows conduct would be likely to cause apprehension or fear or should have known this.</p> <p>(2) As above, but the weapon involved is a firearm or imitation firearm.</p>		<p>(1) Offensive weapon: 10 years</p> <p>(2) Firearm: 15 years</p>

Jurisdiction	Provision	Aggravated form of offence	Minimum penalty	Maximum penalty
Western Australia	<i>Criminal Code (WA) s 297 (Grievous bodily harm)</i>	<p>Aggravated offence if committed against:</p> <ul style="list-style-type: none"> a public officer performing a function of his office or employment, or offence is committed because of this; or a person operating or in charge of a vehicle on a railway (e.g train), ferry, passenger transport vehicle; or an ambulance officer a member of a FES Unit, SES Unit or VMRS Group or a member or officer of a private fire brigade or volunteer fire brigade; or a person working in a hospital or is in the course of providing a health service to the public; or a contracted court security officer or custodial services officer, or a contracted private prison worker. 	<p>Yes</p> <p>Adult offender against certain victim types: 12 months' actual imprisonment (s 297(5)(b))</p> <p>Young offender against certain victim types: 3 months' imprisonment or 3 months' detention (s 297(6)(b))</p>	<p>GBH: 14 years (s 297(4))</p> <p>(10 years where not aggravated due to job type and no other aggravating circumstance)</p>

Table A5– 4: Examples of aggravating factors for sentencing purposes for assaults and other non-fatal offences against specific categories of workers – Australia, Canada, England and Wales and New Zealand

Jurisdiction	Provision	Aggravating factor/s	Specific offence or general application?
New South Wales	<i>Crimes (Sentencing Procedure) Act 1999</i> (NSW) s 21A(2) (Aggravating factors)	<p>(a) the victim was a police officer, emergency services worker, correctional officer, judicial officer, council law enforcement officer, health worker, teacher, community worker, or other public official, exercising public or community functions and the offence arose because of the victim’s occupation or voluntary work;</p> <p>(l) the victim was vulnerable – examples include vulnerability due to the victim’s occupation (such as a person working at a hospital (other than a health worker), taxi driver, bus driver or other public transport worker, bank teller or service station attendant).</p> <p>[Note: s 21A(5) states: ‘The fact any ... aggravating or mitigating factor is relevant and known to the court does not require the court to increase or reduce the sentence for the offence.’]</p>	General application
Canada	<i>Criminal Code</i> (R.S.C., 1985, c. C-46) s 269.01 (Aggravating circumstance – assault against a public transit operator)	Offence committed against a public transit officer (an individual who operates a vehicle (including bus, licensed taxi, train, tram and ferry) used in the provision of passenger transport services to the public, including individual who drives a school bus) engaged in the performance of his or her duty.	<p>Specific offences:</p> <p>s 264.1(1)(a) (Uttering threats to cause GBH – to cause death or bodily harm to any person)</p> <p>s 266 (Assault)</p> <p>s 267 (Assault with a weapon or causing bodily harm)</p> <p>s 268 (Aggravated assault)</p> <p>s 269 (Unlawfully causing bodily harm)</p>
England and Wales	<i>Assaults on Emergency Workers (Offences) Act 2018</i> (UK) s 2 (Aggravating factor)	<p>Offence committed against an emergency worker acting in the exercise of functions as such a worker.</p> <p>Definition of ‘emergency worker’ includes:</p> <ul style="list-style-type: none"> • a (police) constable; • a prison officer; • another person employed or engaged to carry out functions in a prison; • a prisoner custody officer or custody officer in the exercise of escort functions; • a person employed or engaged to provide, fire services or fire and rescue services; 	<p>Specific offences:</p> <p><i>Offences against the Person Act 1861</i> (UK):</p> <p>s 16 (Threats to kill);</p> <p>s 18 (Wounding with intent to cause GBH);</p>

Jurisdiction	Provision	Aggravating factor/s	Specific offence or general application?
		<ul style="list-style-type: none"> a person employed or engaged to provide, search and/or rescue services; a person employed or engaged to provide— <ul style="list-style-type: none"> (i) NHS health services; or (ii) services in the support of the provision of NHS health services, and whose general activities in doing so involve face to face interaction with individuals receiving the services or with other members of the public. <p>Requirement to state in open court the offence is so aggravated (s 2(2)(b)).</p>	<p>s 20 (Malicious wounding);</p> <p>s 23 (Administering poison etc);</p> <p>s 28 (Causing bodily harm by gunpowder etc);</p> <p>s 29 (Using explosive substances etc with intent to cause GBH)</p> <p>s 47 (Assault occasioning actual bodily harm)</p> <p>s 3 of the <i>Sexual Offences Act 2003</i> (Sexual assault)</p> <p>Manslaughter</p> <p>Kidnapping</p> <p>An ancillary offence in relation to the above.</p>
New Zealand	<i>Sentencing Act 2002</i> (NZ) s 9 (Aggravating and mitigating factors)	<p>Victim was:</p> <ul style="list-style-type: none"> a constable, or a prison officer, acting in the course of his or her duty (s 9(1)(fa)); an emergency health or fire services provider acting in the course of his or her duty at the scene of an emergency (s 9(1)(fb)); particularly vulnerable because of his or her age or health or because of any other factor known to the offender (s 9(1)(g)). <p>Statement of aggravating factors does not imply that ‘a factor referred to ... must be given greater weight than any other factor that the court might take into account’ (s 9(4)(b)).</p> <p>Prosecution must prove beyond reasonable doubt the existence of any disputed aggravated fact (s 24(2)(c)).</p>	General application