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Response to the
Queensland Sentencing
Advisory Council
Issues Paper on the
penalties for assaults on a
public officer

June 2020

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List of acronyms and definitions

QCS – Queensland Corrective Services

CS Act – *Corrective Services Act 2006*

CSOLA Bill - *Corrective Services and Other Legislation Amendment Bill 2020*

Corrective services facility – is defined under Schedule 4 of the *Corrective Services Act 2006* (CS Act) and means a prison, the Helana Jones Centre, or a work camp

Criminal Code – Schedule 1 of the *Criminal Code Act 1899*

CSO – Corrective Services Officer means a person who holds appointment as a corrective services officer under section 275 of the CS Act (including both community and custodial officers)

Offender – a person being supervised by Queensland Corrective Services in the community

Prisoner – a person serving a term of imprisonment in a Queensland Corrective Services custodial facility

QPS – Queensland Police Service

QSAC – Queensland Sentencing Advisory Council



Introduction

This document is Queensland Corrective Services' (QCS) submission in response to the Queensland Sentencing Advisory Council's (QSAC) Issues Paper on the penalties for assaults on public officers. The submission contains information and analysis compiled and completed by QCS. It does not represent Government policy. QCS welcomes the review and thanks QSAC for the opportunity to provide input.

Overview

QCS has a workforce of approximately 4,700 frontline staff that supervise almost 30,000 prisoners and offenders across Queensland every day. Operations are complex and are delivered across 11 high security and six low security correctional centres, 13 work camps, 36 community corrections district offices and more than 150 reporting centres throughout Queensland.

Safety is QCS's number one priority. QCS is committed to providing safe environments for our workforce, communities, visitors, prisoners and offenders through concerted action to address and prevent the causes of violence in correctional environments and the community. Like any other workforce, Corrective Services Officers (CSOs) should be able to attend work, perform their job, and return home to their families without experiencing physical threats and violence.

CSOs perform a complex role, balancing risks and expectations to ensure our staff, visitors, prisoners, offenders and the wider community are safe. CSOs must consider every aspect of safety, from infrastructure to operational procedures, training, equipment, policy, legislation and technology.

Everyone has a role to play to maintain a safe environment. CSOs are highly trained professionals responsible for guiding those in custody and under community supervision to become productive members of society. Prisoners and offenders who choose to assault a CSO should receive a penalty proportionate to the level of harm they have caused and significant enough to deter violence in the future. This is in line with section 9 of the *Penalties and Sentences Act 1992* (PSA) that states that sentencing should deter the offender, as an individual, and others from committing the same or similar offences in the future.

While research, and preliminary submissions to the review, noted that prisoners who commit assault are often doing so as an act of defiance or non-compliance with a direction given by a CSO (De Andrade 2012), the consequences for this behaviour should send a clear message that violence is not tolerated in our society or in workplaces. While prisoners and offenders have far poorer health indicators than the general population including disproportionately higher rates of problematic substance use, mental health issues and disability needs (AIHW 2018), CSOs support the individual needs and circumstances of each prisoner or offender to assist them to rehabilitate and successfully transition back into society.

Prisoners and offenders are being held accountable for their crimes and are encouraged to take personal responsibility for desisting from future offending to become contributing members of the community. Those who behave violently and assault others are perpetuating the criminal and anti-social behaviour that led to their sentence of imprisonment or community supervision. Unfortunately, already in 2019-20 (as at 8 June 2020) there has been an increase in the number of serious assaults committed against CSOs with eight prisoner on staff serious assaults, in comparison to six for the same period in 2018-19.

When an assault on a CSO does occur, it not only impacts on the victim but also has a significant impact on the workforce and QCS' operations. For example, in December 2018 staff at Woodford Correctional Centre stopped work in response to a serious assault by a prisoner on a CSO. Again, in June 2019 Wolston Correctional Centre took unprotected industrial action in response to an assault by a prisoner on a CSO. Employees and the Together Union have raised concerns directly with the Minister for Police and Minister for Corrective Services about officer safety and the appropriate application of section 340 of the Criminal Code.

The current wording of section 340 of the Criminal Code is of concern to CSOs who work in correctional centres due to the specific reference to prisoners who assault corrective services officers working in a corrective services facility in section 340(2). Section 340(2) provides a maximum penalty of 7 years imprisonment. Section 340(2AA)



with aggravating circumstances attracts a higher maximum penalty and applies to all other public officers, including frontline workers such as nurses, doctors, teachers and ambulance officers, but also non-frontline staff. Arguably, an offender on a community based order who assaults a CSO working in a community corrections office would be prosecuted under section 340(2AA) which attracts a higher maximum penalty of 14 years imprisonment if the offender bites or spits or throws bodily fluids at the officer, causes bodily harm or is or pretends to be armed with a dangerous or offensive weapon.

Consequently, in October 2019, e-petition 3187-19 and paper petition 3224-19 entitled *Protect Our Prison Officers* were tabled in the Legislative Assembly. The petitions requested the House to amend or omit clauses of section 340 and any other relevant legislative instruments necessary to ensure that consistent maximum sentencing is applied to perpetrators of unlawful assault against any member, officer or employee of a service established for a public purpose under an Act. The two petitions received a combined total of 3,967 signatures.

On 17 March 2020, the Honourable Mark Ryan, Minister for Police and Minister for Corrective Services introduced the Corrective Services and Other Legislation Amendment Bill 2020 (CSOLA Bill) into the Queensland Parliament. This Bill includes an amendment to subsection 340(2) of the Criminal Code to include the aggravating factors that attract the penalty of 14 years imprisonment, to the offence of seriously assaulting a CSO present at a corrective services facility in his or her capacity as a corrective services officer. The Community Safety and Legal Affairs Committee recommended that the Bill be passed, in its report tabled in Parliament on 29 May 2020.

These amendments ensure that the aggravating circumstances and the maximum penalty of 14 years may be applied when a prisoner assaults a CSO present at a corrective services facility in his or her capacity as a corrective services officer. This will ensure that in circumstances where a prisoner bites, spits, throws bodily fluid or faeces, causes bodily harm to the CSO, or if the prisoner is or pretends to be, armed with a dangerous or offensive weapon or instrument, the maximum penalty of 14 years can be applied. In all other circumstances the maximum penalty of 7 years imprisonment remains. The amendment will provide a strong deterrent to this type of behaviour occurring in a closed environment, and reassurance to CSOs of the importance of their health and safety.

Spitting or throwing bodily fluids at another person is a particularly vile act. It is especially malicious as it places the victim under significant and prolonged stress while they await the outcome of testing to determine whether they have contracted an infectious disease from the perpetrator. Unfortunately, because this reprehensible behaviour occurs regularly in prisons, CSOs are exposed to a form of attack that few others in our society must endure. Prisoners and offenders who behave in this manner need to be held accountable for this type of behaviour.

Anyone who assaults those that work on the frontline to support the safety of others needs to receive adequate consequences for their behaviour. This includes prisoners and offenders, who have already received a sanction for anti-social behaviour. The fact that they have already received a community or custodial sentence should not mean that the consequence for their violent behaviour should be less than if they had been in the community.

While section 156A of the *Penalties and Sentences Act* (PS Act) requires a mandatory cumulative sentence to be imposed where the prisoner is already serving a term of imprisonment when they commit an offence under section 340 of the Criminal Code, it does not mean that the prisoner should receive a lesser sentence. A prisoner who assaults a CSO present at a corrective services facility in his or her capacity as a corrective services officer should receive the same penalty as any other person who assaults a public officer, ensuring their sentence is not reduced based on their current period of imprisonment.

CSOs perform a vital frontline community service. Their health and safety in the workplace should be protected due to the public service they perform managing and supervising some of society's most dangerous and complex individuals.

The following responds to questions raised by QSAC in the Issues Paper.



Aggravated assault based on victim status

QUESTION 1.

Should an assault on a person while at work be treated by the law as more serious, less serious, or as equally serious as if the same act is committed against someone who is not at work, and why?

All members of the community have an equal entitlement to not be assaulted when going about their lawful business. Queenslanders should be able to go to work each day and return to their families protected from harm.

However, as frontline workers, CSOs are assaulted by the very people they are responsible for managing and supporting to rehabilitate. This behaviour is unacceptable, and the consequences should be significant enough to deter the individual and others from engaging in such behaviour in the future. CSOs supervise people who exhibit some of the most abhorrent behaviours, including spitting and throwing faeces at others. Not all public servants go to work each day knowing there is a real likelihood that they may be assaulted or have bodily fluids thrown at them.

Increased penalties for assaulting a public officer seek to recognise the risks associated with frontline work and provide a strong deterrent to people who chose to assault those who are working in professions to support or assist the public. This includes police, ambulance officers, doctors, nurses, and CSOs.

QUESTION 2.

If an assault is committed on a public officer performing a public duty, should this be treated as more serious, less serious, or as equally serious as if the same act is committed on a person employed in a private capacity (e.g. as a private security officer, or taxi driver) and why?

Queensland public servants come to work to deliver a public service for the community.

In Queensland, public officers are held to a high standard of accountability. The *Public Sector Ethics Act 1994* and the *Code of Conduct for the Queensland Public Service* (Code of Conduct) require public officers to maintain high standards of ethical behaviour to ensure public sector integrity and accountability. The Code of Conduct extends beyond the workplace in that public employees must ensure that their private conduct maintains the integrity of the public service. Non-compliance with these standards can result in disciplinary action or termination of employment. Public servants also have an obligation to identify and report any behaviour that is not consistent with the Code of Conduct.

The *Human Rights Act 2019* also requires Queensland public entities, including public servants, to consider human rights in all decision-making and action, and only after careful consideration limit human rights in circumstances where it is considered fair and necessary. Public officers have an obligation to respect, protect and promote the human rights of all individuals.

Public officers are not promoting private interests or seeking to make a profit. These staff are expected to work ethically and be accountable for community safety. Therefore, they should be entitled to do so with the strongest protections from harm, ensuring they can come to and go home from work safely.

QUESTION 3.

Should the law treat assaults on particular categories of public officers as being more serious than other categories of public officer, and why?

Not all public officers are exposed to high levels of risk in the workplace. But for those who are, the law should provide the highest level of protection to deter and prevent this type of behaviour.

Frontline staff are QCS's greatest asset and work each day to protect the people of Queensland by dealing directly with some of the most complex and dangerous people in our society. QCS places the human rights of individuals, especially the most vulnerable, at the forefront of service delivery. All CSOs are required to consider



human rights in day-to-day decision making, from front line service delivery to the making of policies and legislation.

Prisoners in custody and offenders in the community are under QCS's supervision due to their criminal behaviour. To be in custody under sentence or under community supervision, an individual has already engaged in behaviour that does not meet community expectations as prescribed under law.

CSOs do not choose who they are responsible for supervising and managing. In custody and in the community, CSOs have an obligation to deal with often dangerous and vulnerable people in complex situations. CSOs manage prisoners in custody that may have significant criminal histories, including malicious behaviours like spitting or throwing bodily fluids at others. Unlike other occupations where employees can choose to walk away from a violent or aggressive individual, CSOs are required to challenge anti-social thinking and behaviours and must continue to work with dangerous, violent or sexual offenders when they come to work.

In a correctional centre, a structured environment is required to maintain safety and security, and prisoners are expected to comply with basic standards of behaviour. CSOs work with prisoners to hold them accountable for their behaviour and support them to engage in pro-social behaviour. CSOs are trained in violence reduction and prevention programs, including the use of relevant tools de-escalation techniques. In addition to this, QCS has implemented measures to increase staff safety, including increasing staffing levels, rolling out body worn cameras and load bearing vests across corrective services facilities, installing additional bunk beds, demand management strategies, extension of prison industries from five to seven days, and implementation of a Modified Unit Routine to alleviate overcrowding pressures.

In the community, CSOs work closely with offenders to support behaviour change. This includes challenging anti-social ideas and behaviours of offenders in a much less controlled environment than prison. CSOs in the community do not carry accoutrements nor are they trained in tactical restraint. CSOs are often required to conduct home visits, which requires them to enter a house with limited knowledge of the people, or possibly weapons, that may be present. CSOs in Community Corrections are reliant on communication skills to de-escalate risk, with a workforce that is largely young and female.

Across the service, CSOs work to rehabilitate offenders, acting as role models, demonstrating the attitudes and behaviours expected of people in custody and under supervision in the community. The harm that is caused by a serious assault is not only felt by the CSO involved and their family, but it extends across the workforce.

HARM

An assault on a CSO can have lasting physical and mental impacts, lead to occupational stress and burnout. In the custodial context, studies have shown that violent interactions with prisoners lead to CSOs experiencing high levels of post-traumatic stress disorder symptoms, burnout and stress, and trauma of all types (Boudoukha et al 2013).

CSOs take home with them the stress and burden of their work each day and this has flow-on impacts for their families. This can transfer to family members and impact on the living environment. CSOs come to work each day to supervise prisoners and offenders who exhibit some of the most difficult and unacceptable behaviours. In custody, there are prisoners who are known to flood their cells with faeces and throw it at others.

[REDACTED]

[REDACTED]

[REDACTED]



The harm that is caused also extends to the other CSOs working in the correctional centre. Increases in assaults in custody lower feelings of safety and increase CSOs level of vulnerability (Sorrensen et al 2011). The assault can impact on the centre's culture and morale, which can also impact on the dynamic and social climate of a facility. This generally creates a culture of fear and nervousness among staff and the wider prison leading to a greater likelihood that use of force may be applied.

The following quote encapsulates the sentiment that what happens in the workplace in a correctional context, impacts significantly on others:

What happens inside jails and prisons does not stay inside jails and prisons. It comes home with prisoners after they are released and with corrections officers at the end of each days shift. When people live and work in facilities that are unsafe, unhealthy, unproductive, or inhumane, they carry the effects home with them. We must create safe and productive conditions of confinement not only because it is the right thing to do, but because it influences the safety, health, and prosperity of all of us (Gibbons & Katzanbach, 2006, Part 1).

Violence against public officials has flow-on costs to government due to lost productivity, sick leave and overtime to cover shifts. Prisoner assaults on CSOs increase the risk of industrial action and civil cases against the service. This has implications for the attractiveness of QCS as an employment option and can lower community confidence in corrective services.

DETERRENCE

QCS delivers high quality services with a committed, professional and resilient workforce. Should an assault occur, it is essential that offenders are held accountable for their actions. Prisoners and offenders that assault CSOs can and do face the consequences of their actions including criminal charges, loss of privileges and consideration of their behaviour by the Parole Board Queensland as part of the parole application process.

The QSAC *Sentencing @ a glance Serious Assault* data shows that the average length of a sentence to imprisonment for assaulting a public officer, with circumstances of aggravation, is 9.2 months. This is for all assaults on police or other public officers where there were aggravating circumstances, and where the serious assault was the most serious offence the offender had committed.

The Issues Paper notes that almost all perpetrators of assault charged under section 340(2) of the Criminal Code received a custodial sentence, as the perpetrators were likely to already be serving a sentence of imprisonment. Those charged in the Magistrates court received an average sentence of 0.7 years. This supports the sentiment among CSOs that the penalties given under the current legislative and sentencing framework for prisoners who assault a CSO working in a corrective services facility do not properly account for punishment and deterrence. Prisoners who assault CSOs do so in a closed environment. While the PSA requires any sentence to be served cumulatively with any current sentence, there is a perception that prisoners 'get off lightly' for their actions as sentences are mitigated in order to compensate for the cumulative requirements.

The following examples illustrate the sentiment that prisoners are not adequately punished for their violent behaviour in custody.

[REDACTED]



[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

There are also a number of other incidents which occur in the community corrections workplace, that while often not prosecuted demonstrate the interactions staff often deal with.

[REDACTED]

[REDACTED]



[REDACTED]

QCS is committed to ensuring QCS CSOs receive holistic support that is responsive to their unique working conditions. This includes supporting CSOs to make criminal complaints against prisoners or offenders who assault them at work and to instil confidence that adequate, just punishment will be imposed. Ensuring that just sentences are delivered will work to encourage CSOs to make a complaint and proceed with court proceedings and criminal investigations.

Responding to the needs of victims

QUESTION 4.

Does the current sentencing process in Queensland adequately meet the needs of public officer victims?

As discussed in the Issues Paper, the criminal justice response to an assault is a critical component of acknowledging what a victim has experienced and communicating to the perpetrator and to the community that the behaviour is unacceptable.

Prisoners and offenders under QCS supervision have already been sentenced to a penalty of imprisonment or supervision or have been remanded in custody due to the risk they pose to the community. It is the role of CSOs to ensure that prisoners and offenders are appropriately managed and supervised, treating them with respect and dignity as they progress through the correctional system.

As noted in response to Question 3, assaults on CSOs have significant impacts on the individual, their family and their colleagues.

The data provided to QSAC for the review identifies that in a significant number of cases the CSO does not progress a formal complaint, and the assault is dealt with as a prisoner breach of discipline. The preference to not progress a formal complaint when assaulted may indicate that the sentencing process is not working in a way that is benefiting the victim.

The sentencing process needs to recognise the impact that an assault on a CSO has, not only to the victim on a personal level, but the message the sentencing process sends to all CSOs who work in the same environment and continue to manage high risk prisoners in custody and in the community.

In addition to this, as prisoners and offenders are already serving a sentence, any new sentence that is subsumed into their existing sentence can undermine the impact of the sentence, or the legitimacy of the sentence for the victim. It can be perceived that there is little, or no consequence for assault, that may continue to have significant impacts for the victim for a long period of time. It also offers little or no personal or general deterrence, as required in section 9 of the PSA.

QUESTION 5.

Should any changes be considered to the current approach to better respond to victim needs? If so, what reforms should be considered?

The Griffith University Literature Review acknowledges the underreporting of workplace assaults. There are numerous reasons for not reporting or following through with a complaint about a workplace assault include fear of retaliation, a perception that reporting incidents will not make a difference and a professional disposition to not report, due to working in a 'caring' role.

QCS has implemented measures to reduce violence in corrective services facilities. This includes the QCS Violence Prevention Strategy and the QCS Officer Safety (Use of Force) Review. To prevent violence in corrective services facilities QCS has increased staffing levels, rolled out body worn cameras and load bearing vests, installed additional bunk beds, implemented demand management strategies, extended prison industries from five to seven days, and implemented a Modified Unit Routine to alleviate overcrowding pressures. QCS has also invested in violence reduction and prevention programs, and the provision of relevant tools, training and de-escalation techniques for staff. Hot spots are also monitored and incidents analysed to address trends and boost staff safety. The QCS Use of Force Review also focuses on the prevention of violence in prisons, with a focus on enhancing CSO health and wellbeing in the workplace.

While QCS is implementing measures to increase CSO safety and support healthy workplaces, QCS considers improvements can also be made to support victims of assault through the criminal justice process and encourage other victims of assault to proceed with criminal charges. This can be supported by ensuring that the sentence is proportionate to the harm caused to the CSO.

Definition of a ‘public officer’

QUESTION 6.

Who should be captured within the definition of a ‘public officer’ and how should this be defined? Are the current definitions under sections 1 and 340 of the Criminal Code sufficiently clear, or are they in need of reform? For example:

- a. Should the definition of ‘public officer’ in section 340 of the Criminal Code be expanded to expressly recognise other occupations, including public transport drivers (e.g. bus drivers and train drivers) and public transport workers?
- b. Should people employed or engaged in another state or territory or by the Commonwealth to perform functions of a similar kind to Queensland public officers who are on duty in Queensland, also be expressly protected under section 340?

QCS supports amendments to clarify who is covered by the definition of ‘public officer’ in the Criminal Code. As discussed in the Issues Paper and identified in Preliminary Submissions to the QSAC Review, it is unclear who is captured by the current definition of public officer under section 340.

Under section 275 of the CS Act the chief executive can appoint an appropriately qualified public service officer or another qualified person as a CSO. As a CSO, this person has the powers given to them under the CS Act and is subject to the directions of the chief executive in exercising the powers. While it is reasonable that CSOs fall within the existing definition of ‘public officer’ in the Criminal Code, the preference to use the specific offence under subsection 340(2) results in the aggravating circumstances and the associated increased penalty not applying. This reinforces the sentiment that CSOs assaulted by a prisoner in a custodial environment have a lesser level of protection under the law than other public officers, including CSOs working in community corrections.

The definition of ‘public officer’ for the purpose of section 340, and the rest of the Criminal Code, should capture CSOs, as defined in Schedule 4 of the CS Act. It should also cover any contracted service providers and Queensland Health staff working in a corrective services facility, as defined in Schedule 4 of the CS Act.

The consistent use of subsection 340(2) of the Criminal Code to prosecute prisoners who have assaulted a CSO present at a corrective services facility in his or her capacity as a corrective services officer, when the aggravating circumstances in 340(2AA) could have been applied, is evidence that the definition of ‘public officer’ as it applies to section 340 needs to be clarified.

The CSOLA Bill seeks to clarify that the aggravating circumstances can also be applied in the circumstances where a prisoner assaults a CSO present at a corrective services facility in his or her capacity as a corrective services officer. QCS supports amendment to the provision, as long as it remains clear that the aggravating



circumstances equally apply to the serious assault offence when a CSO, working in a custodial centre or the community, is a victim.

CSOs deserve recognition and respect for the important work they do to keep Queenslanders safe. CSOs, particularly those in the custodial environment, manage people held against their will, and although the majority of prisoners are compliant, some engage in disruptive and resistive behaviours. In the community, CSOs are responsible for managing these same dangerous and high risk individuals in a much less controlled environment. CSOs that work in community corrections are not trained in self-defence, nor do they have accoutrements for protection. The largely young, female workforce relies on communication skills to deescalate risky situations.

To recognise this unique working environment, all CSOs should be clearly captured under the definition of 'public officer' and be afforded the highest legislative protection against harm in the workplace.

QUESTION 7.

Should assaults on people employed in other occupations in a private capacity, working in particular environments (e.g. hospitals, schools or aged care facilities) or providing specific types of services (e.g. health care providers or teachers) also be recognised as aggravated forms of assault? For example:

- a. by recognising a separate category of victim under section 340 of the Criminal Code — either with, or without, providing for additional aggravating circumstances (e.g. spitting, biting, throwing bodily fluids, causing bodily harm, being armed) carrying a higher maximum penalty;
- b. by stating this as a circumstance of aggravation for sentencing purposes under section 9 of the *Penalties and Sentences Act 1992* (Qld);
- c. other?

QCS supports people employed in other occupations in a private capacity, working in particular environments, being covered by the serious assault provision. QCS engages a range of non-government organisations to deliver programs and services in corrective services facilities, both in custody and the community. This includes psychologists, re-entry service providers and religious visitors. These people are also performing duties on behalf of the government and in the interest of the community, rather than seeking to promote private interests.

Given the unique operating environment of corrections, and heightened risks associated with the work environment, assaults on anyone working in a corrective service facility should be recognised as an aggravated form of assault in comparison to an assault, for example section 335 of the Criminal Code. This is to ensure a strong deterrent for this behaviour and protect people performing an essential community service from harm.

QCS believes it is important to maintain a specific offence for the assault of a public officer for reasons outlined in response to Questions 3 and 6 above.

It is essential that the aggravating circumstances are maintained for instances where a prisoner or offender spits, bites or throws bodily fluids at a CSO. Deliberately spitting or throwing bodily fluids at another person is vile and unacceptable behaviour. Unfortunately, QCS data shows that these actions are a regular element of assaults on CSOs. These actions can result in the victim undergoing months of testing to confirm whether or not they have contracted a disease or virus from the perpetrator. The consequences for such actions should be proportionate to the harm caused.

Assaults by prisoners on corrective services officer under section 340 of the *Criminal Code*

QUESTION 8.

If section 340 of the Criminal Code is retained in its current or amended form, is there a need to retain subsection (2) which applies to assaults by prisoners on working corrective services officers (as defined for the



purposes of that section), or can this type of conduct be captured sufficiently within subsection (2AA)? What are the benefits of retaining subsection (2)?

QCS supports the simplification of section 340 on the basis that CSOs are clearly, beyond doubt, captured under subsection (2AA) or a similar amended subsection. QCS acknowledges the potential unnecessary complexity of specific offence provisions like subsection (2) existing where the conduct could be appropriately captured by a broader public officer provision like subsection (2AA).

The repeal of subsection (2) avoids the circumstances and confusion where the specific CSO offence (subsection 2) and more general public officer offence (2AA) may both apply. As outlined in the CSOLA Bill, it is essential that the circumstances of aggravation provided for public officers in subsection (2AA) with the maximum penalty of 14 years, clearly applies to the assault of a CSO present at a corrective services facility in his or her capacity as a corrective services officer. This view is supported by the Together Union, as outlined in the Parliamentary petition that gained 3567 signatures in support of this amendment in October 2019.

As noted above, CSOs work in a dynamic environment and the workplace health and safety risks of Queensland's corrective services facilities is demonstrated in the increasing number of assaults by prisoners on CSOs.

Repealing subsection (2) may have implications from a statistical and reporting perspective. However, QCS maintains records of incidents that include the assault of a CSO in both the custodial and community settings, including incidents where the perpetrator is dealt with through breach of discipline rather than a criminal offence.

Legal framework for assaults on public officers

QUESTION 9.

Should assaults against public officers continue to be captured within a specific substantive offence provision (serious assault) or, alternatively, should consideration be given to:

- a. making the fact the victim was a public officer performing a function of their office, or the offence was committed against the person because the person was performing a function of their office an aggravating factor that applies to specific offences as a statutory circumstance of aggravation (meaning a higher maximum penalty would apply); and/or
- b. amending section 9 of the *Penalties and Sentences Act 1992* (Qld) to statutorily recognise the fact the victim was a public officer an aggravating factor for sentencing purposes (in which case it would signal the more serious nature of the offence, but would not impact the upper limit of the sentence that could be imposed)?

Assaults against public officers require a separate offence provision to send the clear message denouncing and labelling the behaviour as unacceptable, specifically due to the status of the victim. QCS also supports the symbolic and declarative function a separate provision serves, as recognised by the Tasmanian Sentencing Advisory Council in relation to the Tasmanian provision for emergency services workers in sections 34B(2)-(2A) of the *Police Offences Act 1935* (Tas).

QCS supports a standalone offence for serious assault. QCS also supports amendments to include an aggravating circumstance due to the victim being a public officer, noting that the aggravating circumstance would not adequately replace the standalone offence.

In addition to the labelling and symbolic functions, the stand-alone offence currently recognises additional aggravating circumstances public officers may experience when being assaulted. Including risk of assault by bodily fluid or faeces, bodily harm, or a person being, or pretending to be, armed with a dangerous or offensive weapon or instrument.

The additional circumstances of aggravation serve a similar purpose as the stand-alone offence in denouncing and labelling specific conduct as unacceptable towards a public officer. The circumstances of aggravation also



provide symbolic and declarative recognition of the specific kinds of aggravated assault a public officer may be subjected to.

Amending the PSA to statutorily recognise the fact the victim was a public officer as an aggravating factor for sentencing purposes does not achieve the denouncement and symbolic representation of a standalone offence. Further, it does not achieve the purpose of higher-level aggravating circumstances for certain kinds of assault against public officers which should be considered especially heinous.

QCS supports an aggravating circumstance due to the victim being a public officer across Criminal Code offences, in addition to the existing standalone offence.

Offences of assault and related conduct (resist and obstruct)

QUESTION 10.

What benefits are there in retaining multiple offences that can be charged targeting the same or similar behaviour (e.g. sections 199 and 340 of the Criminal Code as well as sections 655A and 790 of the *Police Powers and Responsibilities Act 2000* (Qld), sections 124(b) and 127 of the *Corrective Services Act 2006* (Qld), and other summary offences)?

It is acknowledged that there is some overlap between the multiple offences that can be charged for the same or similar behaviour both within the Criminal Code as well as in the *Police Powers and Responsibilities Act 2000* (PPRA) and the CS Act. There is some overlap between sections 199 (Resisting public officers) and 340 (Serious assaults) of the Criminal Code, given section 340 of the Criminal Code captures the conduct of resisting lawful arrest and detention. However, section 199 of the Criminal Code is a misdemeanour and attracts a maximum penalty of 2 years imprisonment, while section 340 of the Criminal Code is a crime attracting a maximum penalty of 7 or 14 years imprisonment depending on the circumstances of the assault. Therefore, QCS considers there is a benefit to retaining section 199 of the Criminal Code.

The offences in sections 124(b) *Other offences* and 127 *Obstructing staff member or proper officer of a court* of the CS Act are longstanding provisions consolidated from the repealed *Corrective Services Act 2000* and repealed *Corrective Services Act 1988*. The maximum penalties for these offences are considerably lower than for section 340 of the Criminal Code, being 2 years and 1 year respectively. These penalties align to the penalty in section 199 of the Criminal Code for resisting public officers.

The behaviour that constitutes an offender obstructing a CSO in the exercise of their power (sections 124(b) and 127 of the CS Act) may not rise to the level of assault captured by section 340 of the Criminal Code appropriately captures the assault behaviour. The maximum penalties for sections 124(b) and 127 do not reflect the seriousness of an assault and are often charged in conjunction with section 340 of the Criminal Code. Therefore, it is useful to retain these offences in the CS Act and section 199 of the Criminal Code for the instances where prosecution of a defendant under section 340 of the Criminal Code fails.

Further, as discussed above, amendment to the existing section 340 of the Criminal Code is required to ensure offending against CSO, including the application of aggravating circumstances, is appropriately captured, as proposed in the CSOLA Bill.

QUESTION 11.

Should any reforms to existing offence provisions that apply to public officer victims be considered and if so, on what basis?

As noted above, QCS supports reforms to the existing offence provisions that are in line with the amendments proposed in the CSOLA Bill to section 340 of the Criminal Code. Aggravating factors should apply in circumstances where a prisoner assaults a CSO in a corrective services facility as they do to assaults by offenders in the community, and assaults towards other public officers. This acknowledges the inherent risks associated with performing these roles and goes some way towards addressing the existing discrepancies in

charging practices and sentencing outcomes for these victims. It will also provide CSOs with confidence that the community values their role in keeping the Queensland safe.

Purpose of sentencing for assault on public officers

QUESTION 12.

What sentencing purpose/s are most important in sentencing people who commit assaults against police and other frontline emergency service workers, corrective services officers and other public officers? Does this vary by the type of officer or context in which the assault occurs, and in what way?

The key purposes in sentencing people who commit assault against CSOs are punishment, deterrence and community protection. It is imperative that offenders are held accountable for their actions, that sentences provide a strong deterrent for violent behaviour and that workers are protected from harm in the course of their duties.

Sentencing should also account for the circumstances and context of an assault. CSOs work in dynamic environments with unique risk factors. It is a unique environment where CSOs, in many circumstances' colleagues of the victim, will be required to continue to manage and supervise the perpetrator humanely and fairly after sentencing. Queensland's sentencing regime should reflect this unique work environment and send a strong message of reassurance to CSOs, and all staff that work in corrective services facilities, of the importance of their health and safety in the workplace. Sentencing also needs to send a clear message to deter others from engaging in similar behaviour. While the correctional environment carries inherent risks, workplace assaults are not an inevitable consequence of being a CSO.

As outlined in the response to Question 3, assaults against CSOs influence staff morale, particularly when it is viewed that a prisoner 'gets off lightly' for their actions.

Just as CSOs work every day to protect the community, they too deserve a proportionate level of protection from being harmed while performing this necessary service. A sense among staff that they may be insufficiently protected by current legislative provisions has the potential to undermine their work. QCS can continue to progress reforms for greater staff safety across the correctional environment in Queensland, but if the perception is that offenders cannot be held accountable in proportion to the impact of their crime, the effectiveness of this work will be compromised.

Current penalties and sentencing practices in Queensland

QUESTION 14.

Do existing offences, penalties and sentencing practices in Queensland provide an adequate and appropriate response to assaults against police and other frontline emergency service workers, corrective services officers and other public officers? In particular:

- a. Is the current form of section 340 of the Criminal Code as it applies to public officers supported, or should changes be made to the structure of this section?
- b. Are the current maximum penalties for serious assault (7 years, or 14 years with aggravating circumstances) appropriate in the context of penalties that apply to other assault-based offences such as:
 - i. common assault (3 years);
 - ii. assault occasioning bodily harm (7 years, or 10 years with aggravating circumstances);
 - iii. wounding (7 years);
 - iv. grievous bodily harm (14 years)?
- c. Should any changes be made to the ability of section 340 charges to be dealt with summarily on prosecution election? For example, to exclude charges that include a circumstance of aggravation?
- d. Are the 2012 and 2014 reforms to section 340 (introduction of aggravating circumstances which carry a higher 14 year maximum penalty) achieving their objectives?
- e. Are the current penalties that apply to summary offences that can be charged in circumstances where a public officer has been assaulted, or should any changes be considered?



f. Do the current range of sentencing options (e.g. imprisonment, suspended sentences, intensive correction orders, community service orders, probation, fines, good behaviour bonds) provide an appropriate response to offenders who commit assaults against public officers, or should any alternative forms of orders be considered?

g. Similarly, do the current range of sentencing options for children provide an appropriate response to child offenders who commit assaults against public officers, or should any alternative forms of orders be considered?

h. Should the requirement to make a community service order for offences against section 340(1)(b) and (2AA) of the Criminal Code and section 790 of the *Police Powers and Responsibilities Act 2000*, in accordance with section 108B of the *Penalties and Sentences Act 1992* (unless the court is satisfied that, because of any physical, intellectual or psychiatric disability of the offender, they are not capable of complying) be retained and if so, on what basis?

PENALTIES IN SECTION 340 OF CRIMINAL CODE

The existing offences, penalties and sentencing practices in Queensland do not provide an adequate or appropriate response to assaults against CSOs. The CSOLA Bill proposes to amend the Criminal Code to ensure that CSOs are covered by the higher penalty associated with the aggravating circumstances in subsection 340(2AA) of the Code. The current maximum penalty of 7 years imprisonment for serious assault of a working CSO, under subsection 340(2) of the Criminal Code, with no aggravating features does not reflect the seriousness or circumstances of the assault. In line with the CSOLA Bill, QCS supports aggravating circumstances being applied to the CSO provision, to ensure that any CSO in the community or in custodial facilities who is assaulted in certain circumstances are covered by the 14 year maximum penalty.

This aligns with the expectations of CSOs, the Together Union and the broader community that CSOs should be given the same level of protection by the law. It is also a strong deterrent, signalling that assaults against CSOs will not be tolerated. An assault on a CSO in the community or in the custodial environment should attract the same maximum penalty. This approach continues to allow for police and prosecutorial discretion in charging and judicial discretion in cases where the court considers a lower penalty is appropriate.

CHARGES TO BE DEALT WITH SUMMARILY ON PROSECUTION ELECTION

The prosecution's ability to elect for a charge to be dealt with summarily is supported. However, if the circumstance of aggravation is introduced in subsection 340(2) for serious assaults against CSOs, QCS would question whether it is appropriate for this offence to be dealt with summarily, given the seriousness of the offending.

REFORMS

The 2014 reforms to the Criminal Code inserted a new circumstance of aggravation in subsection 340(2AA) to increase the maximum penalty for assaults on public officers which: involve spitting, biting or the application of bodily fluid or faeces; cause bodily harm; or where the offender is, or pretends to be, armed.

As noted previously, while prisoners who seriously assault CSOs could be charged under subsection 340(2AA) if there are aggravating features, they are more commonly charged under subsection 340(2) even when there are aggravating circumstances to the assault. This has resulted in an inconsistency whereby the maximum penalty for seriously assaulting a CSO in a custodial facility is lower than for a CSO working in community corrections. This indicates that the 2014 reforms are not meeting their stated objectives, particularly in the context of increasing numbers of assaults against CSOs noted in QCS' preliminary submission.

PENALTIES FOR SUMMARY OFFENCES

QCS supports the introduction of higher maximum penalties for summary offences charged in circumstances where a CSO has been assaulted. This would still give the courts discretion in sentencing defendants but would provide a greater deterrent for offenders and prisoners and would improve the confidence of QCS staff and the community in the sentencing framework.

SENTENCING OPTIONS

QCS notes there are a range of sentencing options available to the courts and that ultimately the sentence imposed on a defendant is a matter of judicial discretion. Sentencing prisoners to short orders of imprisonment, to compensate for the cumulative nature of the sentence due to the PSA, sets a precedent that consequently influences future sentences.

Notwithstanding the above, QCS does not consider there is a need to explore alternative options.

Reform options

QUESTION 15.

If the Government was to introduce sentencing reforms targeting assaults on public officers in general, or specific categories of public officers, on the basis that current sentencing practices are not considered adequate or appropriate, what changes would you support or not support?

QCS supports sentencing reform targeting assaults on public officers in line with the amendments proposed in the CSOLA Bill. Current sentencing practices are not meeting the need of CSOs as victims of assault. Anyone who assaults a CSO should receive a punishment that is commensurate with the harm they have caused and significant enough to deter the perpetrator and others from engaging in this behaviour. Current sentencing practices are not achieving this objective.

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