Queensland Sentencing Advisory Council

Penalties for assaults on public officers

Final Report

August 2020

Warning to readers

This report contains subject matter that may be distressing to readers. Material describing assaults committed on police, other emergency services personnel, corrective services officers and other public officers, including case studies drawn from sentencing remarks, and descriptions of the impact these offences can have on victims are included in this report. If you need to talk to someone, support is available:

Lifeline Australia: 13 11 14

Victim Assist Queensland: 1300 546 587 (business hours) or email: VictimAssist@justice.qld.gov.au

You may also be able to seek advice and support from your current employer and/or employee union. Visit their websites for more information.

Penalties for assaults on public officers: Final Report

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The Queensland Sentencing Advisory Council

The Queensland Sentencing Advisory Council is established by section 198 of the *Penalties and Sentences Act 1992* (Qld). The Council provides independent research and advice, seeks public views and promotes community understanding of sentencing matters. The Council's functions, detailed in section 199 of the Act, include to:

- inform the community about sentencing through research and education;
- engage with Queenslanders to understand their views on sentencing; and
- advise the Attorney-General on matters relating to sentencing, at the Attorney-General's request.

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Letter to the Attorney-General

31 August 2020

The Honourable Yvette D'Ath

Attorney-General and Minister for Justice, Leader of the House

GPO Box 149

Brisbane Qld 4001

Dear Attorney-General

I am pleased to provide the Queensland Sentencing Advisory Council's *Penalties for assaults on public officers: Final Report*.

This final report addresses the Terms of Reference you referred to the Council on 2 December 2019.

Yours sincerely

John Robertson

Chair

Queensland Sentencing Advisory Council

Preface

This report represents the Council's work to understand and reform sentencing for assaults on public officers.

While the Council is committed to the principle that all individuals should be considered equal before the law, it is a historical fact that assaulting a police officer has always been an offence that attracts a higher penalty in Queensland than assaults of others in the community. Section 340 ('Serious assaults'), which formed part of the original *Criminal Code* from its commencement in 1901, extended this protection to those performing duties imposed by law, and who were assaulted in other defined circumstances.

Over time, and with incremental amendment to section 340, more and more classes of people have been recognised and included in the offence, which attracts a significant maximum penalty of 14 years' imprisonment for the aggravated form where committed against a police officer, corrective services officer, or other public officer. Compounding this complexity, there are a number of alternative charge options scattered throughout the statute books creating offences of resist, assault or obstruct a public officer carrying out a range of public roles in the community. Furthermore, a range of offences for assault and offending causing very serious physical harm apply to any victim, regardless of occupation.

The Council affirms the right of all workers in our community to be able to do their job safely. We have had the benefit of hearing the personal accounts of individuals who have been directly affected by assault in the workplace, and also the broader work being done and planned to be done as a priority by industries and organisations to prevent workplace violence. We acknowledge that the criminal justice process can be a daunting and disempowering experience for many victims of crime, and that restorative justice conferencing may deliver improved outcomes for all concerned.

Worker safety is particularly important for those in our midst whose jobs are designed to protect the community and respond to emergencies. Since the advent of COVID-19, the importance of the work of frontline and emergency workers has been starkly demonstrated. We expect a great deal from our public health and other emergency workers in this environment, who are at the forefront of halting the spread of the virus. Along with these workers, we also expect much from our police and corrective services officers, who enforce the law and deal daily with criminal behaviour, as well as our paramedics, firefighters, defence force members and other health and emergency staff. Not one of these officers should ever consider that violence is 'just part of the job'.

Another critical consideration for the Council has been to gain an understanding of the circumstances of these offences. Whether it be a police call-out to a noise complaint, a paramedic called to a health crisis, or someone lashing out in a correctional centre, emergency situations very often involve the most vulnerable members of our community. People who have mental health or cognitive impairment, people with drug or alcohol dependence, people in situations of domestic and family violence, people who have experienced significant and ongoing trauma in their lives. Many of these individuals have had negative and confrontational experiences with first responders and often react accordingly. In most of these situations, knowledge that they may be subject to a higher penalty if they assault someone in authority will not deter them from doing so in that moment. Sentencing options that aim to address chronic health and social issues have a role to play, as do the services that can assist people to address their problems.

Our report recommends several important changes to the structure of offences and penalties for assault in the workplace. Firstly, we recommend the introduction of an aggravating sentencing factor in section 9 of the *Penalties and Sentences Act 1992* (Qld) to signal that if a victim of an offence that involved violence or physical harm was made vulnerable because of their job, no matter what their job is, this should be treated more seriously for sentencing purposes.

Secondly, we recognise the unique occupational vulnerability of frontline and emergency workers in the proposed re-worded offence of 'assault of a frontline or emergency worker' (formerly 'serious assault'). These are workers whose job it is to intervene in potentially dangerous situations. They have been trained for and tasked with community protection and to assist in an emergency, and we acknowledge the increased seriousness of an assault on these workers.

We hope to see, in time, the repeal of a range of resist, assault or obstruct offences in legislation outside the *Criminal Code* through the creation of a new summary offence, and we recommend an increase from two to three years' imprisonment as the maximum penalty for the more serious offence of resisting public officers in section 199 of the *Criminal Code*, taking into account that acts of obstruction, as distinct from assaults, will no longer be caught within scope of the new section 340.

Finally, we recommend that assaults against other classes of vulnerable people currently included in section 340 — those aged over 60 years and those who rely on a guide, hearing or assistance dog, wheelchair or other remedial device — which carry higher maximum penalties should be relocated to a new offence section separate from the re-worded section 340, which will deal exclusively with assaults of 'frontline and emergency workers'.

We acknowledge the work of those Council members who sat on the Project Board, which has been responsible for all decisions associated with this report. We are indebted to the many stakeholders we met with and who provided a submission — for all your efforts and contributions to our work, we thank you. And finally, our gratitude to the Council Secretariat, who provide the evidence and analysis that gives the Council the ability to make recommendations based on informed consideration. Their work is of the highest quality and underpins the extensive work done by the Council in 2020, including this reference, under the cloud of the COVID-19 crisis. We are proud and fortunate to work with such a committed and talented group of people.

John Robertson

Chair

Cheryl Scanlon

Project Sponsor

Acknowledgments

The Council's inquiries are informed by the knowledge and expertise of its members, research and policy analysis undertaken by its staff, and the contribution of key criminal justice agencies, other stakeholders and community members.

The Council would like to acknowledge the contributions of all those who made submissions, attended meetings to discuss issues relating to the review, and provided information to inform the development of this Final Report. While not exhaustive, those who have contributed submissions to the review included:

- Aboriginal and Torres Strait Islander Legal Service (Qld);
- Australasian College for Emergency Medicine;
- Australasian Railway Association;
- Australian Lawyers Alliance;
- Bus Industry Confederation;
- Bar Association of Queensland;
- Department of Agriculture and Fisheries;
- Department of Child Safety, Youth and Women;
- Department of Communities, Disability Services and Seniors;
- Department of Education;
- Department of Environment and Science;
- Department of Housing and Public Works;
- Department of Justice and Attorney-General;
- Department of Youth Justice;
- Dispute Resolution Branch, DJAG;
- GoldlinQ Pty Ltd (Gold Coast Light Rail);
- Independent Education Union (Queensland and Northern Territory Branch);
- Legal Aid Queensland;
- Office of Industrial Relations;
- Office of the Information Commissioner;
- Office of the Public Guardian;
- Prisoners' Legal Service;
- Public Advocate; Queensland Advocacy Incorporated;
- Queensland Corrective Services;
- Queensland Catholic Education Commission;
- Queensland Council of Unions;
- Queensland Health;
- Queensland Human Rights Commission;
- Queensland Fire and Emergency Services;
- Queensland Law Society;
- Queensland Nurses and Midwives' Union;
- Queensland Police Service;
- Queensland Police Union of Employees;
- Queensland Teachers' Union;
- Rail, Tram and Bus Union;
- Security Providers Association of Australia Limited;
- Sisters Inside;
- Together Queensland;
- TrackSAFE Foundation;
- Transport Workers' Union (Queensland Branch);
- United Workers Union; and
- local and interstate criminal justice agencies and academic researchers.

Following the release of our Issues Paper on this topic, the Council met with a number of stakeholders who had made submissions and a number of other professional and industry bodies with an interest in the review, including the Australian Medical Association; the Office of the Director of Public Prosecutions; Queensland Rail; and the Royal Australian College of General Practitioners. The Council thanks all those who gave so generously of their time and expertise in informing the review and providing the Council with a more detailed understanding of the operating contexts and issues for those employed in their industries.

The Council looked at a range of sentencing data to inform the findings in this paper, and would like to thank the following agencies for providing data for this review:

- Court Services Queensland (DJAG);
- DJAG;
- Department of Education;
- Department of Transport and Main Roads;
- Department of Youth Justice
- Queensland Ambulance Service;
- Queensland Corrective Services;
- Queensland Fire and Emergency Services;
- Queensland Health;
- Office of Industrial Relations;
- Public Service Commission;
- The QPS;
- Victim Assist Queensland;
- WorkCover Queensland.

The Council would also like to acknowledge the Griffith Institute of Criminology, which was commissioned to conduct a literature review on the sentencing of assaults on public officers, and Associate Professor Chelsea Bond and her research team at the School of Social Science at The University of Queensland for work undertaken on an expert report to the Council on potential contributing factors to Aboriginal and Torres Strait Islander overrepresentation among those charged with these offences.

In an effort to better understand issues for Aboriginal and Torres Strait Islander peoples, women and people in circumstances of vulnerability, the Council hosted a roundtable attended by several legal and advocacy bodies. The Council thanks all those who participated for sharing valuable insights into the particular impacts of any sentencing reforms on these vulnerable cohorts, deepening our understanding of the contexts in which assaults on public officers commonly occur.

The Council also acknowledges the input and advice provided by the Council's Aboriginal and Torres Strait Islander Advisory Panel. The Council appreciates the input of the panel on this project and thanks the members of the panel for their engagement and advice, which continues to be invaluable to the Council in responding to complex questions regarding potential sentencing reforms.

It is the Council's practice to establish a Project Board for every inquiry. The Council acknowledges the contributions of Project Board members and thanks board members for giving so generously of their time during all stages of the review. It particularly recognises Assistant Commissioner Cheryl Scanlon APM for her outstanding contribution and leadership as the Project Sponsor for the review, and the contributions of Council Chair John Robertson, who acted as the Project Sponsor for a period due to Assistant Commissioner Scanlon's competing work commitments and also led consultations with legal stakeholders.

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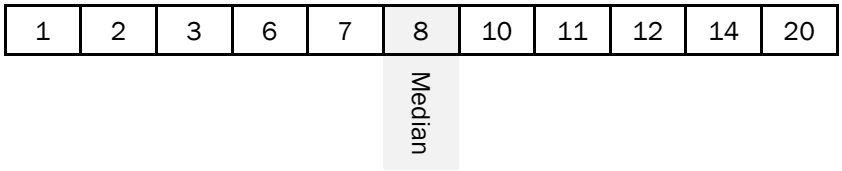
Abbreviations

ABS	Australian Bureau of Statistics
ACEM	Australasian College of Emergency Medicine
ALA	Australian Lawyers Alliance
ALRC	Australian Law Reform Commission
ANZSOC	Australian and New Zealand Standard Offence Classification
AOBH	assault occasioning bodily harm
ARJC	adult restorative justice conferencing
ASOC	Australian Standard Offence Classification scheme
ATSILS	Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd
BAQ	Bar Association of Queensland
CCO	community correction order
COVID-19	COVID-19 is a disease caused by a new strain of coronavirus
CSA	*Corrective Services Act 2006* (Qld)
CSO	corrective services officers
DFV	domestic and family violence
DJAG	Department of Justice and Attorney-General
DPP	Director of Public Prosecutions
ED	Emergency Department (of a hospital)
ERP	estimated resident population
GBH	grievous bodily harm
HRA	*Human Rights Act 2019* (Qld)
ICO	intensive correction order
LAQ	Legal Aid Queensland
MSO	most serious offence
ODPP	Office of the Director of Public Prosecutions (Queensland)
OPG	Office of the Public Guardian
OPM	*Operational Procedures Manual* (of the QPS)
PIN	penalty infringement notice
PSA	*Penalties and Sentences Act 1992* (Qld)
PPRA	*Police Powers and Responsibilities Act 2000* (Qld)
QAI	Queensland Advocacy Incorporated
QCA	Queensland Court of Appeal
QC	Queen's Counsel
QCS	Queensland Corrective Services
QCU	Queensland Council of Unions
QFES	Queensland Fire and Emergency Services
QGSO	Queensland Government Statistician's Office
QHRC	Queensland Human Rights Commission
QLS	Queensland Law Society
QNMU	Queensland Nurses and Midwives' Union
QOVSU	Queensland Occupational Violence Strategy Unit

QP9	Queensland Police Form 9 or police court brief
QPC	Queensland Productivity Commission
QPS	Queensland Police Service
QPU	Queensland Police Union of Employees
QSAC	Queensland Sentencing Advisory Council
QSIS	Queensland Sentencing Information Service
QTU	Queensland Teachers' Union
QWIC	Queensland Wide Inter-Linked Courts database
SNPP	standard non-parole period
SPAAL	Security Providers Association of Australia Limited
SVO	serious violent offence
TSAC	Tasmanian Sentencing Advisory Council
TWU	Transport Workers' Union (Qld)
UK	United Kingdom
UWU	United Workers' Union
VIS	victim impact statement
VLRC	Victorian Law Reform Commission
VOCCA	*Victims of Crime Assistance Act 2009* (Qld)
VSAC	Victorian Sentencing Advisory Council
WHS	Workplace health and safety
YJ	Department of Youth Justice
YJA	*Youth Justice Act 1992* (Qld)

Glossary

Appeal	Review of all or part of a court's decision by a higher court. An appeal against a sentencing decision of a magistrate can be heard by a District Court judge. An appeal against a sentencing decision of a District Court or Supreme Court judge can be heard by the Court of Appeal.
Average	The average is a measure used to determine where the centre of a distribution lies. The average is calculated by adding up all the values in a dataset and dividing the sum by the total number of values. The average is affected by outliers — extreme scores at either end of the distribution can cause the mean to shift significantly. Also referred to the mean.
Case law	Law made by courts, including sentencing decisions and decisions on how to interpret legislation. This is also known as **common law.**
Common law	Law made by courts, including sentencing decisions and decisions on how to interpret legislation. This is also known as **case law**.
Compensation	Compensation is an amount of money provided for any loss, destruction or damage caused to property, and can also address personal injury suffered by a person (whether or not they are a victim of the offence) because of the commission of a criminal offence.
Conviction	A determination of guilt made by a court.
Court of Appeal	A division of the Supreme Court. The Court of Appeal hears appeals against conviction, sentence or both. It usually comprises three judges.
Crown	The prosecution may be referred to as the Crown. The Crown refers to the Queensland Government representing the community of Queensland.
Defendant	A person who has been charged with an offence but who has not yet been found guilty or not guilty. Can be used interchangeably with **accused**.
Denunciation	Communication of society's disapproval of an offender's criminal conduct.
De Simoni (De Simoni principle)	The principle that a person should only be sentenced for an offence for which he or she has been found guilty.
Deterrence	Discouraging offenders and potential offenders from committing a crime by the threat of a punishment or by someone experiencing a punishment. One of the five statutory sentencing purposes in Queensland.
Head sentence — imprisonment	The total period of imprisonment imposed. A person will usually be released on parole or a suspended sentence before the entire head sentence is served.
Mean	The mean is a measure used to determine where the centre of a distribution lies. The mean is calculated by adding up all the values in a dataset and dividing the sum by the total number of values. The mean is affected by outliers — extreme scores at either end of the distribution can cause the mean to shift significantly. Also referred to the average.
Median	The median is a measure used to determine where the centre of a distribution lies. The median is the middle value (or the halfway point) of an ordered dataset. Half of the values lie above the median, and half below. The advantage of using the median is that, compared to the mean, it is relatively unaffected by extreme scores at either end of the distribution.
Most serious offence (MSO)	For this report, the MSO refers to an offender's most serious offence at a court event. It is the offence receiving the most serious penalty, as ranked by the classification scheme used by the Australian Bureau of Statistics (ABS). An offender records one MSO per court event.



Non-parole period	The time an offender serves in prison before being released on parole or becoming eligible to apply for release on parole.
Offender	A person who has been found guilty of an offence or who has pleaded guilty to an offence.
Parity (principle of parity)	People who are parties to the same offence should receive the same sentence, although matters that create differences must be taken into account.
Parsimony (principle of parsimony)	A sentence must be no more severe than is necessary to achieve the purposes for which the sentence is imposed.
Partially suspended sentence	Imprisonment of up to five years, with some actual prison time followed by release from prison with the remaining period of imprisonment suspended for a set period (called an 'operational period'). If the offender commits a further offence punishable by imprisonment during the operational period, they must serve the period suspended in prison (unless unjust to do so), plus any other penalties issued for the new offence.
Plea	The response by the accused to a criminal charge — 'guilty' or 'not guilty'.
Proportionality (principle of proportionality)	A sentence must be appropriate or proportionate to the seriousness of the crime.
Prosecution	A legal proceeding by the State of Queensland against an accused person for a criminal offence. Prosecutions are brought by the Crown (through the ODPP or police prosecutors).
Remand	To place an accused person in custody awaiting further court hearings dealing with the charges against them. A person who has been denied bail, or not sought it, will be placed on remand. This is also known as 'pre-sentence custody'.
Restitution	Restitution is a specific form of compensation that relates to property damaged or taken in relation to the commission of a criminal offence.
Restorative justice conferencing	Restorative justice conferencing involves a dialogue between the parties (victim and offender) directly affected by a criminal offence, whereby the harm suffered by the victim can be expressed, acknowledged by the offender and an agreement reached about the way to repair the harm, where possible.
Sentence	The penalty the court imposes on an offender.
Sentencing factors	The factors that the court must take into account when sentencing.
Sentencing principles	Principles developed under the common law, which serve as guideposts to assist judges and magistrates to reach a decision concerning the most appropriate sentence to impose. They include parity, parsimony, proportionality, totality, and the De Simoni principle.
Sentencing purposes	The legislated purposes for which a sentence may be imposed. In Queensland there are five sentencing purposes for the sentencing of adults: punishment, deterrence, rehabilitation, denunciation, and community protection.
Sentencing remarks	The reasons given by the judge or magistrate for the sentence imposed.
Supreme Court	The highest state court in Queensland. It comprises the trial division and the Court of Appeal. All trials and sentencing hearings for murder and manslaughter take place in the Supreme Court trial division.
Suspended sentence	A sentence of imprisonment of five years or less suspended in whole (called a 'wholly suspended sentence') or in part (called a 'partially suspended sentence') for a period (called an 'operational period'). If further offences punishable by imprisonment are committed during the operational period, the offender must serve the period suspended in prison (unless unjust to do so), plus any other penalties issued for the new offence.
Totality (principle of totality)	When an offender is convicted of more than one offence, the total sentence must be just and appropriate to the offender's overall criminal behaviour.

Victim impact statement	A mechanism for a victim of crime to provide a written account of the impact of an offence on them, which is presented to the sentencing court – most often in a written format to the judge, although sometimes the victim can read the statement to the court. This forms part of the court's assessment of the seriousness of the offence.
Wholly suspended sentence	A sentence of imprisonment of up to five years but with no actual time served in prison as part of the sentence, unless the person commits a further offence during the operational period. If further offences punishable by imprisonment are committed during the operational period, the offender must serve the period suspended (unless unjust to do so), plus any other penalties issued for the new offence.

Executive summary

Introduction

This report presents the Council's findings and recommendations on its inquiry into penalties for assaults on public officers, referred to the Council by the Attorney-General and Minister for Justice, the Honourable Yvette D'Ath MP.

In asking the Council to undertake this review, the Attorney-General referred to the expectation of the community and government that public officers should not be the subject of assault during the execution of their duties, and the need for public officers to have confidence that the criminal justice system properly reflects the inherent dangers they face.

'Public officer' was defined for the purposes of the review to include police and other emergency service workers, corrective services officers, and other public officers engaged to perform public duties on behalf of the State of Queensland. Its meaning as this applies to offences charged under section 340(2AA) of the *Criminal Code* (Qld) and whether its scope should be expanded was a key focus of the review.

The Council's analysis was limited to assaults and assault-related offences that could be readily identified as involving a public officer victim. Fatal assaults and sexual assaults were scoped out on the basis that these were not the intended focus of the current review. Limited analysis of other offences charged was undertaken based on data provided by the Queensland Police Service (QPS), Queensland Corrective Services (QCS) and the Department of Youth Justice.

The Council's approach

The Council undertook work on the review over five key stages.

The initial stages included a call for preliminary submissions to help inform the Council's approach, the release of a high-level analysis of data on serious assault as part of the Council's 'Sentencing @ a glance' series, and an information sheet explaining the offences under consideration and their applicable penalties.

In April 2020, the Council released *Penalties for Assaults on Public Officers: Issues Paper*, together with a literature review produced by the Griffith Criminology Institute, Griffith University. The Council invited further written submissions to 17 questions posed in the Issues Paper, and it received 32 submissions in response. Submissions are available on the Council's website, with the exception of those made on a confidential basis.

Over May to early July 2020, the Council held a series of meetings. Over 60 people participated in these meetings and roundtable discussions. The majority of meetings took place by videoconference in compliance with social distancing guidelines issued as part of the government's COVID-19 public health response.

The publication of this *Penalties for Assaults on Public Officers: Final Report* represents the final stage of the project and presents the Council's findings and recommendations.

The Council undertook additional work to better understand the drivers of the overrepresentation of Aboriginal and Torres Strait Islander peoples and women among those charged with assaults on public officers. To better understand these trends, the Council hosted a roundtable with key legal and advocacy bodies, consulted with the Council's Aboriginal and Torres Strait Islander Advisory Panel, sought an expert report from an Aboriginal and Torres Strait Islander academic about potential contributing factors, and analysed relevant sentencing remarks to understand whether the circumstances of these offences were different for different offender cohorts. The findings are presented in this report.

The case for reform

Section 340 — broad in scope, confused in focus, and with overlapping provisions

The main focus of this review has been on the offence of serious assault under section 340 of the *Criminal Code* as this applies to assaults on public officers.

Section 340 makes certain kinds of assaults against certain people a more serious offence than assaults committed on other people that are charged, for example, as a common assault or assault occasioning bodily harm (AOBH). It relies on the same definition of 'assault' as for these other offences, but, unlike the other Code offences, applies higher maximum penalties based on specific scenarios and victim characteristics.

Serious assault formed part of the original 1899 *Criminal Code* and was initially classified as a misdemeanour carrying a maximum penalty of 3 years. It applied in six different specified circumstances including assault of a police officer while acting in the execution of his or her duty, or any person acting in aid of a police officer while so acting, and assault of any person on account of any act done by that person in the execution of a duty imposed by law.

From 1988 to 2020, there have been 16 amending Acts making changes of substance to this section, including:

- the reclassification of serious assault from a misdemeanour to a crime;
- an increase in the maximum penalty from 3 years to 7 years;
- the extension of the section to assaults on victims aged 60 years or older, as well as those who rely on a guide, hearing or assistance dog, wheelchair or other remedial device;
- the insertion of a separate subsection (s 340(2AA)) targeted at assaults on 'public officers'; and
- the introduction of circumstances of aggravation, such as biting, spitting on, and throwing bodily fluids or faeces at a victim, or causing bodily harm, to which a 14-year maximum penalty applies. This was initially limited to assaults on police but was later extended to assaults on public officers and, much more recently, to assaults by prisoners on corrective services officers.

The many amendments have resulted in an offence provision that is very broad in scope, capturing assaults both on victims who are vulnerable due to their occupation or the functions they are performing, and those whose vulnerability arises from their age and/or physical disability, and applying both to assaults as well as to acts of obstruction.

There is significant overlap in the conduct and victim classes captured across the various subsections of section 340 as these apply to public officers. For example, charges of assault on police are most commonly charged and sentenced under section 340(1)(b), but also found among cases dealt with under sections 340(1)(a), (c), (d) and (2AA). The existence of a separate subsection dealing with assaults by prisoners on corrective services officers (s 340(2)) also gave rise to confusion about whether assaults on corrective services officers involving circumstances of aggravation could be charged under section 340(2AA), which applies to the broader category of 'public officer'. This has led to recent amendments to this subsection to import the same circumstances of aggravation into section 340(2).

Given these many overlapping provisions, the problem of ensuring people are correctly charged, identified by the Court of Appeal in 1995 and well prior to a number of these changes,[1] has probably become even more pronounced.

Another issue raised with the Council has been the uncertainty about the definition of a 'public officer' and what categories of officers are, and are not, included within its scope.

The many amendments made over time, and uncertainty about definitional issues, has resulted in a provision that the Council considers is confused, awkwardly structured, and unclear in its intention and focus. This lack of clarity, in the Council's view, has contributed to unhappiness by some groups that they are not expressly named, and by implication, excluded from its scope.

Taking these problems into account, the Council's view is that those falling within section 340 need to be more clearly and narrowly defined so the application of this provision more closely reflects the section's original intention. The Council's recommendations are set out in Chapter 8.

Making clear to the public the aggravating nature of offences committed on workers providing essential public services to the community

Many of those who are vulnerable to assault due to their occupation or working environment do not meet the current definition of 'public officer' for the purpose of section 340. For example, they may provide services to the public in a private capacity or be engaged as a contracted service provider. This includes a wide range of people from service station attendants, to bus drivers, taxi drivers and others in the transport industry, private security guards, general practitioners, and other health-service providers. In circumstances where an assault occurs, a charge must instead be brought under one of the offence provisions available under the general criminal law, such as common assault (*Criminal Code*, s 335) and AOBH (*Criminal Code*, s 339).

However, the fact that there is no special offence (such as serious assault) established to reflect the special vulnerability of these specific victim classes does not prevent a court from taking this factor into account in sentencing. Sentencing courts have always taken relevant common law circumstances of aggravation into account, unless legislation displaces their ability to do so. Given the broad features of section 9(2) of the *Penalties and Sentences Act 1992* (Qld) (PSA) (which applies to any sentence)[2] and judicial discretion, the fact that a person was assaulted while doing his or her job, if relevant, will be considered.

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1 *Sweet v Armstrong* [1995] QCA 406, 5–6 (Demack J, Pincus JA and Shepherdson J agreeing).

2 See, for example, *R v Carlton* [2010] 2 Qd R 340, 364–5 [106] (Mullins J).

The Court of Appeal has made repeated statements recognising the need for deterrence, denunciation and a salutary penalty in the case of assaults of police, the interests of protecting them and their authority, and reflecting community support for them.[3] It has made similar comments in relation to offences against specific classes of victim including railway guards,[4] court clerks,[5] corrections officers,[6] and local council officers.[7]

The Court of Appeal has further long acknowledged that some groups of people in regular contact with the public in the course of their employment are at increased vulnerability, such as taxi drivers,[8] service station attendants and convenience or takeaway store staff, and that this should be reflected in the sentence imposed. The Court has recognised such workers (often working night shifts, sometimes alone) as a vulnerable cohort, serving the community while at risk of attacks that can cause physical and psychological harm. It has restated the importance of deterrence in sentencing and made strong statements to this effect for at least the last 25 years.

One benefit of the flexibility under existing law is that courts have the ability to recognise new categories of workers without the need for legislative change. As one example, the introduction of rideshare services means the risks that once applied primarily to taxi drivers now apply to a new category of worker. The advent of the COVID-19 pandemic in more recent months has heightened awareness of the risks of assault posed to retail workers, which may not only result in physical injury but also the fear of contracting what is a highly transmissible and potentially deadly virus.

The difficulty, however, is that the increased seriousness with which assaults on specific workers are viewed may not always be clear to members of the public, or to those workers who may feel vulnerable to such assaults. This is because, rather than pointing to a specific offence that carries a high maximum penalty, it relies on the public and workers in these industries being aware of how courts apply the general provisions contained in the PSA and the common law.

During this review, there were a number of industries strongly advocating for their workers to be included within the scope of section 340 on the basis that a higher maximum penalty applies to these assaults. This provides some evidence of a belief among some workers and in some industries that the fact an assault has occurred at work will not be treated as more serious unless it is expressly stated to be so.

The Council considers the best way to address this problem is through the introduction of a new aggravating factor, which would make the increased seriousness of assaults that occur in this context clear. This is discussed in Chapter 10 of the Council's report.

Achieving greater uniformity in summary assault and obstruct provisions

The Council was asked to consider whether to retain separate summary offences that can be charged in circumstances where a public officer has been assaulted, with express reference being made to section 790 of the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA) and section 124(b) of the *Corrective Services Act 2006* (Qld) (CSA).

There are over sixty other Queensland Acts that carry offence provisions relating to persons acting in roles such as 'authorised officers'. They target assault and various acts including wilful obstruction, intimidation and attempts ('obstruct' is defined under a number of provisions as including assault). Many of these provisions state this conduct is an offence 'unless the person has a reasonable excuse'.

The maximum penalty for these summary offences ranges from a modest fine to a large fine or period of imprisonment (for example, 2 years under section 124(b) of the CSA).

There was strong support for the retention of summary offences as an alternative to charging the more serious offence of serious assault under the *Criminal Code*. However, there is a clear lack of uniformity in the wording of these provisions and in the penalties that apply.

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3 See, for example, *R v Williams* [1997] QCA 476, 6–7 (Dowsett J, McPherson JA and Thomas J agreeing); *R v Kazakoff* [1998] QCA 459, 6 (Ambrose J, McPherson JA and Byrne J agreeing) citing *R v Howard* (1968) 2 NSWR 429; *Queensland Police Service v Terare* (2014) 245 A Crim R 211, 221–2 [38], 222 [40] (McMurdo P, Fraser and Gotterson JJA agreeing); *R v King* (2008) 179 A Crim R 600, 601-–2 [6] (de Jersey CJ, Keane and Holmes JJA agreeing); *R v MCL* [2017] QCA 114, 6 [16] Fraser JA, McMurdo JA and Mullins J agreeing).

4 *R v Nagy* [2004] 1 Qd R 63, 74–5 [47] (Williams JA, Jerrard JA agreeing).

5 *R v McKinnon* [2006] QCA 16, 4–5 (McMurdo P, McPherson JA and Muir J agreeing).

6 *R v Hope* [1993] QCA 299, 4 (Fitzgerald P, Davies JA and Moynihan SJA).

7 *R v Ketchup* [2003] QCA 327, 1 [3] (Williams JA, Davies JA agreeing).

8 See *R v Levy; Ex parte A-G (Qld)* [2014] QCA 205, 9–10 [32], [35] and [37] (Morrison JA, Holmes JA and Philip McMurdo J agreeing), discussing *R v Wilkins; Ex parte A-G (Qld)* [2008] QCA 272 at 10 [37] and *R v Hamilton* [2009] QCA 391, 15–16 [61].

Better responses to victims

Through the consultation process, the Council learned that the nature and impacts of occupational violence vary from industry to industry, and from organisation to organisation as do the institutional responses. In consulting with individuals and organisations, it became evident that occupational violence is a workplace health and safety concern for many industries.

The Council found some groups, such as police and corrective services officers, are more comfortable reporting an incident of violence at work than other groups, such as teachers and health workers. The reasons for this are complex, and in many cases, industry-specific.

Concerningly, many victims of assault who shared their stories through their organisations or directly with the Council reported they did not have a positive experience with the criminal justice system. This not only referred to the quality of information provided, and to delays in having matters finalised, but in some cases to disappointment with the sentencing outcomes.

The Council considers there are opportunities to improve current justice system responses. This includes ensuring victims have access to appropriate support and information and are given the opportunity if they choose to do so — and where this is considered appropriate — to participate in alternative justice processes to better meet their needs.

Overview of this report

How frequent are assaults on public officers and what offences are charged?

Chapter 2 reports on the Council's findings about the frequency of assaults on public officers, whether WorkCover claims are pursued, and the number of sentenced cases involving a charge of serious assault or summary assault offence.

Agencies in the health sector record the highest number of assaults, but only a small number result in a claim for compensation. In contrast, police officers, corrective services officers, and youth detention staff have higher rates of compensation claims following an assault.

Over the period 2009–10 to 2018–19, there were 10,194 sentenced cases involving a serious assault. In 7,932 of these cases, serious assault was the most serious offence (MSO) sentenced.

The most common type of serious assault involves assault of a police officer, comprising 65.4 per cent of cases, although the number of these cases has decreased over the past five years.

The lesser summary offence of assault or obstruct a police officer under section 790 of the PPRA was sentenced in 85,434 cases over the 10-year period, although the number of these cases has decreased considerably over this time. Acts of assault formed the basis of 16.0 per cent of these sentenced charges, compared with 89.9 per cent that involved an act of obstruction (approximately 10% of cases involved acts of both assault and obstruction, which were counted twice).

There are over sixty other summary offences identified throughout various pieces of legislation that involve acts of assault, obstruction, hindering or resisting a public officer. These were sentenced in 1,553 cases over the 10-year data period.

Who is involved in assaults on public officers and who reoffends?

Chapter 3 considers who commits assaults on public officers and the profile of victims. Serious assaults of public officers are **most commonly committed** by men (66.6%), and by non-Indigenous people (61.7%), with an average age of 28.8 years. Aboriginal and Torres Strait Islander peoples are overrepresented among those sentenced for serious assault of a public officer, with men being sentenced at a rate 16 times greater than their non-Indigenous counterparts, and women being sentenced at a rate 12 times greater than non-Indigenous women.

Police officers are the **most common public officer victim of serious assault**, followed by paramedics, detention centre staff, and corrective services officers. Serious assaults of 'public officers' sentenced under section 340(2AA), (1)(c) and (1)(d) involve victims from a wide range of professions including paramedics, detention centre workers, medical/hospital workers, security guards, watch-house officers, transport officers, and child safety officers.

Young people are most likely to be charged for assault of a detention centre worker or education worker, whereas adults are most likely to be dealt with for an assault of a paramedic or medical worker. Sentenced assaults of detention centre workers have increased over the 10-year period.

Reoffending by commission of the same offence is most common for those convicted of serious assault of a corrective services officer under section 340(2) or for assault or obstruct police under section 790 of the PPRA, with about one in five offenders being sentenced for the same offence within a two-year period.

Across all victim categories, people sentenced for serious assault of a public officer and for assault or obstruct police or corrective services staff are more likely to be sentenced for another offence of violence than those sentenced for AOBH (aggravated, 31.1% and non-aggravated 28.3%), common assault (31.3%), wounding (22.1%) or grievous bodily harm (GBH) (22.2%).

Aboriginal and Torres Strait Islander peoples have higher levels of recidivism, with a higher proportion of them committing repeat offences, as well as other violent offences. Men have higher levels of recidivism compared to women for offences involving the assault of a public officer; although these gendered differences are less pronounced, and in some cases reversed, for assaults that do not involve a public officer.

What are the circumstances in which public officers are assaulted?

In Chapter 4, the Council draws on a variety of sources to identify some of the factors that may contribute to assaults on public officers and help to explain the context in which this offending occurs.

Based on the Griffith Criminology Institute's **literature review**, assaults of public officers are more likely in particular circumstances or conditions, such as:

- perpetrators involved in substance abuse, at least in the healthcare sector;
- perpetrators with poor mental health, across a number of sectors;
- perpetrators with a current or past history of violent behaviour;
- officers with less experience on the job;
- operational workplace characteristics, which may vary by sector (such as understaffing in the healthcare sector, and ticketing and timetabling issues in the public transit sector).

A **sentencing remarks analysis** undertaken by the Council based on a sample of 276 serious assault cases sentenced in the higher courts found differences based on the gender and Aboriginal and Torres Strait Islander status of the offender. Spitting was more common for women, whereas physical assaults such as kicking, punching or pushing were more common for men. The majority of offenders were described as being 'uncooperative' or 'aggressive' while committing the offence. Assaults most commonly occurred while the offender was being arrested, restrained, or resisting the direction of a public officer. Half of the women, and one-third of Aboriginal and Torres Strait Islander men were under the influence of drugs or alcohol. One-third of offenders had mental health problems — particularly non-Indigenous women.

An analysis of **associated offences** (committed during the same incident as an assault of a public officer) found that assaults of corrective services officers are the least likely to have another offence charged. The serious assault of a police officer is the most likely to have multiple counts of the same offence arising out of the same incident — particularly for cases involving male offenders. Public nuisance is the most commonly associated non-violent offence, and most common for Aboriginal and Torres Strait Islander women.

Since their introduction, **aggravating circumstances** have been present in approximately 59.0 per cent of serious assault cases involving a police officer and 45.0 per cent of cases involving a public officer. Bodily fluids are the most common aggravating circumstance, followed by bodily harm.

Impact on victims

Chapter 5 explores the impact of assaults on victims and their experiences of reporting an assault.

The Council found the nature and impacts of occupational violence vary from industry to industry, and from organisation to organisation. Across all sectors, assaults have potential to result in far-reaching impacts on the life of the direct victim, on the victim's family and on the victim's future working life. This includes both physical and mental health impacts, with recovery that can be lengthy and highly individualised. They also have broader impacts on workplaces — for example, potentially leading to recruitment and retention challenges — and on the broader community.

Improving institutional responses to better respond to victim needs is discussed in **Chapter 11.**

Current sentencing framework and practices

Chapter 6 explores the application of sentencing guidelines and principles set out in the PSA, and applied under the common law, as well as the range of sentencing options available to the courts. It discusses the application of these general principles to sentencing for serious assault, reviewing relevant Court of Appeal cases, including the relevance of mental illness, intoxication and a disadvantaged background. It notes the Court of Appeal's recognition that serious assault 'is an offence which can occur in circumstances of widely variable levels of criminality, ranging, for example, from physical acts of minor resistance to arrest through to deliberately dangerous, degrading or prolonged attacks'.[9] For this reason 'the range of appropriate sentences … is inevitably very broad'.[10]

Chapter 7 presents the Council's findings as to how assaults on public officers are dealt with by the courts based on sentencing data. Key findings include:

- The use of custodial penalties for assaults on public officers charged under section 340 of the *Criminal Code*, section 790 of the PPRA and section 12(b) of the CSA has increased over the past 10 years.
- Almost all serious assaults of a public officer sentenced in the higher courts over the 10-year period examined resulted in a custodial penalty being imposed (90.6% of cases, MSO). In the Magistrates Courts, almost two-thirds of cases resulted in a custodial sentence (64.8%).
- For adult offenders in both the higher and lower courts, imprisonment was the most common penalty type for serious assault offences analysed (MSO).
- Suspended sentences were ordered in between 7.1 and 31.5 per cent of cases (MSO), depending on the type of offence.
- The lesser summary offence of assaulting a police officer under section 790 of the PPRA resulted in a custodial penalty in 13.4 per cent of cases, much higher than the 3.4 per cent of cases with custodial outcomes for obstructing a police officer (MSO).
- The summary offence of assaulting or obstructing a corrective services officer under section 124(b) of the CSA almost always resulted in a custodial penalty (84.0% of cases, MSO).
- The average sentence for non-aggravated serious assault in the higher courts was 1.0 years where the victim was a police officer and 0.9 years in circumstances where the victim was a corrective services officer.
- Sentences were shorter in the Magistrates Courts for non-aggravated serious assault, averaging 0.6 years where the victim was a police officer, 0.7 years for assaults on corrective services officers, and 0.4 years for assaults on other public officers.
- A monetary penalty was most common for the lesser summary offence of assaulting (48.7% of cases) or obstructing (65.2% of cases) police officers, with an average penalty amount of $620.80 for assaults, and $414.50 for obstructions.
- For young offenders, community-based orders (including probation and community service) were the most common types of penalties imposed for serious assaults, with an average length of 8 to 9 months for probation and 50 to 80 hours of community service.
- For the summary offence of obstructing a police officer, over half of young people were reprimanded.

The Council found that **the impacts of the 2012 and 2014 amendments**, which introduced circumstances of aggravation that increased the maximum penalty applying where these factors are present from 7 years to 14 years, are difficult to assess due to a lack of recorded data on the circumstances of offending for offences prior to these changes. For example, whether an assault sentenced prior to these amendments involved one of the relevant circumstances of aggravation — such as spitting, biting, throwing bodily fluids or faeces or causing bodily harm.

The introduction of the aggravating factors does appear, however, to have had some effect with offences with aggravating circumstances receiving increased sentences compared to orders made prior to these legislative amendments — both being more likely to attract a custodial sentence, and for these sentences on average to be longer than prior to the 2012 and 2014 reforms. No change, however, was identified to sentencing patterns for young offenders following these legislative changes.

Reforms to the offence of serious assault under section 340 of the *Criminal Code*

Chapter 8 sets out the Council's recommendations for reforming section 340. The Council recommends that section 340 be recast with a focus on assaults on frontline and emergency workers, and that the offence be retitled to reflect this change to promote understanding of the type of conduct it is intended to capture.

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9 *R v Cooney* [2019] QCA 166, 9 [46] (Henry J, Gotterson JA and Bradley J agreeing).

10 Ibid.

Under the Council's proposals, references to acts of obstruction would be removed, with such charges instead having to be brought under relevant summary offences or the *Criminal Code* offence of resisting public officers under section 199. The Council recommends the maximum penalty for offences under section 199 be increased from 2 years to 3 years, taking into account that more serious acts of obstruction would not be likely to be charged under this provision.

The new section 340 would be targeted at assaults on those officers whose primary role is to keep the community safe, who perform critical response duties on behalf of the community, and who perform a unique role in the supervision and management of offenders. They include:

- police officers, watch-house officers and protective security staff employed by the Queensland government;
- ambulance officers;
- health-service providers employed under the Hospital and *Health Boards Act 2011* (Qld) or delivering services in a private hospital, prison or detention centre environment, as well as people acting in aid of those health-service providers;
- fire and emergency services employees under the *Fire and Emergency Services Act 1990* (Qld), volunteers of rural fire brigades, members of the State Emergency Service and other volunteers engaged in an activity to support functions under that Act;
- corrective services officers;
- youth justice staff members; and
- authorised officers under the *Child Protection Act 1999* (Qld).

This not only reflects the essential and critical role of these officers but will also result in greater clarity about who the section applies to.

As a consequence of this recommendation, the Council recommends sections 340(1)(c) and (d) be repealed, and the existing provisions that apply to assaults on persons aged 60 years or more, or who rely on a guide, hearing, assistance dog, wheelchair or other remedial device, to another section of the Code. The recommended changes will also require significant reform or repeal of sections 340(1)(b), (2) and (2AA), removing references to the term 'public officer'.

The existing circumstances of aggravation will continue to apply, but to the more narrowly defined class of victim who would fall under section 340 of 'frontline and emergency workers'.

The Council notes concerns that the current 14-year maximum penalty that applies to aggravated serious assault is poorly aligned with that which applies to AOBH (10 years in its aggravated form), and with equivalent offences in other jurisdictions, such as aggravated serious assault in Western Australia. The highest custodial sentence imposed over the period examined was a sentence of 5 years, falling well short of a sentence of 10 years for torture, and 8 years for GBH — both of which also carry a 14-year maximum penalty.

Ultimately, the Council has recommended that the 14-year penalty be retained. It has done so on the basis that the classification of offences and setting of statutory maxima — as a general proposition — is best undertaken as a holistic exercise. This enables an assessment to be made of the seriousness of individual offences and conduct captured relative to other similar offences and is therefore more likely to promote a penalty framework that is internally consistent and coherent. The last review of maximum penalties in Queensland was the O'Regan Committee's review in 1992,[11] completed some years prior to the initial increase in the maximum penalty for serious assault from 3 years to 7 years, and 20 years before the current 14-year penalty was introduced. Over this time there have been a number of amendments to the maximum penalties that apply to other offences under the Code, including common assault and AOBH (both simpliciter and in its aggravated form).

A consequence of the Council's proposals is that some classes of public officer would no longer be captured within section 340. They include transit officers, fisheries inspectors, local government employees and public-school employees. The Council considers the increased seriousness of assaults on these officers should be recognised through a new aggravating factor under section 9 of the PSA. This will allow the same protections to be extended to workers performing similar roles to those in the public sector — for example, private schoolteachers and staff, and private or contracted public transport providers — while keeping section 340 appropriately narrowly focused.

11 R.S. O'Regan, J.M. Herlihy and M.P. Quinn, *Final Report of the Criminal Code Review Committee to the Attorney-General* (18 June 1992).

Summary offences of assault and obstruct public officers

Chapter 9 reviews existing summary offences of' assault' and 'obstruct' that can be charged in place of 'serious assault'.

The Council agrees with views expressed by a number of stakeholders that it is important to retain separate levels of offences — even if these offences ostensibly capture the same forms of criminal behaviour. This ensures that people who commit these offences are not exposed to the possibility of a more severe penalty being imposed for actions that are relatively minor — for example, in the case of an assault, a light push where no injury has been caused. Retaining these offence distinctions not only means that a different penalty framework is applied, but also ensures that criminal histories present a more accurate reflection of the seriousness of the charges an offender has been convicted of and sentenced for.

However, taking into account the proliferation of summary assault and obstruct offences in Queensland over time, adding to the general complexity of the criminal law, the Council recommends that a new summary offence be created under the *Summary Offences Act 2005* (Qld) to replace existing offences of assault and obstruct, which it recommends should be repealed over time. The Council recommends this new summary offence should carry a maximum penalty of 6 months' imprisonment or 100 penalty units.

The existing assault and obstruct offences for police and corrective services officers, however, would be retained, with no change to the current penalties that apply. This is on the basis that these are the most frequently charged forms of assault and obstruct offences, and that the maximum penalties set take into account the particular contexts in which this offending occurs.

The Council further recommends that the QPS should develop internal guidelines to supplement the existing *Director's Guidelines* issued by the Office of the Director of Public Prosecutions to support the consistent and appropriate exercise of discretion across the state when deciding whether to prefer a section 340 offence or a summary charge.

Changes to the sentencing framework for assaults on public officers and other workers vulnerable to assault

Chapter 10 presents the Council's recommendations for reform of the current sentencing framework.

As discussed above, Queensland courts have long recognised the status of victims as public officers, or in occupations that involve a higher vulnerability to assaults, as an aggravating factor for sentencing purposes.

Given the concerns raised by some industries about the need for proper protections against assaults on their workers, such as those representing workers in the transport and security industries, the Council considers there is merit in giving statutory recognition to the increased vulnerability of these workers and the treatment of this factor in sentencing as aggravating.

Although some may view this change as unnecessary, by enshrining this principle in legislation, it will make clear to the community that offences involving violence, or threatened violence, against these workers will be treated by courts in sentencing as more serious, thereby serving an important communicative function. It will achieve this purpose while preserving the courts' ability to determine the weight to be placed on this factor in the particular circumstances of the case.

The Council proposes its objectives be achieved by introducing a new aggravating factor in section 9 of the PSA that will apply to offences to which the current subsections (2A) and (3) apply — that is, which involve the use, or attempted use, of violence, or that have resulted in physical harm to another person. Courts would be required to consider the fact such an offence has occurred in the performance of the functions of the victim's office or employment, or because of this, as aggravating providing it can reasonably be treated as such. The new provision, under the Council's preferred option, will have two separate limbs, based on a similar provision in NSW:[12]

- the first applying to offences committed on frontline and emergency workers, as defined for the purposes of section 340, with application to offences under the general criminal law in circumstances where the victim's occupation is not an element of the offence — for example, AOBH (s 339), GBH (s 320), wounding (s 323) — and acts intended to cause GBH and other malicious acts (s 317); and
- the second based on the victim's vulnerability due to their occupation, which will not be limited to frontline emergency workers and can be applied to people working both in the public and private sector and engaged as volunteers. It could contain a non-exhaustive list of examples, such as bus drivers or other public transport workers, taxi drivers, rideshare drivers, health and aged care workers, and security officers.

A legislative example might be provided of where it might not be reasonable to do so — for example, if the offender is suffering from a mental illness.

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12 *Crimes (Sentencing Procedure) Act 1999* (NSW) ss 21A(2)(a) and (l).

After reviewing the current sentencing approach for serious assault under section 340, the Council has not identified any compelling case for change. There appears to be sufficient scope under the current arrangements to impose an appropriate sentence, and the increased use of custodial sentences by courts suggest that courts are recognising these offences as more serious. The Council has also recommended the current arrangements for the summary disposition of section 340 charges on prosecution election should be retained. While some legal stakeholders were strongly in favour of these matters moving to a defence election to provide defendants with the right to a jury trial, there are, equally, arguments against such a change, including that the current approach expedites the resolution of charges, in the interests of both defendants and complainants. On balance, it considers no change is necessary.

With regard to sentencing options, the Council refers to reforms proposed in its *Community-based Sentencing Orders, Imprisonment and Parole Options: Final Report* released in 2019, as having potential to improve sentencing responses to assaults on public officers. These recommendations included providing courts with a broader range of options, including combining the use of imprisonment with a community-based order when sentencing for a single offence; encouraging the use of more targeted community-based orders to address the underlying causes of offending; and removing the availability of parole for short sentences of imprisonment where this might not be appropriate and lead to an increased risk of reoffending.

This earlier report also recommended a review of mandatory sentencing provisions that would allow investigation of whether the current requirement under section 108B of the PSA for a court to make a community service order where an offence is committed in a public place while adversely affected by an intoxicating substance is meeting its intended objectives and should be retained. This requirement currently applies not only to serious assault of police and public officers under sections 340(1)(b) and (2AA), and section 790 of the PPRA, but also to a number of other offences, such as common assault, wounding, AOBH and GBH. The Council has previously stated its concerns about mandatory sentencing, including the lack of evidence that it achieves its intended deterrent purpose. Given the significant overrepresentation of Aboriginal and Torres Strait Islander peoples among those sentenced for assaults of police and other public officers, any extension of mandatory sentencing provisions as they apply to these offences would risk having a particularly negative impact on these offenders.

Improving system responses and increasing community understanding

Chapter 11 highlights the importance of ensuring there are appropriate institutional responses to occupational violence and that there are supports and information available to victims.

The Council considers, in particular, there is substantial merit in the Queensland Government investigating the expanded use and availability of adult restorative justice conferencing as part of a broader criminal justice response to assaults on public officers and others who are assaulted at work. This program, which gives victims the ability to meet face-to-face with the offender in a supportive environment, was viewed very positively by a wide range of stakeholders during consultations and in submissions.

Although restorative justice conferencing may not be an option all victims wish to pursue, many stakeholders commented on its potential to improve victim satisfaction by giving victims a role as active participants in the process and allowing them to communicate the harm that has been caused by the offender's actions, other than through the making of a victim impact statement. It may also provide victims with greater confidence in the outcome.

Chapter 12 presents three recommendations to improve the ability to report on sentencing outcomes for assaults on public officers and public knowledge and understanding of penalties and sentences for these offences. These are:

- identifying ways information can be captured that highlights if a victim of an assault, or an assault-related offence, is a public officer assaulted at work or assaulted because of their status as a public officer;
- supporting continued work on strategies to make more District Court sentencing remarks publicly available; and
- the continuation of public awareness campaigns that include information about maximum penalties that apply to assaults on public officers.

The Council further recognises the importance of continuing its engagement with the media, tertiary and secondary educational institutions, and professional bodies to improve understanding of sentencing, as well as the continued production of resources such as its *Judge for Yourself* program, its 'Case in Focus' series, the *Queensland Sentencing Guide* and statistical publications, which are aimed at explaining various aspects of sentencing to a general community audience.

List of recommendations

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

Chapter 8 — Reforms to the offence of serious assault

Recommendation 1: Retention of section 340

Section 340 of the *Criminal Code* should be retained and redrafted to simplify its operation and narrow its focus to assaults on frontline and emergency workers while performing a function of their office, or because of this.

Recommendation 2: Statutory circumstances of aggravation

Statutory circumstances of aggravation regarding assaults of frontline and emergency workers because of their occupation, housed in current offence provisions or separately in the *Criminal Code*, should not be created.

Recommendation 3–1: Frontline and emergency service workers under new section 340

The categories of people captured within section 340 should be limited to the following in circumstances where the assault occurs in the performance of the functions of their office, or because of the performance of those functions:

(a) police officers;

(b) watch-house officers as defined under the *Police Service Administration Act 1990* (Qld);

(c) a person appointed or employed under the *State Buildings Protective Security Act 1983* (Qld);

(d) a corrective services officer under the *Corrective Services Act 2006* (Qld);

(e) a youth justice staff member under the *Youth Justice Act 1992* (Qld);

(f) an authorised officer under the *Child Protection Act 1999* (Qld);

(g) a person appointed as an employee under the *Fire and Emergency Services Act 1990* (Qld), a volunteer of a rural fire brigade registered under the Act, a member of the State Emergency Service, or a volunteer engaged in an activity to support functions under that Act;

(h) an ambulance officer under the *Ambulance Service Act 1991* (Qld);

(i) a 'health service provider' as defined under the Health Practitioner Regulation National Law:

  i. employed under the *Hospital and Health Boards Act 2011* (Qld); or

  ii. providing health services under the *Private Health Facilities Act 1999* (Qld); or

  iii. delivering health services in either:

    a. a prison; or

    b. a detention centre under the *Youth Justice Act 1992* (Qld);

(j) any person acting in aid of a health service provider delivering a health service in the circumstances set out in paragraph (i), where the assault occurs in the course of his or her employment; or

(k) a person employed or engaged by the Commonwealth or in another State to perform functions of a similar kind to those set out in paragraphs (a)–(i) and who are on duty in Queensland.

Recommendation 3–2: Term 'public officer'

The term 'public officer' should not be used in the redrafted version of section 340, given the lack of clarity about the scope and meaning of this term and that it is separately defined for different purposes in section 1 of the *Criminal Code*.

Recommendation 4–1: Limiting section 340 to acts of assault

The criminal conduct captured within section 340 should be limited to acts of assault on frontline and emergency workers. References to resisting and obstructing a police officer or public officer should be omitted.

Recommendation 4–2: Maximum penalty for section 199 ('Resisting public officers')

The maximum penalty that applies to offences under section 199 of the *Criminal Code* ('Resisting public officers') should be increased from 2 years' to 3 years' imprisonment, taking into account that more serious resist and obstruct charges that might have been charged under section 340 may instead be charged under section 199.

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

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

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

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

Recommendation 7: New section title — 'Assaults on frontline and emergency workers'

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

Recommendation 8–1: Penalty framework under section 340

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

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

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

Chapter 9 — Summary assault and obstruct offences

Recommendation 9–1: Section 790 of the PPRA and sections 124(b) and 127 of the CSA

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

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

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

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

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

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

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

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

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

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

Chapter 10 — Reforms to the sentencing framework

Recommendation 10–1: New aggravating factor for assaults on public officers and other workers

(a) A new subsection, modelled on, and placed as part of, existing sections 9(9B) (regarding manslaughter of a child under 12 years), 9(10) (offender who has one or more previous convictions) and 9(10A) (domestic violence offences), should be added to section 9 of the *Penalties and Sentences Act 1992* requiring that when determining the appropriate sentence for an offender convicted of an offence to which subsections (2A) and (3) apply, a court must treat as an aggravating factor the fact that the offence occurred in the performance of the functions of the victim's office or employment, or because of the performance of those functions or employment.

(b) The aggravating factor should apply to two classes of victim within the provision, reflecting the NSW model in the *Crimes (Sentencing Procedure) Act 1999,* section 21A(2):

i. frontline and emergency workers adopting the same definition as under the revised section 340 as set out in Recommendation 3–1; and

ii. other victims who are vulnerable because of their occupation. It could contain a non-exhaustive list of examples, such as bus drivers or other public transport workers, taxi drivers, rideshare drivers, health workers, or security officers, but should not be limited to public sector employees and should include volunteers.

(c) The new section should also have words to the effect that its subject matter must be treated as an aggravating factor if the court considers that it can be reasonably treated as such, having regard to the particular circumstances of the individual case. This is consistent with the effect of sections 9(10) and (10A).

It should also have an example of when it may not be reasonable to apply the aggravating factor — as was done with 'exceptional circumstances' in section 9(10A) — namely, when the offender's behaviour giving rise to the charge was affected by his or her mental illness.

(d) It should be made clear in drafting this new section that the court is not to have additional regard to the victim's occupation in sentencing if that factor is an element of the offence. For example, such an offence would not apply to assaults charged under section 340 of the *Criminal Code*.

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

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

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

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

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

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

Chapter 11 — Institutional responses

Recommendation 12–1: Review of Adult Restorative Justice Conferencing

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

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

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

Chapter 12 — Enhancing community knowledge and understanding

Recommendation 13–1: Improving reporting capabilities on sentencing outcomes

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

Recommendation 13–2: Enhancing access to sentencing remarks

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

Recommendation 13–3: Community awareness campaigns

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

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

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

Chapter 1 Introduction

1.1 Background

The Queensland Sentencing Advisory Council (the Council) was established in 2016 to inform, engage and advise the community and government about sentencing in Queensland.

The Council's six legislative functions are outlined in section 199 of the *Penalties and Sentences Act 1992* (Qld) (PSA), one of which is to provide advice to the Attorney-General on matters relating to sentencing, when requested. Other relevant functions of the Council are:

- to give information to the community to enhance knowledge and understanding of matters relating to sentencing;
- to publish information about sentencing;
- to research matters about sentencing and publish the outcomes of the research; and
- to obtain the community's views on sentencing and matters about sentencing.

In December 2019, the Attorney-General and Minister for Justice, the Honourable Yvette D'Ath MP, requested the Council undertake a review of penalties for assaults on police and other frontline emergency service workers, corrective services officers and other public officers (hereafter referred to collectively as 'public officers').

In April 2020, in response to a request made by the Council, the Attorney-General granted an extension, postponing the Council's reporting date from 30 June 2020 to 31 August 2020.[1] The extension was granted on the basis of the emergence of the COVID-19 pandemic, and the Council's concerns about the need for stakeholders to have additional time to respond, given their necessary focus on delivering essential services to the community during this challenging period.

1.2 Terms of Reference

The Terms of Reference issued to the Council outline matters the Council was asked to consider in reporting to the Attorney-General. These are:

- the expectation of the community and government that public officers carrying out their duties should not be the subject of assault during the execution of their duties;
- the need for public officers to have confidence that the criminal justice system properly reflects the inherent dangers they face in the execution of their duties, and the negative impacts that such an assault can have on those workers, their colleagues and their families; and
- the importance of the penalties provided for under legislation and sentences imposed for these offences being adequate to meet the purposes of sentencing under section 9(1) of the PSA while also taking into account the individual facts and circumstances of the case, the seriousness of the offence concerned, and offender culpability.

The Terms of Reference then outline a series of issues that must be addressed by the Council in providing its advice. These are:

- analysis of penalties and sentencing trends for offences sentenced under section 340 ('Serious assaults') of the *Criminal Code*,[2] including the impact of the 2012 and 2014 legislative amendments that introduced higher maximum penalties, to determine whether they are in accordance with stakeholder expectations;
- advice about whether the current structure of section 340 of the *Criminal Code* should be retained as it currently stands, or whether such offending should instead be targeted in a separate provision or provisions, possibly with higher penalties, or through the introduction of a circumstance of aggravation;
- advice about whether the definition of 'public officer' in section 340 of the *Criminal Code* should be expanded to recognise other occupations, including public transport drivers;
- a review of related provisions in other legislation that targets the same offending to assess the suitability of retaining these separate offences, and advice about whether penalties for these other offences reflect stakeholder expectations;
- analysis of the approach in other Australian and relevant international jurisdictions to address this type of offending and presentation of any evidence of the impact of any reforms introduced in these jurisdictions;
- identify ways to enhance community knowledge and understanding of the penalties for this type of offending.

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1 Notified by the Attorney-General and Minister for Justice, Yvette D'Ath, on 29 April 2020.

2 *Criminal Code Act 1899* (Qld) sch 1 ('*Criminal Code*').

In undertaking its work, the Terms of Reference require the Council to:

- consider any relevant statistics, research, reports or publications regarding causes, frequency and seriousness of relevant offending;
- consult with stakeholders;
- advise on options for reform to the current offence, penalty and sentencing framework to ensure it provides an appropriate response to this kind of offending; and
- advise on any other matters relevant to this reference.

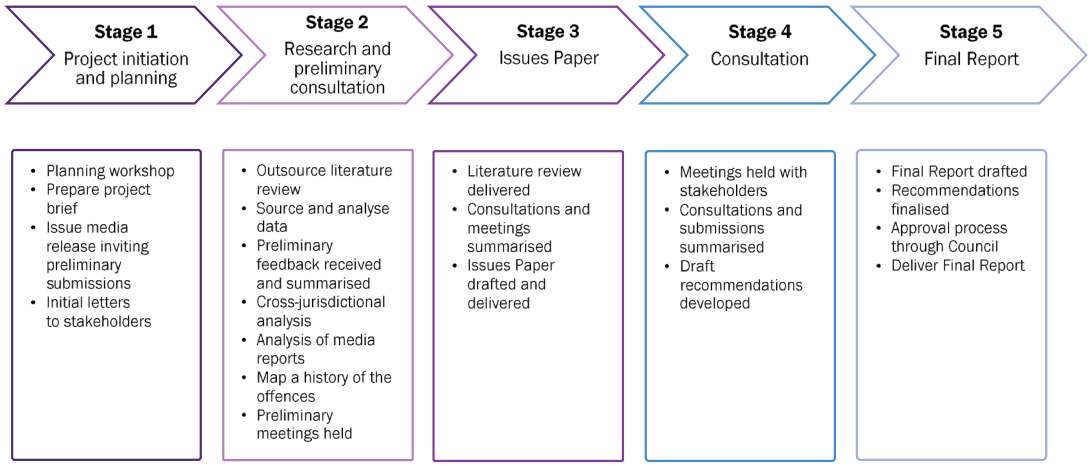
The Terms of Reference are set out in full at **Appendix 1**.

1.3 The Council's approach

As with all Terms of Reference projects at the Council, work is governed by a project management policy that was established early in the life of the Council. The Council's practice is to nominate several of its members to sit on a separate Project Board that meets throughout the life of a project and governs all decisions relating to the progress of the project. The Project Board for these Terms of Reference has met monthly and is responsible for ensuring a high-quality response to the Terms of Reference.

Key stages of the project are shown in Figure 1 below.

Figure 1-1: The Council's approach to the Terms of Reference



During the initial stage of the project, the Project Board commenced work on the Terms of Reference by developing a project plan, which was approved by the full Council, and inviting early submissions from stakeholders about what should be considered during the project. Preliminary submissions were initially sought by 10 January 2020, but this was later extended to 28 January to provide stakeholders with adequate time to respond. The Council received 35 submissions during this initial consultation phase.

Stage 2 of the project involved the commencement of work on key aspects of the research program, including data and legislative analysis, documenting the history of the relevant legislative provisions, holding preliminary meetings with data custodians and undertaking an analysis of media reports on the issue. During this phase of the project the Council published an initial high-level analysis of relevant data on serious assault as part of its Sentencing @ a glance series, as well as an information sheet on penalties for assaults of public officers. These two documents were placed on the Council's website and were intended to assist stakeholders in identifying areas for further investigation.

During Stage 3, the Council released an Issues Paper, the development of which was informed by preliminary submissions received and a literature review prepared by the Griffith Criminology Institute. The issues paper posed 17 questions and invited submissions on the issues raised. The Council received 32 submissions from individuals and stakeholder agencies, including legal professional bodies, employee unions and government departments. A list of submissions is at **Appendix 2**.

Following the release of the issues paper in April, the Council held a series of individual meetings, and a roundtable focusing on issues for Aboriginal and Torres Strait Islander peoples, women and people in circumstances of vulnerability. Over 60 people participated in these meetings and roundtable discussions from May to early July. The

majority of meetings took place by videoconference in compliance with social distancing guidelines issued as part of the government's COVID-19 public health response. A list of stakeholder consultations is at **Appendix 2**.

Data presented in the Issues Paper on sentencing for these offences revealed some interesting demographic patterns indicating that Aboriginal and Torres Strait Islander peoples and women were overrepresented among those sentenced for these offences. In order to better understand the reasons for these demographic patterns, the Council undertook some additional work. This comprised:

- additional consultation with key stakeholders, including the Council's Aboriginal and Torres Strait Islander Advisory Panel, seeking views about these demographic findings;
- the seeking of an expert report from an Aboriginal and Torres Strait Islander academic to provide an additional view about these demographic findings; and
- an analysis of relevant sentencing remarks using a stratified sample[3] to understand whether the circumstances of these offences were different for different offender cohorts.

The publication of this report, which presents the Council's final advice and recommendations, represents the final stage of the project.

1.4 Scope of the project

Early in the life of the project, the Council considered whether there were any matters that should be excluded from the analysis undertaken for the project. Some of these issues arose as a result of the quality of data recorded and maintained in relation to sentencing for assault offences. For example, the Council was not able to determine whether there were assaults on public officers charged under general offence provisions under the *Criminal Code* such as the offences of grievous bodily harm (s 320; **GBH**), wounding (s 323), and assault occasioning bodily harm (s 339; **AOBH**). This is because the identity of the victim is not recorded in a reliable way in the data and, even when the victim's occupation is reliably recorded, it is not possible to identify whether the victim was assaulted while at work or because of a function performed in their work capacity. Consequently, only sentencing outcomes for the offence of serious assault and specific offences that, by their nature, are committed against identified classes of public officers (e.g. police and corrective services officers) could be examined for the purposes of the Council's work.

A data-linkage exercise was undertaken by the Council using administrative data provided by the Department of Youth Justice, the Queensland Police Service (QPS) and Queensland Corrective Services (QCS) in an endeavour to fill some of these data gaps. The data provided by these crime-data agencies highlighted a number of challenges in seeking to report on victim type, and potential areas to enhance existing data collection. These data challenges are discussed throughout this report and are also the subject of Recommendation 13–1 in Chapter 12 of this report.

Offences that resulted in a police caution or other diversionary option were excluded from analysis, as these are not sentences imposed under the PSA or the *Youth Justice Act 1992* (Qld).

The Council agreed that fatal assaults also would not be considered in responding to these Terms of Reference. This decision was made on the basis that the main focus of the reference was on the offence of serious assault under section 340 of the *Criminal Code*, and other assault-related offences, and that these offences would probably be prosecuted as a homicide.

The Council also scoped out the *Criminal Code* offences of assault with intent to commit rape (s 351) and sexual assault (s 352) from being investigated as part of this review. Assaults with a sexual motivation may well be committed against public officers while they are working, but the Council was concerned that including this kind of offending in the Council's analysis could distort findings and distract from the main emphasis of the Terms of Reference. There was no suggestion by stakeholders in preliminary submissions that specific sexual offences should be examined.

The Council did not undertake a detailed analysis regarding the sentencing regime for juveniles in Queensland or in other jurisdictions, although it has considered these issues in the context of the specific advice it has been asked to provide about the appropriateness of sentencing responses more generally. Nor did the Council consider matters dealt with by the Mental Health Court, on the basis that this court is not a sentencing court and the orders made are not sentencing orders. Submissions and consultations suggested that the arrangements for dealing with people who come within the jurisdiction of the Mental Health Court are generally poorly understood and that this is an important area of focus for community education.

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3 A stratified sample is one that ensures a subgroup or subgroups are adequately represented in the sample for a research project.

Finally, the Council considered that the issue of what offence a person is charged with — that is, the charging practices of police officers — would be a much broader issue that could not be adequately addressed as part of this reference. The Council has therefore devoted limited attention to charging practices, although it has made a recommendation supporting the development by the QPS of additional internal guidance to support appropriate charges being laid in response to specific concerns raised in submissions and during consultations. With this limited exception, the Council considers decisions by police officers as to which offence they decide to initially charge is a matter that precedes prosecution and sentencing, and therefore falls outside the Council's functions.

1.5 Data used in this paper

In the early stages of the project, the Council wrote to a number of public sector agencies to seek access to information about assault incidents occurring against their staff that had been reported internally during the period 2014–15 to 2018–19. Data were provided by:

- Queensland Health;
- the Queensland Police Service;
- the Queensland Ambulance Service;
- Queensland Fire and Emergency Services;
- Queensland Corrective Services;
- the Department of Justice and Attorney-General;
- the Department of Youth Justice; and
- the Department of Education.

The Department of Youth Justice, QCS, and the QPS all provided unit record data for all perpetrators who were involved in the assault of a staff member.

The Council wrote to WorkCover Queensland and received unpublished claims data for the period 2015–16 to 2018–19, which document accepted claims regarding assault of a public officer. Additional data were sought and obtained from Victim Assist Queensland on claims made by public officers that resulted from an assault in the workplace. As part of their submission to the Council, the Office of Industrial Relations provided data extracted from its incident notifications dataset, which records reported incidents of workplace violence.

The Council also wrote to the Public Service Commission and received data on numbers of officers employed in the Queensland public service. These figures were used to calculate rates and contextualise the number of assaults that have occurred in the public sector.

As is usual practice for the Council when undertaking a Terms of Reference project, the Council also used sentencing data from the Queensland Government Statistician's Office (QGSO). For the purposes of this reference, it looked at all sentencing outcomes for the period 2009–10 to 2018–19 where the case involved:

- serious assault of a police officer, corrective services officer, or other public officer (*Criminal Code* ss 340(1)(b)–(d) and (2AA));
- assault or obstruction of a corrective services officer (*Corrective Services Act 2006* (CSA) s 124(b));
- assault or obstruction of a watch-house officer (*Police Powers and Responsibilities Act 2000* (PPRA) s 655A);
- assault or obstruction of a police officer (PPRA s 790);
- resisting a public officer (*Criminal Code* s 199);
- GBH (*Criminal Code* s 320);
- torture (*Criminal Code* s 320A);
- AOBH (*Criminal Code* s 339(1));
- wounding (*Criminal Code* s 323); and
- common assault (*Criminal Code* s 335).

Sentencing for this broader range of assault offences was sought to enable comparison of sentencing trends for different types of assault and assault-related offences. Much of these data are presented in Chapters 2, 3, 4 and 7 of this report.

1.6 Limitations of the data

In conducting its review, the Council has identified two major difficulties in working with administrative data in the criminal justice sector. A summary of the difficulties that beset the research and analysis during this review is given below.

Inadequate data on the circumstances of offending

No agency in the criminal justice sector collects quantitative data on the circumstances of a person's offending in a way that can be analysed. For example, there are no data available on the type or extent of injury that may have been caused, the type of weapon that may have been used, or the type of bodily fluid that was used (e.g. blood, saliva, faeces, etc.).

Where a public officer is the victim of a serious assault charged under section 340(2AA), there is little data available on the victim's occupation. To overcome this deficiency, the Council requested information from the QPS on victim occupation as recorded in court briefs (QP9s). This process involved a QPS officer manually reviewing case files and extracting relevant information on the occupation of the victim in each case. The findings from this analysis are available in Chapter 3.

There are also limited data recorded on whether a victim has been assaulted during the course of their work, which means it is not clear how many public officers are victims of offences other than serious assault, such as common assault, AOBH, GBH or wounding. To provide some insight into this matter, the Council requested offender-level data from the Department of Youth Justice and QCS for all assaults of staff members that have occurred within corrective or detention facilities. Similar data were requested from the QPS on assaults of on-duty police officers. Data provided by these agencies were matched to Queensland Courts data to assist the Council to better understand the range of offences charged involving public officer victims and associated sentencing outcomes. The findings of this analysis are available in Chapter 7 of this report.

Inadequate data sharing between agencies

The Council encountered difficulties in obtaining identifiable data from agencies outside the criminal justice sector due to the absence of clear data-sharing protocols. As these agencies were unable to include the personal information of their staff members who were the victims of assaults in the workplace, it was not possible to match data on workplace assaults to courts data to determine the sentencing outcomes for these offences.

Within the criminal justice sector, each agency maintains separate administrative data systems. Although many agencies are using a shared person identifier to recognise unique offenders, these fields were sometimes missing or had not been updated to reflect changes made by other agencies. As a result, the data held by different criminal justice agencies were not linked, and a considerable amount of work had to be undertaken by Council researchers to create a cohesive dataset to get the full picture of the wider criminal justice sector.

1.7 Literature review

To assist the Council in understanding the causes, frequency and seriousness of assaults of public officers, and the impact of sentencing reforms aimed at addressing these types of assaults, the Council commissioned the Griffith Criminology Institute at Griffith University to undertake a literature review focusing on these questions. It should be noted that the views contained in the literature review are those of the authors and not necessarily those of the Council. The full report is on the Council's website.[4]

1.8 Outline of this report

The remaining chapters of this report are set out below:

PART A — Nature and extent of assaults on public officers

Chapter 2 How frequent are assaults on public officers?

Chapter 3 Who is involved in assaults on public officers?

Chapter 4 What are the circumstances in which public officers are assaulted?

PART B — The impact of assaults on victims of crime

Chapter 5 The impact on victims

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4 Christine Bond et al, *Assaults on Public Officers: A Review of Research Evidence* (Griffith Criminology Institute for Queensland Sentencing Advisory Council, March 2020) iii to vi.

PART A — Nature and extent of assaults on public officers

Chapter 2 How frequent are assaults on public officers?

2.1 Introduction

This chapter, together with the following two chapters of this report, explores key issues that have informed the Council's understanding of assaults of public officers and its views about whether the current legal framework in Queensland is appropriate to respond to this form of offending, or is in need of reform. Questions explored were:

- How common are assaults on public officers, and what types of offences are most commonly charged when a public officer is assaulted based on sentencing data? (Chapter 2)
- Who commits assaults on public officers (by gender, age and Aboriginal and Torres Strait Islander status) and what types of public officers are the victims of such assaults? (Chapter 3)
- In what circumstances are public officers assaulted and what are the relevant contextual factors? (Chapter 4).

In responding to these issues, the Council has drawn on a range of data sources and research including:

- a literature review commissioned by the Council undertaken by the Griffith Criminology Institute that reported on evidence around the causes, frequency and seriousness of assaults on public officers, as well as any evidence of the impact and outcomes of these reforms;
- data on reported incidents of assault and WorkCover claims, including the type of injury reported and amount claimed;
- courts data on sentencing outcomes for serious assault under section 340 of the *Criminal Code*, and summary offences that may be charged where an assault has been committed on a public officer;
- an analysis of a sample of sentencing remarks for serious assault cases sentenced in the higher courts; and
- consultation with stakeholders on relevant issues, such as potential factors contributing to demographic trends.

2.2 Findings from the literature — incidence of assaults on public officers

The Council has had the benefit of considering the Griffith Criminology Institute's literature review, which provides an overview of academic literature on the incidence of assaults on public officers, the findings of which are summarised below.

Overall, estimates of the prevalence of, and trends in, assaults against public officers, are not easily made. Different data sources, different definitions of violence, and different time periods make it difficult to compare different types of public officers. Although most studies focused on physical assault, there were a sufficient number that defined workplace violence more broadly. In other words, more reliable studies are required to provide a robust empirical assessment of the extent of assaults against public officers.

With that limitation, the research suggests that, at least in Australia, New Zealand, the United Kingdom (UK) and Canada:

- rates of the incidence of assault may be lowest among firefighters, and highest in the health and welfare sectors;
- the most common type of assault against public officers does *not* involve weapons or result in serious injury;
- assaults in the workplace are more commonly *reported* by male staff than female staff, across a range of occupational groups.

Trends in the incidence of assaults against public officers are more difficult to assess, due to possible changes in reporting and the environment (in addition to methodological limitations). More recent research suggests that, at least for those in the justice sector, assaults against public officers may have declined. However, this may not be the case for those in the healthcare and welfare sector.

Although conclusions about the trends and extent of assaults against public officers are made tentatively, the impact of these assaults on both victims and organisation should not be overlooked. For victims, the research documents detrimental impacts such as: negative consequences for emotional and physical well-being; decreased connectedness to the organisation; lack of a desire to remain in the occupation; and reduced job performance, including increased errors. However, the extent of the organisational costs of these assaults — such as lost productivity and high staff turnover — has been largely understudied, especially outside the health sector and the United States. A 2011 Australian study of accepted workers' compensation claims made by police officers estimated

an average of 587 work hours per claim (ranging from claims for one hour to over 11,840 hours) were lost due to injuries caused by the broader category of occupational violence.

2.3 Reported incidents and accepted WorkCover claims

Section summary

- Agencies in the health sector recorded the highest number of assaults; however, very few of these assaults resulted in a claim for compensation. On the other hand, police officers, corrective services officers and youth detention staff had higher rates of compensation claims following an assault. These findings are supported by the evidence in the literature review that workers in care professions may view occupational violence as 'part of their job'.
- When viewed as a rate of the workforce, police officers and prison officers are the most likely to receive compensation following an assault, followed distantly by teacher aides and paramedics.

As highlighted in the Griffith University literature review, the findings of which are summarised above, certain occupational groups are less likely to report assaults committed against them. Public officers working in care professions, including healthcare, education, and emergency response sectors, under-report assaults committed against them, as the professional orientation of these professions inhibits reporting. For example, some professionals may view occupational violence as 'part of their job'.[1] The issue of under-reporting is expanded on in section 11.1.1 of this report.

The Council obtained data from a range of public sector agencies on the number of incidents reported internally from 2014–15 to 2018–19 that involved the assault of a public officer. It is important to note that the definition of 'assault' could be applied differently in each agency, and therefore the number of reported incidents might not be comparable across agencies. Further data were obtained from WorkCover Queensland on the number of accepted claims that involved the assault of a public officer.[2] These figures are displayed in Table 2-1 below.

A conversion rate was calculated by dividing the number of accepted WorkCover claims by the number of incidents reported by each agency. Employees in the health sector had the lowest conversion rate, with only 4.3 per cent of reported incidents resulting in an accepted WorkCover claim. The Queensland Ambulance Service had a conversion rate of 8.5 per cent — almost twice that of Queensland Health but comparatively low in relation to other agencies. Police officers had a higher conversion rate, with 26.8 per cent of reported incidents leading to an accepted WorkCover claim.

Similarly, corrective services officers also had a higher conversion rate, with 34.8 per cent of incidents resulting in an accepted claim.

Table 2-1: Number of reported incidents and accepted WorkCover claims for assaults of public officers, 2014–15 to 2018–19

Agency	Reported incidents	Accepted WorkCover claims	Conversion rate
Queensland Health	34,844	1,481	4.3%
Queensland Ambulance Service	1,656	141	8.5%
Queensland Fire and Emergency Services	19	2	10.5%
Queensland Police Service — Police Officers	9,103	2,440	26.8%
Queensland Corrective Services — Prison staff* (2018–19 only)	333	116	34.8%
Youth Justice — Detention centre staff* (2018–19 only)	121	18	14.9%

Source: Incident data provided by individual agencies — unreported data, 2014–15 to 2018–19. Claims data provided by WorkCover Queensland — unreported data, 2014–15 to 2018–19.
Notes:
(1) Incident data from different agencies are sourced from different administrative systems and may not be directly comparable. Incident data from QCS and Youth Justice reflect the number of incidents recorded in prison and detention facilities involving a staff member. Data from the QPS reflect the number of assaults of on-duty police officers that were charged. Data from Queensland Health, QAS and QFES reflect the number of incidents involving the assault of a staff member that were reported internally.
(*) Due to Machinery-of-Government changes, only includes data from 2018–19.

The number of accepted WorkCover claims can provide an indication of which public sector agencies are affected by assaults. However, due to differences in reporting rates between different professions (discussed above), some occupational groups may under-report more than others. The extent of harm caused may also affect the number of

1 Christine Bond et al, *Assaults on Public Officers: A Review of Research Evidence* (Griffith Criminology Institute for Queensland Sentencing Advisory Council, March 2020) [3.2].

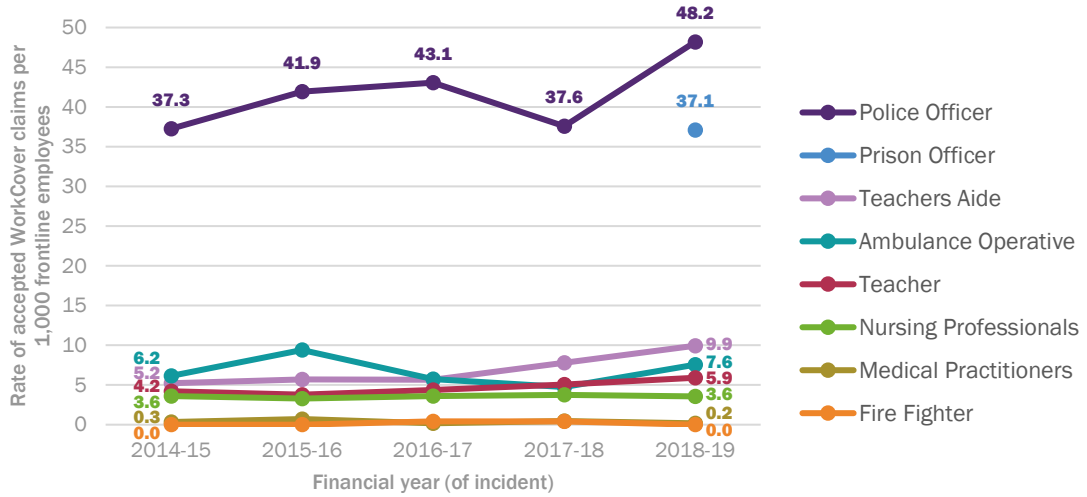
2 See Appendix 3 for the methodology WorkCover used to extract the claims data.

claims accepted by WorkCover; that is, assaults that result in medical costs or time off work may be more likely to result in a WorkCover claim. Table A4–3 in Appendix 4 provides a breakdown of the number of accepted WorkCover claims by agency and occupation from 2014–15 to 2018–19. It is important to note that some occupational groups have many more employees than other occupational groups. Hence, data between agencies are not comparable. For comparable data, refer to Figure 2-1 below, which reports the number of accepted WorkCover claims reported as a rate of workers employed in those roles.

In 2018–19, the QPS, Department of Education, and Department of Health reported the highest number of accepted WorkCover claims resulting from an assault of a staff member (n=583, 581, 284, respectively, excluding guards and security officers). QCS and the Department of Child Safety, Youth and Women also reported a large number of accepted WorkCover claims (n=107 and n=123, respectively, excluding guards and security officers). Guards and security officers accounted for 45 claims, across a range of agencies. While the number of assaults in other agencies (such as the Queensland Ambulance Service) is relatively low, it is important to note that there are also fewer workers employed in these agencies — see Figure 2-1 for further context.

Figure 2-1 shows the rate of accepted WorkCover claims per 1,000 employees where the claim was the result of the assault of a public officer. Police officers had the highest rate, which has increased over the past five years, from 37.3 claims per 1,000 officers in 2014–15 to 48.2 claims per 1,000 officers in 2018–19. Prison officers (of both adult prison and juvenile detention centres) had the second-highest rate of claims, with 37.1 accepted WorkCover claims per 1,000 officers in 2018–19. Due to Machinery-of-Government changes, the Council was unable to obtain comparable numbers of prison officers for years prior to 2018–19 to allow for a comparison over time. The remaining occupational groups for which data were available were relatively low in comparison. There were 7.6 accepted WorkCover claims per 1,000 ambulance operatives in 2018–19. Teacher aides had a rate of 9.9 claims per 1,000 employees in 2018–19, which was higher than the rate of 5.9 for teachers.

Figure 2-1: Rate of accepted WorkCover claims per 1,000 employees for assault of public officers, 2014–15 to 2018–19



Source: Claims data provided by WorkCover — unreported data, 2014–15 to 2018–19. Rates calculated from the number of frontline workers as provided by the Queensland Public Service Commission — unreported data, 2014–15 to 2018–19.
Note: Prison officers were not identified as a discrete group prior to 2018–19.

2.4 Sentenced cases involving acts intended to cause injury

Section summary

- Serious assault offences comprise 11.8% of all sentenced acts intended to cause injury.
- Other assaults of public officers comprise 16.0% of all sentenced acts intended to cause injury.

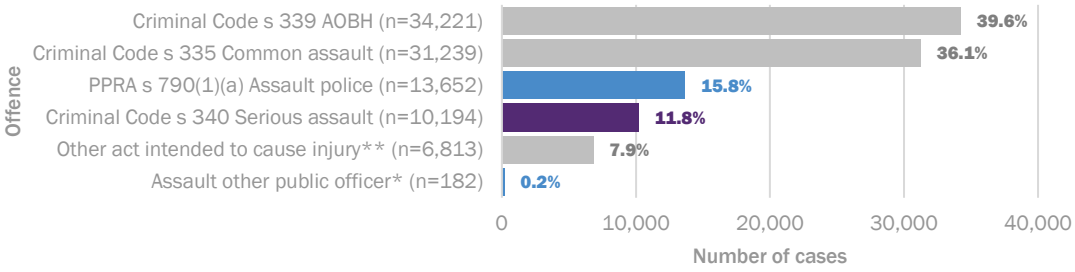
As discussed above, not all cases involving the assault of a public officer are reported. Even fewer cases proceed to a WorkCover claim, or result in criminal charges. The remainder of this chapter discusses those cases that have resulted in a conviction for an offence sentenced by a Queensland Court.

The Australian and New Zealand Standard Offence Classification (ANZSOC) is used to classify offences into broad categories for statistical purposes. To ascertain the prevalence of serious assaults, Figure 2-2 shows a breakdown of all offences falling within the broad offence category of 'acts intended to cause injury'. This category includes offences that cause non-fatal injury or harm to another person where there is no sexual or acquisitive element and includes offences such as common assault and assaults occasioning bodily harm (AOBH). As the ANZSOC is a national classification, its broad categories may not always account for the elements of offences as they exist in

individual jurisdictions. For this reason, it is important to note that, in the Queensland context, some offences that are classified under 'acts intended to cause injury' do not actually require an 'intent' to injure, and the classification might more accurately be thought of as 'assaults that cause harm'.

Assaults against a public officer make up a substantial proportion of all acts intended to cause injury sentenced in Queensland Courts — see Figure 2-2. Assault of a police officer under section 790(1)(a) of the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA) accounted for 15.8 per cent of all acts intended to cause injury. An additional 11.8 per cent of cases involved a serious assault. A further 0.2 per cent of cases involved the assault of a public officer under a different legislative provision.

Figure 2-2: Number of sentenced cases involving an 'act intended to cause injury'



Data include higher and lower courts, adult and juvenile cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes:
(1) Totals will add to more than 100%, as a case will be counted multiple times if it contains multiple offences.
(2) For the purposes of this analysis, some offences were recoded from the offence classification of 'resist or hinder government official' to 'acts intended to cause injury'. These included:

- the serious assault of a public officer (*Criminal Code* s 340(2AA));
- the assault or obstruction of a corrective services officer (*Corrective Services Act 2006* s 124(b));
- the assault or obstruction of a watch-house officer (*Police Power and Responsibilities Act 2000* s 655A); and
- resisting a public officer (*Criminal Code* s 199).

(*) 'Assault other public officer' includes assaults and obstructions of corrective services officers under s 124(b) of the CSA, watch-house officers under s 655A of the PPRA, and public officers under s 199 of the *Criminal Code*.
(**) Offences with fewer than 5,000 cases were grouped as 'other act intended to cause injury'; these include offences such as GBH (n=2,133), unlawful stalking (n=1,549), wounding (n=1,397), and others.

2.5 Sentenced cases involving the assault of a public officer

Section summary

- There were 10,194 sentenced cases involving a serious assault from 2009–10 to 2018–19. In 7,932 of these cases, serious assault was the most serious offence sentenced.
- The most common type of serious assault involved assault of a police officer, comprising 65.4% of cases, although the number of these cases has decreased over the past five years.
- The lesser summary offence of assaulting or obstructing a police officer was sentenced in 85,434 cases over the 10-year period, although the number of these cases has decreased considerably over this time.
- There were over 60 different offences identified throughout various pieces of legislation that involved the assault, obstruction, hindering or resisting of a public officer — these were sentenced in 1,553 cases.

2.5.1 Serious assault

From 2009–10 to 2018–19, there were 10,194 cases sentenced in Queensland's courts that involved a charge of serious assault — see Table 2-2. These cases involved a total of 13,565 offences of serious assault and were committed by 9,061 unique individuals. In 7,932 of these cases, serious assault was the most serious offence sentenced.

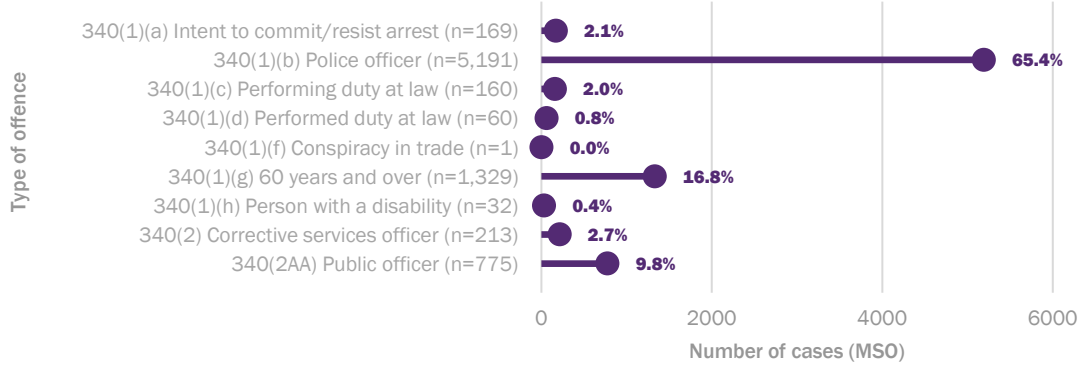
Table 2-2: Frequency of serious assaults sentenced in Queensland courts

Section	Offence Description	Cases	Offenders	Offences	MSO
340	Serious assault — nfd*	4	4	5	2
340(1)(a)	Serious assault — Intent to commit/resist arrest	294	292	366	169
340(1)(b)	Serious assault — Police officer	6,538	6,014	8,736	5,191
340(1)(c)	Serious assault — Performing duty at law	236	229	306	160
340(1)(d)	Serious assault — Performed duty at law	85	82	101	60
340(1)(f)	Serious assault — Conspiracy in trade	2	2	2	1
340(1)(g)	Serious assault — 60 years and over	1,702	1,664	1,823	1,329
340(1)(h)	Serious assault — Person with a disability	40	39	45	32
340(2)	Serious assault — Corrective services officer	292	246	422	213
340(2AA)	Serious assault — Public officer	1,337	1,259	1,759	775
TOTAL		**10,194**	**9,061**	**13,565**	**7,932**

Data include higher and lower courts, adult and juvenile cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: (*) nfd = not further defined — these cases could not be classified into specific subsections.

Figure 2-3 shows the number of cases sentenced where serious assault was the most serious offence (MSO) sentenced. The serious assault of a police officer was, by far, the most common type of serious assault, accounting for 65.4 per cent of cases sentenced under section 340 (MSO). The second most frequently sentenced type of serious assault involved people aged 60 years and over (16.8%). Public officers were the third-largest category (9.8%). The remaining types of serious assault only account for small percentages of all serious assault cases, including cases involving a serious assault charge under section 340(1)(c) assault of a person performing a duty at law and section 340(1)(d) assault of a person who has performed a duty at law, as well as section 340(2) assault of a working corrective services officers at a corrective services facility.

Figure 2-3: Number of sentenced serious assault cases (MSO), by subsection



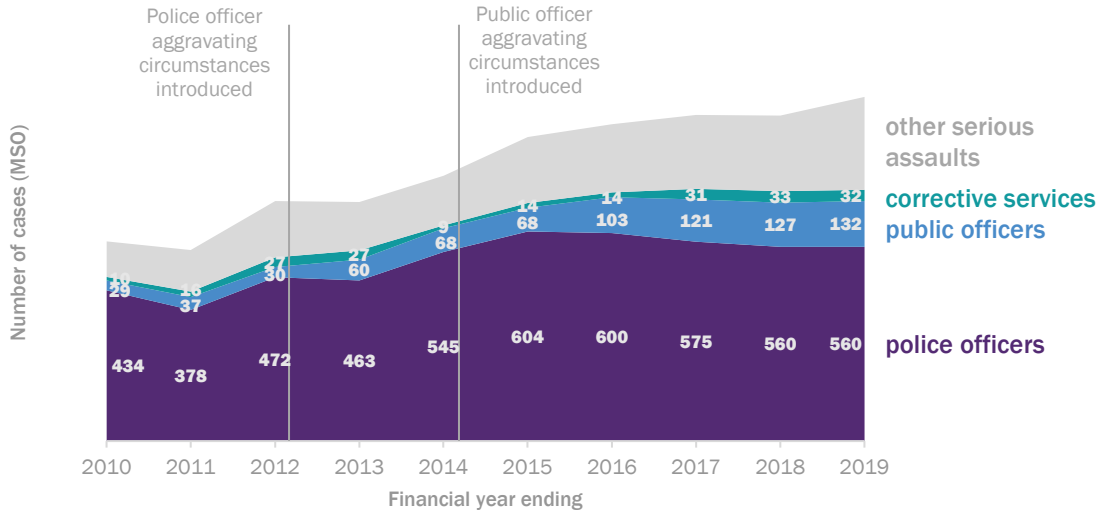
Data include: Higher and lower courts, adult and juvenile cases (MSO) sentenced between 2009–10 and 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

Figure 2-4 provides a breakdown of the types of serious assault over time. For a detailed breakdown see Table A4-2 in Appendix 4.

The number of serious assaults of a police officer increased by 39.2 per cent from 2009–10 to 2014–15; however, since 2014–15, the number of serious assaults involving a police officer as the victim has declined by 7.3 per cent. The QPS Violent Confrontations Review, undertaken by the QPS following five fatal police shootings in 2013–14, observed a 15.2 per cent reduction of all reported assaults of on-duty police officers between 2012 and 2014. The review identified the increased use of 'accoutrements (capsicum spray, taser and firearms) which are traditionally deployed from a greater distance between the subject and police officer' as a possible contributing factor.[3]

The number of assaults of public officers more than quadrupled over the data period, from 29 cases (MSO) in 2009–10 to 132 in 2018–19. Over the same period, the number of employees in the public sector increased by 18.8 per cent.

Figure 2-4: Number of sentenced serious assault cases (MSO), by subsection over time

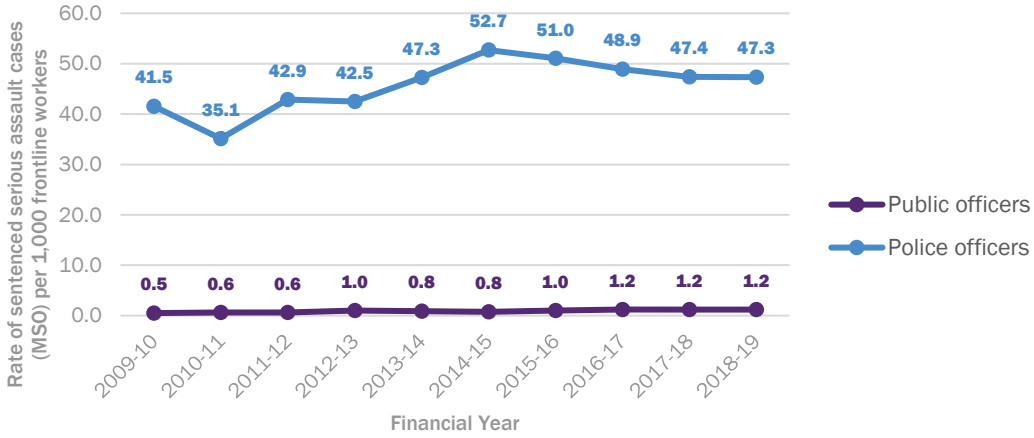


Data include higher and lower courts, adult and juvenile cases (MSO) sentenced between 2009–10 and 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

[3] Queensland Police Service, Violent Confrontations Review Team, Operational Capability Command, *QPS Violent Confrontations Review* (undated) <https://www.police.qld.gov.au/sites/default/files/2018-12/QPS%20Violent%20Confrontations%20Review.pdf> 23.

The decrease in serious assaults against police officers in recent years is even more notable considering the number of police officers in Queensland has increased by 3.2 per cent over the same period (2014–15 to 2018–19). Figure 2-5 shows the rate of sentenced serious assault cases per 1,000 frontline employees. In 2014–15, there were 52.7 sentenced cases involving the assault of a police officer (MSO) per 1,000 officers, reducing to 47.3 in 2018–19. Over the same period, the rate of assaults of public officers increased minimally, from 0.8 sentenced cases per 1,000 frontline workers in 2014–15 to 1.2 in 2018–19.

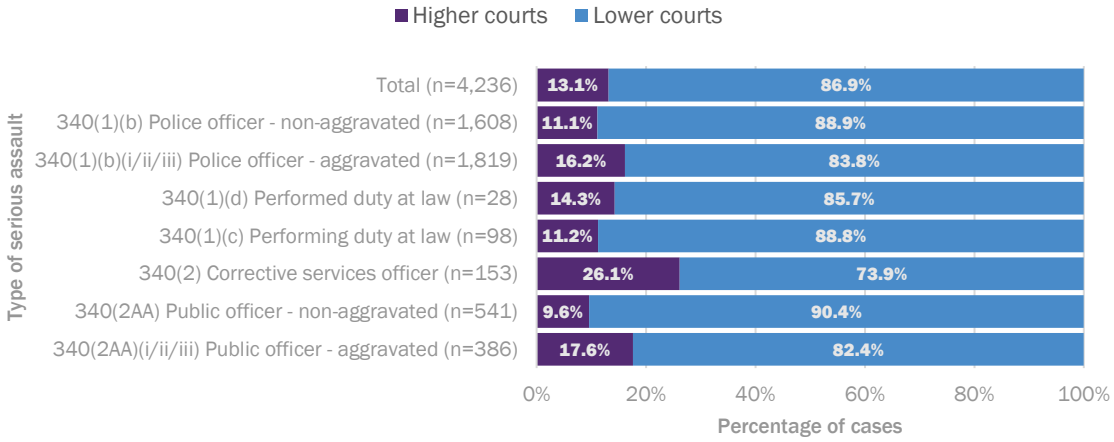
Figure 2-5: Rate of sentenced serious assault cases (MSO) per 1,000 frontline employees over time



Data include higher and lower courts, adult and juvenile cases (MSO) sentenced between 2009–10 and 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Rates calculated from the number of frontline workers provided by the QPSC — unpublished data, 2014–15 to 2018–19.
Note: 'Public officers' includes serious assaults of corrective services officers under s 340(2), public officers under s 340(2AA), and those performing or who performed a duty imposed at law under s 340(1)(c) and s 340(1)(d).

While most cases involving a serious assault are heard in the Magistrates Courts, some types of serious assault are more likely to be dealt with in the higher courts. Serious assaults of working corrective services officers by prisoners who are either in prison or on parole are the most likely type of serious assault to be sentenced in the higher courts (26.1%). The non-aggravated assault of a public officer is the least likely type of serious assault to be dealt with by the higher courts, with 90.4 per cent of these cases sentenced in the Magistrates Courts — see Figure 2-6.

Figure 2-6: Proportion of serious assault of a public officer cases sentenced in the higher and lower courts



Data include adult and juvenile cases sentenced between 2014–15 and 2018–19 where the offence was committed on or after 5 September 2014.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

2.5.2 Summary offences

In contrast to serious assaults under the *Criminal Code*, the offence of assaulting or obstructing a police officer under section 790 of the PPRA is a less serious offence that can only be dealt with by a Magistrates Court, unless transmitted to a higher court to be dealt with alongside more serious charges.

Compared with the number of cases sentenced for serious assault of a police officer under section 340(1)(b) of the *Criminal Code* (Qld) (n=6,538), a much larger number of cases (n=85,434) involved an offender being sentenced for assault or obstruction of a police officer under section 790 of the PPRA. In 24,488 of those cases, the assault

or obstruction of a police officer was the most serious offence sentenced, indicating that this offence is often charged alongside more serious offences.

Other summary offences involving the assault or obstruction of a public officer were sentenced far less often. Resisting public officers under section 199 of the *Criminal Code* was sentenced in 25 cases over the 10-year period, 147 cases were sentenced involving assault or obstruction of a corrective services officer (CSA s 124(b)), and 10 cases were sentenced involving assault or obstruction of a watch-house officer (PPRA s 655A).

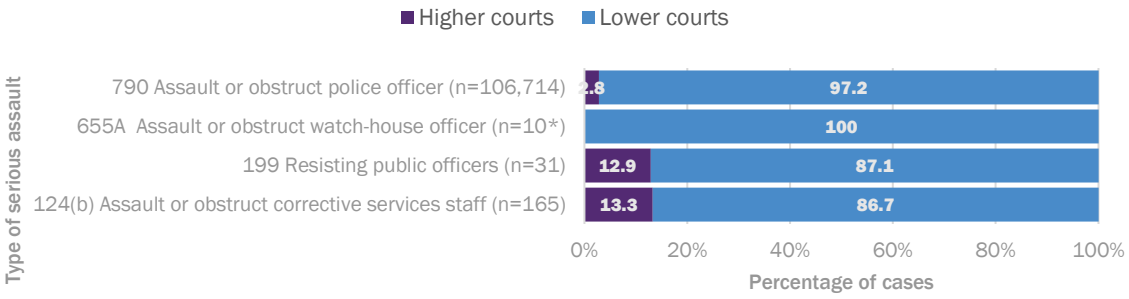
Table 2-3: Frequency of summary offences sentenced in Queensland courts

Section	Offence Description	Cases	Offenders	Offences	MSO
124(b)	Assault or obstruct corrective services staff	147	138	165	81
199	Resisting public officers	25	25	31	7
655A	Assault or obstruct watch-house officer	10	10	10	6
790	Assault or obstruct police officer	85,434	61,924	106,714	24,488

Data include higher and lower courts, adult and juvenile cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

Due to the less serious nature of these summary offences, they were predominantly sentenced in the lower courts — approximately 87 per cent or more of these offences were sentenced in the lower courts. Those sentenced in the higher courts are likely to be dealt with alongside more serious charges.

Figure 2-7: Proportion of summary offences cases sentenced in the higher and lower courts

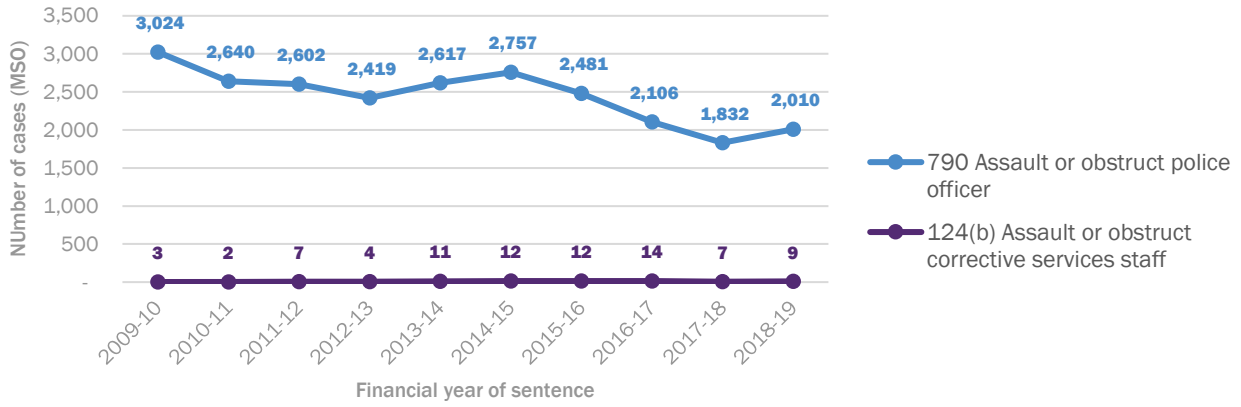


Data include adult and juvenile cases, offences sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: (*) Small sample size

The number of assault or obstruction of police officers (MSO) sentenced under section 790 of the PPRA has decreased over the past 10 years, from 3,024 cases in 2009–10 down to 2,010 cases in 2018–19. This decrease might be partly attributable to an increased use of penalty infringement notices (PINs). Police officers can issue PINs for obstruction offences (although not for assault offences), which means the person does not have to go to court if they pay the infringement amount. Officers use their discretion in deciding whether to issue a PIN or to instead choose the court process. Other non-court actions include cautioning, conferencing and referral to support services.

Far fewer cases were sentenced for assault or obstruction of corrective services staff (CSA s 124(b)); however, proportionally, there was a slight increase in cases from 2009–10 to 2018–19, peaking at 14 cases in 2016–17.

Figure 2-8: Number of sentenced summary offence cases (MSO), over time



Data include higher and lower courts, adult and juvenile cases (MSO) sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

2.5.3 Other offences

Table 2-4 below lists all the offences that have been sentenced in Queensland Courts from 2009–10 to 2018–19 that involved the assault, obstruction, resistance or hinderance of a particular category of person. The list was compiled by searching for all offences that contained the phrases 'resist', 'obstruct', or 'hinder'. Additionally, any offences that were categorised under certain ANZSOC categories were included. These categories included:

1541 Resist or hinder government official (excluding police officer, justice official or government security officer)

1562 Resist or hinder police officer or justice official

The resulting list of offences was manually reviewed to verify that the included offences were relevant.

Offences that have been examined in detail elsewhere in this report were not included in this analysis. These offences were:

- s 340 *Criminal Code* — Serious assault;
- s 790 PPRA — Assault or obstruction of a police officer;
- s 124(b) CSA — Assault or obstruction of a corrective services officer; and
- s 199 *Criminal Code* — Resisting public officers.

The type of penalty received at sentencing is included in the table. Due to the small number of cases for most of these offences, it was not feasible to provide more detailed breakdowns — as a result, the data include penalties from all courts, and for both adults and young people. The penalties are grouped into broad categories:

- Custodial penalties — including imprisonment, suspended sentences, and intensive correction orders (for young offenders, this included detention, conditional release orders and boot camp orders);
- Community-based penalties — including probation and community service;
- Monetary penalties — including fines, compensation and restitution payments; and
- Other — including good behaviour bonds, and cases that were convicted but not further punished (for young offenders, this included reprimands and court-ordered conferences).

Table 2-4: Offences involving the assault, obstruction, resist or hinderance of a specific category of person

Act	Section	Offence description	Cases	MSO	Sentencing outcomes			
					Custodial penalties	Community-based penalties	Monetary	Other
ANZSOC category: 02 Acts Intended to cause injury								
Transport Operations (Marine Safety) Act 1994	190(1)	Obstruction of master or crew	10	6	2	1	3	4
Police Powers & Responsibilities Act 2000	655A(1)(a)	Assault watch-house officer	5	3	2	2	1	0
Criminal Code (Qld)	317(1)(c)	Acts intended to cause GBH — resisting arrest	4	3	4	0	0	0
Justices Act 1886	40(1)(D)	Unlawfully assault or wilfully obstruct a person in attendance at a court or an examination	2	0	2	0	0	0
Criminal Code (Qld)	317(1)(d)	Acts intended to cause GBH — resisting public officer	1	1	1	0	0	0
ANZSOC category: 13 Public order								
Liquor Act 1992	165A(4)	Resisting authorised person after being refused entry to premises	491	223	1	6	385	99
Liquor Act 1992	166	Obstruction generally	274	129	0	8	216	52
Petroleum and Gas (Production and Safety) Act 2004	805(1)(B)	Obstruction of petroleum authority holder — carrying out an authorised activity for the petroleum authority on the land	2	2	0	0	2	0
Criminal Code (Qld)	206	Obstruct minister of religion while officiating by threats or force	1	0	1	0	0	0
ANZSOC Category: 1541 Resist or hinder government official (excluding police officer, justice official or government security officer)								
Ambulance Services Act 1991	46	Obstruct/hinder ambulance officer	198	73	7	21	114	58
Criminal Code (Cth)	149	[Cth] Obstruction of Commonwealth public officials	73	23	2	8	37	31
Liquor Act 1992	173ED(3)	Resisting an authorised person who is removing a prohibited person from premises	70	10	0	2	60	10
Transport Operations (Passenger Transport) Act 1994	135(1)	Obstruction of an authorised officer in the exercise of a power	62	1	1	3	33	25
Fisheries Act 1957	182	Obstruct an inspector	43	18	0	0	42	1
Liquor Act 1992	185(1)	Obstruct investigator or person assisting investigator	24	10	0	1	16	7
State Buildings Protective Security Act 1983	29	Resist security officer	21	4	1	5	10	5
Fire and Emergency Services Act 1990	150C(1)	Obstruction of persons performing functions	20	9	3	3	17	2
Hospital & Health Boards Act 2011	187(1)	Obstructing an authorised person or security officer	14	1	1	2	7	4
Transport Operations (Road Use Management) Act 1995	54(2)	Obstruction of authorised officer	14	6	0	0	14	0
Transport Operations (Road Use Management) Act 1995	80(5A)	Obstructing healthcare professional taking blood specimen	4	0	0	2	1	1
Animal Care & Protection Act 2001	206(1)	Obstruct authorised officer or inspector without reasonable excuse	4	1	0	0	3	1
Transport Operations (Marine Safety) Act 1994	182(1)	Obstruction of shipping inspectors	3	1	0	0	2	1
Work Health and Safety Act 2011	190	Offence to assault, threaten or intimidate inspector	2	1	0	0	0	2
Criminal Code (Qld)	190–191	[Repealed] obstructing/resisting possession of post and telegraph officers etc.	2	1	0	0	1	1
Recreation Areas Management Act 2006	194(1)	Obstructing an authorised officer	2	0	0	0	2	0
Food Act 2006	214(1)	Obstructing an authorised person in exercise of power	2	0	0	0	2	0
[Repealed] *Consumer Credit Act 1994* (Qld)	47	[Repealed] Obstructing inspector	2	0	0	0	2	0
Australian Securities & Investment Commission Act (Cth)	66(1)(A)	Engage in conduct that obstructs or hinders ASIC in the performance of its functions	2	0	1	0	0	1
Animal Management (Cats And Dogs) Act 2008	137(1)	Obstruction of authorised person	2	2	0	0	2	0
Fair Trading Act 1989	91(1)	Obstruction	1	1	0	0	1	0

					Sentencing outcomes			
Act	**Section**	**Offence description**	**Cases**	**MSO**	**Custodial penalties**	**Community-based penalties**	**Monetary**	**Other**
[Repealed] *Property Agents and Motor Dealers Act 2000*	561	[Repealed] Threatening or obstructing inspectors	1	1	0	0	1	0
[Repealed] *Workplace Health and Safety Act 1995*	173	[Repealed] Unlawfully obstructing inspector	1	1	0	0	0	1
Mental Health Act 2016	625(1)	Obstruct an official exercising a power, or someone helping an official exercising a power	1	1	0	0	0	1
Nature Conservation Act 1992	155	Obstruct conservation officer	2	1	0	0	2	0
Forestry Act 1959	86(1)(A)	Abuse forest officer performing duties	1	1	0	0	1	0
Heavy Vehicle National Law Act 2012	584(1)	Obstruct an authorised officer, or someone helping an authorised officer, exercising a power under the heavy vehicle national law (Queensland)	1	1	0	0	1	0
Sunshine Coast Regional Council – Local Law No 1 (Admin) 2011	23	Threatening etc. an authorised person	1	1	0	0	1	0
Work Health And Safety Act 2011	188	Offence to hinder or obstruct inspector	1	0	0	0	0	1
Transport Operations (Marine Safety) Act 1994	85	Obstruction of a harbour master	1	0	0	0	0	1
Brisbane City Council – Local Law 04 – Legal Proceedings	PART 12 S2(C)(I)	Use threatening, insulting or abusive language to officer discharging/attempting to discharge duties	2	0	0	0	2	0
Transport Infrastructure Act 1994	107(1)	[Repealed] Obstructing an authorised person for a railway	1	0	0	0	0	1
Transport Operations (Road Use Management) Act 1995	73(1)(B)	Obstruction of person authorised under section 71	1	0	0	0	1	0
ANZSOC Category: 15621 Resist arrest, incite, hinder, obstruct police								
Kowanyama Aboriginal Council By-Laws 1997	30	Obstruct, hinder or resist police	29	14	0	0	29	0
Police Powers & Responsibilities Act 2000	575(1)	[Repealed] Assault or obstruct authorised person exercising a power (special event)	23	6	1	2	14	6
Child Protection Act 1999	160(1)	Obstruction of authorised officer etc.	19	6	0	2	10	7
[Repealed] *Police Act 1937*	59	[Repealed] Assault/obstruct/hinder police/resist arrest	42	3	2	0	22	18
Police Service Administration Act 1990	10.20A(2)	[Repealed] Assault/obstruct police officer in performance of duty	25	2	2	0	16	7
Police Powers & Responsibilities Act 2000	655A(1)(b)	Obstruct watch-house officer	5	3	0	0	4	1
Woorabinda Aboriginal Council By-Laws	3.7	Assault/obstruct police	3	1	0	0	2	1
ANZSOC Category: 15623 Resist or hinder other justice official								
Corrective Services Act 2006	127(1)	Obstructing staff member	26	11	16	0	5	6
Criminal Code (Qld)	148	Obstructing officers of courts of justice	3	2	0	1	1	1
Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984	64	Obstruction, intimidation and assault	1	0	1	0	0	0

Chapter 3 Who is involved in assaults on public officers?

3.1 Demographic profile of people sentenced for serious assault

Section summary

- Serious assaults of public officers were most commonly committed by men (66.6%) and by non-Indigenous people (61.7%), with an average age of 28.8 years.
- Aboriginal and Torres Strait Islander peoples were overrepresented for the offence of serious assault of a public officer, with men being sentenced at a rate 16 times greater than their non-Indigenous counterparts, and women being sentenced at a rate 12 times greater than non-Indigenous women.
- The rate of overrepresentation of Aboriginal and Torres Strait Islander peoples has been decreasing in recent years for these offences.

3.1.1 Gender

Males comprised the majority of offenders sentenced for the serious assault of a public officer, regardless of the category of serious assault. Overall, two-thirds of sentenced offenders were male (66.6%). The proportion of female offenders was highest at 36.4 per cent for the serious assault of a public officer (s 340(2AA)) and was the lowest at 16.0 per cent for the serious assault of a corrective services officer — see Table 3-1.

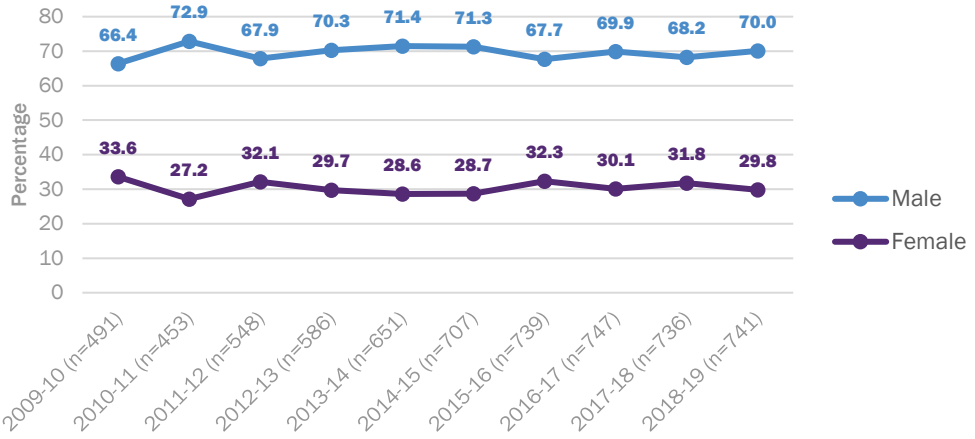
Table 3-1: Gender of offenders sentenced for serious assault of a public officer

Section	Offence	Total (n)	Female (%)	Male (%)
340(1)(b)	Serious assault — police officer	5,191	30.3	69.7
340(1)(c)/(d)	Serious assault — performing/performed duty	220	26.4	73.2
340(2)	Serious assault — corrective services officer	213	16.0	84.0
340(2AA)	Serious assault — public officer	775	36.4	63.6
Total	**All serious assault of public officer offences**	**6,399**	**30.4**	**66.6**

Data include adult and juvenile offenders, higher and lower courts, MSO sentenced between 2009–10 and 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: Cases where gender and/or Indigenous status was unknown have been included in the calculations but not presented; therefore the percentages may not total 100%.

Over the 10-year data period, there was no change in the gender of offenders being sentenced for section 340 serious assault of a public officer. Each year the proportion of male offenders was approximately double that of female offenders. The proportion of female offenders peaked in 2009–10 at 33.6 per cent of offenders sentenced for serious assault.

Figure 3-1: Gender of offenders sentenced for serious assault of a public officer, over time



Data include adult and juvenile offenders, MSO, higher and lower courts, ss 340(1)(b), 340(1)(c) and 340(1)(d), 340(2), and 340(2AA), sentenced between 2009–10 and 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: Cases where gender was unknown have been included in the calculations but not presented; therefore the percentages may not total 100%.

3.1.2 Aboriginal and Torres Strait Islander status

Almost two-thirds of people sentenced for the serious assault of a public officer were non-Indigenous (61.7%). This finding was consistent across all types of serious assault — see Table 3-2. The proportion of Aboriginal and Torres Strait Islander offenders was lowest at 37.3 per cent for the serious assault of public officer performing/performed a duty (s 340(1)(c)/(d)), and highest at 39.9 per cent for serious of corrective services officer — although, overall, there was little difference between the different types of serious assault.

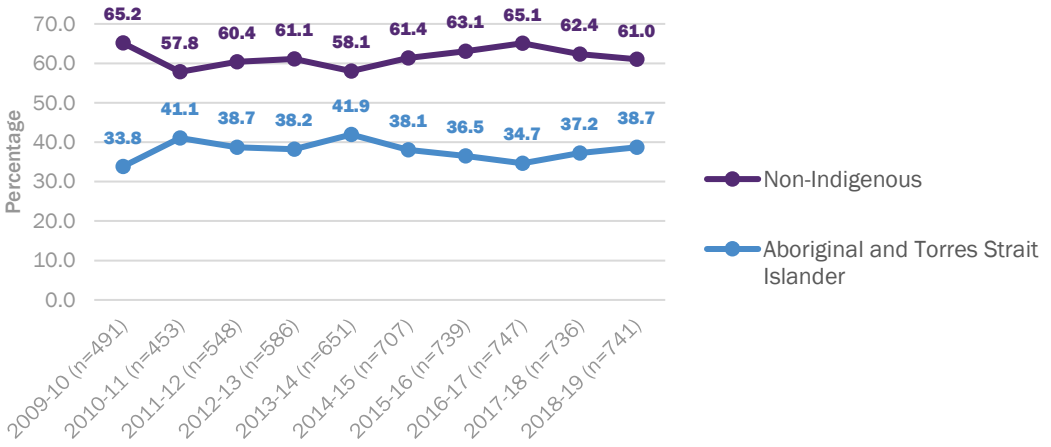
Table 3-2: Aboriginal and Torres Strait Islander status of people sentenced for serious assault of a public officer

Section	Offence	Total (n)	Aboriginal and Torres Strait Islander (%)	Non-Indigenous (%)
340(1)(b)	Serious assault — police officer	5,191	37.6	61.8
340(1)(c)/(d)	Serious assault — performing/performed duty	220	37.3	62.3
340(2)	Serious assault — corrective services officer	213	39.9	59.6
340(2AA)	Serious assault — public officer	775	38.8	60.9
Total	**All serious assault of public officer offences**	**6,399**	**37.8**	**61.7**

Data include adult and juvenile offenders, higher and lower courts, MSO sentenced between 2009–10 and 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: Cases where gender and/or Indigenous status was unknown have been included in the calculations but not presented; therefore, the percentages may not total 100%.

Over the 10-year data period, there was little fluctuation in the Aboriginal and Torres Strait Islander status of offenders sentenced for serious assault of a public officer, with the majority of offenders being non-Indigenous. The proportion of Aboriginal and Torres Strait Islander offenders was lowest in 2009–10 at 33.8 per cent, peaking at 41.9 per cent in 2013–14 — see Figure 3-2.

Figure 3-2: Aboriginal and Torres Strait Islander status of offenders sentenced for serious assault of a public officer, over time



Data include adult and juvenile offenders, MSO, higher and lower courts, ss 340(1)(b), 340(1)(c) and 340(1)(d), 340(2), and 340(2AA), sentenced between 2009–10 and 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: Cases where gender was unknown have been included in the calculations but not presented; therefore the percentages may not total 100%.

3.1.3 Gender and Aboriginal and Torres Strait Islander status

Overall, non-Indigenous males make up the largest proportion of offenders sentenced for assault of a public officer, accounting for close to half (43.5%) — see Table 3-3. Aboriginal and Torres Strait Islander males comprised just over one-quarter of sentenced offenders (25.8%) while Aboriginal and Torres Strait Islander females made up the smallest number of offenders.

Table 3-3: Serious assaults of a public officer by gender and Aboriginal and Torres Strait Islander status

			Aboriginal and Torres Strait Islander		Non-Indigenous	
Section	**Type of serious assault**	**Total (n)**	**Female (%)**	**Male (%)**	**Female (%)**	**Male (%)**
340(1)(b)	Police officer	5,191	12.1	25.5	18.0	43.9
340(1)(c)/(d)	Performing/performed duty	220	8.6	28.6	17.7	44.1
340(2)	Corrective services officer	213	7.5	32.4	8.5	51.2
340(2AA)	Public officer	775	13.9	24.9	22.3	38.6
Total	**All serious assault of public officer**	**6,399**	**12.0**	**25.8**	**18.2**	**43.5**

Data include adult and juvenile offenders, higher and lower courts, MSO sentenced between 2009–10 and 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: Cases where gender and/or Indigenous status was unknown have been included in the calculations but not presented; therefore the percentages may not total 100%.

3.1.4 Age

Overall, the average age at offence for offenders sentenced for serious assault (of a public officer) was 28.8 years. The youngest offender was aged 10.7 years while the oldest was 71.0 years. By offence, there were small differences in the average age at offence, with those sentenced for serious assault of a public officer performing/performed a duty being slightly younger at 27.6 years and those sentenced for assault of a public officer being slightly older at 31.3 years — see Table 3-4.

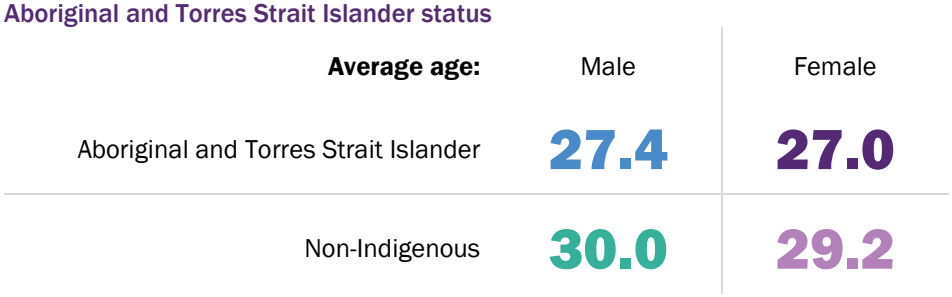
Table 3-4: Average age at offence by type of serious assault

Section	Offence	Total (n)	Average age (years)
340(1)(b)	Serious assault — police officer	5,191	28.5
340(1)(c)/(d)	Serious assault — performing/performed duty	220	27.6
340(2)	Serious assault — corrective services officer	213	28.6
340(2AA)	Serious assault — public officer	775	31.3
Total	**All serious assault of public officer offences**	**6,399**	**28.8**

Data include adult and juvenile offenders, MSO, higher and lower courts, ss 340(1)(b), 340(1)(c) and 340(1)(d), 340(2), and 340(2AA), sentenced between 2009–10 and 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

Considering gender and Aboriginal and Torres Strait Islander status in conjunction, Aboriginal and Torres Strait Islander peoples sentenced for serious assault (of a public officer) were slightly younger than their non-Indigenous counterparts (27.0 years compared with 29.2 years for females and 27.4 years compared with 30.0 years for males) — see Figure 3-3. However, it is important to note that the average age of the Aboriginal and Torres Strait Islander population is younger in comparison to the non-Indigenous population in Queensland — for more details on this, see the Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians*, cat. no. 3238.0.55.001.

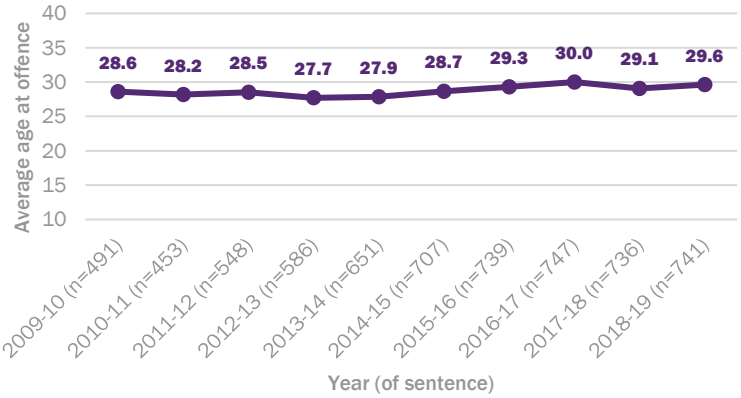
Figure 3-3: Average age (at offence) of offenders sentenced for serious assault of a public officer by gender and Aboriginal and Torres Strait Islander status



Data include adult and juvenile offenders, MSO, higher and lower courts, ss 340(1)(b), 340(1)(c) and 340(1)(d), 340(2), and 340(2AA), sentenced between 2009–10 and 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: Cases where gender and/or Indigenous status was unknown have been included in the calculations but not presented; therefore the percentages may not total 100%.

There was little change in the average age of offenders sentenced for serious assault over the 10-year period, increasing slightly from 28.6 years in 2009–10 to 29.6 years in 2018–19 — see Figure 3-4. The youngest average age was 27.7 years in 2012–13 and the oldest was in 2016–17 at 30.0 years.

Figure 3-4: Average age (at offence) of offenders sentenced for serious assault of a public officer, over time



Data include adult and juvenile offenders, MSO, higher and lower courts, ss 340(1)(b), 340(1)(c), 340(1)(d), 340(2), and 340(2AA), sentenced between 2009–10 and 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

3.1.5 Overrepresentation of demographic groups by estimated resident population

This section explores the overrepresentation of demographic groups by expressing the number of sentenced serious assault cases as a rate over the estimated residence population (ERP) of each group. While Aboriginal and Torres Strait Islander peoples comprise approximately 4.6 per cent of the Queensland population,[1] they are overrepresented across the criminal justice system, especially in respect of offences involving the assault of public officers.

Table 3-5 shows the rate of sentenced offences per 1,000 ERP for various types of offending in 2015–16. The table compares the rate of overrepresentation for all sentenced offences across the criminal justice system, and then narrows its focus to acts intended to cause injury, and finally provides offending rates for serious assaults.

Across all sentenced cases in the criminal justice system, 150 Aboriginal and Torres Strait Islander men per 1,000 ERP were sentenced for an offence in a Queensland court. This was four times the rate of non-Indigenous men, who were sentenced at a rate of 37.1 men per 1,000 ERP. For serious assault of a public officer, Aboriginal and Torres Strait Islander men offended at a rate of 3.3 per 1,000 ERP — this is 16 times higher than the rate for non-Indigenous men at 0.2 men per 1,000.

As explored earlier in this chapter, Aboriginal and Torres Strait Islander women made up the smallest number of sentenced serious assault cases (12.0% of cases, see Table 3-3). However, when expressed as a rate of the population, Aboriginal and Torres Strait Islander women were the second most overrepresented demographic in Queensland, following Aboriginal and Torres Strait Islander men. Table 3-5 shows that 70.1 Aboriginal and Torres Strait Islander women per 1,000 were sentenced for an offence in the criminal justice system — six times higher than the rate of 11.6 for non-Indigenous women. For the offence of serious assault of a public officer, Aboriginal and Torres Strait Islander women were sentenced at a rate of 1.2 women per 1,000 — a rate that is 12 times higher than that of non-Indigenous women at 0.1 per 1,000.

Table 3-5: Rate of offending per 1,000 estimated resident population in 2016

	Aboriginal and Torres Strait Islander		Non-Indigenous	
Offence category	**Female**	**Male**	**Female**	**Male**
All sentenced offences	70.1	150.0	11.6	37.1
Acts intended to cause injury offences	8.5	21.3	0.5	2.1
s 340 serious assault offences	1.4	3.8	0.1	0.3
s 340 serious assault against a public officer*	1.2	3.3	0.1	0.2

Data include unique offenders (adult and juvenile), higher and lower courts, offences occurring in 2015–16.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Estimated resident population figures were retrieved from ABS Cat No. 3101.0 Table 53 and are for the estimated number of Queenslanders aged 10 or older by gender and Aboriginal and Torres Strait Islander status as at June 2016. Shown as a rate per 1,000 Estimated Resident Population.
Note: (*) ss 340 (1)(b), (1)(c), (1)(d), (2), and (2AA)

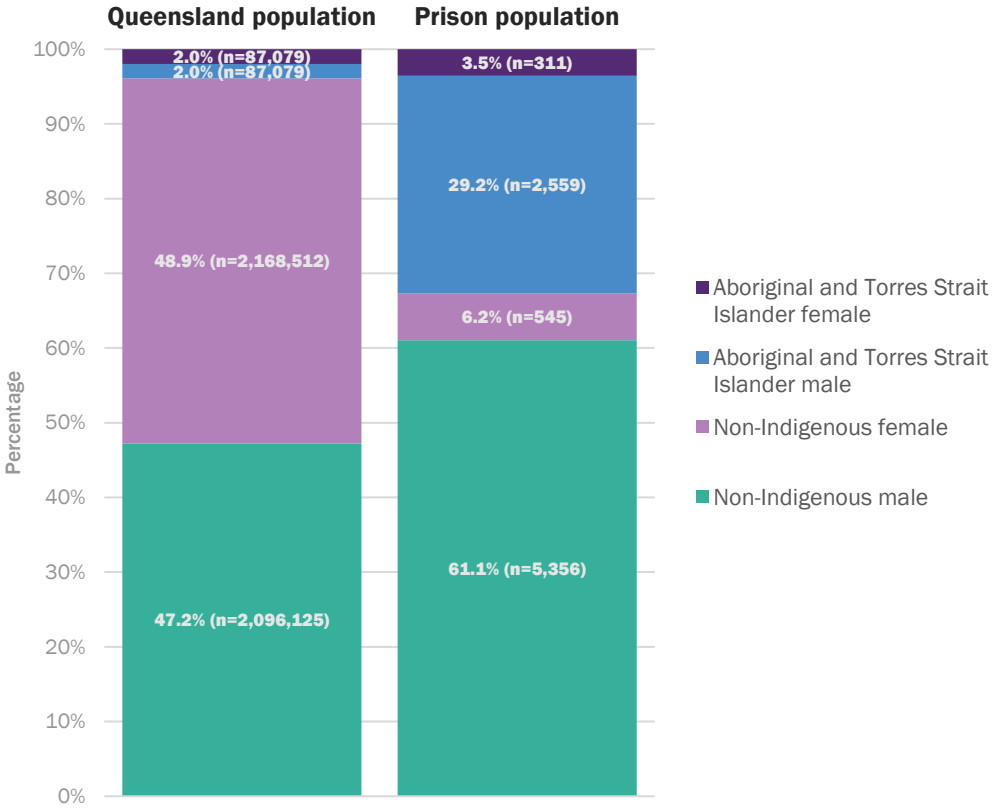
[1] As at 30 June 2016. For population estimates of Aboriginal and Torres Strait Islander peoples in Queensland, see Queensland Government Statistician's Office, Population estimates and projections, *Aboriginal and Torres Strait Islander Queenslanders* (11 July 2019) available at <https://www.qgso.qld.gov.au/statistics/theme/population/aboriginal-peoples-torres-strait-islander-peoples/population-estimates-projections>.

For serious assaults of corrective services officers by prisoners, a different rate needs to be calculated to provide more accurate findings. For these offences, the rate must be calculated from the prison population, which is markedly different from the composition of the general population in Queensland. Figure 3-5 below illustrates the differences between the general population of Queensland and its prison population.

Male offenders comprise the vast majority of people in Queensland's prisons. While Aboriginal and Torres Strait Islander men only comprise approximately 2.0 per cent of the Queensland population (aged 10 years or over), they comprise over 29.2 per cent of the prison population.

Aboriginal and Torres Strait Islander women are also overrepresented in the prison population — while they comprise approximately 2.0 per cent of the Queensland population, they are 3.5 per cent of the prison population. Non-Indigenous women are the only demographic group that is underrepresented in the prison population — making up 48.9 per cent of the overall Queensland population, non-Indigenous women only comprise 6.2 per cent of the prison population.

Figure 3-5: Differences between the general Queensland population and the prison population



Data include population figures as at 30 June 2019, for people aged 10 years or older.
Source: Estimated resident population figures retrieved from ABS Cat No. 3101.0 Table 53, and Cat No. 3238.0 Table 3 and are for the estimated number of Queenslanders aged 10 or older as at June 2019.
Prison population retrieved from ABS Cat No. 4517.0 *Prisoners in Australia 2019*, Table 21 as at 30 June 2019.
Note: The proportion of male and female Aboriginal and Torres Strait Islander peoples in the general population was estimated by dividing the total estimate of Aboriginal and Torres Strait Islander peoples in half.

Table 3-6 shows the number of assaults of corrective services officers as a rate per 1,000 of the prison population. It includes serious assaults under section 340(2) as well as assaults and obstructions under section 124(b) of the *Corrective Services Act 2006*. The data include cases from 2012–13 to 2018–19, as breakdowns by gender and Aboriginal and Torres Strait Islander status were only available from the Australian Bureau of Statistics from 2012–13 onwards.

Aboriginal and Torres Strait Islander women had the highest rate of offending against corrective services officers, with a rate of 12.7 women per 1,000 in the adult prison population — this was twice the rate of Aboriginal and Torres Strait Islander men, who assaulted corrected services officers at a rate of 6.5 men per 1,000 of the adult prison population. Non-Indigenous women also had a higher rate of assaulting corrective services officers compared with non-Indigenous men (8.6 women per 1,000, compared with 4.6 men per 1,000).

Aboriginal and Torres Strait Islander offenders generally had higher rates of assault of corrective services officers compared with their non-Indigenous counterparts. For men, Aboriginal and Torres Strait Islanders assaulted corrective services officers at a rate of 6.5 per 1,000, compared with 4.6 per 1,000 for non-Indigenous men.

Table 3-6: Rate of serious assault of corrective services officer offences by prison population per 1,000

	Aboriginal and Torres Strait Islander		Non-Indigenous	
Offence category	**Female**	**Male**	**Female**	**Male**
Assaults of corrective services officer	12.7	6.5	8.6	4.6

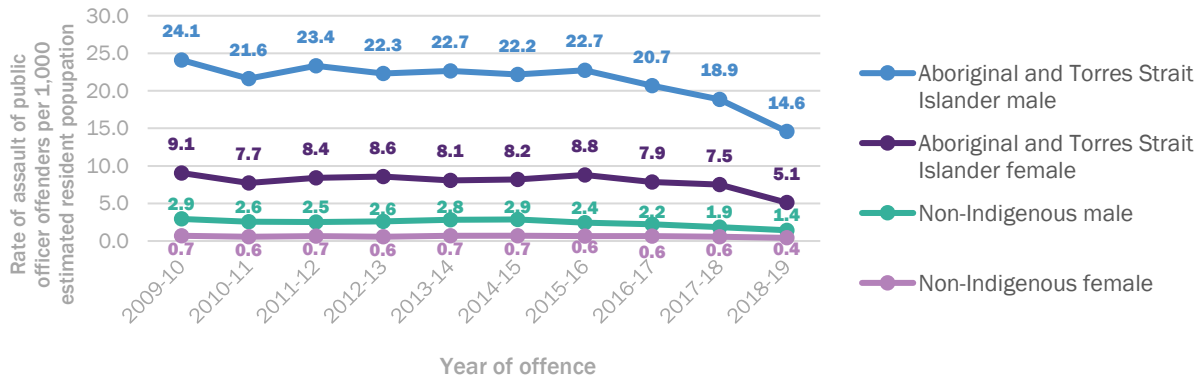
Data include unique adult offenders, higher and lower courts, sentenced for s 340(2) or s 124(b), offence occurring on or after 1 July 2012, sentenced between 2012–13 and 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Prison population as at 30 June 2013 to 30 June 2019 retrieved from ABS Cat No. 4517.0 Prisoners in Australia, 2013 to 2019, Table 20, 21, or 22. (Indigenous status by gender only available from 2012–13 onwards.)

Figure 3-6 shows the rate of people who assaulted a public officer (excluding corrective services officers) per 1,000 estimated resident population over the 10-year data period.

Overall, the rate of serious assaults of public officers has decreased for all demographic groups. The largest decrease was for Aboriginal and Torres Strait Islander men, falling from a rate of 24.1 men per 1,000 population in 2009–10, to a low of 14.6 men per 1,000 in 2018–19.

The figure also shows that Aboriginal and Torres Strait Islander men were the most overrepresented demographic for the serious assault of public officers (excluding corrective services officers) over the data period. The second most overrepresented group was Aboriginal and Torres Strait Islander women — each year between 5 and 10 Aboriginal and Torres Strait Islander women per 1,000 estimated resident population were sentenced for the serious assault of a public officer.

Figure 3-6: Rate of serious assault of public officer* per 1,000 estimated resident population



Data include unique offender count, adult and juvenile offenders, higher and lower courts, offence occurring on or after 1 July 2009, presented by financial year of offence, sentenced between 2009–10 and 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Estimated resident population aged 10 or over as at 30 June each year retrieved from ABS Cat No. 3238.0 Table 3 (assumed 50% male and female based on census data) and Cat No. 3101.0 Table 53 (non-Indigenous population estimated by Queensland ERP (aged over 10) minus Indigenous population ERP).
Note: (*) 'Public officer' includes ss 340(1)(b), (1)(c), (1)(d) and (2AA), and 790.

As outlined in Chapter 1, the Council observed the marked overrepresentation of Aboriginal and Torres Strait Islander peoples and women in the preparation of the Issues Paper and undertook some additional work to understand what might be driving this particular level of overrepresentation. This work comprised three elements:

1. Additional targeted consultation with key stakeholders, including the Council's Aboriginal and Torres Strait Islander Advisory Panel
2. An expert report from an Aboriginal and Torres Strait Islander academic
3. Analysis of sentencing remarks to understand the circumstances and broader context of these assault events, to determine whether there are different circumstances involved for different demographic groups.

Consultation with key stakeholders elicited a number of important themes that helped contextualise these demographic findings.

The following themes have been noted by the Council:

- The Aboriginal and Torres Strait Islander Advisory Panel provided advice arising from their own consultation with professional and personal networks. They spoke about the experience of being an Aboriginal and Torres Strait Islander in ordinary circumstances in public spaces. One member spoke about his personal experience of being stopped by police where he lived while he was out for a run, for no apparent reason. He felt he had come to the attention of police because he was a black man in a white, wealthy neighbourhood and he was running (and therefore suspicious). In these circumstances, where Aboriginal and Torres Strait Islanders are faced with a situation where they are confronted by a public officer such as a police officer, the historical relationships between them and authority figures leads to a 'fight or flight' reaction, whereby the immediate response is to either 'get out of there', or to react protectively and defensively.
- Key stakeholders at a roundtable meeting on 22 June 2020 raised several relevant issues, one of which was the question of whether women were overrepresented due to escalating behaviour in the context of a domestic violence callout by police. Another issue related to the poor management of mental health and lack of diversion and early intervention options for people experiencing critical mental health problems. If relevant interventions were available, these individuals would not end up in custody (and often, these people end up in solitary confinement and in conflict with corrective services officers). A third issue raised by the group was the chronic and fundamental levels of disadvantage experienced by Aboriginal and Torres Strait Islander peoples, which is demonstrated in there being little or no improvements in the national Closing the Gap targets.
- An expert report received by the Council in July 2020, written by Associate Professor Chelsea Bond, Dr David Singh and Helena Kajlich from the School of Social Science at The University of Queensland, provides an interpretation of the overrepresentation issue by using Critical Race Theory[2] as a means of interrogating a series of case studies from media articles and in coronial reports of Aboriginal and Torres Strait Islander peoples who have been involved in interactions with public officers. The report outlines the racialisation of Aboriginal and Torres Strait Islander peoples as a risk or threat to public good and emphasises the need to understand the violent historical context of the relationship between Aboriginal and Torres Strait Islander people and authority figures that has accompanied land dispossession. The report comments: 'community memory connects the violence of the frontier to contemporary violence of the front line'. (The authors acknowledge that the views expressed in their report are their own and not necessarily those of the Council.)
- The sentencing remarks analysis is presented in the next chapter of this report.

These are important themes to understand when thinking about the demographic patterns outlined in this chapter. It is particularly important to consider this in the context of the Black Lives Matter movement, which emerged across the world in the wake of the death of George Floyd at the hands of police in the United States in May 2020 — the period when interactions between public officers and members of the community were being considered by the Council.

The overrepresentation of Aboriginal and Torres Strait Islander peoples is not limited to the types of offending examined in this report.[3] In 2017, the Australian Law Reform Commission published its *Pathways to Justice* report

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2 Critical race theory is described in the expert report as follows: 'Critical race theory grew out of a movement in the US law where questions were asked of the very foundations of the liberal political order, including notions of equality, legal reasoning, Enlightenment rationalism and the supposed neutrality of the law. Race, racism and power are central to these questions. Leading CRT scholar David Theo Goldberg, in exploring the nature of the state, law and race, argues that hierarchical understandings of race and the development of the modern state are aligned.'

3 See Queensland Sentencing Advisory Council, *Community-based Sentencing Orders, Imprisonment and Parole Options* (Final Report, July 2019) 54–55 [4.5].

— the most recent major study into the issue of overrepresentation in the criminal justice sector.[4] The report noted that Aboriginal and Torres Strait Islander peoples 'may be more likely to end up in prison for the same offence' compared with their non-Indigenous counterparts.[5]

The Council acknowledges the devastating continuing impacts of colonisation experienced by the Aboriginal and Torres Strait Islander community, and the intergenerational trauma that has been inherited by modern Indigenous Australia. These themes form an important backdrop to the work on this review, and the Council is undertaking further work outside of this reference to contribute to a broader understanding of Indigeneity and sentencing. This will be informed by the important work undertaken as part of this review.

4 Australian Law Reform Commission, *Pathways to Justice — An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples: Final Report* (Report No. 133, 2017).

5 Ibid 230 [7.4], citing Australian Bureau of Statistics, *Corrective Services, Australia, June Quarter 2017*, Cat No. 4512.0 (2017) Table 19.

3.2 Who are the victims of assaults on public officers?

Section summary

- Police officers were the most common victim of serious assault of a public officer, followed by paramedics, detention centre staff, and corrective services officers.
- A 'public officer' under sections 340(2AA), (1)(c) and (1)(d) involved a wide range of professions including paramedics, detention centre workers, medical/hospital workers, security guards, watch-house officers, transport officers, and child safety officers.
- Young people were most likely to assault a detention centre worker or education worker, whereas adults were most likely to assault a paramedic or medical worker.
- Spitting was most common in situations where the victim was a transport officer or security guard.
- Sentenced assaults of detention centre workers have increased considerably over the 10-year period.

This section of the report explores who the victims of serious assault are and seeks to uncover the occupations of victims who have been classified as a 'public officer'. To provide a high-level overview, Table 3-7 provides a breakdown of all victims of serious assault of a public officer. This includes police officers under section 340(1)(b) and corrective services officers under section 340(2), in addition to the more ambiguous categories of public officers under sections 340(1)(c), (1)(d) and (2AA). Overall, across all serious assaults of a public officer from 2009–10 to 2018–19, the vast majority of victims were police officers (78.5%), distantly followed by paramedics (5.4%).

Table 3-7: Overview of the occupation of victims of serious assaults

Victim occupation	Frequency	Percentage
Police	8,886	78.5
Paramedic	612	5.4
Detention centre worker	442	3.9
Corrective services officer	420	3.7
Medical/hospital worker (excluding security)	377	3.3
Security guard	219	1.9
Watch-house officer	130	1.1
Transport officer (excluding security)	62	0.5
Child safety officer	46	0.4
Compliance officer	31	0.3
Education	28*	0.2
Carer	16*	0.1
Unknown	16*	0.1
Staff at licensed premises (excluding security)	14*	0.1
Firefighter/fire investigator	10*	0.1
Other government role	8*	0.1
Youth worker	7*	0.1
TOTAL	**11,324**	**100**

Data include lower and higher courts, adult and juvenile offenders, cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019, QSIS and the QPS.
Notes: Count is by charge (i.e. victim) — therefore the victim may not be unique; victims entered as 'prison officer' or 'correctional officer' or under section s 340(2) where the offender was sentenced as a child have been coded as 'detention centre worker'.
(*) Small sample size

3.2.1 Victims recorded in the court process

The remainder of this section will focus on serious assaults of a public officer under section 340(2AA), as well as serious assaults of a person performing, or who has performed, a duty at law under sections 340(1)(c) and 340(1)(d). For details on the methodology and data used, please refer to Appendix 3.

Paramedics were the most common victims of serious assault of a public officer under section 340(2AA); the second most common victim occupation was a medical/hospital worker — see Table 3-8. The serious assault of a person who is performing, or has performed, a duty at law under section 340(1)(c)/(d) has somewhat different victims, with detention centre workers, security guards, and police officers among the most frequent occupations.

The occupation of victims who were assaulted by young offenders was markedly different from the victims who were assaulted by adults. Unsurprisingly, young offenders most commonly assaulted detention centre workers. Over the 10-year data period, 28 education workers were sentenced under these provisions — the majority of these assaults (82.1%, n=23) were committed by young people. Adult offenders most commonly assaulted paramedics, medical staff, security guards, compliance officers and police officers.

Table 3-8: Victim occupations, by type of serious assault and whether the offender was an adult

Victim type	TOTAL	340(2AA) Public officer	340(1)(c)/(d) Duty at law	Adult offenders	Young offenders
Victim occupation	**N**	**%**	**%**	**%**	**%**
Paramedic	612	95.1	4.9	90.0	10.0
Detention centre worker	422	72.8	27.3	5.2	94.8
Medical/hospital worker (excluding security)	377	93.4	6.6	91.8	8.2
Security guard	219	64.4	35.6	90.0	10.1
Police officer	150	59.3	40.7	90.0	10.0
Watch house officer	130	69.2	30.8	91.5	8.5
Transport officer (excluding security)	62	83.9	16.1	64.5	35.5
Child safety officer	46	93.5	6.5	69.6	30.4
Compliance officer	31	71.0	29.0	100.0	0.0
Education worker	28	71.4	28.6	17.9	82.1
Corrective services officer	18*	-	-	-	-
Carer	16*	-	-	-	-
Unknown	16*	-	-	-	-
Staff at licensed premised (excluding security)	14*	-	-	-	-
Firefighter/fire investigator	10*	-	-	-	-
Other government role (state or federal)	8*	-	-	-	-
Youth worker	7*	-	-	-	-
TOTAL	**2,166**	**81.2**	**18.8**	**71.1**	**28.9**

Data include lower and higher courts, adult and juvenile offenders, cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019, QSIS and the QPS.
Notes: Count is by charge (i.e. victim) — therefore the victim may not be unique; victims entered as 'prison officer' or 'correctional officer' where the offender was sentenced as a child have been coded as 'detention centre worker'.
(*) Small sample size

Impact of the introduction of aggravating circumstances

From 5 September 2014, it became an aggravating circumstance to assault a public officer by biting, spitting, throwing or applying bodily fluid or faeces; causing bodily harm to a public officer; or, at the time of the assault, being or pretending to be armed. The aggravating circumstances carry a higher maximum penalty of 14 years' imprisonment for adult offenders and 7 years' detention for juvenile offenders. The maximum penalty for a non-aggravated serious assault committed by a child (but only if the child is before a higher court) is 3.5 years' detention. In the lower courts, a jurisdictional limit of one year's detention applies, for any offence, committed by a juvenile.[6]

There are differences in the occupation of victims based on the type of aggravating circumstance — see Table 3-9.

Serious assault with bodily fluid was more prevalent for some occupations. Two-thirds of serious assaults with transport officers as victims involved bodily fluid (66.7%), and only 20.0 per cent of serious assaults of transport officers did not involve any aggravating circumstances. Similarly, 44.1 per cent of serious assaults of a security guard involved bodily fluids and only one-third of assaults on security guards did not involve any aggravating circumstances (32.3%). Assaults involving bodily fluid were relatively high for detention centre staff (32.5%), medical/hospital staff (26.4%) and watch-house officers (24.1%).

Medical workers were the most likely to receive bodily harm, at a rate of nearly 1 in 5 (18.8%), closely followed by security guards (18.3%). Police officers were also more likely to receive bodily harm than other occupational groups, at 16.0 per cent.

Being armed was most common where the victim was a police officer or a transport officer (excluding security), with 1 in 10 (10.0%) assaults involving a weapon (where the case was sentenced as a public officer under section 340(2AA)).

Table 3-9: Aggravating circumstances by victim occupation

	TOTAL	Bodily fluid	Bodily harm	Armed	No aggravating circumstances
Victim occupation	**N**	**%**	**%**	**%**	**%**
Paramedic	375	16.8	10.4	5.1	68.5
Detention centre worker	269	32.5	4.8	9.3	53.5
Medical/hospital worker (excluding security)	261	26.4	18.8	3.1	54.4
Security guard	93	44.1	18.3	8.6	32.3
Watch-house officer	58	24.1	8.6	0	67.2
Police	50	22	16	10	58
Transport officer (excluding security)	30	66.7	6.7	10	20
Other	29	26.7	17.2	0	58.6
Compliance officer	18*	0	0	11.1	88.9
Corrective services officer	15*	20	13.3	0	73.3
Child safety officer	14*	7.1	14.3	7.1	71.4
TOTAL	**1,212**	**26.2**	**11.7**	**5.9**	**57.8**

Data include lower and higher courts, adult and juvenile offenders, offences occurring on or after 5 September 2014, cases sentenced from 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019, QSIS and the QPS.
Notes:
(1) Count is by charge (i.e. victim) — therefore the victim may not be unique; victims entered as 'prison officer' or 'correctional officer' where the offender was sentenced as a child have been coded as 'youth detention worker'.
(2) Small categories have been combined into 'other' due to sample size, includes firefighter/fire investigator, education, carer, youth worker, staff at licensed premises (excluding security), other government roles and unknown.
(*) Small sample size

6 See *Youth Justice Act 1992* (Qld) s 176 regarding the 7-year maximum penalty — this can only be imposed by a judge, not a magistrate. See s 175 regarding the 3.5-year maximum regarding serious assault simpliciter offences (if the sentence is imposed by a judge) and 1-year maximum penalty available to magistrates generally. The differences in sentencing juvenile offenders are discussed in Chapter 6.

Victim occupation by offender demographics

Non-Indigenous offenders are more prevalent across most victim occupation types, particularly male offenders. Although Aboriginal and Torres Islander offenders are less prevalent, they are overrepresented as they comprise 44.2 per cent of offenders for assault of a public officer (ss 340(1)(c), (1)(d), and (2AA)), yet make up only 3.8 per cent of Queensland's population aged 10 years and over.[7]

When the victim was a detention centre worker, Aboriginal and Torres Strait Islander males were the most common offender at 83.7 per cent. For paramedics, medical/hospital staff, security guards, police officers, and watch-house officers, non-Indigenous male offenders were most common. However non-Indigenous females were the offender in about one-quarter of assaults on paramedics, medical/hospital workers and security guards. Close to half of the child safety officers were assaulted by a non-Indigenous female (43.5%) with a further 19.6 per cent of assaults on child safety officers perpetrated by an Aboriginal and Torres Strait Islander female. Non-Indigenous females were by far the most likely to seriously assault a carer (62.5%). See Table 3-10.

For a complete picture of serious assaults of public officers, including police officers under section 340(1)(b) and corrective services officers under section 340(2), see Table A4-6 in Appendix 4.

Table 3-10: Offender demographics by victim occupation

		Aboriginal and Torres Strait Islander		Non-Indigenous	
Victim occupation	**TOTAL**	**Female (%)**	**Male (%)**	**Female (%)**	**Male (%)**
Paramedic	612	15.5	19	24.4	40.4
Detention centre worker	422	4	83.7	0.2	11.9
Medical/hospital worker (excluding security)	377	13.8	21.5	26	38.5
Security guard	219	7.3	16.9	24.2	50.7
Police officer	150	12.7	28.7	15.3	43.3
Watch-house officer	130	15.4	20	18.5	46.2
Transport officer (excluding security)	62	16.1	14.5	4.8	64.5
Child safety officer	46	19.6	8.7	43.5	28.3
Compliance officer	31	0	19.4	9.7	71
Education worker	28*	7.1	39.3	10.7	39.3
Corrective services officer	18*	5.6	33.3	5.6	55.6
Carer	16*	12.5	18.8	62.5	6.3
Unknown	16*	6.3	50	12.5	31.3
Staff at licensed premised (excluding security)	14*	7.1	21.4	21.4	50
Firefighter/fire investigator	10*	0	20	20	60
Other government role (state or federal)	8*	0	37.5	25	37.5
Youth worker	7*	0	28.6	14.3	57.1
TOTAL	**2,166**	**11.3**	**32.9**	**18.4**	**36.9**

Data include lower and higher courts, adult and juvenile offenders, ss 340(1)(c), s 340(1)(d), and (2AA), cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury – Courts Database, extracted November 2019, QSIS and the QPS.
Notes:
(1) Cases where gender and/or Aboriginal and Torres Strait Islander status was unknown have been included in the calculations but not presented; therefore the percentages may not total 100%;
(2) Count is by charge (i.e. victim) — therefore the victim may not be unique and if an offender had multiple victims the demographic of the offender will be counted more than once;
(3) Victims entered as 'prison officer' or 'correctional officer' or under section s 340(2) where the offender was sentenced as a child have been coded as 'detention centre worker'.
(*) Small sample size

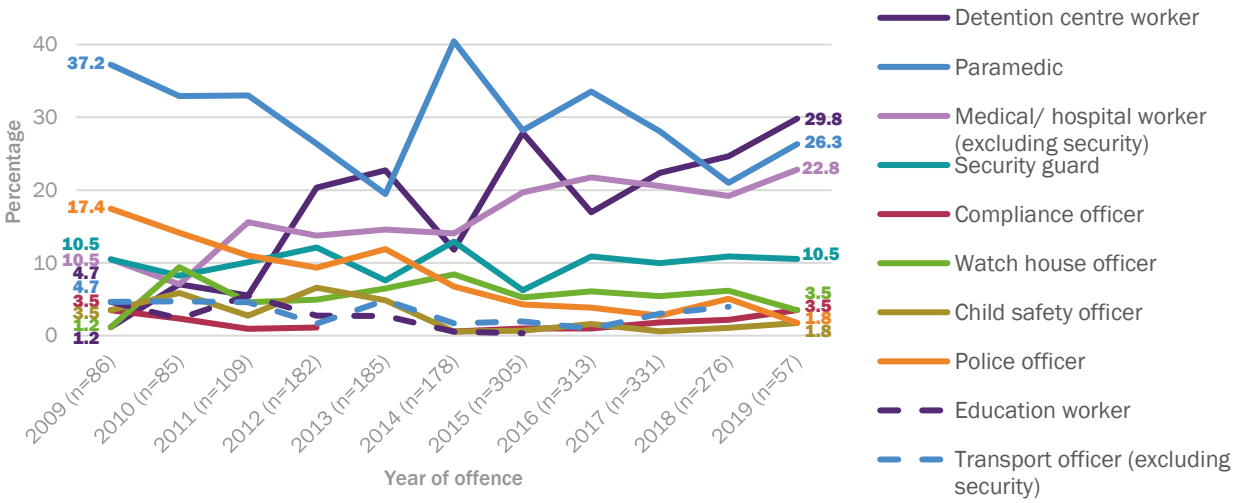
[7] As at 30 June 2015. See Queensland Government Statistician's Office, *Population Estimates by Indigenous Status, LGAs, 2001 to 2015*, available at <http://www.qgso.qld.gov.au/subjects/demography/atsi-people/tables/pop-est-indigenous-status/index.php> accessed 4 August 2017.

Change in victim occupation over time

Figure 3-7 shows the proportion of victim occupations for serious assaults of a public officer (s 340(2AA), (1)(c), (1)(d)) over the past 10 years. Paramedics, detention centre workers, and medical/hospital workers remained in the top three over most of the data period. In 2019, detention centre workers comprised 29.8 per cent of cases, paramedics comprised 26.3 per cent, and medical/hospital workers comprised 22.8 per cent. Paramedics were consistently the most common type of public officer in most years, with detention centre workers taking the top spot in 2018 and 2019. Detention centre workers, on the other hand, comprised only 1.2 per cent of cases in 2009, and rose to the most common type of victim in 2009 at 29.9 per cent.

Security guards made up another type of occupation that was consistent over the data period, remaining relatively unchanged at 10.5 per cent of cases in 2009, and remaining at 10.5 per cent of cases in 2019.

Figure 3-7: Occupational group of victims of serious assault, over time



Data include lower and higher courts, adult and juvenile offenders, ss 340(2AA), 340(1(c)) and 340(1(d)), offences occurring from 2010 to 2018, sentenced 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019, QSIS and the QPS.
Notes:
(1) Count is by charge (i.e. victim) — therefore the victim may not be unique.
(2) Occupational groups where the total sample was less than 25 have been included in calculations but not presented.

3.2.2 Victims recorded in WorkCover claims

Data were obtained from WorkCover on all claims that were accepted due to the assault of a public officer. Details on the methodology used to extract this information are available in Appendix 3, and further analysis of WorkCover data is available at section 4.3 of this report.

WorkCover data show that one-third of the accepted assault-related claims were made by police officers (n=2,440, 33.3%). Collectively, those working in the police, education and medical sectors comprised three-quarters of accepted assault-related claims (75.2%) — see Figure 3-8.

Figure 3-8: Proportion of assault-related claims by reported occupation type, 2014–15 to 2018–19

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

3.2.3 Repeat offenders and recidivist offenders

Section summary

- Serious assaults of corrective services officers were the most likely offence to result in repeat offending (i.e. a future charge of the same offence). The summary offence of assaulting or obstructing a police officer was similarly high.
- Assaults or obstructions of corrective services staff were the most likely offences to result in future violent offences, closely followed by serious assaults of a person who was performing or who had performed a duty at law.
- Aboriginal and Torres Strait Islander peoples had higher levels of recidivism, with a higher proportion of people committing repeat offences, as well as other violent offences.
- Men had higher levels of recidivism compared with women for offences involving the assault of a public officer; although these gendered differences were less pronounced, and in some cases reversed, for assaults that did not involve a public officer.

The Council identified the need to understand recidivism as part of its Terms of Reference, particularly to enable it to comment on which offences are associated with what levels and quantum of reoffending. Ultimately, all sentencing aims to prevent offenders from engaging in further criminal activity, to protect the community either through incapacitation (incarcerating individuals) or through rehabilitation so the causes of the offending are addressed and ideally removed.

In this section, the term ‘repeat offender’ is used to describe people who commit the same offence multiple times, while the term ‘reoffending’ or ‘recidivism’ is used to describe people who repeatedly commit offences of any type.

There are considerable challenges in measuring recidivism. For the purposes of the present exercise, the Council operationalised recidivism as any sentencing event that was followed by another sentencing event within two years of an offender’s expected release from custody. For more information on the application of this methodology, please see Appendix 3.

The darkest purple bars in Figure 3-9 (below) show the proportion of cases in which the offender reoffended. The lightest purple bars show the proportion of cases where the offender was a repeat offender — that is, where they reoffended by committing the same offence. The other bars show the proportion of cases in which the offender reoffended by committing a similar offence, either an act intended to cause injury, or assault of a public officer.

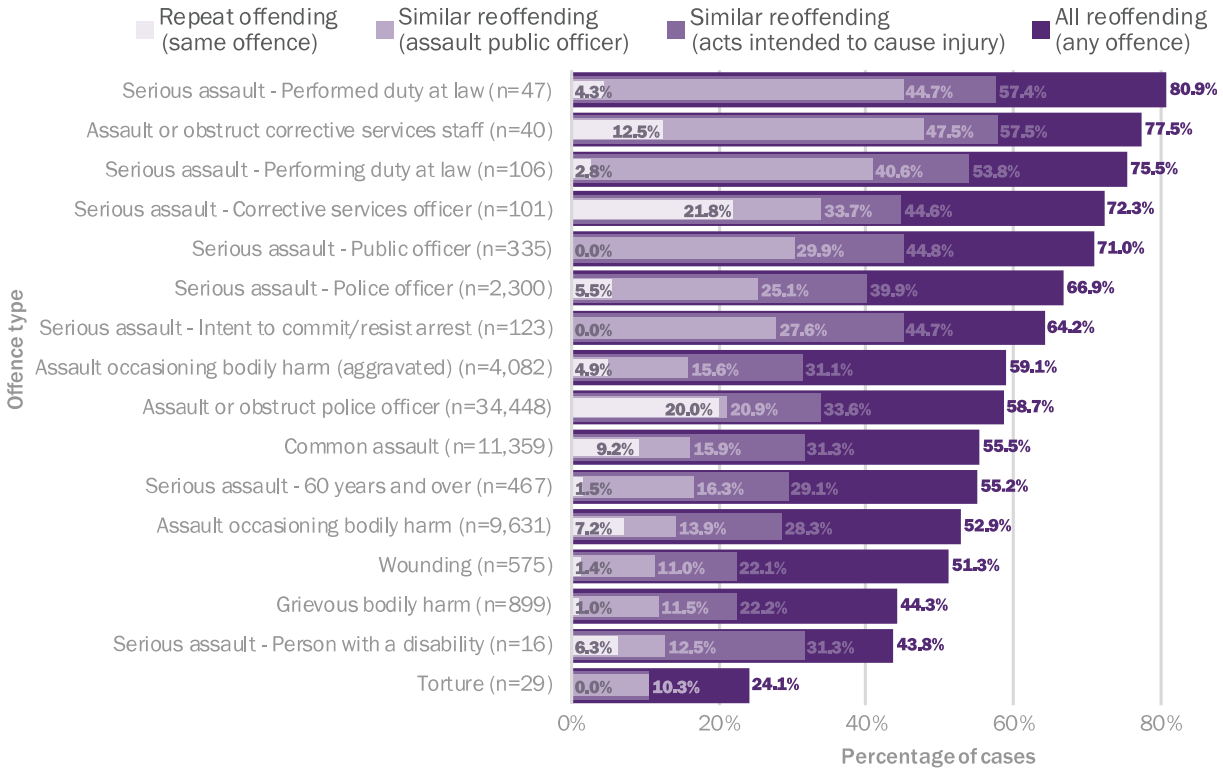
The serious assault of a person performing a duty at law under section 340(1)(c) of the *Criminal Code* had the highest rate of reoffending, with 80.9 per cent of cases followed by a new offence within two years. Similarly, cases involving the serious assault of a person who performed a duty at law under section 340(1)(d) of the *Criminal Code* also had high levels of reoffending at 75.5 per cent.

The assault or obstruction of a corrective services officer under section 124(b) of the CSA had the second-highest level of reoffending for all offences examined at 77.5 per cent. The serious assault of a corrective services officer under section 340(2) was also high at 72.3 per cent. These offences also saw a high rate of repeat offending; that is, one in five cases that involved the serious assault of a corrective services officer were followed by a subsequent serious assault of a corrective services officer (21.8%). The assault or obstruction of a corrective services officer also had relatively high levels of repeat offending, with 12.5 per cent of cases leading to a repeat offence.

The assault or obstruction of a police officer under section 790 of the PPRA had the second-highest percentage of repeat offending out of all the offences examined, with 20.0 per cent of cases followed by a repeat offence.

General types of assault, such as common assault, AOBH, GBH and wounding had lower rates of recidivism compared with serious assaults of a public officer. Of these offences, aggravated AOBH had the highest rate of reoffending at 59.1 per cent. Common assault was slightly lower at 55.5 per cent, and non-aggravated AOBH was slightly lower again at 52.9 per cent. The more serious offences of wounding and GBH had lower reoffending again at 51.3 per cent and 44.3 per cent, respectively.

Figure 3-9: Percentage of cases that resulted in reoffending within two years of release, by type of offence

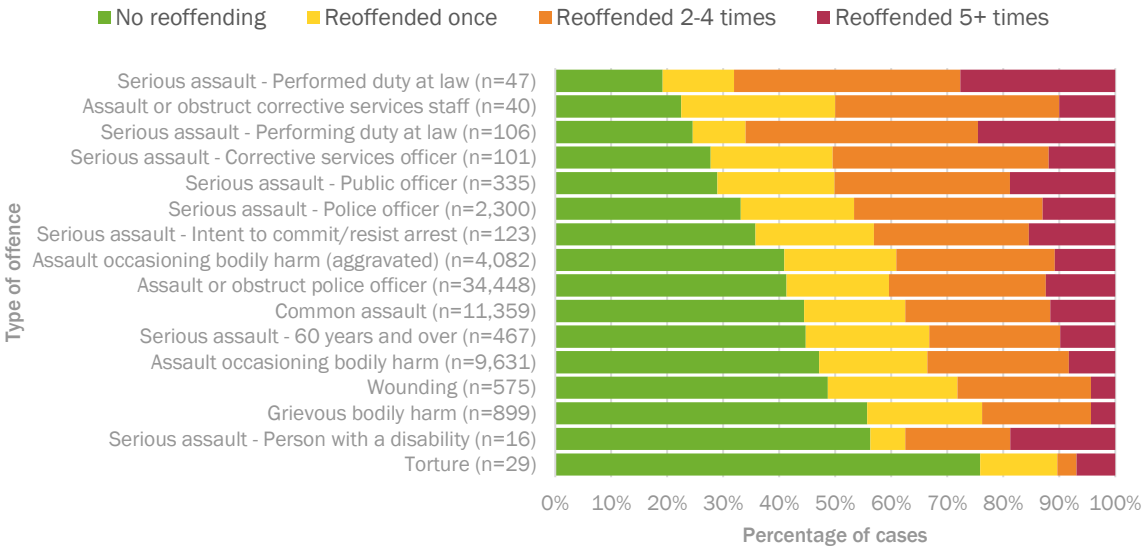


Data include adult and juvenile cases sentenced between 2010–11 and 2013–14 where reoffending occurred within two years of the offender's expected release from custody.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

Figure 3-10 shows the number of occurrences of reoffending that followed the sentencing for each type of assault. The green bars illustrate the proportion of cases that had no reoffending. The yellow portion of the bar represents cases in which the offender reoffended once, and the orange represents cases where the offended was sentenced in up to four separate court events within two years of their release from custody from the initial offence. The red portion of the bar represents cases in which the offender reoffended and was sentenced five times or more. For the percentage values, see Table A4-5 in Appendix 4.

Cases involving the serious assault of a person who was performing or had performed a duty at law under section 340(1)(c) or (d) of the *Criminal Code* were not only the most likely to reoffend, but they reoffended more often. Over a third of offenders for these offences (40.4% and 40.0%, respectively) reoffended between two and four times, and a quarter of offenders reoffended five times or more (27.7% and 24.5%, respectively).

Figure 3-10: Number of instances of reoffending, by type of offence



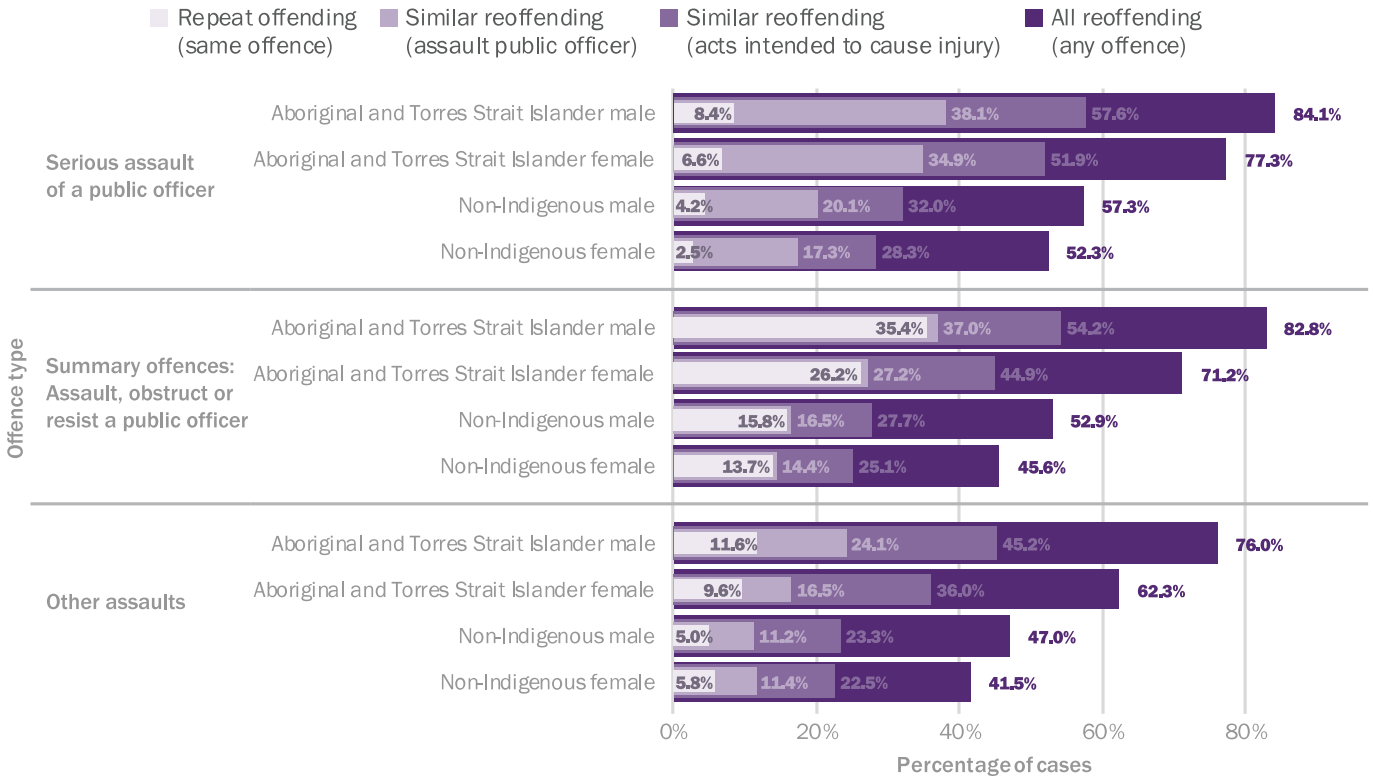
Data include adult and juvenile cases sentenced between 2010–11 and 2013–14 where reoffending occurred within two years of the offender's expected release from custody.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

The percentage of cases that resulted in recidivism was different for various demographic groups — see Figure 3-11. Male offenders generally had higher levels of reoffending compared with female offenders, and Aboriginal and Torres Strait Islander offenders had higher levels of reoffending compared with non-Indigenous offenders.

Analysis of serious assaults of a public officer (including police officers, corrective servicers officers, people performing a duty at law, and other public officers) shows that Aboriginal and Torres Strait Islander males reoffend with another assault of a public officer in 38.1 per cent of cases, which is slightly higher than the 34.9 per cent of cases in which a female Aboriginal and Torres Strait Islander person reoffends by assaulting another public officer. The proportion of cases in which a non-Indigenous male reoffended by assaulting another public officer was lower, with one in five cases (20.1%) resulting in this type of recidivism. Non-Indigenous females reoffended in this way in 17.3 per cent of cases.

Figure 3-11 contains additional statistics on reoffending for summary offences involving the assault or obstruction of a public officer, and other assault-related offences (such as common assault, AOBH, or serious assault not involving a public officer).

Figure 3-11: Percentage of cases that resulted in reoffending within two years of release, by demographics and type of offence



Data include adult and juvenile cases sentenced between 2010–11 and 2013–14 where reoffending occurred within two years of the offender's expected release from custody.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: The offence categories are comprised as follows:

- 'Serious assault of a public officer' includes s 340(1)(b) police officers, s 340(1)(c)–(d) performing/performed a duty at law, s 340(1)(2) corrective services officers, and s 340(2AA) public officers of the *Criminal Code*.
- 'Summary offence' includes the assault or obstruction of a police officer under s 790 of the PPRA, the assault or obstruction of a corrective services staff member under s 124(b) of the CSA and resisting public officers under s 199 of the *Criminal Code*.
- 'Other assaults' includes all offences classified as an 'act intended to cause injury' under the ANZSOC.

Chapter 4 What are the circumstances in which public officers are assaulted?

There are limited data sources available to explore the circumstances surrounding assaults on public officers. This chapter draws on a variety of sources to identify some of the factors that may contribute to assaults on public officers, helping to explain the context in which this offending occurs.

The information presented includes the findings of the literature review undertaken for the purposes of the reference by the Griffith Criminology Institute,[1] an analysis of key features of these offences drawn from a sample of sentencing remarks, and the WorkCover data that assisted the Council in identifying the type and extent of harm caused to victims. Court data were also analysed to obtain insights based on whether an offender was sentenced for other offences committed on the same day as the assault offence and, if so, the nature of these associated offences.

The chapter also presents high-level data on the offence of assault or obstruct a police officer under section 790 of the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA) and aggravated forms of serious assault under section 340 of the *Criminal Code*. These data are presented to illustrate the types of conduct involved in these offences and, in the case of aggravated serious assault, trends in the number of people being sentenced for this offence over time.

4.1 Findings from the literature

The literature review conducted by the Griffith Criminology Institute for the purposes of this review examined current evidence about the causes, frequency and seriousness of assaults on public officers. It found that assaults of public officers are *more* likely in particular circumstances or conditions, such as:

- perpetrators involved in substance abuse, at least in the healthcare sector;
- perpetrators with poor mental health, across a number of sectors;
- perpetrators with a current or past history of violent behaviour;
- officers with less experience on the job;
- operational workplace characteristics, which may vary by sector (such as understaffing in the healthcare sector, and ticketing and timetabling issues in the public transit sector).

Detailed findings of this desktop review are set out in this report, which is available on the Council's website.

4.2 Analysis of sentencing remarks

Section summary

- The transcripts of a sample of 276 sentencing remarks involving serious assault cases sentenced in the higher courts (Supreme and District Courts, and Childrens Court of Queensland) were analysed.
- Many differences were found based on the gender and Aboriginal and Torres Strait Islander status of the offender.
- Spitting was more common for women, whereas physical assaults such as kicking, punching or pushing were more common for men.
- The majority of offenders were described as being 'uncooperative' or 'aggressive' while committing the offence.
- Assaults most commonly occurred while the offender was being arrested, restrained, or resisting the direction of a public officer.
- Half of the women and one-third of Aboriginal and Torres Strait Islander men were under the influence of drugs or alcohol.
- One-third of offenders had mental disorders — particularly non-Indigenous women.

Sentencing remarks provide an important record of what happened during the offence, the reasons for the judge's sentencing outcome, and anything relevant for future assessments of the offender. This analysis of sentencing remarks supplements the analysis of administrative data elsewhere in this report and provides additional insight into the circumstances of offending, relevant factors about the offender, including his or her background (e.g. poor

[1] Christine Bond et al, *Assaults on Public Officers: A Review of Research Evidence* (Griffith Criminology Institute for Queensland Sentencing Advisory Council, March 2020). It should be noted that the views contained in the literature review are those of the authors and not necessarily those of the Council.

health, substance abuse) and impact of the offence on the victim. This analysis explores the circumstances of offending for serious assaults against public officers, and whether differences exist based on the offender's gender or Aboriginal and Torres Strait Islander status.

4.2.1 Methodology

Sample selection

There were 1,421 relevant cases involving the serious assault of a public officer in the higher courts between 2009–10 and 2018–19.[2] A small number of cases that involved more than one type of serious assault offence were excluded from this analysis (n=46), bringing the total number of cases to 1,375. Table 4-1 shows the population sizes for each demographic category (i.e. female Aboriginal and Torres Strait Islander, male Aboriginal and Torres Strait Islander, female non-Indigenous and male non-Indigenous) by victim occupation (i.e. corrective services officer; public officer or officer performing a duty at law; and police officer).

Table 4-1: Population of relevant serious assault cases in the higher courts

	Aboriginal and Torres Strait Islander		Non-Indigenous		
Type of victim	**Female**	**Male**	**Female**	**Male**	**TOTAL**
Corrective services officer	4	20	3	53	**80**
Public officer*	16	59	32	68	**175**
Police officer	126	304	153	537	**1,120**
					1,375

Data include higher courts, adult and juvenile cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: (*) Includes offences under s 340(2AA) public officer, s 340(1)(c)/(d) performing/performed a duty at law.

Where the population (offence by demographics) was less than 30, all cases were included in the sampling frame. For all other populations a random sample was selected using a sample size that would result in a confidence level of 95 per cent and a confidence interval of 15 per cent.[3] The table below shows the resulting sample sizes for each population. The sample was randomly selected, and the coding was performed by a team of five researchers. If the transcript of a sentencing remark was unavailable, or contained insufficient detail to be coded, it was replaced with another randomly selected case.

Table 4-2: Sampling for the sentencing remarks analysis

	Aboriginal and Torres Strait Islander		Non-Indigenous		
Type of victim	**Female**	**Male**	**Female**	**Male**	**TOTAL**
Corrective services officer	4	20	3	24	**51**
Public officer*	16	25	18	27	**86**
Police officer	32	38	34	40	**144**
					281

Notes: (1) Shaded cells are population sizes that were less than 30 and all cases were included in the sampling frame.
(*) Includes offences under s 340(2AA) public officer, s 340(1)(c)/(d) performing/performed a duty at law.

Five cases involving the serious assault of a corrective services officer were unable to be analysed due to insufficient details in the sentencing remarks, and additional cases were unable to be sampled as the entire population for these categories had already been included. Of these assaults, four were committed by Aboriginal and Torres Strait Islander men, and one was committed by an Aboriginal or Torres Strait Islander woman. In total, 276 cases were analysed.

Limitations

As with its previous work, the Council acknowledges the limitations associated with analysing sentencing remarks; most notably, that sentencing remarks do not contain a comprehensive list of factors taken into account by a sentencing judge. Factors were only coded when the judge specifically commented on the circumstances of the offending. Hence, for example, if the sentencing remarks do not mention that an offence was committed in a private residence, this does not necessarily mean that no offences were committed in private residences but simply that

2 Sentencing transcripts are only available in cases within the higher courts.

3 A confidence level of 95 per cent refers to the probability that the findings were the result of random chance. A confidence interval of 15 per cent refers to the range of values within which the population parameter falls. In other words, based on the sampling methodology selected for this analysis, we are 95 per cent certain that the findings fall within 15 per cent of the values reported.

these circumstances of offending were not expressly mentioned during sentencing. Nevertheless, as part of a mixed-methods research design, sentencing remarks supplement purely data-driven analyses, providing a rich source of additional information on serious assaults of public officers.

Because most assaults on public officers are sentenced in the lower courts, the cases analysed may also not be representative of the nature of assaults, and the broader contexts in which these assaults occur.[4]

4.2.2 Findings

Victim occupation

More than half of the victims in the cases analysed were police officers (52.7%, n=148) — most of these were cases that involved the serious assault of a police officer under section 340(1)(b); however, a few cases were sentenced under the serious assault of a public officer under section 340(2AA) (n=4). Corrective services officers comprised 17.1% of victims (n=48), two of these cases were sentenced under the public officer offence.

Health workers made up 16.0 per cent of victims (n=45) and included doctors, nurses, paramedics, psychiatrists, psychologists and other hospital staff. A smaller proportion of the cases included: child safety officers, parking officers, security guards or officers, transit officers, watch-house officers, and youth detention workers.

These occupational patterns are similar to the analysis of victim occupation conducted at section 3.2 of Chapter 3.

Table 4-3: Victim occupation from analysis of sentencing remarks

Occupation	Frequency (n)	Percentage (%)
Serious assault — Corrective services officer	**46**	**16.4**
Serious assault — Police officer	**144**	**51.2**
Serious assault — Public officer	**91**	**32.4**
Paramedics	28	10.0
Youth detention workers	16	5.7
Security guards or officers	13	4.6
Nurses	11	3.9
Unknown	5	1.8
Police officers	4	1.4
Psychiatrists or psychologists	2	0.7
Hospital staff	2	0.7
Transit officers	2	0.7
Watch-house officers	2	0.7
Doctors	2	0.7
Corrective services officers	2	0.7
Child safety officers	1	0.4
Parking officers	1	0.4

Note. Total number of victim occupation is N = 281 as some cases involved multiple victims.

[4] The Office of the Director of Public Prosecutions *Director's Guidelines* (as at 30 June 2019) identify specific factors that must be taken into account in the exercise of the discretion to proceed summarily, and factors relevant to whether a serious assault on police should proceed on indictment. These guidelines are discussed in sections 8.8.7, 9.2.3 and 10.6.1 of this report.

Offence location

The analysed offences occurred in various locations — see Figure 4-1.

At a high level, over a quarter of the serious assaults occurred in either a prison, detention centre or watch-house (28.2%, n=79). A relatively high proportion of offences occurred in private residences (14.3%, n=40), an unspecified public location (11.4%, n=32), or a hospital (10.0%, n=28). In almost one in five cases, the sentencing remarks did not provide enough detail to classify the location of the offence (19.6%, n=55).

Figure 4-1: Location of assault from analysis of sentencing remarks

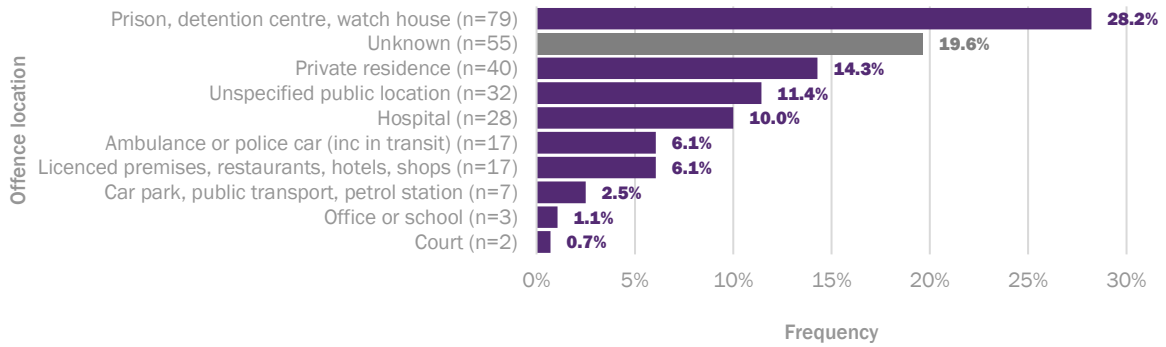


Table 4-4 (below) provides a further breakdown of the offence location by the type of offence and demographic classification of the perpetrator. The number of cases analysed is provided in the labels in the table; however, it is important to exercise caution in interpreting results associated with a small number of cases. Cases with an unknown location were excluded from calculations.

Unsurprisingly, almost all serious assaults of corrective services officers occurred in a prison or similar facility. Serious assaults on police officers most commonly occurred in private residences (n=35), followed by unspecified public locations (n=28). Female offenders were the most likely demographic group to assault a police officer in a prison, detention centre or watch-house (25.0% of cases), irrespective of Aboriginal and Torres Strait Islander status.

Serious assaults of public officers showed some variation in the type of location. Non-Indigenous people were the most likely to assault a public officer in a hospital (63.6% for females; 47.8% for males). Aboriginal and Torres Strait Islander males were the most likely to commit the serious assault of a public officer in a prison, detention centre, or watch-house (70.8%) — the majority of these were young offenders in detention centres (76.5% — data not displayed in table).

Table 4-4: Location of assault from analysis of sentencing remarks, by demographic groups

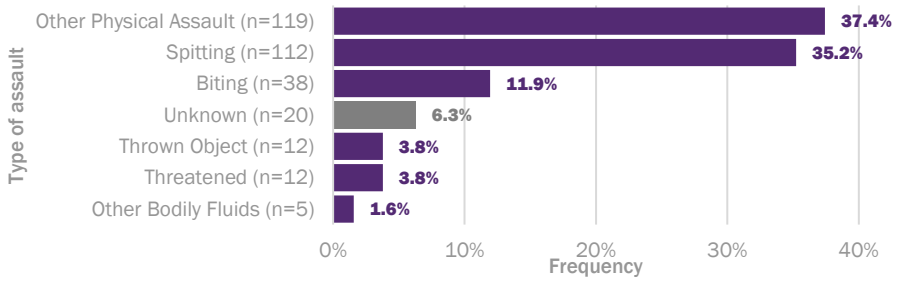
	Aboriginal and Torres Strait Islander		Non-Indigenous	
Offence Location	**Female**	**Male**	**Female**	**Male**
Serious assault – police officer				
Private residence (n=35)	33.3%	28.1%	29.2%	30.6%
Unspecified public location (n=28)	29.2%	21.9%	16.7%	27.8%
Prison, detention centre, watch-house (n=18)	25.0%	9.4%	25.0%	8.3%
Licenced premises, restaurants, hotels, shops (n=13)	8.3%	12.5%	12.5%	11.1%
Police vehicle (n=9)	4.2%	15.6%	4.2%	5.6%
Other (n=13)	0.0%	12.5%	12.5%	16.7%
Unknown (n=32)	27.3%	15.8%	33.3%	12.2%
Serious assault – public officer				
Hospital (n=24)	22.2%	16.7%	63.6%	47.8%
Prison, detention centre, watch-house (n=21)	33.3%	70.8%	0.0%	4.3%
Ambulance (n=5)	11.1%	4.2%	18.2%	4.3%
Private residence (n=5)	11.1%	4.2%	0.0%	13.0%
Other (n=12)	22.2%	4.2%	18.2%	30.4%
Unknown (n=19)	43.8%	4.0%	38.9%	14.8%
Serious assault – corrective services officer				
Prison, detention centre, watch-house (n=40)	100.0%	100.0%	66.7%	95.0%
In transit (n=2)	0.0%	0.0%	33.3%	5.0%
Unknown (n=4)	0.0%	0.0%	0.0%	16.7%

Notes: (1) Total number of offence locations is N = 280 as some cases involved offences in different locations.
(2) Categories with a count of less than 5 were rolled into 'Other'.
(3) Cases with an unknown location were excluded from calculations for each demographic group.

Type of assault

Figure 4-2 shows the different types of assault of public officers coded from the sentencing remarks. Over a third of cases involved a physical assault, which includes kicking, pushing, punching (37.4%, n=119). Spitting was the second most common type of assault, also occurring in over a third of cases (35.2%, n=112). A smaller proportion of cases involved biting (11.9%, n=38), throwing an object (3.8%, n=12), threatening the victim (3.8%, n=12), and throwing or applying other bodily fluids (e.g. urine; 1.6%, n=5).

Figure 4-2: Type of assault from analysis of sentencing remarks



Note: Total number analysed is N = 381 as some cases involved multiple types of assault of the victim (e.g. spitting and biting, kicking and spitting).

Table 4-5 below provides a further breakdown of the type of assault by demographic classification. Cases where the type of assault was unknown were excluded from calculations.

Males were the most likely to commit a serious assault involving physical violence, such as kicking, pushing and punching (46.8% for Aboriginal and Torres Strait Islander males; 47.9% for non-Indigenous males), whereas females were most likely to offend by spitting on or at a public officer (45.5% for Aboriginal and Torres Strait Islander females; 46.2% for non-Indigenous females).

Approximately one in five offenders bit a public officer — however, this was not the case for Aboriginal and Torres Strait Islander men, who did not bite a public officer in any of the cases analysed.

Table 4-5: Type of assault from analysis of sentencing remarks, by demographic groups

	Aboriginal and Torres Strait Islander		Non-Indigenous	
Assault type	**Female**	**Male**	**Female**	**Male**
Other physical assault (n=199)	30.9%	46.8%	30.8%	47.9%
Spitting (n=112)	45.5%	38.0%	46.2%	28.7%
Biting (n=38)	18.2%	0.0%	20.0%	16.0%
Threatened (n=12)	3.6%	7.6%	1.5%	3.2%
Thrown object (n=12)	1.8%	7.6%	1.5%	4.3%
Other bodily fluids (n=5)	0.0%	2.5%	0.0%	3.2%
Unknown (n=20)	9.1%	3.7%	3.1%	10.3%

Note: Total number analysed is N = 381 as some cases involved multiple types of assault (e.g. spitting and biting, kicking and spitting).

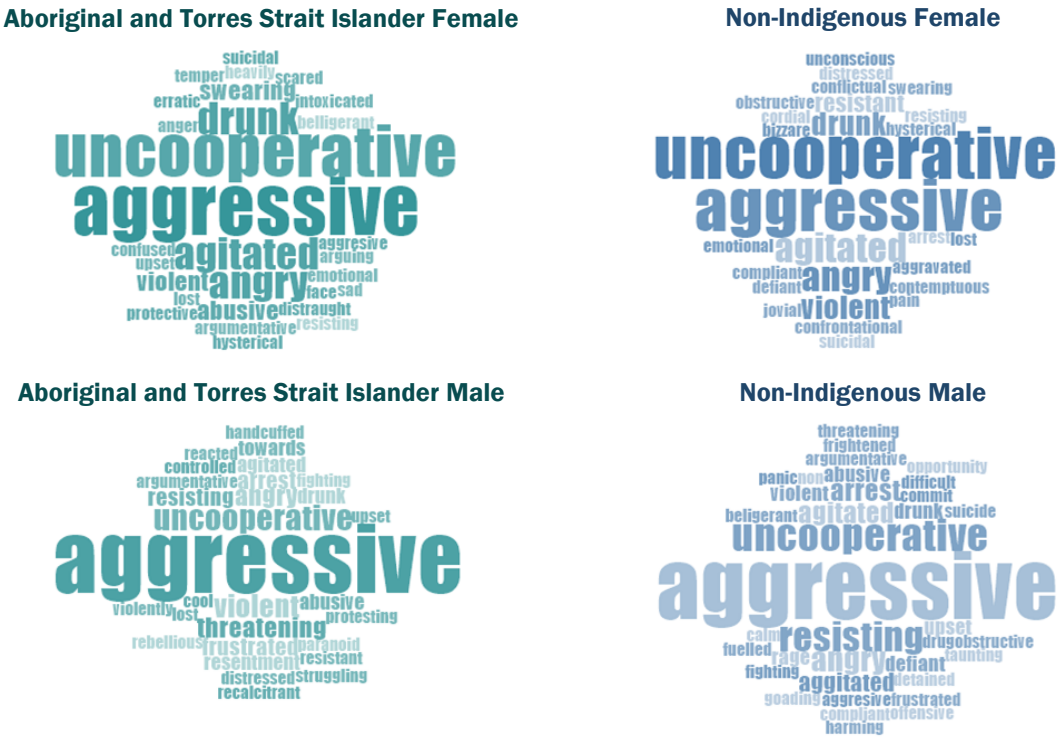
Attitude of the perpetrator

The attitude of the perpetrator leading up to the offence was coded as part of this analysis. In the majority of cases analysed, the sentencing judge provided a description of the way in which offenders were behaving leading up to the assault. Across all demographic groups, they were most frequently coded as being aggressive or uncooperative — see Figure 4-3.

There were some differences between the demographic groups. Although all categories of offenders were described as aggressive, aggression was more prominent for men (regardless of Aboriginal and Torres Strait Islander status). Female offenders were more likely than male offenders to be described as uncooperative, agitated, drunk or angry leading up to the assault (regardless of Aboriginal and Torres Strait Islander status).

Non-Indigenous males were more likely to be resisting arrest leading up to the assault, compared with Aboriginal and Torres Strait Islander males, who were more often described as behaving violently or threatening the victim.

Figure 4-3: Most common coded attitude of offenders leading up to the offence from the sentencing remarks analysis, Queensland, 2009–10 to 2018–19



Apparent reason for the assault

The sentencing remarks were coded for themes that provided insight into the reason and circumstances in which the assault occurred — see Table 4-6. In one-quarter of the cases analysed the reason for the assault was unclear or not specified by the sentencing judge (25.4%, n=70).

The most common circumstance in which a serious assault occurred was while the offender was being arrested or restrained (33.5%, n=68). This included cases where, for example, an offender refused to submit to a search, spat while being restrained, or was struggling to break free while being apprehended by police. Assaults of public officers

in these types of situations were least common among Aboriginal and Torres Strait Islander females (27.8% of cases), compared with other demographic groups (33.3% to 35.7% of cases).

The second most common type of situation in which a serious assault occurred was where the perpetrator was resisting an instruction given by a public officer. Some examples included cases where a security guard was instructing a person to leave a premises, and where police officers were attempting to confiscate items (especially alcohol) or perform an alcohol breath test. These types of assaults were more common for Aboriginal and Torres Strait Islander females (22.2% of cases), compared with the other demographic groups (12.3% to 16.2% of cases).

Men and Aboriginal and Torres Strait Islander peoples were more likely to commit an unprovoked serious assault on a public officer. These types of cases were often described as being the result of anger management issues on the part of the perpetrator, or where the perpetrator was in an alcohol- or drug-induced state. Non-Indigenous women were the least likely to commit an unprovoked assault (4.8% of cases) — see Table 4-6.

In some cases, a public officer was assaulted after they had intervened in an ongoing fight or dispute. This included circumstances in which a public officer was attempting to break up a fight, where a public officer was incidentally or accidentally assaulted as part of a larger affray, or where an argument between the victim and perpetrator escalated into violence. Non-Indigenous men were most commonly involved in this type of assault (13.5% of cases).

In 9.9 per cent of cases, particularly those involving non-Indigenous women, a public officer was assaulted while attempting to render aid or assistance to the perpetrator. This commonly involved assaults on paramedics who were attempting to render assistance, but also included police officers, nurses and prison guards who were attempting to help. Self-harm and suicide was a common theme in these cases, in circumstances where the perpetrator of the assault did not wish to be prevented from self-harming. The perpetrator in these situations was most likely to be female (19.0% of cases for non-Indigenous women; 13.9% of cases for Aboriginal and Torres Strait Islander women).

In 6.9 per cent of cases, the perpetrator assaulted a public officer due to perceived unfairness or in retaliation to a perceived slight or insult. This type of offending was more common among Aboriginal and Torres Strait Islander men (14.0% of cases). Some examples of this type of offending included assaults by young people in youth detention when a rugby match was cancelled due to poor behaviour or situations in which a perpetrator 'lashed out' after comments made by a victim.

A small number of cases involved situations where a perpetrator had 'lashed out' following an emotional event (4.9%, n=10). This included cases where an adverse decision had been made regarding child custody, or where a paramedic was assaulted while rendering aid to a family member of the perpetrator. This theme was observed among all demographic groups, except for Aboriginal and Torres Strait Islander women.

Another category with a small number of cases was where the perpetrator was attempting to prevent the arrest or detention of someone else (4.4% of cases, n=9). This most commonly involved Aboriginal and Torres Strait Islander women (16.7% of cases) in cases where police were attempting to arrest or restrain a family member.

A few cases (n=4) involved non-Indigenous offenders assaulting a public officer after being pulled over (e.g. due to speeding). A couple of cases (n=2) involved Aboriginal and Torres Strait Islander men assaulting public officers while protesting.

Table 4-6: Reason for the offence from the analysis of sentencing remarks

	Aboriginal and Torres Strait Islander		Non-Indigenous		
Reason	**Female**	**Male**	**Female**	**Male**	**Total**
Unclear (n=70)	31.4%	27.8%	25.5%	19.8%	**25.4%**
Being arrested/restrained (n=68)	27.8%	33.3%	35.7%	35.1%	**33.5%**
Resisting instructions (n=33)	22.2%	12.3%	14.3%	16.2%	**16.3%**
Unprovoked (n=23)	11.1%	17.5%	4.8%	9.5%	**11.3%**
Ongoing fight/dispute (n=20)	5.6%	10.5%	9.5%	13.5%	**9.9%**
Victim helping the perpetrator (n=20)	13.9%	3.5%	19.0%	9.5%	**9.9%**
Perceived unfairness/retaliation (n=14)	2.8%	14.0%	2.4%	5.4%	**6.9%**
Lashed out due to an emotional event (n=10)	0.0%	5.3%	9.5%	4.1%	**4.9%**
Intervening someone else's arrest or detention (n=9)	16.7%	0.0%	2.4%	2.7%	**4.4%**
Pulled over (while driving) (n=4)	0.0%	0.0%	2.4%	4.1%	**2.0%**
Protesting (n=2)	0.0%	3.5%	0.0%	0.0%	**1.0%**
Number of cases	**51**	**79**	**55**	**91**	**276**

Notes: Cases with an unclear reason were excluded from calculations for each demographic group.

Other characteristics

Table 4-7 contains some additional characteristics of the analysed cases by Aboriginal and Torres Strait Islander status and gender.

Over one-third of cases involved aggression on the part of the perpetrator (41.3% of cases). Aggression was most likely to be mentioned in the sentencing remarks for Aboriginal and Torres Strait Islander men (48.1% of cases), and least likely to be mentioned for non-Indigenous men (15.2% of cases). In just under one-third of cases, the sentencing remarks described the perpetrator as being restrained during the incident. This factor was more likely in cases involving non-Indigenous females (34.5% of cases).

In 18.1 per cent of cases, the victim was said to be intervening in an ongoing incident. This covered a wide range of situations; examples include public officers attempting to break up a fight, police officers intervening in an ongoing crime, paramedics providing assistance in difficult situations, and prison guards responding to incidents such as fights or wilful damage.

A high proportion of cases involved the influence of alcohol or drugs (42.8%). This was a factor that was most likely to affect women, regardless of Aboriginal and Torres Strait Islander status (51.0% of cases for Aboriginal and Torres Strait Islander women; 47.3% for non-Indigenous women). Non-Indigenous men were the least likely to be affected by alcohol or drugs (13.0% of cases).

Weapons were used in 17.0 per cent of cases (n=47) and were most likely to be used by Aboriginal and Torres Strait Islander men (24.1% of cases). The type of weapon used varied and usually reflected whatever was readily available at the time of the offence. In nine cases a knife was used, seven cases involved another sharp object such as a tomahawk, spear or broken glass, and in six cases the perpetrator had prepared a container of bodily fluids — usually urine. The remaining cases involved other miscellaneous items, such as brooms, buckets, rocks, clubs and chairs.

In over a third of cases (36.2%), the perpetrator was identified as having mental health problems. This was most common for non-Indigenous females (58.2%), and included a range of conditions, such as schizophrenia, bipolar affective disorder, depression, attention deficit hyperactivity disorder, anxiety, autistic spectrum disorder. Cognitive impairment was only identified in the sentencing remarks in 4.0 per cent of cases (n=11).

Table 4-7: Case characteristics by Indigenous status and gender from the sentencing remarks analysis, Queensland, 2009–10 to 2018–19

	Aboriginal and Torres Strait Islander		Non-Indigenous		
Case characteristics	**Female**	**Male**	**Female**	**Male**	**Total**
Offence characteristics					
Offender being aggressive leading up to incident (n=114)*	33.3%	48.1%	30.9%	15.2%	**41.3%**
Offender being restrained at the time of incident (n=89)*	29.4%	24.1%	34.5%	13.0%	**32.2%**
Victim intervening in an ongoing incident (n=50)	19.6%	21.5%	12.7%	5.8%	**18.1%**
Under the influence during the offence (n=118)	51.0%	38.0%	47.3%	13.0%	**42.8%**
Culpability factors					
Weapon use (n=47)*	7.8%	24.1%	10.9%	6.5%	**17.0%**
Poor mental health identified (n=100)*	27.5%	21.5%	58.2%	13.4%	**36.2%**
Cognitive impairment identified (n=11)†	0.0%	1.3%	1.8%	3.3%	**4.0%**
Number of cases	**52**	**79**	**55**	**91**	**276**

Notes:
* significant difference found between the groups.
† no significant testing conducted due to small sample sizes as results may not be reliable.

4.3 Analysis of accepted WorkCover claims

Section summary

- Most injuries resulting from an assault involved trauma to muscles, joints, neck and back pain, dislocation, contusions, bruising or lacerations.
- Carers, medical practitioners and teachers suffered the highest proportion of mental disorders such as anxiety, stress or post-traumatic stress disorder. These injuries were lowest for police officers.
- The median compensation payment was $638; this was considerably higher for carers, health professionals, prison officers, security guards and youth workers.
- Half of workers received paid work absence as part of the WorkCover claim, which was highest for nursing assistants and youth workers.

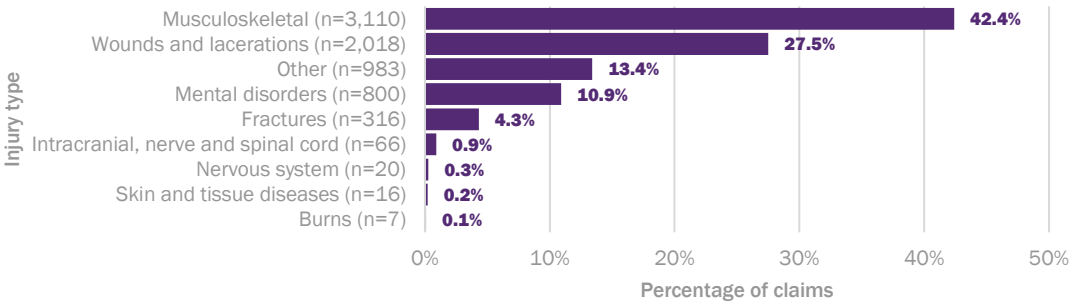
While assessing the seriousness of offending requires a complex and multifaceted approach, for the purpose of this review, only limited analysis was feasible due to data availability. This section provides insight into the seriousness of offending by reporting on the harm caused by assaults on public officers. The data in this section were obtained from WorkCover Queensland and include information on the type of injury, the monetary amount claimed by victims of assault, and the number of days off work resulting from the assault of a public officer.[5]

Type of injury

The type of injury reported below refers to the primary injury as recorded against the WorkCover claim.

The most common reported injury from an accepted WorkCover claim for the assault of a public officer was musculoskeletal injuries and diseases, representing 42.4 per cent of accepted claims. These injuries include trauma to muscles, joints, neck and back pain and dislocation. The second most commonly reported injury type was wounds and lacerations, representing 27.5 per cent of the accepted claims. These injuries include contusions, bruising and lacerations.

Figure 4-4: Proportion of assault-related claims by injury type



Source: WorkCover Queensland — unpublished data, 2014–15 to 2018–19.
Notes: type of injury refers to the primary injury recorded on the WorkCover claim.

5 See Appendix 3 for the methodology used by WorkCover to extract the data on claims.

Type of injury by occupational group

All occupational groups are more likely to have accepted assault-related injury claims for musculoskeletal injuries than any other injury type. Wounds and lacerations are also high across all groups, particularly for police officers (33.2%) and teacher aides (35.2%). Claims for mental disorders are highest for aged/disabled/residential care officers (24.4%) and teachers (20.1%) and lowest for police officers (1.6%).

The Queensland Council of Unions in its submission noted that victims of assault may be concerned for their own ongoing employment, which could result in under-reporting by some categories of victims.[6] Take, for example, an employee who suffers a psychological injury, such as post-traumatic stress disorder, as the result of a workplace incident. The fact that the employee sustained this psychological injury may mean they have a propensity to be adversely affected in this line of work, which may mean that an employer is unable to provide this employee with a safe working environment. In situations such as these, an employee may choose not to put in a claim related to their psychological injury out of concern that it could result in them being found to be no longer suited to performing their job. This may offer some insight into why some occupational groups are much less likely to report a mental disorder — see Table 4-8.

Table 4-8: Proportion of assault-related claims by injury type and victim occupation

Injury type	Musculoskeletal	Wounds and lacerations	Mental disorders	Fractures	Intracranial, nerve and spinal cord	Nervous system	Skin and tissue diseases	Burns	Other
Victim occupation	%	%	%	%	%	%	%	%	%
Police Officer (n=2,440)	37.5	33.2	1.6	6.0	0.9	0.4	0.2	0.1	20.1
Teacher (n=1,189)	40.4	27.9	20.1	2.4	0.8	0.3	0.4	0.1	7.7
Other/Unknown (n=786)	40.1	23.3	21.9	3.2	0.6	0.1	0.0	0.0	10.8
Nursing Professional (n=711)	49.4	18.6	17.3	4.5	1.1	0.3	0.1	0.3	8.4
Teacher Aide (n=651)	41.5	35.2	10.0	2.0	0.8	0.3	0.5	0.2	9.7
Prison Officer (n=421)	47.3	22.6	6.2	6.7	2.1	0.0	0.0	0.0	15.2
Youth Worker (n=284)	51.4	20.4	12.3	4.2	0.0	0.4	0.4	0.4	10.6
Nursing Assistant (n=234)	60.7	17.9	9.8	4.7	1.3	0.0	0.0	0.0	5.6
Guards and Security Officers (n=198)	53.0	23.7	6.1	4.0	1.0	0.0	0.0	0.0	12.1
Ambulance Operative (n=141)	46.1	17.7	8.5	5.0	0.0	0.0	0.0	0.0	22.7
Health Professional (n=133)	49.6	17.3	14.3	3.0	0.0	0.0	0.0	0.0	15.8
Aged/Disabled/Residential Care Officer (n=127)	37.8	29.1	24.4	0.8	3.1	0.0	0.0	0.0	4.7
Medical Practitioner (n=19)	47.4	15.8	26.3	0.0	0.0	0.0	0.0	0.0	10.5
Firefighter (n=2*)	-	-	-	-	-	-	-	-	-
Total	**42.4**	**27.5**	**10.9**	**4.3**	**0.9**	**0.3**	**0.2**	**0.1**	**13.4**

Source: WorkCover Queensland — unpublished data, 2014–15 to 2018–19.
Notes: Type of injury refers to the primary injury recorded on the WorkCover claim.
(*) Small sample size

6 Submission 16 (Queensland Council of Unions) 4.

Length of work absence by year and occupational group

The length of work absence due to assault-related claims is calculated by the number of paid days away from work received by the claimant (including any required excess periods). These data only include the work absence from the WorkCover claim, and may not reflect the actual work absence. For example, some agencies may continue to pay wages throughout the course of the claim. Police officers have access to a Sick Leave Bank, which allows sworn police officers who have exhausted their sick leave entitlements to draw upon additional leave in certain situations. So, although police officers receive, on average, less paid days from WorkCover compared with other occupations, they may be accessing additional leave through other arrangements, which is not reflected in the data below.

Overall, just over half of all accepted claims included paid absence from work (54.9%). This was highest for nursing assistants (81.6%) and youth workers (81.3%).

The average number of days off work (28.4 days) was considerably higher than the median number of days off work (1 day). The median value is pulled lower because of the high number of claims that did not receive any paid days off work (45.1%), whereas the average is pulled higher by a small number of cases that received hundreds of days off work.

A few occupations shared the highest median number of days off work due to an assault-related claim. These included nursing professionals, nursing assistants, medical practitioners, and aged/disabled/residential care officers — all of which had a median of 6 days off work. Nursing assistants and nursing professionals also had the highest average number of days off work (56.7 days and 52.9 days, respectively) — followed by youth workers (46.9 days), prison officers (44.9 days), aged/disabled/residential care officers (44.6 days) and guards and security officers (43.6 days).

Table 4-9: Work absence due to assault-related claims, by occupation group

Victim occupation	Average (days)	Median (days)	Proportion that received paid leave (%)
Nursing Assistant (n=234)	56.7	6	81.6
Nursing Professional (n=711)	52.9	6	78.3
Youth Worker (n=284)	46.9	5	81.3
Prison Officer (n=421)	44.9	5	67.9
Aged/Disabled/Residential Care Officer (n=127)	44.6	6	74.8
Guard and Security Officer (n=198)	43.6	4	66.7
Health Professional (n=133)	37.2	4	72.9
Other/Unknown (n=786)	33.4	3	66.7
Teacher (n=1,189)	28.1	1	55.8
Medical Practitioner (n=19)	20.9	6	63.2
Teacher Aide (n=651)	19.2	1	58.2
Police Officer (n=2,440)	13.0	0	32.7
Ambulance Operative (n=141)	9.9	0	45.4
Firefighter (n=2*)	-	-	-
Total	**28.4**	**1**	**54.9**

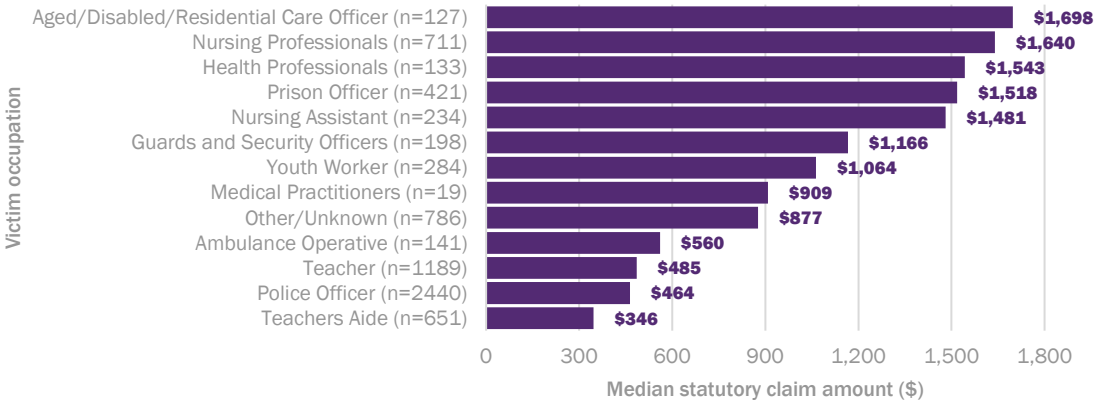
Source: WorkCover Queensland — unpublished data, 2014–15 to 2018–19.
Notes: Work absence refers to the total number of paid days the claimant received, including the excess period.
(*) Small sample size

Amount claimed by occupational group

The majority of accepted WorkCover claims resulted in a financial payment (94.5% of accepted claims) — see Table A4-4 in Appendix 4 for breakdowns.

The median payment across all claims due to an assault-related incident from 2014–15 to 2018–19 was $638. The highest median by occupational group was $1,698, paid to aged/disabled/residential care officers. This was closely followed by nursing professionals at a median of $1,640. Over the time period analysed, teacher aides received the lowest median amount at $346 — see Figure 4-5.

Figure 4-5: Median WorkCover amount due to assault-related claims, by occupation group



Source: WorkCover Queensland — unpublished data, 2014–15 to 2018–19.
Notes: (1) Firefighter has not been presented due to a small sample size (n=2).
(2) Monetary amounts include statutory payments and do not include common law payments.

Amount claimed by occupational group and year

The median amount paid by WorkCover due to assault-related claims has increased slightly each year, from $465 in 2014–15 to $729 in 2018–19. As shown in Table 4-10, there was no discernible pattern to the median payments by occupational group over time, with large fluctuations as well as small sample sizes for some groups.

Table 4-10: WorkCover amount due to assault-related claims, by occupation group over time

	2014–15		2015–16		2016–17		2017–18		2018–19	
Victim occupation	**N**	**Median ($)**	**N**	**Median ($)**	**N**	**Median ($)**	**N**	**Median ($)**	**N**	**Median ($)**
Police Officer	427	335	493	421	506	537	444	514	570	538
Teacher	203	387	188	456	221	461	263	448	314	788
Other/Unknown	120	1,421	145	773	137	836	170	826	214	855
Nursing Professional	129	1,481	126	1,467	144	1,189	157	1,906	155	2,440
Teacher Aide	94	300	106	396	107	388	151	395	193	317
Prison Officer	46	2,079	76	665	100	1,736	87	1,436	112	1,908
Youth Worker	39	982	35	848	73	1,627	57	727	80	1,282
Nursing Assistant	35	601	54	2,649	45	826	51	2,678	49	3,055
Guard and Security Officer	17	490	35	1,271	50	1,391	51	1,631	45	1,326
Health Professional	24	450	38	573	24	655	21	753	34	419
Ambulance Operative	15	3,549	44	897	29	1,596	19	2,144	26	3,092
Aged/Disabled/Residential Care Officer	22	2,611	27	611	28	2,257	27	1,788	23	2,121
Medical Practitioner	3	250	7	2,443	2	402	5	4,910	2	22,657
Total	**1,174**	**465**	**1,374**	**557**	**1,467**	**696**	**1,504**	**686**	**1,817**	**729**

Source: WorkCover Queensland — unpublished data, 2014–15 to 2018–19.
Notes:
(1) Firefighter has not been presented due to a small sample size (n=2).
(2) Monetary amounts include statutory payments and do not include common law payments.
(*) Small sample size.

Number of injuries recorded

The average number of distinct injuries recorded on an accepted WorkCover claim due to the assault of a public officer was 1.4, with a maximum of 9 injuries in the one incident. On average, aged/disabled/ residential care officers and youth workers recorded the highest number of injuries per claim at 1.6, closely followed by prison officers, nursing assistants, and guards/security officers with an average of 1.5 injuries per claim.

With the highest average number of injuries, as well as also receiving the highest median payment amount and the highest median number of days lost, suggests that the claims raised by aged/disabled/residential care workers may involve more severe assaults resulting in more serious injuries — see Figure 4-6.

Figure 4-6: Number of injuries resulting from incidents, by occupation

Victim occupation	Average number of injuries	Maximum number of injuries
Police Officer (n=2,440)	1.4	9
Teacher (n=1,189)	1.4	8
Other/Unknown (n=786)	1.3	8
Nursing Professional (n=711)	1.4	9
Teacher Aide (n=651)	1.3	7
Prison Officer (n=421)	1.5	8
Youth Worker (n=284)	1.6	9
Nursing Assistant (n=234)	1.5	7
Guard and Security Officer (n=198)	1.5	9
Ambulance Operative (n=141)	1.3	5
Health Professional (n=133)	1.4	6
Aged/Disabled/Residential Care Officer (n=127)	1.6	6
Medical Practitioner (n=19)	1.1	2
Firefighter (n=2*)	-	-
Total	**1.4**	**9**

Source: WorkCover Queensland — unpublished data, 2014–15 to 2018–19.
Notes: Guards and security officers are displayed separately as they appeared across many different agencies.
(*) Small sample size

4.4 Associated offences

Section summary

- An 'associated offence' is an additional offence that was committed during the same incident as an assault of a public officer.
- Assaults of corrective services officers were the least likely to have associated offences — that is, the only offence committed during these incidents was the assault itself.
- The serious assault of a police officer was the most likely offence to have multiple counts of the same offence arising out of the same incident — particularly those involving male offenders.
- Public nuisance was the most commonly associated non-violent offence. It was more commonly associated with Aboriginal and Torres Strait Islander women.

This section of the report explores types of offences that are commonly committed alongside the assault of a public officer. The phrase 'associated offence' is used in this section to describe an offence that was committed on the same day and by the same perpetrator who assaulted a public officer. The purpose of this analysis is to provide some insight into the types of situations in which assaults of public officers occur. For example, an incident that does not have any associated offences may imply that the assault was not associated with other criminal activities, whereas an incident that involved a multitude of associated offences may allude to a higher level of criminal activity on the part of the offender on the day of the offence.

Number and proportion of associated offences

Table 4-11 provides an overview of different types of assault-related offences and shows the proportion of cases that contained at least one associated offence. Assaults of corrective services officers were the least likely to have associated offences. For the serious assault of a corrective services officer, only 25.7 per cent of incidents involved an associated offence — which means that in three-quarters of cases, the serious assault was the only offence committed. Similarly, the summary offence of assaulting or obstructing a corrective services staff member also contained a low proportion of associated offences (29.3%).

A serious assault under section 340(1)(a), which includes assaults with intent to commit a crime, or with intent to prevent a lawful arrest, had the highest proportion of incidents that contained associated offences (87.2%). This can presumably be explained because, in order to be resisting arrest or intending to commit a crime, the offender must have committed, or be intending to commit another offence. Assaults of police officers also had a high proportion of associated offences (82.0% for serious assault; 74.8% for the summary offence). This indicates that incidents that result in the assault of a police officer also involve other offences.

These findings are at a very high level. The following pages delve deeper into the number of associated offences, any differences between demographic groups, and explores the most common associated offences.

Table 4-11: Proportion of incidents that had at least one associated offence, by different types of assault

Offence	At least one associated offence
Assault occasioning bodily harm (n=26,270)	41.4%
Assault occasioning bodily harm (aggravated) (n=10,668)	52.3%
Assault or obstruct corrective services staff (n=150)	29.3%
Assault or obstruct police officer (n=90,907)	74.8%
Common assault (n=33,466)	50.5%
Grievous bodily harm (n=2,151)	34.6%
Serious assault — 60 years and over (n=1,730)	48.2%
Serious assault — Corrective services officer (n=339)	25.7%
Serious assault — Intent to commit/resist arrest (n=297)	87.2%
Serious assault — Performed duty at law (n=88)	46.6%
Serious assault — Performing duty at law (n=242)	66.5%
Serious assault — Person with a disability (n=43)	48.8%
Serious assault — Police officer (n=6,738)	82.0%
Serious assault — Public officer (n=1,439)	49.3%
Torture (n=161)	75.2%
Wounding (n=1,411)	45.4%

Data include adult and juvenile offenders, higher and lower courts, cases sentenced 2009–10 to 2018–19.
Source: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: Counts are of 'incidents' — an incident is a collection of offences committed on the same day, by the same perpetrator, and where those offences are sentenced on the same day.

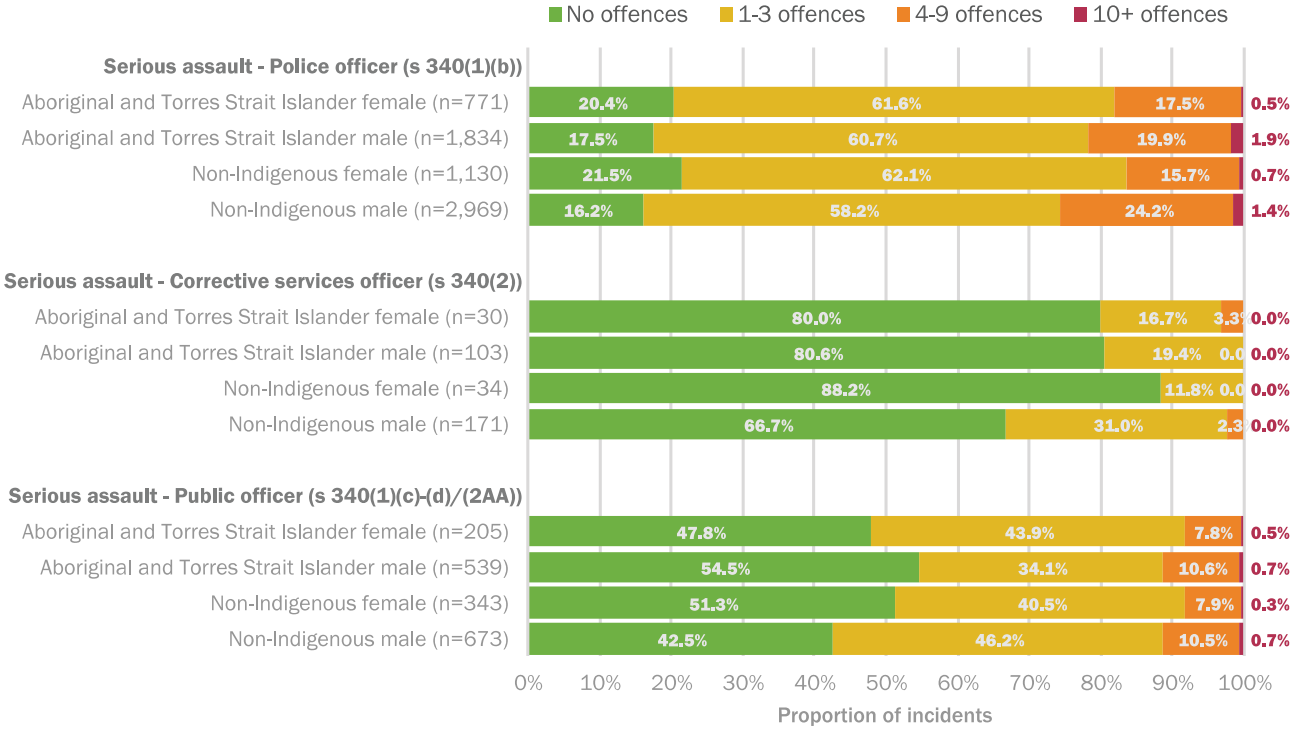
Figure 4-7 shows the number of associated offences for serious assaults of a public officer, broken down by demographic groups. The leftmost portion of the bars, which is shaded green, represents the proportion of cases that did not have any associated offences. It is clear the serious assaults of corrective services officers are the least likely to have any associated offences, across all demographic groups.

There are some interesting patterns observed based on the type of offence. In incidents involving the serious assault of a police officer, men are generally more likely to have associated offences compared with women (regardless of Aboriginal and Torres Strait Islander status). In fact, in a small proportion of cases, some men commit upwards of 10 offences in the one incident that involved the assault of a police officer.

However, in cases involving the serious assault of a public officer, the demographic breakdowns are remarkably different. In these incidents, Aboriginal and Torres Strait Islander men are the least likely to have associated offences — in over half of incidents where the assault of a public officer was the only offence committed (54.5% of incidents); whereas non-Indigenous men were the most likely to have committed multiple offences during the incident.

Assaults on corrective services officers follow different patterns altogether. Overall, few incidents involving the serious assault of a corrective services officer had associated offences. Non-Indigenous men were the most likely to commit multiple offences during the incident; whereas non-Indigenous women were the least likely to commit multiple offences.

Figure 4-7: Number of associated offences for serious assaults on public officers by demographics



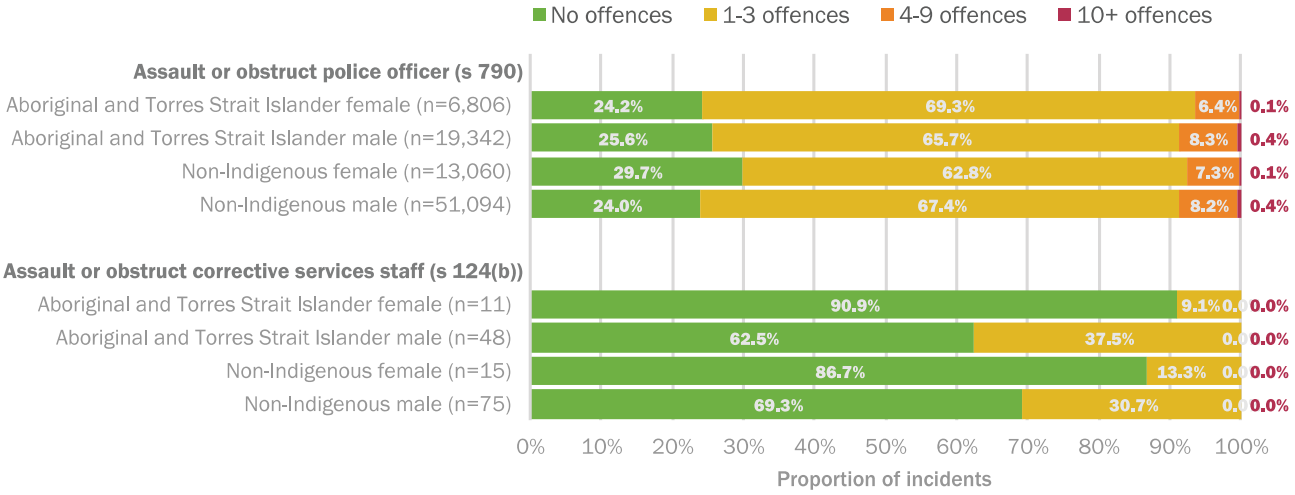
Data include adult and juvenile offenders, higher and lower courts, cases sentenced 2009–10 to 2018–19.
Source: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: Counts are of 'incidents' — an incident is a collection of offences committed on the same day, by the same perpetrator, and where those offences are sentenced on the same day.

Figure 4-8 is similar to the previous figure but shows data for the alternative summary offences of assaulting or obstructing a police officer or a corrective services officer.

The patterns for the summary offence of assaulting or obstructing a police officer are slightly different from the more serious offence of serious assault. While Aboriginal and Torres Strait Islander women were one of the least likely groups to have associated offences along with serious assault (see Figure 4-7), they were one of the most likely to have associated offences for the summary offence. However, overall, the difference between each demographic group was not considerable.

For the summary offence of assaulting or obstructing a corrective services officer, women were considerably less likely to have associated offences compared with men — although the sample sizes for women were small and limited weight can be placed on these findings.

Figure 4-8: Number of associated offences for relevant summary offences by demographics



Data include adult and juvenile offenders, higher and lower courts, cases sentenced 2009–10 to 2018–19.
Source: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: Counts are of 'incidents' — an incident is a collection of offences committed on the same day, by the same perpetrator, and where those offences are sentenced on the same day.

Type of associated offence

Many incidents involve multiple counts of the same offence. This leads to a situation where an offence is often associated with itself — that is, for example, if a person assaults two police officers, they may be charged with two counts of serious assault of a police officer, and in this way the offence of serious assault is associated with a second count of serious assault. Table 4-12 contains a breakdown of incidents that contain multiple counts of the same offence — or, in other words, are associated with themselves.

The serious assault of a police officer is the most likely to have multiple counts arising out of the same incident. The proportion of incidents with multiple counts is highest for Aboriginal and Torres Strait Islander men (25.5% of incidents) and lowest for non-Indigenous women (17.3% of incidents).

Table 4-12: Proportion of incidents with multiple counts of the same offence

	Aboriginal and Torres Strait Islander		Non-Indigenous	
Offence	**Female**	**Male**	**Female**	**Male**
Assault or obstruct corrective services staff (n=149)	9.1%	12.5%	13.3%	6.7%
Assault or obstruct police officer (n=90,302)	16.9%	12.8%	18.4%	12.7%
Serious assault – Police officer (n=6,704)	20.8%	25.5%	17.3%	22.7%
Serious assault – Corrective services officer (n=338)	16.7%	13.6%	8.8%	22.8%
Serious assault – Public officer/duty at law (n=1,760)	17.6%	18.4%	13.4%	14.6%

Data include adult and juvenile offenders, higher and lower courts, cases sentenced 2009–10 to 2018–19.
Source: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: Counts are of 'incidents' — an incident is a collection of offences committed on the same day, by the same perpetrator, and where those offences are sentenced on the same day.

The remainder of this section explores the offences that are most commonly associated with the assault of a public officer. In conducting this analysis, it became apparent that many of the offences that were most commonly associated with the assault of a public officer corresponded to the most common offences that were sentenced in Queensland generally.

Table 4-13 provides a list of the top 20 most common offences sentenced in Queensland courts (excluding traffic offences). Due to the sheer volume of these cases, many of these offences tended to appear as associated offences across all types of assaults of public officers. Hence, it is important to note that many of the associated offences tended to represent the most common offences committed generally over the reporting period.

Table 4-13: Top 20 most common offences sentenced in Queensland courts (excluding traffic offences)

Rank	Offence category	Offence	Cases
1	Drugs	Possessing dangerous drugs	173,422
2	Drugs	Possession of drug utensils	144,416
3	Public order	Public nuisance	122,540
4	Justice and government	Offence to contravene direction or requirement of police officer	107,443
5	Justice and government	Breach of bail — failure to appear	89,044
6	Justice and government	Assault or obstruct police officer	83,942
7	Theft	Stealing	82,204
8	Justice and government	Contravention of domestic violence order	77,825
9	Property damage	Wilful damage	62,037
10	Theft	Unauthorised dealing with shop goods	55,322
11	Acts endangering persons	Vehicle offences involving liquor or other drugs	49,293
12	Justice and government	Breach bail condition	48,680
13	Unlawful entry	Entering or being in premises and committing indictable offences	34,817
14	Acts intended to cause injury	Assaults occasioning bodily harm	34,222
15	Drugs	Possessing property suspected of being used, acquired or furnished in connection with a drug offence	33,967
16	Public order	Trespass	32,168
17	Acts intended to cause injury	Common assault	31,291
18	Fraud	Fraud	29,780
19	Theft	Unlawful use or possession of motor vehicles, aircraft or vessels	29,516
20	Acts endangering persons	Careless driving of motor vehicles	26,308

Data include adult and juvenile offenders, higher and lower courts, cases sentenced 2009–10 to 2018–19.
Source: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

Table 4-14 (below) shows the top five offences that were most commonly associated with serious assaults of public officers. To ensure that the top five most commonly associated offences were displayed for each demographic group, more than five associated offences have been displayed for some offences.

Serious assaults of corrective services officers and serious assaults of public officers were most commonly associated with themselves (see Table 4-12 above). However, the serious assault of a police officer was most commonly associated with a charge of the summary offence of obstructing or assaulting a police officer under section 790 of the PRRA. This was most common for women, where almost half of incidents involving the serious assault of a police officer also involved a charge of the corresponding summary offence (48.8% for non-Indigenous women; 44.9% for Aboriginal and Torres Strait Islander women). This also affected a high proportion of incidents involving men (43.3% for non-Indigenous men; 38.2% for Aboriginal and Torres Strait Islander men).

Public nuisance was frequently associated with the serious assault of both police officers and public officers, particularly for Aboriginal and Torres Strait Islander women. One-third of serious assaults of a police officer involving Aboriginal and Torres Strait Islander women also involved a charge of public nuisance (34.8% of incidents); whereas this was lower at approximately one-fifth of cases for other demographic groups.

Wilful damage was a common associated offence across all types of serious assaults analysed. For incidents involving the serious assault of a corrective services officer, it was the second most common associated offence, although the proportion of cases involving wilful damage was small. For serious assaults of police officers and public officers, wilful damage was most commonly associated with Aboriginal and Torres Strait Islander men.

The serious assault of a public officer was often associated with assaults of police officers (both the offence of serious assault, and the summary offence). The implication in this finding is that there were a number of incidents that involved the assault of a public officer (such as a paramedic) as well as a police officer.

Table 4-14: Top five associated offences for serious assaults on public officers by demographics

	Aboriginal and Torres Strait Islander		Non-Indigenous	
Associated offences	**Female**	**Male**	**Female**	**Male**
Serious assault — Police officer (s 340(1)(b))	n=771	n=1,834	n=1,130	n=2,969
Assault or obstruct police officer	44.9%	38.2%	48.8%	43.3%
Public nuisance	34.8%	21.9%	22.4%	21.1%
Serious assault — Police officer	20.8%	25.5%	17.3%	22.7%
Wilful damage	11.4%	16.2%	10.5%	13.7%
Possessing dangerous drugs	2.6%	4.0%	5.6%	7.6%
Contravention of domestic violence order	2.5%	7.1%	2.2%	5.6%
Common assault	4.5%	5.2%	4.3%	4.5%
Serious assault — Corrective services officer (s 340(2))	n=30	n=103	n=34	n=171
Serious assault — Corrective services officer	16.7%	13.6%	8.8%	22.8%
Wilful damage	3.3%	1.9%	2.9%	2.9%
Assault occasioning bodily harm (non-aggravated)	3.3%	1.9%	0.0%	1.2%
Assault occasioning bodily harm (aggravated)	3.3%	1.0%	0.0%	1.2%
Common assault	0.0%	0.0%	0.0%	1.8%
Assault or obstruct corrective services staff	0.0%	1.0%	0.0%	1.2%
Serious assault — Public officer (s 340(1)(c)-(d)/(2AA))	n=205	n=539	n=343	n=673
Serious assault — Public officer	13.2%	8.5%	19.2%	16.9%
Assault or obstruct police officer	14.6%	14.1%	11.1%	11.9%
Public nuisance	17.6%	6.7%	12.8%	10.1%
Wilful damage	4.4%	14.1%	6.4%	11.0%
Serious assault — Police officer	7.3%	4.1%	10.5%	7.1%
Common assault	6.8%	4.1%	4.7%	4.2%

Data include adult and juvenile offenders, higher and lower courts, cases sentenced 2009–10 to 2018–19.
Source: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) Counts are of 'incidents' — an incident is a collection of offences committed on the same day, by the same perpetrator, and where those offences are sentenced on the same day.
(2) The top five associated offences were selected for each demographic group. More than five associated offences were displayed if different demographic groups had a different top five associated offences.

Table 4-15 is similar to the previous figure but shows data for the alternative summary offences of assaulting or obstructing a police officer or a corrective services officer.

For the summary offence of assaulting or obstructing a police officer, the most common associated offence for all demographic groups was public nuisance. This was most common for Aboriginal and Torres Strait Islander women, occurring in 41.3 per cent of incidents. There was little difference between the other demographic groups, which were all associated with public nuisance in approximately 28 per cent of incidents.

The offence of wilful damage was associated with a relatively high proportion of incidents involving the assault or obstruction of a corrective services officer. Note that the offence of wilful damage appears twice in the table below, the first reference is to the offence of wilful damage under section 469 of the *Criminal Code* (Qld), and the second reference is to wilfully damaging any part of a corrective services facility under section 124(i) of the CSA.

Unregulated high-risk activities is another summary offence that is occasionally associated with the assault or obstruction of a corrective services officer, which was only ever associated with men. The offence of unregulated high-risk activities is defined under section 14 of the *Summary Offences Act 2005* (Qld), and includes activities such as parachuting, BASE jumping, climbing or abseiling from a building or structure. Presumably, the incidents analysed here involved the climbing of prison buildings or structures.

Table 4-15: Top five associated offences for relevant summary offences by demographics

		Aboriginal and Torres Strait Islander		Non-Indigenous	
Associated offences		**Female**	**Male**	**Female**	**Male**
Assault or obstruct police officer (s 790)		n=6,806	n=19,342	n=13,060	n=51,094
	Public nuisance	41.4%	28.4%	28.5%	28.9%
	Assault or obstruct police officer	16.9%	12.8%	18.4%	12.7%
	Offence to contravene direction or requirement of police officer	6.6%	5.5%	6.5%	6.7%
	Possessing dangerous drugs	2.9%	4.4%	6.1%	7.6%
	Wilful damage	5.8%	6.7%	4.2%	5.6%
	Possession of drug utensils	2.6%	3.2%	4.8%	4.7%
	Trespass	3.5%	5.9%	2.2%	3.8%
	Contravention of domestic violence order	2.7%	6.1%	2.4%	3.6%
	Serious assault — Police officer	5.1%	3.6%	4.2%	2.5%
Assault or obstruct corrective services staff (s 124(b))		n=11*	n=48	n=15	n=75
	Assault or obstruct corrective services staff	9.1%	12.5%	13.3%	6.7%
	Unregulated high-risk activities	0.0%	6.3%	0.0%	8.0%
	Wilful damage	0.0%	10.4%	0.0%	5.3%
	Wilful damage of corrective services facility	0.0%	8.3%	6.7%	4.0%
	Common assault	0.0%	2.1%	0.0%	2.7%
	Serious assault — Corrective services officer	0.0%	2.1%	0.0%	2.7%

Data include adult and juvenile offenders, higher and lower courts, cases sentenced 2009–10 to 2018–19.
Source: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) Counts are of 'incidents' — an incident is a collection of offences committed on the same day, by the same perpetrator, and where those offences are sentenced on the same day.
(2) The top five associated offences were selected for each demographic group. More than five associated offences were displayed if different demographic groups had a different top five associated offences.
(*) Small sample sizes for the associated offences (less than 10 incidents).

To provide a point of comparison, Table 4-16 provides a breakdown of the top five offences most commonly associated with the offence of common assault.

Interestingly, the offences most commonly associated with common assault were somewhat different from the offences sentenced for assaults of public officers.

The contravention of a domestic violence order was associated with common assault in 19.6 per cent of cases where the perpetrator was an Aboriginal and Torres Strait Islander man, and in 7.4 per cent of cases where the perpetrator was a non-Indigenous man.

The offence of stealing was also one of the more common associated offences for serious assault — an offence that did not appear for any of the assaults of public officers explored above. Although the proportion of cases was relatively low, it was at its highest of 5.5 per cent for Aboriginal and Torres Strait Islander women.

Other than these differences, however, common assault had many of the same associated offences as assaults of public officers, including charges of wilful damage, public nuisance and other types of assaults, such as AOBH, and assaults or obstructions of police officers.

Table 4-16: Top five associated offences for common assault

	Aboriginal and Torres Strait Islander		Non-Indigenous	
Associated offences	**Female**	**Male**	**Female**	**Male**
Common assault	n=3,372	n=7,437	n=4,907	n=17,467
Wilful damage	8.2%	13.7%	9.2%	13.4%
Common assault	9.3%	10.1%	9.6%	9.2%
Contravention of domestic violence order	3.6%	19.6%	2.3%	7.4%
Public nuisance	8.8%	6.7%	6.4%	6.1%
Assault occasioning bodily harm	3.8%	6.4%	3.6%	6.0%
Assault or obstruct police officer	4.5%	5.8%	5.5%	5.2%
Stealing	5.5%	3.3%	4.1%	3.9%

Data include adult and juvenile offenders, higher and lower courts, cases sentenced 2009–10 to 2018–19.
Source: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) Counts are of 'incidents' — an incident is a collection of offences committed on the same day, by the same perpetrator, and where those offences are sentenced on the same day.
(2) The top five associated offences were selected for each demographic group. More than five associated offences were displayed if the demographic groups had a different top five associated offences.

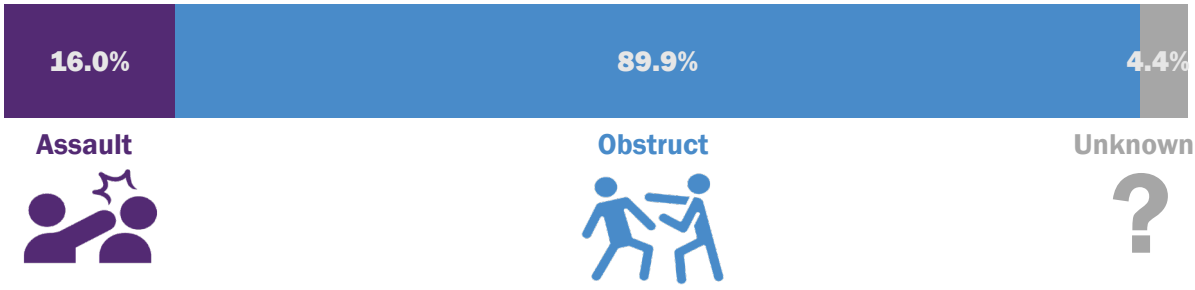
4.5 Assault or obstruction of a police officer

The majority of cases involving the assault of a police officer are sentenced as the summary offence of assault or obstruct a police officer under section 790 of the PPRA (n=85,434), as opposed to serious assault of a police officer under section 340(1)(b) of the *Criminal Code* (Qld) (n=6,538) — see section 2.5 of Chapter 2.

On 20 September 2018, section 790 of the PPRA was amended to separate the offence into two subsections: one dealing with the assault of police officers, and the other dealing with obstruction of police officers. For offences committed prior to 20 September 2018, it can be difficult to determine whether a charge under section 790(1) involved an 'assault' or an 'obstruction'. To address this question, the Council obtained additional data from Queensland Court Services on the full text of the charge. This text was analysed to determine if the charge involved an assault or an obstruction; if there was ambiguity, the offence was labelled as 'unknown'. Using this method made it possible to determine the number of assaults, as opposed to obstructions, that were sentenced under section 790(1) from 2009–10 to 2018–19.

Over this 10-year data period, the majority of cases sentenced under section 790(1) involved the obstruction of a police officer (89.9%, n=76,785). There were 13,652 cases (16.0%) that involved the assault of a police officer. In 4.4 per cent of cases (n=3,771), it was not possible to determine whether the case involved an assault or an obstruction. Some cases involved multiple charges under section 790(1) in circumstances in which there were some charges that involved an assault and other charges that involved an obstruction — when this occurred, the case was counted twice (once as an assault, and once as an obstruction), resulting in percentages that add up to more than 100 per cent. Approximately 10.1 per cent of cases involved both a charge of assault and a charge of obstruction (n=8,634).

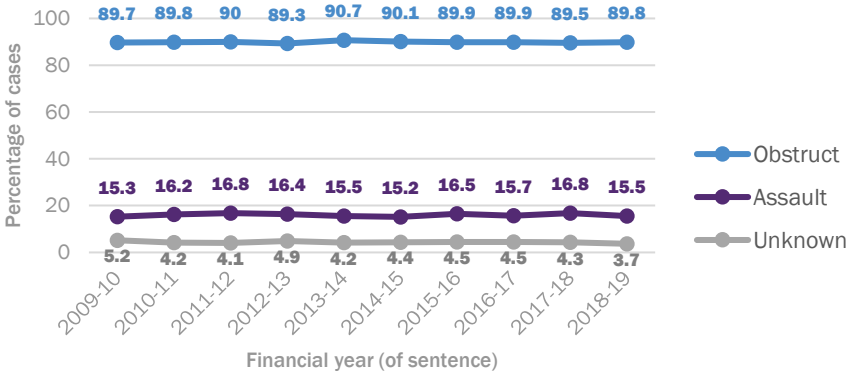
Figure 4-9: Proportion of assaults and obstructions sentenced under section 790(1) PPRA



Data include adult and juvenile offenders, lower and higher courts, cases sentenced 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: Summed percentages will exceed 100% as cases involving a combination of assault, obstruct and unknown offences have been counted in each applicable category (n=8,634, 10.1%).

Analysis of changes over time have shown there has been no variation in the proportion of assault and obstruct offences sentenced under section 790(1) — see Table 4-17.

Table 4-17: Proportion of assaults and obstructions under section 790(1) PPRA



Data include adult and juvenile offenders, lower and higher courts, cases sentenced 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: Summed percentages will exceed 100% as cases involving a combination of assault, obstruct and unknown offences have been counted in each applicable category (n=8,634, 10.1%).

4.6 Serious assault cases with circumstances of aggravation

Section summary

- Since their introduction, aggravating circumstances were present in approximately 59 per cent of serious assault cases involving a police officer and 45 per cent of cases involving a public officer.
- Bodily fluids were the most common aggravating circumstance, followed by bodily harm.

From 29 August 2012, it became a statutory circumstance of aggravation to the offence of serious assault of a police officer under section 340(1)(b) of the *Criminal Code* (Qld) to assault a police officer by biting, spitting on, throwing at or applying bodily fluid or faeces to, or causing bodily harm to a police officer or, at the time of the assault, being or pretending to be armed. From 5 September the same circumstances of aggravation were extended to cover assaults of public officers under section 340(2AA) of the *Criminal Code*.

For a discussion on the sentencing outcomes for these circumstances of aggravation, please refer to section 7.5 of Chapter 7, which discusses the impact of the introduction of these statutory circumstances of aggravation.

Police officers

Table 4-18 shows the number of charges, offenders, cases and MSOs that have been sentenced for the serious assault of a police officer with, and without, circumstances of aggravation.

In the higher courts, out of the 660 cases that involved the serious assault of a police officer since 29 August 2012, 446 cases involved the presence of one or more aggravating circumstances (67.6% of cases). In the lower courts over the same period, out of the 3,890 cases involving the serious assault of a police officer, 2,149 cases involved circumstances of aggravation (55.2% of cases).

The most common aggravating circumstance involved bodily fluid being thrown at or applied to a police officer, occurring in 251 cases in the higher courts (38.0% of cases), and 1,190 cases in the lower courts (30.3% of cases). Bodily harm was caused to a police officer in 146 cases in the higher courts (22.1% of cases), and 597 cases in the lower courts (15.3% of cases). The least common type of aggravating circumstance was an offender being or pretending to be armed, with 82 cases involving this circumstance of aggravation in the higher courts (12.4% of cases) and 429 cases in the lower courts (11.0% of cases).

Table 4-18: Number of sentenced serious assaults of a police officer by offence type

Section number	Offence description	Charges	Offenders	Cases	MSO
Higher courts	Police officer	998	653	660	387
340(1)(b)	Police officer (non-aggravated)	380	288	290	74
340(1)(b)(i)	Police officer — bodily fluid	313	249	251	175
340(1)(b)(ii)	Police officer — bodily harm	180	146	146	98
340(1)(b)(iii)	Police officer — armed	125	82	82	40
Lower courts	Police officer	5,110	3,655	3,890	3,225
340(1)(b)	Police officer (non-aggravated)	2,437	1,907	1,974	1,385
340(1)(b)(i)	Police officer — bodily fluid	1,390	1,144	1,190	987
340(1)(b)(ii)	Police officer — bodily harm	647	583	597	509
340(1)(b)(iii)	Police officer — armed	636	412	429	344

Data include adult and juvenile offenders, offences occurring on or 29 August 2012, sentenced from 2012–13 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: (*) Includes police officers who were obstructed but may not have been assaulted.

Public officers

Table 4-19 shows the number of cases involving the assault of a public officer. In the higher courts, serious assault involving bodily fluid or faeces being thrown at or applied to a public officer was the most common offence as the MSO; whereas in the lower courts, non-aggravated serious assault was the most common MSO.

The less serious offence of resisting a public officer under section 199 of the *Criminal Code* was only sentenced as the MSO in 6 cases. Serious assault of a person who performed, or is performing, a duty at law had 84 sentenced cases. Serious assault of a public officer under section 340(2AA) had 49 cases sentenced in the higher courts, and 465 cases in the lower courts.

Table 4-19: Number of sentenced serious assaults of public officers by offence type

Section Number	Offence Description	Charges	Offenders	Cases	MSO
Higher courts	**Public officer**	**184**	**107**	**110**	**49**
340(2AA)	Public officer (non-aggravated)	83	52	52	10
340(2AA)(i)	Public officer — bodily fluid	69	48	48	29
340(2AA)(ii)	Public officer — bodily harm	21	19	19	9
340(2AA)(iii)	Public officer — armed	11	4	4	1
Lower courts	**Public officer**	**1028**	**740**	**775**	**465**
340(2AA)	Public officer (non-aggravated)	618	473	489	238
340(2AA)(i)	Public officer — bodily fluid	248	188	198	135
340(2AA)(ii)	Public officer — bodily harm	106	96	96	69
340(2AA)(iii)	Public officer — armed	56	34	35	23

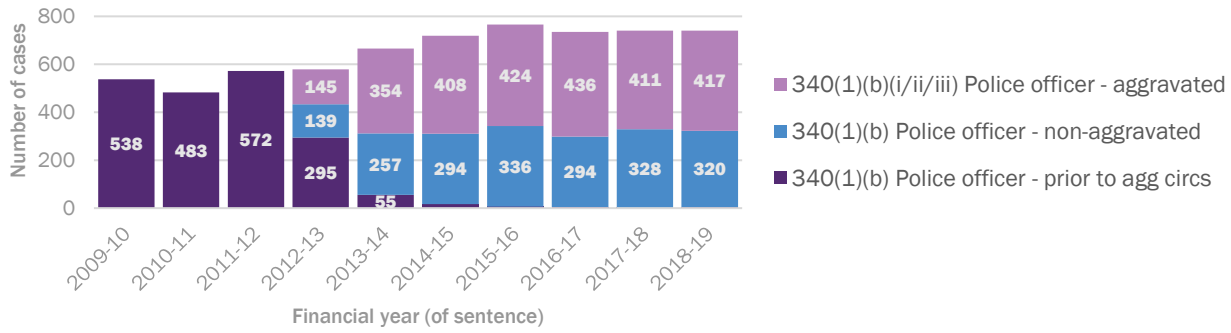
Data include adult and juvenile offenders, offences occurring on or after 5 September 2014, cases sentenced from 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

4.6.1 Serious assault cases with circumstances of aggravation, over time

Police officers

From 2013–14 to 2018–19, over half of all cases involving the serious assault of a police officer involved at least one circumstance of aggravation (56.1%, n=2,450) — see Figure 4-10.

Figure 4-10: Number of serious assaults of police officers, by aggravating circumstances, over time

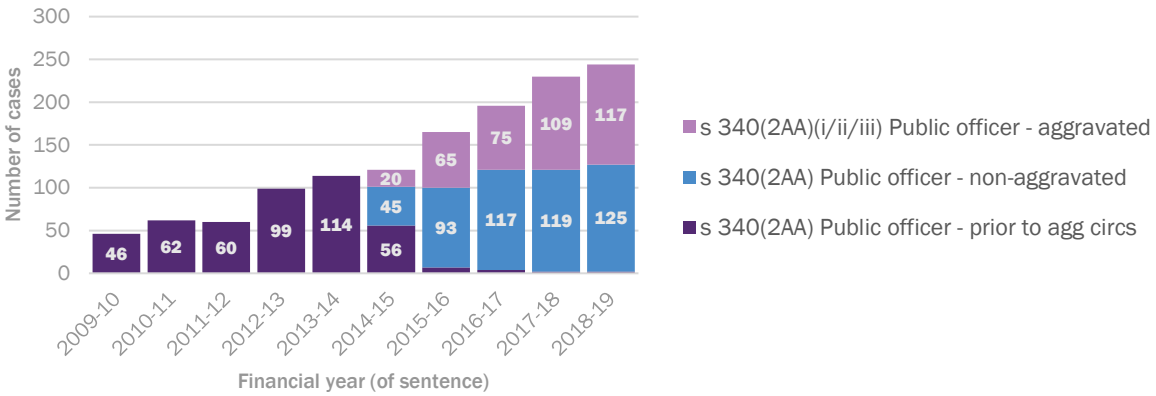


Data include lower and higher courts, adult and juvenile offenders, cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: Each case is counted once only; if a case contains multiple serious assaults of a police officer, where some assaults include aggravating circumstances and others do not, the entire case will be counted as one that contains aggravating circumstances.

Public officers

Figure 4-11 shows the effect of the introduction of aggravating circumstances, with an increase in the number of serious assaults of public officer offences being sentenced in the years following the introduction.

Figure 4-11: Number of serious assaults of public officers by aggravating circumstances, over time



Data include lower and higher courts, adult and juvenile offenders, cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: Each case is counted once only; if a case contains multiple serious assaults of a public officer, where some assaults include aggravating circumstances and others do not, the entire case will be counted as one that contains aggravating circumstances. If a case involves offences in occurring both prior to and after the introduction of aggravating circumstances, the entire case will be counted in the applicable post-introduction category.

PART B — The impact of assaults on victims of crime

Chapter 5 The impact on victims

The Council's Issues Paper highlighted some of the issues experienced by victims of serious assault and related offences, which the Council has further explored as part of the consultation phase of the Terms of Reference. These experiences relate to the personal and professional impact of assault, as well as the organisational response to these incidents, and the process of reporting and being involved in a criminal justice system response to a violent occupational event.

This chapter outlines the Council's findings about the mixed experiences of victims of those who have been assaulted in their workplace, and the potential implications for improving system responses and reducing the longer-term impacts of these assaults on victims.

5.1 The experience of being assaulted at work

As part of their written submissions to the Council, several organisations included de-identified case studies from individuals who had been the victim of an assault. This section of the Council's report draws heavily on the actual stories of these individuals who have generously written about their experiences of having been assaulted at work.

Through the consultation process, the Council learned that the nature and impacts of occupational violence vary from industry to industry, and from organisation to organisation. This has certainly been borne out in submissions. For police, corrective services workers and youth detention staff, risks clearly relate to the nature of the work — responding to disorderly behaviour, enforcing the law and maintaining order are all tasks that will bring a worker into direct conflict with individuals who, for a range of reasons, may not be able or prepared to accept direction.

A range of case studies provided to the Council on a confidential basis by Queensland Corrective Services (QCS) demonstrate the nature of the incidents experienced by officers working in correctional centres. The incidents reported to the Council included kicking, biting, punching and throwing implements at officers and led to injuries including broken bones and concussion. These occurrences are symptomatic of the violent environment of a prison where corrective services officers are in close contact with individuals who may not have any incentive to treat prison staff with respect.

For other industries — public transport, the health sector, the education sector, child protection services, and a whole host of regulatory agencies — the issues and risks are different.

In the transport industry, for example, different types of workers are exposed to different levels of risk depending on their particular role. Railway station staff are at greater risk than train drivers, for example, due to the level and nature of the contact they have with members of the public, and their physical location (workers in remote locations, for example, are often staffing public transport hubs on their own and therefore are more vulnerable). The Australasian Railway Association provided information to the Council from the Gold Coast Light Rail regarding the nature of incidents experienced by their workers over a three-year period while enforcing ticket regulations and other aspects of public transport. These included:

- verbal abuse and general aggression;
- spitting;
- damage to property such as mobile phones;
- physical confrontations leading to assaults such as pushing, grabbing, slapping or throwing things, but not requiring medical attention; and
- physical assaults leading to injuries such as sprains, soreness and swelling.[1]

[1] Email from Director, Corporate Services, Australasian Railway Association to Manager, Policy, Queensland Sentencing Advisory Council, 3 July 2020.

The Transport Workers' Union (TWU) spoke about the particular issues faced by rideshare drivers, a new and rising class of worker. A 2019 survey of 1,100 NSW rideshare drivers found that 40 per cent reported a lack of safety measures as one of their most central concerns:

> Drivers also reported instances of death threats, threats of harm, actual physical assaults, sexual harassment and assault. They further reported racist abuse ranging from tasteless jokes, slurs, threats of violence, with instances of angry and drunk passengers damaging and soiling vehicles, and breaking personal property. Violent passengers aren't banned from services and drivers must deal with vehicle damage, medical bills and long-term effects. Drivers have also reported deactivation from false reports, putting them under serious pressure in order to keep their jobs.[2]

The TWU pointed out that rideshare drivers and food-delivery workers have 'been at the forefront of Australia's response to the Coronavirus (COVID-19) pandemic … stopping the spread of the virus and enabling people to stay safe in isolation'.[3]

Workers in the education sector, such as teachers, teacher aides and other school staff, experience a completely different environment in relation to occupational violence. While school staff acknowledge the risk of assault from students, particularly older children, the Queensland Teachers' Union (QTU) identified that 'state schools are in the unique position of being required to create and maintain long term relationships with students and/or their family members/carers'.[4] The nature of the relationship between teachers and families presents an entirely different context, with schools often needing to have lengthy relationships with a family for many years before the family ages out of the school community. In these situations, victims of assault are aware that they must manage an ongoing relationship, which can often lead them to choose not to report an assault to police and to deal with it using alternative approaches.

For a victim of assault in this context, either the victim or the family need to leave the school altogether if they want to avoid contact. The QTU provided a case study in its submission outlining the journey of a deputy principal who was assaulted and injured by two senior students in 2016, and the significant emotional, psychological and financial impacts on her. These impacts include ongoing psychological support due to fear and anxiety from the offence; avoiding potential confrontation by not visiting popular public places like shopping centres and community complexes; and as of mid-2020 the inability to secure an equivalent position at another school.[5]

A separate issue raised in the education sector is the need for better tracking and management of problem families who continually relocate schools when relationships break down due to threatening or violent behaviour. Being unaware of prior incidents means the school is unable to put in place an appropriate management plan to manage a known risk, and prevent incidents occurring to their staff.

Quite a different set of risk factors face health workers, and again these risks vary according to the nature and location of the person's role. The health industry faces a range of high-risk situations with clients requiring medical attention who present to hospital under the influence of drugs such as methylamphetamine, who are seriously alcohol-affected, who have advanced dementia, or who are experiencing a mental health episode. Sometimes these things operate in combination.

The Council spoke with an Emergency Department (ED) nurse who had been assaulted on many occasions in her role. Her assessment was that the vast majority of the incidents she had experienced related to people seeking access to prescription medication such as Endone or oxycodone. She pointed out the range of potentially very dangerous weapons available in an ED, having been threatened by a tendon hammer and a scalpel in separate incidents, and having an IV pump and pole thrown at her. This interviewee spoke about the impact of changing public attitudes towards people in health roles, particularly in the public sector:

> And I think people are just jerks sometimes. You get really genuinely amazingly nice patients who are just so grateful, but it seems to be a society where we're expected to do things and I have a lot of patients that will say to you: 'Well I pay your wage' — that sort of thing. Because it's a public system … and that's the focus they have, that we work for them. … That's only been something I've only come across in the last five or six years. I've never been spoken to how I have like that … Even when I was 19 and I first started working, patients would never even swear at you. But it's changed so much.[6]

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2 Submission 12 (Transport Workers' Union) 7.

3 Ibid 8.

4 Submission 20 (Queensland Teachers' Union) 5.

5 Ibid Annexure.

6 Meeting on 19 June 2020.

Case studies written by health workers and included in a submission from Queensland Health provided the most powerful examples of the situations in which health and hospital staff are exposed to danger and violence. The case studies report assaults from spitting, biting and throwing of bodily fluids, to bruising and abrasions, all the way through to choking, broken bones and head injuries.

The themes emerging from these case studies echo the comments in other organisational submissions, which allude to the potential for far-reaching impacts on the life of a victim of occupational violence, on their family and on their future working lives. This includes both physical and mental health impacts, with recovery that can be lengthy and very individualised:

> The unpredictable nature of the punch has made me question my nursing skills. I have nursed for almost 7 years, and nothing has made me question my assessment and communication skills like this. I now find myself suspicious of a patient or a relative's behaviour, questioning myself what their intentions are and if I need to step back and reassess the situation, even with the calmest of patients … I have also found a new insecurity when it's dark outside and I'm leaving work. I used to be confident walking to my car, but now if I'm not accompanied by a colleague, I ask security to escort me there. I understand that my quality of life has not been a vast decrease since being punched, compared to others who may have worse injuries, but I don't know what may happen in the future. I understand that the anxieties around my work and my confidence should improve with time. (Case study 10)
>
> If anything, I am hypervigilant now whenever I walk into that particular area and other mental health wards. Following the incident I felt more anxious when attending incidents, particularly as this was an unprovoked attack. In September it will be two years since this occurred. The thought of the offender pleading not guilty and me having to give evidence is incredibly stressful. (Case study 12)
>
> The trauma associated with this has significantly affected my day to day living. Going to work is a struggle, but I have to support my family. (Case study 14)
>
> Personally, I have been scratched, bitten, kicked, punched and spat on. I have had to endure the year-long waits for a clearance after having saliva and/or blood spat in my face. I am sure that this, in part, was a part of the reason for my marriage to fail. (Case study 15)
>
> The main problems I experienced were anxiety, sleep disturbance and flashbacks. (Case study 17)
>
> The thing that angers me is that the biggest injury during an occupational violence is the psychological trauma. I was made to feel as if it was part of my job. On the day of my incident, I left my home a complete, happy person and I came back a broken soul. And only time will tell when I can be the same jolly person I was. I miss the old me. (Case study 18)
>
> The injury and two surgeries impacted on every area of my life and it was a long road to recovery. I was unable to eat solid food for several months and unable to engage in any of my usual activities for fear of aggravating the injury. I had pain management to assist with pain and discomfort and endured a great deal of stress and worry at the time. Since the surgery, my mouth's bite opening has been reduced and I have received maxillofacial physiotherapy. I continue to experience numbness in the left side of my jaw and cheek. I have since returned to full operational duties, but not a day goes by that I am not concerned for my welfare. (Case study 19)
>
> This incident left me extremely shaken and anxious. I had a few days off work and found myself feeling anxious and nervous even walking past strangers whilst out exercising. I felt an irrational fear that anyone could attack me, unprovoked, at any time. (Case study 20)
>
> There are always going to be days that are good and days that are bad and occasionally there are those days that give me flashbacks and nightmares. But this is where I remind myself of how far I have come and where I am today. (Case study 21)[7]

5.2 Impacts on workplaces and the community

Beyond the impact on individuals themselves, the Council has considered the broader impact on workplaces and the community. For example, the impact of occupational violence on recruitment and retention of staff was cited in a number of submissions by individuals and organisations. The nurse victim of serious assault interviewed by the Council pointed out the loss of specialist medical staff as a consequence of the assaults experienced by staff in these roles:

> … the impact their actions has on people — not just in leaving nursing, but in leaving specialty areas like emergency — where Australia has a national shortage of emergency nurses — it is a specialty area. That impact on nursing, and on management having to deal with that …[8]

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7 Submission 9a (Queensland Occupational Violence Strategy Unit), Appendix 1 (confidential, reproduced with permission).

8 Meeting on 19 June 2020.

This was echoed by the Queensland Nurses and Midwives' Union:

> Consequences of workplace assaults can lead to organisations experiencing recruitment and retention challenges, absenteeism, decreased productivity and low morale (Sharma & Sharma, 2016). In the healthcare environment, not only can assaults disrupt the provision of care but assaults can also impact the service that is provided with studies showing delayed nursing interventions and additional time required to complete nursing work per shift when nurses have experienced violence (Roche, Diers, Duffield & Catling-Paull, 2010).[9]

Queensland Corrective Services noted that assaults on corrective services officers can have 'a significant impact on the [broader] workforce and QCS operations'.[10] Citing relevant research on the impacts of assaults in custodial settings, it noted:

> Increases in assaults in custody lower feelings of safety and increase CSOs' level of vulnerability. 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. … 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.[11]

WorkCover data presented in section 4.3 show the financial impact of occupational violence, which includes days away from work on sick leave, and can sometimes mean long-term absences while someone regains their confidence and returns to the workplace.

The Bar Association of Queensland also notes the potential impact on the welfare system:

> An assault at work has particular aspects of seriousness. Work is the way in which livelihoods are earned. Upon a person being assaulted at work the consequences may well be an inability to continue in that employment for a period; which has ramifications upon the individual and potentially the welfare system.[12]

5.3 The needs of victims

The experience of a violent event will affect individuals in different ways and multiple ways. What may have a significant impact on one person, may not have the same level of impact on another. Responses to a traumatic event such as an assault can vary from a mild response that can resolve quickly, to a severe and ongoing experience that can lead to a mental health diagnosis.[13]

Clearly there are several immediate needs of victims that must be attended to. While there may be physical injuries, some of which need medical attention (and some of which may impact on a person for months or years), there will always be an emotional response. This can be experienced either at the time of the event or develop over time. For some victims of violent encounters, the emotional symptoms can continue and deepen into a state of psychological trauma.

The needs of victims, therefore, vary depending on the individual and will change over time.

In the very first instance, a victim may need both physical and psychological first aid.[14] While treatment for any physical injuries is an obvious first issue, it is also the support and emotional care provided by first responders that can make a significant difference to the emotional recovery of an assault victim.

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9 Submission 14 (Queensland Nurses and Midwives' Union) 4.

10 Submission 21 (Queensland Corrective Services) 4.

11 Ibid 8.

12 Submission 27 (Bar Association of Queensland) 1.

13 Judicial College of Victoria, *Victims of Crime in the Courtroom: A Guide for Judicial Officers* (Judicial College of Victoria, Melbourne, 2019) 3.

14 Psychological first aid is a practical set of skills that aim to support someone in a time of stress. It helps a person to articulate what their immediate needs or concerns are; ensures they feel they are not alone; helps them to cope with any immediate problems they are experiencing; provides information about support services; and connects them with social supports (Queensland Health, Occupational Violence Incidence Response Kit, date unknown).

A substantial body of literature has developed in relation to emotional and psychological trauma, which can be defined as:

> the result of extraordinarily stressful events that shatter your sense of security, making you feel helpless in a dangerous world … Traumatic experiences often involve a threat to life or safety, but any situation that leaves you feeling overwhelmed and isolated can result in trauma, even if it doesn't involve physical harm.[15]

It is acknowledged in the literature that emotional and psychological trauma can be caused by a single incident such as an accident, injury or a violent attack,[16] and that an individual's response can be influenced not only by their own experience, but by whether they have access to supports, their coping and life skills and those of their immediate family, and the response of the broader community.[17]

Some of the emotional symptoms of psychological trauma are:

- shock, denial or disbelief;
- confusion and difficulty concentrating;
- anxiety and fear;
- guilt, shame and self-blame;
- social withdrawal;
- feelings of sadness or helplessness; and
- feeling disconnected or numb.[18]

Psychological trauma can change one's perspective on life, where a person might feel the world to be a dangerous place and people as being untrustworthy, or they may see themselves as weak or inadequate, or that they should have responded differently in the situation.[19] Trauma can also manifest physically, with symptoms such as:

- insomnia and nightmares;
- fatigue;
- being easily startled;
- racing heartbeat;
- aches and pains; and
- muscle tension.[20]

These symptoms are common for people who have experienced a traumatic event and can last weeks before they recede. If they continue for a period of more than a month, or if they worsen over this time, the person may enter the more chronic experience of trauma — post-traumatic stress disorder — where the person may report one or more of a range of symptoms, in conjunction with a host of other physical and psychological symptoms. These symptoms can include:

- recurrent, involuntary and intrusive distressing memories of the event;
- recurrent distressing dreams that relate to the event;
- dissociative reactions such as flashbacks;
- intense, prolonged psychological distress where internal or external cues resemble an aspect of the event;
- marked physiological reactions to internal or external cues that resemble an aspect of the event.[21]

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15 Lawrence Robinson, Melinda Smith and Jeanne Segal, 'HelpGuide', *Emotional and Psychological Trauma* (Web Page, February 2020), https://www.helpguide.org/articles/ptsd-trauma/coping-with-emotional-and-psychological-trauma.htm).

16 Ibid.

17 Center for Substance Abuse Treatment, 'Chapter 3 – Understanding the Impact of Trauma', *Trauma-informed Care in Behavioral Health Services, Treatment Improvement Protocol Series, No. 57* (2014) (Web Page, 2014)< https://www.ncbi.nlm.nih.gov/books/NBK207191/#part1_ch3.s2>.

18 Robinson, Smith and Segal (n 15).

19 Seth Gillihan, '21 common reactions to trauma', *Psychology Today* (Web Page, 7 September 2016) <https://www.psychologytoday.com/au/blog/think-act-be/201609/21-common-reactions-trauma>.

20 Robinson, Smith and Segal (n 15).

21 American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM-5)* (Arlington, VA, 5th ed, 2013) 271–2.

Treatment for post-traumatic stress disorder is critical. It can include psychological therapies, drug treatment, exercise, mindfulness and self-help strategies such as yoga or relaxation activities.[22]

What is clear from the literature reviewed for this chapter is that an early response and the delivery of psychological first aid, combined with longer-term strategies such as counselling and self-care routines, are key to ensuring that the impact of a traumatic event such as occupational violence does not result in a person being diagnosed with post-traumatic stress disorder, which can have profound effects on an individual's life and that of their family.

5.4 Victim reflections on the response from their employer

It became clear to the Council during the course of consultation with individuals and organisations that occupational violence is a workplace health and safety concern for many industries. One of the Council's key observations about institutional responses to assault in the workplace is that they vary across industry groups, with some occupations having well-developed approaches to the issue, while others are still at an earlier stage of developing systems for prevention and response.

For someone who is assaulted at work, a supportive and informed response from their employer is paramount. It became clear from the case studies provided in submissions that positive experiences from one's workplace, not only at the time of the incident, but in the weeks and months that follow, form a critical role in the recovery process. While the majority of case studies, not surprisingly, address the negative experiences of becoming a victim of assault in the workplace, there were some individuals who spoke about those things that they felt helped them. These are instructive and demonstrate the benefits of investment in appropriate institutional responses to occupational violence:

> Being supported to press charges when assaults happen helps me to feel safe in continuing to do the job I love doing. (Case study 6)
>
> I was able to request within my workplace to not work at triage for the next few weeks and this is where I felt most vulnerable, exposed and nervous to be speaking to members of the public. I have since had five sessions with the hospital psychologist as follow up to the incident. This has been helpful and a much-appreciated resource. (Case study 20)
>
> This is where the workplace rehabilitation officer comes in, she was amazing. Called me every day to ensure I was OK and safe. Not only did she call, but she assisted with paperwork and making appointments. (Case study 21)
>
> Thankfully, I had a representative from the health service assist with the legal side of things and would only update me on the information I only needed to know. This was a blessing — not having to go to the courts and risk exposing myself to trauma and anguish. (Case study 21)
>
> I've never seen two departments rally around their staff so emotionally. I've always been a believer that there is a huge 'ethical dilemma' in dealing with violent patients — on one hand, we know that 'D is for Danger', yet there is something inherently inside of us that just can't walk away. If each one of those staff didn't risk their own safety for the sake of their colleagues, things could have been so much worse. (Case study 25)[23]

Not only is it critical to recovery, employer support is also the most important factor in encouraging people to report incidents in the workplace. This issue is further explored in Chapter 11 of this report.

5.5 Victim reflections on their experience with the criminal justice system

Taking the step of reporting an assault to police and engaging with the criminal justice system to pursue prosecution is another area that varies across occupational groups. Some groups, such as police and corrective services officers, are clearly more comfortable reporting a violent incident at work than groups such as teachers and health workers.

That aside, it is clear that many victims of crime do not have positive experiences of the criminal justice system. In preparing its report on sentencing for offences arising from the death of a child, victims of crime and the services that support them told the Council that they found the legal process 'protracted, complex and confusing' and that 'communication and the provision of information and support provided through the process could be improved'.[24]

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22 Black Dog Institute, *Post-Traumatic Stress Disorder Treatment* (Web Page) <https://www.blackdoginstitute.org.au/resources-support/post-traumatic-stress-order/treatment/>.

23 Submission 9a (Queensland Occupational Violence Strategy Unit), Appendix 1 (confidential, reproduced with permission).

24 Queensland Sentencing Advisory Council, *Sentencing for Criminal Offences Arising from the Death of a Child* (Final Report, October 2018) 170 [10.4.7].

From comments in submissions, and discussions with individuals during the consultation phase of this project, it is clear that victims of serious assault are often disappointed in their experience of the criminal justice system. This disappointment arises from several key issues, which will be explored in the remainder of this chapter.

Disappointment with sentencing outcomes

One of the central themes arising from consultations is the expectation that victims of serious assault hold in relation to the penalty outcome. This is a universal theme expressed by many victims of a personal or violent offence, and many look to the sentencing outcome for validation of the impact of their experience and condemnation of the offender's behaviour. The quantum of the sentence can equate to feelings of their own value to society, and several submissions touched on this issue:

> Often, staff feel 'let down' by the courts, if no jail time is served, or if a suspended sentence is handed down. With the introduction of the *Human Rights Act QLD* (2019), staff have expressed fear that the rights of patients will be viewed as superior to those of staff.[25]

The case studies of individuals in the health sector that were provided by Queensland Health as part of its submission again outline very starkly these feelings of disappointment:

> I got bitten, waited two years for the matter to go to trial only for the offender to plead guilty and get a suspended sentence, not serving a single day in custody. To further add insult the Judge elected to not award any compensation/restitution. I think that is a reasonable example of why society has a cynical view of the current court system. (Case study 1)
>
> I am very disappointed with the whole justice system especially considering the Queensland Government were advertising the '7 years jail term for assaulting public officers'. My case was not taken seriously by the DPP nor it seemed, by the Magistrate. Due to the disappointing experience I had, there will be more alleged offenders not even being charged, because my case was disregarded and in hindsight, a complete waste of time for my witnesses and me. (Case study 2)
>
> The above incident indicated to me the various departments and people within them don't support the victim. Although I was on WorkCover for my injury the lack of compassion for staff who were injured and the mere contempt for courts and legislation and judges' rules was mind blowing … none of the incidents and court proceedings have resulted in any actual prison time despite the apparent 'Zero Tolerance' and has resulted in repeat offenders and lack of regard for legislation and contempt for courts. (Case study 4)
>
> … I suppose the cumulative effects are the contempt I have for internal and legal processes. (Case study 5)
>
> I pressed charges, but despite there being video evidence, the judge did not record a conviction. This left me feeling let down by the process, despite receiving very good support from my department and the hospital. The general feeling amongst my colleagues is that whenever it involves mental health patients, the police are less interested in the matter, as they presumably feel like it is harder to get a conviction. This is certainly my experience. I have had physical assaults since this time, but I have not bothered to pursue them due to the expectation that QPS and the court system will once again be disinterested in pursuing a conviction. I am also disheartened by the experiences of my colleagues who have been assaulted and attended court. Despite supposed minimal sentencing for assaults of public officers, their experience is still that their attacker gets a slap on the wrist and a small fine. This leaves us feeling exposed and under-valued. As a frontline worker, we are expected to attend to frankly hostile people, whether drug-influenced or not, yet we increasingly feel that our safety is not a factor for the courts. (Case study 8)
>
> I elected not to notify police although this was suggested by senior nursing staff on duty at the time. I always wondered, what's the point? No one will ever prosecute. (Case study 9)
>
> I received a punch to the face resulting in a deviated septum that required surgery. I pressed charges against the individual who was found guilty of assault and given a 'whopping' $500 fine plus court charges, totally about $2,000. The individual had previously attempted to pay me off with $3,000 to walk away and drop the charges, which I declined. (Case study 10)
>
> That is the events of the night. That, I am over. It was the next step that left me traumatised. The next day I went to the police station and made an official complaint, only to be told that it is highly unlikely anything will go any further than a complaint. How disappointing that staff do not get natural justice when assaulted by patients who appear to be protected by the system. Two other people made complaints to the police that day. Mine went to the mental health court, one never made it past a complaint and the Night Nurse was given a payout as she never returned to work. The patient was deemed to be unfit for trial indefinitely, so there was no outcome for me. (Case study 16)

[25] Submission 9a (Queensland Occupational Violence Strategy Unit), Appendix 1 (confidential, reproduced with permission).

> After about 2 years, I received a call from QPS, who advised me that the matter was due to be heard in court in a few weeks. I was advised I was not required to attend and would be notified of the outcome. A few months went by, and I hear nothing, until I received a letter in the mail advising that I was awarded $250 in restitutions. (Case study 24)
>
> All of the staff were injured, but the damage sustained to the new grad was clear. A significant head and psychological injury could only mean one thing — her career was over … In fact, the new grad was devastated when she told me that despite her career-ending injury, the patient only received a $360 fine. As if that's all her life is worth … (Case study 25)

In contrast, a number of legal stakeholders who made submissions to the Council's review considered current sentencing practices for these offences, in general, to be adequate and appropriate:

> Upon considering the cases, our committee members observe that the courts have been far from lenient when sentencing offenders for this offence. Most cases have led to the offender receiving a term of imprisonment. Anecdotally, it appears most offenders receive an actual period of imprisonment for serious assaults with circumstances of aggravation, particularly in cases where the offender has spat upon or bitten the public officer. Even when the offender is a youth or has mental health issues at the time of the offence, most offenders are sentenced to a period of imprisonment, though generally suspended or with immediate parole.[26]
>
> LAQ is of the view that the current sentencing process in Queensland adequately meets the needs of public officer … victims. It is clear from the research discussed in the issues paper that courts are treating this offending seriously and imposing adequate penalties. If there are to be amendments, we reiterate that the discretion of the court should be maintained.[27]
>
> The Association submits that the current legislative framework adequately and effectively provides for assaults against public officers as provided for in section 340 of the *Criminal Code* … The Association is of the opinion that, generally, existing offences, penalties and sentencing practices in Queensland do adequately and appropriately respond to assaults against police … The Association does not accept … that current sentencing practices are inadequate or inappropriate.[28]

Court delays

Several case studies spoke about the long process that ensues in court before a matter is finalised:

> He had the first appearance for court delayed, citing his witness was not available to attend court … Three months after the initial court appearance should have happened, which was nine months after the alleged assault, we attended court … The Magistrate did not want me on the stand for too long and while giving my statement, she kept telling me to pause as she 'could not write very fast'. The session was adjourned for a two-hour lunch break, then my witnesses and I were told at approximately 3.30 pm that it was in fact being adjourned, with no estimated timeframe given. (Case study 2)
>
> The patient was charged and referred to Mental Health Court. The matter was heard two years later, and the individual was found not guilty, due to the patient's mental condition at the time. During this process QPS had a liaison officer who would update me as the matter progressed. (Case study 5)
>
> The court case took over 18 months to settle. The patient wasn't charged straight away. I got a call Easter weekend informing me that he had been arrested and charged. I was oblivious, I thought this meant he sat in a cell until a court case. I soon discovered this was not the case when the patient was in the medical imaging department where I had run into him. After several adjournments from the court, the patient finally had their hearing, he pleaded mental health. This then made the court case even longer. (Case study 21)
>
> I was assaulted earlier this year. A complaint was made to QPS, and body-worn camera footage was provided. Not surprisingly, I have not heard anything since. Everyone expects a long, drawn-out process. Not expecting any real outcome — if history is anything to go by. (Case study 22)[29]

The submission from the Queensland Human Rights Commission also raised the issue of delays in the criminal justice process, and the impact of these being 'harmful to victims and have an impact on the ability to give credible evidence'.[30] One way of ameliorating the experience for victims, particularly when a number of delays may be experienced, is to provide regular updates about the progress of a matter through the prosecution process. The Queensland Human Rights Commission provides a good summary of the information that victims need when

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26 Submission 30 (Queensland Law Society) 3.

27 Submission 29 (Legal Aid Queensland) 3.

28 Submission 27 (Bar Association of Queensland) 6, 8, 11.

29 Submission 9a (Queensland Occupational Violence Strategy Unit), Appendix 1 (confidential, reproduced with permission).

30 Submission 18 (Queensland Human Rights Commission) 13 [48].

engaged in the criminal justice system, which also reflects obligations of Queensland government agencies and non-government organisations under the Charter of Victims' Rights:[31]

> … a victim should be kept informed about such things as: progress of a police investigation, decisions about the prosecution of the accused person, warrants that have been issued, court processes and hearing dates, details of the sentence, outcomes of bail application, and arrangements for release of the accused person.[32]

This leads to the next most commonly cited experience for victims of occupational violence — the lack of timely updates on the progress of a matter once it has reached court.

Lack of timely information

This issue has been very much raised in other projects undertaken by the Council. It became clear during consultations with agencies, and has been confirmed in written submissions, that there is a significant lack of information and knowledge for people who interact with the criminal justice system, including about how sentencing operates, and the role of maximum penalties.

> After the incident I contacted the police, who attended later in the shift. They asked me if I would like to press charges, to which I said yes. They took an informal statement the next day … After speaking with the patient, they informed me she had admitted to the assault and I would therefore not need to give a formal statement, unless she changed her plea at a later time. This was quite confusing, as I thought they should take a statement when it is fresh in my mind, not months later, if she decided to plead not guilty. I got no further input or feedback from the police after this point. I assume she was charged with assault, but I am unsure. (Case study 7)

> I am unaware of any outcomes of the court process, thus far apart from being made aware that the matter has been referred to the Mental Health Court. (Case study 17)

> I never really knew where the process was at, as I had little to no communication with the QPS as to the status of the case. I also understand that it took several weeks for evidence (CCTV footage) to be requested from my hospital. This concerned me greatly, as there is such a short window to save footage. (Case study 19)

> Whilst I'm not aware of the ins and outs of the court process, I can tell you this. The patient was from intra-state and successfully applied to have the court case heard locally. Despite all of the staff pressing charges, none were aware of what was occurring throughout the court process. (Case study 25)

In its report *Sentencing for Criminal Offences Arising from the Death of a Child*[33] the Council made specific recommendations aimed at improving the experience of family members of child homicide victims with the criminal justice system. Recommendations 3–6 of that report addressed the need to improve victims' experiences of:

- support provided by the Queensland Police Service through appointment of dedicated Family Liaison Officers to support bereaved family members through the criminal justice process;
- interactions with the Office of the Director of Public Prosecutions to ensure effective communication occurs regularly to keep family members informed of key events and major decisions made about the prosecution of a person accused of committing a child homicide offence; and
- their involvement in the court process, specifically to see the development and provision of practical information for courts about responding to the needs and interests of family members of child victims of homicide.

Clearly, the offence of child homicide is a particularly serious one, and the needs of family members should be carefully considered. However, there is a need to consider all victims of crime, particularly victims of personal and violent offences, who look to the criminal justice system and the community for condemnation of the behaviour and validation of their experience. All victims of crime need regular information about what is occurring in their matter, and what the likely next steps will be.

5.6 Conclusion

This chapter has highlighted the significant impacts an assault can have on a victim who has experienced violence in their workplace, and the continued need to improve information and support to victims to assist with their recovery.

Ensuring there are appropriate institutional responses to occupational violence is an issue expanded on in Chapter 11 of this report.

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31 *Victims of Crime Assistance Act 2009* (Qld) sch 1AA.

32 Ibid.

33 Queensland Sentencing Advisory Council (n 24) 171.

The Council suggests these mechanisms may prove a beneficial way to provide victims with the additional support they require in making a formal complaint to police where they wish to pursue this, and in navigating the criminal justice process.

The Council further supports the Queensland Government exploring options to make Adult Restorative Justice Conferences more widely available to victims of workplace assaults both as a diversionary option for less serious forms of assault and, in the case of more serious offences, as a supplementary process. While this might not be an option all victims wish to pursue, the Council considers this option might allow for a more meaningful engagement of victims in the criminal justice process, and lead to improved outcomes both for victims and offenders.

This issue is further discussed in Chapter 11.

PART C — The current sentencing framework and sentencing practices

Chapter 6 Current legislative framework and sentencing practices

6.1 Introduction

In this chapter we explore the current legislative framework and principles that guide sentencing in Queensland, with a particular focus on those that apply to the sentencing of offences involving assaults on public officers.

The Council's recommendations for reform to strengthen the application of these principles in cases involving assaults of public officer victims and others who are vulnerable to assault due to their occupation are set out in Chapter 10 of this report.

6.2 *Penalties and Sentences Act 1992* (Qld) — purposes, guidelines and factors

The *Penalties and Sentences Act 1992* (Qld) (PSA) is the key piece of legislation that guides sentencing for offences in Queensland. The Act has its own purposes as a piece of legislation, and also lists sentencing guidelines and factors that courts must consider.

6.2.1 The purposes of the PSA

Relevant to this review, the purposes of the PSA are —

(a) collecting into a single Act general powers of courts to sentence offenders; and

(b) providing for a sufficient range of sentences for the appropriate punishment and rehabilitation of offenders, and, in appropriate circumstances, ensuring that protection of the Queensland community is a paramount consideration; and …

(d) promoting consistency of approach in the sentencing of offenders; and …

(f) providing sentencing principles that are to be applied by courts; and …

(h) promoting public understanding of sentencing practices and procedures.

Consistency in sentencing in this context refers to the application of a consistent *approach* (i.e. using the same purposes and principles) for sentencing similar offenders for similar offences, rather than applying the same sentence.[1]

6.2.2 Sentencing guidelines

Section 9(1) of the PSA sets out sentencing guidelines, limited to the following five (including combinations of them):

(a) to punish the offender to an extent or in a way that is just in all the circumstances; or

(b) to provide conditions in the court's order that the court considers will help the offender to be rehabilitated; or

(c) to deter the offender or other persons from committing the same or a similar offence; or

(d) to make it clear that the community, acting through the court, denounces the sort of conduct in which the offender was involved; or

(e) to protect the Queensland community from the offender.

The PSA does not suggest that one purpose should be more, or less, important than any other purpose; in practice, their relative weight must be assessed taking into account the individual circumstances involved. The purposes overlap and none of them can be considered in isolation; they are guideposts to the appropriate sentence, sometimes pointing in different directions.[2]

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1 Sarah Krasnostein and Arie Freiberg, 'Pursuing Consistency in an Individualistic Sentencing Framework: If You Don't Know Where You're Going, How Do You Know When You've Got There?' (2013) 76(1) *Law and Contemporary Problems* 265, 270–71.

2 *Veen v The Queen (No. 2)* (1988) 164 CLR 465, 476 (Mason CJ, Brennan, Dawson and Toohey JJ).

The concept of 'just punishment' reflects the principle of proportionality — a fundamental principle of sentencing in Australia. Sentencing courts must ensure the sentence imposed: 'should never exceed that which can be justified as appropriate or proportionate to the gravity of the crime considered in light of its *objective* circumstances'.[3]

While a sentence must not be 'extended beyond what is appropriate to the crime merely to protect society', the propensity of an offender to commit future acts of violence, and the need to protect the community is a legitimate sentencing consideration.[4]

The principle of proportionality is of direct relevance to sentencing courts in setting the duration and intensity of conditions ordered under a community-based sentencing disposition. Courts cannot impose a longer order or attach more onerous conditions (even those directed at the offender's treatment or rehabilitation), 'if the resulting order would be disproportionate to the gravity of the offending'.[5]

Deterrence has a forward-looking, crime prevention focus and aims, as a consequence of the penalty imposed, to discourage the offender and other potential offenders from committing the same or a similar offence.[6]

Denunciation in a sentencing context is concerned with communicating 'society's condemnation of the particular offender's conduct'.[7] The sentence imposed represents 'a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law'.[8]

As discussed later in this chapter, there is a long line of authority that deterrence and denunciation are primary sentencing considerations in sentencing for assaults on public officers (although this can be 'significantly reduced' in appropriate, unusual circumstances).[9] The need for a salutary penalty in such cases has also been identified.[10]

6.2.3 Sentencing factors

Sections 9(2)–(11) of the PSA set out general and specific sentencing factors to which a court must have regard in sentencing (as they apply to the facts of each case).

Imprisonment must generally only be imposed as a last resort and a sentence allowing an offender to stay in the community is preferable (section 9(2)(a) of the PSA). However, these two principles do not apply to offences involving the use of (or counselling or procuring the use of, or attempting or conspiring to use) violence against another person, or that resulted in physical harm to another person (section 9(2A) of the PSA).[11] This exception in section 9(2A) and the corresponding list of factors in section 9(3) are discussed in detail in Chapter 10, section 10.2.4.

There is also a list of general factors in section 9(2), which apply to all cases, including offences of violence:

- the maximum penalty and any minimum penalty for the offence;
- the nature of the offence and how serious the offence was, including:
  - any physical, mental or emotional harm done to a victim, including harm mentioned in a victim impact statement; and
  - the effect of the offence on any child under 16 years who may have been directly exposed to, or a witness to the offence;
- the extent to which the offender is to blame for the offence (culpability);
- any damage, injury or loss caused by the offender;
- the offender's character, age and intellectual capacity;

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3 *Hoare v The Queen* (1989) 167 CLR 348, 354 (Mason CJ, Deane, Dawson, Toohey and McHugh JJ) (emphasis in original).

4 *Veen v The Queen (No. 2)* (1988) 164 CLR 465, 473, 475 (Mason CJ, Brennan, Dawson and Toohey JJ).

5 *Boulton v The Queen* (2014) 46 VR 308, 328 [75] (Maxwell P, Nettle, Neave, Redlich and Osborn JJA). The Court commented that this position was not displaced by the offender's need to consent to the making of the order: 'the willingness of the offender to consent to treatment proposed as part of a CCO does not relieve the court of the obligation to ensure that the order remains within the bounds of proportionality': 328 [76].

6 Arie Freiberg, *Fox and Freiberg's Sentencing: State and Federal Law in Victoria* (Law Book Co, 3rd ed, 2014) 250–51.

7 *Ryan v The Queen* (2001) 206 CLR 267, 302 [118] (Kirby J).

8 Ibid citing *R v M (CA)* [1996] 1 SCR 500, 558 (Lamer CJ).

9 *R v Ganeshalingham* [2018] QCA 34, 5, 6 (Sofronoff P, Philippides JA and Boddice J agreeing); *R v Whiting* [2009] QCA 338, 3 [15] (Keane JA, Holmes JA and McMeekin J agreeing).

10 See, for example: *Queensland Police Service v Terare* (2014) 245 A Crim R 211, 221–2 [38] (McMurdo P, Fraser and Gotterson JJA agreeing); *R v King* (2008) 179 A Crim R 600, 601–2 [6] (de Jersey CJ, Keane and Holmes JJA agreeing); *R v Reuben* [2001] QCA 322, 5 (Davies JA, Williams JA and Byrne J agreeing).

11 *Penalties and Sentences Act 1992* (Qld) ss 9(2)(a) and 9(2A).

- the presence of any aggravating or mitigating factor concerning the offender;
- the prevalence of the offence;
- how much assistance the offender gave to law enforcement agencies in the investigation of the offence or other offences;
- time spent in custody by the offender for the offence before being sentenced;
- other sentences imposed on the offender that have an impact on the sentence being imposed (and vice versa);
- submissions made by a representative of the community justice group in the offender's community, if the offender is an Aboriginal or Torres Strait Islander; and
- any other relevant circumstance.

The application of these principles by courts in sentencing for serious assault are discussed in section 6.5 of this chapter.

6.2.4 Aggravating and mitigating circumstances

Aggravating circumstances are those factors that would increase a sentence. Mitigating circumstances are those that would reduce a sentence. Both can impact on the sentence imposed, depending on their relevance and the weight placed on them by the court.

The Court of Appeal has noted that the expression 'aggravating factors' is useful because:

> it signifies the tendency of such factors to promote a more severe punishment. However, sometimes such factors really reflect the relevance, in the sentencing process, of the interests of the community and the interests of those who have been directly affected by the offence.[12]

Previous convictions must be treated as an aggravating factor if the court considers they can reasonably be treated as such. This is determined by considering the nature of the previous conviction, its relevance to the current offence, and the time that has elapsed since the conviction.[13]

The fact an offence is a domestic violence offence must be treated as an aggravating factor, unless the court considers it is not reasonable to do so because of the exceptional circumstances of the case.[14] This ensures that sentences reflect a specific type of aggravating criminal behaviour in every case in which such behaviour appears, irrespective of what offence is charged. This method is very different from the way that aggravating circumstances, with discrete higher maximum penalties, are grafted into the specific subsections of the actual offence provisions regarding serious assault and assaults occasioning bodily harm. These different approaches are discussed in more detail in Chapter 10, section 10.2.7.

6.2.5 Guilty plea as a mitigating factor

A Queensland sentencing court must take the offender's guilty plea into account and may reduce the sentence it would have otherwise imposed had the offender not pleaded guilty (taking into account the timing of the plea).[15] The courts have indicated the more serious the offence, the less significance a plea of guilty will carry in terms of the ultimate sentence imposed. However, even where the offence is quite serious, some reduction in the sentence is warranted in the event of a guilty plea.[16]

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12 *R v Patrick (a pseudonym)* [2020] QCA 51, 7 [28] (Sofronoff P, Fraser JA and Boddice J agreeing).

13 *Penalties and Sentences Act 1992 (Qld)* s 9(10).

14 Ibid s 9(10A). For 'Domestic violence offence', see *Criminal Code* (Qld) s 1.

15 *Penalties and Sentences Act 1992* (Qld) s 13.

16 See, for example, *R v Bates* [2002] QCA 174, 11–12 [58] and [60] (Williams JA) where the Court of Appeal allowed an appeal by an offender who received a life sentence on this basis substituting a determinate sentence of 18 years' imprisonment finding that the failure of the sentencing judge to take the guilty plea into account in mitigation represented an error in the exercise of the sentencing discretion; and *R v Duong* [2002] QCA 151 where the Court of Appeal accepted the offenders must receive some benefit for their guilty pleas notwithstanding its lateness: 9 [38]; and that it involved 'an horrendous crime calling for severe punishment': 10 [45]. In that instance, sentences of 12 years' imprisonment on two offenders, and 9 years' imprisonment on the others with a serious violent offence declaration were not disturbed on appeal.

There are three reasons why a guilty plea is generally accepted as justifying a lower sentence than would otherwise be imposed.

First, the plea can be a manifestation of remorse or contrition. The Court of Appeal has cautioned that 'on sentencing, an offender's remorse should not be left to inference. If it exists, it should be proved with clarity'.[17] An example of this is the attention paid to formal expressions of apology by offenders to public officers assaulted, as identified elsewhere in this chapter.

Secondly, the plea has a utilitarian value to the criminal justice system. It saves public time and money.

Thirdly, in particular cases — especially sexual assault cases, crimes involving children and, often, elderly victims — there is particular value in avoiding the need to call witnesses, especially victims, to give evidence.[18]

In the absence of remorse by the offender for their actions, the focus moves to the willingness of the offender to facilitate the course of justice.[19]

As to the utilitarian value of a plea, courts have recognised that the public interest is served by an accused person who accepts guilt and pleads guilty to an offence charged,[20] even if there is a high likelihood of conviction had the case proceeded to trial.[21] This is because, unless there is some incentive for a defendant to plead guilty, there is always a risk they will proceed to trial if they consider there is nothing to be lost by doing so.[22]

The degree of leniency may vary according to the degree of inevitability of conviction as it may appear to the sentencing judge, but it is always a factor to which a greater or lesser degree of weight must be given.[23]

The person's motive for pleading guilty is not a basis for not taking the plea into account.[24]

The extent to which a guilty plea may reduce the sentence that would otherwise have been imposed depends in part on how early or late the plea was entered,[25] although the circumstances of the case need to be considered. For example, if a person only pleads guilty to an offence after other charges to which he or she was not prepared to plead guilty are withdrawn, it cannot automatically be assumed the person has not pleaded guilty at the earliest opportunity.[26]

6.3 Sentencing principles in case law — totality and the *De Simoni* principle

Sentencing principles established by case law are applied alongside the legislative factors and are equally important. They are referred to as the 'common law' and courts have a duty to follow them. The principles are often discussed in judgments issued by the Queensland Court of Appeal.

6.3.1 Proportionality

A sentence must always be proportionate to the objective seriousness of the offending.[27] Proportionality, in the form adopted by Australian courts, sets the outer limits (both upper and lower) of punishment.[28]

> It is only within the outer limit of what represents proportionate punishment for the actual crime that the interplay of other relevant favourable and unfavourable factors … will point to what is the appropriate sentence in all the circumstances of the particular case.[29]

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17 *R v Randall* [2019] QCA 25, 5 [27] (Sofronoff P and Morrison JA and Burns J).

18 *R v Thomson* (2000) 49 NSWLR 383, 386 [3]. This principle has been cited with approval by the Queensland Court of Appeal. See, for example, *R v Bates* [2002] QCA 174, 14 [76] (Atkinson J).

19 *Cameron v The Queen* (2002) 209 CLR 339, 343 [11], [13]–[14] (Gaudron, Gummow and Callinan JJ); and *McQuire & Porter* (2000) 110 A Crim R 348, 358 (de Jersey CJ), 362 and 366 (Byrne J).

20 *R v Harman* [1989] 1 Qd R 414; *Cameron v The Queen* (2002) 209 CLR 339, 360–61 [66]–[68] (Kirby J).

21 *R v Bulger* [1990] 2 Qd R 559, 564 (Byrne J).

22 Ibid.

23 *R v Ellis* (1986) 6 NSWLR 603, 604 (Street CJ).

24 *R v Morton* [1986] VR 863, 867 cited in *R v Bates* [2002] QCA 174 (17 May 2002) 16 [83] (Atkinson J).

25 *R v Bates* [2002] QCA 174, 15 [79] (Atkinson J).

26 *Atholwood v The Queen* (1999) 109 A Crim R 465, 468 (Ipp J) cited in *R v Bates* [2002] QCA 174, 15 [80].

27 *Markarian v The Queen* (2005) 228 CLR 357, 385 [69] (McHugh J); *Veen v The Queen (No 2)* (1988) 164 CLR 465, 473–474 (Mason CJ, Brennan, Dawson, Toohey JJ). *Penalties and Sentences Act 1992* (Qld) s 9(11) expressly applies this principle to previous convictions.

28 Freiberg (n 6) 237.

29 *Veen v The Queen (No 2)* (1988) 164 CLR 465, 491 (Deane J).

In determining whether a sentence is proportionate, courts consider factors such as the maximum penalty for the offence and the circumstances of the offence, including the degree of harm caused and the offender's culpability.[30]

6.3.2 Parity

The parity principle guards against unjustifiable disparity between sentences for offenders guilty of the same criminal conduct or common criminal enterprise. Ideally, people who are parties to the same offence should receive the same sentence but matters that create differences must be taken into account. These include each offender's 'age, background, previous criminal history and general character … and the part which he or she played in the commission of the offence'.[31]

6.3.3 Totality

When a sentencing court is dealing with multiple offences at once (for instance, a number of assaults on different police or paramedics in one incident) or is sentencing for an offence and the person is already serving another sentence, it must look at the totality of all criminal behaviour. It must impose a sentence that 'adequately and fairly represents the totality of criminality involved in all of the offences to which that total period is attributable'.[32] It can achieve this by making the sentences concurrent, so they run together, instead of making the sentences cumulative (i.e. to be served one after the other).[33]

> The totality principle applies whether the penalty takes the form of a fine or a term of imprisonment or, indeed, whatever might be the form of punishment. It will apply whether the resulting accumulation of punishments is relatively light, such as a series of fines or several cumulative short terms of imprisonment, or whether it is severe. The principle is very much concerned with the concept of proportionality that pervades so many facets of the system of law. In some of its applications it reflects the prohibition against double punishment which is a risk when several offences committed at the same time contain elements that are all proved by the same fact.[34]

This principle is specifically reflected in two of the sentencing factors in section 9 of the PSA. A sentencing court must have regard to:

> (k) sentences imposed on, and served by, the offender in another State or a Territory for an offence committed at, or about the same time, as the offence with which the court is dealing; and
>
> (l) sentences already imposed on the offender that have not been served.

6.3.4 'Crushing' sentences

There are circumstances where cumulative terms of imprisonment are justified, but their total combined effect can be described as 'crushing'. Examples include:

> when an offender is sentenced to a long term of imprisonment but then commits a further serious offence while imprisoned, or while at liberty after escaping, or, sometimes, while on bail awaiting trial for a set of offences for which he is later found guilty. If sentences in such cases were not made cumulative then the offender would effectively get a discount by a misapplication of the totality principle.[35]
>
> Also, sometimes the need to vindicate the rights of different victims while giving effect to the totality principle results in making sentences cumulative in whole or in part.[36]

In such cases, harshness in the overall sentence (if it in fact arises in the particular case) is alleviated by the notion that a sentence should never be a 'crushing sentence'.[37] Such a sentence has been described as one so harsh as to 'provoke a feeling of helplessness in the [offender] if and when he is released or as connoting the destruction of

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30 Commonwealth, *Royal Commission into Institutional Responses to Child Sexual Abuse, Criminal Justice Report* (2017) 280.

31 *Lowe v The Queen* (1984) 154 CLR 606, 609 (Gibbs CJ), affirmed in *Postiglione v The Queen* (1997) 189 CLR 295, 303 (Dawson and Gaudron JJ), 325 (Gummow J).

32 *R v Beattie; Ex parte A-G (Qld)* (2014) 244 A Crim R 177, 181 [19] (McMurdo J) cited in *R v DBQ* [2018] QCA 210, 7–8 [27] (Philipiddes JA, Boddice and Bond JJ agreeing).

33 *Mill v The Queen* (1988) 166 CLR 59, 63 (Wilson, Deane, Dawson, Toohey, Gaudron JJ). See also *R v Hill* [2017] QCA 177, 7–8 [34]–[36] (Applegarth J, Sofronoff P and Atkinson J agreeing) and *Nguyen v The Queen* (2016) 256 CLR 656, 677 [64] (Gageler, Nettle and Gordon JJ).

34 *R v Symss* [2020] QCA 17, 6 [22] (Sofronoff P, Morrison and McMurdo JJA agreeing).

35 Ibid 7 [25] (Sofronoff P, Morrison and McMurdo JJA agreeing) citing *R v Makary* [2019] 2 Qd R 528.

36 Ibid citing *Richards v The Queen* [2006] NSWCCA 262.

37 Ibid 8 [32] (Sofronoff P, Morrison and McMurdo JJA agreeing).

any reasonable expectation of useful life after release'.[38] While some mandatory sentences (life imprisonment for murder, for example) must be imposed regardless of their crushing impact, where there is still discretion, a court can reduce a sentence on the basis that it is crushing:

> Such mercy is not a reflection upon the applicant's subjective characteristics or his deserts. It reflects the attitude of our community[39] that, in general, and in the absence of particular circumstances, even a justly severe punishment [and factors that aggravate the severity of the offence, particularly denunciation][40] ought not remove the last vestige of a prisoner's hope for some kind of chance of life at the end of the punishment.[41]

6.3.5 The *De Simoni* principle

A sentencing judge can generally consider all of an offender's conduct, including conduct that would make the offence more, or less, serious — but cannot take into account circumstances of aggravation that would have warranted a conviction for a more serious offence.[42]

The acts, omissions and matters constituting the offence (and accompanying circumstances) for sentencing purposes are determined by applying common sense and fairness. Something that might technically constitute a separate offence is not necessarily excluded from consideration for that reason.[43] However, such things cannot be taken into account if they would establish:

- a separate offence that consisted of, or included, conduct that did not form part of the offence for which the person was convicted;
- a more serious offence; or
- a circumstance of aggravation.[44]

In such a case, the act, omission, matter, or circumstance cannot be considered for any purpose either to increase the penalty or deny leniency. A person convicted of an isolated offence is entitled to be punished for that isolated offence. In restating these principles, the Queensland Court of Appeal has recognised it would be wrong to punish the person on the basis that their isolated offence formed part of a pattern of conduct for which the person has not been charged or convicted.[45]

6.4 The general approach to sentencing in Queensland

Sentencing is not a mechanical or mathematical exercise:[46]

> Sentences of imprisonment are necessarily calculated by reference to the number of months or years for which an offender must be imprisoned. However, strict adherence to the mathematics of sentencing can lead to injustice.[47]

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38 *R v Beck* [2005] VSCA 11, [19] (Nettle JA), cited in *R v Symss* [2020] QCA 17, 7 [27] (Sofronoff P, Morrison and McMurdo JJA agreeing).

39 'Shared values of the community which do not countenance either cruelty in punishment or a total abandonment of hope, even for the worst kind of offender': *R v Symss* [2020] QCA 17, 8 [33] (Sofronoff P, Morrison and McMurdo JJA agreeing).

40 *R v Symss* [2020] QCA 17, 8 [32] (Sofronoff P, Morrison and McMurdo JJA agreeing).

41 Ibid 10 [40] (Sofronoff P, Morrison and McMurdo JJA agreeing).

42 *The Queen v De Simoni* (1981) 147 CLR 383, 389 (Gibbs CJ). See also *Nguyen v The Queen* (2016) 256 CLR 656, 667 [29] (Bell and Keane JJ), 676 [60] (Gageler, Nettle and Gordon JJ) and *R v D* [1996] 1 Qd R 363, 403. A circumstance of aggravation means 'any circumstance by reason whereof an offender is liable to a greater punishment than that to which the offender would be liable if the offence were committed without the existence of that circumstance': *Criminal Code* (Qld) s 1.

43 *R v D* [1996] 1 Qd R 363, 403.

44 Ibid. Note *R v Cooney* [2019] QCA 166, 6–7 [27]–[35] (Henry J, Gotterson JA and Bradley J agreeing), where a defence *De Simoni* argument in a serious assault case failed — the manner in which the offender's blood ended up on a police officer's cut hand was inadvertent physical proximity rather than a direct application as required by the section ('applies'). This meant that the court could consider emotional harm caused to the officer as a result of the blood, because the Crown had not foregone the opportunity to charge a circumstance of aggravation.

45 Ibid 403–4.

46 *Markarian v The Queen* (2005) 228 CLR 357, 372–5 [30]–[39] (Gleeson CJ, Gummow, Hayne and Callinan JJ) as cited in *DPP (Vic) v Dalgliesh (a Pseudonym)* (2017) 262 CLR 428, 443 [45] (Kiefel CJ, Bell and Keane JJ). See also *Barbaro v The Queen* (2014) 253 CLR 58, 72 [34] (French CJ, Hayne, Kiefel and Bell JJ).

47 *R v Symss* [2020] QCA 17, 6 [22] (Sofronoff P, Morrison and McMurdo JJA agreeing).

Queensland courts sentence by applying an 'instinctive synthesis' approach:

> The task of the sentencer is to take account of *all* of the relevant factors and to arrive at a single result which takes due account of them all. That is what is meant by saying that the task is to arrive at an 'instinctive synthesis'. This expression is used, not as might be supposed, to cloak the task of the sentencer in some mystery, but to make plain that the sentencer is called on to reach a single sentence which … balances many different and conflicting features.[48]

The High Court, in considering the proper approach to sentencing, has recognised 'there is no single correct sentence' and sentencing judges are to be allowed as much flexibility in sentencing as is in keeping with consistency of approach and applicable legislation.[49]

Unless legislation fixes a mandatory penalty (as it does for some assaults of public officers in certain circumstances, see below at section 6.6.4) 'the discretionary nature of the judgment required means that there is no single sentence that is just in all the circumstances'.[50] Sentencing courts have a wide discretion yet must take into account all (and only) relevant considerations including legislation and case law.[51]

The discretion can 'miscarry' when the sentence is clearly unjust[52] — either being 'manifestly excessive' or 'manifestly inadequate'.[53] Such sentences, which an appeal court can set aside, fall 'outside the range of sentences which could have been imposed if proper principles had been applied'.[54]

Consistency in sentencing requires like cases to be treated alike and different cases, differently.[55] Queensland's Court of Appeal has stated '[c]ommunity confidence in the sentencing process depends … on a wide variety of judges imposing sentences which are consistent, and which are formulated by reference to relevant discretionary factors and by having regard to the relevant legislation, comparable sentences, and the guidance of appellate court decisions'.[56]

The administration of criminal justice works as a system, not as a multiplicity of unconnected single instances. It should be systematically fair and involve, among other things, reasonable consistency.[57]

However, if cases show a range of sentences for similar offending that is 'demonstrably contrary to principle', they do not have to be followed in future.[58]

'Consistency' does not require exact replication. The ultimate sentencing discretion lies somewhere between a non-punishment (like an unconditional discharge) and the maximum penalty set in the legislation.[59]

The so-called range is 'merely a summary of the effect of a series of previous decisions'; it reflects Parliament's recognition that 'the range of circumstances surrounding each offence will also be great'.[60] The history of a range of sentences for similar offending does not guarantee the range, including its upper and lower limits, is correct.[61] Previous sentences have been described as a guide only.[62]

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48 *DPP (Vic) v Dalgliesh (a Pseudonym)* (2017) 262 CLR 428, 434 [5] (Kiefel CJ, Bell and Keane JJ) citing *Wong v The Queen* (2001) 207 CLR 584, 611 [75] (Gaudron, Gummow and Hayne JJ) (emphasis in original).

49 *Markarian v The Queen* (2005) 228 CLR 357, 371 [27] (Gleeson CJ, Gummow, Hayne and Callinan JJ).

50 *DPP (Vic) v Dalgliesh (a Pseudonym)* (2017) 262 CLR 428, 434 [7] (Kiefel CJ, Bell and Keane JJ).

51 *Markarian v The Queen* (2005) 228 CLR 357, 371 [27] (Gleeson CJ, Gummow, Hayne and Callinan JJ) and *Barbaro v The Queen* (2014) 253 CLR 58, 70 [25] (French CJ, Hayne, Kiefel and Bell JJ).

52 *House v The King* (1936) 55 CLR 499, 504–5 (Dixon, Evatt and McTiernann JJ).

53 *DPP (Vic) v Dalgliesh (a Pseudonym)* (2017) 262 CLR 428, 434 [7] (Kiefel CJ, Bell and Keane JJ).

54 *Barbaro v The Queen* (2014) 253 CLR 58, 70 [26] (French CJ, Hayne, Kiefel and Bell JJ) (emphasis in original).

55 *R v Pham* (2015) 256 CLR 550, 559 [28] (French CJ, Keane and Nettle JJ), citing *Wong v The Queen* (2001) 207 CLR 584, 591 [6] (Gleeson CJ), 608 [65] (Gaudron, Gummow and Hayne JJ) and *Hili v The Queen* (2010) 242 CLR 520, 535 [49] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).

56 *R v Jones* [2011] QCA 147, 8 [27] (Daubney J, Muir and White JJA agreeing).

57 *Wong v The Queen* (2001) 207 CLR 584, 591 [6] (Gleeson CJ).

58 *DPP (Vic) v Dalgliesh (a Pseudonym)* (2017) 262 CLR 428, 445 [50] (Kiefel CJ, Bell and Keane JJ).

59 *R v Streatfield* (1991) 53 A Crim R 320, 325 (Thomas J, Cooper J agreeing).

60 *R v Ryan; Ex parte A-G (Qld)* [1989] 1 Qd R 188, 192 (Dowsett J).

61 *Hili v The Queen* (2010) 242 CLR 520, 537 [54] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ) citing *Director of Public Prosecutions (Cth) v De La Rosa* (2010) 79 NSWLR 1, 70–1 [304] (Simpson J, Matthews J agreeing).

62 *R v Hoerler* (2004) 147 A Crim R 520, 532 [49] (Spigelman CJ), citing *R v Whyte* (2002) 55 NSWLR 252, 278–82 [168]–[189] and *Wong v The Queen* (2001) 207 CLR 584, 591 [6] (Gleeson CJ).

It is 'consistency in the application of relevant legal principles' that is sought, 'not numerical equivalence'.[63] Of more use are cases where the Court of Appeal has 'laid down some relevant principle, delineated the yardsticks for particular offending, or re-sentenced'.[64] In the case of a serious assault upon an 81-year-old woman in her home, the Court of Appeal stated:

> It is impossible not to feel anger towards the [offender] for his treatment of the complainant for our society rightly expects its elderly citizens to be nurtured and treated with respect. Every fair-minded person would inevitably feel sympathy for the elderly complainant who was entitled to enjoy the security of her own home. The emotions naturally aroused in the commission of such offences cannot, however, deflect Judges from sentencing upon established principles.[65]

In another case involving the serious injury of a police officer, the Court noted:

> It is true that a sentence serves to satisfy the legitimate emotional needs of the community, but it can only do so justly when the judge engages in the dispassionate application of legal rules and principles in order to serve those needs. It is therefore necessary to be rigorous in the application of the provisions of the Act that sentencing judges are bound to apply.[66]

Recording sentences for comparison is only useful if the 'unifying principles' revealed by those sentences are explained. The reasons the sentences were fixed as they were must be clear[67] and it is important to properly characterise the offending conduct.[68]

The avoidance of 'unjustifiable discrepancy in sentencing' has been recognised by the High Court as 'a matter of abiding importance to the administration of justice and to the community', so that public confidence in the administration of justice is not eroded.[69]

The emphasis on the particular circumstances of each case must not be lost.

In assessing serious assault sentence appeals, the Court of Appeal has commented that it can be 'more instructive … to look at the precise circumstances of [the] case' than the authorities cited by the parties.[70] The various different subsections and types of conduct covered by section 340 make this especially important. In the 2008 Queensland Court of Appeal decision of *R v Spann*, the Court rejected an argument that there was:

> ordinarily a hierarchy of seriousness as to the three examples of offences dealt with in s 340](1)(b) [assault, resist, obstruct] … each of the offences [then attracted] a maximum penalty of seven years imprisonment and the severity of any particular offending will depend on its facts … the cases cited by both counsel are of limited assistance, given the very differing factual matrix they concern … The offending conduct cannot simply be reduced to an act divorced from the surrounding circumstances.[71]

6.5 The application of general sentencing principles and approaches to sentencing for serious assault

6.5.1 General principles

Serious assault under section 340 of the *Criminal Code* captures a very wide range of conduct. As the broad nature of the relevant offence definitions show, not every assault involves a high level of violence resulting in extreme injuries (or even an injury of any kind), and therefore judicial discretion to sentence on the facts is important. The Court of Appeal recently commented that:

> Serious assault on police is an offence which can occur in circumstances of widely variable levels of criminality, ranging, for example, from physical acts of minor resistance to arrest through to deliberately dangerous, degrading

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63 *Barbaro v The Queen* (2014) 253 CLR 58, 74 [40] (French CJ, Hayne, Kiefel and Bell JJ), citing *Hili v The Queen* (2010) 242 CLR 520, 535 [48]–[49] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).

64 *R v Bush (No. 2)* [2018] QCA 46, 12 [76]–[77] (Sofronoff P, Morrison JA and Douglas J).

65 *R v M* [2001] QCA 11, 4 (McMurdo P, Williams JA and Mackenzie J agreeing).

66 *R v Patrick (a pseudonym)* [2020] QCA 51, 9 [42] (Sofronoff P, Fraser JA and Boddice J agreeing).

67 *Wong v The Queen* (2001) 207 CLR 584, 606 [59] as reproduced in *Hili v The Queen* (2010) 242 CLR 520, 537 [55] (French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ).

68 *R v Bush (No. 2)* [2018] QCA 46, 12 [77] (Sofronoff P, Morrison JA and Douglas J).

69 *Lowe v The Queen* (1984) 154 CLR 606, 611 (Mason J).

70 *R v Reuben* [2001] QCA 322, 5 (Davies JA, Williams JA and Byrne J agreeing).

71 *R v Spann* [2008] QCA 279, 9 [31]-[32] (Philippides J, Muir and Fraser JJA agreeing.

> or prolonged attacks. For these reasons the range of appropriate sentences for serious assault of police is inevitably very broad.[72]

The Court noted that 'the absence of infliction of actual physical harm is but one feature relevant to an assessment of the inherent seriousness of this category of offending'.[73]

The Council has examined Court of Appeal judgments regarding section 340 sentencing. Examples of issues relevant to assessment of offence seriousness include:

- the extent of the injuries — both physical and psychological (including the anxiety arising from waiting for test results[74] regarding transmittable diseases)[75]
- any impacts on the officer's interaction with family and their professional life[76]
- an application of bodily fluids accompanied by an offender's statement that they carried a disease (an intentional statement to instil fear)[77]
- no expression of regret/apology — alternatively, a positive act in addition to a plea of guilty such as a letter of apology[78]
- prolonged/protracted offence episode or persistent behaviour[79]
- use of a weapon (including driving a motor vehicle in a dangerous manner).[80]

It is important to note that the weight given to each issue, if and when it arises, will differ according to the particular circumstances of each individual case. None of these issues is unique to serious assaults.

As noted above, courts must consider all relevant mitigating and aggravating circumstances, whether recorded in an offence provision or not.[81] This is a restatement of the pre-existing common law and reflects long-standing sentencing practice prior to the PSA coming into effect.

A recent example is *R v Patrick (a pseudonym),*[82] in which the Attorney-General successfully appealed against a sentence on the basis that it was manifestly inadequate. The head sentence was increased significantly, from

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72 *R v Cooney* [2019] QCA 166, 9 [46] (Henry J, Gotterson JA and Bradley J agreeing).

73 Ibid 9 [49] (Henry J, Gotterson JA and Bradley J agreeing).

74 In terms of the objective statistical risk of disease transmission weighed against the subjective concern in a complainant's mind, see *R v Kalinin* [1998] QCA 261, 5 (Derrington J) discussed in the context of disease test orders in Chapter 9, section 9.2.3.

75 *Queensland Police Service v Terare* (2014) 245 A Crim R 211, 221 [36]–[37] (McMurdo P (Fraser and Gotterson JJA agreeing); *R v Cooney* [2019] QCA 166, 9 [42] (Henry J, Gotterson JA and Bradley J agreeing); *R v Craigie* [2014] QCA 1, 8 [22] (McMeekin J); *R v Ganeshalingham* [2018] QCA 34, 6 (Sofronoff P, Philippides JA and Boddice J agreeing); *R v MCL* [2017] QCA 114, 4 [8] (Fraser JA, McMurdo JA and Mullins J agreeing) (the Court was willing to infer, absent a victim impact statement, an officer 'went through a period of significant distress' awaiting medical results); *R v Mitchell* [2010] QCA 20, 5 [16] (Muir JA, McMurdo P and Fraser JA agreeing), *R v Murray* (2014) 245 A Crim R 37, 42 [15] (Fraser JA, Gotterson and Morrison JJA agreeing).

76 *R v Barry* [2007] QCA 48, 5 [15] (Jerrard JA, de Jersey CJ and Holmes JA agreeing); *R v Benson* [2014] QCA 188, 7 [31] (Morrison JA, Fraser JA and Philippides J agreeing).

77 *R v Barber* [1997] QCA 282, 5 (Williams JA, Davies and McPherson JJA agreeing); *R v Barry* [2007] QCA 48, 5 [15] (Jerrard JA, de Jersey CJ and Holmes JA agreeing); *R v Benson* [1994] QCA 394 3–4 (McPherson JA, Pincus JA and Mackenzie J agreeing); *R v Benson* [2014] QCA 188, 7 [31] (Morrison JA, Fraser JA and Philippides J agreeing); *R v Kalinin* [1998] QCA 261, 4 (Derrington J, de Jersey CJ agreeing): 'The use … of his infection as a weapon to cause added fear and distress to the victims of his assaults in this way is a seriously aggravating feature of his conduct. Knowing of his capacity to infect others by these means, he behaved with reckless malice and if he had in fact infected anyone in this transaction, he would have been imprisoned for a long time indeed'.

78 *McDermott v Jones* [1992] QCA 260, 3 (Lee J, Fitzgerald P and Davies JA agreeing); *R v Barry* [2007] QCA 48, 5 [15] (Jerrard JA, de Jersey CJ and Holmes JA agreeing); *R v Hamilton* [2006] QCA 122, 3 [10] (Fryberg J, Jerrard JA and Douglas J agreeing); *R v King* (2008) 179 A Crim R 600, 602 [11] (de Jersey CJ, Keane and Holmes JJA agreeing) (also communicating the fact the offender had no disease); *R v Laskus* [1996] QCA 120, 4 (Macrossan CJ, Shepherdson J agreeing); *R v McLean* (2011) 212 A Crim R 199, 209 [31] (White JA, Fraser JA and Philippides J agreeing).

79 *R v Marshall* [2001] QCA 372, 6 (Davies JA, Williams JA and Wilson J agreeing); *R v Taylor* [2004] QCA 447, 5 (Mackenzie J, McMurdo P and Williams JA agreeing); *R v Mulholland* [2001] QCA 480, 8 (Mackenzie J).

80 *R v Marshall* [1993] 2 Qd R 307; *R v Marshall* [2001] QCA 372, 4 (Davies JA, Williams JA and Wilson J agreeing); *R v McCoy* [2015] QCA 48, 5 [11] (Margaret McMurdo P, Holmes JA and Jackson J agreeing); *R v Mulholland* [2001] QCA 480, 8 (de Jersey CJ, Mackenzie and Chesterman JJ agreeing); *R v Packwood* [2006] QCA 369, 9 (Atkinson J, Holmes JA and Jones J agreeing).

81 *Penalties and Sentences Act 1992* (Qld) s 9(2)(g).

82 [2020] QCA 51.

3 years to 5 — on the basis of two key aggravating factors that the court applied weight to in the exercise of its own discretion.

A child (aged 15 and 16 when he offended) pleaded guilty to (among others) malicious acts (s 317) against a police officer causing GBH with intent to resist or prevent lawful arrest. This offence carries a maximum penalty of life imprisonment for adults (which, subject to certain other statutory criteria, remains open to courts sentencing children for this offence, although in this case 10 years was the relevant applicable maximum).[83]

The key to the appeal succeeding related to the police officer's role and physical harm caused:

> The two prominent facts that aggravate the gravity of the offending in this case are, first, that grievous bodily harm was done to a police officer in order to evade arrest and, second, that the grievous bodily harm that was actually inflicted upon [the officer] was permanent and was so severe. The other objective facts are in this case also matters in aggravation of sentence. The car that Patrick drove into [the officer] was a stolen car and he was then on bail for burglary and robbery. After injuring his victim, Patrick left him on the roadway and fled, later falsely denying responsibility. However, the first two facts to which I have referred are the crucial ones.
>
> I would accept the Attorney-General's submission that the seriousness of the facts that the victim was a police officer and that the offence was committed to stop him doing his duty were not given due recognition so that the discretion miscarried.[84]

The Court of Appeal has made repeated statements about general sentencing principles regarding violence against police and public officers.[85]

In 1992, before the PSA was even enacted[86] and long before the 1997, 2012 and 2014 penalty amendments to section 340 of the *Criminal Code*, the Court denounced spitting on police as 'especially an aggravating feature' on which it took 'an extremely serious view'. There was a 'need, always, for an appropriate deterrent to uphold the authority of the legal processes and the execution of police duties'.[87] This was a view held by the Court of Appeal 'and its predecessor'.[88]

The Court reaffirmed this in 1997, noting that maintaining social order depends on adequately protecting those charged with enforcing it to the greatest extent possible:

> It is not fair to them that they should be exposed to assaults of this kind, nor is it in the best interest of the community, either the particular community in question or the broader community, that they should be so exposed … It is also … important that the sentence not appear to be merely a nominal one.[89]

There follows a long line of approval for, and repeat of, such sentiments, noting the need for:

- deterrence and denunciation as primary sentencing considerations (although the need for this can be 'significantly reduced' in appropriate, unusual circumstances);[90]
- need for a salutary penalty (which depends on the specific facts and is not inevitably imprisonment, including where the maximum penalty is 14 years' imprisonment under s 340);[91]

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83 See *Youth Justice Act 1992* (Qld) s 176(3), noted by Sofronoff P in *R v Patrick (a pseudonym)* [2020] QCA 51, 9 [35]–[37] and see the discussion regarding sentencing child offenders below at 6.7).

84 Ibid 8–9 [33]–[34].

85 The Court of Appeal decides serious assault cases as and when such cases are presented to it; it is not a function of courts to proactively issue statements or comment.

86 *Penalties and Sentences Act 1992* (Qld) s 9 commenced 27 November 1992 (SL 377 of 1992).

87 *R v Miekle* [1992] QCA 250, 4 (Macrossan CJ, McPherson and Davies JJA agreeing).

88 *R v Benson* [1994] QCA 394, 4 (McPherson JA, Pincus JA and Mackenzie J agreeing). The Court of Appeal was created as a separate division of the Supreme Court of Queensland in 1991 by the *Supreme Court of Queensland Act 1991* (Qld). 'Until then, Queensland's appellate courts were the Full Court of the Supreme Court in civil matters and the Court of Criminal Appeal in criminal matters, with Supreme Court judges sitting on both courts in rotation': Justice Margaret McMurdo AC, 'The Queensland Court of Appeal: The first 25 years' (Lecture, Australian Academy of Law 2016 Queensland Lecture) 1.

89 *R v Williams* [1997] QCA 476, 6–7 (Dowsett J, McPherson JA and Thomas J agreeing) cited in *R v Kazakoff* [1998] QCA 459, 6 (Ambrose J, McPherson JA and Byrne J agreeing), which also cited *R v Howard* (1968) 2 NSWR 429.

90 *R v Ganeshalingham* [2018] QCA 34, 5, 6 (Sofronoff P, Philippides JA and Boddice J agreeing); *R v Whiting* [2009] QCA 338, 3 [15] (Keane JA, Holmes JA and McMeekin J agreeing).

91 See, for example: *Queensland Police Service v Terare* (2014) 245 A Crim R 211, 221 [35] and 222 [40] (McMurdo P, Fraser and Gotterson JJA agreeing); *R v Ganeshalingham* [2018] QCA 34, 5–6 (Sofronoff P, Philippides JA and Boddice J agreeing); *R v King* (2008) 179 A Crim R 600, 601–2 [6] (de Jersey CJ, Keane and Holmes JJA agreeing) and 603 [16] (Holmes JA); *R v MCL* [2017] QCA 114, 6 [16] Fraser JA, McMurdo JA and Mullins J agreeing); *R v Reuben* [2001] QCA 322, 5 (Davies JA, Williams JA and Byrne J agreeing).

- protection of police officers and their authority; and
- community support for them.[92]

The Court of Appeal has also made similar comments in relation to railway guards,[93] court clerks,[94] corrections officers (highlighting the importance of maintaining discipline in correctional centres)[95] and local council officers.[96] It has also made similar comments in respect of persons not protected by section 340, but who are covered (as ordinary members of the community are) by the other general offence provisions of the *Criminal Code*. Examples of taxi drivers, service station attendants and convenience or takeaway store staff are discussed in Chapter 10.

While imprisonment is not inevitable (in the absence of legislation compelling it), the Court of Appeal has noted it is very much open (and as discussed above, is a common sentencing outcome). In one case involving spitting blood and phlegm into a police officer's face and mouth, the Court stated:

> One begins with the proposition that those who treat a police officer in this way should ordinarily expect to be imprisoned, meaning actual imprisonment. Police officers carry out duties which are usually onerous and often dangerous. It is abhorrent that a police officer responsibly going about his or her business be subject to the indignity and risk of being spat upon. The risk in contemporary society relates obviously to communicable disease. Related to the indignity is the display of contempt for civil authority which will often be involved in these incidents. An appropriate level of deterrence will in such cases usually be secured only through actual imprisonment of the offender.[97]
>
> … Even allowing for the serious and disgusting nature of the offence, the effrontery of its being committed against a police officer and the consequent need for serious deterrence, the question arises whether in selecting [a particular period of time as a head sentence in that case], the judge started from too high a level of penalty. Reference to some previous decisions suggests that he did.[98]
>
> … In cases like this, it is often the fact of imprisonment rather than the particular duration of the term imposed which secures the necessary deterrence. In light of the cases to which I have referred I consider the penalty imposed on the applicant was manifestly excessive and should be reduced. The early pleas of guilty, the early written apology with the assurance of no communicable disease, the applicant's previously unblemished character, and his state of depression at the time,[99] combine to warrant significant mitigation in this particular case.[100]

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92 *R v Wotton & Bourne; Ex parte Attorney-General (Qld)* [1999] QCA 382, 4–5 (Chesterman J), citing *R v Howard* (1968) 2 NSWR 429, 430 and *R v Williams* [1997] QCA 385; *R v Marshall* [2001] QCA 372, 5 (Davies JA, Williams JA and Wilson J agreeing); *R v Reuben* [2001] QCA 322, 7 (Davies JA, Williams JA and Byrne J agreeing); *R v Bidmade* [2003] QCA 422, 3 [9] (Muir J); *R v Braithwaite* [2004] QCA 82, 5 [19] (Jerrard JA, McMurdo P and Philippides J agreeing), *R v Nagy* [2004] 1 Qd R 63, 74–5 [47] (Williams JA, Jerrard JA agreeing) (cited in *Braithwaite* and *Devlyn*); *R v Conway* [2005] QCA 194, 17 [54] (McMurdo P, Atkinson and Mullins JJ agreeing) (cited in *Mathieson*); *R v Mathieson* [2005] QCA 313, 3 [9] (McPherson JA, Jerrard JA agreeing); *R v King* (2008) 179 A Crim R 600, 601–2 [6] (de Jersey CJ, Keane and Holmes JJA agreeing); *R v Devlyn* [2014] QCA 96, 8 [32] (Ann Lyons J, Holmes and Morrison JJA agreeing).

93 *R v Nagy* [2004] 1 Qd R 63, 74–5 [47] (Williams JA, Jerrard JA agreeing): 'But the role of a guard on the railways is not all that different [to a police officer]. Part of a guard's responsibility is to ensure the safety of the travelling public and it is their duty to confront anyone who is perceived to be a threat to the safety of the travelling public. Attacks on such officials, particularly cowardly attacks by groups of drunken youths, must be severely punished. In a number of recent cases this court has indicated that stern penalties should be imposed for serious violent offences committed upon innocent people in public places. That principle applies with equal force to attacks on people such as the complainants in these cases.'

94 *R v McKinnon* [2006] QCA 16, 4–5 (McMurdo P, McPherson JA and Muir J agreeing).

95 *R v Hope* [1993] QCA 299, 4–5 (Fitzgerald P, Davies JA and Moynihan SJA).

96 *R v Ketchup* [2003] QCA 327, 1 [3] (Williams JA, Davies JA agreeing).

97 *R v King* (2008) 179 A Crim R 600, 601–2 [6] (de Jersey CJ, Keane and Holmes JJA agreeing). Note Holmes JA also stated that imprisonment is not inevitable (603 [16]). See also *R v Reuben* [2001] QCA 322, 5–7 (Davies JA, Williams JA and Byrne J agreeing) and *R v Williams* [1997] QCA 476, 6 (Dowsett J, McPherson JA and Thomas J agreeing). *King* and *Reuben* were more recently referred to with approval in *R v MCL* [2017] QCA 114, 6 [16] (Fraser JA, McMurdo JA and Mullins J agreeing): 'Consistently with that very severe maximum penalty [14 years' imprisonment], although each case involves an exercise of the sentencing discretion in light of all of the relevant evidence in the case and there is no rule that offenders who assault police officers acting in the course of their duties in a way that attracts that penalty must be sentenced to imprisonment, in the ordinary course offenders who spit upon police officers or break the skin by premeditated biting can expect to be sentenced to a term of imprisonment involving a period of actual custody'.

98 *R v King* (2008) 179 A Crim R 600, 602 [7] (de Jersey CJ, Keane and Holmes JJA agreeing).

99 The offender was 'suffering from what the psychiatrist … terms a "pathological bereavement disorder" following a family tragedy': Ibid 601 [4]. See the discussion of mental illness in this chapter.

100 Ibid 602 [11] (de Jersey CJ, Keane and Holmes JJA agreeing). Noted with approval in *R v Murray* (2014) 245 A Crim R 37, 45 [24] (Fraser JA, Gotterson and Morrison JJA agreeing).

In 2019, the Court of Appeal discussed how legislative amendment made by Parliament can give effect to community expectations regarding sentencing:

> Public clamour about a particular case has to be ignored by a sentencing judge because it is not a reliable indicator of legitimate public expectations of the system of justice or of anything else relevant to sentencing. But community attitudes, standards and expectations are things that a sentencing judge must somehow take into account because, in general, sentences are supposed to reflect a community's values. That is one reason why "denunciation" is a factor in sentencing.
>
> … One source from which judges might discern *legitimate* community expectations is from the content of statutes that change the law governing offences and their penalties.[101]

6.5.2 Relevance of changes to maximum penalties

The Court of Appeal has consistently noted changes in maximum penalties for serious assault as amended by Parliament over time, and commented on how this impacts on sentencing:

- The maximum penalty is one of the many factors a sentencing judge is obliged to take into account and balance with all other relevant factors.[102]
- The 14-year maximum for some section 340 offences is 'very severe'.[103]
- The 'legislature … clearly intended that courts should impose significantly heavier penalties' for serious assaults against police in those aggravated circumstances.[104]
- Increases in maximum penalty can be expected to produce a general increase in severity of sentences, rendering earlier cases of limited utility as comparable sentencing decisions. There should not necessarily be proportionate increases in sentences.[105] Nor does it mean all offences committed after the increase should attract a higher penalty than they previously would have.[106]
- Doubling of the maximum penalty will not necessarily result in a doubling of sentences at all levels.[107] It 'underscore[s] the seriousness' of such assaults.[108]

The sentencing trends for serious assault following the 2012 and 2014 amendments, which introduced statutory circumstances of aggravation carrying a higher 14-year maximum penalty, are discussed in the next chapter of this report.

6.5.3 The impact of offender mental illness and intoxication on sentencing

As highlighted in Chapter 4 of this report, it is not uncommon for assaults on public officers to be committed by offenders with entrenched and serious mental disorders. The literature review undertaken by the Griffith Criminology Institute reported that assaults of public officers across a number of sectors are more likely with offenders who have

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101 *R v O'Sullivan; Ex parte Attorney-General (Qld)* [2019] QCA 300, 28 [101 and 29 [104] (Sofronoff P, Gotterson JA and Lyons SJA) (emphasis in original).

102 *R v Murray* (2014) 245 A Crim R 37, 42 [16] (Fraser JA, Gotterson and Morrison JJA agreeing) and *R v MCL* [2017] QCA 114, 6 [16] (Fraser JA, McMurdo JA and Mullins J agreeing), both judgments citing the High Court's judgment in *Markarian v The Queen* (2005) 228 CLR 357, [31].

103 *R v MCL* [2017] QCA 114, 6 [16] (Fraser JA, McMurdo JA and Mullins J agreeing).

104 *Queensland Police Service v Terare* (2014) 245 A Crim R 211, 221 [35] (McMurdo P, Fraser and Gotterson JJA agreeing); *R v Benson* [2014] QCA 188, 9 [36] (Morrison JA, Fraser JA and Philippides J agreeing).

105 *R v Murray* (2014) 245 A Crim R 37, 42 [16] (Fraser JA, Gotterson and Morrison JJA agreeing), citing *R v Benson* [2014] QCA 188, [36] (Morrison JA) and *R v CBI* [2013] QCA 186, 7 [19] (Fraser JA, Gotterson JA and Mullins J agreeing) (which was a case about increases in maximums for sexual offences). *Murray* was a case post the 14-year maximum introduction. See also at 45 [23], where the Court wrote: 'the applicant's sentence is so far out of kilter with the sentences in those cases, even when the fullest possible allowance is made for the increase in the maximum penalty, as to indicate that the sentencing judge must have erred … That indication is confirmed by reference to the circumstances of this particular offence and the applicant's personal circumstances. Both the head sentence of 15 months' imprisonment and the period before release on parole of five months in custody for this 19-year-old mother of a one-year old baby are manifestly excessive'. See also *R v Brown* [2013] QCA 185, 6 [18] (Holmes JA, Fraser JA and North J agreeing); *R v Holden* [2006] QCA 416, 5 (Holmes JA, McMurdo P, and Fryberg J agreeing); and *R v Kalinin* [1998] QCA 261, 9 (Derrington J).

106 *R v Murray* (2014) 245 A Crim R 37, 42 [16] (Fraser JA, Gotterson and Morrison JJA agreeing), citing *R v Samad* [2012] QCA 63, [30] (Wilson AJA).

107 Ibid citing *R v SAH* [2004] QCA 329, [12]–[13].

108 *R v Roberts* [2017] QCA 256, 9 [30] (Fraser JA, Philippides JA and Douglas J agreeing).

poor mental health.[109] As part of its sentencing remarks analysis, the Council found that in over a third of cases of serious assaults, the sentencing judge directly referred to the fact the offender had a mental illness. The presence of mental disorders was even more common in the case of non-Indigenous women, with 58.2 per cent of cases referring to their presence.

Officers may be required to engage with such people to address their risk to the wider public, or to prevent such people from harming themselves (or both).[110] The Court of Appeal has commented:

> It is, of course, distressing to find someone who, possibly through no reason of their own, becomes involved in offences of this kind. Mental impairment or psychiatric problems have always been circumstances that are taken into account in the course of sentencing. However, they are not ordinarily such as to excuse a person entirely from the penal consequences of what they have done.[111]

> It is well established that an offender's mental disorder, short of insanity, may lessen moral culpability and so lessen the claims of general or personal deterrence upon sentencing.[112]

In an appropriate case, this can even eliminate such claims.[113] In one example, the Court of Appeal noted that:

> in cases under s 340(2AA) it can be a mitigating factor of great force, depending on the particular offender's idiosyncratic circumstances, that an assault was prompted by an extreme state of distress or by a real psychological disturbance … In this case, [the offender's] history of torture, imprisonment, exposure to danger, flight, dislocation, isolation from family, friends and his native land, mental illness and his suicide attempt constitute very weighty matters for consideration. In addition, the motivation for the assault he committed is lacking in the moral blameworthiness that exists in the usual cases …[114]

Assaults on public officers also commonly involve an offender who is under the influence of alcohol and/or other drugs. The literature review commissioned by the Council found that assaults on public officers commonly involved offenders who had substance misuse problems, at least in the healthcare sector. The Council's sentencing remarks analysis found that half of women, and one-third of Aboriginal and Torres Strait Islander men in the cases examined were under the influence of alcohol or other drugs at the time of the offence. This was less common in the case of non-Indigenous men.

Where voluntary intoxication has substantially contributed to the offending, this cannot be taken into account by way of mitigation of the sentence.[115] In this case, weight can be placed 'upon the factors that the sentence imposed should both deter the applicant and deter others from committing the same kind of offence'.[116]

6.5.4 The impact of childhood trauma and disadvantage: *Bugmy v The Queen*

Bugmy v The Queen,[117] an important High Court case originating from NSW (involving offences analogous to Queensland provisions), explains how someone's disadvantage and trauma in life is always relevant to sentence. It also serves as an example of how the same physical actions can be charged as different offences, due to the variation in the level of harm caused.

The offender in that case was a 29-year-old Aboriginal man who had an extremely traumatic and disadvantaged upbringing in a remote community. He was a remand prisoner charged with three counts of assault police, two of resisting an officer in the execution of his duty, escape from police custody, intimidate police and causing malicious damage by fire, for which he was later sentenced separately.[118] A report from a forensic psychiatrist noted that he had 'very negative attitudes towards authority figures, particularly police and I suspect also prison officers. There may be some family "cultural issues" which are also relevant to his negative views'.[119]

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109 It should be noted that the views contained in the literature review are those of the authors and not necessarily those of the Council.

110 For instance, in *R v MCL* [2017] QCA 114, 6 [16], police officers were assaulted when trying to stop an intoxicated and mentally ill person from climbing out of an elevated window at a drug rehabilitation centre.

111 *R v Benson* [1994] QCA 394, 5 (McPherson JA, Pincus JA and Mackenzie J agreeing).

112 *R v Ganeshalingham* [2018] QCA 34, 7 (Sofronoff P, Philippides JA and Boddice J agreeing), referring to *Goodger* [2009] QCA 377, [21] (Keane J) and *Neumann* [2007] 1 Qd R 53.

113 *R v MCL* [2017] QCA 114, 6 [15] (Fraser JA, McMurdo JA and Mullins J agreeing), referring to *R v Bowley* [2016] QCA 254, [34] as summarising the relevant law).

114 *R v Ganeshalingham* [2018] QCA 34, 7–8 (Sofronoff P, Philippides JA and Boddice J agreeing).

115 *Penalties and Sentences Act 1992* (Qld) s 9(9A).

116 *R v MCL* [2017] QCA 114, 6 [15] (Fraser JA, McMurdo JA and Mullins J agreeing).

117 (2013) 249 CLR 571.

118 As explained in *R v Bugmy* [2012] NSWCCA 223, 4–5 [5], 7 [15].

119 Ibid 9 [23].

While on remand, he became upset that visitors might not arrive at the correctional centre before the close of visiting hours. This led to an incident where he threw balls from a pool table at two correctional officers, missing them, giving rise to two charges of assaulting a correctional officer acting in the execution of duty (maximum penalty 5 years' imprisonment).[120]

He had made two verbal threats to physically harm a third officer. When that officer appeared, he made another threat and then threw two pool balls, which struck the officer's back, and a third ball, which struck his eye. Despite a series of surgeries, the officer was left blind in that eye, suffered great physical pain and profound psychological effects including loss of enjoyment of life and career prospects.[121] This gave rise to a much more serious charge of causing grievous bodily harm with intent (maximum penalty 25 years' imprisonment).[122]

The High Court stated that:

> The experience of growing up in an environment surrounded by alcohol abuse and violence may leave its mark on a person throughout life. Among other things, a background of that kind may compromise the person's capacity to mature and to learn from experience. It is a feature of the person's make-up and remains relevant to the determination of the appropriate sentence, notwithstanding that the person has a long history of offending.[123]
>
> Because the effects of profound childhood deprivation do not diminish with the passage of time and repeated offending, it is right to speak of giving "full weight" to an offender's deprived background in every sentencing decision … Giving weight to the conflicting purposes of punishment is what makes the exercise of the discretion so difficult. An offender's childhood exposure to extreme violence and alcohol abuse may explain the offender's recourse to violence when frustrated such that the offender's moral culpability for the inability to control that impulse may be substantially reduced. However, the inability to control the violent response to frustration may increase the importance of protecting the community from the offender.[124]

The High Court noted that 'consideration of the objective seriousness of the offence must take account of the fact that this was an offence committed by a prisoner against an officer in a prison'.[125] One of the issues to be balanced was whether Mr Bugmy's 'background of profound childhood deprivation allowed the weight that would ordinarily be given to personal and general deterrence to be moderated in favour of other purposes of punishment, including rehabilitation'.[126]

The High Court dealt with specific legal issues on appeal, but remitted sentencing to the NSW Court of Criminal Appeal. This involved the application of NSW sentencing laws and principles. That court found that the sentence imposed was manifestly inadequate.[127] Bathurst CJ wrote that:

> It was a serious assault done with intent to cause grievous bodily harm to a law enforcement officer going about his duties. The assault was unprovoked and had tragic consequences for the victim. Further, although it could not be described as premeditated, it was a culmination of a course of conduct which indicated a clear intention to inflict serious harm.[128]
>
> … It is of course necessary to take the respondent's subjective circumstances into account. Further, weight must be given to the respondent's deprived background, taking into account, while his inability to control his violent approach to frustration reduces his moral culpability, it also emphasises the need to take into account the protection of the community and the need for personal deterrence … In this regard the respondent's lengthy criminal record for violent offences is particularly relevant.[129]

Rothman J also noted that 'this offence is an extremely serious one and the injury inflicted debilitating. Ordinarily, that conclusion would be sufficient to interfere with the sentence imposed'.[130]

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120 *Crimes Act 1900* (NSW) s 60A(1). See *Bugmy v The Queen* (2013) 249 CLR 571, 582 [1], 583 [9], 585 [14].

121 *Bugmy v The Queen* (2013) 249 CLR 571, 583–4 [9]–[11], 585 [14].

122 *Crimes Act 1900* (NSW) s 33(1)(b). A similar charge in Queensland's *Criminal Code* (Qld) s 317, carries a maximum of life imprisonment.

123 *Bugmy v The Queen* (2013) 249 CLR 571, 594–5 [43] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ) (citations omitted).

124 Ibid 595 [44] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ)

125 Ibid 595 [46] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ).

126 Ibid 596 [46] (French CJ, Hayne, Crennan, Kiefel, Bell and Keane JJ).

127 *R v Bugmy (No 2)* [2014] 247 A Crim R 556, 559 [11]–[14], 560 [17] (Bathurst CJ, RA Hulme J agreeing), 570 [99] (Rothman J, RA Hulme J agreeing).

128 Ibid 559 [14] (Bathurst CJ, RA Hulme J agreeing).

129 Ibid 559–60 [16] (Bathurst CJ, RA Hulme J agreeing) (citations omitted).

130 Ibid 570 [99] (Rothman J, RA Hulme J agreeing).

Yet the NSW Court of Criminal Appeal did not increase the sentence because of its 'residual discretion decline to resentence' on Crown appeals (the prosecution had appealed against Mr Bugmy's sentence).[131] Reasons for doing so in this case were the significant delay in court proceedings, which was not Mr Bugmy's fault,[132] his approaching parole eligibility date by the time of the Court's decision,[133] and significant alterations in the Crown's submissions in various court proceedings.[134]

Rothman J made the following comments regarding dispossession:

> The fact, if it be the fact, that dispossession is a disadvantage suffered uniquely by persons of Aboriginal descent in Australia cannot, without more, be a matter relevant to sentencing. Sentencing synthesises the issues of objective seriousness and the issues of relevance in the subjective circumstances of the offender.
>
> There can be no doubt that Aborigines were dispossessed (see *Mabo v Queensland (No 2)* [1992] HCA 23; (1992) 175 CLR 1). But others may have been dispossessed from other lands and now live in Australia.
>
> Relevant to sentencing is the effect of any issues or disadvantage on the offender, not its uniqueness. Nothing is before the Court that, in my view, would allow it, in these proceedings, to accept that dispossession, of itself, has had an effect on Mr Bugmy's offending. It is just as illogical to take account of a unique disadvantage solely on that basis as it is to refuse to take account of a relevant disadvantage simply because it is unique.
>
> There may be material which would, in other circumstances, allow for the proposition that other disadvantages have been suffered, which are relevant to Mr Bugmy's moral culpability and his inability to control violent impulses: see *R v Lewis* [2014] NSWSC 1127 at [39]–[43]. However, no such issues of mitigation have been the subject of evidence or detailed submissions before the Court.
>
> Ultimately, the issue in the proceedings rests upon the assessment of this Court as to the range of sentences available to the sentencing judge and whether the sentence imposed is outside that range.[135]

Mr Bugmy was also later ordered to be subject to a high-risk violent offender extended supervision order under the *Crimes (High Risk Offenders) Act 2006* (NSW), which was extended to operate for approximately two years and two months after his sentence had expired. This would involve 'supervision and support in the community that will be provided by the Department under the management plan which will incorporate these conditions, in cooperation with other community-based services, will operate to ameliorate the assessed risk of Mr Bugmy committing an offence of serious violence'.[136]

Expert evidence disclosed the 'contextual, pathological and chronic triggers to the violent criminal conduct of offenders generally and those triggers which are personal to Mr Bugmy given his mental health (including the neurological deficits from which he suffers as a result of an acquired brain injury), his history of poly-substance abuse and the long history of his involvement with the criminal justice system'.[137] Reference was made to his extensive criminal record from the age of 12 (he was then aged 34), being sentenced to imprisonment on 23 separate occasions:

> Many of the offences of violence were committed against police, frequently in the course of affecting his arrest or the arrest of a family member, or against other authority figures … The longest period he has spent in the community as an adult is just under 2 years when he was 20 to 21 … the total period he has spent in the community as an adult is 3 years and 4 months.[138]

He had a history of drug and alcohol dependence and hospitalisation for head injuries, and his childhood was further marred by 'significant and persistent' domestic violence.[139]

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131 Ibid 559 [11], 560 [22] (Bathurst CJ, RA Hulme J agreeing), 565 [65] (Rothman J, RA Hulme J agreeing).

132 Ibid 560 [19] (Bathurst CJ, RA Hulme J agreeing), 570 [101] (Rothman J, RA Hulme J agreeing).

133 Ibid 560 [20] (Bathurst CJ, RA Hulme J agreeing).

134 Ibid 570 [102], [104] (Rothman J, RA Hulme J agreeing).

135 Ibid 564 [94]–[98] (Rothman J, RA Hulme J agreeing). For similar analysis by the Queensland Court of Appeal, see *R v McLean* (2011) 212 A Crim R 199, 205–6 [20]–[22] (White JA, Fraser JA and Philippides J agreeing).

136 *State of New South Wales v Bugmy* [2017] NSWSC 855 [1], [101]–[102] (Fullerton J). See also *State of New South Wales v Bugmy (Preliminary)* [2017] NSWSC 333.

137 *State of New South Wales v Bugmy* [2017] NSWSC 855 [36] (Fullerton J).

138 Ibid [3]–[4].

139 Ibid [9], [45]–[46]. This history was also noted in the High Court judgment: *Bugmy v The Queen* (2013) 249 CLR 571, 584 [12]–[13].

6.6 The orders courts can make when sentencing for assaults on public officers

Except where mandatory sentencing applies, there are a wide range of sentencing options open to courts when sentencing offenders for assaults against public officers. Penalties available to Queensland courts sentencing for Queensland offences are:

- non-custodial options such as fines, good behaviour bonds and community-based orders such as community service and probation;
- various forms of custodial penalties.

The Council's analysis of sentencing outcomes shows that, particularly in the case of aggravated serious assaults, a custodial sentence is the most common penalty type imposed by courts, with imprisonment being the most commonly used form of custodial penalty.

While the use of custodial sentences for assault offences under the *Corrective Services Act 2006* (Qld) (CSA) is also very common, non-custodial sentences are more likely to be imposed in the case of offences charged under section 790 of the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA).

Different forms of custodial and non-custodial penalties are discussed below.

6.6.1 Custodial penalties

Custodial penalties can involve a combined prison and probation order, a term of imprisonment with parole, or a suspended sentence of imprisonment (either wholly or partially).

Imprisonment with parole

As discussed above, imprisonment is the most common custodial penalty imposed on offenders sentenced for serious assaults on public officers, as well as assaults under the CSA.

The total sentence imposed is called a 'head sentence'.

Most offenders will be released on parole, become eligible to apply for parole, or be released on a suspended sentence before the entire period of their head sentence is served.

Parole is the supervised release of a prisoner to serve all or the remainder of their term of imprisonment in the community, subject to conditions and supervision. Consequences for non-compliance include return to prison.[140] A prisoner released on parole is still serving their sentence.[141]

The sole purpose of parole is:

> to reintegrate a prisoner into the community before the end of a prison sentence *to decrease the chance that the prisoner will ever reoffend*. Its only rationale is to keep the community safe from crime. If it were safer, in terms of likely reoffending, for prisoners to serve the whole sentence in prison, then there would be no parole.[142]

The ministerial guidelines that set out the criteria for the Parole Board to use when considering applications provide that the overriding consideration for the board's decision-making process is community safety.[143]

If a court decides to sentence an offender to imprisonment with parole, one of two methods will be used.[144]

1. If the head sentence is 3 years or less (and not a sexual or serious violent offence or the offender is otherwise ineligible, such as if a court ordered parole order has been cancelled during their period of imprisonment) the court *must* set a parole release date.[145] The offender will be released to parole on that date and remain under supervision until the head sentence expires. The court may fix any day of the offender's sentence as their parole release date, including the day of sentence or the last day of the

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140 See <https://www.qld.gov.au/law/sentencing-prisons-and-probation/sentencing-probation-and-parole/applying-for-parole>.

141 *Corrective Services Act 2006* (Qld) s 214.

142 Queensland Parole System Review, *Queensland Parole System Review Final Report* (2016) 1 [3] (emphasis in original).

143 Mark Ryan MP, Minister for Police, Fire and Emergency Services and Minister for Corrective Services, *Ministerial Guidelines to Parole Board Queensland*, 3 July 2017, 2 [1.2]–[1.3].

144 The relevant provisions regarding parole are in the *Penalties and Sentences Act 1992* (Qld) Part 9, Division 3.

145 *Penalties and Sentences Act 1992* (Qld) s 160B.

sentence.[146] This means offenders may be subject to immediate release on parole on the day of sentence, have to serve part of their sentence prior to release, or have to serve their full sentence in prison.

2. The other form of release on parole is a parole eligibility date, which the sentencing court sets. The offender will then be eligible for parole from that date but must apply to the Parole Board Queensland for release on parole. The actual date of their release is at the discretion of the Parole Board and can vary greatly depending on the circumstances of the case and of the offender. In some cases, offenders serve their full head sentence.

If a person fails to comply with the conditions of their parole order, they can have their parole order amended, suspended or cancelled.[147]

Judicial discretion in setting sentences of imprisonment with parole requires flexibility. The Court of Appeal recently observed:

> Because of the many different kinds of offences, the infinite kinds of circumstances surrounding the commission of offences and the limitless kinds of offenders, both the discretion as to length of imprisonment and as to the fixing of a parole date cannot possibly be circumscribed by judge-made rules so as to preclude consideration of whatever relevant factors might arise in a particular case. It may be common to impose a head sentence by having regard mostly to the circumstances surrounding the commission of the offence and to fix the actual period of custody by reference to an offender's personal circumstances. But there is no rule of law that requires that to be done in every case. In the absence of a statute that prescribes the way in which an offender should be punished, sentencing judges have always regarded all of the elements of a sentence to be flexible. They will continue to do so in order to arrive at a just sentence in all the circumstances.[148]

There is a general proposition that, where a sentence of imprisonment does not involve immediate release, a suspension or parole release or eligibility date will often be set at the one-third mark of the head sentence for an offender who enters an early guilty plea accompanied by genuine remorse.[149] For sentences involving parole eligibility, if a court makes no express order, the eligibility date is generally the day after reaching 50 per cent of the period of imprisonment.[150] This is commonly applied to offenders who have been convicted after a trial.

However, in circumstances in which the court determines it appropriate for the offender to be declared convicted of a serious violent offence (SVO), an offender must serve 80 per cent of their sentence before being eligible for parole even if they have entered a guilty plea.[151]

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146 Ibid s 160G.

147 *Corrective Services Act 2006* (Qld) s 205.

148 *R v Randall* [2019] QCA 25, 8 [38] (Sofronoff P and Morrison JA and Burns J). See also *R v Fischer* [2020] QCA 66, 4–5 (Sofronoff P, Boddice and Williams JJA agreeing).

149 Absent a mandatory sentence, it is common for an offender who enters an early guilty plea, accompanied by genuine remorse, to have a parole eligibility date or release date, or suspension of their sentence, set after serving one-third of the head sentence in custody: See *R v Crouch* [2016] QCA 81, 8 [29] (McMurdo P, Gotterson JA and Burns J agreeing); *R v Tran; Ex parte A-G (Qld)* [2018] QCA 22, 6–7 [42]–[44] (Boddice J, Philippides and McMurdo JA agreeing); *R v Rooney* [2016] QCA 48, 6 [16]–[17] (Fraser JA, Gotterson JA and McMeekin J agreeing) and *R v McDougall* [2007] 2 Qd R 87, 97 [20] (Jerrard, Keane and Holmes JJA). More recent judgments stress that 'as a matter of principle, the just and appropriate sentence including the proportion which the period to be served in prison bears to the whole term, is to be fixed with reference to all of the circumstances of the particular case, rather than by the application of some rule of thumb in a way that would unduly confine a sentencing judge's discretion': *R v Dinh* [2019] QCA 231, 5 (Fraser JA, McMurdo JA and Henry J agreeing). Further, 'the discretion to fix a parole eligibility date is unfettered and the significance of a guilty plea for the exercise of that discretion will vary from case to case. Consequently, there can be no mathematical approach to fixing such a date': *R v Randall* [2019] QCA 25, 9 [43] (Sofronoff P and Morrison JA and Burns J).

150 *Corrective Services Act 2006* (Qld) s 184(2).

151 *Penalties and Sentences Act 1992* (Qld) Part 9A. For an explanation of the serious violent offence provisions, see Queensland Sentencing Advisory Council, *Queensland Sentencing Guide* (December 2019) 25 <https://www.sentencingcouncil.qld.gov.au/education-and-resources/queensland-sentencing-guide>. In the case of offenders declared convicted of a serious violent offence, the person's parole eligibility date is automatically set at the day after the person has served 80 per cent of their sentence for the offence, or 15 years (whichever is less): *Corrective Services Act 2006* (Qld) s 182. The Council has previously raised concern that head sentences under this mandatory SVO sentencing regime are being necessarily reduced to take into account a plea of guilty and other matters in mitigation. See Queensland Sentencing Advisory Council, *Community-based Sentencing Orders, Imprisonment and Parole* (Final Report, July 2019) 89–90 [5.7.3] and Queensland Sentencing Advisory Council, *Sentencing for Criminal Offences Arising from the Death of a Child* (Final Report, October 2018) xxxiv, xxxix (Advice 3) and 158 [9.4.4]. The Court of Appeal has spoken of 'the distorting effect' of the scheme, in *R v Sprott; Ex parte Attorney-General (Qld)* [2019] QCA 116, 9 [41] (Sofronoff P, Gotterson JA and Henry J agreeing).

Variable complexities encountered in different cases, which can include the mandated application of non-parole periods[152] (e.g. for serious violent offences) and guilty pleas that are not early, can mean that sentencing courts exercise their discretion to craft just sentences in a different way. The Court of Appeal recently confirmed that a head sentence can be reduced to give credit for a plea of guilty; but, in some cases, this can then result in parole eligibility that is too early (even at the halfway point) and therefore inadequate:

> The mitigating effect of a guilty plea can be manifested in many ways. One way is to reduce the head sentence. Another way is to reduce the non-parole period. The corollary of the latter proposition is that … the mitigating effect of a plea might require a reduction in the head sentence and a postponement of the parole eligibility date.[153]

Suspended sentences

A suspended sentence is a term of imprisonment that is suspended, in whole or in part, for a set period called the 'operational period'. To avoid the possibility of being ordered to serve the suspended term of imprisonment, an offender subject to this form of order must not commit another offence punishable by imprisonment during the operational period.

In the case of serious assaults committed on public officers, about one in five cases result in either a wholly or partially suspended sentence being ordered (17.6% of cases dealt with in the higher courts, and 20.5% of those dealt with in the Magistrates Courts).

Queensland courts can order a sentence of imprisonment to be suspended only for head sentences of 5 years or less[154] and will generally prefer parole over suspension when supervision is required. For instance, in a section 340 case where a young offender spat into a police officer's face, mouth and eyes, the Court of Appeal stated:

> It seems that [the sentencing judge] thought that there was "hope" for the [offender] because of his youth and relatively minor criminal record. He did not, however, explain how that rehabilitation might take place (apart from two months in prison) when there was no information about guidance which might put him on the right path. His Honour, puzzlingly, ordered the sentence to be suspended rather than fixing a parole release date … Section 144(2) of the *Penalties and Sentences Act* provides that a court may order the whole or part of a term of imprisonment to be suspended but "only if the court is satisfied that it is appropriate to do so in the circumstances". There is no indication as to why his Honour could have been satisfied that it was appropriate here. An operational period of two years without any guidance at all put the applicant at risk of being returned to custody. In suspending the sentence without explanation the sentencing judge fell into error. The sentencing discretion must, then, be exercised by this court [which ordered imprisonment with a parole release date after 2 months].[155]

Intensive correction orders

Another form of custodial penalty is an intensive correction order — a period of up to 12 months' imprisonment, served in the community under supervision with a conviction recorded. The offender must comply with conditions, including reporting twice weekly to an authorised corrective services officer, taking part in counselling and other programs as directed, and performing community service. The offender must agree to the order being made and to comply with its requirements. In the event of non-compliance, a court may revoke it and order the person to serve the remaining period of the sentence in prison.[156] These orders are rarely used and represent a very small proportion of sentences for serious assaults on public officers.

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152 See *R v Randall* [2019] QCA 25, 5 [29]–[30] (Sofronoff P and Morrison JA and Burns J).

153 Ibid 9 [44]–[45] (Sofronoff P and Morrison JA and Burns J). That case involved the manslaughter of a baby and a late plea of guilty, where a head sentence of 10 years or more would mean the automatic application of the '80 per cent rule' as part of a mandatory serious violent offence declaration. The court postponed the statutorily mandated halfway parole eligibility date by six months — the sentence was 9 years' imprisonment with parole eligibility after 5 years. See also *R v MCW* [2019] 2 Qd R 344, 351–2 [30]–[31] (Mullins J): An offender pled guilty at an early stage. The sentencing judge declined to fix a date on which he would be eligible to apply for parole. He therefore was not eligible to apply for parole unless he had served half of the effective sentence of imprisonment. His application for leave to appeal against his sentence was refused.

154 *Penalties and Sentences Act 1992* (Qld) s 144. The limit is three years for Magistrates Courts — see *Criminal Code* (Qld) s 552H.

155 *R v McLean* (2011) 212 A Crim R 199, 209 [30] (White JA, Fraser JA and Philippides J agreeing). And see *R v Farr* [2018] QCA 41, 8 (Philippides JA, Gotterson JA and Douglas J agreeing) where a suspended sentence was 'clearly undesirable' because of the offender's longstanding drug addiction. See also *R v Clark* [2016] QCA 173, 3–4 [5]–[6] (McMurdo P) and *R v Wano; Ex parte A-G (Qld)* [2018] QCA 117, 8 [44]–[45] (Henry J, Fraser JA and North J agreeing).

156 *Penalties and Sentences Act 1992* (Qld) Part 6.

6.6.2 Non-custodial orders

Non-custodial orders are orders that do not involve a term of imprisonment being imposed. Non-custodial options in Queensland include fines, good behaviour bonds and community-based orders such as community service and probation.

Good behaviour bond/recognisance

A good behaviour bond is a requirement to appear before a court if called on to do so and to 'be of good behaviour' (not to break the law) for a set period (up to 3 years). It requires the offender and anyone acting as a 'surety' to pay an amount of money if the offender breaks the law or does not comply with other conditions that may be ordered, which may include attending a drug assessment and education session.

Fine

A fine is an order to pay an amount of money. The maximum fine depends on the type of offence and the court hearing the matter. A fine can be ordered in addition to, or instead of, any other sentence with or without a conviction being recorded.

Probation order

A probation order is an order between 6 months and 3 years, with or without a conviction being recorded, that is served in the community with monitoring and supervision by an authorised corrective services officer. The person must agree to the order being made and to comply with the requirements under the order. When making a probation order the court must set mandatory requirements[157] and can also make additional requirements.[158] Mandatory requirements include:

- not committing another offence during the period of the order;
- participating in programs or counselling;
- reporting to and receiving visits from a corrective services officer as directed;
- telling a corrective services officer about any changes of address or employment within two business days; and
- not leaving Queensland without permission.

Additional conditions include submitting to medical, psychiatric or psychological treatment, or any conditions considered necessary to stop the offender committing another offence or to help the offender behave in a way that is acceptable to the community.

Community service order

A community service order is an order to do unpaid community service for between 40 and 240 hours, usually within 12 months, and to comply with reporting and other conditions, with or without a conviction being recorded.[159] In addition to the requirement to perform community service, other mandatory requirements include the points above for probation, except for participating in programs or counselling.

The offender must agree to the order being made (unless it is a mandatory order, which applies to forms of assault against public officers committed in a public place while the offender was adversely affected by an intoxicating substance).[160]

6.6.3 Compensation and restitution

Compensation and restitution orders fall under the definition of 'penalty' in the PSA (which itself falls under the definition of 'sentence').[161] Either order can be made in addition to any other sentence to which the offender is liable.[162]

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157 Ibid s 93.

158 Ibid s 94.

159 Ibid ss 100–103.

160 Ibid s 108B.

161 Ibid s 4.

162 Ibid s 35(2).

6.6.4 Mandatory sentencing

Mandatory sentencing generally involves Parliament prescribing 'a minimum or fixed penalty for an offence'.[163] It can 'take various forms, the chief characteristic being that it either removes or severely restricts the exercise of judicial discretion in sentencing'.[164] In Queensland, this includes mandating non-parole and driving disqualification periods, prescribing minimum penalties, directing that community service must be served as well as any punishment, and mandating the circumstances where a court can set only a period release or eligibility date. Mandatory sentencing as it applies to serious assault is discussed in more detail in Chapter 10, section 10.3.2. In respect of serious assault specifically, it applies to:

- Mandatory community service orders if the offence is committed in a public place while adversely affected by an intoxicating substance.[165]
- Mandatory cumulative, full-time imprisonment where the offence is committed as part of the offender's involvement in a criminal organisation.[166]
- Mandatory cumulative imprisonment where an offender committed the offence (or counselled, procured, attempted or conspired to commit it) while he or she was a prisoner serving a term of imprisonment, or was released on parole.[167] Any sentence of imprisonment imposed for the offence must be served cumulatively (one after the other) with any other term of imprisonment the person is liable to serve.

6.6.5 Other orders that can be made

There are three forms of orders that can be made in addition to sentence to restrict an offender's ability to be around certain people, places or modes of transport. They are non-contact orders, banning orders, and exclusion orders. Some sentencing orders could contain conditions that have a similar effect.

A sentencing court may also decide to make a **non-contact order** under Part 3A of the PSA, when it 'convicts an offender of a personal offence [an indictable offence committed against the person of someone],[168] whether on indictment or summarily'.[169] The order may be made in addition to any other order the court may make[170] but cannot be made if a protection order 'may be made' under the *Domestic and Family Violence Protection Act 2012* (Qld).[171]

A non-contact order contains one or both requirements that the offender, for up to two years from the date of the order or release from any imprisonment:

(a) does not contact the victim against whom the offence was committed, or someone who was with the victim when the offence was committed, for a stated time;

(b) does not go to a stated place, or within a stated distance of a stated place, for a stated time.[172]

The court may make the order if satisfied that, unless the order is made, there is an unacceptable risk of various matters relating to the offender causing injury, harassment, property damage or detriment to the victim or their associate.[173]

It is an offence to fail to comply with the conditions of a restraining or non-contact order.[174]

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163 Law Council of Australia, *Mandatory Sentencing: Factsheet* (No. 1405, undated).

164 Australian Law Reform Commission, *Same Crime: Same Time: Sentencing of Federal Offenders* (Report No. 103, 2006) 538–9 [21.54] (citations omitted).

165 See *Penalties and Sentences Act 1992* (Qld) Part 5, Division 2, Subdivision 2 (ss 108A-D) and *Criminal Code* (Qld) chapter 35A (ss 365A-C).

166 See *Penalties and Sentences Act 1992* (Qld) Part 9D (ss 161N-S) and Schedule 1C.

167 Ibid s 156A and Schedule 1.

168 Ibid s 43B(4).

169 Ibid s 43B(1).

170 Ibid s 43B(2).

171 Ibid s 43B(3), referring to *Domestic and Family Violence Protection Act 2012* (Qld) s 42 'When court on its own initiative can make or vary order against offender'.

172 Ibid s 43C.

173 Ibid s 43C(3).

174 Ibid s 43F. The maximum penalty is 40 penalty units or one year's imprisonment.

A sentencing court may also decide to make a **banning order** under Part 3B of the PSA. A banning order prohibits an offender from doing or attempting to do any of the following for a stated period:

(a) entering or remaining in stated licensed premises (or a stated class of licensed premises);

(b) entering or remaining in, during stated hours, a stated area that is designated by its distance from, or location in relation to, those licensed premises;

(c) attending or remaining at a stated event, to be held in a public place, at which liquor will be sold for consumption.[175]

The court can make the order if the offender has been convicted of certain offences including those involving the use, threatened use, or attempted use of unlawful violence to a person or property, committed in licensed premises or in a public place near licensed premises, if the offender would pose an unacceptable risk if the order was not made, to:

(i) the good order of licensed premises and areas in the vicinity of licensed premises; or

(ii) the safety and welfare of persons attending licensed premises and areas in the vicinity of licensed premises.[176]

Banning orders can be made in addition to any other court order.[177] They do not stop the person entering or remaining at their residence, place of work, place of formal education, a mode of transport they require (or entering a place reasonably necessary to use it), or 'any other place that the court considers necessary in order to prevent undue hardship to the offender or a member of the offender's family'.[178]

It is an offence to contravene a banning order without reasonable excuse.[179]

A court or authorised police officer can make an order similar to a banning order as a special condition of a person's bail undertaking.[180] Furthermore, a police officer can issue a police banning notice and this is not dependent on a charge being laid.[181]

A sentencing court can make an **exclusion order** under Part 4B of the *Transport Operations (Passenger Transport) Act 1994* (Qld). This is an order of not more than two years' duration prohibiting a person from using the public transport network or restricting the general route services or public transport infrastructure they can use, or the times or periods when they can use the network, or the purpose for which they can use the network.[182] Unlike the two orders above, it can be made in respect of both adults and children.[183]

Two types of offences are relevant: 'relevant offences'[184] and 'transport indictable offences'.[185] These both constitute 'exclusion order offences'.[186]

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175 Ibid s 43I.

176 Ibid s 43J(1).

177 Ibid s 43J(2).

178 Ibid s 43J(5).

179 Ibid s 43O. The maximum penalty is 40 penalty units or one year's imprisonment.

180 *Bail Act 1980* (Qld) s 11(3). A court or authorised police officer must consider the imposition of a special condition if (a) the alleged offence involved the use, threatened use or attempted use of unlawful violence to another person or property; and (b) having regard to the evidence available to the court or the police officer, the court or the police officer is satisfied that the alleged offence was committed in licensed premises or in a public place in the vicinity of licensed premises: s 11(4).

181 See *Police Powers and Responsibilities Act 2000* (Qld) Part 5A.

182 *Transport Operations (Passenger Transport) Act 1994* (Qld) s 129Z.

183 Ibid s 129ZA(1)(b). This purports to apply to children despite the *Youth Justice Act 1992* (Qld) being a Code as regards sentencing children, although it does require the application of the sentencing principles and purposes from the *Penalties and Sentences Act 1992* (Qld) or, if the person is a child, the *Youth Justice Act 1992* (Qld): s 129ZB(1)(a).

184 Various summary transport offences regarding, for instance, interfering with public transport infrastructure, service, vehicle or equipment and transport offences regarding creating a disturbance or nuisance, trespassing on a railway or busway and prescribed fare evasion offences. See *Transport Operations (Passenger Transport) Act 1994* (Qld) sch 3 and s 143AHA(4).

185 An indictable offence, including an indictable offence dealt with summarily, committed on or in public transport infrastructure: Ibid s 129Y.

186 Ibid s 129ZA(1)(a).

The exclusion order can be made 'in addition to any sentence a court may make', but the criteria differ depending on whether the court is sentencing for a relevant offence[187] or transport indictable offence.[188] The difference is that in relation to a relevant offence, there is an additional requirement that:

> (a) the person has been convicted of an exclusion order offence—
>
> (i) at least 1 other time during the last 12 months; or
>
> (ii) at least 2 other times during the last 18 months.[189]

The criteria for each offence is then the same: unless the order is made, the person would pose an unacceptable risk to:

> (i) the good order or management of the public transport network; or
>
> (ii) the safety and welfare of persons using the public transport network.

Hardship considerations must be considered,[190] but it is an offence to contravene an exclusion order without a reasonable excuse.[191]

6.7 Differences in sentencing children

The sentencing of children for assaults on public officers is governed by a different sentencing framework to the PSA.

A child under 10 years is not criminally responsible for any act or omission. A child under 14 years can only be criminally responsible if the prosecution shows the child had the capacity to know they should not do the act or make the omission at the time of doing it.[192]

The *Youth Justice Act 1992* (Qld) (YJA) governs the sentencing of children aged 17 years or younger. The PSA only applies to children to the extent that the YJA allows it to.[193] The YJA creates some different types of sentencing orders for children and has different foundational sentencing principles.[194] This is discussed further in Chapter 10 and Recommendation 10–3.

Children may be sentenced to detention but not imprisonment. A court cannot make a detention order unless it has considered a pre-sentence report,[195] has considered all other available sentences and the desirability of not holding a child in detention and is satisfied no other sentence is appropriate in the circumstances.[196]

In general terms, children sentenced to detention must spend a greater proportion of the head sentence physically in detention when compared to an adult offender serving a period of imprisonment prior to release on parole.

Unless a court makes a specific order, a child sentenced to serve a period of detention must be released from detention after serving 70 per cent of the period. A court may order a child be released from detention after serving 50 per cent or more, and less than 70 per cent if it considers there are special circumstances — for example, to ensure parity of sentence with that imposed on a person involved in the same or related offence. As with the adult regime, there are exceptions (in the case of juveniles, the exceptions relate to terrorism offences).[197]

At the end of the period of applicable physical detention, the Chief Executive of the Department of Youth Justice must make a supervised release order releasing the child from detention.[198] This maintains supervision of the child for the remainder of the head sentence and is similar to parole for adults.

The department can impose and amend conditions. The order must require that the child not break the law, must satisfactorily attend programs as directed, comply with every reasonable direction of the chief executive and report

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187 Ibid s 129ZA(2).
188 Ibid s 129ZA(3).
189 Ibid s 129ZA(2)(a).
190 Ibid s 129ZB.
191 Ibid s 129ZG. The maximum penalty is 40 penalty units or 6 months' imprisonment.
192 *Criminal Code* (Qld) s 29.
193 *Penalties and Sentences Act 1992* (Qld) s 6.
194 *Youth Justice Act 1992* (Qld) s 150.
195 Ibid s 207.
196 Ibid s 208.
197 Ibid s 227.
198 Ibid s 228.

and receive visits as directed, not leave, or stay out of, Queensland without prior approval and that the child or a parent notify of any change of address, employment or school. An order cannot require, or be subject to a condition, that the child must wear a tracking device.[199]

The YJA sets different maximum detention periods from those set in the *Criminal Code*, depending on the level of the sentencing court and seriousness of the offence.

The general sentencing powers are found in section 175 of the YJA. When a child is found guilty of an offence before a court, it may order:[200]

- a reprimand;
- good behaviour order for not longer than one year;
- a fine;
- probation (a magistrate can impose not longer than one year; a judge cannot impose longer than 2 years);
- performance of the obligations of a restorative justice agreement if one was made through a pre-sentence referral;
- participation in a restorative justice process as directed by the chief executive;
- unpaid community service (if the child is aged at least 13 at the time of sentence). Maximum hours are 100 for children aged 13 or 14 at sentence, and 200 hours for children 15 years or older;
- an intensive supervision order of not more than 6 months (if the child has not attained the age of 13 years at the time of sentence);
- detention — with or without conditional release. A magistrate can impose not more than one year. A judge can impose up to the shorter of half the maximum term of imprisonment that an adult convicted of the offence could be ordered to serve; or 5 years.

If an offence is a 'relevant offence' and if the Childrens Court of Queensland (the District Court exercising powers under the YJA, as opposed to a Magistrates Court doing the same) is sentencing the child, then that judge has wider penalty powers. This is because section 176 of the YJA (Sentence orders — life and other significant offences) applies.

A 'relevant offence' means a life offence,[201] or an offence of a type that, if committed by an adult, would make the adult liable to imprisonment for 14 years or more (with the exception of some property and drug offences not relevant here).[202] In other words, both aggravated forms of serious assaults (regarding spitting etc. against police and public officers), GBH, malicious acts and torture are relevant offences due to the maximum penalty that applies to these offences.

While the judge could use one of the section 175 sentencing options, he or she could instead:

- impose probation for up to 3 years; or
- make a detention order for not more than 7 years. (Because it is a life offence, this is different for malicious acts — the judge could impose detention of not more than 10 years; or a period up to and including the maximum of life, if the offence involves the commission of violence against a person and the court considers the offence to be a particularly heinous offence, having regard to all the circumstances).

Mandatory minimum penalties applying to adults do not apply to children. Where a mandatory fixed penalty is set for adults, this is treated as the maximum penalty for children.[203]

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199 Ibid.

200 Some orders can only be imposed against a child if the offence in question is one that would make an adult liable to imprisonment (as the maximum penalty applicable). These are probation, community service and an intensive supervision order — ibid s 175(2). All forms of assault carry a maximum of imprisonment for an adult.

201 An offence for which a person sentenced as an adult would be liable to life imprisonment: ibid sch 4.

202 Ibid s 176(10).

203 Ibid s 155.

As this discussion of the YJA demonstrates, 'the purposes to be achieved when sentencing a [child] of 15 or 16 are not the same as the purposes to be achieved when sentencing a grown [adult] for the same offence'.[204] In the case of a boy sentenced to (in the end, increased) detention for malicious acts, involving colliding a stolen car with a police officer, the Court of Appeal contrasted sentencing adults with children:

> In dealing with the objective circumstances of the offending, it is crucial in this case to bear in mind that it was no part of the prosecution case that Patrick intended to drive the car into [the officer] or that he intended to injure him [the child intended to resist or prevent lawful arrest]. In almost all cases involving adult offenders, when the consequences have been as grave as they are in this case, a lack of intention to cause harm is often of only minor significance for sentencing purposes. When sentencing adult offenders, the plainly foreseeable consequences of offending are often treated as equivalent to intended consequences whether the offender foresaw them or not. However, when dealing with child offenders that simple equivalence is not available. Immaturity in thinking that hampers a child's judgment, as well as a child's lack of experience, means that children often commit offences without being conscious of the potential consequences. For this reason, the moral blameworthiness of a child for the consequences of offending cannot always be the same as that of an adult. The *Youth Justice Act 1992* (Qld) embodies this as a fundamental premise and requires judges to sentence accordingly. Principles 8(b) and 16, which require a sentencing judge to deal with a child in a way that gives an 'opportunity to develop in responsible, beneficial and socially acceptable ways' and in a way that "allows the child to be reintegrated into the community', command a sentencing judge to do what can be done to increase the prospects of diverting the child from the potentially damaging effects of punishment towards education, the learning of self-discipline, the nurturing of an appreciation and an acceptance of social standards and, in due course, successful reintegration with the community.
>
> In this respect, if the aims of the Act are to be understood, it is critical to appreciate that although those aims are to some degree informed by the community's natural tenderness towards children, that is a minor aspect and, for present purposes, it can be put to one side. The real reason for these legislative requirements lies in the Australian community's belief that, until a child has matured into an autonomous adult, whatever a child's current circumstances might be, and whatever offence a child has committed, every child holds within itself the potential for an honourable and productive life. The alternative view, that the child's character is irredeemable, or that painful punishment of children will 'reform' them, is not to be adopted unless and until it is conclusively shown to be justified in an individual case. The Act builds upon this assumption by regulating the punishment of children so as to increase the prospect that the child will not reoffend, not by fear of the pain of punishment, but because successful reintegration of the child into the community has removed the risk of re-offending.[205]

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204 *R v Patrick (a pseudonym)* [2020] QCA 51, 10 [43] (Sofronoff P, Fraser JA and Boddice J agreeing).

205 Ibid 10 [45]–[47].

Chapter 7 How are assaults on public officers dealt with by the courts?

7.1 Introduction

The Terms of Reference ask the Council to consider and analyse the penalties and sentencing trends for offences involving assaults on public officers under section 340 of the *Criminal Code* (Qld) — including the impact of the 2012 and 2014 amendments introducing higher maximum penalties. The Council has also been asked to review other offences involving assaults on public officers in other legislation to assess the suitability of providing for separate offences in different Acts targeting the same offending — including their impact on sentencing outcomes for assaults on public officers.

This chapter presents the Council's findings regarding sentencing outcomes for serious assault under section 340 of the Code and summary offences of assault and obstruct that can be charged under the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA) and *Corrective Services Act 2006* (Qld) (CSA).

7.2 Custodial penalties for assaults of public officers

Section summary

- The use of custodial penalties for assaults on public officers charged under section 340 of the *Criminal Code*, section 790 of the PPRA and section 124(b) of the CSA has increased over the past 10 years.
- Almost all serious assaults of a public officer sentenced in the higher courts over this 10-year period resulted in a custodial penalty being imposed (90.6% of cases, MSO). In the Magistrates Courts, almost two-thirds of cases resulted in a custodial sentence (64.8%).
- The lesser summary offence of assaulting a police officer under section 790 of the PPRA resulted in a custodial penalty in 13.4 per cent of cases; much higher than the 3.4 per cent of cases with custodial outcomes for obstructing a police officer (MSO).
- The summary offence of assaulting or obstructing a corrective services officer under section 124(b) of the CSA almost always resulted in a custodial penalty (84.0% of cases, MSO).
- The average sentence for non-aggravated serious assault in the higher courts was 1.0 years where the victim was a police officer and 0.9 years in circumstances where the victim was a corrective services officer.
- Sentences were shorter in the Magistrates Courts for non-aggravated serious assault, averaging 0.6 years where the victim was a police officer, 0.7 years for assaults on corrective services officers, and 0.4 years for assaults on other public officers.

This section of the chapter explores sentencing outcomes in more detail for offences involving assaults on public officers charged under section 340 of the *Criminal Code*, as well as for offences under the PPRA and CSA.

A different sentencing regime applies to young offenders sentenced in Queensland under the *Youth Justice Act 1992* (Qld) from that which applies to adults sentenced under the PSA (see Chapter 6 for more information). For this reason, the penalties imposed on adult offenders and young offenders are discussed separately.

Throughout this section, the phrase '**relevant serious assaults**' means assaults on police officers under section 340(1)(b), corrective services officers under section 340(2), people performing or who performed a duty at law under sections 340(1)(c)–(1)(d), and other public officers under section 340(2AA). The phrase '**relevant summary offences**' means assaults and obstructions of corrective services staff under section 124(b) of the CSA, resisting a public officer under section 199 of the *Criminal Code* (Qld), and assaulting or obstructing a police officer under section 790 of the PPRA.

7.2.1 Overview of custodial penalties

Relevant serious assaults

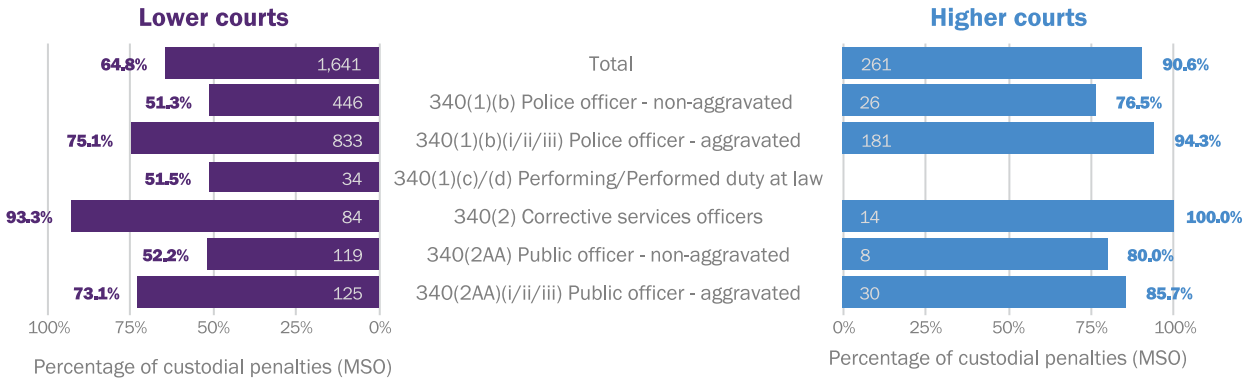
Figure 7-1 shows the percentage of cases in which a custodial penalty was ordered for a relevant serious assault offence (MSO). The data period for this analysis only includes offences committed on or after 5 September 2014, when aggravating circumstances were introduced for serious assault of a public officer.

In the Magistrates Court, a custodial penalty was issued in 64.8 per cent of cases where serious assault of a public officer was the MSO (n=1,641). Almost all serious assaults of a working corrective services officer charged under

section 340(2) resulted in a custodial penalty (93.3%, n=84), which can be explained by the fact that prisoners who commit a serious assault against a corrective services officer are already serving prison sentences. The proportion of custodial penalties was also high for serious assaults of police officers and public officers with circumstances of aggravation. For offences against police officers, 75.1 per cent of serious assaults with circumstances of aggravation resulted in a custodial penalty (n=833); while in the case of public officers, 73.1 per cent of aggravated serious assaults resulted in a custodial penalty (n=125).

In the higher courts, a custodial penalty was issued in 90.6 per cent of cases where serious assault was the MSO (n=261). As expected, all serious assaults of working corrective services officers resulted in a custodial penalty (100%, n=14). For police officers, 94.3 per cent of serious assaults with circumstances of aggravation resulted in a custodial penalty (n=181); for public officers, 85.7 per cent of aggravated serious assaults resulted in a custodial penalty (n=30).

Figure 7-1: Proportion of relevant serious assaults resulting in a custodial penalty (MSO), adult offenders



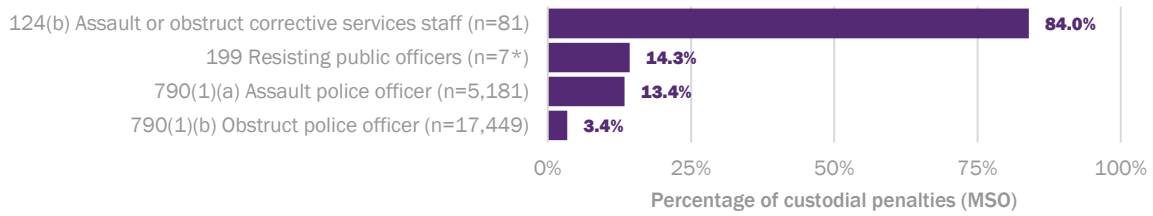
Data include adult offenders, offences occurring on or after 5 September 2014, cases sentenced from 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: In the higher courts, serious assaults on persons performing/performed a duty at law under s 340(1)(c)/(d) were not reported due to small numbers (n=3).

Relevant summary offences

Figure 7-2 shows the proportion of summary offences (involving the assault of a public officer) that resulted in a custodial penalty. The vast majority of these offences (MSO) were sentenced in the Magistrates Courts (99.9%).

The summary offence of assaulting or obstructing a corrective services officer (s 124(b)) was the most likely to result in a custodial penalty, with 84.0 per cent of cases (MSO) resulting in a custodial sentence. For offences under the PPRA, assaults of a police officer were much more likely to result in a custodial penalty than obstructions of a police officer (13.4% and 3.4%, respectively).

Figure 7-2: Proportion of summary offences resulting in a custodial penalty (MSO), adult offenders



Data include higher and lower courts, adult offenders, cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: A small proportion of cases sentenced under s 790 were not included as it was unclear whether they involved an assault or an obstruction (n=761).
(*) Small sample size

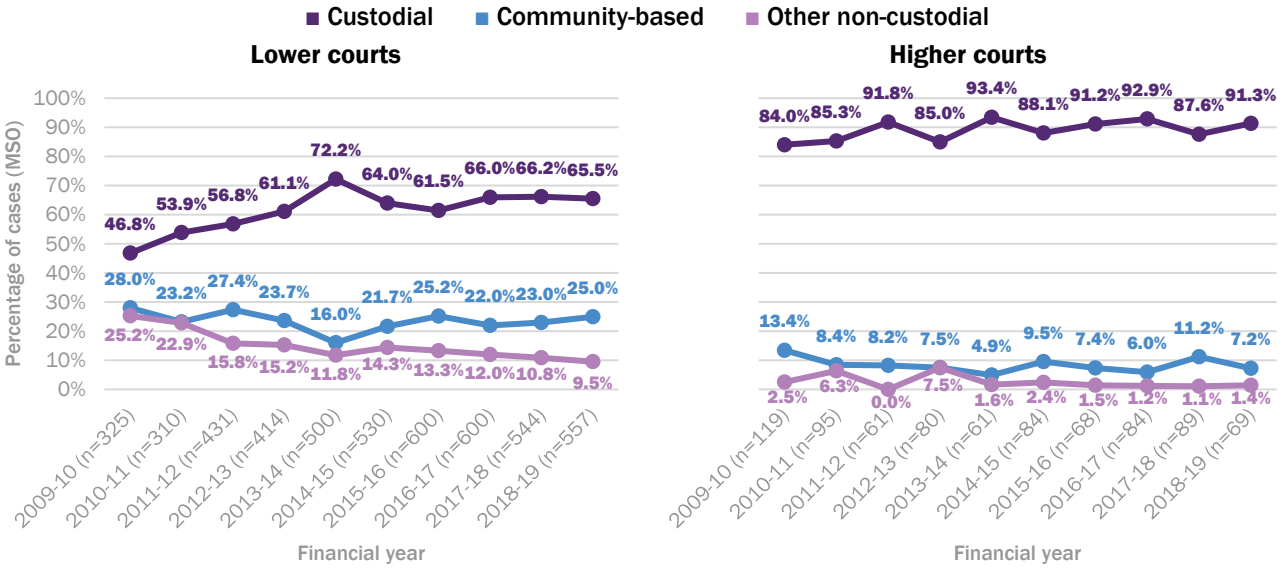
7.2.2 Sentencing trends over time

Relevant serious assaults

Figure 7-3 below shows high-level sentencing trends for relevant serious assaults in the higher and lower courts.

Custodial sentences have become more commonly imposed by Magistrates Courts for section 340 offences, representing under half (46.8%) of penalties in 2009–10, rising to 65.5 per cent in 2018–19. Custodial sentences have also become more common in the higher courts, having increased from 84.0 per cent in 2009–10 to 91.3 per cent in 2018–19. This may partly reflect broader sentencing trends as there was a general increase in the use of custodial penalties across all offence categories in Queensland over this same period.[1]

Figure 7-3: Type of penalties issued for relevant serious assaults over time (MSO)



Data include adult offenders, MSOs sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) 'Custodial' includes imprisonment, partially suspended sentences, wholly suspended sentences, and intensive correction orders. 'Community-based' includes community service and probation. 'Other non-custodial' includes monetary orders (including fines, restitution, and compensation), good behaviour bonds, and convicted not further punished.
(2) Includes serious assaults that involved a public officer, including s 340(1)(b) police officers, s 340(1)(c) person performing a duty imposed by law, s 340(1)(d) person who performed a duty imposed by law, s 340(2) corrective services officers, s 340(2AA) public officers.

[1] Queensland Sentencing Advisory Council, *Community-based Sentencing Orders, Imprisonment and Parole Options* (Final Report, July 2019) 17.

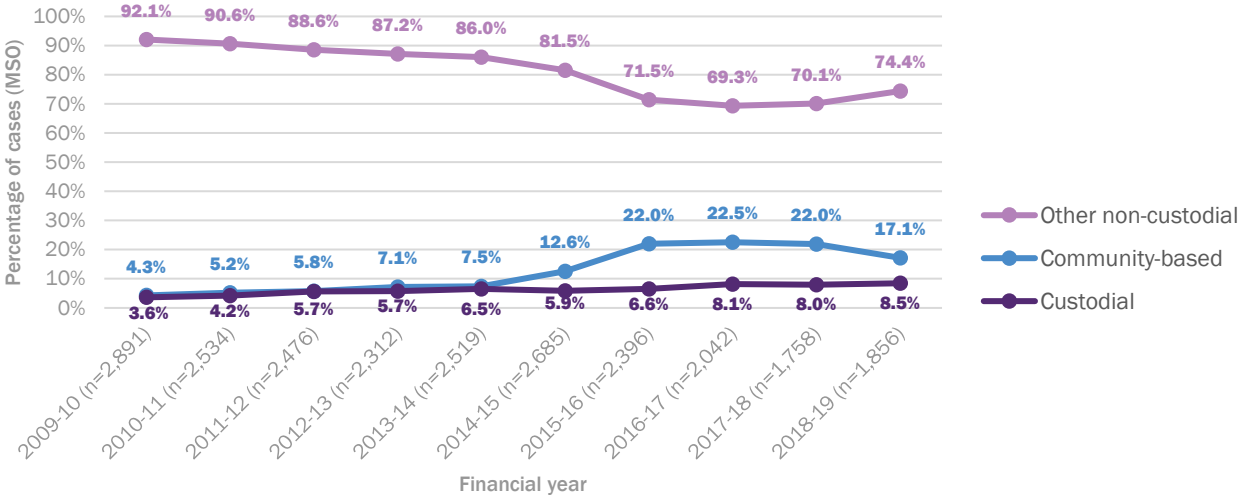
Relevant summary offences

Figure 7-4 shows high-level sentencing trends for relevant summary offences for assault of a public officer in the Magistrates Courts.

For these offences, the most common penalty was consistently a non-custodial penalty (excluding community-based orders such as probation and community service) — this category includes monetary orders and good behaviour orders. However, the proportion of community-based orders has increased over the 10-year data period, from 4.3 per cent of penalties in 2009–10 to 17.1 per cent of penalties in 2018–19. This increase has corresponded with a decrease in 'other non-custodial' orders, including monetary penalties and good behaviour bonds.

Custodial penalties have consistently been the least commonly issued in the Magistrates Courts for relevant summary offences. The use of these penalties has increased slightly, from 3.5 per cent of penalties in 2009–10 to 8.5 per cent in 2018–19.

Figure 7-4: Type of penalties issued for relevant summary offences over time (MSO)



Data include Magistrates Courts, adult offenders, cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) 'Custodial' includes imprisonment, partially suspended sentences, wholly suspended sentences, and intensive correction orders. 'Community-based' includes community service and probation. 'Other non-custodial' includes monetary orders (including fines, restitution, and compensation), good behaviour bonds, and convicted not further punished.
(2) Includes summary offences involving the assault of a public officer: ss 790, 199, and 124(b).

7.2.3 Length of custodial penalties for assaults of public officers

This section provides an overview of the custodial sentencing outcomes for offences that involve the assault of a public officer. Due to the legislative amendments to the offence of serious assault over the past 10 years, the analysis in this section is divided into three categories: assaults of police officers, assaults of corrective services officers, and assaults of other public officers. The date ranges are different for each category.

Data on police officers only include offences occurring on or after 29 August 2012, as this was the date that the aggravated serious assault of a police officer was introduced. Similarly, data on serious assault of a public officer has been analysed from the date that aggravating circumstances were introduced for the serious assault of a public officer — 5 September 2014. For corrective services officers, the analysis is based on the full 10-year data period from 2009–10 to 2018–19.

Police officers

Table 7-1 shows the proportion of custodial penalties ordered for different types of assault offences committed on police officers. It includes offences committed on or after 29 August 2012.

In the higher courts, almost all cases involving the aggravated serious assault of a police officer resulted in a custodial penalty (94.9%), with assaults involving bodily fluids receiving the highest proportion of custodial penalties (97.0% of cases). For non-aggravated serious assaults of police officers, four in five cases resulted in a custodial penalty (79.1%), with an average sentence of 12 months.

In the Magistrates Courts, half of all non-aggravated serious assaults of a police officer resulted in a custodial penalty (52.6%), with an average custodial length of 0.6 years. For cases involving aggravating circumstances, three-quarters of cases resulted in a custodial penalty (75.9%), with a higher average sentence length of 0.7 years.

Offenders sentenced under section 790(1)(b) of the PPRA for the obstruction of a police officer were unlikely to receive a custodial penalty, with only 4.0 per cent of cases (in the Magistrates Courts) resulting in a custodial outcome (MSO). For cases involving the assault of a police officer under section 790(1)(a) of the PPRA, a custodial outcome was more likely, with 14.4 per cent of cases resulting in a custodial sentence.

Table 7-1: Sentencing outcomes for assault of a police officer by assault type (MSO), adult offenders

Section number	Offence description	N (MSO)	Proportion of sentences that are custodial	Average length of custodial penalties (years)	Median length of custodial penalties (years)
Higher courts					
790(1)	Assault or obstruct police officer	7*	-	-	-
340(1)(b)	Police officer — non-aggravated	67	79.1%	1.0	0.8
340(1)(b)(i/ii/iii)	**Police officer — aggravated**	**293**	**94.9%**	**1.2**	**1.0**
340(1)(b)(i)	Police officer — bodily fluid	168	97.0%	0.9	0.8
340(1)(b)(ii)	Police officer — bodily harm	88	92.0%	1.3	1.0
340(1)(b)(iii)	Police officer — armed	37	91.9%	2.1	2.0
Magistrates Courts					
790(1)(a)	Assault police officer	3,369	14.4%	0.3	0.3
790(1)(b)	Obstruct police officer	10,950	4.0%	0.2	0.2
340(1)(b)	Police officer — non-aggravated	1,219	52.6%	0.6	0.5
340(1)(b)(i/ii/iii)	**Police officer – aggravated**	**1,564**	**75.9%**	**0.7**	**0.5**
340(1)(b)(i)	Police officer — bodily fluid	822	82.4%	0.6	0.5
340(1)(b)(ii)	Police officer — bodily harm	443	69.1%	0.7	0.7
340(1)(b)(iii)	Police officer — armed	299	68.2%	0.7	0.5

Data include adult offenders, offences occurring on or after 29 August 2012, cases sentenced from 2012–13 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) A small proportion of cases sentenced under s 790 were not included as it was unclear whether they involved an assault or an obstruction (n=427).
(*) Small sample sizes

Corrective services officers

Table 7-2 shows the proportion of custodial penalties ordered for offenders who assaulted a corrective services officer. Section 7.4 of this chapter explores the number of these custodial penalties that were to be served cumulatively on top of an existing custodial sentence.

In the higher courts, all offenders (n=35; 100.0%) sentenced for the serious assault of a corrective services officer under section 340(2) of the *Criminal Code* (MSO) received a custodial penalty, with an average length of 0.9 years. In the Magistrates Courts, almost all offenders sentenced for serious assault received a custodial penalty (n=167; 94.0%), with an average sentence length less than the higher courts at 0.7 years.

Almost all cases involving the assault or obstruction of a corrective services officer under section 124(b) were sentenced in the Magistrates Courts. Of these, 83.8 per cent received a custodial penalty with an average length of 0.2 years.

Table 7-2: Sentencing outcomes for assault of a corrective services officer by assault type (MSO), adult offenders

Section number	Offence description	N (MSO)	Proportion of sentences that are custodial	Average length of custodial penalties (years)	Median length of custodial penalties (years)
Higher courts					
124(b)	Assault/obstruct corrective services staff	1*	-	-	-
340(2)	Corrective services officer	35	100.0%	0.9	0.8
Magistrates Courts					
124(b)	Assault/obstruct corrective services staff	80	83.8%	0.2	0.3
340(2)	Corrective services officer	167	94.0%	0.7	0.5

Data include adult offenders, cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: (*) Small sample sizes

Public officers

Table 7-3 shows the sentencing outcomes for different offences involving the assault of a public officer, for offences committed on or after 5 September 2014.

In the higher courts, due to the small number of cases sentenced, there are few offences that can be analysed. Custodial penalties were issued for the majority of offenders who were sentenced for aggravated serious assault of a public officer (85.7%), with an average sentence length of 0.7 years.

In the Magistrates Courts, 73.1 per cent of offenders sentenced for the aggravated serious assault of a public officer received a custodial penalty, with an average length of 0.6 years. Non-aggravated serious assault and the serious assault of a person who performed, or was performing, a duty at law had similar percentages of custodial orders (52.2% and 51.5%, respectively), with an average length of 0.7 years.

Table 7-3: Custodial sentencing outcomes for assaults against public officers (MSO), adult offenders

Section number	Offence description	N	Proportion of sentences that are custodial	Average length of custodial penalties (years)	Median length of custodial penalties (years)
Higher courts					
199	Resisting public officers	0			
340(1)(c)/(d)	Performing/performed duty at law	3*	-	-	-
340(2AA)	Public officer — non-aggravated	10*	-	-	-
340(2AA)(i/ii/iii)	**Public officer — aggravated**	**35**	**85.7%**	**0.7**	**0.8**
340(2AA)(i)	Public officer — bodily fluid	26	88.5%	0.7	0.8
340(2AA)(ii)	Public officer — bodily harm	8*	-	-	-
340(2AA)(iii)	Public officer — armed	1*	-	-	-
Magistrates Courts					
199	Resisting public officers	6*	-	-	-
340(1)(c)/(d)	Performing/performed duty at law	66	51.5%	0.5	0.5
340(2AA)	Public officer — non-aggravated	228	52.2%	0.4	0.4
340(2AA)(i/ii/iii)	**Public officer — aggravated**	**171**	**73.1%**	**0.6**	**0.5**
340(2AA)(i)	Public officer — bodily fluid	99	78.8%	0.6	0.5
340(2AA)(ii)	Public officer — bodily harm	56	62.5%	0.6	0.5
340(2AA)(iii)	Public officer — armed	16*	-	-	-

Data include adult offenders, offences occurring on or after 5 September 2014, cases sentenced from 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: (*) Small sample size

7.3 Detailed sentencing outcomes for assaults of public officers

Section summary

- For adult offenders in both the higher and lower courts, imprisonment was the most common penalty type for serious assault offences analysed (MSO).
- Suspended sentences were ordered in 7.1 to 31.5 per cent of cases (MSO), depending on the type of offence.
- A monetary penalty was most common for the lesser summary offence of assaulting (48.7% of cases) or obstructing (65.2% of cases) police officers, with an average penalty amount of $620.80 for assaults, and $414.50 for obstructions.
- For young offenders, community-based orders (including probation and community service) were the most common type of penalty imposed for serious assaults, with an average length of 8 to 9 months for probation and 50 to 80 hours for community service.
- For the summary offence of obstructing a police officer, over half of young people were reprimanded.

Figure 7-5 and Figure 7-6 (over the page) provide a breakdown of the penalties for adult and young offenders, respectively. The cells shaded darker indicate a higher proportion of cases received this sentencing outcome. Data have been presented for offences that specifically deal with the assault of a public officer, including serious assaults, and the corresponding summary offences, where applicable. For adult offenders, some sentences of imprisonment have been displayed separately and labelled as 'immediate release'; these include sentences of imprisonment with immediate release on court ordered parole, or where the entirety of the sentence was fully served as declared pre-sentence custody, or where the defendant was sentenced to the rising of the court.

As discussed in Chapter 6, a community service order is mandatory for offences occurring in certain prescribed circumstances, which must be ordered in addition to any other sentence imposed. However, the figures presented in this section relate only to the MSO sentenced. The MSO is the offence at a court event receiving the most serious penalty, as ranked by the classification scheme used by the Australian Bureau of Statistics. For this reason, if a community service order was ordered alongside a custodial sentence, the community service order will not appear as a relevant sentencing outcome. The number of community sentencing orders reported in this section is therefore likely to be an undercount. The use of mandatory community sentencing orders is discussed in Chapter 10.

Across both the higher courts and the lower courts, imprisonment was the most common type of penalty ordered for adult offenders who committed one of the serious assault offences analysed. The proportion was highest for the serious assault of a corrective services officer, where 92.9 per cent of cases in the higher courts, and 85.6 per cent of cases in the lower courts resulted in an unsuspended term of imprisonment. Section 7.4 of this chapter explores the number of these custodial penalties that resulted in a cumulative penalty.

A suspended sentence of imprisonment was ordered in 7.1 per cent to 31.5 per cent of cases, depending on the type of offence. The serious assault of a corrective services officer was the least likely to result in a suspended sentence (7.8% in the Magistrates Courts, 7.1% in the higher courts). The serious assault of a public officer or a police officer with circumstances of aggravation was the most common offence to result in a suspended sentence — in many cases these were partially suspended sentences, with time served in prison. The Council has previously flagged shortcomings in the administrative data, which mean that some sentences recorded as being 'wholly suspended' may instead be partially suspended — often where time served on remand is declared as time served and the sentence is suspended from the date of sentence. For this reason, the numbers of sentences involving actual time being served in custody may in fact be higher.

A community-based sentence (either a probation order or community service order) was most commonly ordered in the lower courts for the summary offence of assaulting a police officer (28.3%), or for non-aggravated serious assault of a police officer (30.4%) or a public officer (25.9%).

A monetary penalty was most commonly imposed in the lower courts for the summary offences of obstructing a police officer (65.2%) or assaulting a police officer (48.7%).

Young people

Due to the small number of young offenders sentenced in the higher courts (n=21, 2.4%), the data from the lower courts and higher courts are reported together in this section.

A detention order was used more frequently for serious assaults of public officers (30.0% non-aggravated, 38.5% bodily fluid, 28.6% bodily harm) than for serious assaults of police officers (17.5% non-aggravated, 12.7% bodily fluid, 21.8% bodily harm, 16.7% armed). As was discussed in section 3.2.1 of Chapter 3, the majority of public officers assaulted by young people are detention centre workers, which explains the higher proportion of custodial penalties.

Community-based orders were the most common penalty for young people who committed a serious assault. Probation was the most frequently used penalty for the serious assault of both police officers and public officers.

The summary offence of obstructing a police officer most frequently resulted in a reprimand (56.6%); whereas the offence of assaulting a police officer was considerably lower (27.5%) and had a higher proportion of custodial and community-based sentences.

Figure 7-5: Type of penalties issued for relevant offences by assault type (MSO), adult offenders

Adults

Section	Offence	N	Imprisonment	Imprisonment (Immediate release)	Partially suspended	Wholly suspended	Intensive correction order	Community service	Probation	Good behaviour, recognisance	Monetary	Convicted, not further punished
			Custodial penalties					Non-custodial penalties				
Magistrates Courts												
340(1)(b)	Serious assault - Police officer (non-aggravated)	869	12.5%	19.4%	2.8%	14.5%	2.1%	12.0%	18.4%	16.6%	1.4%	0.3%
340(1)(b)(i)	Serious assault - Police officer (bodily fluid)	575	26.3%	26.4%	4.2%	23.5%	1.7%	5.2%	9.7%	3.0%	0.0%	0.0%
340(1)(b)(ii)	Serious assault - Police officer (bodily harm)	325	23.1%	22.5%	2.8%	18.5%	0.9%	11.1%	13.2%	7.1%	0.3%	0.6%
340(1)(b)(iii)	Serious assault - Police officer (armed)	209	20.6%	28.7%	1.9%	15.3%	1.0%	5.3%	21.5%	5.3%	0.5%	0.0%
340(2)	Serious assault - Corrective services officer	90	66.7%	18.9%	2.2%	5.6%	0.0%	0.0%	1.1%	3.3%	0.0%	2.2%
340(2AA)	Serious assault - Public officer (non-aggravated)	228	10.1%	18.4%	3.1%	20.6%	0.0%	11.4%	14.5%	17.5%	3.9%	0.4%
340(2AA)(i)	Serious assault - Public officer (bodily fluid)	99	26.3%	33.3%	6.1%	12.1%	1.0%	4.0%	11.1%	5.1%	1.0%	0.0%
340(2AA)(ii)	Serious assault - Public officer (bodily harm)	56	21.4%	23.2%	1.8%	16.1%	0.0%	7.1%	25.0%	3.6%	1.8%	0.0%
340(2AA)(iii)	Serious assault - Public officer (armed)	16	31.3%	18.8%	12.5%	12.5%	0.0%	0.0%	18.8%	6.3%	0.0%	0.0%
124(b)	Assault or obstruct corrective services staff	50	34.0%	30.0%	2.0%	18.0%	0.0%	0.0%	0.0%	8.0%	0.0%	8.0%
790(1)(a)	Assault police officer	2,232	2.5%	4.7%	0.4%	6.4%	0.2%	16.8%	11.4%	48.7%	7.5%	1.3%
790(1)(b)	Obstruct police officer	7,251	0.9%	1.4%	0.1%	2.0%	0.0%	15.3%	2.0%	65.2%	9.1%	4.0%
655A	Assault or obstruct watch-house officer	6*	-	-	-	-	-	-	-	-	-	-
199	Resisting public officers	6*	-	-	-	-	-	-	-	-	-	-
Higher courts												
340(1)(b)	Serious assault - Police officer (non-aggravated)	34	20.6%	38.2%	2.9%	14.7%	0.0%	5.9%	14.7%	0.0%	2.9%	0.0%
340(1)(b)(i)	Serious assault - Police officer (bodily fluid)	111	18.0%	45.0%	11.7%	19.8%	2.7%	0.9%	0.9%	0.0%	0.9%	0.0%
340(1)(b)(ii)	Serious assault - Police officer (bodily harm)	58	25.9%	44.8%	5.2%	10.3%	3.4%	3.4%	6.9%	0.0%	0.0%	0.0%
340(1)(b)(iii)	Serious assault - Police officer (armed)	23	34.8%	39.1%	8.7%	8.7%	0.0%	0.0%	8.7%	0.0%	0.0%	0.0%
340(2)	Serious assault - Corrective services officer	14	64.3%	28.6%	7.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
340(2AA)	Serious assault - Public officer (non-aggravated)	10	30.0%	20.0%	0.0%	30.0%	0.0%	10.0%	10.0%	0.0%	0.0%	0.0%
340(2AA)(i)	Serious assault - Public officer (bodily fluid)	26	11.5%	50.0%	7.7%	19.2%	0.0%	3.8%	3.8%	0.0%	3.8%	0.0%
340(2AA)(ii)	Serious assault - Public officer (bodily harm)	8*	-	-	-	-	-	-	-	-	-	-
340(2AA)(iii)	Serious assault - Public officer (armed)	1*	-	-	-	-	-	-	-	-	-	-
124(b)	Assault or obstruct corrective services staff	0	-	-	-	-	-	-	-	-	-	-
790(1)(a)	Assault police officer	0	-	-	-	-	-	-	-	-	-	-
790(1)(b)	Obstruct police officer	5*	-	-	-	-	-	-	-	-	-	-
655A	Assault or obstruct watch-house officer	0	-	-	-	-	-	-	-	-	-	-
199	Resisting public officers	0	-	-	-	-	-	-	-	-	-	-

Data include adult offenders, offences occurring on or after 5 September 2014, cases sentenced from 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) 'Imprisonment (Immediate release)' includes where the defendant was immediately released on parole, or where the entirety of the sentence was served by way of declared pre-sentence custody, or those sentenced to the rising of the court.
(2) A small proportion of s 790 PPRA cases were excluded as they couldn't be classified as an assault or an obstruction (n=281).
(*) Small sample sizes

Figure 7-6: Type of penalties issued for relevant offences by assault type (MSO), young people

Young people

Section	Offence	N	Custodial penalties			Non-custodial penalties						
			Detention	Conditional release order	Boot camp order	Intensive supervision order	Community service	Probation	Monetary	Good behaviour, recognisance	Court ordered conference	Reprimand
340(1)(b)	Police officer	114	7.9%	9.6%	0.0%	0.0%	16.7%	36.8%	0.0%	11.4%	10.5%	7.0%
340(1)(b)(i)	Police officer - bodily fluid	118	3.4%	8.5%	0.8%	0.0%	16.9%	55.1%	0.0%	9.3%	5.1%	0.8%
340(1)(b)(ii)	Police officer - bodily harm	55	10.9%	10.9%	0.0%	0.0%	10.9%	38.2%	0.0%	14.5%	14.5%	0.0%
340(1)(b)(iii)	Police officer - armed	30	16.7%	0.0%	0.0%	0.0%	26.7%	30.0%	0.0%	16.7%	3.3%	6.7%
340(2)	Corrective services officer	3*	-	-	-	-	-	-	-	-	-	-
340(2AA)	Public officer	10	20.0%	10.0%	0.0%	0.0%	10.0%	20.0%	0.0%	0.0%	10.0%	30.0%
340(2AA)(i)	Public officer - bodily fluid	39	20.5%	17.9%	0.0%	2.6%	12.8%	25.6%	0.0%	5.1%	12.8%	2.6%
340(2AA)(ii)	Public officer - bodily harm	14	14.3%	14.3%	0.0%	0.0%	14.3%	28.6%	0.0%	7.1%	21.4%	0.0%
340(2AA)(iii)	Public officer - armed	7*	-	-	-	-	-	-	-	-	-	-
124(b)	Assault or obstruct corrective services staff	0	-	-	-	-	-	-	-	-	-	-
790(1)(a)	Assault police officer	211	3.3%	5.2%	0.0%	0.0%	10.4%	19.0%	0.5%	18.0%	16.1%	27.5%
790(1)(b)	Obstruct police officer	251	0.0%	0.8%	0.4%	0.0%	7.6%	4.8%	1.6%	21.1%	7.2%	56.6%
655A	Assault or obstruct watch-house officer	0	-	-	-	-	-	-	-	-	-	-
199	Resisting public officers	0	-	-	-	-	-	-	-	-	-	-

Data include lower and higher courts, young offenders, offences occurring on or after 5 September 2014, cases sentenced from 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) Boot camp orders were introduced on 31 January 2013 and were repealed from 1 July 2016. The orders were available in a limited number of geographic locations.
(2) A small proportion of s 790 PPRA cases were excluded as they couldn't be classified as an assault or an obstruction (n=22).
(*) Small sample sizes

7.3.1 Sentence length and fine amount for relevant offences

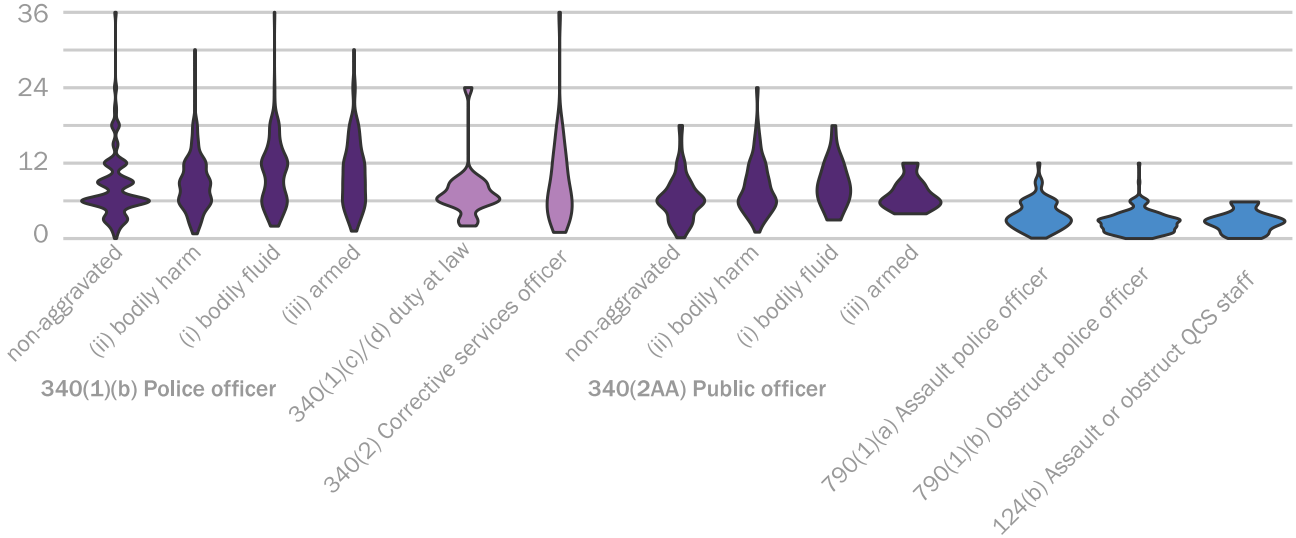
Table A4-13 in Appendix 4 details the sentence lengths and, where relevant, fine amounts for adults who were sentenced for serious assault of a public officer and relevant summary offences.

In the higher courts, the average imprisonment sentence varied considerably. The longest average imprisonment sentence was 29.6 months for the armed serious assault of a police officer, with a maximum sentence of 5 years for this offence. Serious assault of a police officer, which caused bodily harm, was also relatively high, with an average of 17.5 months' imprisonment. Other forms of serious assault sentenced in the higher courts averaged about 12 months' imprisonment.

Due to the higher volume of cases sentenced, it was possible to visualise the distribution of imprisonment sentences in the Magistrates Courts — see Figure 7-7 below. The dark purple shapes, which represent the serious assault of a police officer or a public officer, illustrate that cases with circumstances of aggravation generally receive longer penalties. The serious assault of a police officer with bodily harm or while armed received, on average, the longest imprisonment sentences (10.1 months and 10.3 months, respectively), whereas the non-aggravated assault of a police officer received 8.0 months' imprisonment, on average. Similarly, the serious assault of a public officer with bodily harm or bodily fluid received, on average, 8.6 months' and 8.1 months' imprisonment, respectively — somewhat higher than the 6.4 months' average imprisonment sentenced for the non-aggravated serious assault.

The serious assault of a corrective services officer received an average of 8.8 months' imprisonment, which was relatively high compared with serious assaults of public officers and police officers. The summary offences of assaulting or obstructing a police officer or a corrective services officer all received sentences of less than one year, averaging 3.7 months, 2.6 months, and 2.9 months, respectively — see Table A4-13 in Appendix 4.

Figure 7-7: Distribution of imprisonment lengths for relevant offences in the Magistrates Courts



Data include adult offenders, MSO, Magistrates Courts, offences occurring on or after 5 September 2014, cases sentenced from 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

As discussed above, community service orders were not used very frequently compared to other types of penalties. The summary offence of assaulting a police officer resulted in, on average, 61.7 hours of community service, which was slightly higher than the offence of obstructing a police officer, which itself resulted in 45.5 hours of community service on average — slightly higher than the legislative minimum penalty of 40 hours. Where community service was ordered for a serious assault, the penalties were higher on average. Non-aggravated serious assault resulted in an average of 85.0 hours for police officers, and 88.3 hours for public officers. Aggravated serious assaults had longer penalties again, with an average length of over 100 hours for all types of aggravated serious assault.

Monetary penalties were most commonly used for the summary offences of assaulting or obstructing a police officer. Under section 790, the maximum penalty is a fine of $5,338 (40 penalty units) or 6 months' imprisonment — this is increased to a fine of $8,007 (60 penalty units) or 12 months' imprisonment if the offence is committed within, or in the vicinity of, licensed premises. The average offender was required to pay $620.80 for assaulting and $414.50 for obstructing a police officer. Monetary penalties were not common for serious assault; however, the small proportion of cases that did receive a fine resulted in average amounts of $730 to $1,500, depending on the category of serious assault — with a maximum penalty of $6,800.

Table A4-14 in Appendix 4 contains a breakdown of the sentence lengths and fine amounts for young offenders. It should be read in conjunction with Figure 7-6 earlier in this chapter, which showed the proportion of each type of penalty sentenced.

When the number of young people sentenced for assaulting a public officer is broken down by offence and penalty type, the number of cases is relatively small. Many of the categories in Table 7-5 have been flagged as having a small number of cases, and caution is advised when interpreting the results.

On average, when a young person was sentenced to detention for a serious assault, they received approximately 5 months' detention, with some variation based on the type of serious assault. The aggravated serious assault of a public officer under section 340(2AA) received longer penalties, averaging 9.1 months of detention. For young people who were sentenced to detention but were immediately released into a structured program with strict conditions (a conditional release order), the sentence length was, on average, a little less than three years for aggravated serious assaults.

The length of community service orders varied considerably depending on the type of offence charged. The obstruction of a police officer resulted in the shortest community service orders, with an average of 28.2 hours. The summary offence of assaulting a police officer resulted in longer orders at 46.6 hours on average. The non-aggravated serious assault of a police officer had similar penalty lengths, at 51.1 hours on average. The aggravated serious assault of a police officer or a public officer ranged from an average of 57.5 hours (serious assault of a police officer with bodily fluid) to 81.7 hours (serious assault of a police officer with bodily harm) — however, the sample sizes in some of these categories were small.

Probation was one of the most commonly used orders for young people who assaulted a public officer. Serious assaults of police officers ranged from an average of 8.3 months for non-aggravated offences up to an average of

9.7 months for armed serious assaults. The summary offences of assaulting or obstructing a police officer had shorter probation sentences, with an average of 7.2 months for assaulting a police officer and 6.7 months for obstructing a police officer.

7.4 Cumulative penalties for assaults of corrective services officers

Section summary

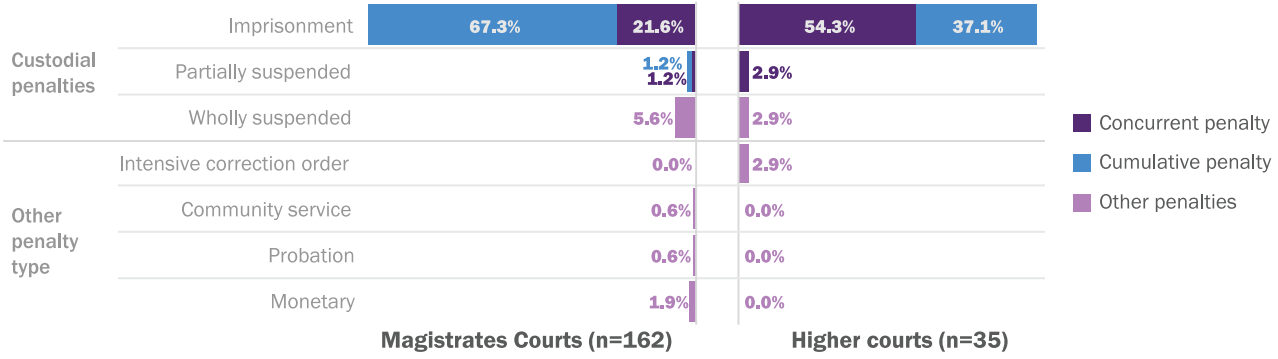
- In the Magistrates Courts, over two-thirds of sentences for serious assault of a corrective services officer sentenced under section 340(2) of the *Criminal Code* were ordered to be served cumulatively (one after the other) (68.5% of cases). In the higher courts, this figure was lower at 37.1 per cent of cases.
- For the summary offence of assaulting or obstructing a corrective services officer under section 124(b) of the CSA, 47.2 per cent of sentences were cumulative terms of imprisonment.

If a prisoner is serving a term of imprisonment, or has been released on parole, then in some situations any additional sentence of imprisonment must be served cumulatively (one after the other) with any other term of imprisonment that person is liable to serve. This applies to offenders convicted of a listed offence (or of counselling, procuring, attempting or conspiring to commit it), including wounding, AOBH, serious assault, GBH, torture, and acts intended to cause GBH and other malicious acts.[2]

While a cumulative penalty is mandatory for serious assault offences committed while a person is serving a term of imprisonment (including where released on parole),[3] this can only be applied if the offender is serving, or liable to serve, a term of imprisonment for a different offence. Figure 7-8 shows that, in the higher courts, over one-third of cases sentenced for serious assault of a corrective services officer (MSO) received a cumulative prison sentence. A further 60 per cent received a concurrent prison sentence, either time to be served or suspended, and 2.9 per cent received an intensive correction order.

In the Magistrates Courts, over two-thirds of cases sentenced for serious assault of a corrective services officer (MSO) received a cumulative prison sentence, a much higher proportion than in the higher courts, where 37.1 per cent of penalties were cumulative. This may be because cases progress faster in the lower courts, increasing the likelihood of the offender still serving an earlier imposed prison sentence at the time of being sentenced for the offence. A further 28.4 per cent received a (concurrent) custodial penalty, primarily a prison sentence to be served, and 3.1 per cent received a non-custodial penalty.

Figure 7-8: Cumulative penalties for s 340(2) serious assault or obstruct corrective services officer (MSO)



Data include adult offenders, MSO, sentenced 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

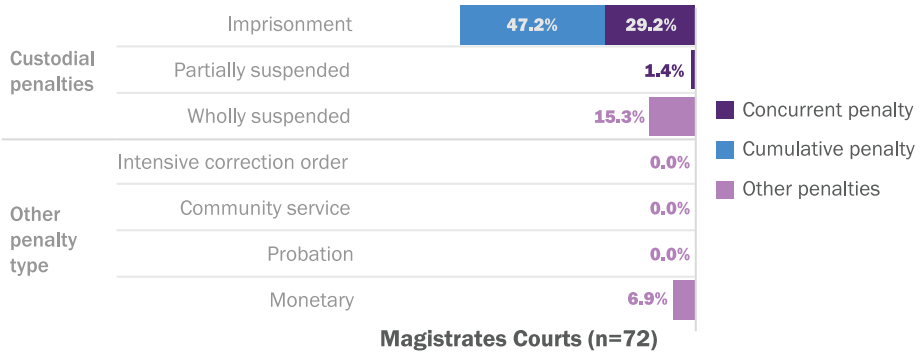
2 *Penalties and Sentences Act 1992* (Qld) s 156A and Schedule 1.

3 Ibid s 156A.

As shown in Figure 7-9, in the Magistrates Courts nearly half (47.2%) of cases sentenced for assaulting or obstructing a corrective services staff member (MSO; s 124(b)) received a cumulative prison sentence. A further 45.9 per cent received a concurrent prison sentence, primarily an imprisonment sentence with time served (29.2%). A small proportion (6.9%) received a monetary penalty.

Only one case that was sentenced in the higher courts for assaulting or obstructing a corrective services staff member (MSO) received a cumulative prison sentence (has not been presented in Figure 7-9).

Figure 7-9: Cumulative penalties for s 124(b) assault or obstruct corrective services staff (MSO), Magistrates Court



Data include adult offenders, MSO, Magistrates Courts, sentenced 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

7.5 Impact of introduction of statutory circumstances of aggravation on sentencing

Section summary

- It is difficult to tell whether penalties for the same type of offending increased following the introduction of aggravating factors that carry a higher 14-year maximum penalty, due to a lack of data recorded on the circumstances of offending for offences prior to the legislative amendments.
- The introduction of the aggravating factors does appear, however, to have had an effect, with offences with aggravating circumstances receiving increased sentences compared to orders made prior to these legislative amendments. Non-aggravated offences, on the other hand, attracted lower penalties following the amendments.
- There was no change in sentencing outcomes for young offenders following the legislative amendments.

From 29 August 2012 (for police officers) it became a statutory circumstance of aggravation to assault a police officer by biting, spitting on, throwing at, or applying bodily fluid or faeces to, or causing bodily harm to a police officer or, at the time of the assault, being or pretending to be armed – with the maximum penalty for a serious assault committed in these circumstances being 14 years' imprisonment. The same circumstances of aggravation and associated maximum penalty were introduced for public officers from 5 September 2014. For juvenile offenders the maximum penalty for the aggravated form of the offence is instead 7 years' detention. The maximum penalty is 3.5 years' detention for a non-aggravated serious assault committed by a child (but only if the child is before a higher court). In the lower courts, a jurisdictional limit of one year's detention applies, for any offence.[4]

For a discussion on the number of cases sentenced under these provisions, refer to section 4.6 of Chapter 4.

Table 7-4 compares the penalties issued for the serious assault of a police officer (MSO) prior to the introduction of these statutory circumstances of aggravation, to the penalties issued following the introduction of these changes.

In the Magistrates Courts, prior to the introduction of this new aggravated form of serious assault, just over half of adult offenders (52.3%) received a custodial penalty for serious assault of a police officer, with an average sentence length of 0.5 years. When statutory aggravating circumstances were introduced, penalties for cases without

4 See *Youth Justice Act 1992* (Qld) s 176 regarding the 7-year maximum penalty. This can only be imposed by a judge, not a magistrate. See s 175 regarding the 3.5-year maximum regarding serious assault simpliciter offences (if the sentence is imposed by a judge) and 1-year maximum penalty available to magistrates generally. The differences in sentencing juvenile offenders are discussed in Chapter 6.

aggravating circumstances remained relatively unchanged. Cases with aggravating circumstances, however, were more likely to receive a custodial penalty with over three-quarters resulting in a custodial sentence (77.9%) — representing an almost 50 per cent increase in the use of custodial penalties (48.9%) — and to attract slightly longer sentences at 0.7 months, on average.

In the higher courts, prior to the introduction of the statutory aggravating circumstances, 85.7 per cent of offenders received a custodial sentence with an average penalty length of 0.8 years. Following the introduction of the aggravating circumstances, cases that did not have aggravating circumstances resulted in slightly lower penalties, with 80.0 per cent of these cases resulting in a custodial penalty, with an average length of 1.0 years. Almost all cases sentenced that had a circumstance of aggravation resulted in a custodial sentence (95.5%), and the average penalty length was longer at 1.2 years.

Table 7-4: Custodial sentences for serious assaults against police officers (MSO) before and after the introduction of aggravating circumstances, adult offenders

	2009–10 to 2011–12		2013–14 to 2015–16	
Type of serious assault of a police officer — s 340(1)(b)	**% custodial**	**Avg length (years)**	**% custodial**	**Avg length (years)**
Higher courts				
Prior to aggravating circumstances (n=252)	85.7	0.8		
Non-aggravated (n=30)			80.0	1.0
Aggravated (n=132)			95.5	1.2
Magistrates Courts				
Prior to aggravating circumstances (n=905)	52.3	0.5		
Non-aggravated (n=580)			55.6	0.5
Aggravated (n=738)			77.9	0.7

Data include adult offenders, MSO.
Data exclude 55 cases where the offence occurred prior to 29 August 2012 but was sentenced in 2013–14 or later (32 cases in the Magistrates Courts and 23 cases in the higher courts).
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

While the figures above suggest that the introduction of aggravating circumstances has led to an increase in the use of custodial penalties and longer terms of imprisonment being imposed, it is not possible to identify with any certainty the extent to which sentences increased for those offences with aggravating features by comparing sentencing outcomes before and after the commencement of these changes. This is because, prior to these changes coming into effect, the acts of biting, spitting on, or throwing or applying a bodily fluid or faeces, whether or not the victim suffered bodily harm, and the presence of a dangerous or offensive weapon or instrument were not separately identified under the offence provision, and therefore not recorded for statistical reporting purposes. The sentencing outcomes for cases with these aggravating features is therefore unknown.

Further, it is possible that the creation of these new statutory circumstances of aggravation carrying a higher maximum penalty may have resulted in some cases that would previously have been charged as an AOBH, for example, instead resulting in charges being brought under section 340(1)(b) — thereby affecting the overall seriousness of offences sentenced. The preferring of charges of serious assault would seem to be supported by the increasing number of cases sentenced following the introduction of the new aggravated form of serious assault — 1,157 in the three years 2009–10 to 2011–12, compared with 1,480 in the three years from 2013–14, representing a 28 per cent increase — see also Figure 4–10 in Chapter 4 for trends on the increased use of section 340(1)(b) following the introduction of aggravating circumstances.

For juvenile offenders, the introduction of statutory circumstances of aggravation had no effect on sentencing outcomes in the lower courts, with minimal change in the proportion of offenders receiving a custodial sentence and no change in the average sentence length — see Table 7-5. The sample size for juveniles sentenced in the higher courts was too small to analyse.

Table 7-5: Custodial sentences for serious assaults against police officers (MSO) before and after the introduction of aggravating circumstances, juvenile offenders

	2009–10 to 2011–12		2013–14 to 2015–16	
Type of serious assault of a police officer – s 340(1)(b)	**% custodial**	**Avg length (years)**	**% custodial**	**Avg length (years)**
Higher courts				
Prior to aggravating circumstances (n=9*)	-	-		
Non-aggravated (n=2*)			-	-
Aggravated (n=10*)			-	-
Lower courts				
Prior to aggravating circumstances (n=118)	20.3	0.4		
Non-aggravated (n=72)			20.8	0.4
Aggravated (n=128)			19.5	0.4

Data include juvenile offenders, MSO.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: (*) Small sample sizes

Table 7-6 compares the penalties issued for the serious assault of a public officer (MSO) prior to the introduction of aggravating circumstances, to the penalties issued following the introduction of aggravating circumstances.

In the Magistrates Courts, prior to the introduction of aggravating circumstances, a custodial sentence was given to over half (58.5%) of adults sentenced for the serious assault of a public officer under section 340(2AA). Following the introduction of aggravating circumstances, cases that did not have any aggravating circumstances had a lower rate of custodial penalties (49.4%), and cases that had aggravating circumstances had a higher rate (75.2%). There was little difference in the average length of custodial sentences before and after the introduction of aggravating circumstances; however, cases with aggravating circumstances had slightly longer custodial sentences on average (0.5 years where non-aggravated, compared with 0.6 years where aggravated).

For the same reasons discussed above, it is difficult to identify what the true impacts of these changes have been, although it seems clear that courts are more likely to impose custodial penalties for serious assault with aggravating circumstances, and to impose slightly longer sentences.

In the higher courts, there were not enough sentenced cases under section 340(2AA) to perform reliable analysis. Similarly, there were not enough cases involving young offenders to perform reliable analysis.

Table 7-6: Custodial sentences for assault against public officers (MSO) before and after the introduction of aggravating circumstances, adult offenders

	2011–12 to 2013–14		2015–16 to 2017–18	
Type of serious assault of a public officer — s 340(2AA)	**% custodial**	**Avg length (years)**	**% custodial**	**Avg length (years)**
Higher courts				
Prior to aggravating circumstances (n=14*)	-	-		
Non-aggravated (n=7*)			-	-
Aggravated (n=27*)			-	-
Magistrates Courts				
Prior to aggravating circumstances (n=130)	58.5	0.5		
Non-aggravated (n=154)			49.4	0.5
Aggravated (n=113)			75.2	0.6

Data include adult offenders, MSO.
Data exclude 8 cases where the offence occurred prior to 5 September 2014 but was sentenced in 2015 -16 or later (6 in the Magistrates Courts and 2 in the higher courts).
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: (*) Small sample sizes

7.6 Sentencing outcomes by demographic groups

Section summary

- There was variation in the proportion of custodial penalties based on gender and Indigenous status.
- Aboriginal and Torres Strait Islander men were the most likely to receive a custodial penalty, with non-Indigenous women the least likely.
- Offences in the Magistrates Courts had more variation between demographic groups compared to the higher courts, perhaps suggesting a wider variation in the type of offending by demographic groups in these courts.

Adult offenders

The following figures in this section illustrate the differences in sentencing outcomes for various demographic groups. Each shape represents a different demographic group and shows the proportion of cases that resulted in a custodial penalty. Shapes with a white centre indicate a small sample size (less than 30 cases), and caution is advised when interpreting these results.

This analysis does not control for confounding variables, such as the presence of mitigating factors (e.g. whether the defendant showed remorse, suffered from a cognitive impairment, or had no prior relevant history of offending) or aggravating factors (e.g. the degree of violence and harm caused, or whether the offence was committed while on bail). These factors have a key impact on sentencing outcomes.

Figure 7-10 shows the proportion of cases that received custodial penalties for relevant serious assaults by gender and Aboriginal and Torres Strait Islander status (adults, MSO).

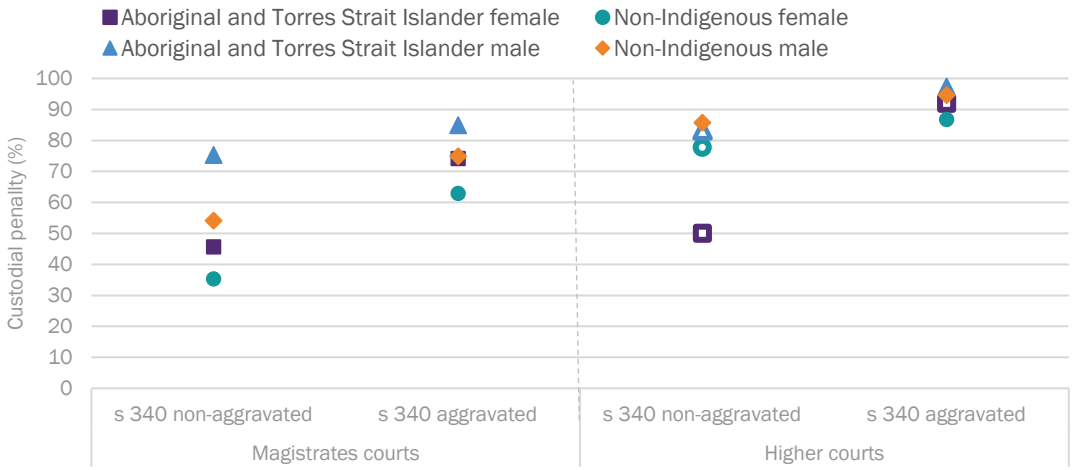
In the Magistrates Courts, Aboriginal and Torres Strait Islander men are consistently the most likely to receive a custodial sentence — this gap is especially wide for non-aggravated serious assaults. Non-Indigenous women are consistently the least likely to receive a custodial penalty. Men were more likely to receive a custodial penalty compared to women. There was a lot more variation between demographic groups in the Magistrates Courts compared to the higher courts, potentially reflecting a wider variation in the type of offending by demographic groups in the Magistrates Courts.

In both the Magistrates Courts and the higher courts, there was more variation for the non-aggravated section 340 offences in terms of who received custodial penalties.

There was less variation between demographic groups in the higher courts, with all demographic groups clustering around the same place. For aggravated serious assaults, all groups were clustered around 90 per cent of cases resulting in a custodial penalty; whereas for non-aggravated serious assaults, around 80 per cent of cases received custodial penalties. Aboriginal and Torres Strait Islander women were the one outlier — receiving a custodial penalty in only 50 per cent of serious assault cases in the higher courts — although the low numbers of cases may have contributed to this finding.

The likelihood of receiving a custodial penalty increases across the figure (from left to right) for both non-Indigenous women and non-Indigenous men; whereas it remains reasonably similar for Indigenous men regardless of the offence type or court level.

Figure 7-10: Proportion of serious assaults that resulted in a custodial penalty (MSO), by Aboriginal and Torres Strait Islander status with gender, adult offenders



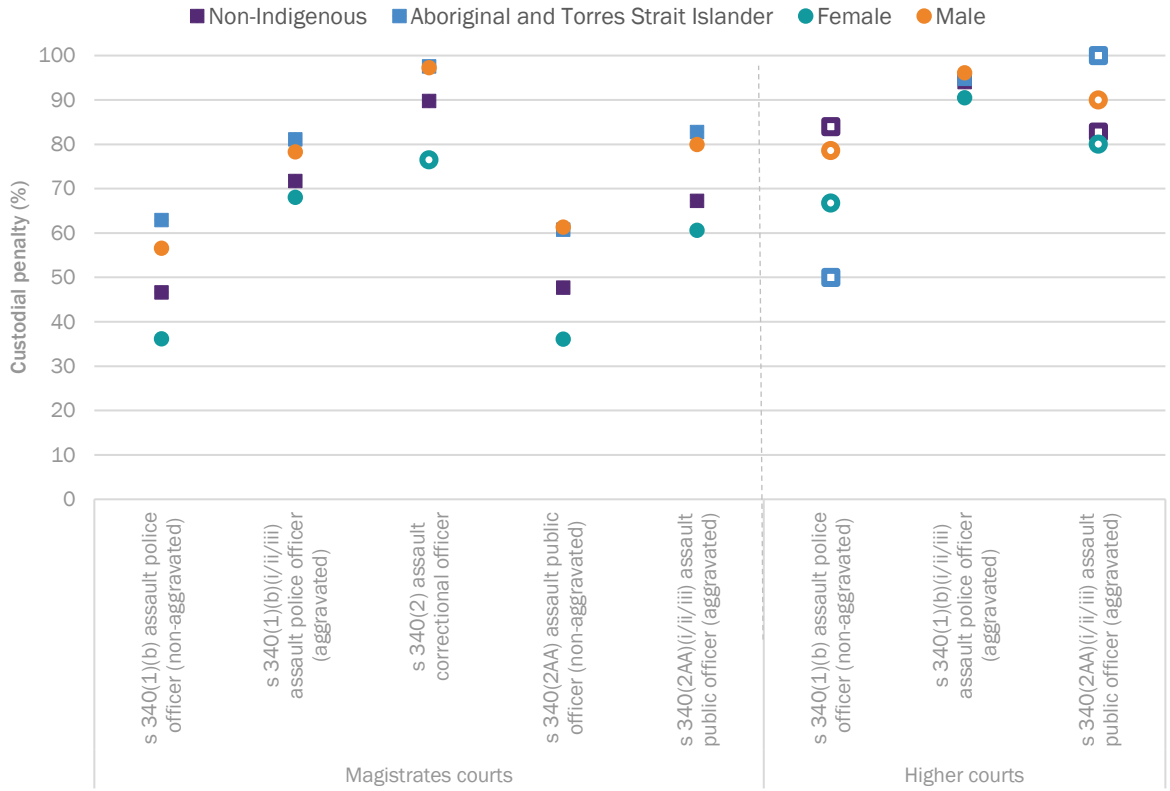
Data include adult offenders, MSO, offences on or after 5 September 2014, sentenced 2014–15 to 2018–19.
Notes:
(1) 's 340 aggravated' includes s 340(1)(b) (penalty, paras (a)(i) to (a)(iii)) and s 340(2AA) (penalty, paras (a)(i) to (a)(iii)).
(2) 's 340 non-aggravated' includes ss 340(1)(b), 340(2AA), 340(2), 340(1)(c) and 340(1)(d).
(3) A white centre on an icon indicates that the sample size for this subgroup is less than 30 and caution should be used when interpreting this result.

Figure 7-11 breaks the data down further into specific types of serious assault. Due to the small number of cases sentenced, it was not possible to break down categories by both gender and Aboriginal and Torres Strait Islander status, as displayed in the previous figure.

In the Magistrates Courts, a consistent pattern emerges. Female offenders were consistently the least likely to receive a custodial penalty, followed by non-Indigenous offenders. Aboriginal and Torres Strait Islander offenders were the most likely to receive a custodial penalty across all offence types. The proportion of custodial sentences for men was similarly high. The highest proportion of custodial penalties was for the assault of a correctional services officer. Unsurprisingly, non-aggravated serious assaults were the least likely to result in a custodial penalty across all demographic groups.

Small sample sizes were present in the higher courts, allowing limited interpretation of the data. However, aggravated serious assaults against police had little variation among demographic groups.

Figure 7-11: Proportion of serious assaults resulting in a custodial penalty (MSO), by gender and Aboriginal and Torres Strait Islander status and offence type, adult offenders



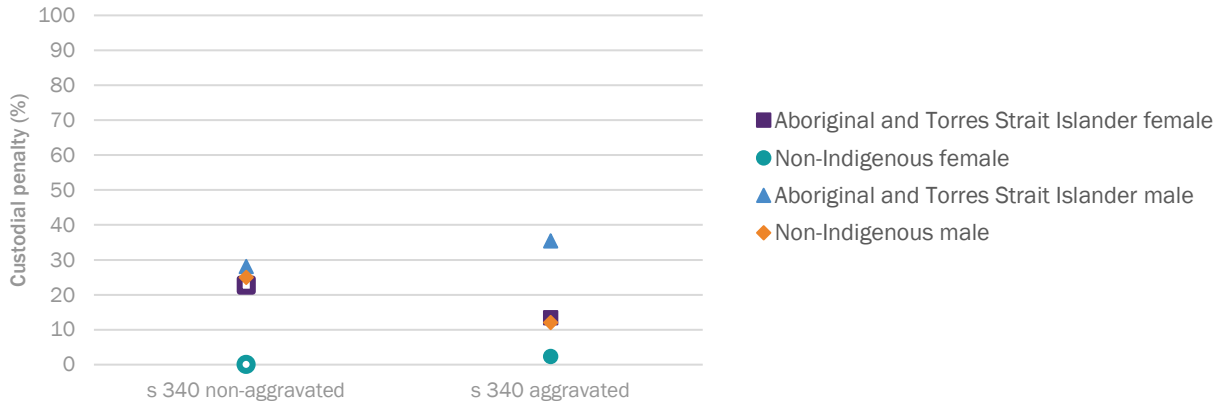
Data include adult offenders, MSO, offences on or after 5 September 2014, sentenced 2014–15 to 2018–19.
Notes: (1) Assault of correctional officer and assault of public officer (non-aggravated) sentenced in the higher courts have not been presented due to small sample sizes.
(2) A white centre on an icon indicates that the sample size for this subgroup is less than 30 and caution should be used when interpreting this result.

Young offenders

Due to sample size limitations in the higher courts, higher and lower courts have been presented together for juvenile offenders — see Figure 7-12. The likelihood of receiving a custodial penalty was much lower for juvenile offenders than adult offenders.

Aboriginal and Torres Strait Islander men were the most likely to receive a custodial penalty for both non-aggravated and aggravated serious assaults, with non-Indigenous women the least likely.

Figure 7-12: Proportion of serious assaults that resulted in a custodial penalty (MSO), by Aboriginal and Torres Strait Islander status with gender, juvenile offenders



Data include juvenile offenders, MSO, offences on or after 5 September 2014, sentenced 2014–15 to 2018–19.
Notes:
(1) 's 340 aggravated' includes s 340(1)(b) (penalty, paras (a)(i) to (a)(iii)) and s 340(2AA) (penalty, paras (a)(i) to (a)(iii)).
(2) 's 340 non-aggravated' includes s 340(1)(b), s 340(2AA), s 340(2), s340(1)(c) and s 340(1)(d).
(3) A white centre on an icon indicates that the sample size for this subgroup is less than 30 and caution should be used when interpreting this result.
(4) Higher courts and lower courts have been combined due to small sample sizes in the higher courts (non-aggravated offences n=5; aggravated offences n=19).

7.7 What offences are charged and sentenced for assaults of police, corrective services officers and youth detention officers?

Section summary

- For general offence provisions under the *Criminal Code*, such as common assault or AOBH, a custodial penalty was much more likely if the victim was a public officer. However, where a custodial penalty was imposed, these penalties were generally shorter.
- Incidents involving the assault of a working corrective services officer or youth detention staff member increased considerably from 2011–12 to 2018–19. Assaults of on-duty police officers that resulted in a charge declined over the same period.
- The offence most commonly charged for assaulting a corrective services officer was serious assault of a QCS officer under section 340(2) of the *Criminal Code* (56.4% of sentenced charges), followed by the lesser summary offence of assault or obstruct working QCS staff member under section 124(b) of the CSA (20.5%).
- For assaults of staff in youth detention facilities, the most common sentenced charge was the serious assault of a public officer under section 340(2AA) of the Code (33.2%) followed by the serious assault of a person performing/performed a duty at law under sections 340(1)(c) and (1)(d) (22.1%). Common assault and AOBH were also commonly charged (14.4% and 12.2%, respectively).
- Incidents involving the assault of an on-duty police officer most commonly involved a charge of assaulting or obstructing a police officer under section 790 of the PPRA (69.4%), followed by the serious assault of a police officer under section 340(1)(b) of the Code (21.9%).

For offences such as serious assault under section 340 of the *Criminal Code*, assault or obstruction of a police officer under section 790 of the PPRA, or assault or obstruction of a corrective services officer under section 124(b) of the CSA, it can be known with certainty that the victim of the assault was a public officer. For other general criminal offences that can be charged as the result of an assault, limited information is collected by courts about the victims of assaults. If an offender is charged with an offence such as common assault, AOBH, GBH or wounding, it is not clear which cases, if any, involve victims who are working public officers.

To provide some insight into this matter, the Council requested and obtained offender-level data from the Department of Youth Justice (YJ) and QCS for all assaults of staff members that occurred within corrective services or detention facilities. Similar data were also requested and obtained from the QPS on assaults of on-duty police officers that resulted in a charge. The Council matched the data provided by these agencies to data on sentenced court cases to better understand the range of offences that are charged for offenders who assault a public officer.

Data allowing for the matching of victims across datasets could not be provided by other government agencies due to the lack of information-sharing provisions allowing for the release of this information to the Council. For this reason, the Council's analysis of the sentencing outcomes for assaults on officers employed by these other agencies is limited to sentences imposed for offences charged under section 340.

7.7.1 Methodology

Each agency provided data on **incidents** that involved the assault of a staff member working in a corrective or detention facility, or the assault of an on-duty police officer. These incident data were matched to data on **charges** that were finalised in Queensland courts. Each incident may be linked to more than one charge, especially where the offender has committed multiple assaults during the incident, or where an incident involves more than one offender. Similarly, each charge may be linked to more than one incident, especially where an offender was involved in more than one incident on the same day.

An incident was considered to be 'matched' if at least one charge was identified in the courts data for at least one offender who was involved in the incident. If an incident involved multiple people, the incident was considered 'matched' even if only one offender was charged.

Incidents were linked to charges by matching the date that the incident occurred (agency data) to the date that the charged offence was committed (courts data), and by matching the details of an offender from the incident to the details of the accused person in the sentenced courts data using deterministic and probabilistic methods.[5] When matching dates, up to two days of discrepancy was allowed between the datasets to account for administrative errors. When matching offenders, the unique identifier assigned by the QPS was used as an 'exact' deterministic match — this identifier was present in data from all agencies. Where a deterministic match could not be achieved, probabilistic-matching techniques were used. For QCS and YJ data, probabilistic-matching techniques were used to match offender names. For the QPS data, the names of offenders were not provided; instead the offender's demographic details were used to create probabilistic matches, with a manual review of other variables such as the location of the offence to verify the reliability of matches.

5 In the context of data matching, **deterministic methods** include creating relationships between entities by joining on some form of identifiable information, such as a unique identifier that has been previously verified as a true and accurate characteristic of the entity. This type of matching is generally very accurate and very fast to perform. **Probabilistic methods** are those that involve the use of statistical modelling to determine if entities with similar characteristics are, in fact, the same. For this project, probabilistic methods were generally used when a deterministic match was not able to be made, often due to missing or incomplete information recorded in the datasets provided.

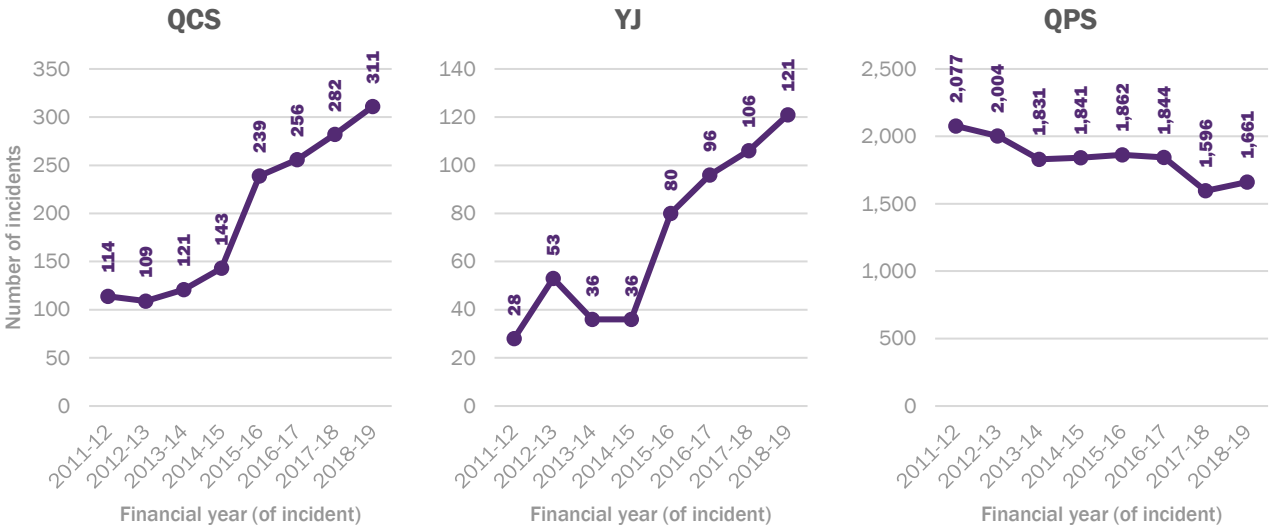
7.7.2 Incidents

The number of reported incidents involving the assault of a staff member in corrective services and youth detention facilities has increased from 2011–12 to 2018–19. In adult correctional facilities, the number of incidents increased from 114 to 311 incidents. Youth detention facilities saw an even more drastic increase, from 28 to 121 incidents.

The number of incidents involving the assault of an on-duty police officer (resulting in a criminal charge) has decreased, from 2,077 incidents in 2011–12 to 1,661 incidents in 2018–19.

It is important to note the numbers displayed in the figures below are not comparable between agencies. For example, there are many more QCS correctional facilities in Queensland compared to YJ youth detention centres, and there is a much larger number of the QPS officers employed across the state compared to the other agencies. There may also be differences in the way agencies classify an 'assault' in internal data management systems. Due to differences in counting rules, these data are not comparable with other jurisdictions.

Figure 7-13: Number of incidents of specific categories of working public officers, 2011–12 to 2018–19



Source: Incident data provided by individual agencies — unpublished data, 2010–11 to 2018-19.
Notes: (1) QCS and YJ data include incidents where criminal proceedings were not initiated. The QPS data include reported offences of assault that resulted in a charge.
(2) QCS incidents do not include assaults where the perpetrator was unknown (e.g. if something was thrown at an officer and the perpetrator was not identified).

7.7.3 Matches

Analysis of matched incidents revealed that the majority of incidents took, on average, 5 to 10 months to result in a finalised sentencing outcome. Incidents involving QCS took longer to be finalised at 10.1 months (on average), while incidents involving the QPS and YJ officers were finalised more quickly at 4.9 months and 5.8 months (on average), respectively.

The majority of cases across all agencies were finalised within two years of the date that the incident occurred — see Table 7-7. Accordingly, incidents that occurred after 30 June 2017 were excluded from this analysis, as not enough time has passed for the majority of these cases to have been finalised.

Table 7-7: Summary statistics on time taken for incidents to be finalised

		Proportion of incidents finalised in ...		
Agency	**Average months to sentence**	**Less than 6 months**	**Less than 1 year**	**Less than 2 years**
QCS incidents	10.1	36.8%	71.7%	94.4%
QPS incidents	4.9	73.3%	89.9%	98.1%
YJ incidents	5.8	64.9%	87.3%	98.8%

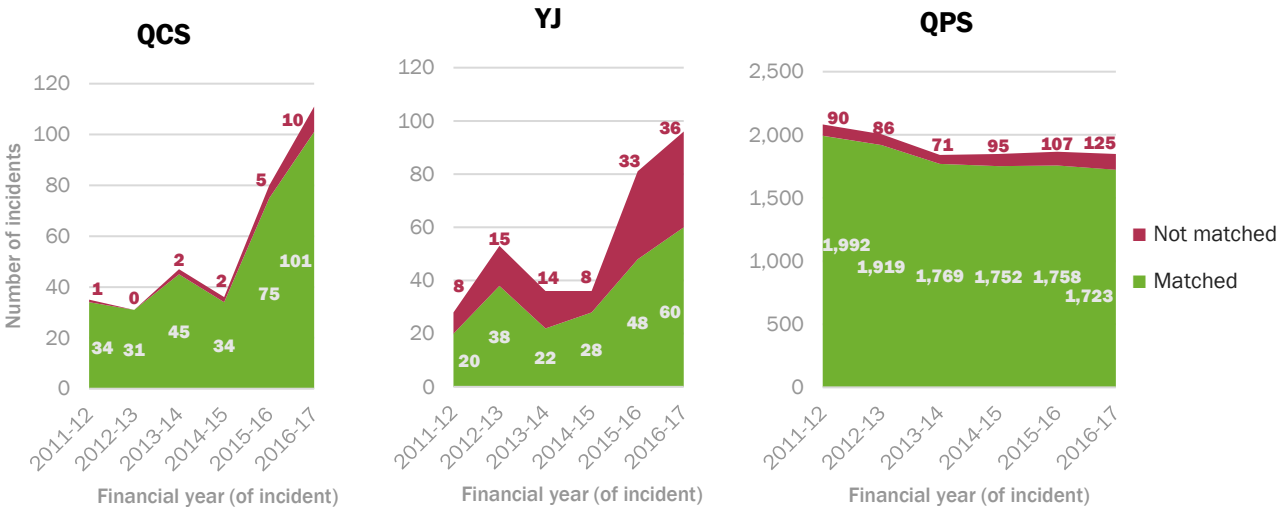
Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by individual agencies — unpublished data, 2011–12 to 2016–17.

The majority of incidents recorded by each agency were successfully matched to a sentencing event in the courts database (QCS=94.1%, YJ=65.5%, QPS=95.0%).

Data received from YJ included all incidents that involved the assault of a staff member, even where the incident did not result in a criminal charge. Incidents that were not prosecuted would, of course, not result in a sentence and so would not result in a match, which is why the proportion of unmatched cases is higher for this group. This proportion of unmatched cases was expected and does not imply that there were problems with the matching techniques.

QCS incidents that did not lead to the initiation of criminal proceedings have been excluded from the following analysis. The small number of cases that did not match in the QCS dataset was the result of two factors: either not enough information was recorded about the perpetrator in the administrative system (e.g. where the perpetrator was a visitor rather than a prisoner), or the case was ongoing and had not yet resulted in a final sentenced outcome.

Figure 7-14: Summary of agency incidents matched to court cases



Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by individual agencies — unpublished data, 2011–12 to 2016–17.
Note: QCS data exclude incidents that did not lead to the initiation of criminal proceedings.

7.7.4 Limitations

The methodology described above matches incidents (as recorded by agencies) to charges that were sentenced in court. Incidents were matched to charges by linking the offender and the date of the offence across datasets. If an offender were to assault a public officer but also on the same day commit other unrelated offences, these unrelated offences may be incorrectly linked to the charge involving the assault of a public officer. Similarly, an incident that involves the assault of a public officer may also involve the assault of other victims — in these situations, it is not possible to distinguish between the assault that involved the public officer, and the assaults of other victims that were committed by the same perpetrator on the same day.

The QPS incident data include reported offences that were classified as an assault on a prima facie basis at the time the offence was reported. In some instances, an offence that was charged as an assault by a police prosecutor might not have initially been classified as an assault — these offences are not included in this analysis. For example, a reported offence might initially be classified as 'resist arrest, incite, hinder, obstruct police' and would not have been included in the data extract received from the QPS, but the offence might subsequently be charged as assault of a police officer under section 790(1)(a) of the PPRA.

Through initial analysis and consultation with the QPS, it was identified that a small number of offences that were reported as an assault were missing. A small number of these offences were affected by administrative data-entry errors. Additionally, in some circumstances the victim's status as a police officer was recorded as 'inactive' — these cases were not included in the extract. Advice from the QPS was that the number of affected cases was minimal and unlikely to have a significant impact on the overall number of offences.

7.7.5 Sentenced offences

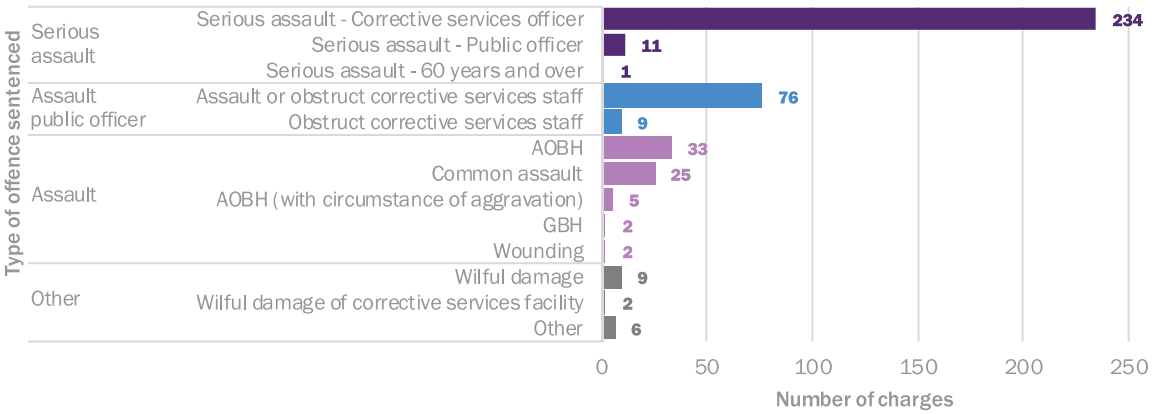
Queensland Corrective Services

Over half of incidents that involved the assault of a working staff member in a corrective services facility resulted in a sentenced charge of serious assault (n=246, 59.3%) — see Figure 7-15. The serious assault of a corrective services officer under section 340(2) of the *Criminal Code* was the most common charge (n=234, 56.4%), although there were a small number of cases involving the serious assault of a public officer under section 340(2AA) (n=11, 2.7%), and one case involving the serious assault of a person aged 60 years and over (n=1, 0.2%).

There were 85 charges sentenced for offences that specifically dealt with the assault of a public officer (20.5%). There were 76 charges sentenced under section 124(b) of the *Corrective Services Act 2006* for assaulting or obstructing a working staff member in a corrective services facility (18.3%), and 9 charges sentenced under section 127(1) of the *Corrective Services Act 2006* for obstructing a corrective services staff member (2.2%).

There were also 67 charges sentenced for assault-related offences that were not specific to public officers (16.1%). Non-aggravated AOBH was the most common charge falling into this category, representing 33 sentenced charges (8.0%). There were 25 charges of common assault sentenced (6.0%). A small number of charges sentenced were for aggravated AOBH (n=6, 1.2%), GBH (n=2, 0.5%) and wounding (n=2, 0.5%), collectively accounting for 2.2 per cent of sentenced charges.

Figure 7-15: Sentenced offences for assaults of working corrective services officers, 2011–12 to 2016–17



Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by Queensland Corrective Services — unpublished data, 2011–12 to 2016–17.

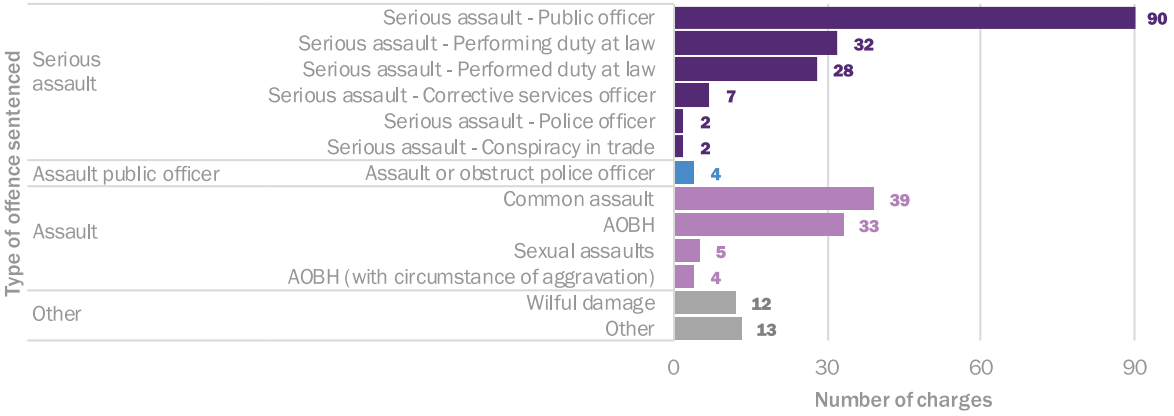
Department of Youth Justice

Over half of sentenced charges resulting from an assault of a staff member in a youth detention facility were for the offence of serious assault (n=161, 59.4%). The most common type of serious assault sentenced was for assault, resist or wilfully obstruct a public officer under section 340(2AA) of the *Criminal Code* (n=90, 33.2%), followed by the serious assault of a person who was performing a duty at law under section 340(1)(c) with 32 sentenced charges (11.8%), or because that person had performed a duty at law under section 340(1)(d) with 28 sentenced charges (10.3%). A small number of charges involved the serious assault of a corrective services officer under section 340(2) (n=7) or of a police officer under section 340(1)(b) (n=2).

Very few incidents resulted in summary offences being charged and sentenced involving assault or obstruction of a public officer. This could be expected given that no separate summary offence of assault or obstruct a youth justice staff member exists under the *Youth Justice Act 1992*. There were only four cases categorised as offences of this nature, all of which involved cases sentenced under section 790 of the PPRA for the assault or obstruction of a police officer.

Almost one-third of incidents resulted in a sentenced charge for a general assault-related offence (n=81, 29.9%). Common assault (n=39, 14.4%) and non-aggravated AOBH (n=33, 12.2%) were the most common offences sentenced.

Figure 7-16: Sentenced offences for assaults of staff of youth detention facilities, 2011–12 to 2016–17



Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by the Department of Youth Justice — unpublished data, 2011–12 to 2016–17.

The Queensland Police Service

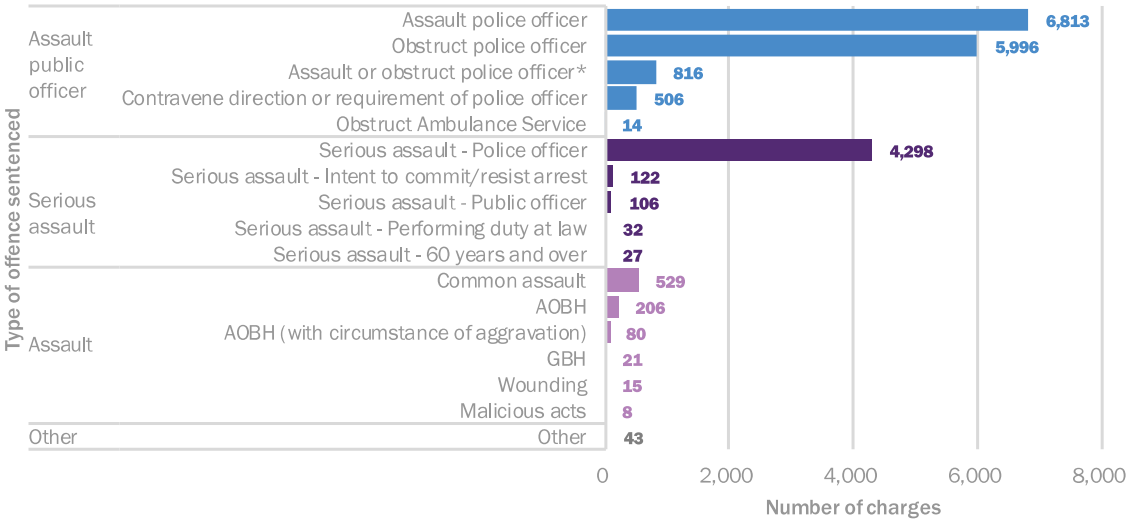
Almost three-quarters of sentenced charges resulting from an incident involving the assault of an on-duty police officer were sentenced for summary offences dealing specifically with the assault of a public officer (72.1%, n=14,154), most of which were sentenced for the assault or obstruction of a police officer under section 790 of the PPRA (n=13,625). The assault of a police officer (s 790(1)(a)) was the most common offence (34.7%, n=6,813), followed by the obstruction of a police officer (s 790(1)(b)) (30.5%, n=5,996).

A small proportion of cases were sentenced for contravening the direction or requirement of a police officer under section 791(1) of the PPRA (n=506, 2.6%). There were 14 charges sentenced for obstructing a member of the Ambulance Service under section 46(1) of the *Ambulance Service Act 1991* (Qld) — these assaults were included in the analysis as they occurred on the same day (and possibly during the same incident) as the assault of a police officer (see the limitations section above for further details).

A charge of serious assault was sentenced for almost a quarter of offences (23.4%, n=4,585). Unsurprisingly, the serious assault of a police officer under section 340(1)(b) was the preferred charge with 4,298 sentenced offences (21.9%). Other types of serious assault were used infrequently.

There were 529 incidents that resulted in a charge of common assault (2.7%), and 286 cases that resulted in a charge of AOBH (1.5%). Due to the limitations outlined above, it is not clear whether the victim of these offences was a police officer, another victim involved in the incident, or the victim of another offence that was committed on the same day by the same perpetrator.

Figure 7-17: Sentenced offences for assaults of on-duty police officers, 2011–12 to 2016–17

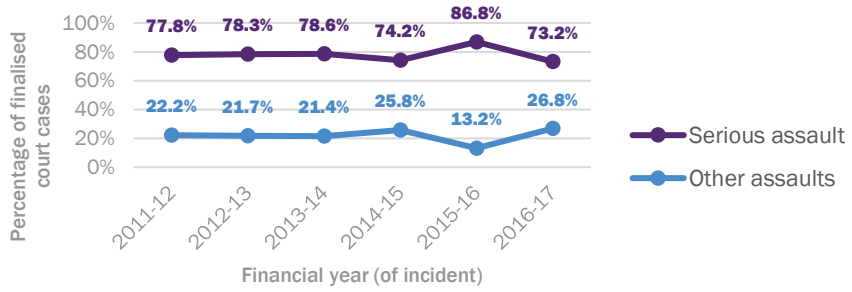


Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by the Queensland Police Service — unpublished data, 2011–12 to 2016–17.
Note: (*) Includes cases sentenced under s 790(1) of the PPRA where it was unclear whether the charge was an assault (s 790(1)(a)) or obstruction (s 790(1)(b)).

7.7.6 Sentenced offences over time

Over time, the proportion of cases in which serious assault has been charged for incidents involving the assault of a corrective services officer has remained relatively stable. From 2011–12 to 2016–17 approximately three-quarters of incidents that resulted in criminal charges being laid resulted in a sentence for serious assault. In 2015–16 this number was higher than usual with 86.8 per cent of incidents resulting in a finalised serious assault charge. In the case of prisoners, the option to treat less serious assaults as a breach of discipline under the CSA and to make use of administrative sanctions may impact on these trends. This is discussed in more detail in Chapter 9.

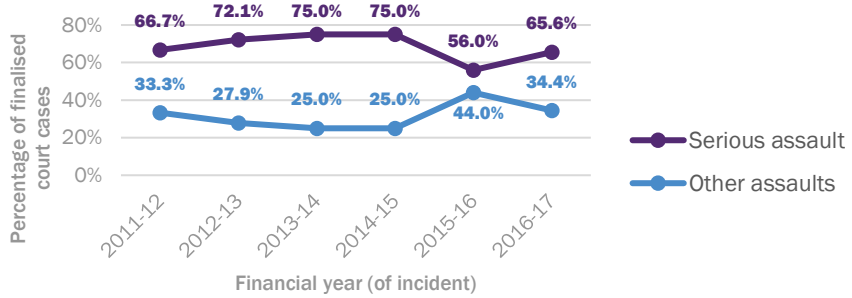
Figure 7-18: Proportion of serious assault charges resulting from assaults in corrective services facilities, 2011–12 to 2016–17



Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by the Queensland Police Service — unpublished data, 2011–12 to 2016–17.

The proportion of serious assaults charged in youth detention facilities was similar to the numbers coming out of adult corrective facilities, with approximately three-quarters of cases resulting in a serious assault charge in most years. There was some fluctuation in recent years, with an increasing number of common assault charges being finalised in 2015–16.

Figure 7-19: Proportion of serious assault charges resulting from assaults in youth detention facilities, 2011–12 to 2016–17

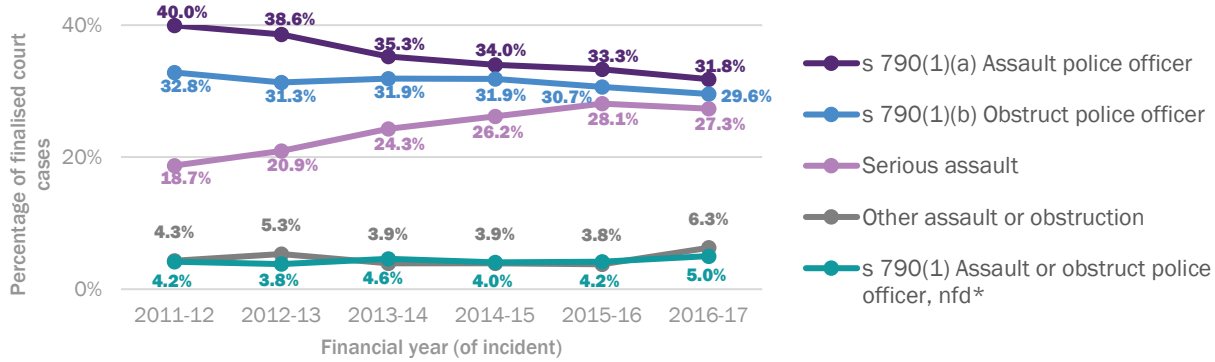


Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by the Queensland Police Service — unpublished data, 2011–12 to 2016–17.

The proportion of serious assaults of an on-duty police officer increased in the years leading up to 2015–16 but decreased slightly in 2016–17. This is consistent with the Council's analysis of court data, which found that the number of serious assaults of police officers sentenced in court has been decreasing since 2015–16 — see Figure 2-4 in Chapter 2.

The proportion of both assaults and obstructions of a police officer under section 790 of the PPRA decreased from 2011–12 to 2015–16 but remained stable in 2016–17.

Figure 7-20: Proportion of charges resulting from assaults of on-duty police officers, 2011–12 to 2016–17



Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by the Queensland Police Service — unpublished data, 2011–12 to 2016–17.
Notes: (1) 'Other assault or obstruction' includes assault charges such as common assault, AOBH and similar offences.
(2) *nfd* — not further defined. Includes charges of s 790 that could not be classified as either an assault or obstruction.

7.7.7 Sentencing outcomes

By linking incident data from agencies to court data on sentencing outcomes, it is possible to compare the types of sentences issued for offences such as common assault and AOBH for different types of victims.

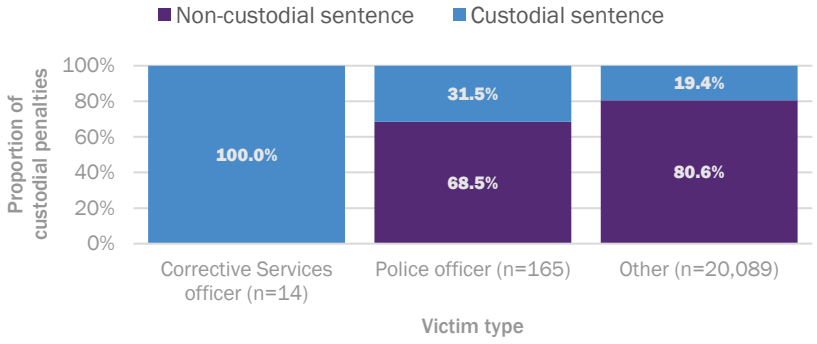
For a comparison of sentencing outcomes for the different types of serious assault, see section 7.3 above.

The findings of this analysis show that cases involving a common assault or AOBH of a public officer generally attracted a higher proportion of custodial penalties compared with cases in which the victim was not a public officer. However, the length of these custodial sentences was generally shorter in cases involving a public officer victim.

Common assault

While only a small number of adult offenders who assaulted a corrective services officer were charged with common assault (MSO), all of these offenders received a custodial penalty (n=14). In cases where a police officer was the victim of a common assault, 31.5 per cent of cases resulted in a custodial penalty — this is higher than the 19.4 per cent of cases that resulted in a custodial penalty with time served where the victim was not an on-duty police officer.

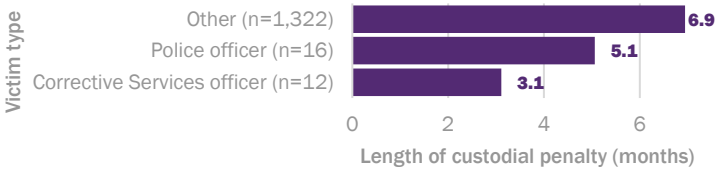
Figure 7-21: Custodial penalties for common assault (MSO) by type of victim, adult offenders, 2011–12 to 2016–17



Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by individual agencies — unpublished data, 2011–12 to 2016–17.

While common assaults against corrective services officers and police officers were more likely to result in a custodial penalty, Figure 7-22 shows that the length of custodial penalties with time served in a custodial facility post-sentence was shorter for common assaults against police officers and corrective services officers. On average, a common assault of a corrective services officer resulted in 3.1 months in custody (with actual time served); the common assault of a police officer resulted in a 5.1-month custodial sentence; and common assaults against other types of victims had longer sentences at 6.9 months on average.

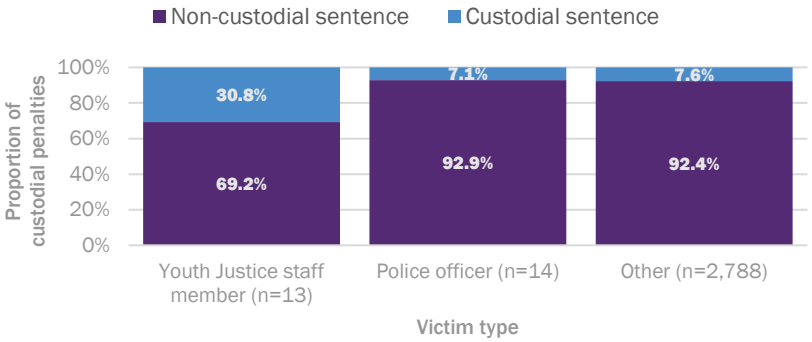
Figure 7-22: Length of custodial penalties (with actual time served) for common assault (MSO), by type of victim, adult offenders, 2011–12 to 2016–17



Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by individual agencies — unpublished data, 2011–12 to 2016–17.

For young people who were sentenced for common assault (MSO), in cases where the incident occurred in a youth detention facility, 30.8 per cent of cases resulted in a custodial penalty. This is considerably higher than the 7.1 per cent of common assaults involving on-duty police officers that resulted in a custodial penalty, and the 7.6 per cent of common assaults involving other types of victims who received a custodial penalty.

Figure 7-23: Custodial penalties for common assault (MSO) by type of victim, young people, 2011–12 to 2016–17



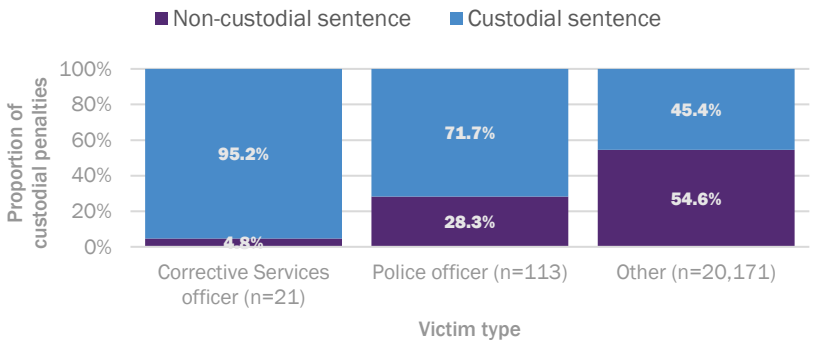
Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by individual agencies — unpublished data, 2011–12 to 2016–17.

Due to the small number of young people sentenced for common assault of a youth justice staff member or a police officer, there was not enough data to analyse the length of these sentences.

Assaults occasioning bodily harm (non-aggravated)

There were 21 cases involving adult offenders assaulting a corrective services officer that resulted in a sentenced charge for non-aggravated AOBH (MSO); almost all of these cases resulted in a custodial sentence (95.2%). For incidents where a police officer was the victim of an AOBH, 71.7 per cent of cases resulted in a custodial penalty. For cases involving other types of victims, the proportion of custodial penalties was lower at 45.4 per cent.

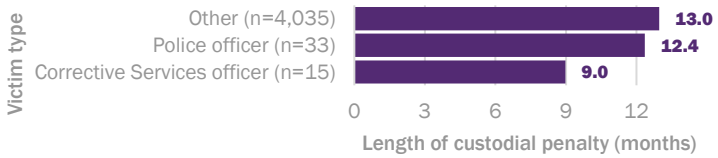
Figure 7-24: Custodial penalties for AOBH (MSO) by type of victim, adult offenders, 2011–12 to 2016–17



Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by individual agencies — unpublished data, 2011–12 to 2016–17.

Figure 7-25 shows the length of custodial penalties (with actual time served) issued for AOBH. In cases where the victim was a corrective services officer, the length of the penalty was relatively short, with sentences averaging 9.0 months. Cases involving a police officer as the victim received longer custodial sentences with an average length of 12.4 months. This was very similar to the average of 13.0 months for other AOBH cases where the victim was not a police officer or a corrective services officer.

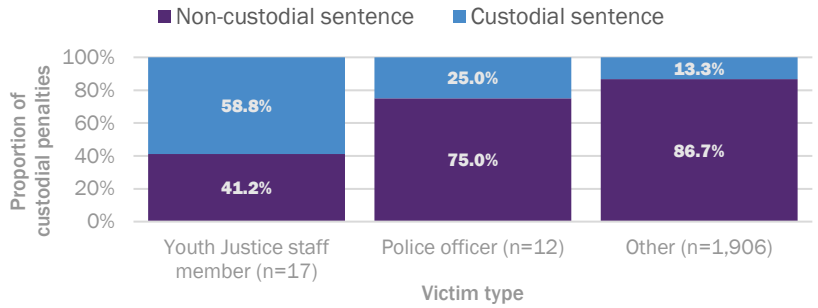
Figure 7-25: Length of custodial penalties (with actual time served) for assaults occasioning bodily harm (MSO), by type of victim, adult offenders, 2011–12 to 2016–17



Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by individual agencies — unpublished data, 2011–12 to 2016–17.

For young people, there were 17 cases that resulted in a sentenced charge for non-aggravated AOBH (MSO) of a staff member working in a youth detention facility. More than half of these cases resulted in a custodial penalty (58.8%). One-quarter of young people who were charged for AOBH of an on-duty police officer were sentenced to a custodial penalty (25.0%). For cases sentenced for AOBH of a person who was not a police officer or a staff member in a youth detention facility, only 13.3 per cent of cases resulted in a custodial penalty.

Figure 7-26: Custodial penalties for AOBH (MSO) by type of victim, young people, 2011–12 to 2016–17



Sources: Court data: QGSO, Queensland Treasury — Courts Database, extracted November 2019. Incident data provided by individual agencies — unpublished data, 2011–12 to 2016–17.

Due to the small number of young people sentenced for common assault of a youth justice staff member or a police officer, there was not enough data to analyse the length of these sentences.

7.8 Type of plea

Section summary

- For offences involving the assault of a public officer, 97.4 per cent of defendants pleaded guilty. Only 2.6 per cent entered a plea of not guilty.
- The serious assault of a corrective services officer was the most likely to result in a not guilty plea (5.6% of cases).
- The summary offence of assaulting or obstructing a police officer was heard ex parte (in the defendant's absence) in 11.8 per cent of cases.
- Following the introduction of aggravating circumstances for serious assault under section 340 of the *Criminal Code*, the proportion of guilty pleas increased for serious assaults on police officers, decreased for serious assaults of public officers, and remained relatively unchanged for young offenders.

The Council refers to plea rates as a factor relevant to its assessment of the impacts of the 2012 and 2014 reforms that introduced new aggravated forms of serious assault carrying a higher 14-year maximum penalty, and also to the potential impacts of the existence of less serious summary charges, which can be charged for the same type of criminal conduct, captured within the offence of serious assault.

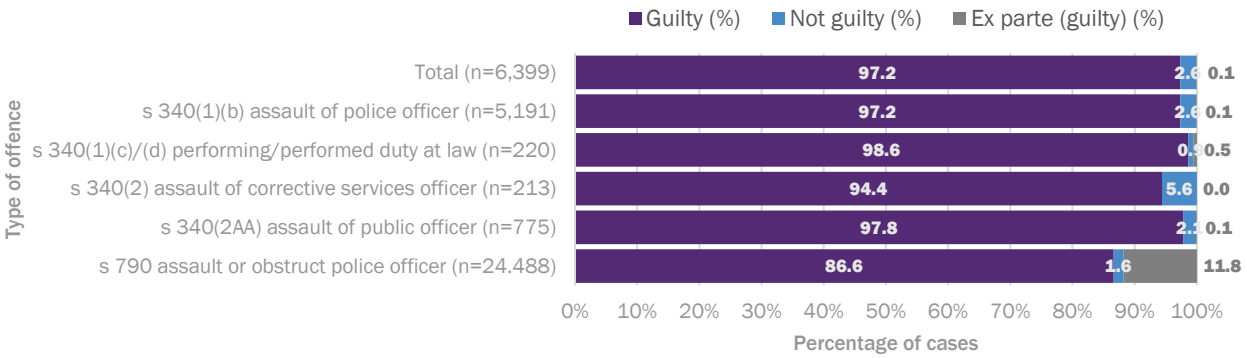
An accused person can be found guilty of an offence if he or she pleads guilty to the offence charged or is found guilty following a trial. This section of the paper explores the proportion of people sentenced who pleaded guilty, compared to those who pleaded not guilty and were subsequently found guilty at trial. Magistrates Courts can sentence people who do not come to court in their absence ('ex parte') — although the court can instead issue a warrant or adjourn the case. A person cannot be sentenced to imprisonment in their absence without an adjournment, specific procedural steps about notice to the person being taken, and a second failure to appear.[6] A defendant can also plead guilty and be sentenced in their absence in Magistrates Courts by providing written notice in some circumstances, but not to indictable offences (e.g. *Criminal Code* offences).[7] The cases referred to below as 'ex parte (guilty)' include these situations in which a defendant was absent from court.

6 See *Justices Act 1886* (Qld) ss 5 ('simple offence') 142 and 142A.

7 Ibid s 146A.

Figure 7-27 shows the proportion of defendants who pleaded guilty for a relevant serious assault offence in the 10-year data period. The vast majority of defendants pleaded guilty (97.2%). Slightly more defendants pleaded guilty to serious assault in the Magistrates Courts (97.3 per cent) compared to the higher courts (96.6%). Offenders sentenced for the serious assault of a corrective services officer had the highest proportion of not guilty pleas at 5.6 per cent of cases. Section 790 assault or obstruct a police officer had the highest proportion of ex parte pleas at 11.8 per cent of cases.

Figure 7-27: Final plea type for serious assault of public officer offences (MSO)



Data include adult and juvenile offenders, higher and lower courts, cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: Cases where the plea type was unknown have been included in the calculations but not presented.

Table 7-8 shows the proportion of guilty pleas by offence and demographic group. Overall, there were few differences by gender or Aboriginal and Torres Strait Islander status. Aboriginal and Torres Strait Islander offenders were slightly more likely to plead guilty than their non-Indigenous counterparts. Female offenders were also slightly more likely to plead guilty than males.

Non-Indigenous offenders, both male and female, were more likely to plead guilty to a section 790 assault or obstruct police officer offence than their Aboriginal and Torres Strait Islander counterparts. Aboriginal and Torres Strait Islander male offenders were slightly more likely to plead guilty for assault of a corrective services officer than other demographic groups at 98.6 per cent.

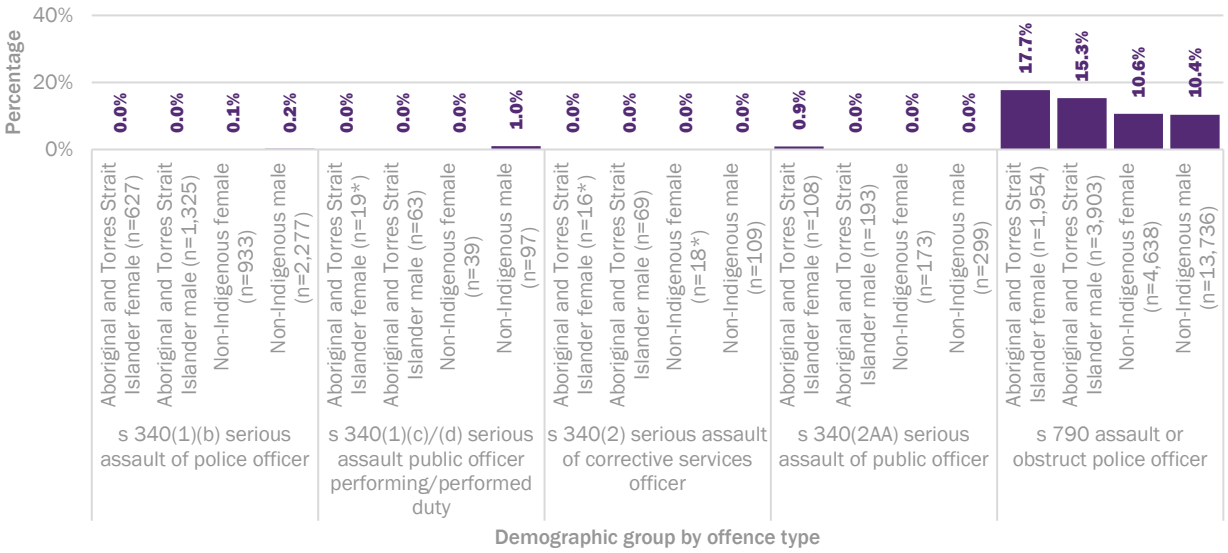
Table 7-8: Final plea type for serious assault of public officer offences (MSO) by demographic group

	Aboriginal and Torres Strait Islander				Non-Indigenous			
Demographic group	**Female**		**Male**		**Female**		**Male**	
Offence	**N**	**% pleaded guilty**	**N**	**% pleaded guilty**	**N**	**% pleaded guilty**	**N**	**% pleaded guilty**
340(1)(b) serious assault police officer	627	98.1	1,325	97.0	933	97.8	2,277	96.9
340(1)(c)/(d) serious assault performing/performed duty at law	19*	100.0	63	100.0	39	97.4	97	97.9
340(2) serious assault corrective services officer	16*	93.8	69	98.6	18*	94.4	109	92.7
340(2AA) serious assault public officer	108	98.2	193	98.5	173	98.3	299	97.0
790 assault or obstruct police officer	1,954	81.6	3,903	83.8	4,368	87.7	13,736	87.6
Total	**770**	**98.1**	**1,650**	**97.3**	**1,163**	**97.8**	**2,782**	**96.8**

Data include adult and juvenile offenders, higher and lower courts, cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: (*) Small sample sizes

Offenders sentenced for a section 790 assault or obstruct police officer offence (MSO) were much more likely to enter an ex parte plea compared with other offences analysed. Female offenders and Aboriginal and Torres Strait Islander offenders were more likely to enter an ex parte plea to this offence than their counterparts, with Aboriginal and Torres Strait Islander females having the highest rate of ex parte pleas for assaulting or obstructing a police officer, at 17.7 per cent. Non-Indigenous males had the lowest proportion of ex parte pleas for this offence, at 10.4 per cent.

Figure 7-28: Proportion of ex parte final pleas for assault of public officer offences (MSO) by demographic group and offence type

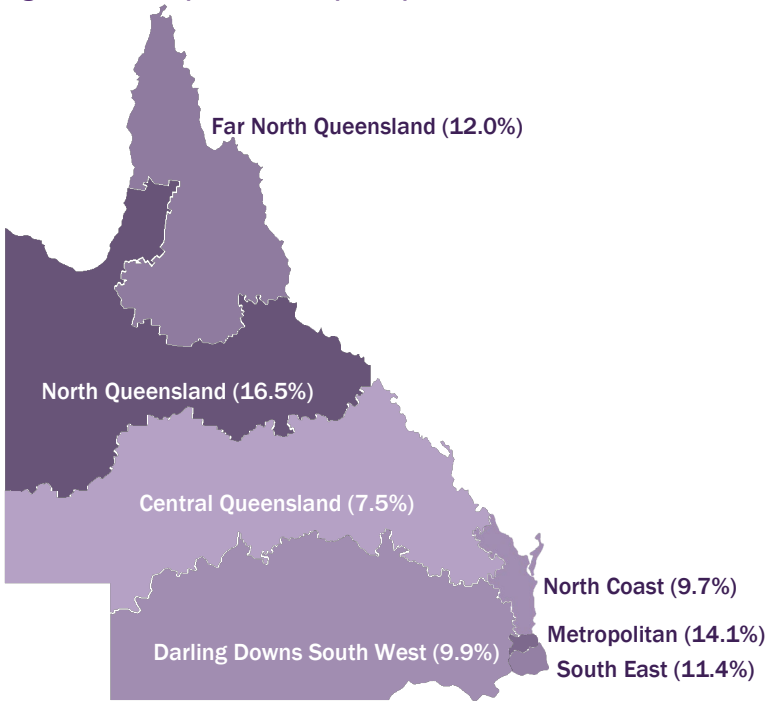


Data include adult and juvenile offenders, higher and lower courts, cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: (*) Small sample sizes

Figure 7-28 (above) provides a breakdown of the regions throughout Queensland with the highest proportion of ex parte pleas for section 790 offences. It was speculated that the location of the court could be one potential reason for the high proportion of ex parte pleas for section 790 offences, with more ex parte pleas in locations that were less urban, where there are greater barriers to access to court and legal representation. However, Figure 7-29 disproves this theory, showing that the more remote regions did not necessarily have a higher proportion of ex parte pleas for section 790 offences.

The North Queensland region, which includes places ranging from Townsville to Mount Isa, had the highest proportion of ex parte pleas for section 790 offences at 16.5 per cent of cases. The region with the lowest proportion of ex parte pleas was Central Queensland at 7.5 per cent, which includes locations ranging from Mackay and Gladstone to Longreach. The Metropolitan region, which includes the Greater Brisbane area, had one of the highest proportions of ex parte pleas at 14.1 per cent of cases.

Figure 7-29: Proportion of ex parte pleas for s 790 assault or obstruct police officer (MSO) by region



Data include adult and juvenile offenders, higher and lower courts, cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

7.8.1 Effect of the introduction of aggravating circumstances on type of plea

Assaults on police by adult offenders

In the higher courts, prior to the introduction of aggravating circumstances for serious assault of a police officer under section 340(1)(b), the vast majority of adult defendants pleaded guilty to serious assault (96.0%). This increased slightly following the introduction of aggravating circumstances, to 97.7 per cent for aggravated offences and to 100 per cent for non-aggravated offences. There were not enough sentenced cases under section 790 in the higher courts to perform similar analysis.

Similar results were seen in the Magistrates Courts, with the proportion of guilty pleas increasing slightly following the introduction of aggravating circumstances for assault of a police officer; rising from 95.9 per cent prior to the introduction of aggravating factors to 97.2 per cent for non-aggravated offences and 97.6 per cent aggravated offences.

Over the same period, section 790 offences sentenced in the Magistrates Courts also saw a slight increase in guilty pleas from 84.8 per cent to 86.3 per cent, as well as a decrease in ex parte pleas (13.4% to 12.2%).

Table 7-9: Final plea type for assaults of police officers (MSO), before and after the introduction of aggravating circumstances, adult offenders

		2009–10 to 2011–12			2013–14 to 2015–16		
Type of offence		**Guilty**	**Not guilty**	**Ex parte (guilty)**	**Guilty**	**Not guilty**	**Ex parte (guilty)**
Higher courts							
s 340(1)(b) police officer	Prior to aggravating circumstances (n=252)	96.0%	4.0%	0.0%			
	Non-aggravated (n=30)				100.0%	0.0%	0.0%
	Aggravated (n=132)				97.7%	2.3%	0.0%
s 790 assault/ obstruct police	Prior to aggravating circumstances (n=7*)	-	-	-			
	Post aggravating circumstances (n=1*)				-	-	-
Magistrates courts							
s 340(1)(b) police officer	Prior to aggravating circumstances (n=905)	95.9%	3.9%	0.0%			
	Non-aggravated (n=580)				97.2%	2.4%	0.3%
	Aggravated (n=738)				97.6%	2.2%	0.0%
s 790 assault/ obstruct police	Prior to aggravating circumstances (n=7,890)	84.8%	1.8%	13.4%			
	Post aggravating circumstances (n=7,512)				86.3%	1.5%	12.2%

Data include adult offenders, MSO.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes:(1) Cases where the plea type was unknown have been included in the calculations but not presented.
(2) Aggravating circumstances were introduced on 29 August 2012.
(*) Small sample sizes

Assaults on police by young offenders

In the higher courts there were not enough sentenced cases under either section 340(1)(b) or section 790 to reliably analyse the final plea type for young offenders. In the Magistrates Courts, almost all juvenile defendants pleaded guilty to serious assault of a police officer, both before and after the introduction of aggravating circumstances. Before the introduction of aggravating circumstances, 98.3 per cent pleaded guilty; this decreased slightly for non-aggravated offences (97.2%) and increased slightly for aggravated offences (99.2%). A slight increase in guilty pleas was also seen for section 790 offences after the introduction of aggravating circumstances.

Table 7-10: Final plea type for assaults of police officers (MSO), before and after the introduction of aggravating circumstances, juvenile offenders

		2009–10 to 2011–12			2013–14 to 2015–16		
Type of offence		Guilty	Not guilty	Ex parte (guilty)	Guilty	Not guilty	Ex parte (guilty)
Higher courts							
s 340(1)(b) police officer	Prior to aggravating circumstances (n=9*)	-	-	-			
	Non-aggravated (n=2*)				-	-	-
	Aggravated (n=10*)				-	-	-
s 790 Assault/ obstruct police	Prior to aggravating circumstances (n=1*)	-	-	-			
	Post aggravating circumstances (n=0)				-	-	-
Magistrates courts							
s 340(1)(b) police officer	Prior to aggravating circumstances (n=118)	98.3%	0.9%	0.0%			
	Non-aggravated (n=72)				97.2%	2.8%	0.0%
	Aggravated (n=128)				99.2%	0.8%	0.0%
s 790 Assault/ obstruct police	Prior to aggravating circumstances (n=368)	98.9%	0.8%	0.3%			
	Post aggravating circumstances (n=295)				99.7%	0.3%	0.0%

Data include juvenile offenders, MSO.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) Cases where the plea type was unknown have been included in the calculations but not presented.
(2) Aggravating circumstances were introduced on 29 August 2012.
(*) Small sample sizes

Assaults on public officers by adult offenders

There were not enough cases sentenced under section 340(2AA) in the higher courts to reliably analyse pleas. In the Magistrates Courts, 98.5 per cent of defendants pleaded guilty to serious assault of a public officer before the introduction of aggravating circumstances. After introduction, the proportion of guilty pleas decreased slightly for both aggravated and non-aggravated offences.

There were not enough sentenced cases under section 340(2AA) involving young offenders to perform reliable analysis for this group.

Table 7-11: Final plea type for assaults of public officers (MSO), before and after the introduction of aggravating circumstances, adult offenders

		2011–12 to 2013–14		2015–16 to 2017–18	
Type of offence		Guilty	Not guilty	Guilty	Not guilty
Higher courts					
s 340(2AA) public officer	Prior to aggravating circumstances (n=14*)	-	-		
	Non-aggravated (n=7*)			-	-
	Aggravated (n=27*)			-	-
Magistrates courts					
s 340(2AA) public officer	Prior to aggravating circumstances (n=130)	98.5%	1.5%		
	Non-aggravated (n=154)			97.4%	2.6%
	Aggravated (n=113)			98.2%	1.8%

Data include adult offenders, MSO.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) Aggravating circumstances were introduced on 5 September 2014.
(*) Small sample sizes

PART D — Reforms to offences, penalties and sentencing for assaults on public officers and other vulnerable workers

Chapter 8 Reforms to the offence of serious assault

8.1 Introduction

Part D of this report sets out the Council's recommended reforms to the current offence, penalty and sentencing framework that applies to assaults on public officers in Queensland.

The focus of this chapter is on reforms recommended to section 340 of the *Criminal Code*. It responds to the request in the Terms of Reference that the Council 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; and
- 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 or whether such offending should be targeted in a separate provision or provisions — or through the introduction of a circumstance of aggravation.

The recommendations in this part are intended to operate as a package of reforms. They reflect the Council's view that, while section 340 of the *Criminal Code* — as this section applies to public officers — should be retained, it is in need of reform to simplify and focus its operation. However, the proposed narrowing of focus, which will target assaults on certain frontline and emergency workers, should not detract from the courts' ability to recognise the higher vulnerability of other workers providing essential services to the public, and for this to be treated as an aggravating factor in sentencing.

The Council considers the best way to achieve its dual objectives is through reforms to section 340 that will operate in conjunction with the introduction of a new aggravating factor that will apply under the *Penalties and Sentences Act 1992* (Qld) (PSA). The operation of this new aggravating factor is discussed in detail in Chapter 10 of this report.

8.2 History of section 340

Section 340 was part of the original *Criminal Code* in 1899. Its original form classified this offence as a misdemeanour carrying a maximum penalty of 3 years' imprisonment.

> **Section 340 (Serious assaults) — as originally enacted**
>
> Any person who—
>
> (1) Assaults another with intent to commit a crime, or with intent to resist or prevent the lawful arrest or detention of himself or of any other person; or
>
> (2) Assaults, resists, or wilfully obstructs, a police officer while acting in the execution of his duty, or any person acting in aid of a police officer while so acting; or
>
> (3) 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
>
> (4) 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
>
> (5) Assaults any person on account of any act done by him in the execution of any duty imposed on him by law; or
>
> (6) Assaults any person in pursuance of any unlawful conspiracy respecting any manufacture, trade, business, or occupation, or respecting any person or persons concerned or employed in any manufacture, trade, business, or occupation, or the wages of any such person or persons;
>
> is guilty of a misdemeanour, and is liable to imprisonment with hard labour for 3 years.

The *Criminal Code* is a schedule to the *Criminal Code Act 1899* (Qld).[1] It contains most of Queensland's criminal offences. Several offence provision options may be open when a public officer is assaulted. If an offender's criminal conduct means they could be charged with an offence under the *Criminal Code* and also under a different statute, either can be used — but the offender cannot be twice punished for the same offence.[2]

The *Criminal Code* was largely the work of then Queensland Chief Justice Sir Samuel Griffith. He compiled a digest of Queensland's criminal laws, prepared a draft code and 'recommended the repeal or amendment of approximately

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1 *Criminal Code Act 1899* (Qld) sch 1.

2 *Criminal Code* (Qld) s 7.

250 Imperial, NSW and Queensland Acts'.[3] This means that the *Criminal Code* is designed to be the single source of Queensland's criminal laws, and any laws existing before it or materials made in drafting it, are not relevant to its use.[4]

The current *Criminal Code* is not identical to the original version established over a century ago. Parliament regularly passes legislation that amends it, and this includes changing, adding and deleting different offences, elements of offences, penalties and the ways in which people can be held criminally responsible in Queensland.

There have been a total of 16 amending Acts making substantive amendments to section 340 passed between 1988[5] and 2020. The most relevant of these to this issue are discussed below.

In **1997**, shortly after two major Queensland reviews and a failed replacement *Criminal Code*,[6] the maximum penalty was raised from 3 years' imprisonment to 7 years and the offence was changed from a misdemeanour to a crime.[7] Section 340 had always recognised police officers, but only referred to other people by virtue of their actions (e.g. executing a duty imposed by law) as opposed to their occupation, age or disability.

The opposition successfully moved to pass amendments adding persons aged over 60 and persons relying on a guide dog, wheelchair or other remedial device as distinct classes of victim. The then Attorney-General, Mr Denver Beanland, opposed this. He told Parliament that the 7-year maximum was an appropriate penalty. He said that if the prosecution was doing its work, the provisions in the Government's Bill should be adequate to achieve tougher penalties where appropriate 'for offenders assaulting people with disabilities, people who are aged, frail or whatever the situation might be'.[8]

In **2006**, a new subsection was included (which was itself replaced in 2012) which stated that circumstances in which a person assaults a police officer included biting, spitting on or throwing a bodily fluid or faeces at them.[9] This recognition of specific factual circumstances made no change to the penalty or existing definition of 'assault', which always covered such conduct.[10] The second reading speech was highly critical of this form of behaviour and encouraged Parliament's condemnation through:

> Strong legislation … that will send a clear message that it is the will of Parliament that persons who perpetrate, and are found guilty of these acts should be dealt with severely by the courts and that these acts regardless of the circumstances, should at all times be treated as a serious assault.[11]

In **2012**, a major amendment was made with the insertion of new penalty paragraph (a) in subsection (1). It was a Liberal National Party pre-election commitment, as part of a wider raft of amendments aimed at strengthening sentences for certain offences against police.[12] This replaced the 2006 descriptive amendment and doubled the maximum penalty to 14 years for serious assaults against police involving biting, spitting on, throwing at or applying bodily fluids or faeces, causing bodily harm, or being or pretending to be armed. The explanatory notes stated:

> Police perform an essential and unique role in maintaining civil authority. Their duties are frequently dangerous … the increase can be justified given the need to: deter this form of concerning conduct; protect police officers carrying out their duties; and ensure the maintenance of civil authority.[13]

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3 R G Kenny, *An Introduction to Criminal Law in Queensland and Western Australia* (Butterworths 5th ed, 2000) 5 [1.9].

4 See *Bank of England v Vagliano Brothers* [1891] AC 107, 145 (Lord Herschell) cited in Kenny (n 3) 7 [1.11], and *Mellifont v A-G for the State of Queensland* (1991) 173 CLR 289, 309 (Mason CJ, Deane, Dawson, Gaudron, McHugh JJ).

5 Removal of hard labour as part of a sentence of imprisonment: *Corrective Services (Consequential Amendments) Act 1988* (Qld).

6 R.S. O'Regan, J.M. Herlihy and M.P. Quinn, *Final Report of the Criminal Code Review Committee to the Attorney-General* (18 June 1992), the Criminal Code [1995] and Peter Connolly QC, Julie Dick, Adrian Gundelach and Michael Quinn, *Report of the Criminal Code Advisory Working Group to the Attorney-General* (July 1996). These are discussed in more detail in Chapter 10 regarding 'A historical Queensland review perspective on aggravating by victim category' and in respect of reforming section 199.

7 *Criminal Law Amendment Act 1997* (Qld) s 60, commenced 1 July 1997 (SL 152 of 1997).

8 Queensland, *Parliamentary Debates*, Legislative Assembly, 20 March 1997, 'Criminal Law Amendment Bill — Second Reading', 712 (Denver Beanland, Attorney-General and Minister for Justice).

9 *Police Powers and Responsibilities and Other Acts Amendment Act 2006* (Qld) s 89, commenced 21 July 2006 (SL 185 of 2006).

10 Explanatory Notes, Police Powers and Responsibilities and Other Acts Amendment Bill 2006 (Qld) 67.

11 Queensland, *Parliamentary Debates*, Legislative Assembly, 21 April 2006, 'Police Powers and Responsibilities and Other Acts Amendment Bill — Second Reading', 1368 (Judy Spence, Minister for Police and Corrective Services).

12 Explanatory Notes, Criminal Law Amendment Bill 2012 (Qld) 2.

13 Ibid 4.

Legal stakeholders criticised the amendment on multiple grounds:

- The existing 7-year maximum was 'adequate'[14] and 'substantial'.[15]
- A 14-year section 340 maximum would be incongruous with the same penalty in place for more serious offences (e.g. GBH, a more serious offence requiring greater harm). Regard should be had, in particular, to penalties for comparable conduct.[16]
- All lives, irrespective of occupation, should be valued equally under the law.[17]
- Many section 340 offenders were seriously disadvantaged, mentally ill, suffering from substance abuse and acting in desperation and were unlikely to comprehend deterrent penalty increases.[18]

The Queensland Government rejected a Parliamentary Legal Affairs and Community Safety Committee recommendation that the Attorney-General monitor and review the consequences of the proposed amendments on the courts and other criminal justice agencies, and report to Parliament within two years from commencement.[19]

In **2014**, this 2012 police penalty provision (with 14-year maximum) was copied over to the public officer offence provision in section 340(2AA), for much the same reasons as the increase regarding police.[20] The same Act introduced mandatory community service orders for serious assaults committed with a circumstance of aggravation (committed in a public place while adversely affected by an intoxicating substance).

In **2016**, the serious organised crime circumstance of aggravation[21] and mandatory sentence component requiring the making of a community service order in certain circumstances[22] were added.[23]

In **2020**, the *Corrective Services and Other Legislation Amendment Act 2020* (Qld) amended section 340 by copying the circumstances of aggravation, and maximum 14-year penalty, from the penalty provision in section 340(2AA)(a) into section 340(2). This commenced on 21 July 2020.[24]

8.3 The current approach

8.3.1 What is an assault?

The definition of 'assault'[25] is very wide and can be met in two ways. The first is where the offender strikes, touches, moves or otherwise applies force of any kind to another person. This can be direct or indirect. It must be done without the victim's consent, or where consent was obtained by fraud.

The second way is where the offender uses a bodily act or gesture to attempt or threaten to apply force of any kind to the victim without the victim's consent, in circumstances where the offender has (actually or apparently) a present ability to effect his or her purpose. Words alone are not enough.

'Applies force' includes applying heat, light, electrical force, gas, odour, or any other substance or thing, if it is applied in such a degree as to cause injury or personal discomfort.

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14 Shane Duffy, Submission No 5 to the Legal Affairs and Community Safety Committee, *Inquiry into the Criminal Law Amendment Bill 2012* (28 June 2012) 2.

15 Roger N Traves SC, Submission No 9 to the Legal Affairs and Community Safety Committee, *Inquiry into the Criminal Law Amendment Bill 2012* (28 June 2012) 4.

16 Ibid.

17 Ibid.

18 Duffy (n 14) 5.

19 Legal Affairs and Community Safety Committee, Parliament of Queensland, *Criminal Law Amendment Bill 2012* (Report No 3, July 2012) 25 (recommendation 2); Queensland Government, *Queensland Government Response to Legal Affairs and Community Safety Committee Report No 3 on the Criminal Law Amendment Bill 2012* (2012) 1–2.

20 *Safe Night Out Legislation Amendment Act 2014* (Qld) s 16, commencement of substantive offence amendments — 5 September 2014; circumstance of aggravation re public intoxication/public place amendments — 1 December 2014: s 2.

21 *Criminal Code* (Qld) s 340(1C).

22 Ibid ss 340(1C) and (2B). This applies if the offender committed the offence in a public place while adversely affected by an intoxicating substance, unless the court is satisfied that, because of any physical, intellectual or psychiatric disability of the offender, the offender is not capable of complying with a community service order: *Penalties and Sentences Act 1992* (Qld) s 108B

23 *Serious and Organised Crime Legislation Amendment Act 2016* (Qld) s 116, commenced 9 December 2016: s 61.

24 *Corrective Services and Other Legislation Amendment Act 2020* (Qld) s 55, introduced to Parliament 17 March 2020 and passed on 16 July 2020.

25 Section 245 of the *Criminal Code* defines assault.

8.3.2 What is serious assault?

The offence of serious assault applies much higher maximum penalties to the same conduct that would otherwise constitute another general assault charge (such as common assault or AOBH), on the basis that the offence was committed against a particular class of person or for a particular reason. The intention is to 'offer greater deterrence' for such assaults.[26] It has been said they are more aggravated than ordinary common assaults, 'because of the persons involved or the intent with which they are carried out'.[27] Despite this, it has been suggested 'they may in fact not be serious in the sense that they call for a jury trial necessarily or a penalty of any great substance in a particular case'.[28]

Section 340 also covers other behaviour that may not even otherwise be an assault at law: resisting or wilfully obstructing police (or people aiding police) or a public officer (ss 340(1)(b) and (2AA)(a)). In some instances, this provision provides a higher maximum penalty than for AOBH (14 years as against 10 years) and on par with GBH (14 years).

An assault can be charged as a serious assault if the victim:

- was performing a duty imposed on them by law (or the assault is committed because the victim had already performed that duty);
- was 60 years old or more; or
- relied on a guide, hearing or assistance dog, wheelchair or other remedial device.

Serious assault also covers assaults committed:

- with intent to commit a crime or resist or prevent lawful arrest or detention of any person; and
- in pursuance of any unlawful conspiracy respecting any manufacture, trade, business or occupation (or respecting anyone concerned or employed in those areas, or the wages of any such persons).

These forms of serious assault carry a maximum penalty of 7 years' imprisonment.

Assaults on police officers are, and have always been, specifically recognised in the section. The 7-year maximum applies where a person assaults, resists or wilfully obstructs a police officer while acting in the execution of their duty (or any person acting in aid of a police officer so acting). The maximum penalty is 14 years where the victim is a police officer and when committing the offence, the offender:

- bites or spits on a police officer;
- throws at or applies to a police officer a bodily fluid or faeces;
- causes bodily harm to the police officer; or
- is, or pretends to be, armed with a dangerous or offensive weapon or instrument.

There is a similar penalty provision that provides for the same form of aggravated offence also carrying a 14-year maximum penalty for unlawfully assaulting a public officer performing a function of their office, or assaulting a public officer because they have performed that function (s 340(2AA)).

Sections 340(1) and 340(2AA) are drafted so that each has two sets of subparagraphs (a) and (b). The first set in each creates offences. The second set creates aggravated offences and sets out the maximum penalties applicable.[29]

Finally, subsection (2) states that a person who unlawfully assaults a 'working corrective services officer' is liable to a maximum penalty of 7 years' imprisonment. This pre-dates the insertion of subsection (2AA) regarding 'public officers' and consultation indicated there may be conflict or uncertainty about what to charge because of the existence of these two separate provisions, which has led to recent legislative changes. These recent changes apply the same circumstances of aggravation carrying the 14-year maximum penalty specifically to this subsection.[30]

'Public officer' has an inclusive (but not exhaustive) definition in section 340. This is distinct from a definition of the same term in section 1 (definitions) of the Code. There are also several definitions of terms relating to the single instance of the term 'working corrective services officer' in section 340(2).

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26 *R v Ganeshalingham* [2018] QCA 34, 3 (Sofronoff P, Philippides JA and Boddice J agreeing).

27 Michael Murray, *The Criminal Code: A General Review* (Report, June 1983) vol 1, 214.

28 Ibid.

29 See *Criminal Code* (Qld) s 365A, regarding circumstances of aggravation of committing the offence in a public place while the person was adversely affected by an intoxicating substance. The term 'penalty, paragraph (a)' is the descriptor used to described the second (a) in each of sections 340(1) and (2AA).

30 This is discussed further below in section 8.9.2.

8.4 The approach in other jurisdictions

8.4.1 Introduction

Chapter 6 of the Council's Issues Paper explored the approach in other jurisdictions, with a focus on other Australian jurisdictions and select international jurisdictions (Canada, New Zealand, and England and Wales), finding differences as to:

- what offences can be charged for assaults against police and other public officers;
- whether aggravated forms of offences exist for assaults on public officers carrying higher maximum penalties;
- whether specific provision is made in sentencing legislation for the treatment of assaults against public officers or other categories of workers.

The existence of aggravated forms of offences and special provision made in sentencing legislation for the treatment of assaults on public officers is discussed in Chapter 10 of this report.

The offences that apply to public officers, or specific categories of officers, are summarised below and in Appendix 5.

8.4.2 Commonwealth and the ACT

Section 147.1 of the Commonwealth *Criminal Code* establishes an offence of causing harm intentionally to a public officer. The person who engages in the conduct that caused the harm must have done so because the victim is a public official or because of the victim's actions as a public official. Where committed against a Commonwealth law enforcement officer (the definition of which includes a member or special member of the Australian Federal Police, as well as public servants employed in the Australian Border Force and members of the Board of the Australian Crime Commission and its staff)[31] the maximum penalty is 13 years' imprisonment.[32]

The Australian Capital Territory (ACT) has most recently legislated in this area, creating a new offence of assault of a frontline community service provider under section 26A of the *Crimes Act 1900* (ACT). The rationale behind the introduction of the new offence was to provide recognition of the 'discrete criminality of this kind of offending'[33] and 'ensure that the special occupational vulnerability' of police officers, firefighters, paramedics and correctional officers is 'appropriately recognised though ACT law'.[34] The Minister for Corrections, in introducing these reforms, identified the legislative intention as being to protect those workers who 'routinely render assistance in volatile and dangerous situations where they are exposed to an increased risk of violence', as well as those who are 'at high risk at a correctional centre'.[35] This intention is reflected in the Explanatory Statement to the Bill which states: 'Police officers, firefighters and paramedics are required to place themselves in harm's way in service to the community, and it is appropriate for the law to reflect this vulnerability'.[36]

A person commits this offence if:

> (a) the person assaults another person; and
>
> (b) the other person is a frontline community service provider; and
>
> (c) the person knows, or is reckless about whether, the other person is a frontline community service provider; and
>
> (d) the assault is committed —
>
> (i) when the frontline community service provider is exercising a function given to the person as a frontline community service provider; or
>
> (ii) as a consequence of, or in retaliation for, action taken by the person in exercising a function as a frontline community service provider; or
>
> (iii) because the person is a frontline community service provider.[37]

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31 *Criminal Code* (Cth) s 146.1 (definition of a 'Commonwealth law enforcement officer').

32 Ibid s 147.1(1)(f).

33 Explanatory Statement, Crimes (Protection of Police, Firefighters and Paramedics) Amendment Bill 2019, 2.

34 Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 21 May 2020, 1100 (Shane Rattenbury MLA).

35 Ibid 1101.

36 Explanatory Statement, Crimes (Protection of Police, Firefighters and Paramedics) Amendment Bill 2019 (ACT) 5–6.

37 *Crimes Act 1900* (ACT) s 26A(1).

In contrast to Queensland, the maximum penalty for this offence is 2 years' imprisonment[38] — the same penalty that applies to the offence of common assault.[39]

The Commonwealth and ACT offences against the specific occupations use complex evidentiary provisions (reflecting their different criminal legislative frameworks from Queensland's). This can affect whether certain defences apply. Most relevantly to this: in Queensland, a person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the reality had been what that person believed was real.[40] For instance, a defendant may believe that a person they were struggling with was not a police officer.

Causing harm to a Commonwealth public official etc.[41] relates to an offender intentionally harming a Commonwealth official because of the official's status as a public official or any conduct engaged in by the official in that capacity. Absolute liability applies regarding the elements of the complainant being a 'Commonwealth public official', their status as such and that the relevant conduct engaged in having been in their official capacity (meaning that, inter alia, the defence of mistake of fact is unavailable).[42]

In the case of the ACT provision, a presumption that the defendant knew the complainant was a frontline community service provider applies, unless there is evidence to the contrary (the onus being reversed and placed on the defendant), if the provider identified themselves as such, or this was: 'reasonably apparent, having regard to all of the circumstances, including the conduct and manner' of the complainant.[43] Examples given are wearing a uniform and being in an emergency vehicle.

Furthermore, strict liability applies to the elements of 'exercising a function' and assaulting the person because of that — and 'it does not matter if the frontline community service provider was off duty' when doing so. This means, inter alia, that the defence of mistake of fact is available.[44]

8.4.3 New South Wales

NSW has an offence of 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.[45] This carries a maximum penalty of 5 years' imprisonment. This offence also applies to assaults of any person with intent to commit a serious indictable offence, or with intent to resist or prevent apprehension or being detained for any offence.

An offence of assault of a police officer while in the execution of his or her duty also exists, which carries the same penalty of 5 years' imprisonment if no bodily harm is caused (compared to 2 years for common assault[46]), rising to 7 years if this occurs during a 'public disorder'[47] or if bodily harm is caused (compared to 5 years for AOBH, or 7 years if in company),[48] or 9 years if both aggravating features are present (bodily harm caused and assault occurs during a public disorder).[49] Even higher penalties apply if a person wounds or causes grievous bodily harm to a police officer while in the execution of their duties, in circumstances where the offender is reckless as to causing

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38 Ibid s 26A.

39 Ibid s 26.

40 *Criminal Code* (Qld) s 24. See Queensland Supreme and District Courts, *Criminal Directions Benchbook* (March 2017 amendments) 'Mistake of Fact, s 24' 79.2 ('Benchbook'). The mistaken belief is honest if genuinely held by the defendant. The defendant's intoxication may be relevant to whether the defendant's mistaken belief was honest: Benchbook, citing *R v O'Loughlin* [2011] QCA 123 [34]. To be reasonable, the belief must be one held by the defendant, in his or her particular circumstances (based on the circumstances as he or she perceived these to be, including an intellectual impairment or language difficulty), on reasonable grounds: Benchbook, citing *R v Julian* (1998) 100 A Crim R 430, 434; *R v Mrzljak* [2005] 1 Qd R 308, 321, 326; *R v Wilson* [2009] 1 Qd R 476 [20]; *R v Rope* [2010] QCA 194; *R v Keevers* [2004] QCA 207 [37]. The prosecution must prove beyond reasonable doubt that the defendant did not hold the belief or that it was unreasonable: Benchbook.

41 *Criminal Code Act 1995* (Cth) sch (*Criminal Code*) s 147.1 (Causing harm to a Commonwealth public official etc.).

42 Ibid s 6.2.

43 *Crimes Act 1900* (ACT) s 26A(2)(b).

44 See *Crimes Act 1900* (ACT) s 7A and *Criminal Code 2002* (ACT) ss 23 and 36.

45 *Crimes Act 1900* (NSW) s 58.

46 Ibid s 61.

47 'Public disorder' is defined to mean 'a riot or other civil disturbance that gives rise to a serious risk to public safety, whether at a single location or resulting from a series of incidents in the same or different locations': Ibid s 4.

48 Ibid s 59.

49 Ibid s 60. This also applies to acts of throwing a missile at, stalking, harassing and intimidation.

actual bodily harm to that officer or any other person — 12 years (compared to 7 years for reckless wounding,[50] and 10 years for reckless GBH[51]), or 14 years if during a public disorder.[52] Defences that apply include self-defence, and that the police officer was not acting within the execution of his or her duty. Standard non-parole periods apply in some cases.[53] As discussed in Chapter 6 of the Council's Issues Paper, these provide 'guideposts' only as to the appropriate sentence based on an offence falling within the 'mid-range of objective seriousness'.[54]

A separate offence applies under the *Crimes Act 1900* (NSW) to assaults of a law enforcement officer (other than a police officer), the definition of which includes correctional officers, probation and parole officers, juvenile justice officers, Crown prosecutions and DPP staff.[55] As for the equivalent provision that applies to police officers, the maximum penalty for this varies depending on whether bodily harm is caused and its extent. Where no bodily harm is caused, the maximum penalty is 5 years, which increases to 7 years if actual bodily harm is caused, and 12 years if the officer is wounded or grievous bodily harm is caused and the offender was reckless as to causing bodily harm to that person or another person. A similar offence applies where the person assaults a staff member of a school or a student.[56]

Other NSW legislation also establishes special forms of assault offences where committed against specific classes of public officers. For example, it is an offence under section 67J of the *Health Services Act 1997* to intentionally obstruct or hinder an ambulance officer providing or attempting to provide ambulance services to another person. The penalty for this offence is 50 penalty units or 2 years' imprisonment if no act of violence is involved, or 5 years if committed with violence.

These offences are in addition to a general aggravating factor that applies for sentencing purposes to certain categories of victims, including police, emergency services workers, health workers, correctional officers, and other public officers. This provision is discussed in detail in Chapter 10.

8.4.4 Northern Territory

The Northern Territory has introduced an offence of assaults on police or emergency workers under section 189A of the *Criminal Code* (NT). This applies if any person unlawfully assaults a police officer or emergency worker in the execution of the officer's or worker's duty. The maximum penalty is 5 years' imprisonment, increasing to 7 years if the victim suffers harm, and 16 years if the victim suffers serious harm. The definition of an 'emergency worker' is discussed in section 8.6.5 below.

The NT has also created separate circumstances of aggravation that apply to the offence of common assault under section 188 of the Code. Common assault is aggravated if the victim of the assault:

- is a member of the Legislative Assembly, the House of Representatives or the Senate and the assault is committed because of such membership;
- is assisting a public sector employee in carrying out the public sector employee's duties;
- is assisting a justice of the peace in carrying out the justice's functions;
- is engaged in the lawful service of any court document or in the lawful execution of any process against any property or in making a lawful distress; or
- has done an act in the execution of any duty imposed on him by law and the assault is committed because of such act.[57]

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50 Ibid s 35(4). This increases to 10 years if the person is in company.

51 Ibid s 35(2). This increases to 14 years if the person is in company.

52 Ibid ss 60(3) and (3A).

53 The standard non-parole periods are 3 years for an offence under s 60(2) (assault of a police officer occasioning bodily harm) and 5 years for an offence under s 60(3) (wounding or inflicting grievous bodily harm on a police officer): *Crimes (Sentencing Procedure) Act 1999* (NSW) Div 1A (Standard non-parole periods) Table.

54 A standard non-parole period is defined under s 54A of the *Crimes (Sentencing Procedure) Act 1999* as representing 'the non-parole period … that taking into account only the objective factors affecting the relative seriousness of the offence, is in the middle of the range of seriousness'.

55 *Crimes Act 1900* (NSW) s 60A.

56 Ibid s 60E.

57 *Criminal Code Act 1983* (NT) sch 1 (*Criminal Code*) ss 188(2)(e)–(h).

Other aggravating circumstances include if the person assaulted:

- suffers harm;
- is a female and the offender is a male;
- is under the age of 16 years and the offender is an adult;
- is unable because of infirmity, age, physique, situation or other disability effectually to defend himself or to retaliate;
- is indecently assaulted; or
- is threatened with a firearm or other dangerous or offensive weapon.[58]

The aggravated form of common assault attracts a maximum penalty of 5 years' imprisonment, compared to one year for non-aggravated forms of common assault.

In addition to these provisions, the NT has established a stand-alone criminal offence under section 188A of the Code applying to assaults of *any worker* who is working in the performance of his or her duties, without the need to establish any specific intention. Its *Criminal Code* provision is broad: 'A person who unlawfully assaults a worker who is working in the performance of his or her duties is guilty of an offence'. It defines a worker as someone who 'carries out employment related activities (work) in any lawful capacity, including work as any of the following': an employee, contractor or subcontractor, apprentice or trainee, student gaining work experience, volunteer, self-employed person or 'person appointed under a law in force in the Territory to carry out functions or to hold an office'. The section specifically excludes police and emergency workers. They are the subject of a different offence provision.[59] The same maximum penalties apply as for assaults against police and emergency workers (5 years if no harm suffered, or 7 years in circumstances where the assault has resulted in the victim being harmed).[60]

In introducing the Bill inserting this new section into the NT *Criminal Code*, the Attorney-General and Minister for Justice explained that the definition of worker 'extends further than people who provide a service to the public, such as taxi drivers, paramedics and hospital workers' and that it 'extends protection to all types of lawful workers, recognising that many workers are faced with situations where they are at the mercy of violent people'.[61] The creation of such an offence was considered justified on the basis that: 'Work is a fundamental cornerstone of many people's lives, and all Territorians should be assured when they go to work they will be protected by the law'.[62]

8.4.5 South Australia

In South Australia, section 5AA of the *Criminal Law Consolidation Act 1935* (SA) creates 'aggravated offences' (over the course of five pages) based on factual circumstances that are then picked up in discrete offence provisions (including assault),[63] which themselves impose a higher maximum penalty for the aggravated variant of the particular offence. The relevant circumstances include committing an offence:

- against specified occupations, including police, prison or law enforcement officers, either knowing the victim was acting in the course of official duty; or in retribution for something the offender knows or believes was done by the victim in the course of official duty;[64]
- against a community corrections officer or community youth justice officer (as legislatively defined) knowing the victim to be acting in the course of their official duties;[65]
- knowing that the victim was, at the time of the offence, over the age of 60 years;[66]
- knowing that the victim was, at the time of the offence, in a position of particular vulnerability because of physical disability or cognitive impairment;[67]
- against the person, where the victim was, at the time of the offence:

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58 Ibid ss 188(2)(a)–(d), (k)–(m).

59 Ibid s 189A (Assaults on emergency workers).

60 Ibid s 188A(2).

61 Northern Territory, *Parliamentary Debates*, Legislative Assembly, 4 December 2012, Criminal Code Amendment (Assaults on Workers) Bill 2012 (NT) — Second Reading Speech, 696 (John Elferink, Attorney-General and Minister for Justice).

62 Ibid.

63 *Criminal Law Consolidation Act 1935* (SA) s 20.

64 Ibid s 5AA(1)(c).

65 Ibid s 5AA(1)(ca).

66 Ibid s 5AA(1)(f)

67 Ibid s 5AA(1)(j).

- to the knowledge of the offender, in a position of particular vulnerability because of the nature of his or her occupation or employment;[68]
- engaged in a prescribed occupation or employment (whether on a paid or volunteer basis) and the offender knew the victim was acting in the course of official duties.[69]

Such prescriptions are listed in regulations and include a further extensive raft of definitions.[70]

There are evidentiary provisions, including:

- A person is taken to know a particular fact if the person, knowing of the possibility that it is true, is reckless as to whether it is true or not.[71]
- If a person is charged with an aggravated offence, the circumstances alleged to aggravate the offence must be stated in the instrument of charge.[72]

A jury must make findings, if there are multiple circumstances of aggravation, about which of the aggravating factors have been established.[73] This 'does not prevent a court from taking into account, in the usual way, the circumstances of and surrounding the commission of an offence for the purpose of determining sentence'.[74]

Increased penalties apply to aggravated forms of offences, which vary depending on the nature of the substantive offence charged. For example, in the case of assault, the following maximum penalties apply:

- for an assault where no harm has been caused to another person:
  (a) for a non-aggravated offence (called a 'basic offence'): 2 years' imprisonment;
  (b) for an aggravated offence — except one to which (c) or (d) applies: 3 years' imprisonment;
  (c) for an offence aggravated by the use of, or threatened us of, an offensive weapon: 4 years' imprisonment;
  (d) for an offence aggravated by the circumstances referred to in section 5AA(1)(c), (ca) or (ka) (discussed above), which includes where the victim falls into one of a broad range of occupations: 5 years' imprisonment.[75]
- For an assault causing harm to another person (an offence that replaced the South Australian offence of assault occasioning actual bodily harm):
  (a) for a non-aggravated offence: 3 years' imprisonment;
  (b) for an aggravated offence (except one to which paragraph (c) or (d) applies): 4 years' imprisonment;
  (c) for an offence aggravated by the use of, or a threat to use, an offensive weapon: 5 years' imprisonment;
  (d) for an offence aggravated by the circumstances referred to in section 5AA(1)(c), (ca) or (ka) (committed against victims in particular occupations): 7 years' imprisonment.[76]

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68 Ibid s 5AA(1)(k)(i).

69 Ibid s 5AA(1)(ka).

70 *Criminal Law Consolidation (General) Regulations 2006* (SA) reg 3A. Occupations prescribed are: emergency work; employment as a person (whether a medical practitioner, nurse, midwife, security officer or otherwise) performing duties in a hospital (including, to avoid doubt, a person providing assistance or services to another person performing duties in a hospital); employment as a person (whether a medical practitioner, nurse, pilot or otherwise) performing duties in the course of retrieval medicine; employment as a medical practitioner or other health practitioner (both within the meaning of the *Health Practitioner Regulation National Law (South Australia)*) attending an out of hours or unscheduled callout, or assessing, stabilising or treating a person at the scene of an accident or other emergency, in a rural area; passenger transport work; police support work; employment as a court security officer; employment as a bailiff appointed under the South Australian *Civil and Administrative Tribunal Act 2013*; employment as a protective security officer within the meaning of the *Protective Security Act 2007*; employment as an inspector within the meaning of the *Animal Welfare Act 1985*. Definitions are extensive and include definitions of an 'accident or emergency department of a hospital', a 'court security officer', an 'emergency', and 'emergency services provider', 'emergency work', 'hospital', 'passenger transport service' and 'passenger transport work'.

71 *Criminal Law Consolidation Act 1935* (SA) s 5AA(2).

72 Ibid s 5AA(3).

73 Ibid s 5AA(4).

74 Ibid s 5AA(6).

75 Ibid s 20(3).

76 Ibid s 20(4).

Following legislative amendments that came into effect on 3 October 2019, a new offence was introduced under section 20AA of the *Criminal Law Consolidation Act 1935* (SA) of causing harm to, or assaulting, certain prescribed emergency workers. Who falls within this definition is discussed in section 8.6.5.

The maximum penalties that apply to this offence range from 15 years' imprisonment for causing harm intentionally[77] down to 5 years for an assault where harm has not been caused either recklessly or intentionally.[78] 'Harm' is defined for the purposes of this section as including harm inflicted by causing human biological material to come into contact with the victim.[79]

During the Second Reading in the Legislative Assembly, the Treasurer identified the need for this new offence on the following basis:

> It must be made absolutely clear that the criminal law is not deficient in terms of what offences are available to be charged and prosecuted. Despite this, a clear message must be sent to both offenders and the courts as to what is an appropriate sentence for someone who harms our front-line emergency services workers. This has been actioned through increased penalties aligning with the position in New South Wales, as requested by the Police Association and the commissioner, and also through secondary sentencing considerations.
>
> The creation of a new offence and increased maxima will better protect police and other emergency services workers while complementing existing laws capturing offences against police and broader assault laws …[80]

8.4.6 Tasmania

Special provisions targeted at assaults on public officers under the *Criminal Code* in Tasmania are more limited. An offence exists under the *Criminal Code* (Tas) of assaulting, resisting or wilfully obstructing any police officer in the due execution of his or her duty, or any other person lawfully assisting, which also applies to the same acts done against any person lawfully arresting, or about to arrest, any person,[81] but this does not extend further to emergency workers or other public officers. Tasmania applies a 21-year maximum penalty to all offences, subject to the provisions of the *Sentencing Act 1997* (Tas) or any other statute providing otherwise.[82]

A separate offence, however, exists under section 34B of the *Police Offences Act 1935* of assault, resist, or wilful obstruct. This offence applies in circumstances where these acts are committed against a police officer acting in the execution of their duty or a person lawfully assisting a police officer in the execution of their duty, or a person lawfully arresting another person, and where committed against a public officer or an emergency service worker acting in the execution of their duty, performing a duty imposed by an Act, or in the exercise of a public duty or authority. The maximum penalty is 50 penalty units, or 2 years' imprisonment, if the victim is a public officer or emergency worker, and 100 penalty units, or 3 years' imprisonment, otherwise. The maximum penalty for common assault in comparison is 20 penalty units, or 12-months' imprisonment, unless the offender committed the offence knowing the victim was pregnant, in which case it increases to 50 penalty units or 2 years.[83]

8.4.7 Victoria

Victoria has established a complex offence and sentencing regime that applies to assaults on emergency workers, youth justice custodial workers and custodial officers.

The offence of assault under section 31 of the *Crimes Act 1958* (Vic) includes an offence of assault, threaten to assault, resist or intentionally obstruct an emergency worker on duty, a youth justice custodial worker on duty, or a custodial officer on duty, knowing or being reckless as to whether the person was an emergency worker, youth justice custodial worker, or custodial officer.[84] It is also an offence to assault someone assisting one of these workers knowing they are rendering assistance to such persons.[85] Other acts caught under this section are assaults or threats to assault another person with intent to commit an indictable offence, and assaults or threats to assault

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77 Ibid s 20AA(1).

78 Ibid s 20AA(3).

79 Ibid s 20AA(6).

80 South Australia, *Parliamentary Debates*, Legislative Council, 4 July 2019, Criminal Law Consolidation (Assaults on Prescribed Emergency Workers) Amendment Bill 2019 — Second Reading, 4055 (Rob Lucas, Treasurer).

81 *Criminal Code Act 1924* (Tas) sch 1 (*Criminal Code*) s 114.

82 Ibid s 389.

83 *Police Offences Act 1935* (Tas) s 35.

84 *Crimes Act 1958* (Vic) s 31(1)(b). All terms are defined for these purposes using the definitions that apply under section 10AA of the *Sentencing Act 1991* (Vic).

85 Ibid s 31(1)(ba).

a person with intent to resist or prevent the lawful apprehension or detention of a person.[86] All forms of this assault carry a maximum penalty of 5 years' imprisonment.

A summary offence equivalent exists under section 51 of the *Summary Offences Act 1966,* carrying a maximum penalty of 60 penalty units, or 6 months' imprisonment.

Section 320A of the *Crimes Act* also applies a higher maximum penalty to the offence of common assault if an offensive weapon or firearm is available to an offender during an assault involving a police officer or a protective services officers, and the victim knows, or is reckless as to whether, the victim is such an officer. For this higher penalty to apply, the offender must be proven to have either allowed the victim to see the weapon (or its shape) or suggested to the victim that they have it readily available and that they knew, or should have known, their conduct would be likely to cause apprehension or fear. The maximum penalty is 10 years if the weapon is an offensive weapon, and 15 years if it is a firearm.

In addition to these offences, the *Sentencing Act 1991* (Vic) creates aggravated forms of offences in circumstances where they are committed against an emergency worker on duty, a youth justice custodial officer on duty, or a custodial officer on duty. This is achieved by requiring a court to set a minimum non-parole period or, alternatively, a minimum sentence of imprisonment or detention unless specific criteria are met — the level of which varies by offence.[87] The offences under the *Crimes Act* to which these provisions apply are:

- causing injury intentionally or recklessly (s 18);
- causing serious injury recklessly (s 17);
- causing serious injury intentionally (s 16);
- causing serious injury recklessly in circumstances of gross violence (s 15B);
- causing serious injury intentionally in circumstances of gross violence (s 15A).

8.4.8 Western Australia

The WA equivalent to section 340 (s 318 of the *Criminal Code* (WA)) establishes an offence of serious assault, which includes the assault of a public officer performing a function of their office or employment (or because of this),[88] and persons acting in aid of that officer as well as other specified categories of workers. The categories of victims captured within this section are discussed in detail in section 8.6.5 below.

As discussed in Chapter 10 of this report, mandatory minimum sentencing provisions apply to those convicted of serious assault where committed against certain classes of public officer, including police, prison officers, youth justice officers, security officers under the *Public Transport Authority Act 2003* (WA), ambulance officers and court security officers, in circumstances where the victim suffers bodily harm.

The maximum penalty that applies to this offence is 7 years, or 10 years if at or immediately before or immediately after the commission of the offence the offender is armed with any dangerous or offensive weapon or instrument or is in company with another person or persons. Temporary amendments that apply for a 12-month period from 4 April 2020 also create an aggravated form of offence if:

> (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.[89]

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86 Ibid ss 31(1)(a) and (c).

87 *Sentencing Act 1991* (Vic) s 10AA.

88 *Criminal Code Act Compilation Act 1913* (WA) sch (*Criminal Code*) s 318(1)(d).

89 Ibid s 318(1A).

8.4.9 England and Wales

In 2018, England and Wales introduced an aggravated form of common assault or battery by providing for a higher penalty for this offence where committed against an emergency worker (defined widely to include police, prison officers, people providing fire and rescue services and health services, among others).[90] This doubles the maximum penalty that would otherwise apply in such circumstances from 6 months' imprisonment to 12 months.

At the same time as this reform, a statutory aggravating factor for the purposes of sentencing was introduced that applies when other assaults, including sexual assault, and assault-related offences, are committed against emergency workers. This provision is discussion in detail in section 10.2.2 in Chapter 10.

8.5 Should public officers be treated differently at law?

The Council has been asked to advise whether the current definition of 'public officer' in section 340 of the *Criminal Code* (Qld) should be expanded to recognise other occupations. It has also been asked to consider whether it might be appropriate to target assaults on public officers in the existing section 340, another offence provision or provisions, or through the introduction of a circumstance of aggravation.

Underpinning the questions asked in the Terms of Reference is the threshold question of whether assaults and assault-related offences, where committed against a public officer, should be treated as more serious at law than if the same conduct was committed against private sector workers.

8.5.1 Aggravated assault based on victim status as a public officer

Historically, and in other common law jurisdictions, assaults on police officers and any other person performing a lawful duty have been treated as more serious at law.

It is clear from the analysis above that a number of Australian jurisdictions and other common law jurisdictions have acted to introduce separate offences and/or circumstances of aggravation that increase the penalties that would otherwise apply to an act of assault based on the victim's status as police officer, emergency worker or other type of identified class of public officer.

There are some notable exceptions to this — such as the ACT, which has applied the same penalty for its new offence of assault of a frontline community service provider as applies to the offence of common assault. Some of the penalty enhancements involved are also more modest than others — for example, a 6-month increase for common assault in England and Wales, and 12 months in Tasmania for assault, resist or wilful obstruction of a public officer or emergency service worker under the *Police Offences Act 1935* (Tas).

A common justification for treating assaults on public officers (or particular classes of victims) differently and applying higher penalties to the same criminal conduct when committed against these victims is that these offences are more serious when committed on people performing duties on behalf of the state. As discussed in Chapter 7 of the Issues Paper, determining offence seriousness comprises two key components — harm done by the offence (the 'harmfulness') and the culpability of the offender (the 'wrongfulness'):

> Analytically, the seriousness of criminal conduct has two major components: harm and culpability. (…) Harm refers to the degree of injury done or risked by the act. Culpability refers to the factors of intent, motive, and circumstance that bear on the actor's blameworthiness — for example, whether the act was done with knowledge of its consequences or only in negligent disregard of them, or whether, and to what extent, the actor's criminal conduct was provoked by the victim's own misconduct.[91]

In Chapter 5, we noted the impacts an assault can have on public officers who are assaulted in their workplace.

Apart from individual impacts, which can be experienced by any victim of assault, at an organisational level, an assault on a person at work can result in lost productivity, and the potential to permanently lose a staff member who has had considerable training invested to skill them to perform their duties. This can be a particular concern, for example, in specialised fields like accident and emergency care where there are shortages of skilled professionals.

Of particular relevance to assaults on public officers, there is also potential for assaults on these officers to erode public confidence in government, the justice system and the institutions they represent. In the case of a police

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90 *Assaults on Emergency Workers (Offences) Act 2018* (UK) ss 1 (Common assault and battery) and 3 (Meaning of 'emergency worker').

91 Andrew von Hirsch 'Commensurability and Crime Prevention: Evaluating Formal Sentencing Structures and their Rationale' (1983) 74(1) *Journal of Criminal Law and Criminology* 209, 214.

officer who is assaulted, for example, it may undermine public confidence that police are adequately protected from assault, and therefore able to adequately protect others from dangerous individuals.

The Queensland Court of Appeal has recently recognised 'the interest that the community has in the maintenance of an effective police force and the protection of police officers from harm':[92]

> The establishment of a state sanctioned body of police serves a number of important and obvious purposes. One of these purposes is to ensure that the community need not rely upon self-help or upon vigilantism to protect itself against criminal acts. The community does not need to take such measures because some among us have volunteered to undertake this difficult and hazardous duty as members of the Queensland Police Service. There is, therefore, a public interest in ensuring that, so far as laws can do so, police officers are protected against harm in the execution of their duties and that offenders are punished when they harm police.[93]

The public nature of the roles public officers perform and that their duties are performed on behalf of the state is a common justification adopted in many jurisdictions reviewed as increasing the seriousness of an assault. During recent parliamentary debates in England and Wales, the sponsoring Member for a Bill introducing the emergency worker reforms, expressed the rationale for this reform in the following terms:

> I start from a simple premise. An assault on anyone is wrong, but an attack on any emergency worker—whether that is a police constable, a paramedic, an ambulance driver, an accident and emergency doctor or nurse, a fire officer, a prison officer, someone working in search and rescue, or someone working on a lifeboat—is an attack on us all. And when we are all attacked, we all stand firm together.[94]

Similar statements have been made in introducing sentencing reforms in New Zealand, with such assaults described as representing 'an attack on the community and the rule of law'.[95]

While some types of assaults are treated as aggravated when committed against specific classes of victim, it equally has been recognised: 'Equality before the law is a fundamental principle which ensures that individuals are not subject to discrimination in the enjoyment of their legal rights and entitlements'.[96]

The Queensland *Human Rights Act 2019* (Qld) (HRA) has given legislative recognition to the right to equality before the law, and to the equal protection of the law without discrimination, as important human rights. These rights may be limited, provided the limit is 'reasonable and justifiable' with reference to factors that include the nature of the human right, the nature and purpose of the limitation, the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose, whether there are any less restrictive and reasonably available ways to achieve the purpose, and the importance of the purpose of the limitation.

While the HRA does not specifically recognise the human rights of victims of crime, the offence of serious assault, and any reforms that might establish new aggravated forms of assault, where committed against a public officer, or particular classes of officer, engage the right to equal protection of the law because these measures result in a special offence, or form of offence, being established that applies only to victims of assault in certain occupations — namely, police officers and other emergency service workers, corrective services officers and other public officers.

Stakeholder views

The Issues Paper asked respondents to consider the following questions:

1. Should an assault on a person while at work be treated by the law as more serious, less serious, or equally serious as if the same act is committed against someone who is not at work, and why?
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?
3. Should the law treat assaults on particular categories of public officer more serious than other categories of public officer, and why?

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92 *R v Patrick (a pseudonym)* [2020] QCA 51, 8 [30] (Sofronoff P, Fraser JA and Boddice J agreeing).

93 Ibid. Similar statements have been made in other jurisdictions with respect to assaults on police. See, for example, the NSW Guideline Judgment, *Attorney-General's Application under s 37 of the Crimes (Sentencing Procedure) Act 1999 (No 2 of 2002)* (2002) 137 A Crim R 196 at [22] and [26].

94 United Kingdom, *Parliamentary Debates*, House of Commons, 20 October 2017, vol 629 (Chris Bryant, Member for Rhondda).

95 New Zealand, *Parliamentary Debates*, House of Representatives, Sentencing (Aggravating Factors) Amendment Bill — First Reading, 12 April 2011, 17, 951 (Judith Collins, Minister for Police).

96 Simon Bronitt and Bernadette McSherry, *Principles of Criminal Law* (4th ed, 2017) 152 with reference to Article 7 of the Universal Declaration of Human Rights.

Stakeholders were divided in their responses to the above questions. Notably, no stakeholders responded that assaults on workers, public officers or otherwise should be treated as less serious under the law.

Several stakeholders indicated their support for assaults on workers to be treated equally under the law, irrespective of whether these workers were engaged in a private or public capacity, or performing their functions in a frontline, management or support role. For example, the Queensland Council of Unions submitted 'all workers have the right to attend work without being subjected to physical or psychological violence and/or abuse'.[97]

A number of stakeholders supported the view that all victims subject to an assault should be treated equally under the law regardless of whether they were assaulted while working or not. The Independent Education Union, in noting its opposition to the creation of offences that 'create artificial distinctions between individuals', was concerned that: 'distinguishing between different categories of person, by imposing different penalties, is unethical as it implies that some individuals are worth more than others'.[98] The Department of Child Safety, Youth and Women (DCSYW) 'considers all assaults should be treated by the law as equally serious, whether the act is committed against someone at work as a public officer or employed in a private capacity'. However, the department further clarified that, 'assaults on people employed in a private capacity in particular environments or providing specific services, such as residential care facilities, should also be recognised as aggravated forms of assault' like those committed against a public officer. Due to the nature of their work, DCSYW did not believe it was appropriate that penalties for assaults on a child safety officer be higher than those perpetrated against residential care staff.[99]

Both Sisters Inside and the Queensland Law Society (QLS) argued for the repeal of offence provisions that distinguish the severity of an assault based solely on a person's occupation rather than on the harm caused in contrast to the law's treatment of other victims of assault. Sisters Inside submitted that no distinction should be made on this basis as: 'The harm suffered by a public officer is the same as experienced by a civilian exposed to the same offending'.[100] The QLS stated that 'the assessment of the seriousness of an assault, and the weight to be given to the victim's occupation, [should] be matters left to the informed consideration of judges and magistrates'.[101]

However, others suggested there were legitimate justifications for treating assaults on public officers as inherently more serious than those committed on other citizens in a private capacity. For example, the Queensland Catholic Education Council submitted there are:

> strong public policy reasons for treating assaults on public officers as an assault involving aggravating features. The work that is being done by public officers enables the delivery of essential community services and, by the very nature of their work, [they] are subject to wider public exposure.[102]

This perspective was echoed by stakeholders who pointed to the obligation of public officers to comply with duties under the law in the delivery of the functions of their occupations as a distinguishing factor. Queensland Corrective Services (QCS) observed public officers are held to a high standard of accountability due to their obligations under the *Public Sector Ethics Act 1994* (Qld), Code of Conduct for the Queensland Public Service and the HRA.[103] It submitted that given staff 'are expected to work ethically and be accountable for community safety' they 'should be entitled to do so with the strongest protections from harm, ensuring they can come to and go home from work safely'.[104]

The Aboriginal and Torres Strait Islander Legal Service similarly noted:

> the shared attribute of public officers presently protected by section 340 is that they are under the direction and control of government authorities, and therefore obliged to act in accordance with government policy and in accordance with the law. They are also subject to disciplinary regimes which offer a form of recourse if they exceed their powers and/or break the law …
>
> Consequently there is both a level of restraint and accountability on public officers and to that end there is a logic that the frontline public officers subject to direction and control of the state and also subject to obligations towards members of the public should also have special protection under the law from those members of the public.[105]

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97 Submission 16 (Queensland Council of Unions) 2.

98 Submission 13 (Independent Education Union (Queensland and Northern Territory Branch)) 1.

99 Submission 5 (Department of Child Safety, Youth and Women) 1–2.

100 Submission 17 (Sisters Inside) 1.

101 Submission 30 (Queensland Law Society) 5 and see 9 and 12.

102 Submission 2 (Queensland Catholic Education Council) 1.

103 Submission 21 (Queensland Correctional Services) 6.

104 Ibid.

105 Submission 22 (Aboriginal and Torres Strait Islander Legal Service) 3–4.

The Queensland Human Rights Commission observed that corrective services officers, police and other frontline emergency service workers 'often deal with the most complex and challenging people in our community and deserve to undertake their critical duties in a safe working environment'.[106] The common feature of each of these occupational groups is their 'legal obligation to perform duties on behalf of the state that may involve dealing with dangerous people in dangerous situations'.[107] However, the Commission cautioned that treating assaults on these occupational groups as more serious 'will limit rights'[108] and 'there must be a justification, based on the particular risks faced by each occupation selected'.[109]

Legal Aid Queensland submitted: 'there is merit in retaining a specific substantive offence provision of serious assault', and suggested '[the] focus of the offence should be the fact that the victim was a public officer performing a function of office'.[110] It noted: 'Historically, it would seem the policy behind these types of provisions relates to the ability to punish those who do not respect authority where the authority is granted through a public purpose' as well as 'to allow those tasked with a public responsibility to carry out their work'.[111]

The Council's view is discussed in section 8.5.3.

8.5.2 Creation of targeted offences vs circumstances of aggravation

The Terms of Reference ask the Council to consider the most appropriate response to assaults on public officers — including whether these should continue to fall within section 340, form the basis of new offences, or be recognised through circumstances of aggravation.

What are 'circumstances of aggravation'?

Statutory circumstances of aggravation can be applied across existing criminal offences (e.g. common assault, AOBH, wounding, GBH) without creating new specialised offences.

This distinguishes substantive offences with increased maximum penalties by victim occupation, rather than by the criminal conduct involved and resulting harm (still necessary as the basis for the simpliciter offence). The offence charged is the same irrespective of victim status but is more serious, having been committed against a person because of their occupation.

The statutory circumstance of aggravation must be proven beyond reasonable doubt:

> [Circumstance of aggravation] is defined in s 1 of the Code to mean a circumstance whose existence renders an offender is 'liable to a greater punishment' than would apply if the existence of the circumstance is not proved. If the Crown wishes to rely upon such a circumstance upon sentence then it must be charged in the indictment.[112] It must be admitted as part of a guilty plea or found by a jury as part of a guilty verdict. A circumstance of aggravation in the statutory sense operates to provide for a higher maximum penalty if the circumstance is found to exist.[113]

Queensland's *Criminal Code* has existing statutory circumstances of aggravation in various offence provisions that provide for higher maximum penalties. These usually pertain to particular acts or omissions of the offender. Examples are dangerous operation of a motor vehicle, sexual assaults, threats, stalking, fraud, robbery, extortion, burglary and forgery. AOBH is perhaps the most relevant example (being armed or in company).

There are no such circumstances of aggravation present in common assault, GBH, torture or wounding.[114] These offences may be the preferred charges for assaults that section 340 would also cover, because they better reflect the harm caused; yet they do not have specific circumstances of aggravation or aggravating factors that give the same recognition to occupation type that section 340 does.

The WA *Criminal Code*'s GBH offence provision (section 297) has circumstances of aggravation regarding public officers and specified workers as victims harmed while performing their duties. The maximum penalty for the WA

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106 Submission 18 (Queensland Human Rights Commission) 2 [3].

107 Ibid 9.

108 Ibid.

109 Ibid.

110 Submission 29 (Legal Aid Queensland) 5.

111 Ibid.

112 *Criminal Code* (Qld) s 564(2), *Justices Act 1886* (Qld) s 47(4).

113 *R v O'Sullivan; Ex parte Attorney-General (Qld)* [2019] QCA 300, 21 [75] (Sofronoff P, Gotterson JA and Lyons SJA) 25–6 [90].

114 However, the separate organised crime circumstance of aggravation, created by the PSA, which instead adds a cumulative prison term, can apply to each except for common assault.

aggravated offence is 14 years' imprisonment (equal to the maximum for GBH simpliciter in Queensland), increased from 10 years for GBH simpliciter.

A recent example of similar considerations — domestic violence

In Chapter 10, the Council discusses the implementation of the aggravated sentencing factor regarding domestic violence in section 9(10A) of the PSA. That reform came from an initial review recommendation of a 'floating' circumstance of aggravation regarding domestic violence applicable to any offence in the *Criminal Code*, on the basis that it would 'reduce the risk that a crime committed in the context of domestic and family violence is "missed".[115]

Both the government and opposition[116] supported an aggravating sentencing factor over a circumstance of aggravation in the eventual Bill, noting stakeholder advice supporting this. The Attorney-General told Parliament that:

> A circumstance of aggravation increases the maximum penalty for offences. It must be charged by the prosecution and therefore becomes a matter that must be proved beyond reasonable doubt.
>
> Stakeholder responses to the discussion paper acknowledge the inherent complexities of applying a circumstance of aggravation across all criminal offences. One particular limitation of a circumstance of aggravation is that it cannot apply to an offence which already attracts a maximum penalty of life imprisonment.[117] This issue was not canvassed by the task force. While it was not the approach preferred by the task force, there was wide support from stakeholders who responded to the discussion paper for an alternative proposal to amend the *Penalties and Sentences Act 1992* to make provision for domestic and family violence as an aggravating factor on sentence. This amendment is included in the bill.[118]

Discretion, equality, symbolism, acknowledgement — competing issues in recognising certain workers

The use of a stand-alone offence (or offences), or legislated aggravating factors or circumstances of aggravation, which name specific categories of victim or forms of behaviour, even if captured elsewhere under the general criminal law, could be argued to perform an important symbolic function.

This involves statutory recognition of occupation as a factor distinguishing 'eligible complainants' from the rest of the population. It risks tension between the fundamental value of equality before the law and what could arguably be an important symbolic function of recognising certain groups, which could create a strong public statement of society's condemnation (achieving education and awareness) of certain behaviours as applied to the recognised group/s.

This has been justified on the basis that the group in question (e.g. police) carry greater risk than others and act in a way that protects the law and society generally. For example, UK legislation (discussed in section 10.2.2 of Chapter 10) carries a positive requirement that sentencing courts treat assaults on emergency workers as aggravating, and to state in open court that the offence is so aggravated.

The Tasmanian Sentencing Advisory Council (TSAC), in its report on assaults on emergency service workers, noted arguments in favour of this approach included that such offences 'can send a strong public statement of society's condemnation of certain behaviours' and the symbolic function of a law can be 'absolutely and without question sufficient justification for its introduction'.[119]

Arguments against such an approach. raised in the context of an earlier review by the Tasmania Law Reform Institute on racial vilification and racially motivated offences, included that it was not a 'useful or necessary exercise of Parliament's power over citizens to enact criminal laws to serve a "symbolic function"' and '[f]or any additional

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115 Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (Final Report, 28 February 2015) 304.

116 Queensland, *Parliamentary Debates,* Legislative Assembly, 19 April 2016, 1031 (Ian Walker, Member for Mansfield).

117 For instance, *Criminal Code* s 317 (malicious acts) can apply to offending against public officers and carries a maximum penalty of life imprisonment.

118 Queensland, *Parliamentary Debates*, Legislative Assembly, 2 December 2015, 'Criminal Law (Domestic Violence) Amendment Bill (No. 2) — Introduction', 3083 (Yvette D'Ath, Attorney-General and Minister for Justice and Minister for Training and Skills).

119 Sentencing Advisory Council (Tasmania), *Assaults on Emergency Service Workers* (Report No. 2, 2013) 41, citing Tasmania Law Reform Institute, *Racial Vilification and Racially Motivated Offences* (Final Report No. 14, 2011) 30.

restrictions on individual or collective freedom to be justified, their actual rather than their emotive, speculative or "symbolic" benefits must be demonstrated'.[120]

In the context of its own review, TSAC identified the symbolic nature of a separate provision for emergency service workers as 'an important argument in support of its introduction', as such an approach 'acknowledges the community's abhorrence of this type of behaviour and acts to educate members of the public about certain behaviours that are not acceptable'.[121] It consequently recommended that the offence of assault of a public officer be broadened to include an emergency service worker, and that the maximum penalty be increased to 50 penalty units or to imprisonment for a term of two years (or both).[122] This recommendation was accepted by the Tasmanian Government and, as discussed above, reflects the current law.[123]

A similar benefit in the 'labelling' of such conduct as unacceptable has also been recognised by other commentators as performing a legitimate and important function in responding to offences against police:

> The labelling effect is important because it reflects the state's explicit message of the role and importance of the police as part of the state. What distinguishes the police officer from other risky professions is that the police represent the state, the community and the law. First, law enforcement is in the interest of the wider public, and condemnation of any interference with the implementation of law and security is therefore justified. Secondly, an attack on a constable is seen as an attack on the Crown, upon which every police officer takes their oath. This is especially true in political demonstrations or riots where officers are attacked just for being 'part of the system'. A strike against an individual officer is therefore of social significance, which goes beyond the individual harm caused. It is a strike against a fundamental institution.[124]

Similar arguments about the need for such provisions are commonly made during parliamentary debates and in explanatory material,[125] and applied equally to the need to establish specific statutory aggravating factors for sentencing purposes.[126]

The COVID-19 pandemic has broadened this issue: quasi criminal health directives (carrying fines for breaches) were created to protect a much broader range of 'essential' workers, balancing a mix of occupational risk and health and economic imperatives.

Queensland's Chief Health Officer issued a direction[127] prohibiting persons from intentionally spitting at, coughing or sneezing on public officials and 'workers', or threatening to do so, in a way that would reasonably be likely to cause apprehension or fear of being exposed to COVID-19. The operation of this directive, and the penalties that apply, are discussed in section 9.3 of Chapter 9. The class of persons to which it applies is discussed in section 8.6.4 (below).

Historical Queensland reviews and outcomes

As discussed in section 8.6.2 (below) and earlier in this chapter, there were large-scale legal reviews of the *Criminal Code*, including section 340, prior to the first set of significant amendments to that section in 1997: a 1992 review (the 'O'Regan Review'),[128] the failed replacement 1995 *Criminal Code*, and the 'Connolly Review' of 1996,[129] which informed the *Criminal Law Amendment Act 1997* (Qld), which itself repealed the unproclaimed replacement Code and made the first major reforms to section 340 since its inception in 1899.

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120 Ibid (references omitted).

121 Ibid.

122 Ibid 47, Recommendation 1(2).

123 *Police Offences Act 1935* (Tas) ss 34B(2)–(2A).

124 Osman Isfen and Regina E Rauzloh, 'Police Officers as Victims: Sentencing Standards and their Justifications in England and Germany' (2017) 81(1) *The Journal of Criminal Law* 33, 46–7.

125 See, for example, Australian Capital Territory, Explanatory Statement: Crimes (Protection of Police, Firefighters and Paramedics) Amendment Bill 2019 which refers to a new offence recognising 'the discrete criminality of this offending', as well as 'clear community expectation that these assaults are unacceptable': 2.

126 See, for example, New Zealand, *Parliamentary Debates*, House of Representatives, 12 September 2012, Sentencing (Aggravating Factors) Amendment Bill — Third Reading, 5193 (Judith Collins, Minister for Justice).

127 The *Protecting Public Officials and Workers (Spitting, Coughing and Sneezing) Direction (No. 3)*, issued under the Chief Health Officer's powers pursuant to the *Public Health Act 2005* (Qld) s 362B. <https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/protecting-public-officials-and-workers-direction>.

128 O'Regan, Herlihy and Quinn (n 6) 200–1.

129 Connolly et al (n 6).

These reviews reveal cogent arguments against adding further aggravating factors and have influenced the Council in determining its final preference for a broader aggravating sentencing factor model over statutory circumstances of aggravation in offence provisions. The Council's view and recommendations are presented in section 10.2.10.

The Connolly Review's task 'was made very much easier by the O'Regan Committee Report on the one hand and [1995 Code] on the other, both of which have been constantly consulted'.[130] The review recommended no amendment to sections 335, 339 or 340, except maximum penalty increases (which occurred), and made the following comment:

> the [working group] **do not recommend the creation of the aggravated offences** detailed in the 1995 Code. The specific offences created in the 1995 Code **are only some of the more serious aggravating facts which sentencing courts presently can and do take into account** when determining an appropriate sentence. **There are many other serious aggravating circumstances which are not the subject of separate aggravated offences** in the 1995 Code. **In attempting to make a list of these aggravating circumstances, it is inevitable that some serious aggravating circumstances are omitted**. The [working group] believe the better course would be to increase the general maximum penalty for the general offence and allow the sentencing court to take into account on sentence the **particular aggravating circumstances of each given offence.** That is what is recommended.[131]

However, that 1997 Act also included references to victims over 60 and guide dogs, wheelchairs or other remedial devices, taken from the repealed Code and moved by the new Labor Opposition as enabled by an independent Member of Parliament. Then Attorney-General, Denver Beanland, opposed this. His comments show the inherent tension in having an offence with increased penalties for distinct classes of people to the exclusion of the rest of the community. He told Parliament that in his view:

- the current provisions (with 7-year maximum, having been increased from 3 years) had appropriate penalties. If the prosecution was doing its work, those provisions should be adequate to achieve tougher penalties where appropriate 'for offenders assaulting people with disabilities, people who are aged, frail or whatever the situation might be';[132]
- a range of penalties was available, at the courts' discretion, and should stay at the courts' discretion: 'We cannot provide for all circumstances, otherwise we would be forever trying to keep up with them. Circumstances vary with each particular case';[133]
- the Opposition's amendment sought to set out some particular class of victim but would 'introduce more irregularities and create more problems'.[134] It was further criticised on the basis it could lead to confusion.

Stakeholder views — statutory circumstance of aggravation

Generally, most stakeholders who specifically engaged on the questions regarding a statutory circumstance of aggravation and an aggravating sentencing factor preferred the latter (discussed in detail in Chapter 10 at sections 10.2.8 and 10.2.10). However, this was also generally a secondary issue for them, with the threshold position often being support for retaining (or curtailing, or in some cases, repealing) the current form of section 340 — without the need for separate additional offences or circumstances of aggravation to be introduced.

The Queensland Human Rights Commission stated that 'tailored and aggravated offences — depending on the justification provided, may represent a reasonable limitation on rights'.[135]

QCS supported a standalone serious assault offence in combination with circumstances of aggravation, but not an aggravating sentencing factor. It pointed to the 'unique operating environment of corrections, and heightened risks associated with the work environment' as reasons to afford its staff greater protection 'in comparison to an assault, for example section 335 of the *Criminal Code*':[136]

> 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).

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130 Ibid, cover letter signed by authors.

131 Ibid 69 (emphasis added).

132 Queensland, *Parliamentary Debates*, Legislative Assembly, 20 March 1997, 'Criminal Law Amendment Bill — Second Reading', 712 (Denver Beanland, Attorney-General and Minister for Justice).

133 Ibid 736.

134 Ibid.

135 Submission 18 (Queensland Human Rights Commission) 9 [28].

136 Submission 21 (Queensland Corrective Services) 13.

> 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. [137]

The Transport Workers' Union sought, 'where legislatively appropriate, to either widen the definition of "Public Officer" to include private bus drivers and personalised transport operators, or recognise such offences in separate provisions with higher penalties or circumstances of aggravation'.[138]

The Department of Agriculture and Fisheries 'would be content with the removal of the offence provision'[139] on the basis that:

> It is most appropriate to reflect that the victim of an assault is a public officer in either or both of a circumstance of aggravation and an aggravating factor for sentencing purposes … this would provide a sentencing Court with the means to consider the nuances of the circumstances of the assault when imposing a penalty.[140]

The Bar Association of Queensland did not support a circumstance of aggravation (while not opposing an aggravating sentencing factor):[141]

> … If a specific result occurs such as death or grievous bodily harm then those substantive offences can be indicted (grievous bodily harm, murder, manslaughter, etc) and the fact it was on a public officer performing a function of their office would be a factually aggravating circumstance.
>
> [Therefore adding a circumstance of aggravation to such offences] is unnecessary and would elevate offences against public officers (irrespective of the vulnerability of a particular officer) above all other occupations including many medical practitioners, police officers and corrective service officers.[142]

The QLS also preferred an aggravating sentencing factor to a statutory circumstance of aggravation:

> The better approach would be to amend section 9 of the Penalties and Sentences Act to statutorily recognise the aggravating feature of the victim being a public officer. This approach preserves judicial discretion and will minimise the prospect of perverse outcomes stemming from the combination of a broad definition of 'public officer' and higher maximum penalty.[143]

8.5.3 Council's view

The Terms of Reference stipulate that the Council must consider the expectation of the community and government that public officials should not be subjected to assault while carrying out their duties, and the need for public officers to have confidence that the criminal justice system properly reflects the inherent dangers they face in the execution of their duties and the negative impact that assaults can have on themselves, their colleagues, and their families.

As discussed above, responding to assaults on public officers as victims of crime requires a careful balancing to ensure that these expectations are met and recognising the vulnerability to assault inherent in these roles while also respecting the fundamental principle of equality before the law.

The Council considers that there are legitimate public policy reasons for continuing to treat assaults on those performing public functions on behalf of the state, and who play a key role in keeping the community safe, as being in a different category from other assaults, justifying a special targeted response. Assaults on public officers — particularly those in frontline and emergency roles — are *sui generis* (in a unique class of their own) involving those engaged to act on the state's behalf in performing roles that are essential to keeping the community safe. As recognised by those who have legislated in this area, unlike many other employees or private citizens, these are

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137 Ibid 14–15.

138 Submission 12 (Transport Workers' Union) 3.

139 Submission 7 (Department of Agriculture and Fisheries) 5.

140 Ibid.

141 Submission 27 (Bar Association of Queensland) 7.

142 Ibid 6.

143 Submission 30 (Queensland Law Society) 10 and see 7.

people who do not have the choice to leave dangerous or risky situations 'because their jobs require them to protect and to save the lives of others'.[144]

Section 340 is a longstanding provision — having formed part of the original *Criminal Code* when first enacted. In the Council's view there is no need to create new special offence or offences to capture conduct that can be addressed through the simple retention of this existing provision.

The Council's primary concern is that section 340 has been amended over time and that in its current form, its application is too broad — capturing assaults both on victims who are vulnerable due to their occupation or the functions they are performing, and others whose vulnerability arises from their age and/or physical disability. The Council's view is that its scope needs to be more clearly defined and its focus narrowed. The approach proposed, discussed in more detail below, will bring Queensland more closely in line with most other jurisdictions examined, which set out in detail the officers performing functions that warrant this additional layer of protection through the creation of stand-alone offences.

The Council has considered but specifically rejected the alternative approach of establishing the fact that the victim was a public officer assaulted while performing his or her functions, or because of these functions, as a circumstance of aggravation that applies to offences of general application — such as common assault, AOBH, GBH and wounding.

In the Council's view this approach would create an unnecessary layer of complexity to Queensland criminal law that would outweigh any potential advantages. In particular, under such an approach, if the prosecution intends to seek a higher penalty based on there being circumstances of aggravation, these generally must be contained in the charge, with the prosecution carrying the burden of proof of establishing such circumstances existed.[145] A new tiered approach to maximum penalties would need to be established for each offence to which it is to apply, or a standardised approach taken as for Queensland's 'serious organised crime circumstance of aggravation', establishing a set 'tariff' that is to apply for offences committed against the prescribed classes of victim.

The Council's findings presented in Chapter 7 of this report show that the overwhelming majority of assaults on police, corrective services officers and public officers are prosecuted under section 340 of the Code, or its summary offence equivalents. The current maximum penalties that apply to serious assault are also set at a level that provides sentencing courts with a broad scope in setting the appropriate sentence for even the most serious examples of assault. These factors combined suggests there is no legislative 'gap' that needs to be filled.

While the Council does not support the introduction of statutory circumstances of aggravation, or penalty enhancement provisions as these are sometimes known, it considers there is value in introducing an aggravating factor for sentencing purposes for those who are at higher vulnerability of assault due to their role in delivering services to the public. The Council's proposals and its rationale are discussed in Chapter 10.

Recommendation 1: Retention of section 340

Section 340 of the *Criminal Code* should be retained and redrafted to simplify its operation and narrow its focus to assaults on frontline and emergency workers while performing a function of their office, or because of this.

Recommendation 2: Statutory circumstances of aggravation

Statutory circumstances of aggravation regarding assaults of frontline and emergency workers because of their occupation, housed in current offence provisions or separately in the *Criminal Code*, should not be created.

8.6 Victim categories under section 340

8.6.1 Current position

As discussed earlier in section 8.3.2 of this chapter, the current section 340 applies to assaults on a number of different victim classes including:

- any person, where committed with a specific intent (e.g. to commit a crime, or to resist or prevent lawful arrest or detention) (s 340(1)(a));

144 New Zealand, *Parliamentary Debates*, 12 September 2012, Sentencing (Aggravating Factors) Amendment Bill — Third Reading, 5193–4 (Judith Collins, Minister for Justice).

145 See, for example, *Criminal Code* (NT) s 174H (Procedure for proving aggravated offence); *Criminal Law Consolidation Act 1935* (SA) s 5AA(3).

- police officers acting in the execution of their duties, or any person acting in aid of a police officer while so acting (s 340(1)(b));
- any person performing, or because they have performed, a duty imposed on them by law (ss 340(1)(c)–(d));
- public officers (s 340(2AA);
- working corrective services officers, where assaulted by a prisoner (s 340(2));
- persons aged 60 years or more (s 340(1)(g)); and
- persons who rely on a guide, hearing or assistance dog, wheelchair or other remedial device (s 340(1)(h)).

The Council's analysis of the occupation of victims caught under these different subsections shows there is substantial overlap in the application of provisions contained within section 340 to specific victim classes. For example, assaults of police officers are most commonly charged under 340(1)(b), but are also charged under 340(1)(a), (c), (d) and (2AA).

The Council has been asked under the Terms of Reference for its advice about whether the definition of a 'public officer' in section 340 should be expanded to recognise other occupations, including public transport drivers (e.g. bus drivers and train drivers). It has also been asked whether assaults on police and other frontline emergency service workers, corrective services officers and other public officers should continue to come within scope of this section or, alternatively, targeted in a separate provision or provisions, or through circumstances of aggravation.

The current definition of 'public officer' in section 340 of the *Criminal Code* is inclusive. It includes:

- a member, officer or employee of a service established for a public purpose under an Act (with the example provided of the Queensland Ambulance Service established under the *Ambulance Service Act 1991* (Qld));
- a health service employee under the *Hospital and Health Boards Act 2011* (Qld);
- an authorised officer under the *Child Protection Act 1999* (Qld);[146] and
- a transit officer under the *Transport Operations (Passenger Transport) Act 1994* (Qld).[147]

Section 1 of the *Criminal Code* expands on the offence-specific definition by providing an exhaustive definition of 'public officer' as meaning:

> a person other than a judicial officer, whether or not the person is remunerated—
>
> (a) discharging a duty imposed under an Act or of a public nature; or
>
> (b) holding officer under or employed by the Crown;
>
> and includes, whether or not the person is remunerated—
>
> (c) a person employed to execute any process of a court; and
>
> (d) a public service employee; and
>
> (e) a person appointed or employed under any of the following Acts—
>
> (i) the *Police Service Administration Act 1990*;
>
> (ii) the *Transport Infrastructure Act 1994*;
>
> (iii) the *State Buildings Protective Security Act 1983*; and
>
> (f) a member, officer, or employee of an authority, board, corporation, commission, local government, council, committee or other similar body established for a public purpose under an Act.

In its current form, the inter-relationship between the definition contained in section 340 and the definition contained in section 1 of the *Criminal Code* has the potential to cause confusion about who is and who is not covered by the serious assault provisions under section 340.

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146 'Authorised officers' are appointed under the *Child Protection Act 1999* (Qld) s 149 and include an officer or employee of the Department of Child Safety, Youth and Women, but can also be a person included in a calls of persons declared by regulation as eligible for appointment (they may not necessarily be public servants).

147 Transit officers are appointed by the chief executive under the *Transport Operations (Passenger Transport) Act 1994* (Qld) s 111(3) and can include public service employees, employees of rail operators and managers that are rail government entities; and an employee of the Authority (established under the *Queensland Rail Transit Authority Act 2013* (Qld) s 6).

8.6.2 A history of the *Criminal Code* definitions

The exhaustive definition of a 'public officer' was inserted by the *Criminal Law Amendment Act* (Qld) in 1997[148] — the only explanation regarding the need for the new definition being that it was 'relevant to the reforms' contained in the Bill.[149]

In particular, prior to the 1997 reforms, the offence of official corruption under section 87 of the *Criminal Code* was restricted to a person 'employed in the public service, or being the holder of a public office', and while a number of other offences included the term 'public officer' in their section heading, they were in practice restricted in application to public servants through the wording of the offence provisions themselves.[150]

The use of the term 'public officer' in a substantive offence provision (rather than merely a section heading or a procedural provision) at the time of the 1997 amendments was limited to sections 78 ('Interfering with political liberty'), 199 ('Resisting public officers'), 399 ('Concealing registers') and 469 ('Malicious injuries in general' — now 'Wilful damage').

In his second reading speech explaining the need for these amendments, then Attorney-General Dean Wells referred to Chapter 4 of the Bill as dealing with abuse of office by a public officer, making particular comment that: 'The offence no longer just covers officers of the public service but is extended to include all statutory office holders, from Ministers of the Crown to clerks in local authorities'.[151] The intention to broaden the application of who was captured by this new form of offence (and amendments that followed in later years) seems to have been the main driver for the introduction of the new definition.[152]

The later inclusion of the definition of a 'public officer' in section 340(3) coincided with the insertion of subsection (2AA) into section 340 by the *Criminal Code and Other Acts Amendment Act 2009* (Qld). The Explanatory Notes to the amendment Bill provided the following explanation of these changes:

> Subclause (4) inserts a new subsection (2AA) to apply to assaults on public officers performing a function of their office or employment. The term 'public officer' is defined in section 1 of the Code. That definition includes a person, other than a judicial officer, discharging a duty of a public nature or executing any process of a court. Therefore, persons protected under current 340(1)(c) and (d) will continue to fall under the provision. Subclause (5) inserts into section 340 an inclusive definition of 'public officer' to ensure assaults on emergency services personnel, health service employees and child safety officers (an authorised officer appointed under section 149 of the *Child Protection Act 1999* would not necessarily be a public service employee) are captured by the provision.[153]

The intended relationship between the exhaustive definition of 'public officer' in section 1 of the Code and the inclusive definition of the same term in section 340 — and, more specifically, the application of the section 1 definition to subsection (2AA) — was not addressed.

As a general principle of statutory interpretation in Queensland, a definition in or applying to an Act applies to the entire Act.[154] Generally, where a legislative definition is expressed in a provision to 'include' a concept, this does not displace another legislative definition, unless the included concept is inconsistent with a concept in the other definition.[155] Any displacement generally occurs only to the extent of any inconsistency.[156]

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148 *Criminal Law Amendment Act 1997* (Qld). An earlier version of this same definition appeared in the *Criminal Code 1995* (Qld) (which was never proclaimed into force, and later repealed) in much the same terms as that introduced into the Code. However, this definition referred to 'holding office under or employed by the State' rather than 'the Crown', 'an officer of the public service' rather than 'a public service employee' and excluded any reference to a person appointed or employed under the *State Buildings Protective Security Act 1983* (Qld) (formerly titled the *Law Courts and State Buildings Protective Security Act 1983* (Qld)).

149 Explanatory Notes, Criminal Law Amendment Bill 1996 (Qld) 4.

150 See, for example, former wording of former sections 84 (Disclosure of secrets relating to defences by public officers — since repealed) and 97 (Personating public officers — substituted in its current form in 2008: see *Criminal Code and Other Acts Amendment Act 2008* (Qld) s 19). Other sections still remaining have retained 'public officer' in the section heading, while applying only to public servants. See, for example, *Criminal Code* (Qld) ss 88 (Extortion by public officers) and 89 (Public officers interested in contracts).

151 Queensland, *Parliamentary Debates*, Legislative Assembly, 24 May 1995, 11875 (Dean Wells, Minister for Justice and Attorney-General and Minister for the Arts).

152 This would seem to be supported by a Green Paper produced when a number of other related reforms were sought to be introduced: Queensland Government, Department of Justice, *A Green Paper on Potential Reforms to the Criminal Law of Queensland* (1998) Chapter 4, 103–106.

153 Explanatory Notes, Criminal Code and Other Acts Amendment Bill 2008 (Qld) 13.

154 *Acts Interpretation Act 1954* (Qld) s 32AA.

155 NSW Parliamentary Counsel's Office, *DP5: Legislative Definitions* (2017) 9 [71].

156 Ibid.

Paragraphs (c) and (d) of subsection 340(1), to which the Explanatory Notes to the amendment Bill refer, do not refer to the term 'public officer' at all. They refer to an unlawful assault committed on a person while the person is, or because the person has, performed a duty imposed on the person by law. In doing so, these paragraphs only partly reflect the language used under the section 1 definition, being a person (other than a judicial officer) 'discharging a duty imposed under an Act', but do not import the concept of a person discharging a duty 'of a public nature'. Nor do they apply explicitly to a person 'holding office under or employed by the Crown'.

What constitutes a duty 'of a public nature' for these purposes is not further defined.

8.6.3 A different approach — the *Human Rights Act 2019* (Qld)

The approach under the *Criminal Code* is in contrast to that recently adopted for the purposes of the HRA. Section 10 of the HRA sets out specific criteria for determining if a function is 'of a public nature' for the purposes of the Act. In accordance with the *Acts Interpretation Act 1954* (Qld), a 'function' includes a 'duty'.[157]

Relevant matters to be considered include:

(a) whether the function is conferred on the entity under a statutory provision;

(b) whether the function is connected to or generally identified with functions of government;

(c) whether the function is of a regulatory nature;

(d) whether the entity is publicly funded to perform the function; and

(e) whether the entity is a government owned corporation.

Examples are also provided under section 10(3) of functions considered to be 'of a public nature' being:

(a) the operation of a corrective services facility under the *Corrective Services Act 2006* or another place of detention;

(b) the provision of any of the following—

(i) emergency services;

(ii) public health services;

(iii) public disability services;

(iv) public education, including public tertiary education and public vocational education;

(v) public transport;

(vi) a housing service by a funded provider or the State under the *Housing Act 2003*.

The phrase 'of a public nature' is applied in the context of defining what a 'public entity' is for the purposes of the HRA[158] which, in addition to other entities expressly referred to in the definition (such as public service employees, police, and local government employees), includes: 'an entity whose functions are, or include, functions of a public nature when it is performing the functions for the State or a public entity (whether under contract or otherwise)'.[159] The following (converse) example appears directly below this provision:

> *Example of an entity not performing functions of a public nature for the State—*
>
> A non-State school is not a public entity merely because it performs functions of a public nature in educating students because it is not doing so for the State.[160]

8.6.4 Responding to COVID-19 — protecting workers from infection

On 27 April 2020, Queensland's Chief Medical Officer issued a direction prohibiting persons from intentionally spitting, coughing or sneezing on a public official or threatening to do so.[161] The *Protecting Public Officials and*

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157 *Acts Interpretation Act 1954* (Qld) s 36, sch 1.

158 The Act only applies to 'public entities' (as defined) to the extent they have functions set out under pt 3 div 4 of the Act: *Human Rights Act 2019* (Qld) s 5(2)(c). It also applies to a court or tribunal, to the extent the court or tribunal has functions under pt 2 and pt 3 div 3 of the Act; and the Parliament, to the extent the Parliament has functions under pt 3 div 1–3 of the Act: ss 5(2)(a)—(b).

159 Ibid s 9(1)(h). This applies also to a person, not otherwise mentioned in paragraphs (a)– (h) who is a staff member or executive officer of a public entity: s 9(1)(i).

160 Ibid s 9(1)(h) — example.

161 It has since been superseded by the *Protecting Public Officials and Workers (Spitting, Coughing and Sneezing Direction (No. 3)* on 15 May 2020.

Workers (Spitting, Coughing and Sneezing) Direction was introduced in response to concern about transmission of the recently emerged COVID-19 virus to public officials and frontline workers via these behaviours.[162] It is discussed in more detail in Chapter 9. The most recent iteration of the Direction provides the following definition for the occupations identified for protection:

> For the purposes of this Public Health Direction:
>
> 5. Health worker means—
>
> a. an ambulance officer under the *Ambulance Service Act 1991*;
>
> b. a health service employee under the *Hospital and Health Boards Act 2011*;
>
> c. a registered health practitioner or a student under the Health Practitioner Regulation National Law;
>
> d. a member of staff of a private health facility within the meaning of the *Private Health Facilities Act 1999*;
>
> e. an allied health professional; or
>
> f. a person who works in a pharmacy or on other premises at which a registered health practitioner routinely practises the practitioner's profession.
>
> 6. Public official means—
>
> a. a health worker;
>
> b. a police officer;
>
> c. a fire service officer under the *Fire and Emergency Services Act 1990*;
>
> d. an emergency officer under the *Public Health Act 2005*;
>
> e. a teacher under the Education (Queensland College of Teachers) Act 2005;
>
> f. a corrective services officer under the *Corrective Services Act 2006*;
>
> g. a youth justice staff member under the *Youth Justice Act 1992*;
>
> h. a local government employee or a local government worker under the *Local Government Act 2009*;
>
> i. a council employee or a council worker under the *City of Brisbane Act 2010*;
>
> j. another person exercising public functions under a law of Queensland;
>
> k. an Immigration and Border Protection worker within the meaning of the *Australian Border Force Act 2015* of the Commonwealth; or
>
> l. a person employed or otherwise engaged by the Commonwealth Department of Health.
>
> 7. Worker includes, without limitation—
>
> a. a retail worker;
>
> b. a person who works at an airport;
>
> c. a person who works for an electricity, gas, water or other utility company;
>
> d. a person who works in the transport industry or a transport-related industry; and
>
> e. a member of the Australian Defence Force.
>
> *Note — Examples of public officials and workers include hospital staff, bus drivers, train drivers, ferry deckhands, taxi drivers, ride share drivers, food delivery workers, security guards, electricity, gas and water meter readers and postal delivery staff (including persons working for an entity under a contract, directly or indirectly, on behalf of the Queensland Government).*[163]

The class of persons the Direction protects is a 'public official' and 'another worker while the worker is … at the worker's place of work, or … travelling to or from that place of work'. It recognises that a worker's place of work may be their residential premises by excluding 'any part of the premises used solely for residential purposes'.

The relevant definitions are extensive, can overlap, include some Commonwealth positions and are arguably redundant in the sense that at its base, the Direction applies to conduct directed at a 'worker' then defined to include, 'without limitation' other types of specified workers.

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162 Ibid.

163 Ibid.

8.6.5 Approach of other jurisdictions

Other Australian jurisdictions have approached the sentencing of perpetrators of assault against certain occupational groups in various ways. Broadly, these differences reflect the occupational groups they have singled out for special treatment, in turn reflecting the cultural values of the state or territory to which they apply. The terminology used to describe these protected workers also varies across jurisdictions.

The WA equivalent to section 340 (s 318 of the WA *Criminal Code*) establishes an offence of assaulting a public officer performing a function of their office or employment (or because of this),[164] but:

- there is no separate definition of a 'public officer' set out in the offence provision;[165]
- the definition of a 'public officer' that appears in WA section 1 does not refer to a person 'discharging a duty … of a public nature' but rather to 'a person exercising authority under a written law'[166] [this is similar to the wording of sections 340(1)(c) and (d) of the Queensland *Criminal Code* (assault of a person while performing, or because the person has performed, 'a duty imposed on the person by law')];
- while there is a separate offence (under s 318(1)(e)) of assaulting *any person* performing a function of a public nature, or on account of this, this is limited to a person performing functions of a public nature 'conferred on [the person] by law'.

Another point of distinction with section 340 of the Queensland *Criminal Code* is that the WA offence of serious assault does not rely solely on the definition of a 'public officer', or the broad categorisation of people as performing a duty imposed by law, to establish other aggravated forms of assault committed against people in particular occupations or performing specific functions. Instead, in addition to the broad categories of conduct captured, it identifies assaults on people falling within particular occupational groups, working at particular places or delivering particular types of services as constituting forms of serious assault.

> **318. Serious assault**
>
> (1) Any person who—
>
> (d) assaults 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; or
>
> (e) 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; or
>
> (f) assaults any person who is acting in aid of a public officer or other person referred to in paragraph (d) or (e) or on account of his having so acted; or
>
> (g) assaults the driver or person operating or in charge of—
>
> a vehicle travelling on a railway; or
>
> a ferry; or
>
> a passenger transport vehicle as defined in the *Transport (Road Passenger Services) Act 2018* section 4(1);[167] or

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164 *Criminal Code* (WA) s 318(1)(d).

165 Ibid. Examples of public officers, however, are set out under the definition of 'prescribed circumstances', which, where present, restrict the court's discretion in sentencing in accordance with ss 318(2), (4). 'Prescribed circumstances' include where the offence is committed against a public officer who is: (i) a police officer; or (ii) a prison officer, as defined in the *Prisons Act 1981* (WA) s 3(1); or (iii) a person appointed under the *Young Offenders Act 1994* (WA) s 11(1a)(a); or (iv) a security officer as defined in the *Public Transport Authority Act 2003* (WA) s 3; in circumstances where the officer suffers bodily harm: s 318(5).

166 Ibid. 'Public officer' is defined under s 1 to mean any of the following: (a) a police officer; (aa) a Minister of the Crown; (ab) a Parliamentary Secretary appointed under *Constitution Acts Amendment Act 1899* (WA) s 44A; (ac) a member of either House of Parliament; (ad) a person exercising authority under a written law; (b) a person authorised under a written law to execute or serve any process of a court or tribunal; (c) a public service officer or employee within the meaning of the *Public Sector Management Act 1994* (WA); (ca) a person who holds a permit to do high-level security work as defined in the *Court Security and Custodial Services Act 1999* (WA); (cb) a person who holds a permit to do high-level security work as defined in the *Prisons Act 1981* (WA); (d) a member, officer or employee of any authority, board, corporation, commission, local government, council of a local government, council or committee or similar body established under a written law; (e) any other person holding office under, or employed by, the State of Western Australia, whether for remuneration or not.

167 Defined to mean a vehicle used or intended to be used in providing a passenger transport service. 'Passenger transport service' is defined in s 4(1) to mean: (a) an on-demand passenger transport service; (b) a regular transport service; (c) a tourism passenger transport service; or a prescribed passenger transport service.

(h) assaults—

an ambulance officer; or

a member of a FES [Fire and Emergency Services] Unit, SES [State Emergency Services] Unit or VMRS [Volunteer Marine Rescue Service] Group (within the meaning given to those terms by the *Fire and Emergency Services Act 1998*); or

a member or officer of a private fire brigade or volunteer fire brigade (within the meaning given to those terms by the *Fire Brigades Act 1942*),

who is performing his or her duties as such; or

(i) assaults a person who—

is working in a hospital; or

is in the course of providing a health service to the public; or

(j) assaults a contract worker (within the meaning given to that term by the *Court Security and Custodial Services Act 1999*) who is providing court security services or custodial services under that Act; or

(k) assaults a contract worker (within the meaning given to that term by section 15A of the *Prisons Act 1981*) who is performing functions under Part IIIA of that Act,

is guilty of a crime.

The specific categories of victims named under section 318 of the WA *Criminal Code* are broader than those referred to in the section 340 Queensland definition of a 'public officer' as they include:

- a person working in a hospital (applicable both to public and private facilities, and to medical and non-medical staff), as well as those assaulted while providing a health service to the public (e.g. private practitioners and those providing in-home services); and
- drivers and people operating or in charge of various forms of public transport — including trains, ferries, and other forms of passenger transport, such as taxis.

The treatment of these categories of victim, however, is different for the purposes of applying the mandatory minimum sentencing provisions. These provisions are confined in their application to certain occupational groups only in circumstances where the victim has suffered bodily harm. For example, they do not apply to assaults of public transport drivers under section 318(1)(g), fire and emergency services staff under sections 318(1)h)(ii)–(iii), or those working in a hospital or providing health services to the public under section 318(1)(i), which do not meet the definition of 'prescribed circumstances' for the purposes of these subsections.[168]

In comparison, as discussed in section 8.4.5 above, the South Australian section 5AA(1) of the *Criminal Law Consolidation Act 1935* (SA) sets out circumstances of aggravation that apply across specified general criminal offences, including assault,[169] creating an aggravated form of assault. The aggravating circumstances, which result in a higher maximum penalty being applied if committed in these circumstances, apply in circumstances including that:

(c) the offender committed the offence against a police officer, prison officer, employee in a training centre (within the meaning of the *Youth Justice Administration Act 2016*) or other law enforcement officer — (i) knowing the victim to be acting in the course of his or her official duty; or (ii) in retribution for something the offender knows or believes to have been done by the victim in the course of his or her official duty;

(ca) the offender committed the offence against a community corrections officer (within the meaning of the *Correctional Services Act 1982*) or community youth justice officer (within the meaning of the Youth *Justice Administration Act 2016*) knowing the victim to be acting in the course of their official duties;

(ka) the victim of the offence was at the time of the offence engaged in a prescribed occupation or employment (whether on a paid or volunteer basis) and the offender committed the offence knowing the victim to be acting in the course of the victim's official duties.[170]

168 *Criminal Code* (WA) s 318(5).

169 *Criminal Law Consolidation Act 1935* (SA) s 20.

170 Ibid ss 5AA(1)(c), (ca) and (ka).

Occupations and employment prescribed for the purposes of these provisions are:[171]

(a) emergency work;[172]

(b) employment as a person (whether a medical practitioner, nurse, midwife, security officer or otherwise) performing duties in a hospital (including … a person providing assistance or services to another person performing duties in a hospital);

(c) employment as a person (whether a medical practitioner, nurse, pilot or otherwise) performing duties in the course of retrieval medicine;[173]

(d) employment as a medical practitioner or other health practitioner (both within the meaning of the *Health Practitioner Regulation National Law (South Australia)*) attending an out of hours or unscheduled callout, or assessing, stabilising or treating a person at the scene of an accident or other emergency, in a rural area;

(e) passenger transport work;[174]

(f) police support work;[175]

(g) employment as a court security officer;[176]

(h) employment as a bailiff appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;

(i) employment as a protective security officer within the meaning of the *Protective Security Act 2007*;

(j) employment as an inspector within the meaning of the *Animal Welfare Act 1985*.[177]

For the purposes of the legislative amendments that came into effect on 3 October 2019, which establish a new offence of causing harm to, or assaulting, certain prescribed emergency workers,[178] a 'prescribed emergency worker' is defined as:

(a) a police officer; or

(b) a prison officer; or

(c) a community corrections officer or community youth justice officer; or

(d) an employee in a training centre (within the meaning of the *Youth Justice Administration Act 2016*); or

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171 *Criminal Law Consolidation (General) Regulations 2006* (SA) r 3A(1).

172 The term 'emergency work' is defined to mean: 'work carried out (whether or not in response to an emergency) by or on behalf of an emergency service provider'. The definition of 'emergency services provider' includes the South Australian Country Fire Service and Metropolitan Fire Service, State Emergency Service, SA Ambulance Service, Surf Life Saving South Australia, the accident or emergency department of a hospital, and a number of other services: *Criminal Law Consolidation (General) Regulations 2006* (SA) r 3A(2).

173 'Retrieval medicine means the assessment, stabilisation and transportation to hospital of patients with severe injury or critical illness (other than by a member of SA Ambulance Service Inc)': Ibid.

174 'Passenger transport work means—(a) work consisting of driving a public passenger vehicle for the purposes of a passenger transport service; or (b) work undertaken as an authorised officer appointed under section 53 of the *Passenger Transport Act 1994*; or (c) work undertaken as an authorised person under Part 4 Division 2 Subdivision 2 of the *Passenger Transport Regulations 2009*': Ibid. 'Public passenger vehicle has the same meaning as in the *Passenger Transport Act 1994*': Ibid. The definition of a 'public passenger vehicle' under *Passenger Transport Act 1994* (SA) s 4(1) is 'a vehicle used to provide a passenger transport service', with 'passenger transport service' further defined to mean: a service consisting of the carriage of passengers for a fare or other consideration (including under a hire or charter arrangement or for consideration provided by a third party) — (a) by motor vehicle; or (b) by train or tram; or (c) by means of an automated, or semi-automated, vehicular system; or (d) by a vehicle drawn by an animal along a public street or road; or (e) by any other means prescribed by the regulations for the purposes of this definition, but does not include a service of a class excluded by the regulations from the ambit of this definition [which currently are: (a) a service provided under a car pooling arrangement; and (b) a service consisting of a ride for the purposes of fun or amusement for a fare less than $5 per ride': *Passenger Transport Regulations 2009* (SA) r 5(1)].

175 'Police support work' means work consisting of the provision of assistance or services to South Australia Police (and includes, to avoid doubt, the provision of assistance or services to a member of the public who is being assisted, or seeking to be assisted, by South Australia Police)': Ibid.

176 'Court security officer means a sheriff, deputy sheriff, sheriff's officer or security officer within the meaning of the *Sheriff's Act 1978*': Ibid.

177 'Inspector means (a) a police officer; or (c) a person holding an appointment as an inspector under Part 5 [of this Act]': *Animal Welfare Act 1985* (SA) s 3.

178 *Criminal Law Consolidation Act 1935* (SA) s 20AA.

(e) a person (whether a medical practitioner, nurse, security officer or otherwise) performing duties in a hospital; or

(f) a person (whether a medical practitioner, nurse, pilot or otherwise) performing duties in the course of retrieval medicine; or

(g) a medical practitioner or other health practitioner (both within the meaning of the *Health Practitioner Regulation National Law (South Australia)*) attending an out of hours or unscheduled callout, or assessing, stabilising or treating a person at the scene of an accident or other emergency, in a rural area; or

(h) a member of the SA Ambulance Service Inc; or

(i) a member of SAMFS [South Australian Metropolitan Fire Service], SACFS [South Australian Country Fire Service] or SASES [South Australian State Emergency Service]; or

(j) a law enforcement officer; or

(k) an inspector within the meaning of the *Animal Welfare Act 1985*; or

(l) any other person engaged in an occupation or employment prescribed by the regulations ...; or

(m) any other person prescribed by the regulations for the purposes of this paragraph,

whether acting in a paid or voluntary capacity, but does not include a person, or person of a class, declared by the regulations to be excluded from the ambit of this definition.[179]

NSW identifies police officers, law enforcement officers,[180] and members of school staff[181] under specific provisions in the *Crimes Act 1900* (NSW). The occupational groups identified are supplemented by the 'aggravating factors' provision under section 21A(2) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) which lists the victim's status as a 'police officer, emergency service worker, correctional officer, judicial officer, council law enforcement officer, health worker, teacher, community worker, or other public official' as being an aggravating factor if the offence arose because of their occupation or voluntary work. The victim's vulnerability because of their geographical location or because of their occupation (e.g. a person other than a health worker working in a hospital, taxi driver, bus driver, or other public transport worker, bank teller or service station attendant) further expands the list of occupational groups considered to be subject to 'aggravating factors'.

In addition to an offence that applies to assaults committed on *any* worker who is working in the performance of his or her duties,[182] as discussed in section 8.4.4 above, the NT recognises assaults on emergency workers under a separate provision in its *Criminal Code*. Under section 189A, an emergency worker is defined as encompassing:

(a) a member of the Northern Territory Fire and Rescue Service established under section 5(1) of the *Fire and Emergency Act*;

(b) a member of the Northern Territory Emergency Service as defined in section 8 of the *Emergency Management Act*;

(c) an ambulance officer or paramedic employed or engaged in providing ambulance services;

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179 Ibid s 20AA(9).

180 'Law enforcement officer' is defined as a police officer, the Commissioner for the Independent Commission Against Corruption, the Commissioner or an officer for the Police Integrity Commission, the Commissioner or member of staff of the New South Wales Crime Commission, the Commissioner of Corrective Services, governors of Corrective Services, correctional officers, probation officers, parole officers, an officer of the Department of Juvenile Justice, a crown prosecutor or acting crown prosecutor, a legal practitioner employed as a member of staff of the Director of Public Prosecutions, a sheriff 's officer, or a recognised law enforcement officer within the meaning of the *Police Act 1990*, or a special constable within the meaning of s 82L of the *Police Act 1990*, or an officer of an approved charitable organisation, within the meaning of *Prevention of Cruelty to Animals Act 1979,* who performs investigation, confiscation or other law enforcement function: *Crimes Act 1900* (NSW) s 60AA.

181 Ibid s 60E.

182 *Criminal Code* (NT) s 188A. An offence exists under the Queensland *Criminal Code* of assault in interference with freedom or trade or work (s 346), which is constituted by the act of hindering or preventing a person from working at or exercising their lawful trade, business or occupation, or from buying, selling or otherwise dealing with any property intended for sale, but in this case it must be proven the accused person acted with the requisite intention. The closest equivalent to the NT offence may therefore be the categories of serious assault that fall within sections 340(1)(c) and 340(1)(d) of the *Criminal Code* which are constituted by an unlawful assault on 'any person while the person is performing a duty imposed on the person by law' or 'because the person has performed a duty imposed on the person by law'. The definition of a 'public officer', who are also expressly protected under section 340(2AA), further extends the provisions of section 340 to a person 'discharging a duty ... of a public nature'. To the extent the duties imposed on a worker are 'imposed by law' and/or 'of a public nature', the same protections that apply to police, corrections officers and other named categories of 'public officer' apply to other workers.

(d) a medical practitioner or a health practitioner, as defined in the Health Practitioner Regulation National Law:

(i) accompanying or assisting a person mentioned in paragraph (c); or

(ii) attending a situation in the absence or unavailability of a person mentioned in paragraph (c).[183]

In the Explanatory Notes explaining the purpose of this section, the rationale behind including medical practitioners and health practitioners was described as being to ensure that they were provided with the same protection as ambulance officers and paramedics in circumstances where formal ambulance services were not available due to remoteness.[184]

In 2014, Victoria introduced a mandatory (or presumptive) minimum term of imprisonment of 6 months, which applies in circumstances where a person, without lawful excuse, has intentionally or recklessly caused injury to an emergency worker on duty, a custodial officer on duty or a youth justice custodial officer on duty in circumstances where the offender knew or was reckless as to whether the victim was such a person.[185]

In its current form, section 10AA(8) of the *Sentencing Act 1991* (Vic) defines 'emergency worker' as meaning:

(a) a police officer or protective services officer within the meaning of the *Victoria Police Act 2013*; or

(b) an operational staff member within the meaning of the *Ambulance Services Act 1986*; or

(c) a person employed or engaged to provide, or support the provision of, emergency treatment to patients in a hospital; or

(d) a person employed by Fire Rescue Victoria established under the *Fire Rescue Victoria Act 1958* or a member of a fire or emergency service unit established under that Act; or

(e) an officer or employee of the Country Fire Authority under the *Country Fire Authority Act 1958*; or

(f) an officer or member of a brigade under the *Country Fire Authority Act 1958*, whether a part-time officer or member, a permanent officer or member or a volunteer officer or member within the meaning of that Act; or

(g) a casual fire-fighter within the meaning of Part V of the *Country Fire Authority Act 1958*; or

(h) a volunteer auxiliary worker appointed under section 17A of the *Country Fire Authority Act 1958*; or

(i) a person with emergency response duties employed in the Department of Environment, Land, Water and Planning or the Department of Transport or the Department of Jobs, Precincts and Regions; or

(j) a registered member or probationary member within the meaning of the *Victoria State Emergency Service Act 2005* or an employee in the Victoria State Emergency Service; or

(k) a volunteer emergency worker within the meaning of the *Emergency Management Act 1986*; or

(l) any other person or body—

(i) required or permitted under the terms of their employment by, or contract for services with, the Crown or a government agency to respond (within the meaning of the *Emergency Management Act 2013*) to an emergency (within the meaning of that Act); or

(ii) engaged by the Crown or a government agency to provide services or perform work in relation to a particular emergency; or

(m) any other person or body who—

(i) is employed or engaged in another State or a Territory or by the Commonwealth to perform functions of a similar kind to those referred to in any other paragraph of this definition; and

(ii) is on duty in Victoria;

hospital means a public hospital, private hospital, denominational hospital or day procedure centre within the meaning of the *Health Services Act 1988*;[186]

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183 *Criminal Code* (NT) s 187(2).

184 Explanatory Statement, Criminal Code Amendment Bill 2018 (NT) 3, cl 5.

185 *Crimes Act 1958* (Vic) s 18; *Sentencing Act 1991* (Vic) ss 3 (definition of 'category 1 offence' — which includes an offence against s 18 of the *Crimes Act 1958* (Vic) if the victim falls into one of the identified categories of worker and the offender knew or was reckless as to this fact (para (cc)); 5(2G) (requirement to impose a custodial order for a category 1 offence); and 10AA(4) (requirement to impose a term of imprisonment of not less than 6 months unless the court finds a special reason exists).

186 *Sentencing Act 1991* (Vic) s 10AA(8).

On 21 May 2020, the ACT Legislative Assembly passed the Crimes (Protection of Frontline Community Service Providers) Bill 2019, which inserted 26A and 26B into the *Crimes Act 1900* (ACT).[187] The Bill introduced the new offence of assault of a frontline community service provider into the *Crimes Act 1990* (ACT).

A 'frontline community service provider' is defined to mean:

(a) a police officer; or

(b) a protective service officer [meaning a person in relation to a declaration under the *Australian Federal Police Act 1979* (Cth) s 40EA is in force]; or

(c) a corrections worker [meaning a corrections officer, or an interstate escort officer, exercising a function under the *Corrections Management Act 2007* (ACT)]; or

(d) a member of an emergency service.[188]

A 'member of an emergency service' is defined with reference to the definition in the *Emergencies Act 2004* (ACT) and includes:

- a person operating in the ACT in accordance with a cooperative arrangement under the *Emergencies Act 2004*, section 176; and
- a person employed by the ACT Emergency Services Agency; and
- a volunteer assisting the ACT Emergency Services Agency.[189]

An 'emergency service' under the *Emergencies Act 2004* (ACT) means the ambulance service, the fire and rescue service, the rural fire service or the SES.[190]

8.6.6 Stakeholder views — definition of 'public officer'

Questions 6 and 7 of the Council's Issues Paper asked:

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 workers (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?

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?

The submissions received by the Council indicated there was an underlying need to clarify the scope of the current definition of 'public officer'. Submissions received from QCS and the Bar Association both indicated the current definition was unclear and would benefit from being made 'simpler, less cumbersome' and therefore more 'accessible and understandable to the public'.[191] The QLS noted the interaction of the two definitions of 'public officer' contained in the *Criminal Code* 'creates needless uncertainty about the roles and people who may or may not be victims of an offence for the purposes of section 340'.[192]

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187 The Bill was originally introduced to the Legislative Assembly under the title Crimes (Protection of Police, Firefighters and Paramedics) Amendment Bill 2019.

188 *Crimes Act 1900* (ACT) s 26A(5).

189 Ibid.

190 *Emergencies Act 2004* (ACT), dictionary.

191 Submission 27 (Bar Association of Queensland) 5.

192 Submission 30 (Queensland Law Society) 6.

The Queensland Human Rights Commission was of the view that: 'if certain offences are to carry higher penalties, the law must be clear about the definition of the workers covered'.[193] It submitted to justify these higher penalties, 'there must be a justification based on the particular risks faced by each occupation selected for increased penalties, rather than a blanket approach'.[194] It identified as a 'common feature' of the frontline workers under consideration as part of the review that they have 'a legal obligation to perform duties on behalf of the state that may involve dealing with dangerous people in dangerous situations'.[195]

Significant input was received from stakeholders regarding the form and occupational groups that should be included in a refined section 340. The views expressed generally reflect an expectation that the important work that public-facing roles across various sectors delivering services to the community deserve recognition and validation of the risk of assault that workers place themselves in to perform these roles. Of note, submissions did not generally advocate for a distinction to be drawn between the public and private sector. Rather there was a tendency to raise concern about ensuring the equal application of the law for private sector workers who they observed as being engaged in delivering essentially the same function as public sector workers and therefore should be afforded the same protections under the law.

For example, the Queensland Catholic Education Commission submitted:

> Catholic **schools and kindergartens** deliver education to a significant portion of Queensland children across all regions of the State, thereby performing a vital public function. Given this, although the schools and kindergartens are operated by non-government entities, it would be appropriate for their staff to be classified under an expanded definition of 'public officer' for the purpose of establishing an applicable penalty and sentencing framework that covers all staff working in education facilities. This would be in recognition that the staff are in essence performing the role of delivering an essential public service to the broader community, and therefore should attract similar protections to staff undertaking comparable functions within government entities … These roles require dealing extensively with not only students but parents, carers and the general public, and unfortunately is a small number of cases these interactions may expose them to risk of threats or actual physical violence.'[196]

A similar perspective was offered by the Transport Workers' Union:

> We assert that bus drivers and personalised transport workers should be captured within the definition of 'public officer' and 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 assaults on people employed in other occupations in a private capacity, working in particular environments or providing specific types of services (i.e. privately employed bus drivers and other transport workers, and personalised transport drivers) should also be recognised as aggravated forms of assault'[197]

The Australasian Railway Association indicated support for penalties for people who assault **public transport staff** being brought into line with penalties for those who assault police and emergency services personnel stating:

> COVID-19 has demonstrated the essential service that public transport provides. Public transport staff continued to work throughout COVID-19 to ensure the ongoing operation of transport networks to support the movement of essential workers. These individuals deserve to go to work and return home safely. Heightened penalties for those who assault public transport staff, supported with a public awareness campaign of the change will help provide a deterrent to individuals who may otherwise mis-treat public transport staff.'[198]

QCS was concerned to ensure that any reforms 'also cover **any contracted service providers and Queensland Health staff** working in a corrective services facility',[199] noting:

> 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.[200]

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193 Submission 18 (Queensland Human Rights Commission) 9 [31].

194 Ibid 9 [32].

195 Ibid 9 [33].

196 Submission 2 (Queensland Catholic Education Commission) 1–2.

197 Submission 12 (Transport Workers' Union) 12.

198 Submission 15 (Australian Railway Association) 1.

199 Submission 21 (Queensland Corrective Services) 12.

200 Ibid 13.

It submitted:

> 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.[201]

Submissions consistently reflected acknowledgement that functions of a public nature are delivered in a broad range of settings by both public and private entities. The Queensland Nurses and Midwives' Union reiterated the position from their preliminary submission requesting the Council to consider coverage of all **healthcare workers** regardless of whether they work in public or private health facilities under section 340.[202] This was echoed in the preliminary submission by Queensland Health in which they stated '**the safety of all people in healthcare settings is of equal importance whether that person be in a hospital, a clinic, an aged care facility, a prison or in the community**' and should 'be treated with equal importance in any sentencing regime'.[203]

Concern for the inclusion of non-departmental staff engaged by the department to deliver services was raised by the Department of Housing and Public Works:

> DHPW considers the broader definition of 'public officer' [should] be further expanded to include non-departmental staff who are engaged in DHPW through an employment agency, as well as contractors, where it would be reasonable for the public to identify them as performing works for departments and agencies of the State of Queensland. The reason for this is that agency staff and contractors are often used by DHPW to carry out its activities.[204]

DCSYW suggested that a separate category of worker could be inserted under section 340 of the *Criminal Code* recognising people providing a public service while working in a private capacity.[205]

Queensland Fire and Emergency Services proposed the definition of a 'public officer' should be reformed to acknowledge **volunteers,** given the important services provided to Queensland communities by the Rural Fire Service, State Emergency Service, and other volunteers.[206]

Several submissions highlighted the context in which the roles of particular occupational groups leave them vulnerable to a heightened risk of assault while in the performance of their duties. The risk arose particularly in circumstances where the occupational group is compelled under law to engage with members of the community, sometimes in volatile situations.

The Queensland Teachers' Union indicated the 'unique position' of **state schools** in being compelled to create and maintain long-term relationships with students and/or their family members/carers due to the legal obligations placed both on the school to enrol and the parent/carers to maintain the enrolment of students of school age in an approved education program.[207]

QCS supported special provisions continuing to apply to **corrective service officers**, noting they do not get to choose who they are responsible for supervising and are obliged to manage 'often dangerous and vulnerable people'.[208] It submitted '[CSOs'] 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'.[209]

The QPS, supporting comments made by the New Zealand Minister for Justice in introducing reforms in this area, noted **police officers**' legal obligation to deal 'with dangerous people in dangerous situations' and that they 'do not have the ability to leave a situation when it gets too dangerous'.[210] The Commissioner emphasised the role of her officers, in particular, in keeping the community safe, noting that assaults on police were 'an unfortunate consequence of the policing environment in which they work'.[211]

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201 Ibid.

202 Submission 14 (Queensland Nurses and Midwives' Union) 3.

203 Preliminary submission 2 (Queensland Health) 2.

204 Submission 28 (Department of Housing and Public Works).

205 Submission 5 (Department of Child Safety, Youth and Women) 2.

206 Submission 32 (Queensland Fire and Emergency Services).

207 Submission 20 (Queensland Teachers' Union) 5.

208 Submission 21 (Queensland Corrective Services) 7.

209 Ibid 5

210 Submission 25 (Queensland Police Service) 1.

211 Cover letter to Submission 25 (Queensland Police Service) 24 June 2020.

While a significant number of the submissions received indicated support for expanding the definition of section 340 to list additional occupational groups, Sisters Inside opposed further expansion on the 'grounds that it is unwarranted, unjust and unlikely to have a deterrent effect'.[212]

Legal Aid Queensland (LAQ) also cautioned that expanding the definition 'could lead to unintended consequences'. For example, it was concerned that 'a definition extended to include officers who are contracted or employed by the Department of Child Safety who provide care to children or who have a role in parenting the child would entrench the criminalisation of children in care'.[213] Any further extension to other occupational groups, the LAQ suggested, would 'run the risk of unnecessarily overcomplicating section 340 and creating arbitrary barriers to sentencing processes.'[214] It viewed this as 'unnecessary given the current sentencing regime under the PSA and approach taken by courts'.[215] It also raised concerns about 'treating assaults on particular categories of public officers being more serious than other categories, because it creates classes of victims without due regard to the particular vulnerabilities of each case.'[216]

Responses to the question of whether people engaged or employed by another state or territory or by the Commonwealth performing similar functions to Queensland public officers should be expressly included were generally affirmative. LAQ noted there should be no distinction and that a 'one in–all in approach' should be taken.[217] The QLS indicated it would be logical to include public officers from other states and territories but stated it would be 'unnecessary to include Commonwealth officers as Commonwealth legislation applies to them'.[218] The DCSYW noted that interstate public officers should be afforded the same protections as Queensland public officers, highlighting the interaction between officers from Queensland and close neighbouring states in the performance of child protection and domestic violence prevention roles.[219]

The QPS noted that if a person is charged with 'assault police' under section 790 of the PPRA, 'an interstate police officer falls within the definition of a Queensland police officer' due to the definition of a 'police officer' that applies under Schedule 6. Schedule 6 of that Act defines a police officer to include (apart from chapters 11 and 13) a police officer who is performing duties for the Queensland Police Service.[220] The position under section 340 of the Code is slightly different as the term 'police officer' is not defined. In this case, it suggested: 'reliance may be made on Schedule 1 of the *Acts Interpretation Act 1954* which provides that a police officer means a police officer under the *Police Service Administration Act 1990* (PSAA)'. It advised: 'Generally where an interstate officer is to perform the functions of a police officer in Queensland, they will be appointed as a special constable by the QPS' and under section 5.16 of the PSAA, a special constable is deemed to be a police officer as far as may be reasonably applied.

Overall, the key theme raised by the submissions is that the **nature of the work**, the **environment** in which it is being performed, and the **service** that is being provided should all factor into any moves to refine or amend section 340.

8.6.7 Council's view

Understanding who is captured within the definition of 'public officer' is a fundamental challenge to understanding section 340 in its current form. The need for clarity was evident in several of the submissions received and provides an explanation for why certain stakeholder groups asked for their members to be explicitly included in any reforms made to the section.

The Terms of Reference ask the Council to provide advice about whether the definition of 'public officer' in section 340 of the *Criminal Code* should be expanded to recognise other occupations, including transport drivers. The original section 340 that appeared in the *Criminal Code* as enacted was focused on assaults committed in particular contexts — such as to commit a crime or to resist or prevent an arrest — as well as against police officers and others assaulted in the performance, or on account of, the performance of their public duty.

As discussed earlier in this chapter, this section largely remained in its original form until 1997 when it became the focus of increasing legislative attention — resulting in increases being made to the maximum penalty (from 3 to 7 years), the introduction of distinct victim categories (working corrective services officers and other public officers) as well as new classes of victim (people aged 60 years or more, and who rely on guide, hearing or assistance dog,

212 Submission 17 (Sisters Inside Inc) 2.
213 Submission 29 (Legal Aid Queensland) 5.
214 Ibid 7.
215 Ibid.
216 Ibid 3.
217 Ibid 2.
218 Submission 30 (Queensland Law Society) 6.
219 Submission 5 (Department of Child Safety, Youth and Women) 2.
220 Submission 25 (Queensland Police Service) 1.

wheelchair or other remedial device), and the creation of circumstances of aggravation carrying a 14-year maximum penalty — initially applying to assaults on police and later to all public officers.

The reforms made over time, while clearly well-intentioned, have resulted in a section that is awkwardly structured, with areas of overlap and unnecessary duplication and, of most concern to the Council, an absence of a clear rationale and focus.

While the Council shares concerns expressed by some about the lack of evidence of penalties offering an effective deterrent to reducing assaults, if the offence and associated penalties are to achieve this objective, then the intention and scope of the offence needs to be clear. As it currently stands, the Council considers this is not the case.

The Council's position is that the current section should be rationalised and redrafted to target assaults on specific classes of public officer who are at heightened risk of assault and who, unlike other officers who may also meet the definition of being a 'public officer', do not have a choice to leave dangerous or risky situations because their jobs require them to protect and save the lives of others. The listing of those captured should be exhaustive so as to avoid, as far as possible, the existing uncertainty about its operation and scope.

Use of the term 'public officer' should be avoided to remove any ambiguity about who is and is not included and its relationship with the definition that applies under section 1 of the Code, which is far broader.

The occupations listed for inclusion in the recommended reformed section 340 could aptly be described as 'frontline and emergency workers'. Their fundamental duty is to respond in situations where they accept a responsibility for safeguarding the health and safety of community members. During the course of undertaking these duties they are often placed in environments and contexts where there is an inherent risk of assault due to the nature of the work they are performing.

The proposed reformed section 340 offence would be targeted at responding to assaults on:

- those who keep us safe;
- perform critical response duties on behalf of the community; and
- who also perform a unique role in the supervision and management of offenders.

The recommended reforms are intended to capture within the scope of section 340:

- police,[221] watch-house[222] and security personnel[223] employed by the Queensland Government;
- corrective services officers;[224]
- youth justice staff members;[225]
- authorised officers under the *Child Protection Act 1999* (Qld);[226]

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221 Assaults on police are currently captured under s 340(1)(b) and have always been separately identified under s 340. The definition of a 'police officer' for the purposes of s 340 is that which applies under sch 1 of the *Acts Interpretation Act 1954* (Qld). A 'police officer' is defined in that Act to mean: 'a police officer within the meaning of the *Police Service Administration Act 1990*' (PSAA). Section 1.4 of the PSAA defines 'police officer' to mean 'a person declared under section 2.2(2) to be a police officer' being: (a) the commissioner of the police service; (b) the persons holding appointment as an executive police officer; (c) the persons holding appointment as a commissioned police officer; (d) the persons holding appointment as a non-commissioned police officer; (e) the persons holding appointment as a constable.

222 'Watch-house officers' currently fall within scope of ss 340(1)(c), (d) and (2AA) but are not expressly named. Section 1.4 of the PSAA cross-references the definition in s 4.9(6) of the PSAA, which defines a 'watch-house officer' to mean (in this section): 'a staff member who is appointed by the commissioner to be a watch-house officer'.

223 State protective security staff are currently separately listed in the definition of a 'public officer' in section 1 of the *Criminal Code* but are not named in the definition of a 'public officer' in s 340(3). Protective security staff currently fall within scope of ss 340(1)(c), (d) and (2AA).

224 'Working corrective services officers' are the subject of a separate offence provision under s 340(2), but this only applies to assaults by prisoners on corrective services officers. A 'working corrective services officer' is defined under s 340(3) to mean 'a corrective services officer [as defined under sch 4 of the *Corrective Services Act 2006* (Qld)] present at a corrective services facility in his or her capacity as a corrective services officer'. Corrective services officers assaulted by probationers, for example, do not fall within scope of this provision, but would fall within ss 340(1)(c), (d) or (2AA).

225 Youth justice officers are not separately listed in the definition of a 'public officer' in s 340(2AA). They would fall within the scope of ss 340(1)(c), (d) or (2AA).

226 Child safety officer/authorised officers are listed in the definition of a 'public officer' in s 340(2AA). 'Authorised officers' are appointed under the *Child Protection Act 1999* (Qld) s 149 and include an officer or employee of the Department of Child Safety, Youth and Women, but can also be a person included in a class of persons declared by regulation as eligible for appointment (they may not necessarily be public servants).

- a person appointed as an employee under the *Fire and Emergency Services Act 1990* (Qld),[227] a volunteer of a rural fire brigade registered under the Act,[228] a member of the State Emergency Service,[229] or a volunteer engaged in an activity to support functions under that Act;
- ambulance officers;[230]
- health service providers[231] employed under the *Hospital and Health Boards Act 2011* (Qld)[232] or delivering services in a private hospital,[233] prison or detention centre environment,[234] as well as people acting in aid;
- workers engaged by the Commonwealth or another state or territory to deliver similar functions to those outlined above.

Under the reforms proposed, section 340 would apply to health service providers working in a public or private capacity in contexts where they are more vulnerable to assault, including when providing services in hospitals, prisons and detention centres (the inclusion regarding the latter two recognises the high-risk nature of these custodial environments and the essential nature of the care provided to prisoners and detainees). It would extend protection to persons 'acting in aid' of these providers where the assault occurs in the course of that person's employment, recognising that, particularly in healthcare settings, others who support those delivering these essential services are frequently exposed to the risk of assault, such as security personnel and support staff.

The Council has not recommended section 340 be extended further to include assaults that occur in other private health care settings or aged care facilities. This is because the Council has been guided by the original intention of the section to focus on assaults committed in particular contexts — that is, responding to situations to safeguard the health and safety of the community. In the case of private healthcare providers, the Council has determined it appropriate to sharpen the focus on assaults committed in the hospital, prison and detention centre environments and the delivery of acute care within that context vital to meeting the immediate health needs of patients. While we

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227 Employees under the *Fire and Emergency Services Act 1990* (Qld), including 'fire officers' as defined under that Act, would fall within the existing definition in s 340(3) of a 'public officer', which is defined to include: '(a) a member, officer or employee of a service established for a public purpose under an Act'.

228 Any group of persons may apply to the commissioner for registration as a rural fire brigade: *Fire and Emergency Services Act 1990* (Qld) s 79(1).

229 SES members are appointed by the commissioner under s 132 of the *Fire and Emergency Services Act 1990* (Qld) (FES Act). SES members would fall within the existing definition of a 'public officer' under s 340(3) as '(a) a member, officer of a service established for a public purpose under an Act'.

230 Ambulance officers are included within the definition of 'public officer' in s 340(3) by virtue of being 'a member, officer or employee of a service established for a public purpose under an Act'. The 'Queensland Ambulance Service established under the *Ambulance Service Act 1991*' is listed as an example of such a service.

231 'Health service provider' comes from the *Health Practitioner Regulation National Law Act 2009* (Qld). Its schedule defines health service provider as 'a person who provides a health service', which is defined to include a list of services, 'whether provided as public or private services' some of which are '(a) services provided by registered health practitioners; (b) hospital services; (c) mental health services and (d) pharmaceutical services'. In the same schedule, 'registered health practitioner means an individual who — (a) is registered under this Law to practise a health profession, other than as a student; or (b) holds non-practising registration under this Law in a health profession'. 'Health profession' means any of 16 professions. It includes a recognised specialty in those professions, being: Aboriginal and Torres Strait Islander health practice; Chinese medicine; chiropractic; dental (including dental hygienist etc.); medical; medical radiation practice; midwifery; nursing; occupational therapy; optometry; osteopathy; paramedicine; pharmacy; physiotherapy; podiatry, and psychology. A registered health practitioner would not be captured under current definition of a 'public officer' unless the person was also a 'health service employee under the *Hospital and Health Boards Act 2011*'— HHBA.

232 To be clear, the HHBA does not use the term 'health service provider' in the context discussed above. Health service employees are appointed under s 67 of the HHBA by the chief executive. Appointment may be on tenure, on a fixed-term contract, on a temporary or casual basis, or, for a senior health service employee, on contract for an indefinite term. A 'health service' is defined under s 15 of the HHBA and is defined to include: (a) a service provided to a person at a hospital, residential care facility, community health facility or other place; and (b) a service dealing with public health including for the prevention and control of disease or sickness; or the prevention of injury; or the protection and promotion of health. The positions are listed in the definition of a 'public officer' in s 340(3).

233 A 'private health facility' is defined under s 8 of the *Private Health Facilities Act 1999* (Qld) to mean: (a) a private hospital; or (b) a day hospital. Under s 9, a private hospital is defined as a facility at which health services are provided to persons who are discharged from the facility on a day other than the day on which the persons were admitted to the facility, but does not include a hospital operated by the state; or a nursing home, hostel or other facility at which accommodation and nursing or personal care are provided to persons who, because of infirmity, illness, disease, incapacity or disability, have a permanent need for nursing or personal care. Such positions would not be captured under current definition in s 340 of a 'public officer'.

234 'Prison or detention centre environment' is narrower than the term 'corrective services facility' in the *Corrective Services Act 2006* (Qld) sch 4, which means a prison, community corrections centre, work camp or declared temporary corrective services facility.

acknowledge calls for the coverage of section 340 to be extended even further, we consider the same outcomes can be achieved through the introduction of a statutory aggravating factor that requires courts to take this into account at sentencing. As this will operate as a sentencing factor, rather than as an element of an offence, the definition of its coverage will not need to be so narrowly circumscribed.

The protection of a person employed or engaged by the Commonwealth or in another state (including another territory)[235] to perform functions of a similar kind to those set out under the new section who are on duty in Queensland is also recommended. This is based on reforms recently introduced in Victoria to clarify that the special sentencing provisions that apply to emergency workers also apply to these officers.[236] Although the Council notes that some stakeholders did not support the extension to Commonwealth officers on the basis that these offences can be prosecuted under Commonwealth law, the Council considers it important that equivalent state protections are applied so as not to potentially disadvantage these officers while acting in Queensland. As discussed in section 8.4.2, the requirements to establish the Commonwealth offence of causing harm to a Commonwealth official are quite different from those that exist in Queensland.

The recommendations presented in this section regarding who should fall within scope of a redrafted section 340 have implications for other subsections currently in section 340. These are discussed below. In particular, the Council suggests that there should be no need to retain sections 340(1)(b)–(d), (2) or (2AA).

The Council acknowledges that the recommendation to refine section 340 to focus on frontline and emergency workers excludes occupational groups that had previously been included either under the umbrella term of 'public officer' or by specific listing. The Council's position does not mean that it considers that assaults on other public officers or, for that matter, anyone assaulted at work while just trying to do their job, are not serious. On the contrary, the Council is of the view that the aggravated nature of these assaults is best recognised through amendments to section 9 of the *Penalties and Sentences Act 1992* (Qld) (the Council's view and recommendations are presented at 10.2.10). This approach will have the advantage of requiring courts to consider this fact as aggravating when sentencing for any offence of violence against the person, rather than limiting recognition of this to one offence, while keeping section 340 focused on specific classes of victim. This is particularly important given that where the harm caused to the officer is serious, charges will be brought under other provisions of the Code — such as under section 317 (acts intended to cause grievous bodily harm and other malicious acts), section 320 (grievous bodily harm) or section 323 (wounding).

As one example, 'transit officers' would no longer be included within those who would fall under section 340. Analysis pertaining to the scope of 'transit officer', as it is currently defined under section 340 of the *Criminal Code,* indicates that in its current form it encompasses only a very narrow subset of transport workers. Consultation with representatives from Queensland Rail indicated that a much broader range of station staff and rail traffic crew regularly interact with customers, leaving them exposed to assaults, a risk sometimes exacerbated by working in environments where they are often performing their duties in isolation. The functions that these staff perform by their very nature are essential to the delivery of the rail network. However, it is the Council's view that they do not provide a service that fits within the scope of the definition of 'frontline and emergency worker' in the limited sense in which it is intended and would be better captured under proposed amendments to section 9 of the PSA.

The section 9 amendments proposed will have the benefit of capturing a far broader class of transport workers who are at higher risk of assault due the nature of their work and interactions with members of the public, such as bus drivers, taxi and rideshare drivers, ferry operators and other transport workers, than limiting its protection to transit officers. Recognition of the increased seriousness of assaults on transport workers based on their higher-level vulnerability under this approach will be possible without risking making artificial distinctions based on whether those workers are operating in a public or private capacity — the distinctions between which may not always be clear.

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235 'State' is defined under Schedule 1 of the *Acts Interpretation Act 1954* (Qld) to mean a state of the Commonwealth and includes the Australian Capital Territory and the Northern Territory. For this reason, there is no need to separately identify those engaged or employed by a territory.

236 *Sentencing Amendment (Emergency Worker Harm) Act 2020* (Vic) ss 4(2)(b) and (3) extend the operation of certain sentencing provisions that apply under the *Sentencing Act 1991* (Vic) to emergency workers to these officers.

Recommendation 3–1: Frontline and emergency service workers under new section 340

The categories of people captured within section 340 should be limited to the following in circumstances where the assault occurs in the performance of the functions of their office, or because of the performance of those functions:

(a) police officers;

(b) watch-house officers as defined under the *Police Service Administration Act 1990* (Qld);

(c) a person appointed or employed under the *State Buildings Protective Security Act 1983* (Qld);

(d) a corrective services officer under the *Corrective Services Act 2006* (Qld);

(e) a youth justice staff member under the *Youth Justice Act 1992* (Qld);

(f) an authorised officer under the *Child Protection Act 1999* (Qld);

(g) a person appointed as an employee under the *Fire and Emergency Services Act 1990* (Qld), a volunteer of a rural fire brigade registered under the Act, a member of the State Emergency Service, or a volunteer engaged in an activity to support functions under that Act;

(h) an ambulance officer under the *Ambulance Service Act 1991* (Qld);

(i) a 'health service provider' as defined under the Health Practitioner Regulation National Law:

  i. employed under the *Hospital and Health Boards Act 2011* (Qld); or

  ii. providing health services under the *Private Health Facilities Act 1999* (Qld); or

  iii. delivering health services in either:

    a. a prison; or

    b. a detention centre under the *Youth Justice Act 1992* (Qld);

(j) any person acting in aid of a health service provider delivering a health service in the circumstances set out in paragraph (i), where the assault occurs in the course of his or her employment; or

(k) a person employed or engaged by the Commonwealth or in another state to perform functions of a similar kind to those set out in paragraphs (a)–(i) who are on duty in Queensland.

Recommendation 3–2: Term 'public officer'

The term 'public officer' should not be used in the redrafted version of section 340 given the lack of clarity about the scope and meaning of this term, and that it is separately defined for different purposes in section 1 of the *Criminal Code*.

8.7 Scope of section 340 — acts of 'assault' and 'obstruction'

8.7.1 The current position

Behaviour constituting obstructing or resisting public officers is covered by both sections 199 and 340 of the *Criminal Code* (and various summary offences discussed in more detail in Chapter 9).

An offence against section 199 (resisting public officers) is committed if any person obstructs or resists any public officer (using the section 1 *Criminal Code* definition) while engaged in the discharge or attempted discharge of the duties of office under any statute or obstructs or resists any person while engaged in the discharge or attempted discharge of any duty imposed on the person by any statute.

Section 199 is largely unchanged from its original 1901 form. It now uses inclusive language; 'statute' is no longer capitalised; and hard labour is no longer an option. It is an indictable offence (a misdemeanour) that must be dealt with summarily with a maximum penalty of 2 years' imprisonment. By contrast, the prosecution has the power to elect if a section 340 charge (a crime) is to be dealt with in this way (see ss 552A and 552B of the *Criminal Code* and the discussion of this in section 10.6 of this report).

The words 'resist' and 'obstruct' in section 340 appear as elements only in sections 340(1)(b) regarding police and 340(2AA)(a) regarding public officers. They do not feature in any aggravated version of serious assault, so that the relevant maximum sentence is 7 years' imprisonment.

The presence of 'resist' and 'obstruct' in section 340 means that, despite its title, the section also covers behaviour that may not actually be an assault at law.

Because these terms are housed in the same subsections of section 340 that also cover assaults, and because section 199 has no subsections, data are not collected on how section 340 and section 199 are being used for resisting or obstructing offences. By contrast, assaults and obstructions are housed in separate sub-sections of

section 790(1) of the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA), which allows analysis of the use of these different formulations for sentencing purposes.[237]

8.7.2 Options discussed in the Issues Paper

Questions 10 and 11 of the Council's Issues Paper asked:

> 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)?
>
> 11. Should any reforms to existing offence provisions that apply to public officer victims be considered and, if so, on what basis?

The Council identified an option in the Issues Paper of removing references to resisting and obstructing from section 340, and utilising section 199 as the sole Code provision in this regard. This follows the WA example and accords with the aim of simplifying and clarifying section 340.

The Council's analysis shows there were only seven instances over the data period in which a section 199 charge was the most serious offence (MSO) charged (all of which, as required, were sentenced in Magistrates Courts). Examining all charges (not just those where it was the MSO sentenced), there were 25 cases involving an offender sentenced under section 199 — two in the District Court (involving co-offenders), and 23 in Magistrates Courts. Sentences ranged from good behaviour bonds of between 6 and 12 months and fines of between $250 and $1,000 up to a 6-month term of imprisonment.[238]

In its Issues Paper, the Council also raised two other potential options:

- repealing section 199 due to disuse; or
- classifying section 199 as a summary offence to create a general offence of resistance or obstruction of a public officer in place of the number of offence provisions capturing the same conduct that exist across the Queensland statute book.

As to repealing section 199, it could be said that the very small numbers of cases sentenced, and the level of penalties imposed for this offence, which must be dealt with summarily, suggest there may be little practical utility in retaining it in the *Criminal Code*.

However, if references to obstruct and resist were removed from section 340, section 199 may be used a great deal more. It is not known how often section 340 is used for acts of obstructing or resisting. Section 199 would occupy a unique position in the *Criminal Code*, bridging a gap between summary offences carrying maximum penalties of 12 months' imprisonment or less, and section 317 ('Acts intended to cause grievous bodily harm and other malicious acts'), which carries a maximum of life imprisonment (resist or prevent a public officer from acting in accordance with lawful authority is caught by sub-section 1(c)).

Finally, the vast majority of section 340 offences are dealt with summarily, on prosecution election, despite the fact that they carry up to 14 years' imprisonment.

As to classifying section 199 as a summary offence, doing this may provide an opportunity to consider the repeal of a number of summary offences scattered across the Queensland statute book that appear to serve the primary purpose, as for section 790 of the PPRA, of providing an alternative charge to what would otherwise need to proceed as a more serious charge under section 340.

However, the Council has recommended, in Recommendation 9–3, creating a new summary offence under the *Summary Offences Act 2005* (Qld) that establishes an offence of assault or obstruct a public officer (other than officers to which ss 790 of the PPRA and 124(b) and 127 of the CSA apply) as a summary offence alternative to an offence being charged under sections 340 or 199 of the *Criminal Code*. If section 199 were repurposed to this end, and section 340 was narrowed to strictly cover assaults only, the gap between summary offences and very serious Code offences covering obstructing and resisting would be very wide.

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237 See Explanatory Notes, Police Powers and Responsibilities and Other Legislation Amendment Bill 2018 (Qld) 4, which discusses improved data collection as one of the reasons for separating acts of assault and obstruction under section 790 of the *Police Powers and Responsibilities Act 2000*.

238 Court Services Queensland, unpublished data. There were also two instances of offenders being convicted but not further punished.

8.7.3 The Western Australian position

There are numerous other jurisdictions that, like Queensland, group assaulting, resisting and obstructing together as equal bases for criminal culpability in the context of offending against police or other public officials, that carry maximum penalties of varying lengths.[239]

The WA Code is the closest example to Queensland's Code and provides an example of how sections 340 and 199 could be amended. Its serious assault (s 318) and resisting public officers (s 172) offence provisions were originally identical to the original Queensland provisions. Section 318 has recognised only assaults since 1985.

Section 172 was replaced in 2005. It alone deals with obstructing public officers with maximum penalties of 3 years' imprisonment (or 18 months if convicted summarily).

The Criminal Code — A General Review was compiled by Mr Murray QC (later Murray J, Supreme Court of Western Australia) in June 1983. He recommended that the penalty for section 172:

> ought to be increased to three years imprisonment and I make that recommendation basically because the offences set out in [then] Section 318(2), (3) & (4), which may involve resistance or obstruction to particular types of public officer, are penalised by punishment of up to three years imprisonment, and they are obviously related offences.[240]

This recommendation would not be realised until May 2005. He noted that 'certain paragraphs of [section 318] are related to the offence contained in Section 172 which is recommended for amendment so that it deals specifically with obstructing or resisting public officers'.[241] He went on to recommend that the maximum penalty for section 318 be increased to 5 years' imprisonment, 'coinciding with that recommended for assault occasioning bodily harm'.[242]

He also recommended that sections 318(2), (3) and (4) — equivalents to provisions including Queensland's current section 340(1)(b) — be replaced with a single paragraph and 'there is no need for this paragraph to refer to offering resistance to or obstructing such public officers because that is a type of activity specifically covered by Section 172'.[243] A very similar recommendation would later be made in Queensland (see below).

The *Criminal Law Amendment Act 1985* (WA) repealed section 318 and inserted a new version with a maximum penalty of 5 years' imprisonment. It did not contain any reference to resisting or obstructing. The same is true of the current section 318, though it has been amended extensively since. That Act did not amend section 172.

A 1992 WA Law Reform Commission report records the landscape as it then was:

> Though there is some common ground between [s 172] and the Police Act offence [s 20, interference with police; performing the role of Queensland's section 790 of the PPRA], the Code offence is concerned with any public officer carrying out statutory duties and so is much wider. The Commission considers that s 20 should continue to deal specifically with the police. The *Criminal Code* contains some other provisions relevant to interference with the police … Under s 318, before its amendment in 1985, it was an offence to assault, resist or wilfully obstruct a police officer in the execution of his duty. Following recommendations in the Murray Report 213, s 318 has been limited to assaults on public officers, on the basis that resistance and wilful obstruction is covered by s 172. Amendments to s 172 suggested in the Murray Report 107 have not been implemented.[244]

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239 For instance, *Crimes Act 1900* (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 — 5 years; *Criminal Code* (Tas) s 114 Assault, resists or wilfully obstruct any police officer in the due execution of his duty, or any other person lawfully assisting — 21 years; *Crimes Act 1958* (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 — 5 years; *Criminal Code* (NT) s 155A 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 — 5 years.

240 Murray (n 27) 107.

241 Ibid.

242 Ibid.

243 Ibid.

244 Law Reform Commission of Western Australia, *Police Act Offences* (Project No 85, Report, 14 August 1992) 43, fn 11.

That report led to an Act, a decade later, in 2004.[245] It replaced section 172 with the current version, which commenced on 31 May 2005.[246] The Act was said to implement the majority of the recommendations of the Law Reform Commission's report and many from the Murray Review.[247] The new section 172 reads:

> 172. Obstructing public officer
>
> (1) In this section — obstruct includes to prevent, to hinder and to resist.
>
> (2) A person who obstructs a public officer, or a person lawfully assisting a public officer, in the performance of the officer's functions is guilty of a crime and is liable to imprisonment for 3 years. Summary conviction penalty: imprisonment for 18 months and a fine of $18 000.

8.7.4 Queensland reviews and analysis

A 1992 review (the 'O'Regan Review') of the *Criminal Code* noted the 1985 WA Act in making a very similar recommendation:

> The present [section 340] ss.(2), (3) and (4) [including current (1)(b) and encompassing all references in the original section 340 to resist and obstruct] should be amalgamated into one offence of assaulting a public officer (ss.2) and the aspects of resisting or obstructing should be deleted because they would be covered by the new offence proposed in relation to s.199 (Draft s.136) which should carry two years' imprisonment.[248]

A new section 136 would have borne the same heading and repeated the wording used in the first half of current section 199, stopping after 'duties of the office'.[249] It also used 'the office' instead of the current 'his or her office'. Section 199 continues with 'under any statute' and the second half relates to 'any person' in the same context. Section 136 would have been a crime and retained the same 2-year maximum penalty — section 199 is a misdemeanour.

Queensland's failed 1995 *Criminal Code* had a new section 201:

> Obstructing or resisting public officer
>
> 201. A person must not unlawfully obstruct a public officer in the exercise of a power, or the performance of a function, of the office.
>
> Maximum penalty—3 years imprisonment.

The subsequent 'Connolly Review' of 1996,[250] which informed the *Criminal Law Amendment Act 1997* (Qld), which itself repealed the unproclaimed replacement Code and made the first major reforms to section 340 since its inception in 1899, was silent on section 199 or an equivalent.

A 2008 Queensland Court of Appeal decision of *R v Spann*[251] represents 'a very serious example of obstruction of a police officer'[252] charged under section 340 leading to a 'severe'[253] head sentence of 3 years' imprisonment.

The offender, Spann, was an acquaintance of a man, Cardwell, who viciously assaulted a police officer resulting in GBH. Spann's conduct involved kicking the officer's capsicum spray away and taking hold of his baton as he used it to defend himself against Cardwell. Cardwell then forcibly removed the baton from Spann after she refused to give it to him, using it to further his assault on the officer, who was forced to shoot Cardwell. A piece of projectile lodged in Spann's leg.

Cardwell was charged with malicious acts under section 317 of the *Criminal Code*. At first, so was Spann. She was 'charged under s 317(c)(e) … with malicious act with intent (that with intent to resist the lawful arrest of Cardwell the applicant did grievous bodily harm to the complainant) as an alternate to the charge of serious assault under s 340(1)(b)'.[254] On pleading guilty to serious assault (by wilfully obstructing the officer in the execution of his duty),

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245 *Criminal Law Amendment (Simple Offences) Act 2004* (WA) s 16.

246 Western Australia, *Western Australian Government Gazette*, No 8, 14 January 2005, 163.

247 Explanatory Memorandum, Criminal Law Amendment (Simple Offences) Bill 2004 (WA) 1 and see 9.

248 O'Regan, Herlihy and Quinn (n 6) Schedule 4, 201.

249 Ibid Schedule 3, 74–5.

250 Connolly et al (n 6).

251 [2008] QCA 279.

252 Ibid 9 [32].

253 Ibid 9 [33].

254 *R v Spann* [2008] QCA 279, 4 [10].

the prosecutor discontinued the count of malicious act with intent. She was sentenced 'only for her role in the incident and not for the very significant injuries inflicted upon the complainant'.[255]

Her sentence was 3 years' imprisonment, with parole release fixed at 588 days (that period having been spent in pre-sentence custody). The maximum was 7 years' imprisonment,[256] as it still is. The Court of Appeal described this as 'severe'[257] but refused leave to appeal. It rejected a submission that:

> there was ordinarily a hierarchy of seriousness as to the three examples of offences dealt with in [s 340(1)(b)] of the *Criminal Code*, with an assault being more serious than resisting a police officer, which in turn was more serious than obstructing a police officer. However, each of the offences [then attracted] a maximum penalty of seven years imprisonment and the severity of any particular offending will depend on its facts.[258]
>
> This case was a very serious example of obstruction of a police officer in the execution of his duty, given its context. The offending conduct cannot simply be reduced to an act divorced from the surrounding circumstances. It occurred when the [officer] was in a desperate, and potentially life-threatening situation.[259]

The case above shows that a Code offence covering resisting and wilfully obstructing an officer can be useful as an alternative basis for culpability to a defendant being charged as a party to a principal offender's more serious offence. Increasing the maximum penalty for section 199 would arguably fill this niche while also reducing duplication and complexity in the *Criminal Code* (and especially in section 340).

8.7.5 Stakeholder views

The Council received limited feedback on this issue in written submissions.

The QLS supported the recommendation to remove obstruct and resist from section 340. It described 'an increase in the threshold for the section 340 offence to one requiring at least "bodily harm" as 'particularly desirable':[260]

> Otherwise … there is little if any practical delineation between this offence and the Police Powers and Responsibilities Act (PPRA) counterpart. Similarly, resisting and obstructing should be removed from section 340, and charged under the PPRA or section 199 of the Code.[261]

LAQ acknowledged that 'there may be value in rejigging the legislative framework and leaving section 790 of the PPRA and section 199 to deal with resisting and less serious assaults on public officers',[262] but was concerned:

> there is little evidence of a difficulty with interpreting or application of section 340. Any rejigging would work more as a tidying up of provisions rather than the instigation of systemic change. There is of course always the risk of unintended consequences that may stem from such change.[263]

QCS, while noting there is some overlap in the conduct captured under sections 340 and 199, considered, due to the different categorisation of these two offences (one a crime, and the other a misdemeanour) and very different maximum penalties, that 'there is a benefit to retaining section 199 of the Criminal Code'.[264]

8.7.6 Council's view

To better target the offence of serious assault in section 340, the Council recommends that the conduct captured in the amended section 340 be limited to acts of assault, leaving acts of resisting or obstructing a police officer or other public officer to be charged under section 199 of the *Criminal Code*.

This change will avoid unnecessary duplication in the offences that can be charged under the *Criminal Code* for the same types of criminal acts and is consistent with the approach in WA, which, like Queensland, has a separate

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255 Ibid 4 [11].

256 Ibid 4 [12].

257 Ibid 9 [33].

258 Ibid 9 [31]. See also *R v Patrick (a pseudonym)* [2020] QCA 51, 8 [32] (Sofronoff P, Fraser JA and Boddice J agreeing) where the Court of Appeal made a similar point in respect of 'resisting' in section 317. It rejected a contention that some of the four different forms of intention to cause GBH in that section were more serious than others: 'the section draws no distinction between any of the specified kinds of intent that motivate the doing of grievous bodily harm — although the circumstances of a particular case will affect the culpability'.

259 Ibid 9 [32].

260 Submission 30 (Queensland Law Society) 7, repeated at 13.

261 Ibid.

262 Submission 29 (Legal Aid Queensland) 5.

263 Ibid.

264 Submission 21 (Queensland Corrective Services) 15.

offence of 'serious assault'. This was recommended long ago in each jurisdiction by separate legal reviews and, while given effect to in WA in 2005, is yet to be acted on in Queensland.

We recommend the maximum penalty that can be applied under section 199 be increased from 2 years to 3 years, taking into account that more serious examples of resist and obstruct may be sentenced under this provision following these changes. This is also consistent with the penalty for the equivalent offence in WA.

In doing so, we acknowledge the Court of Appeal in *R v Spann*[265] rejected an argument that assault, resist and obstruct should always be viewed as representing different positions on a hierarchy of seriousness. There is a possibility that there may be concerns that the 3-year penalty is not sufficient on this basis. However, the prosecution retains the option of charging a defendant as a party to a more serious offence on the basis that the offender, for instance, '[did] or [omitted] to do any act for the purpose of enabling or aiding another person to commit the offence'.[266] Furthermore, the Council's role in making recommendations to government regarding matters of policy and potential legislative reform places it in a very different position from a court, which must apply the legislation as it stands.

The Council does not suggest that section 199 should be further amended by removing the term 'public officer' and inserting the new definitions recommended to apply to an amended section 340. The existing definition of 'public officer' in section 1 would continue to apply to section 199 (as it would to, for example, section 317(1)(d)).

Recommendation 4–1: Limiting section 340 to acts of assault

The criminal conduct captured within section 340 should be limited to acts of assault on frontline and emergency workers. References to resisting and obstructing a police officer or public officer should be omitted.

Recommendation 4–2: Maximum penalty for section 199 ('Resisting public officers')

The maximum penalty that applies to offences under section 199 of the *Criminal Code* ('Resisting public officers') should be increased from 2 years' to 3 years' imprisonment, taking into account that more serious resist and obstruct charges that might have been charged under section 340 may instead be charged under section 199.

8.8 Other matters relevant to reform of section 340

8.8.1 Introduction

Several consequences flow from the Council's view that the existing section 340 should be reformed and narrowed in scope. The Council's view is that this section should be redrafted to apply to assaults on frontline and emergency workers, as defined in Recommendation 3–1.

Certain subsections in section 340 do not directly address public officers as a distinct victim class. However, acceptance of the Council's recommendations as regards section 340 would mean that these subsections could compromise the clarity and purpose of a refined section 340 if they remained within it. They are all from subsection 340(1) (emphasis added):

(a) assaults *another* with intent to commit a crime, or with intent to resist or prevent the lawful arrest or detention of himself or herself or of any other person

(c) unlawfully assaults *any person* while the person is performing a duty imposed on the person by law

(d) assaults *any person* because the person has performed a duty imposed on the person by law

(f) assaults *any person* in pursuance of any unlawful conspiracy respecting any manufacture, trade, business, or occupation, or respecting any person or persons concerned or employed in any manufacture, trade, business, or occupation, or the wages of any such person or persons

(g) unlawfully assaults *any person* who is 60 years or more

(h) unlawfully assaults *any person* who relies on a guide, hearing or assistance dog, wheelchair or other remedial device.

They each create separate categories of serious assault, with a 7-year maximum penalty and, in contrast to assaults of police officers and other public officers, they do not have an aggravated form carrying a higher 14-year maximum penalty.

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265 [2008] QCA 279.

266 *Criminal Code* (Qld) s 7(1)(a).

The Council makes observations only in respect of each of subsections (1)(a) and (1)(f) as it views these as being outside the scope of the Terms of Reference.

It makes recommendations in respect of subsections (c) and (d), and separately, subsections (g) and (h), on the basis that these constitute 'any other matter relevant' to the reference.

Given that the WA offence of serious assault in section 318 of its *Criminal Code*[267] was originally identical to Queensland's section 340 (although both provisions have since diverged), the Council notes that section 318 no longer contains equivalents of Queensland's section 340(1)(a) or (f). It does not contain equivalents to Queensland's section 340(1)(g) or (h). It does retain section 340(1)(c) and (d) equivalents.[268]

The Council is conscious of the fact that the Terms of Reference refer to determining whether it is appropriate for section 340 to continue to apply to 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.

The Council is recommending, and making observations about, the reverse — potentially moving certain subsections out of section 340 in order to focus it sharply on frontline and emergency workers, as supported by the data. The main point, though, is separation. The secondary point, and the reason for the reversal, is that section 340 has historically (in the truest sense of that word) been targeted at public officials and it has a rich history in terms of data, case law, and common usage in this context.

8.8.2 A historical Queensland review perspective on aggravating by victim category

The 1992 O'Regan Review recommended retaining but revising and simplifying 'the present scheme of offences contained in s.340'.[269] It recommended that 'the present ss.(2), (3) and (4) [now sections (1)(b), (c) and (d)] should be amalgamated into one offence of assaulting a public officer (ss.2) [which closely resembled current section 340(2AA)(a) and (b), except that it lacked references to resisting or obstructing]'.[270]

The recommended provision would have covered assaults:

1. with intent to commit a crime or to resist or prevent another's lawful detention or arrest [current (1)(a)];
2. of a public officer performing a function of their office or employment or on account of their performance of such a function [very similar to current (2AA)];
3. of any person performing any act in the execution of any duty imposed upon them by law or on account of any act done in the performance of such a function;[271]
4. of any person acting in aid of a public officer or other person noted above, or on account of the person having so acted;
5. of a child under 16 or a person over 60 [latter current (1)(g)];
6. of 'the driver or person operating or in charge of a conveyance whilst the conveyance is in operation ('in view of the danger created by such assaults').[272]

In 1995, a replacement *Criminal Code* for Queensland was assented to. It was never proclaimed and was repealed in 1997,[273] but it created a new section 114, 'Assault',[274] which carried the following statutory circumstances of aggravation:

1. the assault was committed with intent to commit a crime;
2. the person knew the victim was pregnant;
3. the victim was under 16 or over 60 [latter current (1)(g)];

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267 Originally enacted as the *Criminal Code Act 1902* (WA) s 316.

268 *Criminal Code* (WA) s 318(1)(e) 'function of a public nature conferred on him by law'.

269 O'Regan, Herlihy and Quinn (n 6) 200–1 and see 59. The report then made further recommendations regarding removing references to resisting and obstructing, which are taken up earlier in this chapter regarding s 199.

270 Ibid 201.

271 This remains similar to current (1)(c) and (d), despite the amalgamation point above, but it is largely because it was based on now-repealed s 340(1)(e), which s 340(c) was later created to encompass in 2008. See the discussion of ss 340(1)(c) and (d) below and O'Regan, Herlihy and Quinn (n 6) 110.

272 Ibid and see 59.

273 By the *Criminal Law Amendment Act 1997* (Qld) s 121.

274 It had no offence of wounding, replaced s 245 (definition of assault) with a different provision regarding the definition and amalgamated and replaced sections 335 (common assault), 339 (AOBH), 340 (serious assault), 343A (AOBH) and 206 (offering violence to officiating ministers of religion, to the extent that it relates to assaults: Explanatory Notes, Criminal Code Bill 1995 (Qld) 30.

4. the victim relied on a guide dog, wheelchair or other remedial device (current (1)(h)];
5. the victim was operating a motor vehicle;
6. the assault was committed on the other person while he or she was 'performing, or because the other person has performed, a lawful duty' [current (1)(c) and (d)];
7. the person did bodily harm and was, or pretended to be, armed [current penalty provision (a)(iii) in aggravated serious assaults]; or
8. the person did bodily harm and was in company [former is current penalty provision (a)(ii) in aggravated serious assaults].

This went beyond the recommendations of the 1992 O'Regan Review and was criticised by the Opposition during parliamentary debate as being unrepresentative of the Review Committee's original draft.[275] The Opposition stated that all legal stakeholders opposed the amended Code.[276]

The Opposition won government and commissioned the 'Connolly Review' of 1996,[277] which informed the *Criminal Law Amendment Act 1997* (Qld), which itself repealed the unproclaimed replacement Code and made the first major reforms to section 340 since its inception in 1899.

The Connolly Review's task 'was made very much easier by the O'Regan Committee Report on the one hand and [1995 Code] on the other, both of which have been constantly consulted'.[278] It recommended no amendment to sections 335, 339 or 340, except maximum penalty increases (which occurred), and recommended against the creation of extra aggravated offences.[279]

However, that 1997 Act also included references to victims over 60 and guide dogs, wheelchairs or other remedial devices, taken from the repealed Code and moved by the new Labor Opposition as enabled by an independent Member of Parliament. As discussed above, numerous substantial amendments have been made to section 340 since 1997.

8.8.3 Section 340(1)(a)

Apart from the addition of the words 'or herself' after 'himself', this subsection is the same as the original version from the *Criminal Code*'s enactment.

As noted in Table 2-2 in Chapter 2, over the Council's data period from 2009–10 to 2018–19, this subsection featured in 294 section 340 cases, with 292 offenders and 366 offences. It was the MSO on 169 occasions. As shown in Figure 2-3 in that chapter, this subsection accounted for 2.1 per cent of sentenced serious assault cases (MSO) over that data period.

It cannot be determined how many prosecutions of section 340(1)(a) involved victims who were not police or public officers, or people working in occupations outside of what is contemplated by the proposed reformed section 340 in Recommendation 3–1. As was discussed in section 1.6 of Chapter 1, agencies in the criminal justice sector collect little information on the circumstances of a person's offending in a way that can be analysed. This limitation extends to data collected by courts on the occupation of victims of crime. Analysis performed by the Council found that data on the occupation of victims were not recorded in over one-third (41.7%) of cases that involved a section 340(1)(a) offence.

As was discussed in section 3.2.1 in Chapter 3, the Council overcame this limitation for sections 340(1)(c), (1)(d) and (2AA) (because they were viewed as being within scope of the Terms of Reference) by using supplementary information from QP9s — but supplementary information was not sought for section 340(1)(a).

While subsection (1)(a), like (c) and (d), applies to any person, its scope goes beyond them by requiring proof of an intent to 'commit a crime' to 'resist or prevent the lawful arrest or detention of himself or herself or of any other person'. It serves a specific purpose and replicates, to some degree, other serious, specific offences in the *Criminal Code* that combine an assault or similar behaviour with an intent to commit a particular crime or escape detention, regardless of victim type. Examples are:

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275 'This legislation could no longer be described as even a shadow of the June 1992 draft prepared by the then O'Regan committee': Queensland, *Parliamentary Debates*, Legislative Assembly, 14 June 1995, 'Criminal Code — Second Reading', 12534 (Denver Beanland).

276 Ibid 12536.

277 Connolly et al (n 6).

278 Ibid, cover letter signed by authors.

279 Ibid 69 (emphasis added).

- 315 — Disabling in order to commit an indictable offence ('who, by any means calculated to choke, suffocate, or strangle, and with intent to commit or to facilitate the commission of an indictable offence, or to facilitate the flight of an offender after the commission or attempted commission of an indictable offence, renders or attempts to render any person incapable of resistance').
- 317(1)(d) — Malicious acts, which requires an intent 'to resist or prevent a public officer from acting in accordance with lawful authority' combined with certain physical actions.
- 346 — Assaulting another with intent to hinder or prevent the other person from working at or exercising the other person's lawful trade, business, or occupation, or from buying, selling, or otherwise dealing, with any property intended for sale.
- 351 -— Assaulting another with intent to commit rape.
- 413 — Assaulting any person with intent to steal anything.
- 409 — Robbery — stealing anything, and, at or immediately before or immediately after the time of stealing it, using or threatening to use actual violence to any person or property in order to obtain the thing stolen or to prevent or overcome resistance to its being stolen.

Section 340(1)(a) also covers assaults on persons who are not police officers making an arrest or assisting a police officer in effecting a lawful arrest or detention of a person.[280]

The Council makes the observation that this subsection might continue to exist in a revised, more targeted section 340, although this may continue the incongruous and inconsistent nature of the offence, which the Council's recommendations are designed to address. Alternatively, if the Council's recommendations are accepted, the Government might consider moving this subsection or creating a new provision entirely.

8.8.4 Sections 340(1)(c) and (d)

The Council recommends below that sections 340(1)(c) and (d) be repealed if Recommendation 3–1 is accepted because they act to extend section 340 beyond the narrowed scope achieved. The aggravating sentencing factor that would be created if Recommendation 10–1 were accepted would cover this cohort of victim, with an emphasis on vulnerability.

The most significant amendment of these sections was in the *Criminal Code and Other Acts Amendment Act 2008* (Qld). Section 61 omitted the existing versions of subsections (c), (d) and (e) and inserted current (c) and (d) ('performing/has performed a duty imposed on the person by law'). The omitted provisions were identical to those in the original *Criminal Code*, save for a change from 'him' to 'the person' in (e):

> (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
>
> (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
>
> (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

The explanatory notes to the 2008 Bill explained that:

> New subparagraph (c) applies to an unlawful assault on a person performing a duty imposed by law. This extends omitted section 340(1)(e) which provided that such an assault had to be committed 'on account' of an act done by the person performing the duty.
>
> … Subclause (4) inserts a new subsection (2AA) to apply to assaults on public officers performing a function of their office or employment. The term 'public officer' is defined in section 1 of the Code. That definition includes a person, other than a judicial officer, discharging a duty of a public nature or executing any process of a court. Therefore, persons protected under current section 340(1)(c) and (d) will continue to fall under the provision.[281]

The Council has based its recommendations regarding narrowing section 340 to key frontline and emergency workers on sentencing patterns observed in the data. Remaining occupations with demonstrable vulnerability not covered by section 340 would instead be covered by the aggravating sentencing factor in section 9.

Maintaining the very wide language in sections 340(1)(c) and (d) would render the Council's recommended changes to section 340 pointless. The intention is for a case to clearly fall under either section 340 or the section 9 aggravating factor. In the Council's view, subsections (1)(c) and (d) are obtuse (especially so in the context of the proposed amended provision) and would serve only to complicate and confuse if they were retained. Those

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280 See *Criminal Code* (Qld) chapter 58 'Arrest' (ss 545A–552) and ss 137(b), 252(2), 257, 258, 450A, 479.

281 Explanatory Notes, Criminal Code and Other Acts Amendment Bill 2008 (Qld) 13.

occupational cohorts not covered by section 340 would instead be covered by either of sections 335 or 339 (or more serious offences if required) in concert with the new aggravated sentencing factor in section 9 of the PSA. This is illustrated by Table 3-8 in Chapter 3, which shows the overwhelming majority (if not all) assaults prosecuted under these subsections would likely be captured under the revised section 340 or the section 9 aggravating factor.

The other basis on which the Council makes this recommendation regarding sections 340(1)(c) and (d) is that they are little used. As noted in Table 2-2 in Chapter 2, over the Council's data period from 2009–10 to 2018–19:

- subsection (1)(c) accounted for 236 cases, 229 offenders, 306 offences (160 being the most serious offence); and
- subsection (1)(d) accounted for 85 cases, 82 offenders, 101 offences (60 being the most serious offence).

As shown in Figure 2-3 in Chapter 2, subsection (1)(c) accounted for only 2.0 per cent of sentenced serious assault cases (MSO) over that data period, and (1)(d) accounted for only 0.8 per cent.

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

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

8.8.5 Section 340(1)(f)

Section 340(1)(f) is identical to the original version as enacted. It has the evidentiary challenge of requiring proof of a conspiracy and that the assault occurred in this context. The *Criminal Practice Rules* set out the requirements as:

> Assaulted EF, in pursuance of an unlawful conspiracy respecting—
>
> (a) the [describe the manufacture, trade, business or occupation]; or
>
> (b) GH who was concerned (or employed) in the [describe the manufacture, trade, business or occupation]; or
>
> (c) the wages of GH who was concerned (or employed) in the [describe the manufacture, trade, business or occupation].[282]

Between 2009–10 and 2018–19, there were two cases sentenced involving section 340(1)(f) offences.[283] Both involved juvenile offenders who were sentenced in the Childrens Court. In one case (sentenced in 2016–17), the offence was the MSO (the single (1)(f) MSO in a total of 7,932 section 340 MSOs), for which 12 months' probation was ordered. The other case (sentenced in 2013–14) received a probation order for 9 months; however, the offence was not the MSO. In this case the MSO was section 339(1) AOBH, for which the offender received a 9-month probation order.

The 1992 O'Regan Review recommended repealing section 340(1)(f) on the basis that it was covered by section 340(1)(a).[284] In WA, the 1983 Murray Report[285] recommended deleting 'existing paragraph (6)' of section 318 of the WA *Criminal Code* [the equivalent to Queensland's s 340(f)] on the basis that it was 'inappropriate to be retained having regard to the recommendations to be made with respect to the law of conspiracy and discussed in more detail later in this report'.[286] No such paragraph survives in WA's section 318.

The Council makes the observation that there appears to be no need to retain section 340(1)(f) — assault of a person in pursuance of an unlawful conspiracy. It appears to be an anachronism and rarely charged. The Council could find only two cases over the 10-year period examined in which this offence had been charged and sentenced — both involving juvenile offenders. Of those sentences for which sentencing remarks could be accessed, it was unclear the basis on which this offence was charged as these cases appeared to possibly involve the assaults of youth detention centre workers.

Retaining this section may also continue the incongruous and inconsistent nature of the offence, which the Council's recommendations are designed to address.

Under the reforms recommended to section 9 of the PSA, the Council can see no real benefit to be gained in retaining this provision as any assaults committed against someone for reasons associated with trade, business or occupation will be recognised as an aggravating factor that is applied across all offences that can be charged involving the use, or threatened use, of violence against the person.

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282 *Criminal Practice Rules 1999* (Qld) Sch 3, Form 193 'Serious Assault' (5).

283 See Chapter 2, Table 2-2. Two more were 'not further defined' beyond 'section 340'.

284 O'Regan, Herlihy and Quinn (n 6) 201.

285 Murray (n 27) 214.

286 Ibid.

Finally, as the O'Regan Report noted, the conduct covered (in a very complicated way) by subsection 1(f) is likely covered by subsection (1)(a) in any event, given that assaulting someone in pursuance of an unlawful conspiracy would usually also constitute assaulting someone with intent to commit a crime.

8.8.6 A new offence to cover sections 340(1)(g) and (h)?

Sections 340(g) and (h) were introduced by unusual means into the Code by the *Criminal Law Amendment Act 1997* (Qld). The Labor Opposition passed them with the support of an independent Member of Parliament. The people-aged-over-60 provision had been recommended as part of the O'Regan Review and included in the failed 1995 Code, while the person-using-a-guide-dog etc. provision had appeared in the 1995 Code. Neither was supported by the Connolly Review and the Government opposed the Opposition's amendments.

As noted in Table 2-2 in Chapter 2, over the Council's data period from 2009–10 to 2018–19:

- subsection (1)(g) accounted for 1,702 cases, 1,664 offenders, 1,823 offences (1,329 being the MSO); and
- subsection (1)(h) accounted for 40 cases, 39 offenders, 45 offences (32 being the MSO).

As shown in Figure 2-3 in Chapter 2, subsection (1)(g) accounted for 16.8 per cent of sentenced serious assault cases (MSO) over that data period, and (1)(h) accounted for 0.4 per cent.

The Council recommends relocating subsections (1)(g) and (h) from section 340 and into a new, standalone section regarding assaults of vulnerable persons. The Council notes that it has not specifically sought the views of disability support groups and other relevant stakeholders, and this may be required, although such a move would not appear to the Council to disadvantage the people covered by these subsections.

The proposed aggravated sentencing factor in section 9 of the PSA would not apply to the new provisions, just as it would not apply to an amended section 340. The aggravating factor would apply to persons made vulnerable because of their occupation. The standalone offence would be inherently aggravated anyway.

Alternatively, these subsections could be moved from section 340 and into other provisions regarding offences against the person, to form circumstances of aggravation within each — as is the approach adopted in WA for offences against the person in circumstances where the victim is aged 60 years or more. However, this would create disparity within these sections by creating another layer of maximum penalty. There would also be a question of whether such circumstances of aggravation should apply to every offence against the person, or only some. Again, given the coverage that section 9(3)(c) of the PSA affords, the Council considers this would be the best way to recognise and protect such cohorts.

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

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

8.8.7 Section title of 'serious assault'

The language used to describe conduct captured within criminal offences is important when taking into account that one of the objectives of the criminal law is to prescribe what behaviour is to be treated as unlawful and deserving of criminal punishment.

The offence titles assigned in legislation can aid community understanding of what type of conduct the offence is targeted at. Conversely, offence titles that do not accurately reflect the conduct captured may contribute to misunderstandings about the nature of these offences.

While the term 'serious assault' is well understood by police and criminal lawyers, to general members of the community it often suggests something very different — an assault that has resulted in serious injury or harm to the victim. In its submission, the QLS noted 'the label "serious assault" is confusing, particularly to a potential employer considering the results of a criminal history check'.[287]

Under existing Director of Public Prosecution Guidelines, when an assault has resulted in serious injury being caused to a police officer, serious assault is only to be charged for injuries that fall short of GBH or wounding, meaning that cases involving more serious injuries are charged under other sections of the *Criminal Code*.[288]

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287 Submission 30 (Queensland Law Society) 5.

288 Office of the Director of Public Prosecutions (Queensland), *Director's Guidelines* (30 June 2019) 17.

For the offence of 'serious assault' to be established, there is no need for any bodily harm to have been caused or intended to be caused. The conduct may also involve an act of resisting or obstructing a public officer, rather than an assault (although under the Council's proposed reforms, this latter issue would be resolved).

To further confuse matters, the nomenclature of 'serious assault' is used for statistical purposes to report on offences and sentencing outcomes under the Australian Standard Offence Classification Scheme.[289] Two forms of 'serious assault' are specified under the Queensland extension to this classification scheme: 'serious assault resulting in injury', which is constituted by offences such as GBH, AOBH, wounding and torture, and 'serious assault not resulting in injury'.[290] The offence of 'serious assault' is coded to both broad offence categories, depending on whether injury has resulted from the assault.

The Council recommends that, should its recommendations regarding the repeal of subsections (1)(c) and (d) (Recommendation 5) and relocation of subsections (1)(g) and (h) (Recommendation 6) be accepted, and other advice regarding subsection (1)(a) and (f) be accepted, section 340 should be retitled to better reflect the nature of the conduct captured with a view to promoting community understanding of the scope of the redrafted offence. Alternatively, should the Council's recommendations regarding the relocation of subsections (1)(g) and (h) not be accepted, we see merit in making this change, but including a reference to 'vulnerable persons'. This change should also assist agencies whose officers are captured within scope to better target any public awareness campaigns about penalties that apply to these forms of assault.

Recommendation 7: New section title — 'Assaults on frontline and emergency workers'

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

8.9 Penalties for serious assault

8.9.1 Introduction

In Chapter 7, we discussed in some detail 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* (Qld) in the execution of their duties. The impact of the 2012 and 2014 amendments introducing higher maximum penalties was also considered.

In this section, we discuss whether the current penalties are appropriate and if this is in accordance with stakeholder expectations.[291]

8.9.2 Current position in Queensland

Serious assault

Assaults on police officers are, and have always been, specifically recognised in section 340. The 7-year maximum penalty applies where a person assaults, resists or wilfully obstructs a police officer while acting in the execution of duty (or any person acting in aid of a police officer so acting). The maximum penalty is 14 years where the victim is a police officer and when committing the offence, the offender:

- bites or spits on a police officer;
- throws at or applies to a police officer a bodily fluid or faeces;
- causes bodily harm to the police officer; or

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289 Australian Bureau of Statistics, *Australian and New Zealand Standard Offence Classification: Australia* (2011, 3rd ed) Catalogue ref 1234.0.

290 Queensland, Office of Economic and Statistical Research *Australian Standard Offence Classification (Queensland Extension)* (QASOC) (2008) Div 02 'Acts intended to cause injury', subdiv 021 'Assault' comprises categories 0211 (Serious assault resulting in injury), 0212 'Serious assault not resulting in injury,' and 0213 'Common assault'.

291 This was addressed in question 14 of the Council's Issues Paper, which sought feedback on stakeholder support for s 340 and whether structural changes should be considered, appropriateness of maximum penalties with reference to those for other assault-based offences, and whether the objectives of the aggravated forms of serious assault were being achieved.

- is, or pretends to be, armed with a dangerous or offensive weapon or instrument.

There is a similar penalty provision that provides for the same form of aggravated offence, also carrying a 14-year maximum penalty for unlawfully assaulting a public officer performing a function of their office, or assaulting a public officer because they have performed that function (s 340(2AA)).

In some instances, this provision provides a higher maximum penalty than for AOBH (s 339, 14 years as against 10 years) and on par with GBH (s 320, 14 years).

Sections 340(1) and 340(2AA) are drafted so that each has two sets of subparagraphs (a) and (b). The first set in each creates offences. The second set creates aggravated offences and sets out the maximum penalties applicable.[292]

A similar approach has now also been applied under subsection (2), which previously provided only that a person who unlawfully assaults a 'working corrective services officer' is liable to a maximum penalty of 7 years' imprisonment. This pre-dated the insertion of subsection (2AA). The Queensland Parliament added the 14-year maximum and aggravated penalty provision to section 340(2) in July 2020 (commenced 21 July 2020).[293]

Alternative *Criminal Code* charges to serious assault

A wide range of behaviour can constitute an assault. One incident could result in police deciding between several different kinds of charges, or a mixture of them. The Court of Appeal has noted:

> One difficulty is that quite often offences of the type in question are associated with other, frequently more serious, offences and the penalties imposed with respect to the offences in question are affected by other sentences imposed at the same time.[294]

This is a key point when considering criticism of sentences for section 340 offences: more serious offences could be charged instead, and/or the serious assault offence may be caught up in a wider range of charges where a higher head sentence is imposed for a more serious charge. Alternatively, the breadth of the section is such that the conduct involved could be extremely minor, and thus attract a sentence reflective of that.

Other *Criminal Code* offences that can be used instead of, or beside, section 340 are:

- common assault (s 335) — maximum penalty 3 years' imprisonment;
- AOBH [295] (s 339) — maximum penalty 7 years' imprisonment, or 10 years where the offender is or pretends to be armed with any dangerous or offensive weapon or instrument, or is in company with someone else;
- wounding[296] (s 323) — maximum penalty 7 years' imprisonment;
- GBH [297] (s 320) — maximum penalty 14 years' imprisonment;
- acts intended to cause GBH and other malicious acts ('malicious acts', section 317) — maximum penalty life imprisonment;
- resisting public officers (s 199) — maximum penalty 2 years' imprisonment; [298] and
- torture[299] (s 320A) — maximum penalty 14 years' imprisonment.

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292 See *Criminal Code* (Qld) s 365A, regarding circumstances of aggravation of committing the offence in a public place while the person was adversely affected by an intoxicating substance. The term 'penalty, paragraph (a)' is the descriptor used for the second (a) in each of ss 340(1) and (2AA).

293 *Corrective Services and Other Legislation Amendment Act 2020* (Qld) s 55.

294 *R v Juric* [2003] QCA 13, 4 [9] (Williams JA, de Jersey CJ and Atkinson J agreeing).

295 'Bodily harm' means any bodily injury that interferes with health or comfort: *Criminal Code* (Qld) s 1.

296 Case law says that wounding means the true skin is broken and penetrated (not merely the cuticle or outer skin). It does not matter how the wound was inflicted (for instance, a weapon does not have to be used): Justice Ryan, Judge Rafter and Judge Devereaux, LexisNexis, *Carter's Criminal Law of Queensland* (online at 3 January 2020) [s 323.20] Unlawful wounding.

297 The term 'grievous bodily harm' means the loss of a distinct part or an organ of the body, serious disfigurement, or any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health; whether or not treatment is or could have been available: *Criminal Code* (Qld) s 1.

298 This offence covers obstruct and resisting public officers and so duplicates aspects of s 340. It is discussed in detail in section 8-7 of this chapter.

299 Torture is the intentional infliction of severe pain or suffering on a person by an act or series of acts done on one, or more than one, occasion. 'Pain or suffering' includes physical, mental, psychological or emotional pain or suffering, whether temporary or permanent: *Criminal Code* (Qld) s 320A.

8.9.3 Position in other jurisdictions

The cross-jurisdictional tables at Appendix 5 show examples of indictable offences dealing with assaults of police and various groups of public officers, collected by occupational group. These cover the Commonwealth, New South Wales, Northern Territory, South Australia, Tasmania, Victoria, Western Australia, and Canada.

The analysis of penalties that apply in other jurisdictions demonstrates that a wide range of penalties apply to these offences depending on the type of conduct captured. In some cases, higher penalties are only applied if 'bodily harm' is caused or if accompanied by an intention to cause harm, or reckless indifference to this. Some of the penalties applying to these offences, and the nature of these offences is discussed above in section 8.6.5.

8.9.4 The Council's approach to assessing 'adequacy'

As discussed in the Council's Issues Paper, the 'adequacy' of penalties is a difficult concept to measure in an evidence-based way.

In the Council's report on penalties imposed on sentence for criminal offences arising from the death of a child, we discussed the concept of 'adequacy' in some detail. We noted that unless legislation fixes a mandatory penalty, 'the discretionary nature of the judgment required means that there is no single sentence that is just in all the circumstances',[300] or an 'objectively correct sentence'.[301]

In exercising discretionary judgment in setting the sentence, courts do not approach the task in an overly structured or mathematical way:

> At best, experienced judges will agree on a range of sentences that reasonably fit *all* the circumstances of the case. There is no magic number for any particular crime when a discretionary sentence has to be imposed.[302]

Even an agreement to accept a plea to a lesser charge (in this case, to an offence under section 790 of the PPRA, rather than to serious assault) 'cannot affect the duty of either the sentencing judge or a court of criminal appeal to impose a sentence which appears to the court, acting solely in the public interest, to be just in all of the circumstances'.[303]

Sentencing courts have a wide discretion, yet 'must take into account all relevant considerations (and only relevant considerations)'[304] including legislation and case law.

As discussed in Chapter 6, it can be inferred that the sentencing discretion has 'miscarried' when the sentence is clearly unjust, being 'manifestly excessive' or 'manifestly inadequate'.[305] Such sentences, which an appeal court can set aside, are those falling 'outside the *range* of sentences which could have been imposed if proper principles had been applied'.[306]

However, as with the earlier child homicide reference, it is evident the intention of the Attorney-General in referring this matter to the Council is that it should look beyond the issue of legal adequacy and consider the question of community and, in particular, stakeholder expectations.

In responding to this reference, the Council therefore sought to identify:

- any evidence of inconsistency in the approach of courts to sentencing for these offences — including whether aggravated forms of serious assault are treated by courts, in general, as more serious, and that the distribution of sentences is what could be expected based on the maximum penalties that apply;
- any inconsistencies between the approach in Queensland and that in other Australian and select overseas jurisdictions; and
- any evidence of a lack of community confidence in sentencing for assaults on public officers, including any disparities between current sentencing practices and stakeholders' and Parliament's views of offence seriousness. The consultation process has informed the Council's response. Taking into account that,

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300 *DPP v Dalgliesh (a Pseudonym)* (2017) 349 ALR 37, 40 [7] (Kiefel CJ, Bell and Keane JJ). See also *Wong v The Queen* [2001] HCA 64; (2001) 207 CLR 584 at 611–612 [74]–[76] (Gaudron, Gummow and Hayne JJ).

301 *Markarian v The Queen* (2005) 228 CLR 357, 384 [66] (McHugh J).

302 Ibid 383 [65] (McHugh J) (emphasis in original).

303 *DPP v Dalgliesh (a pseudonym)* (2017) 349 ALR 37, 51 [66] (Kiefel CJ, Bell and Keane JJ) citing *Malvaso v The Queen* (1989) 168 CLR 227, 233; *Barbaro v The Queen* (2014) 253 CLR 58, 72–74 [34]–[39] (French CJ, Hayne, Kiefel and Bell JJ).

304 *Markarian v The Queen* (2005) 228 CLR 357, 371 [27] (Gleeson CJ, Gummow, Hayne and Callinan JJ).

305 *DPP v Dalgliesh (a pseudonym)* (2017) 349 ALR 37, 40 [7] (Kiefel CJ, Bell and Keane JJ).

306 *Barbaro v The Queen* (2014) 253 CLR 58, 70 [26] (French CJ, Hayne, Kiefel and Bell JJ) (emphasis in original).

within the timeframe for the review, it was not possible to test community views on this issue in a way that was methodologically sound. Stakeholder feedback is discussed below.

The Council has also considered whether the current penalty and sentencing framework provides an appropriate response to this form of offending with respect to meeting the primary purposes of sentencing.

8.9.5 Evidence of consistency in approach of courts — by the data

The Council's analysis looked at sentencing outcomes by the type of offence and the type of sentencing court.

The circumstances of aggravation with 14-year maximum penalties in section 340 signal to courts the more serious nature of the offending. However, they also widen the disparity between applicable maximum penalties for the same conduct, based not necessarily on the harm caused but on the occupation of the victim. For example:

- a 7-year maximum penalty for serious assault without bodily harm or other aggravating factors being present, versus a 3-year maximum penalty for common assault;
- a 14-year maximum penalty for serious assault causing bodily harm, versus a 7-year maximum penalty for AOBH (or 10 years if the offender is, or pretends to be, armed or is in company with another person);
- a 14-year maximum penalty for serious assault involving the offender spitting on a police officer or public officer, versus a 3-year maximum penalty for common assault where the victim is not a public officer or police officer (although if the offender has an infectious disease and intends to transmit the disease by spitting on the person, they may be charged under section 317 of the *Criminal Code,* which carries a maximum penalty of life imprisonment — irrespective of the occupation of the victim);
- a 14-year maximum penalty for serious assault involving the offender biting a police officer or public officer, versus a 7-year maximum penalty for AOBH (without a circumstance of aggravation) and wounding.

Sentencing outcomes for non-aggravated serious assault and other 'acts intended to cause injury' carrying a 7-year maximum penalty (by MSO)

Non-aggravated serious assault carries a maximum penalty of 7 years. Other offences falling within the category of 'acts intended to cause injury' also have a 7-year maximum penalty: AOBH where there are no circumstances of aggravation, and wounding. Figure 8-1 (below) shows the distribution of the length of custodial sentences applied for these offences. Further summary statistics are set out in Tables A4-7 and A4-9 in Appendix 4.

The overwhelming majority of non-aggravated serious assaults (as the MSO) over the data period (95.4%; n=1,253) were sentenced in the Magistrates Courts, as were most AOBH offences (92.1%; n=8,144). Wounding must be dealt with on indictment and therefore all sentences imposed for this offence were imposed by the higher courts.

In the higher courts, outcomes of note were:

- offences most likely to result in a custodial penalty: wounding (97.0%), followed by non-aggravated forms of serious assault (82.0%), then AOBH (80.0%)
- highest custodial penalty: wounding and AOBH (5.0 years), then non-aggravated serious assault (3.5 years)
- average sentence: wounding (2.1 years), followed by AOBH (1.5 years), then non-aggravated serious assault (0.9 years).

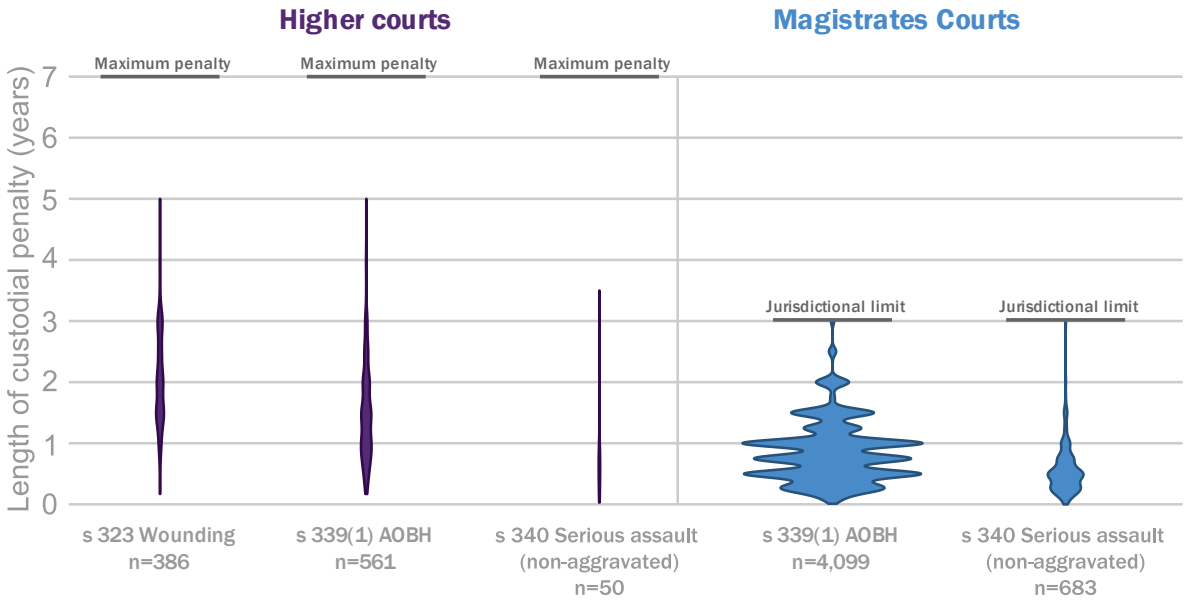
In the Magistrates Courts (which cannot sentence above 3 years, nor for wounding), outcomes of note were:

- highest proportion of cases receiving a custodial penalty: non-aggravated serious assault (54.5%), followed by AOBH (50.3%);
- highest sentence imposed for both offences: 3 years;
- use of custodial penalties less frequent (about half of cases);
- custodial penalty lengths clustered differently for the two offences: about 6 months for non-aggravated serious assault (with an average sentence of 0.6 years, or just over 7 months) and a more even spread from 6 months up to 2 years for AOBH (with an average of 0.8 years, or around 9.5 months).

This analysis tends to show (based on the use of custodial sentences and distribution of sentence lengths):

- Higher courts treat wounding and AOBH as more serious than non-aggravated serious assault (which, unlike wounding and AOBH, does not involve bodily harm). Serious assault was slightly more likely to attract a custodial sentence compared to AOBH.
- Magistrates Courts exhibit the same general sentencing patterns for non-aggravated serious assault and AOBH. AOBH was slightly less likely to attract a custodial sentence, but when a prison sentence was imposed, AOBH attracted, on average, slightly longer sentences than non-aggravated serious assault (0.8 years for AOBH; 0.6 years for serious assault).

Figure 8-1: Distribution of custodial penalties for 'acts intended to cause injury' offences carrying a 7-year maximum penalty (MSO)



Data include adult offenders only, offences occurring on or after 5 September 2014, cases sentenced 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

Sentencing outcomes for aggravated serious assault and other 'acts intended to cause injury' offences carrying a 14-year maximum penalty (MSO)

Aggravated serious assault carries a maximum penalty of 14 years, as do the offences of GBH and torture. Figure 8-2 (below) shows the distribution of the length of custodial sentences applied for these offences.

Both GBH and torture must be dealt with on indictment in the higher courts. All offences of torture (n=62) and almost all GBH offences (99.1%; n=567/572) sentenced over the data period received a custodial penalty. Further summary statistics are set out in Table A4-8 in Appendix 4.

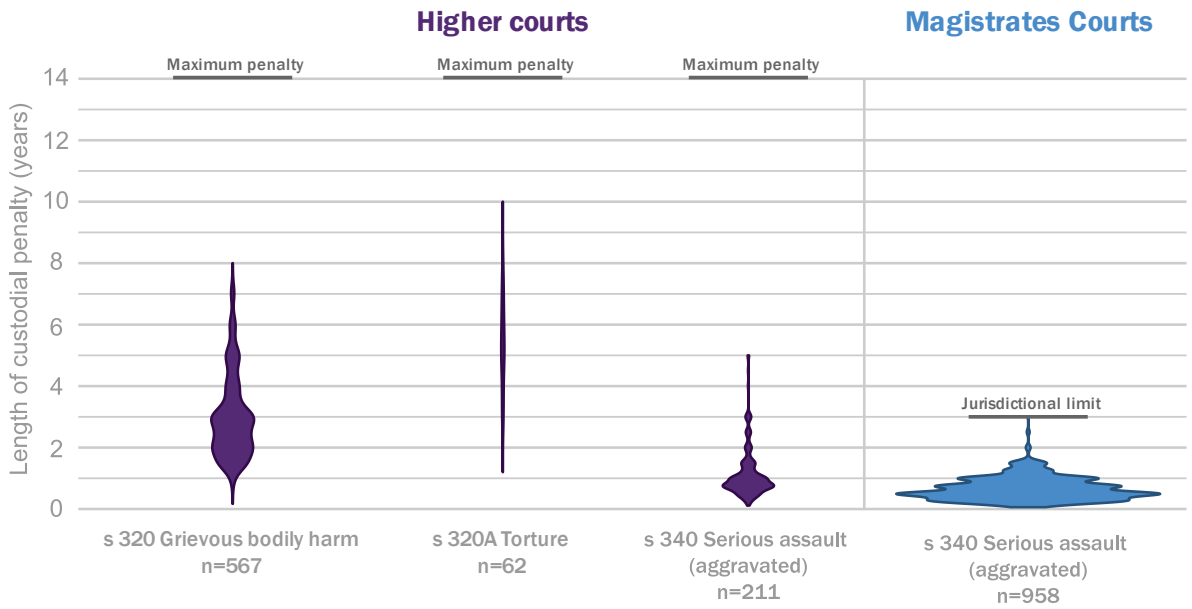
Aggravated serious assaults can only be dealt with in the Magistrates Courts on prosecution election. The majority of aggravated serious assaults (84.9%; n=1,280/1,507) were sentenced in the Magistrates Courts with three-quarters (74.8%) resulting in a custodial sentence being imposed. Those cases dealt with in the higher courts, although smaller in number, were more likely to result in a custodial sentence (93.0%) probably reflecting the more serious nature of the matters dealt with on indictment.

In the higher courts, outcomes of note were:

- custodial penalties were overwhelmingly the most common penalty imposed across all offences: torture (100.0%), followed by GBH (99.1%), then aggravated serious assault (93.0%);
- highest custodial penalty: torture (10.0 years), followed by GBH (8.0 years), then aggravated serious assault (5.0 years);
- average sentence: torture (5.4 years); followed by GBH (3.0 years), then aggravated serious assault (1.1 years);
- distribution of custodial penalties: aggravated serious assault tended to cluster around one year, with a lower proportion of cases over 2 years compared to torture and GBH. Torture sentences were fairly evenly spread between 1 and 10 years, with a slight increase around the 5-year mark. The majority of sentences for GBH fell between 1 and 3 years.

In the Magistrates Courts, custodial sentences were imposed in 74.8 per cent of cases of aggravated serious assault. The highest custodial penalty was 3 years. The majority of sentences were under 2 years (6 months was most common). The average sentence was 0.7 years or about 8.5 months (compared to 1.1 years in the higher courts). It can be assumed that aggravated forms of serious assault dealt with summarily are at the less serious end of the spectrum.

Figure 8-2: Distribution of custodial penalties for 'acts intended to cause injury' offences carrying a 14-year maximum penalty (MSO)



Data include 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.

Sentencing outcomes for section 317: Acts intended to cause grievous bodily harm and other malicious acts (MSO)

The Council also analysed data for acts intended to cause grievous bodily harm and other malicious acts (s 317).

The section 317 offence carries a maximum penalty of life imprisonment and cannot be dealt with summarily. The prosecution must prove one of a list of four specific intentions (not required for s 340) accompanying one of seven physical actions. The intentions are to maim/disfigure/disable; do GBH or transmit a serious disease; resist or prevent arrest or detention; or resist or prevent a public officer from acting in accordance with lawful authority. The physical actions include wounding; doing GBH or transmitting a serious disease; and striking with a projectile (or anything else capable of achieving the intention).

Like various other *Criminal Code* offences, this offence can be used instead of (or in addition to, in which case the malicious acts sentence will likely attract the highest penalty) section 340 for offending against public officers For example, it has been used when offenders have driven a vehicle into a police officer causing GBH,[307] shot at them with firearms,[308] stabbed them with knives (resulting in wounds)[309] and poured petrol over them (no physical injury).[310]

From 2009–10 to 2018–19, there were 276 cases involving section 317 offences as the MSO. All of these cases were sentenced in the higher courts and were predominantly adult offenders (96.4%, n=266). All adult offenders received a custodial sentence, with an average length of 6.4 years — see Table 8-1. The longest sentence was 15 years, as shown in Figure 8-3.

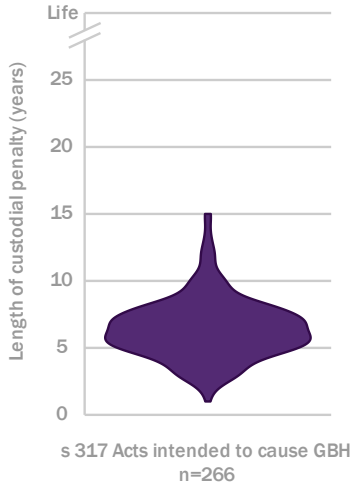
307 *R v Patrick (a pseudonym)* [2020] QCA 51.
308 *R v Mulholland* [2001] QCA 480, *R v Treptow* [1995] QCA 582.
309 *R v Williams* [1997] QCA 476.
310 *R v Kolb* [2007] QCA 180.

Table 8-1: Summary of custodial penalties for malicious acts offences (MSO)

Offence description	Cases with custodial penalties (%)	Length of custodial penalty (years)			
		Average	Median	Minimum	Maximum
s 317 malicious acts (n=266)	100%	6.4	6.0	1.0	15.0

Data include adult offenders, higher courts, sentenced 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

Figure 8-3: Distribution of custodial penalties for malicious acts offences (MSO)



Data include adult offenders, higher courts, sentenced 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

The main finding from the Council's analysis

The main finding regarding sentencing in the higher courts is that they treat both torture and GBH, in general, as more serious than aggravated serious assault — even though all three offences share the same 14-year maximum penalty. For section 317 offences, which are more serious again, the higher courts treat these as the most serious of all offences analysed.

Over two in five (41.9%) torture sentences imposed were for a period at or over 40 per cent of the maximum penalty[311] of 14 years, as were 5.6 per cent of sentences for GBH. None of the sentences for aggravated serious assault met this threshold.

In the higher courts, custodial penalties were ordered in 211 cases in which aggravated serious assault was the MSO (93.0%); in 567 cases where GBH was the MSO (99.1%); 62 cases where torture was the MSO (100.0%); and 276 cases where malicious acts was the MSO (100%). In the Magistrates Courts, there were 958 cases resulting in a custodial penalty where aggravated serious assault was the MSO (74.8%). The offences of GBH, torture and malicious acts cannot be sentenced in the Magistrates Courts.

It is arguable that, once offending has a sufficiently serious gravamen, serious assault is no longer the most suitable or appropriate charge — other *Criminal Code* charges may be better suited to a particular case and result in a higher head sentence and non-parole period.[312] This may even be the case with offences of wounding and AOBH, which carry a lower maximum penalty than aggravated serious assault.[313]

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311 The use of 40 per cent of the maximum penalty as a meaningful point of assessment is based on the Victorian Sentencing Advisory Council's consideration of how 'standard sentence' levels might be set under a standard sentence scheme. Under the Victorian Council's recommendations, 40 per cent was chosen to represent the mid-range of objective seriousness, before subjective factors (those personal to the offender) are accounted for. See Sentencing Advisory Council (Victoria), *Sentencing Guidance in Victoria: Report* (2016) xxxi, 186–7. A lower sentence for a mid-range offence might be appropriate once subjective factors are factored in including, for example, the lack of a relevant prior criminal history, remorse, and an early guilty plea.

312 For a discussion of this issue in the context of the ODPP's *Director's Guidelines*, see section 8.8.7 of this report.

313 See (n 312).

This is often because of the type of injury caused, how it is caused, and/or the intention of the offender in committing the offence, which can be proven to the criminal standard. The elements of another offence may better reflect the criminality involved and harm caused.

For example, a recent torture and assault of a vulnerable victim case[314] demonstrates how different *Criminal Code* charges, which carry the same maximum penalty as serious assault, are used for extremely serious offending — and can be preferred to assault charges because they are recognised historically, and because of their elements, as more serious.

In this case, the Court of Appeal refused an application to appeal against a sentence of 10 years' imprisonment (with an automatic serious violent offence declaration requiring 80 per cent of that term to be served in actual custody).[315] Other charges were common assault, GBH and domestic violence order breaches, which received lesser, concurrent penalties.

The victims were a 39-year-old man with cerebral palsy and limited use of one side of his body, and a 28-year-old woman. The offender threatened to kill the woman while holding scissors open against her throat, grabbed her around the neck, spat in her face and threw the scissors at her, striking her abdomen. The disabled male victim was subjected to a 10-hour ordeal that left him with a life-threatening injury (traumatic large left pneumothorax with partial collapse of the left lung), rib fractures, fractures to his vertebra, partial thickness burns, multiple abrasions and contusions, and a nasal bone fracture.

The offender knocked him to the ground, punched him repeatedly to the head and face, jumped on his chest (causing the collapsed lung), kicked him repeatedly in the ribs and hit him in the head with a glass. Boiling water was poured on his neck, face and back three times. The offender expressed an intent to blind the victim, who described smelling his skin burning. Other acts included repeated strikes to the back and neck with a power cord, hitting his legs with a metal bar stool, hitting his head with a kettle, stomping on his cheek and eye and making a small cut to his throat with a knife. The victim was verbally abused and tormented throughout. He lost consciousness but later escaped. The offender found him hiding in a cupboard. His head was stomped on again. He was, again, beaten repeatedly until he nearly lost consciousness and was finally abandoned in a front yard. The Court of Appeal stated:

> The offences to which the [offender] pleaded guilty involved a course of conduct over a protracted period in which [he], as the principal offender, terrorised two complainants. The torturous assault of those complainants was properly described by the sentencing Judge as 'cowardly, vicious and evil'. One complainant suffered serious and life-threatening injuries. He was callously left for dead. That complainant was disabled, rendering him largely defenceless. There was nothing in that complainant's conduct which provided any sensible reason for the [offender's] behaviour.
>
> Notwithstanding the [offender's] pleas of guilty and his expressed remorse and the other matters in mitigation such as his troubled childhood, drug addiction and prospects of rehabilitation, an effective head sentence of 10 years imprisonment imposed on an offender who had a relevant and significant criminal history, including previous convictions for violence and drugs, and who had committed the offences in question while on probation and when on bail for the domestic violence offence, fell well within an appropriate exercise of the sentencing discretion.[316]

This reflects the data analysis — that offending of an extremely high level, with the intentional infliction of harm and serious injury, will not necessarily result in a head sentence above 10 years (this is compounded by the serious violent offence scheme and its mandatory application to sentences of 10 years or more).

This may also explain why the data show that the highest head sentences for serious assault remain well below the maximum legislated figure of 14 years. It may be that a head sentence ceiling for section 340 offences is not a reflection of a problem with the section or associated sentencing practices, but that the other offences in the *Criminal Code* (namely AOBH, wounding, GBH and, possibly, malicious acts) remain preferable alternatives for more serious offending that straddles different offences.

The fact that these other offences do not explicitly mention a particular victim's profession or other characteristic does not prevent or discourage courts from continuing to treat assaults on public officers as a circumstance of aggravation. Courts do not need statutory recognition of a particular victim's status to treat it as an aggravating factor.

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314 *R v Drews* [2020] QCA 18. Serious assault could not have been used here. See 8 [38] (Sofronoff P, Fraser and Philippides JJA agreeing) and *R v WBJ* [2020] QCA 32, 2 [1]–[2]. 3 [5], 5 [15]–[17], 6 [27].

315 For an explanation of the serious violent offence provisions, see Queensland Sentencing Advisory Council, *Queensland Sentencing Guide* (December 2019) 9.

316 *R v Drews* [2020] QCA 18, 4–5 [27]–[28] (Boddice J, Sofronoff P and McMurdo JA agreeing).

The way in which the offence sits within the hierarchy of *Criminal Code* offences is important. An unintended consequence of a precise amendment to the maximum penalty for one offence in the Code may be that this does not take into account the relationship that that offence bears to other offences in the same Code that have co-existed since its creation, and the way in which this is borne out in sentencing and charging practice.

The Court of Appeal rejected prosecution arguments, in a 2014 section 340 case, that sentences for the aggravated form of serious assault should be comparable to those for GBH because they shared the same maximum penalty (in the context of the particular facts of that case, which did not involve actual physical injury, nor psychological injury or trauma):

> The legislature, the applicant contended, intended that offences of this kind were to be dealt with as severely as offences of doing grievous bodily harm …
>
> The legislature in increasing the maximum penalty clearly intended that sentencing courts should impose significantly heavier penalties in respect of serious assaults committed on police officers acting in the execution of their duty where, as here, the offender applies a bodily fluid to the police officer. As this Court identified in *R v CBI*, this increase in maximum penalty can be expected to produce a general increase in severity of sentences, rendering earlier cases of limited utility as comparable sentencing decisions. But that does not mean that a sentence of actual imprisonment is inevitable in every case, even where, as here, the maximum penalty has been increased from seven to 14 years imprisonment.
>
> I cannot accept … that the sentences imposed for offences of this kind should be comparable to those imposed for the offence of grievous bodily harm. The extent of the injuries suffered by a complainant in offences of physical violence is relevant in determining the appropriate sentence.
>
> It is fortunate for both the complainant and the respondent that the complainant was not apparently physically injured beyond the obvious revulsion she must have experienced … This case was not as serious as those where offenders claimed to suffer from serious contagious diseases and threw blood, saliva or other bodily fluids on police officers. There was no suggestion the respondent was suffering from any contagious disease, that the complainant had reason to think he was, that his urinating on her shoes and lower pants could spread life-threatening illness, or that the complainant had reason to think it could. It is also fortunate for both the complainant and the respondent that there was no evidence that the complainant suffered psychological injury or trauma as a result of the assault, although that possibility certainly cannot be discounted in cases of this kind. [317]

The data and discussion above reflect stakeholder concerns raised with the relevant Parliamentary Committee when considering the first doubling of maximum penalty in section 340 in 2012 (and repeated to the Council during this review), that:

- a 14-year maximum would be incongruous with the same penalty in place for more serious offences; and
- regard should in particular be had to penalties for comparable conduct.[318]

Such amendments, regardless of the jurisdiction, are often election commitments. This approach is at odds with one leading academic's suggestion that, if a legislature is seeking to deter crime by increasing maximum penalties it should consider:[319]

> [w]hat resources should be used in order to calculate the extra margin of severity that is required in order to reduce the incidence of the crime to a 'tolerable' level, or whatever level is specified. If it is effectiveness that is important … then that would indicate that there should be some empirical testing of different marginal increases, perhaps through research with offenders and non-offenders. [320]

Evidence of consistency in approach of courts — by the data — aggravated and non-aggravated serious assaults

The Council found that, on average, aggravated forms of serious assault attract higher penalties (1.1 years for higher courts sentences, and 0.7 years in the Magistrates Courts) than non-aggravated forms of serious assault (0.9 years for higher courts sentences, and 0.6 years in the Magistrates Courts).

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317 *Queensland Police Service v Terare* (2014) 245 A Crim R 211, 218 [22], 221 [35]–[37] (McMurdo P, Fraser and Gotterson JJA agreeing) (citations omitted).

318 Traves (15) 4.

319 'The assumption here is that marginal general deterrents work in a hydraulic fashion (sentences up, crimes down), whereas [it is argued that] they can rarely be expected to do so': Andrew Ashworth, 'The Common Sense and Complications of General Deterrent Sentencing' (2019) *Criminal Law Review* 7, 577.

320 Ibid 573.

The proportion of offences attracting a custodial sentence are also much higher for aggravated serious assault (93.0% of offences dealt with in the higher courts, and 74.8% in the Magistrates Courts) than for non-aggravated forms (82.0% of offences dealt with in the higher courts, versus 54.5% in the Magistrates Courts).

There was also a high level of consistency in the length of custodial sentences imposed when examined by court level.

Further sentencing outcome analysis — section 340 and common assault, AOBH

The Council undertook analysis of a further three sentencing outcome comparisons:

- section 340 simpliciter and common assault;
- aggravated section 340 (causing bodily harm) and AOBH simpliciter; and
- aggravated section 340 (while armed) and common assault associated with other weapons offences.

In each, the section 340 offence was more likely to result in a custodial sentence, supporting the finding that serious assault, when considered against its closest analogues, is treated by sentencing courts as being a more serious offence warranting a higher or more severe sentence. This is consistent with Parliament's intention in setting higher maximum penalties for this offence.

Sentencing outcomes for non-aggravated serious assault and common assault (MSO)

As noted above, the maximum penalty for non-aggravated serious assault is more than double that of common assault (7 years' imprisonment comparted with 3 years, respectively). Bodily harm is not an element of either offence. Figure 8-4 below shows the distribution of the length of custodial sentences applied for these offences.

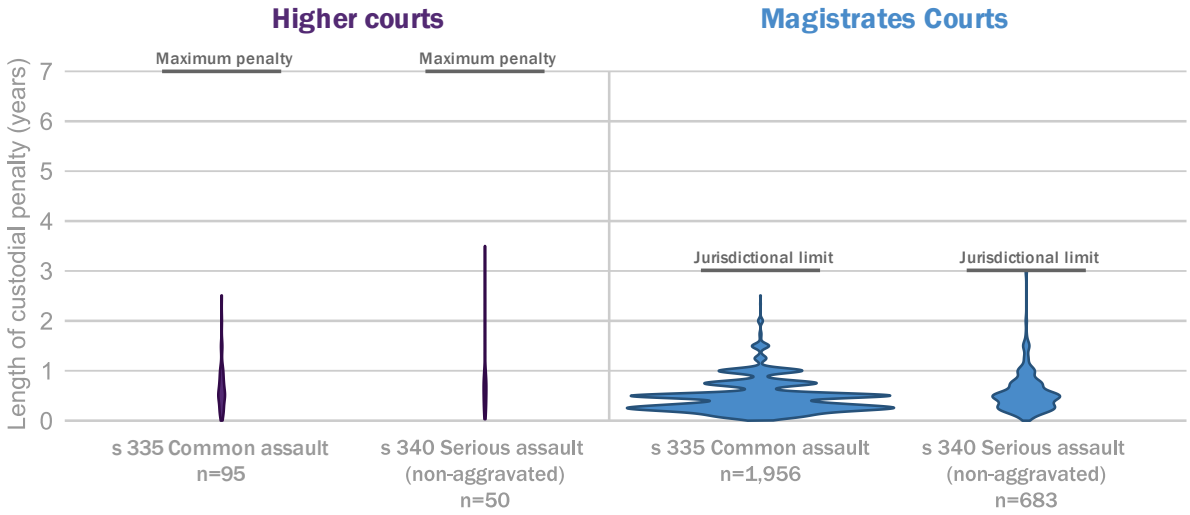
- Non-aggravated serious assault offences are much more likely to attract a custodial sentence. In the higher courts, 82.0 per cent attracted a custodial penalty, compared to 41.7 per cent for common assault. In the Magistrates Courts the difference was even greater (54.5% and 21.5%, respectively).
- Non-aggravated serious assault offences resulted in longer (on average) sentences than common assault across all courts (0.9 years compared to 0.7 years for offences sentenced in the higher courts, and 0.6 years compared to 0.5 years for offences sentenced in the Magistrates Courts).

For offences resulting in a custodial sentence, the distribution of custodial sentences for non-aggravated serious assault and common assault is more similar than for other 'acts intended to cause harm' offences analysed above.

The longest sentence imposed for common assault across both court levels was 2.5 years. The distribution of sentences, however, was quite different. For common assaults in the higher courts, the sentence lengths were distributed relatively evenly; whereas in the Magistrates Courts, which imposed 95.1 per cent of all custodial penalties for this offence, sentences were concentrated at less than one year. Further summary statistics are set out in Table A4-9 in Appendix 4.

The longest sentence imposed for non-aggravated serious assault was 3 years in the Magistrates Courts, and 3.5 years in the higher courts — both of which exceeded the highest sentence imposed for common assault.

Figure 8-4: Distribution of custodial penalties for common assault (MSO) and non-aggravated assault of public officer offences (MSO)



Data include adult offenders, offences occurring on or after 5 September 2014, sentenced 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

Sentencing outcomes for section 340 (bodily harm circumstance of aggravation) vs section 339(1) (AOBH simpliciter) (MSO)

The Council analysed data for serious assault causing bodily harm, and non-aggravated AOBH, after the release of its Issues Paper. The only difference in elements between these offences is the occupation of the victim of a serious assault. The offences are otherwise identical, but the maximum penalty for serious assault is double that of AOBH (14 years as against 7 years). There are two forms present in section 340: those regarding police officers and those regarding public officers (a third regarding working correctional services officers commenced on 21 July 2020).[321]

In the Magistrates Courts, serious assault (of police and public officers) with the bodily harm circumstances of aggravation (penalty provision sections 340(a)(ii) and 340(2AA)(a)(ii)) was more likely to receive a custodial penalty (68.1%) than non-aggravated AOBH (s 339(1) (50.3%).

The highest sentence for both AOBH and serious assault causing bodily harm was 3 years (the jurisdictional limit). The average custodial sentence for serious assault causing bodily harm was 0.7 years (approximately 9 months), similar to that for AOBH at 0.8 years (approximately 10 months).

In the higher courts, custodial sentence lengths for serious assault causing bodily harm (average custodial penalty 1.2 years) were slightly lower than non-aggravated AOBH (average custodial penalty 1.5 years).

Table 8-2: Summary of custodial penalties for AOBH (MSO) versus serious assault of a public officer causing bodily harm (MSO)

		Length of custodial penalty (years)			
Offence	**Cases with custodial penalties (%)**	**Average**	**Median**	**Minimum**	**Maximum**
Higher courts					
s 339(1) Non-aggravated assault occasioning bodily harm (n=701)	80.0	1.5	1.5	0.2	5
s 340 Serious assault causing bodily harm* (n=78)	89.7	1.2	1	0.3	5
Magistrates Courts					
s 339(1) Non-aggravated assault occasioning bodily harm (n=8,145)	50.3	0.8	0.8	(5 days) 0.0	3
s 340 Serious assault causing bodily harm* (n=420)	68.1	0.7	0.7	0.1	3

Data include MSO, adult offenders, offences occurring on or after 5 September 2014, sentenced 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: (*) Includes offences under the following sections: s 340(1) — penalty para (a)(ii) and s 340(2AA) — penalty para (a)(ii).

[321] *Corrective Services and Other Legislation Amendment Act 2020* (Qld) s 55.

The most common penalty for non-aggravated AOBH and serious assault of a public officer causing bodily harm in both Magistrates and higher courts was imprisonment — see Table 8-3. However, in the Magistrates Courts the use of monetary orders was much higher for non-aggravated AOBH than serious assault of a public officer causing bodily harm.

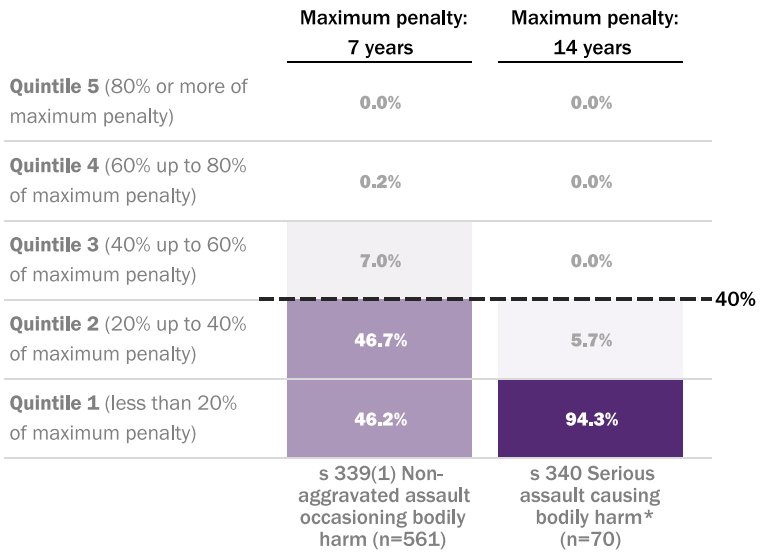
Table 8-3: Summary of penalty types for non-aggravated AOBH (MSO) and serious of a public officer causing bodily harm (MSO)

	Higher Courts		Magistrates Courts	
Penalty type	**s 339(1) Non-aggravated AOBH (%)**	**s 340 Serious assault causing bodily harm* (%)**	**s 339(1) Non-aggravated AOBH (%)**	**s 340 Serious assault causing bodily harm* (%)**
Imprisonment	57.2	70.5	33.6	46.4
Partially suspended	5.9	5.1	1.8	2.6
Wholly suspended	15.7	11.5	14.0	18.3
Intensive correction order	1.3	2.6	1.0	0.7
Community service	4.4	2.6	7.7	9.8
Probation	9.1	7.7	18.4	15.2
Monetary	4.7	0.0	20.4	6.0
Good behaviour, recognisance	1.4	0.0	3.0	0.5
Convicted, not further punished	0.3	0.0	0.2	0.5
Total	**n=701**	**n=78**	**n=8,145**	**n=420**

Data include MSO, adult offenders, offences occurring on or after 5 September 2014, sentenced 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: (*) Includes offences under ss 340(1) — penalty para (a)(ii) and 340(2AA) — penalty para (a)(ii).

In the higher courts, the longest penalty for both offences was 5.0 years. Of the 70 serious assaults of a public officer causing bodily harm (MSO) sentenced in the higher courts to a custodial order, none met the threshold of 40 per cent or more of the maximum penalty. Of the 561 non-aggravated AOBH offences (MSO) sentenced in the higher courts to a custodial order, 7.1 per cent received a sentence at or over 40 per cent of the maximum penalty (approximately 1.2 years or 14 months).

Figure 8-5: Proportion of maximum penalty, non-aggravated AOBH versus serious assault of a public officer causing bodily harm

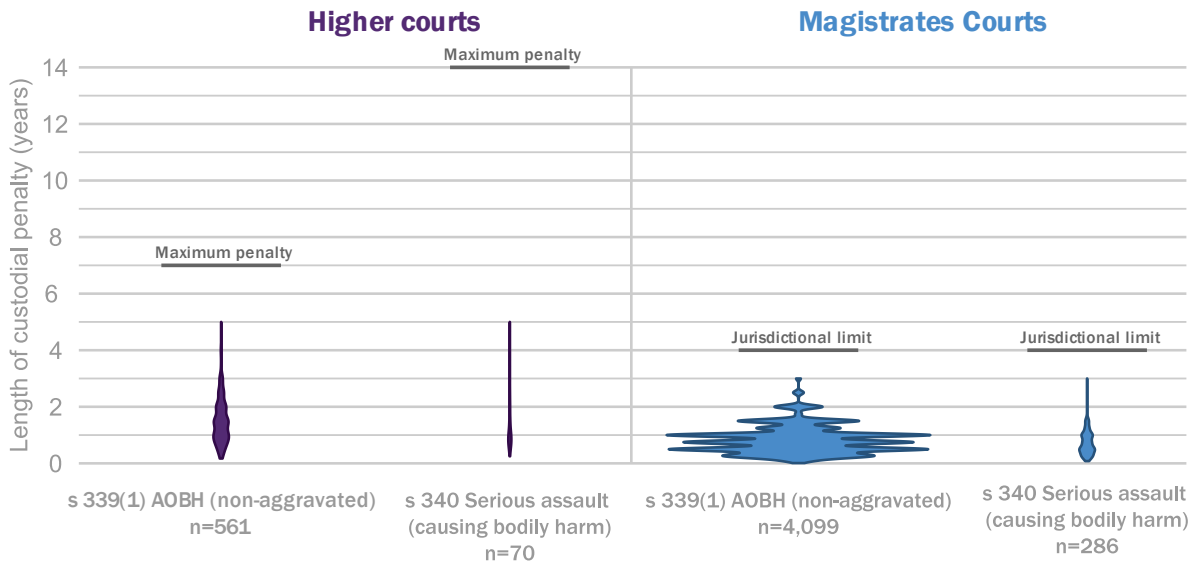


Data include MSO, adult offenders, higher courts, offences occurring on or after 5 September 2014, sentenced 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: (*) Includes offences under ss 340(1)(a)(ii) and 340(2AA)(a)(ii).

As shown in Figure 8-6, in the Magistrates Courts both offences reached the 3-year jurisdictional limit. However, non-aggravated AOBH has a wider spread with sentences predominantly at or below one year. For serious assault causing bodily harm, sentences are more evenly spread up to 1.5 years.

In the higher courts, the longest sentence for non-aggravated AOBH was 5 years, 2 years below the available maximum sentence, with most sentences between 6 months and 2 years. The longest sentence for serious assault causing bodily harm was also 5 years, 36 per cent of the maximum sentence of 14 years, with sentences more evenly spread across the sentence range.

Figure 8-6: Distribution of custodial penalties for offences causing bodily harm (MSO)



Data include MSO, adult offenders, higher courts, received a custodial order, offences occurring on or after 5 September 2014, sentenced 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

Sentencing outcomes: Serious assault of public officer while armed (ss 340(1) & 340(2AA) — penalty para (a)(iii)) versus common assault (MSO) with associated weapons or going armed offences

In the Magistrates Courts, over two-thirds of serious assault offences with the aggravating circumstance of being, or pretending to be, armed with a dangerous or offensive weapon or instrument ('while armed'— MSO) received a custodial penalty (68.8%). There are two forms present in section 340: those regarding police officers and those regarding public officers (a third regarding working correctional services officers was passed by Parliament in July 2020).

This is considerably higher than for a common assault (MSO) where a weapons offence was sentenced in the same court event (at 44.3%) — see Table A4-10 in Appendix 4 for the types of weapons offences that were sentenced with a common assault MSO.[322] However, there was little difference in the average length of a custodial order when comparing these offences, at 0.7 years for serious assault while armed, and 0.6 years for common assault (with a co-sentenced weapons offence).

In the higher courts, nearly all serious assault offences while armed received a custodial penalty (92.6%) with an average sentence length of 2.2 years. There were not enough common assault offences (MSO) in conjunction with a weapons offence sentenced in the higher courts to allow comparison (n=2).

Table 8-4: Summary of custodial penalties for serious assault while armed (MSO) and common assault (MSO) sentenced with a weapons offence

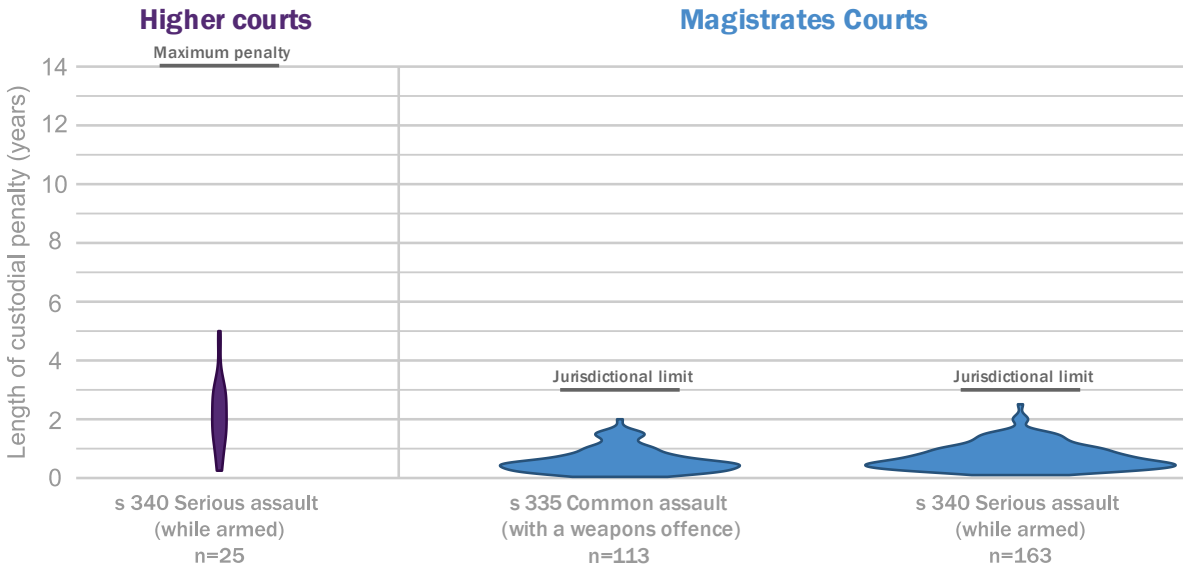
		Length of custodial penalty (years)			
Offence	**Cases with custodial penalties (%)**	**Average**	**Median**	**Minimum**	**Maximum**
Higher Courts					
Common assault (with a weapons offence) (n=2*)	100.0	-	-	-	-
Serious assault while armed^ (n=27*)	92.6	2.2	2	0.3	5
Magistrates Courts					
Common assault (with a weapons offence) (n=255)	44.3	0.6	0.5	0	2
Serious assault while armed^ (n=237)	68.8	0.7	0.7	0.1	2.5

Data include MSO, adult offenders, offences occurring on or after 5 September 2014, sentenced 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes:
(1) The serious assault offences may also include additional aggravating factors such as bodily fluid, bodily harm, intoxication and/or the domestic violence aggravating sentencing factor (PSA s 9(10A)).
(2) The common assault (MSO) may include additional aggravating factors such as domestic violence (PSA s 9(10A)).
(3) The common assault (MSO) is sentenced at the same court event with one or more weapons offence. The offences that were identified as weapons offences for this analysis are shown in Table A4-10 in Appendix 4.
(*) Small sample size
(^) Includes offences under ss 340(1) — penalty para (a)(iii) & 340(2AA) — penalty para (a)(iii).

322 Note: It is not certain that the common assault in each case involved a scenario where a weapon was used. The data could include sentences where different charges from different dates were dealt with at the same court hearing.

In the higher courts, the distribution of custodial penalties for serious assault while armed is spread relatively evenly, with the longest sentence being 5 years. For the same offence sentenced in the Magistrates Courts, the longest sentence was 2.5 years, not quite reaching the 3-year jurisdictional limit. Common assault (MSO) sentenced in the Magistrates Courts with a weapons offence had a similar distribution to that of serious assault while armed, while the longest sentence was slightly shorter at 2 years.

Figure 8-7: Distribution of custodial penalties for serious assault while armed (MSO) and common assault (MSO) sentenced with a weapons offence



Data include MSO, adult offenders, offences occurring on or after 5 September 2014, sentenced 2014-15 to 2018-19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes:
(1) The serious assault offences may also include additional aggravating factors such as bodily fluid, bodily harm, intoxication and/or the domestic violence aggravating sentencing factor (PSA s 9(10A)).
(2) The common assault (MSO) may include additional aggravating factors such as domestic violence (PSA s 9(10A)).
(3) The common assault (MSO) is sentenced at the same court event with one or more weapons offence.

The offences that were identified as weapons offences for this analysis are shown in Table A4-10 in Appendix 4. In the Magistrates Courts, the most common penalty applied was imprisonment for both serious assault while armed (MSO) and common assault (MSO) sentenced with a weapons offence — see Table 8-5. However, the proportion of imprisonment sentences applied was higher for serious assault at nearly half (49.0%), compared to just over one-third for common assault (MSO) sentenced with a weapons offence (34.5%). Probation was quite high for both offence types at 29.4 per cent for serious assault while armed and 20.7 per cent for common assault. Monetary orders were more common for common assault (15.3 per cent) than for serious assault while armed (5.1%).

Table 8-5: Summary of penalty types for serious while armed (MSO) and common assault (MSO) sentenced with a weapons offence.

Penalty type	s 335 Common assault (MSO) sentenced with a weapons offence (%)	s 340(iii) Serious assault while armed^ (%)
Imprisonment	34.5	49.0
Partially suspended	1.2	3.0
Wholly suspended	7.1	16.0
Intensive correction order	1.6	0.8
Community service	7.1	5.1
Probation	29.4	20.7
Monetary	15.3	5.1
Good behaviour, recognisance	2.8	0.4
Convicted, not further punished	1.2	0.0
Total	**n=255**	**n=237**

Data include MSO, adult offenders, Magistrates Courts, offences occurring on or after 5 September 2014, sentenced 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes:
(1) The serious assault offences may also include aggravating factors such as bodily fluid, bodily harm, intoxication and/or the domestic violence aggravating sentencing factor (PSA s 9(10A)).
(2) The common assault (MSO) may include additional aggravating factors such as domestic violence (PSA s 9(10A)).
(3) The common assault (MSO) is sentenced at the same court event with one or more weapons offences. The offences that were identified as weapons offences for this analysis are shown in Table A-4 in Appendix 4.
(*) Small sample size
(^) Includes offences under ss 340(1)(a)(iii) & 340(2AA)(a)(iii).

8.9.6 Evidence of inconsistencies with the sentencing approach in other jurisdictions

The second point noted above as informing analysis of penalties and sentencing trends for offences involving assaults against public officers, and determination of whether these are in accordance with stakeholder expectations, is: any inconsistencies between the approach in Queensland and that in other Australian and select overseas jurisdictions.

As one example, in looking at maximum penalties that apply to behaviour that would otherwise be captured within the general criminal offence of AOBH where committed against public officers (or a sub-set of these), it is apparent that the maximum penalties in Queensland are already comparatively high — particularly taking into consideration that the Queensland serious assault offence does not require the offender to have intended to cause harm through their actions.

The highest penalties for an equivalent offence of causing harm to a public officer in the absence of a specific intention to cause harm is 12 years in NSW where a law enforcement officer is wounded (or GBH caused) in circumstances where the offender is reckless as to causing actual bodily harm, and 10 years in South Australia (which applies where the offender was reckless as to whether harm would result, or if harm is caused in the process of hindering or resisting police), and in Canada (where the offender carried, used/threatened to use a weapon or imitation weapon; or caused bodily harm to the officer).

Where such harm is intentional, higher penalties can apply (e.g. 13 years under the Commonwealth *Criminal Code* if the official is a Commonwealth judicial officer or law enforcement officer, or 10 years otherwise), 15 years in South Australia for causing harm intentionally to prescribed emergency workers and 10 years for intentionally causing injury to any person (not just a public officer) in Victoria.

Further, the cross-jurisdictional analysis indicates that, unlike Queensland, other jurisdictions do not treat assaults resulting in bodily harm as equivalent in seriousness to the offence of causing GBH, or its equivalents, for the purposes of setting the maximum penalty. The exception to this is wounding of law enforcement officers in NSW.

Table 8-6: Maximum penalties for AOBH, and equivalents, where committed against a public officer (or specific classes of officer) by jurisdiction

Jurisdiction	Provision	Nature of act/s constituting offence	Maximum penalty
Commonwealth	*Criminal Code* (Cth) s 147.1	Engaging in conduct causing harm to a Commonwealth public official etc. with the intention of causing harm without consent	10 years, or 13 years if official is judicial officer or law enforcement officer
New South Wales	*Crimes Act 1900 (NSW)* ss 60(2) & (2A) (police), 60A(2) (law enforcement officers other than police), 60E (school staff)	Assault occasioning actual bodily harm Wounding where reckless as to causing actual bodily harm	AOBH: 7 years, 9 years (police only) if during public disorder Wounding: 12 years, 14 years (police only) if during public disorder
Northern Territory	*Criminal Code* (NT) ss 155A (person providing rescue services etc.), 189A (emergency workers)	Assault causing harm: person providing rescue, resuscitation, medical treatment, first aid etc. to a third person (not specific to 'public officers') emergency workers	7 years
Queensland	*Criminal Code* (Qld) ss 340(1)(b) and (2AA)	Assault causing bodily harm to: - police - public officer	14 years
South Australia	*Criminal Law Consolidation Act 1935* (SA) s 20AA (prescribed emergency workers)	(1) cause harm intending to cause harm (2) cause harm recklessly (3) assault (not otherwise falling within (1) or (2)) (4) hinder or resist police causing harm	(1) 15 years (2) 10 years (3) 5 years (4) 10 years
Victoria	*Crimes Act 1958* (Vic) s 18 (Note: not specific to public officers)	Cause injury: (1) intentionally; or (2) recklessly	(1) 10 years (2) 5 years
	Common law offence	Common assault	5 years
	Crimes Act 1958 (Vic) s 320A	Common assault on police officer on duty or protective services officer on duty (and offender knows or is reckless as to this): (1) offender has an offensive weapon (2) offender has a firearm or imitation firearm, so as to cause fear	(1) 10 years (2) 15 years
Western Australia	*Criminal Code* (WA) s 318(1)	Assault of: public officer/person performing - function of public nature conferred by law/due to performance of such function/acting in aid of such person - driver or person operating or in charge of train, ferry, passenger transport vehicle - an ambulance officer	7 years 10 years (aggravated) Aggravated if offender: is armed with dangerous or offensive weapon or instrument; or is in company with another person or persons

Jurisdiction	Provision	Nature of act/s constituting offence	Maximum penalty
		- fire and emergency services - hospital worker or person providing a health service to the public - contract worker court security/prisons	Also, aggravated (in force for 12 months only from 4 April 2020) if: at the commission of the offence the offender knows he/she has COVID-19; or 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
Canada	*Criminal Code* (R.S.C., 1985, c. C-46) s 270.01	Assault a public officer or peace officer where offender: carried, used/threatened to use a weapon or imitation weapon; or caused bodily harm to the officer	10 years
New Zealand	*Crimes Act 1961* (NZ) s 191 (applies to any person)	Cause injury to any person where committed with intent to facilitate the commission of, or avoid detection of an imprisonable offence, or to avoid arrest etc.	7 years

Forms of mandatory sentences that apply to section 340 offences in Queensland in some circumstances are discussed in Chapter 10. Some jurisdictions have introduced mandatory, or presumptive minimum terms of imprisonment, but these only apply in certain circumstances, or if the offence involves bodily harm.

8.9.7 Sentencing purposes

As discussed in Chapter 6, the primary purposes referred to by courts when sentencing for serious assault are typically general deterrence and denunciation.

Leaving aside the issue of whether penalties deter this form of offending, the question becomes whether a particular type or quantum of punishment (e.g. 6 months' imprisonment) in an individual case is sufficient to meet other sentencing purposes set out in section 9(1) of the PSA including, through the sentence imposed:

- making clear that the community, acting through the court, denounces the sort of conduct in which the offender was involved;
- punishing the offender to an extent and in a way that is just in all the circumstances; and
- providing conditions that the court considers will help the offender to be rehabilitated.

The concept of **proportionality** is central to denunciation and just punishment. 'Ordinal proportionality' has been said by legal theorists to consist of three 'sub-requirements':

- *Parity* — 'when offenders have been convicted of criminal conduct of similar seriousness, they deserve penalties of comparable severity'.
- *Rank-ordering* — 'Punishing crime Y more than crime X expresses more disapproval of crime Y, which is warranted only if it is more serious. Punishments thus should be ordered on the scale of penalties so that their relative severity reflects the seriousness-ranking of the crimes involved'.
- *The spacing of penalties* — 'Suppose crimes X, Y and Z are of ascending order of seriousness; but that Y is considerably more serious than X but only slightly less so than Z. Then, to reflect the conduct's gravity, there should be larger space between penalties for X and Y than those for Y and Z'.[323]

[323] Andrew von Hirsch and Andrew Ashworth, *Proportionate Sentencing: Exploring the Principles* (Oxford University Press, 2005) 140 [9.3.2].

Maximum penalties typically provide a rough guide in most jurisdictions as to Parliament's (and, by extension, the community's) view of the perceived relative seriousness of various offences. However, the challenges of identifying a widely accepted and comprehensive scale of what makes one crime more serious than another are well documented.[324]

Where changes to maximum penalties occur on a more ad hoc basis (e.g. in response to an outcry about the sentence in a particular high-profile case), the problem becomes whether the maximum penalties remain an effective measure of relative seriousness.

While increasing maximum penalties is one lever typically used by Parliament to lift penalty levels, there is no one-to-one correspondence between changes to the maximum penalty and shifts in sentencing practices. For example, a doubling in the maximum penalty does not necessarily mean average sentence lengths will double, although it will communicate to courts the increased seriousness with which such offences are viewed. The Court of Appeal explained this in detail in a serious assault (by spitting) sentence appeal judgment in 2014:

> It is also plain that the maximum penalty of 14 years imprisonment for this offence must be taken into account. As Gleeson CJ, Gummow, Hayne and Callinan JJ observed in *Markarian v The Queen* (2005) 228 CLR 357 at [31], 'careful attention to maximum penalties will almost always be required, first because the legislature has legislated for them; secondly, because they invite comparison between the worst possible case and the case before the court at the time; and thirdly, because in that regard they do provide, taken and balanced with all of the other relevant factors, a yardstick.' Whilst it is to be expected that the increase in the maximum penalty for the particular offence of which the applicant was convicted will lead to more severe penalties for that offence (see *R v Benson* [2014] QCA 188 at [36] per Morrison JA), '[i]t **does not necessarily follow from the fact of an increase in the maximum penalty that all such offences committed after the amendment came into effect should attract a higher penalty than they previously would have**' (*R v Samad* [2012] QCA 63 at [30] per Wilson AJA). **Nor should a doubling of the maximum penalty necessarily result in a doubling of sentences at all levels** (see *R v SAH* [2004] QCA 329 at [12]–[13]). The respondent's counsel endorsed the following remarks I made in *R v CBI* [2013] QCA 186 at [19] about an increase in a different maximum penalty:
>
> > Those changes in the sentencing regime for this offence, especially the substantial increase in the maximum penalty, are significant. It is to be expected that they would produce a general increase in the severity of sentences, rendering the earlier cases of little utility as comparable sentencing decisions. That is so even though, as the applicant submitted, the increase in the maximum penalty should not necessarily be reflected in proportionate increases in sentences.[325]

While it is possible for the Council to test in a rudimentary way whether current sentencing practices demonstrate a level of ordinal proportionality (e.g. as discussed above, by testing whether, based on the maximum penalties set for assault and related offences, including with and without circumstances of aggravation, offences with a higher level of objective seriousness receive higher sentences), it is not possible for the Council to determine with any degree of certainty or specificity what level or type of sentence, or range of sentences, is 'adequate' or 'appropriate', given there is no one 'correct' sentence or widely accepted 'deserved' penalty.[326]

Looking at **rehabilitation** as another relevant sentencing purpose, other types of sentencing orders that are reasonably equivalent to other forms of penalties that might have been imposed (e.g. imprisonment) might be considered to address underlying factors associated with this offending (e.g. drug and alcohol use and mental health issues).[327] Notably, in Victoria, which introduced a form of mandatory minimum sentence, alternative orders may be made where special circumstances exist. These include forms of treatment orders.

The complexity of the issues means it has been necessary for the Council to draw on a range of evidence and information, including views expressed in submissions, to assess whether current penalties and the sentencing framework provide 'an appropriate response to this form of offending', as required under the Terms of Reference.

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324 See, for example, Michael Tonry, 'Proportionality Theory in Punishment Philosophy: Fated for the Dustbin of Otiosity' in Michael Tonry (ed), *Of One-eyed and Toothless Miscreants: Making the Punishment Fit the Crime* (Oxford University Press, 2019) 13–16.

325 *R v Murray* (2014) 245 A Crim R 37, 42 [16] (Fraser JA, Gotterson and Morrison JJA agreeing) (emphasis added).

326 On the related issues of the appropriate 'anchoring' of penalties by fixing actual (rather than comparative) severity levels for crimes see von Hirsch and Ashworth (n 323) 140 [9.3.2]; and Tonry (n 324) 13–16.

327 On the problems associated with identifying penal equivalency of different sentencing orders, see Tonry (n 324) 23–6.

8.9.8 Stakeholder views

Relevance of stakeholder views

The perceived adequacy of penalties imposed is of direct relevance to this review as, together with other evidence used to identify if there are problems with current sentencing practices:

- If sentencing levels are found to be generally consistent with stakeholder expectations, it would tend to suggest there are no major problems with the current penalties, offence and sentencing framework from the perspective of those consulted and who made submissions to the review;
- If sentencing levels are found to be generally inconsistent with stakeholder expectations, it would tend to suggest there are potential problems with the current penalties, offence and/or sentencing framework and reforms may need to be considered. It might also mean that information about the wider range of charges used for such offending could be better communicated outside of legal stakeholder groups.

A range of views were expressed as to whether penalties or sentences should be increased for assaults on public officers, or the current offence and sentencing framework was appropriate.

Views were expressed regarding **contentment with the current state of the law**.

The Department of Agriculture and Fisheries stated that 'the current maximum penalty for serious assault is appropriate'[328] (including for relevant summary offences) but noted that it would not support anything certain or likely to result in decrease in penalties.[329]

The view of the Queensland Teachers' Union (QTU) was that the current legislative framework:

> provides an appropriate mechanism for responding to the growing problem of assaults on public officers. The QTU's experience is that police appropriately charge parents or members of the community who assault teachers or principals. The QTU therefore asserts that the current law and penalties, as they apply to our members, are appropriate and do not require amendment.[330]

There was also **support for increases to penalties.** Some stakeholders and victims consulted expressed a view that penalties do not reflect the seriousness of the harm, do not hold offenders accountable, do not encourage reporting, and are inadequate to deter assaults.

The Queensland Police Union, which was among those seeking stronger penalties, noted it had 'long advocated for mandatory or minimum sentencing' in relation to assaults on police officers and other emergency service workers.[331] It submitted:

> It is the QPU's position that police and emergency workers deserve adequate legislative protection for simply doing their duty and serving the people of Queensland. This can only be achieved through a minimum sentencing range being imposed by statute.[332]

Its call for mandatory sentencing is discussed as a separate topic in Chapter 10, section 10.3.5.

The Transport Workers' Union's (TWU) submission called for 'tougher penalties', pointing to the risks borne by public and private bus drivers and personalised transport workers.[333] It would welcome 'other well-targeted interventions and prevention strategies' in tandem with harsher penalties:[334]

> Our view is that the introduction of tougher penalties combined with a robust public service campaign to enhance community awareness would assist in reduction of further instances of violent assaults within the transport industry.[335]

In making this argument, the TWU pointed to WA and South Australian amendments and 'Deloitte's *Department of Transport and Main Roads Queensland Bus Driver Safety Review*'[336] (although that review recommended against adopting reforms to penalties in the short term, finding 'there appears to be sufficient penalties under current legislation in QLD' and voiced concerns that there was insufficient evidence to suggest penalty changes would have

328 Submission 7 (Department of Agriculture and Fisheries) 7.
329 Ibid 8.
330 Submission 20 (Queensland Teachers' Union) 4.
331 Preliminary Submission 23 (Queensland Police Union of Employees) 1.
332 Ibid.
333 Submission 12 (Transport Workers' Union) 3, 8, 9, 12.
334 Ibid 9.
335 Ibid 12.
336 Ibid 8.

the desired impact of deterring violence, and would not directly address the key triggers of violence identified by the review).[337] The TWU also relevantly discussed NT and NSW provisions.

It recognised the need for the concept of 'just punishment', the principle of proportionality and consideration of 'the circumstances surrounding the offence for a person with impaired capacity, and the impact of any proposed changes on children and young people'.[338]

QCS appeared to criticise the effect of the totality and proportionality principles on moderating cumulative sentences under section 156A of the PSA.[339] This section requires that any prison sentence imposed be ordered to be served cumulatively with any other term of imprisonment the offender is liable to serve in circumstances where the offence was committed while the person was a prisoner serving a term of imprisonment, or released on parole, or other specified circumstances.

QCS's concern was that 'those sentences are shorter than they should be because of the existing sentence'[340] and 'there is a perception that prisoners 'get off lightly' for their actions as sentences are mitigated in order to compensate for the cumulative requirements'.[341] It submitted:

> While section 156A … 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.[342]

Ultimately, it stated that it did 'not consider there is a need to explore alternative options'.[343] Those are foundational, general sentencing principles and review of them is beyond the scope of the reference.

QCS considered it crucial that section 340(2) contain the circumstances of aggravation penalty provision, as per (2AA) (commenced 21 July 2020).[344] It considered there was otherwise an inadequacy in the drafting of section 340, which provides for aggravated forms of serious assault carrying a 14-year maximum penalty for police and other public officers. This did not appear in subsection (2), which applies to assaults by prisoners on working corrective services officers. It identified that amendments, now passed, which will mean that these circumstances of aggravation and the associated 14-year penalty will apply to offences charged under subsection 340(2) of the Code, will address this issue. It submitted:

> 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.[345]

It also supported higher maximum penalties for summary offences[346] — but without specifying what these higher penalties should be.

Some preliminary submissions earlier in the review supported increased penalties.

Security Providers Association of Australia Limited supported an increase in penalties for assaults on police and other frontline emergency service workers, corrective service officers and other public officers, but without providing any additional detail of what options would be supported.[347]

A joint submission from the Australasian Railway Association, Bus Industry Confederation, the Rail, Tram and Bus Union and TrackSAFE Foundation supported 'an elevation of penalties for anyone [who] assaults a public transport staff member so that the penalties are equal to the assault of emergency personnel'.[348] They also referred to

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337 Deloitte Risk Advisory, *Department of Transport and Main Roads Queensland Bus Driver Safety Review* (20 April 2017) 123.

338 Submission 12 (Transport Workers' Union) 8–9.

339 Submission 21 (Queensland Corrective Services) 5, 8, 11, 18.

340 Ibid 18.

341 Ibid 8.

342 Ibid 5.

343 Ibid 18.

344 By the *Corrective Services and Other Legislation Amendment Act 2020* (Qld) s 55.

345 Submission 21 (Queensland Corrective Services) 17.

346 Ibid 17

347 Preliminary submission 1 (Security Providers Association of Australia Limited) 1.

348 Preliminary submission 5 (Australasian Railway Association and Ors) 1.

reforms in WA, South Australia, and the Northern Territory –– in the NT case, it was noted to involve increasing penalties for assaults on 'non-emergency workers engaged in the course of their duties'.[349]

Some stakeholders raised concerns about section 340 being **too harsh in its effect or too wide in its application**. Several did not the support the rationale for section 340 existing at all but gave feedback about its operation after explaining their opposition to it.

While the QLS 'does not support special offences for assault based on the occupational status of the victim' (because this does not necessarily make the assault more serious and can lead to 'absurd results'),[350] it 'considers that the current sentencing process adequately meets the victim's needs given that the maximum penalty can be up to 14 years imprisonment where the defendant has spat on, bitten or caused bodily harm etc. to the public officer or police officer'.[351] It submitted the maximum penalties for section 340 were 'appropriate for the most serious type of conduct that may be encompassed by the offence, noting however that there are other offence provisions that could respond to conduct of that severity'.[352] The QLS noted that:

> the courts have been far from lenient when sentencing offenders for this offence. Most cases have led to the offender receiving a term of imprisonment. Anecdotally, it appears most offenders receive an actual period of imprisonment for serious assaults with circumstances of aggravation, particularly in cases where the offender has spat upon or bitten the public officer. Even when the offender is a youth or has mental health issues at the time of the offence, most offenders are sentenced to a period of imprisonment, though generally suspended or with immediate parole.[353]

It referred to the Council's sentencing statistics and commented that for non-aggravated serious assaults, 'by virtue of the status of the victim a more serious penalty is generally being imposed that makes the offence akin to a more serious assault (one where bodily harm was sustained)':[354]

> Just over 50% of both received custodial terms, compared to just over 20% for common assault offences.
>
> Whilst the duration of the terms of imprisonment involved was on average somewhat higher for assault occasioning bodily harm offences, that is understandable in view of the breadth of conduct they encompass.[355]

The QLS also commented on the Council's analysis in terms of aggravated serious assaults:

> When aggravated serious assaults (with a maximum penalty of 14 years) are compared with the alternative offences only able to be dealt with on indictment, a larger gap in outcomes does arise. Whilst similar high proportions of both types of offences resulted in terms of imprisonment, the duration of imprisonment on average was markedly higher for grievous bodily harm (average of 3 years), and there was a wider range for torture (average around 5 years), with aggravated serious assaults as high as 5 years but averaging under one.
>
> The point that arises from this is that the likelihood of a custodial sentence for a serious assault offence is generally high, particularly so in cases where if charged as a corresponding serious offence (grievous bodily harm, torture, wounding) it would also likely arise in a term of imprisonment. Whilst there is a difference in the duration of imprisonment imposed on average, that likely reflects the broad range of conduct encompassed by those offences.
>
> For instance, an aggravated serious assault can be as 'minor' as a person pretending to be armed with a knife before being arrested by a police officer, where no physical harm is caused to the victim. The threshold however for a grievous bodily harm offence for instance is markedly higher, in that for the offence to be made out a particular degree of harm to the victim is required.[356]

Sisters Inside's overall position was that section 340 as it relates to public officers — namely, sections 340(1)(b)-(d), (2) and (2AA) — should be repealed because it is inappropriate to legislate different penalties for the same action on the basis of victim profession, rather than the harm caused. It further argued that 'the separate offence of serious assault is gratuitous in that no correlation between higher penalties and reduced offending can be demonstrated'[357] and 'the *Criminal Code* creates offences sufficient to cover the conduct targeted by s 340'.[358]

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349 Ibid 1.

350 Submission 30 (Queensland Law Society) 1 and see 11.

351 Ibid 3 and see 7.

352 Ibid 13.

353 Ibid 3 and see 13–14.

354 Ibid 14.

355 Ibid 13–14.

356 Ibid 14.

357 Submission 17 (Sisters Inside) 1.

358 Ibid 5.

The QLS argued:

- 'The threshold for charging under section 340 is ill-defined and too low' and that sentencing statistics showed that '90% of actions charged under the serious provision are about as serious as common assault'.[359]
- 'Imposing a maximum penalty of 14 years for an aggravated serious assault on a public officer is disproportionate to the penalties imposed on comparable and more serious offences in the *Criminal Code*'.[360]

Sisters Inside proposed various actions if the legislation was amended:[361]

- a clearer definition 'to differentiate it from the offences under the PPRA and CSA and to correspond to the seriousness of the maximum penalty';
- strict police guidelines for charging;
- specifying different maximum penalties depending on whether or not bodily harm was caused (and its seriousness);
- facilitation of greater judicial discretion by requiring that decisions be made on a case-by-case basis, with a non-exhaustive list of relevant sentencing considerations including 'Aboriginal or Torres Strait Islander identity, mental health, disability, drug and/or alcohol intoxication, history of trauma, intergenerational trauma, language barriers etc';
- reconsidering the aggravating circumstances contained in sections 340(1)(b)(i)–(iii) and 340(2AA) (with the comment made that 'no other Australian jurisdiction specifies spitting as an aggravating feature of an assault on a police or public officer');[362]
- eliminating mandatory sentencing (s 340(1C) and the intoxication in a public place aggravating circumstance.

The Aboriginal and Torres Strait Islander Legal Service (ATSILS) advocated for the starting point to be that 'everyone is equal under the law'.[363] It discussed the four key criticisms directed against the amendment that first introduced the 14-year maximum and aggravated circumstances to section 340 in 2012[364] and argued that 'in an ideal world such considerations could even result in the abolition of a separate offence as an unnecessary addition to the existing range of offences which are already available'.[365]

It was concerned that the amendments made to create aggravated forms of serious assault with a higher 14-year maximum penalty 'elevated the protection of some types of official above the need to protect all other categories of persons engaged in potentially dangerous contact with members of the public'.[366]

While expressing its 'admiration for the very difficult and challenging role that so many police officers undertake on a daily basis', it suggested 'in an ideal world such considerations could even result in the abolition of a separate offence as an unnecessary addition to the existing range of offences which are already available'.[367]

It raised concerns with use of police chokeholds in the context of excessive use of force, stating that the flicking of 'foaming spittle which results from choking' after use of a choke-hold:

> is radically different from and should be distinguished from a deliberate spit. In the context of sentencing for serious assault, we would argue that more serious penalties should expressly not be available when a chokehold has been applied to a person.[368]

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359 Ibid 2.

360 Ibid 2.

361 Ibid 6.

362 The Council notes, however, Western Australian legislative reforms to serious assault regarding risk of transmitting COVID-19. Further, in some jurisdictions, such as in South Australia, spitting is recognised as a way a person can cause harm to an emergency worker, which attracts higher penalties.

363 Submission 22 (ATSILS) 2

364 Ibid.

365 Ibid.

366 Ibid.

367 Ibid.

368 Ibid 5.

ATSILS also raised concerns about incarceration of 'so many people suffering intellectual disability, cognitive development issues, mental health issues and behavioural issues' for this offending.[369] A 'primary answer' to this:

> is the lack of suitable sentencing alternatives because they are almost inevitable regarded as unsuitable for the present community based sentencing options. For those who are sentenced to actual terms of imprisonment, many leave jail more damaged than they arrived. For those who are sentenced to parole release dates or suspended sentences, their inability to self-regulate can see those jail sentences triggered for even low level behaviour. Jail should not end up being a default option when some sort of community based intervention would be cheaper and more effective and provide a greater long term contribution to frontline safety.[370]

Queensland Advocacy Incorporated (QAI) recognised 'the vulnerability of people working in high risk jobs' but submitted inherent vocational risk should be 'separated from a consideration of the severity of sentencing that should be applied to an offender for an offence against a high risk worker'. It submitted that a 'more punitive sentencing response' solely on this basis 'would be to disregard the innate vulnerability of the majority of perpetrators … and the drivers for their offending. Linking the occupation of the victim with the seriousness of the offence is inappropriate and can have serious implications [e.g. jurisdiction/indictment]'.[371]

The QAI noted in its initial feedback 'that the current maximum sentences for serious assault provide adequate scope for courts to impose sentences of appropriate length' and its support for 'the removal of the maximum penalty provision contained in s 340(a)(i)'.[372]

The Bar Association of Queensland (BAQ) stated 'the current legislative framework adequately and effectively provides for assaults against public officers as provided for in section 340 of the *Criminal Code*'[373] and 'generally, existing offences, penalties and sentencing practices in Queensland do adequately and appropriately respond to assaults against police'.[374]

The BAQ made specific observations about penalties for serious assaults:

- 'Assaults against police, other frontline emergency service officers and public officers will ordinarily attract sentences of imprisonment. The structure of such sentences varies depending on the circumstances of the offence and the offender and is most appropriately left to the proper exercise of sentencing discretion by a judicial officer'.[375]
- 'The current maximum penalty for an un-aggravated serious assault is appropriate to reflect the fact that an assault that does not cause an injury which amounts to bodily harm is more serious than other common assaults if the person assaulted is deserving of or in need of greater protection under the law'.[376]
- 'A circumstance of aggravation under section 340 doubles that maximum penalty. This is at odds with the approach taken to aggravated assaults that occasion bodily harm where the maximum penalty increases from 7 years to 10 years'.[377]
- 'It is difficult to reconcile a maximum penalty of 14 years imprisonment for an assault (in specific circumstances), when the same maximum penalty is available for a person who causes very serious bodily injuries amounting to grievous bodily harm'.[378]

LAQ stated that 'there does not need to be any change to the current legislation' given 'how courts currently deal with the issues of acts of violence against public officers and workers in certain circumstances'.[379] LAQ submitted that 'the issues paper has not demonstrated any evidence-based reasons to enact legislative reforms to the provisions that apply to public officer victims in the criminal law and sentencing process'.[380]

> The various offences set out in the *Criminal Code* and *Police Powers and Responsibilities Act 2000* adequately cover a multitude of circumstances. The existing sentencing framework outlined in the *Penalties and Sentences*

369 Ibid 6.
370 Ibid 6.
371 Ibid 3.
372 Ibid 3.
373 Submission 27 (Bar Association of Queensland) 6.
374 Ibid 8.
375 Ibid 9.
376 Ibid 9.
377 Ibid 9.
378 Ibid 10.
379 Submission 29 (Legal Aid Queensland) 2.
380 Ibid 6.

> *Act 1992* and through the common law provide adequate scope for a court to take into account the serious nature of offending against public officers and sentence accordingly.[381]

LAQ believed that any change 'needs to be consistent and ensure that the discretion of the court is maintained in the sentencing process'.[382] After reviewing the common law, LAQ concluded that:

> i. It is clear the courts when given the opportunity to take into account all the circumstances of the case, do so;
>
> ii. The sentiment regarding aggravating features where the complainant is at work and where the complainant is performing public duty, is taken into account, and;
>
> iii. Consistent with the research outlined in the issues paper, Imprisonment whether suspended or actual as the penalty imposed, is unexceptional.[383]

LAQ noted amendments to the original section 340 which 'specified particular classes of persons, and voiced its 'concerns about creating classes of victims':[384]

> As demonstrated in the issues paper, there are an array of offences and sentencing methods currently available to courts to allow them to adequately punish for a variety of circumstances. The statistics in the issues paper demonstrate that the courts across all jurisdictions take these matters seriously but also impose a variety of penalties. This is entirely appropriate. We are concerned about a law that treats assaults on particular categories of public officers being more serious than other categories, because it creates classes of victims without due regard to the particular vulnerabilities of each case.[385]

Like other stakeholders, LAQ criticised the doubled aggravated maximum penalty:

> Apart from the inclusion of a maximum penalty of 14 years in the aggravated cases, we submit to the maximum penalties that apply to each offence are appropriate. The 14-year maximum is out of step with other categories of offences. It is clear the courts deal with these matters seriously and have done so for some time prior to the amendment.[386]

LAQ also provided a reform option regarding the Victims Assist Scheme, suggesting:

> consideration could be given to amending the categories of special assistance payable under section 39(h) and Schedule 2 of the *Victims of Crime Assistance Act 2009* (VOCAA) and the special assistance payable to public officers who are the victims of acts of violence.[387]

The Queensland Human Rights Commission, while acknowledging the importance of the two overarching objectives of sentencing responses — to denounce assaults on frontline public officers and to prevent future attacks from occurring — cautioned:

> it is arguable that there are ways of achieving either or both with less limitations on human rights than imposing higher penalties. Certainly, any law reform imposing such changes would have to be accompanied by evidence-based justification for why it is the least restrictive way of achieving one or both of these goals.[388]

The Commission was also concerned that, given overcrowding of prisons had been identified as a particular issue in prisoner-on-staff assaults, 'If higher penalties lead to higher incarceration rates, such reforms may inadvertently increase the risk of assault for corrections officers'.[389]

The QTU stated in its submission that 'as a matter of principle [it] does not support differentiated penalties associated with a category of employment or other distinguishing characteristic of individuals' but that it recognised:

> that a similar response involving differentiated penalties may be appropriate for other categories of employees engaged in contact with the public where similar concerns exist regarding escalating safety fears arising from patterns of offending.[390]

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381 Ibid 2.

382 Ibid 2.

383 Ibid 2–3.

384 Ibid 3.

385 Ibid 3.

386 Ibid 7.

387 Ibid 3, with more detailed discussion from there.

388 Submission 18 (Queensland Human Rights Commission) 2 [5].

389 Ibid 8 [25].

390 Submission 20 (Queensland Teachers' Union) 4.

The QTU further submitted that 'assaults on public officers must never be treated as less significant than any other assault'.[391]

8.9.9 Council's view

The current statutory maximum penalties were identified as a significant issue or concern by stakeholders during consultation only in the context of being unduly harsh and incongruous with the rest of the *Criminal Code*. The Council notes views expressed by some that the current maximum penalty of 14 years for serious assault with aggravating circumstances appears to be poorly aligned with maximum penalties for other similar assaults and assault-related conduct, even with aggravating features — such as the 10-year maximum penalty for aggravated forms of AOBH.

The doubling of the maximum penalty was an election commitment and was not supported by any clear rationale as to the level at which it was set.

The Council notes that the WA serious assault equivalent — which is similar in many respects to that which exists in Queensland — applies a 10-year maximum penalty where there are aggravating factors present. Aggravating factors for the purposes of the WA provision are that the offender was armed, was in company, committed the act knowing they had COVID-19, or immediately before or immediately after the commission of the offence made a statement or did any other act that created a belief, suspicion or fear that they had COVID-19.

There is some risk that the current 14-year penalty creates unrealistic expectations by victims as to the likely sentence that will be imposed — particularly as the majority of offences are currently dealt with summarily, in circumstances where a court can only impose a sentence of up to 3 years' imprisonment.

Further, in cases where an offender has caused serious harm to a victim, the likely charge will be wounding, GBH or acts intended to cause GBH — all of which must be dealt with on indictment. In this context, the Council finds it difficult to conceive of a situation where the harm caused to a victim and the culpability of the offender for an offence charged as a serious assault would reach the same level as offences, such as GBH, which involve as an element of the offence the infliction of significant bodily injury.

This is not to suggest that head sentences for offences causing serious harm are too low, but these other more serious offences with maximum penalties equal to or higher than section 340 (but with more neutral and generic offender and victim descriptor language) are being utilised as harm in particular cases increases. Other offences in the *Criminal Code*, providing maximum penalties of up to life imprisonment (section 317), can instead be relied upon when the harm caused is sufficient — and this is the case regardless of victim class or categorisation.

The Council's analysis of sentencing outcomes indicates that otherwise, section 340, as a separate section targeting assaulting, obstructing and resisting particular classes of people, does make a difference in penalty outcome. In particular, it generally achieves a higher rate of custodial penalties when compared with various forms of generic assault-type offences.

It is the Council's view that the classification of offences and setting of statutory maxima — as a general proposition — is best undertaken as a holistic exercise that enables an assessment to be made of the seriousness of individual offences and conduct captured relative to other similar offences. This approach is more likely to promote a penalty framework that is internally consistent and coherent.

The Council notes extensive reviews of Queensland's *Criminal Code*, which included examination of maximum penalties, took place in 1992 and 1996.[392] A great many amendments to the Code and the PSA have taken place since.

In the absence of an opportunity to review penalties in this comprehensive way, or broad stakeholder support for the current maximum penalties that apply to section 340 to be changed, the Council recommends that the current penalty framework under section 340, which provides for an aggravated form of penalty in specified circumstances, should be retained and apply across all frontline and emergency workers as defined in a reformed section 340 offence.

While the Council makes no recommendations in respect of changing the maximum penalties for serious assaults (aggravated or simpliciter) for the same reasons, it suggests that should a broader review of maximum penalties for assaults and assault-related offences be conducted, the maximum penalty that applies to serious assault — particularly in its aggravated form — should form part of such a review.

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391 Ibid.

392 Note O'Regan, Herlihy and Quinn (n 6) and Connolly et al (n 6).

The Council's views about the need for additional guidance to courts in sentencing, including its views on mandatory and statutory minimum periods, are discussed in Chapter 10.

Recommendation 8–1: Penalty framework under section 340

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

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

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

Chapter 9 Summary assault and obstruct offences

9.1 Introduction

This chapter presents the Council's recommendations regarding simple, or 'summary' offences that can be charged for less serious examples of assaults and obstructions of a public officer, such as assault or obstruct a police officer in the performance of their duties under section 790 of the *Police Powers and Responsibilities Act 2000* (Qld) (PPRA) and assault by a prisoner of a corrective services staff member under section 124(b) of the *Corrective Services Act 2006* (Qld) (CSA). The advice provided responds to the requirement under the Terms of Reference for the Council to review these provisions and 'assess the suitability of providing for separate offences in different Acts targeting the same offending', as well as advising on options for reform to the current offence framework.

In presenting the Council's advice, the chapter also considers current guidelines that support prosecution agencies in determining if a summary charge of assault should be preferred over a charge of serious assault under section 340 of the *Criminal Code*, and the potential need for additional guidance.

9.2 Assault and obstruct offences

9.2.1 Current position in Queensland

Assault or obstruct a police officer in the performance of the officer's duties: PPRA s 790

The offence of assault or obstruct a police officer in the performance of the officer's duties under section 790 of the PPRA carries a maximum penalty of a $5,338 fine (40 penalty units) or 6 months' imprisonment. This is increased to a fine of $8,007 (60 penalty units) or 12 months' imprisonment if the offence is committed within, or in the vicinity of, licensed premises. The definition of assault in the *Criminal Code* applies to this section, while 'obstruct' includes hinder, resist and attempt to obstruct.

Over 80 per cent of assault or obstruct offences committed against police officers (82.4%) involve a charge brought under section 790, in cases where this is the most serious offence (MSO) sentenced. Looking solely at acts of assault (i.e. excluding acts of obstruction), just over half (51.7%) of assaults on police officers are prosecuted under section 790 of the PPRA, rather than as a serious assault under section 340 of the *Criminal Code*.. See Table 7-1 in Chapter 7 for more information.

Assault or obstruct a watch-house officer in the performance of the officer's duties: PPRA s 655A

The offence of assault or obstruct a watch-house officer in the performance of the officer's duties was introduced into the PPRA relatively recently in September 2018.[1] The maximum penalty is consistent with that which applies to the non-aggravated form of assault or obstruct a police officer under section 790 — that is, 40 penalty units, or 6 months' imprisonment.

In 2018–19, there were 10 cases sentenced involving this charge and in six, this was the most serious offence sentenced.[2] Three assaults on a watch-house officer committed after the commencement of the new PPRA offence provision were charged and sentenced as a serious assault under section 340(1)(c)–(d) or (2AA) of the *Criminal Code*. None of these sentenced charges was the MSO.

CSA ss 124(b) and 127

Section 124(b) of the CSA creates the offence of a prisoner assaulting or obstructing a staff member who is performing a function or exercising a power under this Act or is in a corrective services facility. It has a maximum penalty of 2 years' imprisonment. For this offence, 'prisoner' does not include a person who is released on parole.[3]

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1 *Police Powers and Responsibilities and Other Legislation Amendment Act 2018* (Qld) s 33. This provision commenced on 20 September 2018.

2 See Table 2-3: Frequency of summary offences sentenced in Queensland courts in Chapter 2 for more information.

3 *Corrective Services Act 2006* (Qld) sch 4 (because s 124 is in chapter 3, part 2 and is excluded).

Over the 10-year data period, there were 147 sentenced cases involving a charge under this section. In 81 cases, this charge was the MSO. This compares to the 202 charges (MSO) sentenced under the more serious charge of serious assault under section 340(2) of the *Criminal Code*.[4]

The lower proportion of matters proceeded with under section 124(b) of the CSA, compared with those sentenced as a section 340 charge, may be explained both by the fact that section 340(2) applies the broader definition of a 'prisoner', which includes a prisoner released on parole, and that assaults by prisoners who are in custody can be dealt with as a breach of discipline rather than by way of a criminal charge. The sanctions that can be applied to a prisoner administratively on being found to have committed what is determined to be a 'major breach of discipline'[5] can include:

- a reprimand without further punishment;
- an order that the privileges the prisoner might have otherwise received be forfeited; or
- an order that the prisoner undergo a period of separate/solitary confinement[6] for not more than 7 days.[7]

A prisoner must not be charged with an offence because of an act (such as an assault) or omission if already punished for that act or omission as a breach of discipline.[8] In its submission, Queensland Corrective Services (QCS) notes that dealing with assaults as a breach of discipline is the case for 'a significant number of cases' where a corrective services officer does not progress a formal complaint.[9]

Under section 127, it is an offence for a person to obstruct (which includes to hinder, resist and attempt to obstruct) a staff member performing a function or exercising a power under that Act, or the proper officer of a court who is performing a function or exercising a power under that Act, without a reasonable excuse. The maximum penalty is a fine of $5,338 (40 penalty units) or one year's imprisonment. For this offence, 'person' does not include a prisoner, other than a prisoner who is released on parole.[10]

Prosecutions under section 127 are far less common than those under section 124(b), with 26 sentenced cases involving a charge under this section over the 10-year data period. This offence was the MSO in only 11 cases over this period (see Chapter 2, Table 2-5 for more information). In comparison, there were 18 sentenced charges involving a corrective services officer prosecuted under the more serious offence of serious assault under sections 340(1)(c)–(d) and (2AA) of the *Criminal Code*.[11]

Other miscellaneous Acts

There are over 60 other Queensland Acts that carry offence provisions relating to persons acting in roles such as 'authorised officers'. They target assault and various acts including wilful obstruction, intimidation and attempts. ('Obstruct' is defined under a number of provisions as including assault.) Many of these provisions state that this conduct is an offence 'unless the person has a reasonable excuse'.

The offences for which a sentence was imposed over the 10-year data period examined, and associated sentencing outcomes, are reported in Chapter 2 of this report. Excluding offences charged under section 790 of the PPRA or under sections 124(b) or 127 of the CSA, the most commonly sentenced offences with 40 cases or more involving these charges over the relevant period, from the most to the least commonly charged, were:

- resisting authorised person after being refused entry to premises (*Liquor Act 1992* (Qld), s 165A(4));
- obstruction generally under section 166 of the *Liquor Act 1992* (Qld);

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4 Some of the 202 offences sentenced under s 340(2) may have involved an assault by a prisoner released on parole due to the definition of 'prisoner' that applies for the purposes of s 340(2). These figures therefore are not directly comparable.

5 Defined to mean 'a breach of discipline decided under section 113 [of the Act] to be proceeded with as a major breach of discipline': *Corrective Services Act 2006* (Qld) sch 4. Specific acts that constitute breaches of discipline for the purposes of section 113 are set out in s 5 of the *Corrective Services Regulations 2017* (Qld) and include a range of actions, including contravening a lawful direction of a corrective services officer, and acting in a way that is contrary to the security or good order of a corrective services facility.

6 *Corrective Services Act 2006* (Qld) s 118(2).

7 Ibid s 121(2).

8 Ibid s 115(2). Conversely, a prisoner must not be punished for an act or omission as a breach of discipline if the prisoner has been convicted or acquitted of an offence for the same act or omission: s 115(1).

9 Submission 21 (Queensland Corrective Services) 11.

10 *Corrective Services Act 2006* (Qld) s 125.

11 See n 4. It is likely some of those prosecuted under section 340(2) may have been prisoners released on parole. For this reason, the comparable s 340 figures are likely to be higher.

- obstruct/hinder an ambulance officer under section 46 of the *Ambulance Service Act 1991* (Qld);
- obstruction of Commonwealth public officials under section 149 of the Commonwealth *Criminal Code Act 1995;*
- removal of a prohibited person under section 173ED(3) of the *Liquor Act 1992* (Qld);
- obstruction of an authorised person in the exercise of a power under section 135(1) of the *Transport Operations (Passenger Transport) Act 1994* (Qld); and
- obstruction of an inspector under section 182 of the *Fisheries Act 1957* (Qld).

Many victims of such offences would be classed as 'compliance officers' for the purposes of the Council's section 340 analysis. There were 31 charges of serious assault sentenced under sections 340(1)(c)–(d), (2AA) involving this class of officer, suggesting summary charges are more likely to be preferred in the case of acts of assault or obstructions of these officers.

Reviewing sentencing outcomes for the above listed offences, the majority of sentences imposed involve the imposition of a monetary penalty. The maximum penalties for these offences vary significantly from 16 penalty units for obstruct or hinder a person acting under the *Ambulance Service Act*, 50 penalty units for resisting an authorised person under section 165A(4) of the *Liquor Act* (or 100 penalty units for other acts of obstruction under section 166 of that Act), 60 penalty units for obstructing an authorised person under the *Transport Operations (Passenger Transport) Act*, and 1,000 penalty units for obstruction of an inspector under the *Fisheries Act*. The Commonwealth *Criminal Code* offence of obstruction of Commonwealth public officials carries a maximum penalty of 2 years' imprisonment.

Obstruct/hinder an ambulance officer was the offence most likely to attract a custodial or community-based order, although proportionally, some offences with a small number of people charged were more likely to result in these types of penalties:

- obstruction of a person performing functions under section 150C(1) of the *Fire and Emergency Services Act 1990*, which carries a maximum penalty of 100 penalty units or 6 months imprisonment; and
- assault or resist a security officer under the *State Buildings Protective Security Act 1983*, which carries a maximum penalty of 10 penalty units or 6 months imprisonment.

9.2.2 Position in other jurisdictions

It was not possible for the Council to undertake a comprehensive review of all assault and obstruct offences in other jurisdictions. However, based on a limited cross-jurisdictional review, it is clear that some jurisdictions have retained a number of summary assault and obstruct offences, while others have established a more streamlined approach, meaning the choice of charges may be more limited (e.g. in Western Australia, a decision between prosecuting a charge under the offence of serious assault or obstruction of a public officer under the WA's *Criminal Code*, or preferring a charge of common assault or some other criminal offence of general application).

In New Zealand, an offence of assault on a police, prison, or traffic officer is established under section 10 of the *Summary Offences Act 1981* (NZ), which carries a maximum penalty of a $4,000 fine or 6 months' imprisonment. A separate offence of resist or obstruct these same classes of officer exists under section 23 of that Act, which carries a lower maximum penalty of a $2,000 fine or 3 months' imprisonment. The fact that the victim of an offence is a constable, or a prison officer acting in the course of his or her duty, or an emergency health or fire services provider acting in the course of his or her duty at the scene of an emergency is also an aggravating factor under the *Sentencing Act 2002* (NZ), which applies to courts when sentencing for any offence where it can be reasonably treated as such, including offences such as common assault, aggravated assault and wounding under the *Crimes Act 1961* (NZ).

9.2.3 Issues

Co-existence of summary and indictable charges

Queensland's *Criminal Code* was established to codify Queensland's criminal law. The current *Queensland Legislation Handbook's* primary purpose is to assist departmental policy or instructing officers in working with the Office of the Queensland Parliamentary Counsel in drafting legislation. It provides: 'if the Criminal Code provides for an offence, it is undesirable that another Act should erode its nature as a comprehensive code by providing for the same or essentially the same offence'.[12]

12 Department of the Premier and Cabinet, *Queensland Legislation Handbook* (6th ed, 2019) 10 [2.12.4].

In practice, there are a number of offences that have been introduced over time that essentially replicate offences in the *Criminal Code*, while existing as summary offences — meaning they can only be dealt with by a Magistrates Court. One example is the offence of assaulting, resisting or wilfully obstructing a police officer, which has existed in section 340 since the Code's commencement on 1 January 1901. The PPRA (s 790, and its precursors) deals with this same conduct. This offence also appeared in the earlier 1997 PPRA,[13] and as section 10.20A of the 1990 PPRA, in which it was inserted in 1993 due to the repeal of the *Police Act 1937* (Qld) in which this offence also appeared.[14]

Even within the *Criminal Code* itself, as illustrated in the discussion in Chapter 8, there is some overlap between conduct that could either fall within section 340 (which is classified as a crime) and section 199 (which is classified as a misdemeanour).

A charge under section 199 must be dealt with summarily (by a Magistrates Court),[15] whereas in the case of a charge under section 340 of the Code, the prosecution has the power to elect if the charge is to be dealt with in this way.[16] As discussed further in Chapter 10, the Council recommends that the current arrangements for summary disposition should be retained.

There are other practical procedural differences between offence types, such as whether a warrant is generally required for arrest,[17] and whether there is a limitation on commencing prosecutions after a defined period.[18]

A recent example that provides some explanation for why summary offences may be introduced, even when there is an existing *Criminal Code* offence that deals with the same conduct, is the introduction of the new offences of assaulting and obstructing a watch-house officer. The Explanatory Note to the Bill introducing these new offences noted:

> Currently, if a watch-house officer is assaulted or obstructed in the course of their duties, the only option for charging an offender is under the *Criminal Code*. This may result in the watch-house officer not making any complaint of assault, or result in a disproportionate charge against a person as there is no simple offence alternative.
>
> … the new offences will ensure that any penalty issued by the courts and any consequent criminal history is reflective of the offence being a simple offence and not indictable.[19]

The existence of a discretion by police to charge a person with the summary offence of 'assault police' under the PPRA, rather than with the offence of 'serious assault' under section 340 of the *Criminal Code* — although section 340 can also be dealt with summarily — could be argued, therefore, to provide an important protection against more minor criminal conduct being dealt with under the more serious form of criminal offence, which carries a higher maximum penalty. This might be important not only from the perspective of ensuring proportionate sentences, but that the person's criminal history reflects the fact the assault was of a more minor nature than had the person been charged under section 340.

In the case of other summary assault offences, the justification for introducing these offences has included the visibility of establishing this form of conduct as an offence under legislation targeting specific matters, and the ability for an offence to be prosecuted by an agency other than police. For example, section 190 of the *Work Health and Safety Act 2011* (Qld) establishes an offence of assaulting, threatening or intimidating an inspector or person assisting an inspector (or attempting to do so). The Explanatory Notes to the Bill that introduced this new section justify this on the basis that:

> Although this is also an offence at general criminal law, the inclusion of this provision is intended to ensure greater deterrence by giving it more prominence and allowing its prosecution by the regulator.[20]

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13 *Police Powers and Responsibilities Act 1997* (Qld) (repealed) s 120.

14 *Police Act 1937 (*Qld) (repealed) s 59.

15 See *Criminal Code* (Qld) s 552BA and definition therein of a 'relevant offence', which includes an offence against the Code if the maximum term of imprisonment to which the defendant is liable is not more than 3 years.

16 See *Criminal Code* (Qld) s 552A.

17 An offender may generally be arrested without a warrant for a crime, but ordinarily a warrant is required in the case of a misdemeanour. See *Criminal Code* (Qld) s 5.

18 *Justices Act 1886* (Qld) s 52 sets out time limits for proceedings provides that, unless some other time is limited for making the complaint by the law relating to the particular case, the complaint must be made within one year from the time when the matter of complaint arose. In contrast, indictable offences are not subject to a time limit for bringing prosecutions, even if they are dealt with summarily: *Criminal Code* (Qld) s 552F.

19 Explanatory Notes, Police Powers and Responsibilities and Other Legislation Amendment Bill 2018 (Qld) 24–25.

20 Explanatory Notes, Work Health and Safety Bill 2011 (Qld) 8.

Charging discretion

It is the decision of independent prosecution agencies — generally, the Queensland Police Service (QPS) or the Office of the Director of Public Prosecutions, Queensland (ODPP) — using their discretion and assessment of the evidence, as to whether a person is charged, and what charge or charges are used.

As the seriousness of the injury increases, so too does the pool of different *Criminal Code* charges from which police and prosecutors can select.

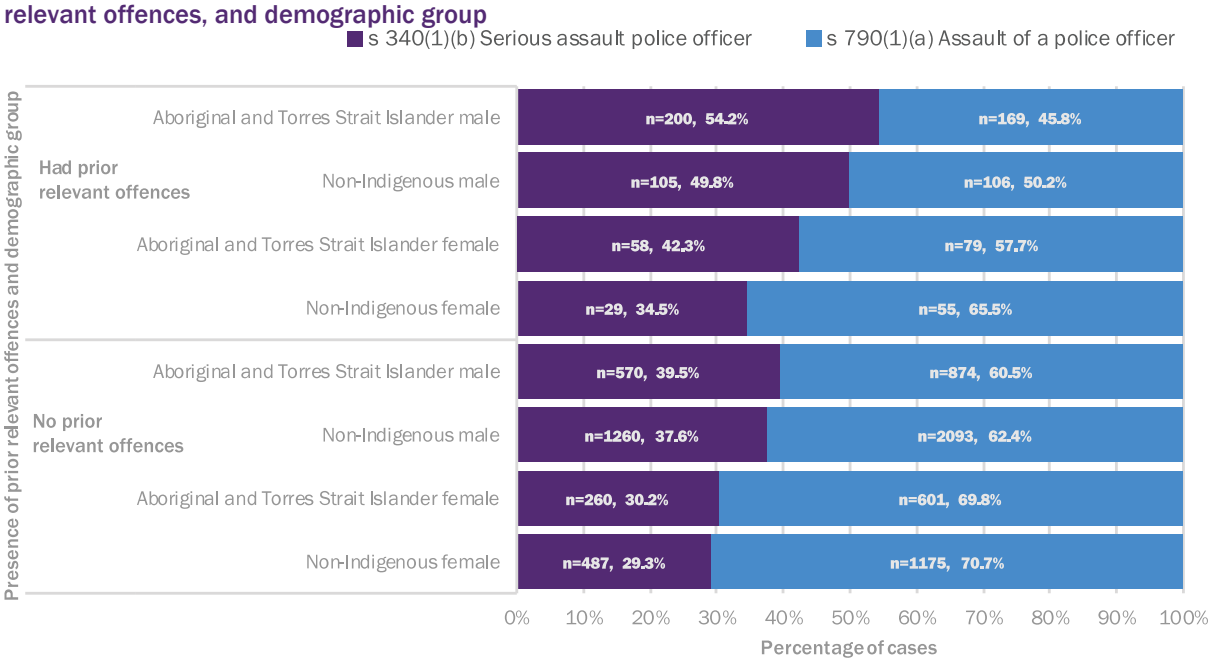
The ODPP publishes the *Director's Guidelines*, 'designed to assist the exercise of prosecutorial decisions to achieve consistency and efficiency, effectiveness and transparency'. They are issued to ODPP staff, others acting on the ODPP's behalf, and to police.[21]

If a summary charge (dealt with in the Magistrates Courts) is an option, the *Director's Guidelines* state it should be preferred when choosing what to charge or which court to sentence in, unless this would not provide adequate punishment taking into account the maximum penalty of the summary charge, the circumstances of the offence and the antecedents of the offender, or there is some relevant connection with an offence that must be dealt with in a higher court.[22] Further guidance on jurisdictional decisions mentions the gravity of the injury, whether it involved spitting, biting or a needle-stick injury and the risk of contracting an infectious disease is a factor, and the importance in every case of considering all circumstances, including the nature of the assault, its context, and the accused's criminal history.[23]

The Council tested the application of one of these factors — an accused's relevant criminal history[24] — to determine if this showed any differences in patterns as to whether a charge of assault police is more likely to be charged under section 790 of the PPRA rather than serious assault under section 340 of the Code. This analysis is very limited as it does not take into account the seriousness and circumstances of the offence, or the existence of other charges that must be dealt with in a higher court.

With these significant limitations in mind, the analysis tends to show that the existence of relevant prior convictions means a charge under section 340 of the *Criminal Code* is more likely to be preferred than a charge of assault or obstruct police under section 790 of the PPRA, which suggests the *Director's Guidelines* are being applied as intended to guide decision-making. The differences observed, in particular, between male and female offenders may be attributable to one of a number of factors, including the nature and seriousness of the conduct involved, whether any bodily injury was caused and, if so, the extent of this injury.

Figure 9-1: Proportion of sentenced cases involving the assault of a police officer, by the presence of prior relevant offences, and demographic group

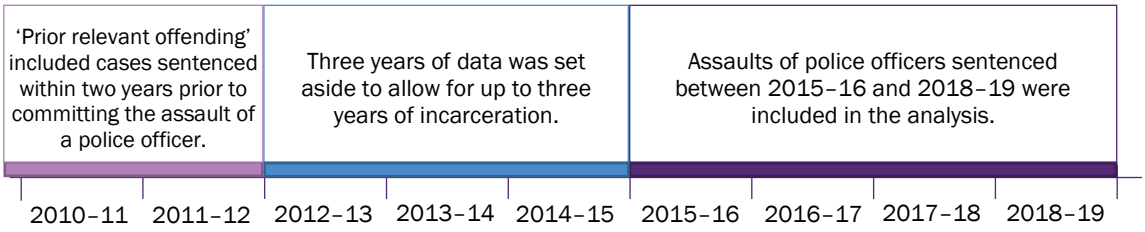


Data include adult and juvenile cases sentenced between 2015–16 and 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

21 Office of the Director of Public Prosecutions (Queensland), *Director's Guidelines* (30 June 2019) 1.

Offences sentenced from 2015–15 to 2018–19 provided the basis for this analysis. A similar methodology was applied to that discussed earlier in this report, albeit in reverse — see Figure 9-2 and compare with Table A4-5 in Appendix 4. A prior offence was operationalised as any sentenced offence where the offender was released from custody prior to (and within two years of) the date that the offender committed a new offence.

Figure 9-2: Prior relevant offences methodology



In cases where an Aboriginal or Torres Strait Islander male offender had prior relevant offences and assaulted a police officer, 54.2 per cent of cases resulted in a sentenced charge of serious assault, and 45.8 per cent in the lesser summary charge under the PPRA of assaulting a police officer. This was slightly higher than the proportion of non-Indigenous males. Of those who had committed relevant prior offences, 49.8 per cent were sentenced for a charge of serious assault, compared to 50.2 per cent who received a sentence for the lesser summary charge.

Female offenders with relevant prior convictions were less likely to be sentenced for serious assault (as opposed to the equivalent summary charge), compared to male offenders. Aboriginal and Torres Strait Islander women were more likely to be sentenced for a charge of serious assault (42.3%) compared to non-Indigenous females (34.5%).

Those offenders sentenced who did not have any relevant prior convictions were more likely to be sentenced for the summary charge of assaulting a police officer under the PPRA rather than for an offence of serious assault. Aboriginal and Torres Strait Islander male offenders were the most likely to be sentenced for a charge of serious assault in these circumstances (39.5%), closely followed by non-Indigenous males (37.6%). Non-Indigenous women were the least likely to be sentenced for serious assault (29.3%), followed by Aboriginal and Torres Strait Islander female offenders (30.2%).

Disease test orders

In the case of serious assault — involving the offender biting, spitting on or throwing at or applying a bodily fluid or faeces to a public officer — the arrest of an alleged offender for this offence triggers the ability for police to apply to a Magistrates or Childrens Court for a disease test order. If a bodily fluid may have been transmitted to a person during or soon after the commission of a 'chapter 18 offence', this order allows an officer to ask a doctor or prescribed nurse to take blood and urine samples from a relevant person under chapter 18 of the PPRA to determine if the person may have transmitted a relevant disease to the victim, or another person.[25]

The ability to seek this testing order is limited to only certain listed offences (referred to as 'chapter 18 offences'), which include a serious assault if: (i) blood, saliva or another bodily fluid has penetrated, or may have penetrated, the victim's skin' or (ii) blood, saliva or another bodily fluid has entered, or may have entered, a mucous membrane

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22 Ibid 15, 17–18 ('13. Summary Charges').

23 Ibid 17–18 ('13. Summary Charges').

24 A 'relevant' prior offence was defined to include any offence classified as an act intended to cause injury by the Australian and New Zealand Standard Offence Classification (ANZSOC). In addition, a selection of other violent offences were also included, these were robbery, going armed so as to cause fear, threatening violence, deprivation of liberty, assault with intent to steal, demanding property with menaces with intent to steal, affray, riot, and assaults of public officers and justice officials. Although some homicide offences involve direct acts of violence, they were not included in this analysis due to the small number of cases and because the circumstances of these offences are typically very different from those in which assaults on public officers are committed.

25 *Police Powers and Responsibilities Act 2000* (Qld) ss 538(1), (2). The next chapter in that Act, chapter 18A, deals with breath, saliva, blood and urine testing of persons suspected of committing particular assault offences (grievous bodily harm, wounding and serious assaults carrying the maximum 14-year penalty). It was introduced by the *Safe Night Out Legislation Amendment Act 2014* (Qld). It is not concerned with disease testing, but with proving an offender's intoxication. It applies testing powers under the *Transport Operations (Road Use Management) Act 1995* (Qld), s 80 for this purpose. It works in conjunction with chapter 35A of the *Criminal Code* (Qld) (proof) and *Penalties and Sentences Act 1992* (Qld), pt 5 div 2 sub-div 2 (circumstance of aggravation). It is a circumstance of aggravation for a prescribed offence that the offender committed the offence in a public place while the offender was adversely affected by an intoxicating substance. This carries a mandatory penalty of a community service order.

of the victim.[26] It does not apply to an assault that involves spitting saliva onto intact skin,[27] or to other less serious forms of assault, such as an assault under the PPRA. For this reason, an alleged offender may initially be charged with serious assault, even if the charges are later downgraded to an offence under the PPRA.

The Queensland Law Society commented on disease test order provisions in its submission:

> As to the availability of disease test orders as a matter of course for certain serious assault offences, it is accepted that this might inappropriately motivate police to charge with this offence in certain cases. Given the court has discretion in other cases on application to make such an order, and in our committee members' experience uniformly will do so absent cogent reasons not to (ie. there having been no risk of transmission whatsoever), standardising the basis on which such an order can be obtained for *all offences* is desirable — perhaps on application only.[28]

The purpose of chapter 18 'is to help ensure victims of particular sexual offences and serious assault offences, and certain other persons receive appropriate medical, physical and psychological treatment'.[29] In a submission to the Council, Queensland Advocacy Incorporated (QAI) suggested that 'police, correctional and emergency services personnel need more information about disease transmission' and pointed to a lack of medical evidence of disease transmission through spitting.[30] QAI was further concerned:

> These laws share the false premise that appropriate care and support to police or others can be meaningfully informed by the status of the alleged accused. The rationale for testing is to alleviate any distress police or other emergency service personnel may experience following an incident. Nevertheless, test results will likely be misleading and where a positive result is returned, only cause additional but baseless anxiety, given that there is no risk of transmission.[31]

In terms of weighing the objective statistical risk of disease transmission against a complainant's subjective concern, note Derrington J's comment in *R v Kalinin*:[32]

> The first [alleged sentencing error was that the offender] had subjected the complainants to a 'very high risk' whereas [the officer] had been advised by a doctor that the risk was low. This error, however, is not of great consequence because even after advice by the doctor, [the officer] has indicated that the possibilities of infection to himself and his family had a very serious impact on his life and his family relationships.[33]

Recent amendments inserting a new chapter 18B into the PPRA provide for a special COVID-19 test order to be made for a person who coughs, sneezes or spits on or at a police officer or another person in the suspected commission of a 'relevant offence' — defined as an offence against either section 317, section 335 or section 340 of the *Criminal Code*.[34] This is a temporary provision, allowing for a respiratory tract sample to be taken,[35] which expires on the day the COVID-19 emergency ends or 31 December 2020 (whichever is later).[36]

Table 9-1 (below) shows the number of cases in which a disease test order was issued by Queensland courts from 2005–06 to 2018–19. The data analysed did not identify the specific offence the disease test order applied to and so the data presented show all offences that were before the court for that offender on the day the disease test order was made.

There were 235 unique disease test orders issued by Queensland courts from 2005–06 to 2018–19. Over three-quarters of the cases where a disease test was ordered involved at least one section 340 serious assault offence (77.4%, n=182) and nearly half were for section 340 offences involving the aggravating circumstance of biting, spitting or other bodily fluids (48.1%, n=113).

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26 *Police Powers and Responsibilities Act 2000* (Qld) s 538(1)(g). The offences, other than serious assault, that constitute a chapter 18 offence are listed in s 538(1). They are all sexual offences and must be committed in the same context regarding blood, saliva or another bodily fluid.

27 Ibid s 538(3)(c).

28 Submission 30 (Queensland Law Society) 13 (emphasis added).

29 *Police Powers and Responsibilities Act 2000* (Qld) s 537.

30 Preliminary submission 35 (Queensland Advocacy Incorporated) 9–10.

31 Ibid 10.

32 [1998] QCA 261, 5.

33 Ibid (Derrington J). A more recent example of emotional harm regarding testing, without reference to statistical risks of transmission, is *R v Cooney* [2019] QCA 166 (which QAI noted).

34 *Police Powers and Responsibilities Act 2000* (Qld) ss 548I (When application for order may be made), s 548H (Definition of 'relevant offence').

35 Ibid s 548O.

36 Ibid s 548U.

Cases involving serious assault of a police officer made up the largest proportion of cases at 65.1 per cent (n=153) and the majority of those cases involved the aggravating circumstance of biting, spitting or other bodily fluids (n=100). Cases involving the offence of assault or obstruction of a police officer under the PPRA (s 790) was the next most common at 17.0 per cent (n=40).

A much smaller proportion of cases in which a disease test order was made involved a serious assault of a public officer offence (7.7%, n=18); however the vast majority of these involved the aggravating circumstance of biting, spitting or other bodily fluids (n=13).

Table 9-1: Disease test orders under Chapter 18 of the *Police Powers and Responsibilities Act 2000* (Qld)

Offence	Number of cases (n)	Proportion of all cases involving a disease test order (%)
Cases involving a disease test order	235	100.0
Cases involving s 340 offence	182	77.4
Cases involving s 340 offence with bodily fluid	113	48.1
Cases involving s 340(1)(a) intent assault police offence	8	3.4
Cases involving s 340(1)(b) assault police offence	153	65.1
Cases involving s 340(1)(b)(i) assault police offence with bodily fluid	100	42.6
Cases involving s 340(1)(c) assault performing duty	3	1.3
Cases involving s 340(1)(d) assault performed duty	4	1.7
Cases involving s 340(1)(g) assault person over 60	2	0.9
Cases involving s 340(2) assault corrections officer	2	0.9
Cases involving s 340(2AA) assault public officer offence	18	7.7
Cases involving s 340(2AA)(i) assault public officer offence with bodily fluid	13	5.5
Cases involving PPRA s 790 assault or obstruct police officer offence	40	17.0

Data include higher and lower courts, cases from 2005–06 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) The data applied disease test orders to all offences heard within the court event; therefore, where there was more than one offence heard in the court event, it was not possible to identify which offence the order applied to.
(2) As the analysis looked at all offences within the court event, the total number of cases is greater than the total number of unique disease test orders issued and percentages sum to more than 100%.

It was not possible for the Council to determine to what extent the ability to apply for a disease test order for serious assault may, or may not, influence the initial charging decision by police, and whether the charge of serious assault, which allowed for the order to be made, was the offence for which the offender was ultimately convicted.

A 'catch all' assault and obstruct offence under the *Summary Offences Act 2005* (Qld)

The Council identified a number of options in its Issues Paper to address issues with the current level of overlap in conduct captured under sections 340 and 199 of the *Criminal Code*, and in conduct that can be charged as summary offences under other legislation.

The Council identified that if section 199 were to be recast as a summary offence, this may provide an opportunity to consider the repeal of a number of summary offences scattered across the Queensland statute book that appear to serve the primary purpose, as for section 790 of the PPRA, of providing an alternative charge to what would otherwise need to proceed as a more serious charge under section 340 of the *Criminal Code*.

Alternatively, it is suggested that section 199 could be retained in its current form, either retaining the same or a higher penalty, and sections 340(1)(b) and 340(2AA) amended to limit the criminal conduct captured to assaults, rather than extending to acts of resistance or wilful obstruction. This is ultimately the option favoured by the Council.

This still leaves open the question, however, of whether it would be preferable to formulate a summary offence that might replace the multitude of offences introduced across the Queensland statute book that are ultimately aimed at the same form of criminal conduct — assault and obstruction of a public officer in the performance of their duties.

9.2.4 Stakeholder views

There was strong support for the retention of summary offences as an alternative to charging the more serious offence of serious assault under the *Criminal Code*.

In its submission to the Council, the QPS stated that the current legislative framework is appropriate.[37] In supporting the current approach, it referred to the broad range of conduct that can be involved and level of harm:

> Unfortunately, police officers may be unlawfully assaulted in a myriad of ways with differing degrees of severity. Having different offence provisions allow an offence to be preferred that carries and appropriate maximum penalty that addresses the alleged behaviour. For example, it may be considered appropriate to prefer the simple offence under s 790 of the PPRA in circumstances where a police officer was lightly slapped causing no injury. In contrast, if a police officer was seriously injured as a consequence of an assault, an indictable offence with a greater maximum penalty may be considered to be more appropriate.[38]

Sisters Inside also supported the current two-tiered approach as having the advantage of enabling people to be charged with a lesser offence, where appropriate:

> We contend that it is desirable to maintain this duality [of offences in both the *Criminal Code* and PPRA] so that people have the benefit of being charged with the lesser, summary offence contained in s 790 of the PPRA, when that is appropriate.[39]

However, it raised concerns that 'currently the requirements for establishing whether an action should be charged as a summary or indictable offence are not clear'.[40] This means that 'too much discretion is afforded to police. In our experience police misuse this discretionary power and always elect to charge a person with the indictable offence'.[41]

Similar concerns about the lack of a clear rationale for some assaults being charged under the *Criminal Code* rather than as a section 790 PPRA offence were expressed at a roundtable hosted by the Council, the focus of which was on understanding the drivers of Aboriginal and Torres Strait Islander overrepresentation and issues for people in circumstances of vulnerability. A view was expressed that charges of assault under the Code seemed to be more commonly preferred where the person charged was an Aboriginal or Torres Strait Islander person.

Sisters Inside was further concerned:

> There is a relatively low threshold for satisfying serious assault under the Criminal Code and there is no explicit delineation between acts occasioning bodily harm and those that do not. This means that the police and prosecuting authority lack clear guidelines for determining whether to charge the person with a summary or indictable offence.[42]

It suggested that 'the legislation requires clarification to ensure that less serious assaults and obstructions are not punished disproportionately'.[43]

The broad nature of section 340 was also criticised by Sisters Inside on the basis it:

> captures low-level behaviour from unwell, vulnerable people and criminalises them instead of diverting them to mental health services and rehabilitation centres. Legislation and police guidelines should be drafted to recognise that actions on the lower end of the spectrum that do not cause bodily harm should rightly remain summary offences.[44]

It raised similar issues in relation to the decision to charge an offender for assaulting a corrective services officer under section 124(b) of the CSA or section 340 of the *Criminal Code*.[45]

Sisters Inside contrasted the Queensland approach to structuring the serious assault offence with the method in NSW, the Northern Territory, Victoria, the ACT, Tasmania and South Australia, where the legislation explicitly differentiates penalties based on whether bodily harm was caused:

> For example, the New South Wales legislation specifies that where no actual bodily harm is caused to the officer (or specified person) the maximum penalty is 5 years, whereas assaults that cause bodily harm attract a maximum penalty of 7 years and assaults amounting to grievous bodily harm have a maximum penalty of 12 years.
>
> In Victoria the legislation provides that assaulting, threatening, resisting or obstructing a police officer carries a maximum penalty of 5 years.... In Victoria, if a person commits a more serious assault they are charged under the

37 Submission 25 (Queensland Police Service) 2.

38 Ibid.

39 Preliminary submission 21 (Sisters Inside) 4.

40 Ibid.

41 Submission 17 (Sisters Inside) 3.

42 Preliminary submission 21 (Sisters Inside) 5.

43 Ibid 4–5 and Submission 17 (Sisters Inside) 6.

44 Submission 17 (Sisters Inside) 4.

45 Preliminary submission 21 (Sisters Inside) 6.

> serious injury and gross violence provisions elsewhere in the Act, which apply equally to civilians and police or public officers. We submit that the Queensland Acts should incorporate greater specificity, as in other Australian jurisdictions, in order to reduce the occurrence of unwarranted criminalisation.[46]

QAI referred to the graduation of penalties in NSW under section 60 of the *Crimes Act 1900* (NSW), and in the Northern Territory under section 188A of the *Criminal Code* (NT), noting that in the ACT, charges are brought under general offence provisions and the fact that the complainant is a police officer is taken into account as an aggravating feature.[47]

Legal Aid Queensland (LAQ) stated that 'the various offences set out in the *Criminal Code* and PPRA adequately cover a multitude of circumstances'[48] and argued that 'there is no evidence to support a change' in penalties for relevant summary offences:[49]

> There is a benefit in retaining multiple offences that can be charged both under the Criminal Code and summarily. The reason for this is that it allows prosecution discretion to proceed with a charge that best fits the factual circumstances of each case.[50]

Similarly, the Aboriginal and Torres Strait Islander Legal Service (ATSILS) supported the two-tiered approach:

> It is appropriate that there are a range of offences which reflect the range of circumstances in which these incidents occur. There is a very large spectrum of fact situations which involve serious assault charges but an even greater spectrum of fact situations in objectively less serious circumstances where it is not in the interests of justice to bring the more serious charges.
>
> That great variety of circumstances in which serious assault charges can arise is both explicitly and implicitly recognised in *The Director's Guidelines*.[51]

The Bar Association of Queensland (BAQ) identified two broad categories of benefit in retaining 'multiple offences targeting the same or similar behaviour':[52]

> Firstly, it allows flexibility in prosecutorial authorities in charging an offence that most adequately reflects the criminality in a particular case…
>
> Secondly, offending, and particularly assaults, occur in many different circumstances. As such, the subtle differences in elements may target or capture particular acts not as suitably reflected through a different offence. That is so in concepts of "obstruct" as opposed to "assault".[53]

BAQ was 'not aware of any amendments necessary to the available summary offences. For each summary offence with a lower maximum penalty there is an indictable alternative that can be, and often is, charged when the offence is factually more serious'.[54]

The Queensland Law Society (QLS) stated that generally, 'a restrictive approach to substantive criminal provisions is preferable. The prospect of multiple offences in respect of similar conduct can cause confusion and lead to overcharging'.[55] However, the QLS noted that section 340 is arguably 'artificial' in that its purpose, derived from victim status and not assault outcome, can cause 'peculiar outcomes' such as 'a higher sentence for touching a public officer without consent where no injury is caused than if an ordinary citizen is more seriously harmed'.[56] The QLS stated that if section 340 is retained:

> there is benefit in having different levels of offence to reflect the very broad range of circumstances the offences cover and the fact that the vast majority of cases involve minor assaults finalised at the Magistrates Court level.[57]

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46 Ibid.

47 Preliminary submission 35 (Queensland Advocacy Incorporated) 10.

48 Submission 29 (Legal Aid Queensland) 2.

49 Ibid 7.

50 Ibid 6.

51 Submission 22 (ATSILS) 4

52 Submission 27 (Bar Association of Queensland) 7.

53 Ibid.

54 Ibid 10.

55 Submission 30 (Queensland Law Society) 11.

56 Ibid 11.

57 Ibid 11.

Its position in respect of current penalties applicable to relevant summary offences was that 'the penalties that apply for such matters when charged summarily are appropriate generally and provide adequate scope for sentencing in such cases'.[58]

QCS supported the retention of all offences, with an apparent preference for section 340 prosecutions:

> 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.[59]

The Department of Environment and Science (DES) noted a lack of consistency across the Acts administered by DES as to whether the definition of 'obstruct' included acts of 'assault' and supported consistency across Acts administered by the department to include acts of 'assault'.[60] It further viewed provisions that create an offence of obstruction only in circumstances where an officer is acting as a statutory power as too limited, and preferred a formulation that would include obstruct/assault in circumstances where an authorised officer is executing powers or duties to ensure assaults against DES officers are caught by the relevant offence provisions.[61]

Another concern of the DES was the lack of consistency in maximum penalties across Acts administered by the department 'ranging from a modest fine to imprisonment' with the department being of the view that 'the maximum penalty for these offences should be broadly consistent across the existing obstruct/assault provisions', and that maximum penalties should be increased.[62] It specifically supported the availability of imprisonment to 'increase the deterrence value of these offences'.[63]

9.2.5 Council's view

As discussed above, existing legislative drafting guidelines in Queensland provide: 'if the Criminal Code provides for an offence, it is undesirable that another Act should erode its nature as a comprehensive code by providing for the same or essentially the same offence'.[64]

In practice, there are a number of offences that have been introduced over time that essentially replicate offences in the *Criminal Code*, while existing as summary offences — meaning they can only be dealt with by a Magistrates Court.

A number of submissions were made in support of retaining these summary offences, in addition to those that exist under the *Criminal Code,* to allow the lower seriousness of these offences to be reflected in the charges brought.

The Council agrees that it is important to retain separate levels of offences in this case, even if these offences ostensibly capture the same forms of criminal behaviour, to ensure that people who commit these offences are not exposed to the possibility of a more severe penalty being imposed for actions that are relatively minor — for example, in the case of an assault, a light push where no injury has been caused.

Retaining these offence distinctions not only means that a different penalty framework is applied, but also ensures that criminal histories present a more accurate reflection of the seriousness of charges of which an offender has been convicted and sentenced than would be the case should all assaults be dealt with under section 340 of the *Criminal Code*, and all acts of obstruction be charged under section 199 of the Code.

However, taking into account the proliferation of summary assault and obstruct offences in Queensland over time, adding to the general complexity of the criminal law, the Council's preference is for a new summary offence to be created under the *Summary Offences Act 2005* (Qld) to replace the existing offences of assault and obstruct, which it recommends should be repealed over time. The offence should be drafted in such a way as to allow for separate analysis of outcomes for assaults of a public officer and acts of obstruction, allowing these different forms of conduct to be separately identified on an offender's criminal history.

The Council recommends this new summary offence should carry a maximum penalty of 6 months' imprisonment or 100 penalty units. The maximum fine recommended is consistent with a number of existing assault and obstruct provisions, and also the maximum fine that can be imposed by law by a Magistrates Court for an indictable offence

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58 Ibid 15

59 Submission 21 (Queensland Corrective Services) 15.

60 Submission 26 (Department of Environment and Science) 2–3.

61 Ibid.

62 Ibid 3–4.

63 Ibid 4 [33].

64 Department of the Premier and Cabinet, *Queensland Legislation Handbook* (6th ed, 2019) 10 [2.12.4].

dealt with summarily. By providing for imprisonment as an option to a court in sentencing, it should more than sufficiently provide for these less serious forms of assault and obstruct offences, and there should be few provisions that need to be retained on the basis that a higher maximum penalty is warranted.

The requirement to review and consider repealing existing provisions over time should not apply to national laws or national scheme legislation, given that the objective in that case is to achieve national consistency rather than consistency with Queensland laws and drafting practices.

Retention of the existing discrete assault and obstruct offences for police and corrective services officers is supported as another exception, with no change to the current penalties that apply. This recommendation is made on the basis that these are the most frequently charged forms of assault and obstruct offences, and that the penalties set take into account the specific contexts in which this offending occurs. Any new offence of assault or obstruct established under the *Summary Offences Act* should therefore expressly exclude police and corrective services officers from its scope.

To address identified stakeholder concerns regarding when the charging of an assault under section 340 of the *Criminal Code* is preferred over an alternative summary charge, the Council recommends that the QPS should develop internal guidelines to supplement the existing ODPP's *Director's Guidelines*, which advise charging officers about what factors might influence the charging discretion — such as the level of injury caused.

Recommendation 9–1: Section 790 of the PPRA and sections 124(b) and 127 of the CSA

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

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

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

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

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

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

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

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

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

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

9.3 Failure to comply with a public health direction under the *Public Health Act 2005*

In addition to criminal laws, governments have responded to the COVID-19 pandemic by widening powers under health legislation. Quasi-criminal health directives (carrying fines for breaches and, more recently, imprisonment) were created.

In Queensland, a new Part 7A of chapter 8 of the *Public Health Act 2005* (Qld) ('Particular powers for COVID-19 emergency, applicable during that period')[65] gives the Chief Health Officer power[66] to make public health directions restricting movement and contact, requiring people to stay at or in a stated place or not to enter or stay at or in a stated place, and to make any other direction the Chief Health Officer considers necessary to protect public health.

The legislation also extends powers to emergency officers ('general' and 'medical')[67] to give a person a written direction if the emergency officer reasonably believes it is necessary to assist in containing, or to respond to, the spread of COVID-19 within the community.[68]

It is an offence to fail to comply with a public health direction[69] or direction from an emergency officer,[70] unless the person has a reasonable excuse.

There is a particular public health direction relevant to the Council's review. The Chief Health Officer issued the *Protecting Public Officials and Workers (Spitting, Coughing and Sneezing) Direction* on 27 April 2020. It was effective from that date and has been updated since.[71] It prohibits a person from intentionally spitting at, coughing or sneezing on public officials and 'workers', or threatening to do so, in a way that would reasonably be likely to cause apprehension or fear of being exposed to COVID-19.

The class of person it protects is a 'public official' and 'another worker while the worker is … at the worker's place of work, or … travelling to or from that place of work'. It recognises that a worker's place of work may be their residential premises, by excluding 'any part of the premises used solely for residential purposes'.

The relevant definitions are extensive, can overlap, include some Commonwealth positions and are arguably redundant in the sense that at its base, 'health worker' and 'public official' are widely defined and 'worker includes, without limitation', a retail worker, a person who works at an airport, for an electricity, gas, water or other utility company or in the transport industry or a transport-related industry, and a member of the Australian Defence Force. Further examples of public officials and workers include:

> hospital staff, bus drivers, train drivers, ferry deckhands, taxi drivers, ride share drivers, food delivery workers, security guards, electricity, gas and water meter readers and postal delivery staff (including persons working for an entity under a contract, directly or indirectly, on behalf of the Queensland Government or the Commonwealth Government).

The maximum fine for breaching both public health and emergency officer directions is 100 penalty units ($13,345).

An amendment introducing a maximum penalty of 6 months' imprisonment for breaching public health directions issued under section 362B commenced on 21 July 2020 (the fine remains in place).[72] Imprisonment would only be open if court proceedings for a breach were instituted, as opposed to the issuing of a penalty infringement notice. Health directions, including the *Protecting Public Officials and Workers (Spitting, Coughing and Sneezing) Direction*, have been updated to reflect the term of imprisonment.

The infringement notice amount for breaching a health direction varies depending on the nature of the direction. It is 30 penalty units ($4,003) for an individual or 50 penalty units ($6,672) for a corporation in respect of failure to comply with a public health direction restricting entry into Queensland from another state by:

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65 Inserted by the *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* (Qld).

66 *Public Health Act 2005* (Qld) s 362B.

67 See *Public Health Act 2005* (Qld) ss 333, 335.

68 Ibid s 362G.

69 Ibid 362D.

70 Ibid s 362J.

71 The *Protecting Public Officials and Workers (Spitting, Coughing and Sneezing) Direction (No. 3)*, issued under the Chief Health Officer's powers pursuant to the *Public Health Act 2005* (Qld) s 362B. <https://www.health.qld.gov.au/system-governance/legislation/cho-public-health-directions-under-expanded-public-health-act-powers/protecting-public-officials-and-workers-direction>.

72 Section 362D of *Public Health Act 2005* (Qld), as amended by the *Corrective Services and Other Legislation Amendment Act 2020* (Qld) s 55X.

- entering Queensland in contravention of the direction;
- giving information about a matter that is not true and correct in contravention of the direction; and
- failing to stay at or in a stated place in contravention of the direction.[73]

For all other breaches of health direction (such as that regarding spitting and coughing) and all breaches of emergency officer directions, the infringement notice amount is 10 penalty units for individuals ($1,334) or 50 penalty units ($6,672) for corporations.[74]

A person who is given an infringement notice in Queensland can elect to pay the fine in full to the administering authority or request that the matter be determined by a Magistrates Court.[75]

The QPS advised the Council[76] that during the period 27 April to 31 July 2020, six penalty infringement notices were issued by the QPS relating to the *Protecting Public Officials and Workers (Spitting, Coughing and Sneezing) Direction* (there are many other directions not relevant to the Council's review).

Four notices to appear in court were issued for alleged breaches of this same direction during the same period. A further notice to appear was issued for an alleged offence against section 143(1) of the *Public Health Act 2005* (Qld) (Person must not recklessly put someone else at risk of contracting a controlled notifiable condition).[77]

The health directions do not displace the criminal law and the police charging discretion is not changed. Therefore, criminal offences, which can attract the entire range of sentencing options, could be preferred to prosecuting a breach of health directions. The QPS *Operational Procedures Manual* notes:

> Arresting officers should select an offence which accurately reflects the nature and extent of the criminal behaviour under investigation and which is supported by the admissible evidence. Where the circumstances of a particular case indicate two or more alternative charges may be made out, the offence carrying the greater penalty should be preferred, subject to the Director of Public Prosecutions (State) Guidelines.[78]

The maximum fine of 100 penalty units is the same as the highest fine a Magistrates Court can impose for any indictable offence dealt with summarily.[79] The maximum for the District Court is 4,175 penalty units for an individual, or $557,153.[80] A court can generally issue a fine in addition to other penalties.

The statutory maximum fine for a charge of assault or obstruct police under the PPRA varies from 40 penalty units ($5,338) or 6 months' imprisonment to 60 penalty units ($8,007) or 12 months' imprisonment (within or in vicinity of licensed premises). An offence of obstruction can be dealt with via infringement notice (3 penalty units/$400 or 6 penalty units/$800 if within or in vicinity of licensed premises), but an assault offence cannot.[81]

From 2009–10 to 2018–19, for serious assault of a police officer involving bodily fluids (s 340(1)(b)(i)), the average fine amount was $1,320 (n=35). Similarly, for assaults of public officers involving bodily fluids (s 340(2AA)(i)), the average fine amount was $1,125 (n=6).[82] However, as discussed in Chapter 7, the much more usual penalty applied to these types of offences is a custodial penalty.

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73 *State Penalties Enforcement Regulation 2014 (Qld)* sch 1.

74 Ibid.

75 *State Penalties Enforcement Act 1999* (Qld) s 15.

76 Emails from Strategic Policy Branch, Queensland Police Service to Manager, Research and Statistics, Queensland Sentencing Advisory Council, 17 June 2020 and 12 August 2020.

77 Maximum penalty: 200 penalty units ($26,690) or 18 months' imprisonment. Subsection 2 of that section is an offence of recklessly transmitting a controlled notifiable condition to someone else — Maximum penalty: 400 penalty units ($53,380) or 2 years' imprisonment. A note to this section acknowledges that 'the Criminal Code, section 317 provides for the crime of intentionally transmitting a serious disease to a person'. COVID-19 is a controlled notifiable condition — see *Public Health Act 2005* (Qld) s 63 and *Public Health Regulation 2018* (Qld) sch 1.

78 Queensland Police Service, 'Chapter 3 — Prosecution Process', *Operational Procedures Manual* (31 July 2020, Issue 77, Public Edition) 13 [3.4.2] 'The decision to institute proceedings'.

79 *Criminal Code* s 552H. Otherwise, if an Act creates an offence and does not provide a sentence, the maximum fine that a Magistrates Court may impose for a single offence is 165 penalty units ($22,019) for an individual: *Penalties and Sentences Act 1992* (Qld) s 46(1).

80 *Penalties and Sentences Act 1992* (Qld) ss 5A and 46(1)(b). At the time of this report, the prescribed dollar value of a penalty unit was $133.45: *Penalties and Sentences Regulation 2015* (Qld) s 3. The same provisions place no limit on the amount of fines the Supreme Court can impose. The Supreme Court would deal with assault-type offences only in unusual circumstances.

81 *State Penalties Enforcement Regulation 2014 (Qld)* sch 1.

82 Note: small sample size.

Chapter 10 Reforms to the sentencing framework

10.1 Introduction

The findings and recommendations in this chapter respond to the request under the Terms of Reference for the Council to review the current penalty and sentencing framework 'to ensure it provides an appropriate response to this form of offending' and to provide advice on options for reform.

The most significant of the reforms recommended is to amend the statutory principles that guide the sentencing of adult offenders in Queensland under section 9 of the *Penalties and Sentences Act 1992* (Qld) (PSA). The objective of these reforms is to ensure that where an assault is perpetrated on an emergency worker or any other worker who is at increased risk of assault due to the nature of their work, courts have specific regard to this in sentencing. The reforms proposed extend beyond public officers, to the number of workers who also perform essential roles in the community but who may be at increased risk of assault — such as bus drivers and other public transport workers, taxi drivers, rideshare drivers, healthcare workers not otherwise captured within the scope of the new section 340 of the *Criminal Code* (Qld), service station attendants, and private security officers. This approach will have the flexibility to respond to changes in local conditions. For example, with the emergence of the COVID-19 pandemic, it would be broad enough to recognise pharmacists, supermarket workers and other retail staff. Importantly, the new aggravating factor will apply to all offences of violence rather than being limited in its application to particular forms of assault.

The chapter also presents the Council's findings on specific matters raised not addressed in earlier chapters of this report.

In responding to the issue of appropriate sentencing options for this form of offending, it also revisits a number of recommendations made by the Council in its July 2019 report on community-based sentencing orders, imprisonment and parole options.

10.2 New aggravating factor under section 9 of the PSA

Questions 9(a) and (b) of the Council's Issues Paper asked whether assaults against public officers should continue to be captured within a specific substantive offence provision (serious assault) or, alternatively, whether consideration should be given to creating:

(a) a statutory circumstance of aggravation (meaning a higher maximum penalty would apply); or

(b) an aggravating factor in section 9 of the PSA to recognise the fact the victim was a public officer or worker as an aggravating sentencing factor (signalling the more serious nature of the offence, without impacting the maximum penalty).

In Chapter 8, section 8.5.2, the Council discussed the option of introducing statutory circumstances of aggravation, which it does not support, and has recommended against. The following discussion relates to the alternative approach of introducing an aggravating factor for the purposes of sentencing, which is preferred by the Council for the reasons set out below.

The significance of an aggravating factor for sentencing purposes is:

> to bring into existence a factor in aggravation of penalty in the common law sense. It is a factor that a sentencing judge *may* take into account in imposing a more severe sentence than might be imposed in the absence of that factor.[1]

Aggravated sentencing factors can provide even more flexibility than statutory circumstances of aggravation (question 9(b)). These, too, can apply to any existing offence by virtue of a factual link (i.e. victim occupation). There is no requirement for the aggravating factors to be specifically charged.

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1 *R v O'Sullivan; Ex parte A-G (Qld)* [2019] QCA 300, 26 [91] (Sofronoff P, Gotterson JA and Lyons SJA) (emphasis in original).

10.2.1 Queensland's current statutory sentencing factors — section 9 of the PSA

In sentencing for Queensland offences, imprisonment must generally only be imposed as a last resort and a sentence allowing an offender to stay in the community is preferable (section 9(2)(a) of the PSA). However, these two principles do not apply in certain factual circumstances, including sections 9(2A) and (3), which apply for sentencing of any offence:[2]

> (2A) …
>
> (a) that involved the use of, or counselling or procuring the use of, or attempting or conspiring to use, violence against another person; or
>
> (b) that resulted in physical harm to another person.
>
> (3) In sentencing an offender to whom subsection (2A) applies, the court must have regard primarily to the following—
>
> (a) the risk of physical harm to any members of the community if a custodial sentence were not imposed;
>
> (b) the need to protect any members of the community from that risk;
>
> (c) the personal circumstances of any victim of the offence;
>
> (d) the circumstances of the offence, including the death of or any injury to a member of the public or any loss or damage resulting from the offence;
>
> (e) the nature or extent of the violence used, or intended to be used, in the commission of the offence;
>
> (f) any disregard by the offender for the interests of public safety;
>
> (g) the past record of the offender, including any attempted rehabilitation and the number of previous offences of any type committed;
>
> (h) the antecedents, age and character of the offender;
>
> (i) any remorse or lack of remorse of the offender;
>
> (j) any medical, psychiatric, prison or other relevant report in relation to the offender;
>
> (k) anything else about the safety of members of the community that the sentencing court considers relevant.

There is a similar model employed for any offence of a sexual nature committed in relation to a child under 16 years (ss 9(4) and (6)) and child exploitation material offences (ss (6A) and (7)). A difference, however, is that sexual offences against children must result in an actual term of imprisonment, unless there are exceptional circumstances (s 9(4)(b)).

Section 9 also houses provisions that require specific factual circumstances to be treated as aggravating factors on sentence, in relation to:

- manslaughter of children:

  > (9B) In determining the appropriate sentence for an offender convicted of the manslaughter of a child under 12 years, the court must treat the child's defencelessness and vulnerability, having regard to the child's age, as an aggravating factor.

- and domestic violence offences (section 9(10A) is discussed in detail below):

  > (10A) In determining the appropriate sentence for an offender convicted of a domestic violence offence, the court must treat the fact that it is a domestic violence offence as an aggravating factor, unless the court considers it is not reasonable because of the exceptional circumstances of the case.
  >
  > Examples of exceptional circumstances—
  >
  > 1. the victim of the offence has previously committed an act of serious domestic violence, or several acts of domestic violence, against the offender
  >
  > 2. the offence is manslaughter under the Criminal Code, section 304B

A 'domestic violence offence' is defined by the existing definitions in the *Criminal Code* and the *Domestic and Family Violence Protection Act 2012* (Qld).

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2 *Penalties and Sentences Act 1992* (Qld) ss 9(2)(a) and 9(2A). See also *R v McLean* (2011) 212 A Crim R 199, 203 [15] (White JA, Fraser JA and Philippides J agreeing). See pages 35–7 of the Council's Issues Paper.

As discussed in Chapter 8, section 8.5.2, reviews of the *Criminal Code* in the 1990s revealed disparate views regarding whether specific victim cohorts should be identified in offence provisions. These identify cogent arguments against adding further aggravating factors and have ultimately influenced the Council in determining its final preference for the approach of a broader aggravating sentencing factor (Recommendation 10–1) over statutory circumstances of aggravation in offence provisions (Recommendation 2).

10.2.2 Other jurisdictions

In providing its advice, the Council has been asked to examine relevant offence, penalty and sentencing provisions in place in other Australian and international jurisdiction to address assaults on public officers.

As noted below, there are examples in other jurisdictions of the use of either or both of the methods in questions 9(a) and (b). They show different approaches regarding how a complainant's occupational status is recognised and how an aggravating factor is triggered. This could be because the worker:

- is working (meaning that an offender knows of the relevant role and its exercise);
- is a worker (this could apply when they hold that role but are not working); or
- has done something as part of that role (i.e. the offending could be an act of retribution).

England and Wales

England and Wales have introduced examples of both a 'statutory aggravating factor' tied to specific offences and a much wider 'general aggravating factor' that applies to offences on those working in the public sector or providing a service to the public.

The general aggravating factor that applies for sentencing purposes is established under sentencing guidelines issued by the Sentencing Council for England and Wales. Definitive sentencing guidelines issued by the Sentencing Council[3] must be followed by courts unless it would be contrary to the interests of justice to do so.[4]

The guideline for assault occasioning bodily harm (AOBH) treats the fact that an offence was committed against those working in the public sector or providing a service to the public as aggravated on the basis of:

- the fact that people in public facing roles are more exposed to the possibility of harm and consequently more vulnerable and/or
- the fact that someone is working in the public interest merits the additional protection of the courts.[5]

This aggravating factor applies whether the victim is a public or private sector employee or is acting in a voluntary capacity, although the guideline notes that 'care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence,' and further cautions against double counting in circumstances where the statutory aggravating factor relating to emergency workers applies.[6]

The statutory aggravating factor to which the guideline refers was introduced under the *Assaults on Emergency Workers (Offences) Act 2018* (UK). It applies in circumstances where the 'offence was committed against an emergency worker acting in the exercise of functions as such a worker'.[7] Courts must treat that fact 'as an aggravating factor (that is to say, a factor that increases the seriousness of the offence)' and 'state [this] in open court'.[8]

The aggravating factor applies to a list of 10 offences (or related ancillary offences). These are threats to kill, wounding with intent to cause grievous bodily harm (GBH), malicious wounding, administering poison etc., causing bodily injury by gunpowder etc., using explosive substances etc. with intent to cause GBH, AOBH, sexual assault, manslaughter, and kidnapping.[9]

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3 Issued under the *Coroners and Justice Act 2009* (UK) s 120.

4 Ibid s 125(1). See also See *Crime and Disorder Act 1998* (UK) s 29.

5 Sentencing Council for England and Wales, *Assault occasioning actual bodily harm / Racially or religiously aggravated ABH* (Crown and Magistrates Court versions) <https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/assault-occasioning-actual-bodily-harm-racially-religiously-aggravated-abh/>. This is listed under 'Other aggravating factors'.

6 Ibid.

7 *Assaults on Emergency Workers (Offences) Act 2018* (UK) s 2(1)(b).

8 Ibid ss 2(2)(a) and (b).

9 Ibid ss 2(3)(a)–(e).

The legislation explicitly recognises that it does not oust a court's discretion to apply the aggravating factor to offences other than the 10 specified within it (its application and the associated procedural points are mandatory for those 10).[10]

Examples are given of when 'an offence is to be taken as committed against a person acting in the exercise of functions as an emergency worker'. These include:

> circumstances where the offence takes place at a time when the person is not at work but is carrying out functions which, if done in work time, would have been in the exercise of functions as an emergency worker.[11]

'Emergency worker' is defined to mean a constable (or analogue), National Crime Agency officer, prison officer (or analogue in a custodial institution),[12] prisoner custody (as legislatively defined) or custody officer (as legislatively defined) exercising escort functions (as legislatively defined) and persons 'employed for the purposes of providing, or engaged to provide' services in:

- fire/fire and rescue;
- search and/or rescue;
- National Health Service (NHS) health services (as legislatively defined); and
- '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'.[13]

It covers volunteers: it is 'immaterial … whether the employment or engagement is paid or unpaid',[14] and there is a requirement to state in open court that the offence is so aggravated.[15]

During debate of the amendment Bill introducing these reforms, there was some concern that such reforms were unnecessary, given the existence of the broader aggravating factor that applied under the UK Sentencing Guidelines.[16] In the Second Reading speech, the sponsoring Member of Parliament submitted: 'Part of the fury that 999 [emergency services] workers feel is caused by the fact that that element is never stated in open court, but now it will be'.[17] By placing this aggravating factor on a statutory footing, it was argued, and requiring the court to state this as an aggravating element of the offence, it will give victims of these offences 'a sense that justice is being done'.[18]

In addition to these two different forms of aggravating factors (one that exists under sentencing guidelines, and the other with a statutory basis), the Act introducing these changes created a new form of offence of common assault or battery where committed against an emergency worker in the exercise of their functions.[19] This offence is discussed in section 8.4.9 of Chapter 8.

New South Wales

The NSW model involves specific offences targeting assaults against specific occupations (such as assault police, other law enforcement officers, school students/staff members) in its *Crimes Act 1900* (NSW),[20] together with a very broad set of general circumstances of aggravation in its *Crimes (Sentencing Procedure) Act 1999* (NSW) section 21A(2). That section states that 'the aggravating factors to be taken into account in determining the appropriate sentence for an offence are as follows' and includes two tiers regarding employment:

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10 Ibid s 2(6).

11 Ibid s 2(4).

12 'Custodial institution' is defined as a prison; young offender institution, secure training centre, secure college or remand centre; removal centre, a short-term holding facility or pre-departure accommodation (as defined), or services custody premises (as defined).

13 Ibid s 3(1).

14 Ibid s 3(2).

15 Ibid s 2(2)(b).

16 United Kingdom, *Parliamentary Debates*, House of Commons, 20 October 2017, 1113 (Chris Bryant, Member for Rhondda) referring to comments made by others.

17 United Kingdom, *Parliamentary Debates*, House of Commons, 20 October 2017, 1113 (Chris Bryant, Member for Rhondda). This was a Private Members' Bill sponsored by Chris Bryant and Baroness Donaghy, Labour members of Parliament.

18 Ibid.

19 *Assaults on Emergency Workers (Offences) Act 2018* (UK) s 1.

20 See *Crimes Act 1900* (NSW) ss 60, 60A, 60E.

(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

...

(l) the victim was vulnerable, for example, because the victim was very young or very old or had a disability, because of the geographical isolation of the victim or because of 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).

The section expressly provides: 'The fact that any such 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'.[21]

The aggravating factor cannot be applied to the aforementioned specific offences that apply to police, other law enforcement officers and school staff because 'the court is not to have additional regard to any such aggravating factor in sentencing if it is an element of the offence' (s 21A(2)).

The *Crimes Act* offence regarding police officers refers to assaults of an officer 'while in the execution of the officer's duty':

> An action is taken to be carried out in relation to a police officer while in the execution of the officer's duty, even though the police officer is not on duty at the time, if it is carried out ... as a consequence of, or in retaliation for, actions undertaken by that police officer in the execution of the officer's duty, or ... because the officer is a police officer.[22]

A specific provision exists regarding assaults of school students or members of staff of a school while attending a school.[23] Such people are taken to be attending a school while on school premises for the purposes of school work or duty (even if not engaged in it at the time) or before-school or after-school child care; or while entering or leaving school premises in connection with school work or duty or before-school or after-school care.[24]

These offences are discussed in section 8.4.3 of Chapter 8.

New Zealand

New Zealand's *Sentencing Act 2002* (NZ) has an aggravating and mitigating factors provision,[25] which states sentencing courts 'must take into account the following aggravating factors to the extent that they are applicable in the case'. Included are facts that the victim was:

- a constable or prison officer acting in the course of his or her duty;
- an emergency health or fire services provider acting in the course of his or her duty at the scene of an emergency — this means someone with 'a legal duty (under any enactment, employment contract, other binding agreement or arrangement, or other source) to, at the scene of an emergency, provide services that are either or both (a) ambulance services, first aid, or medical or paramedical care; (b) services provided by or on behalf of Fire and Emergency New Zealand to save life, prevent serious injury, or avoid damage to property); and[26]
- particularly vulnerable because of his or her age or health or because of any other factor known to the offender.

The provision makes plain that no listed aggravating or mitigating factor 'prevents the court from taking into account any other aggravating or mitigating factor that the court thinks fit' or 'implies that a factor referred to in those subsections must be given greater weight than any other factor that the court might take into account'.[27]

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21 *Crimes (Sentencing Procedure) Act 1999* s 21A(5).

22 *Crimes Act 1900* (NSW) s 60. Similar language is used in s 60A regarding law enforcement officers.

23 Ibid s 60E.

24 Ibid s 60D.

25 *Sentencing Act 2002* (NZ) s 9.

26 Ibid s 9(4A).

27 Ibid s 9(4).

Canada

Canada's *Criminal Code* recognises victim occupation and directs sentencing courts:

- For five offences[28] (largely against the person), courts 'shall consider as an aggravating circumstance the fact that the victim of the offence was, at the time of the commission of the offence, a public transit operator engaged in the performance of his or her duty'.[29]
- For offences of assaulting a peace officer, assaulting peace officer with weapon or causing bodily harm, aggravated assault of peace officer or intimidation of a justice system participant,[30] courts 'shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence'.[31]

10.2.3 The current approach in Queensland

Sentencing courts have always taken relevant common law circumstances of aggravation into account, unless legislation displaces their ability to do so. Given the broad features of section 9(2) (which still applies to any sentence)[32] and judicial discretion, the fact that a complainant was doing his or her job when assaulted will, if relevant, be considered.

The Bar Association of Queensland (BAQ) in its submission to the Council noted that:

> the fact that the victim of an assault was assaulted in the course of their employment and any consequences of that are, at present, circumstances that are routinely taken into account in the determination of penalty by the courts. The circumstances of such assaults are considered as aggravating features of the offender's conduct.[33]

Another integral factor is 'the actual harm caused … [being] an important factor in the sentencing process and of course the relative lack of harm is a factor that must be reflected in the sentence'.[34] As discussed in Chapter 6, section 6.5.1, there are numerous examples of Court of Appeal judgments noting the relevance of the extent of injuries caused by assaults — both physical and psychological.

The Court of Appeal has made repeated statements over many years about sentencing principles regarding violence against police, public officers and other occupations. It denounced spitting on police as 'especially an aggravating feature' on which it took an extremely serious view' in 1992 — before the PSA was enacted.[35] It has continued stating the need for deterrence, denunciation and a salutary penalty, protecting police and their authority and reflecting community support for them.[36] It has made similar comments in relation to offences against specific classes of victim including railway guards,[37] court clerks,[38] corrections officers[39] and local council officers.[40]

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28 *Criminal Code (R.S.C., 1985, c. C-46)* ss 264.1(1) (Uttering threats to cause death or bodily harm), 266 (Assault), 267 (Assault with a weapon or causing bodily harm), 268 (Aggravated assault), 269 (Unlawfully causing bodily harm).

29 Ibid s 269.01(1). 'Public transit officer', defined in subsection 269.01(2): an individual who operates a vehicle used in the provision of passenger transportation services to the public, and includes an individual who operates a school bus. 'Vehicle' is defined to include a bus, paratransit vehicle, licensed taxi, train, subway, tram and ferry.

30 Ibid ss 270(1), 270.01, 270.02, 423.1(1)(b).

31 Ibid s 718.02.

32 See, for instance, *R v Carlton* [2010] 2 Qd R 340, 364–5 [106] (Mullins J).

33 Submission 27 (Bar Association of Queensland) 1.

34 *R v Elliott* [2000] QCA 267, 4 [10] (Davies and Thomas JJA, McPherson JA agreeing), citing *Amituanai* (1995) 78 A Crim R 588. See also *R v Mitchell* [2010] QCA 20, 5 [16] (Muir JA, McMurdo P and Fraser JA agreeing).

35 *R v Miekle* [1992] QCA 250, 4 (Macrossan CJ, McPherson and Davies JJA agreeing).

36 *R v Williams* [1997] QCA 476, 6–7 (Dowsett J, McPherson JA and Thomas J agreeing); *R v Kazakoff* [1998] QCA 459, 6 (Ambrose J, McPherson JA and Byrne J agreeing) citing *R v Howard* (1968) 2 NSWR 429; *Queensland Police Service v Terare* (2014) 245 A Crim R 211, 221–222 [38] (McMurdo P, Fraser and Gotterson JJA agreeing); *R v King* (2008) 179 A Crim R 600, 601–2 [6] (de Jersey CJ, Keane and Holmes JJA agreeing); *R v MCL* [2017] QCA 114, 6 [16] Fraser JA, McMurdo JA and Mullins J agreeing); *R v Reuben* [2001] QCA 322, 5 and 7 (Davies JA, Williams JA and Byrne J agreeing); *R v Wotton; Ex parte A-G (Qld)* [1999] QCA 382 [1999] QCA 382, 4–5 (Chesterman J); *R v Marshall* [2001] QCA 372, 5 (Davies JA, Williams JA and Wilson J agreeing); *R v Bidmade* [2003] QCA 422, 3 [9] (Muir J); *R v Braithwaite* [2004] QCA 82, 5 [19] (Jerrard JA, McMurdo P and Philippides J agreeing); *R v Nagy* [2004] 1 Qd R 63, 74–5 [47] (Williams JA, Jerrard JA agreeing); *R v Conway* [2005] QCA 194, 17 [54] (McMurdo P, Atkinson and Mullins JJ agreeing); *R v Mathieson* [2005] QCA 313, 3 [9] (McPherson JA, Jerrard JA agreeing); *R v Devlyn* [2014] QCA 96, 8 [32] (Ann Lyons J, Holmes and Morrison JJA agreeing).

37 *R v Nagy* [2004] 1 Qd R 63, 74–5 [47] (Williams JA, Jerrard JA agreeing).

38 *R v McKinnon* [2006] QCA 16, 4–5 (McMurdo P, McPherson JA and Muir J agreeing).

39 *R v Hope* [1993] QCA 299, 4 (Fitzgerald P, Davies JA and Moynihan SJA).

40 *R v Ketchup* [2003] QCA 327, 1 [3] (Williams JA, Davies JA agreeing).

The Court has also long recognised that taxi drivers are members of the public performing a valuable community service that makes them vulnerable. Salutary deterrent penalties are required for charges of AOBH and GBH against them.[41]

Another victim cohort given similar recognition is service station attendants and convenience or takeaway store staff in the context of robbery (which has statutory circumstances of aggravation applying to any offender and complainant).[42] The Court has recognised such workers (often working night shifts, sometimes alone) as a vulnerable cohort, serving the convenience of the community while at risk of attack causing physical and psychological harm. It has confirmed the importance of deterrence in sentencing and made strong statements repeatedly and early, for instance in 1994,[43] 1996[44] and 1999.[45]

These examples demonstrate that courts already take this factor into account in the absence of specific statutory guidance under the PSA.

10.2.4 The purpose and history of section 9(2A)

Sections 9(2A) and (3) were introduced (although numbered differently) in 1997 alongside the serious violence offence scheme, which occupies a later and separate part of the PSA.[46] The relevant terms within these sections are not further defined. Other 1997 amendments included changing some of the sentencing purposes in section 9(1) (replacing 'discourage' with 'deter' and 'does not approve of' with 'denounces'). The amendments were described as fulfilling this election commitment by the then Liberal National Government: 'in determining the appropriate length of a custodial sentence for a serious violent offender, a court will take into account the protection of the community as a primary sentencing consideration'.[47]

The Attorney-General at the time, Denver Beanland, explained that 'this Bill delivers that promise by amendments to the purposes section and the sentencing guidelines of the Act'.[48] He stated:

> While the Act currently mentions protection of the community among the purposes of sentencing, section 9(1), there is nothing in section 9(2), the sentencing principles, requiring the court to actually have regard to the protection of the community as a sentencing consideration. Significantly, the sentencing criteria which might arguably be said to be paramount are those of section 9(2)(a), that prison is a last resort and that a non-custodial sentence is preferable to one of imprisonment. This logically cannot always be the case, and certainly not in the case of serious violent offenders.[49]

However, section 9(2A) applies to any offence involving violence or physical harm, thereby reaching beyond the very serious offences to which the serious violent offence scheme applies.

The Queensland Court of Appeal has noted:

> the intent of the amendments was to have the matters listed in s 9(3) regarded as 'primary'. In aid of this legislative purpose, the existing s 9(4), which obliged the court to impose a sentence of imprisonment upon an offender aged under 25 years only when satisfied that no other sentence would be appropriate, was also repealed. Successive governments since 1997 have left these provisions in place. Consequently, these provisions cannot be regarded as being merely declaratory of the pre-existing law and as having no effect upon the legislative status quo. They were expressly intended to result in sentences that were more severe than those which had been imposed in the

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41 See *R v Levy; Ex parte A-G (Qld)* [2014] QCA 205, 9–10 [32], [35] and [37] (Morrison JA, Holmes JA and Philip McMurdo J agreeing), discussing *R v Wilkins; Ex parte A-G (Qld)* [2008] QCA 272 at 10 [37] and *R v Hamilton* [2009] QCA 391, 15–16 [61]. See also 11 [39], 18 [75], 19 [77] and 20 [80].

42 See for instance Submission 27 (Bar Association of Queensland) 2.

43 *R v Dunn* [1994] QCA 147, 4 (Pincus and McPherson JJA and Mackenzie J). See also *R v Suey* [2005] QCA 27, 4 (Mackenzie J, McMurdo P and Chesterman J agreeing) and *R v Dullroy; Ex parte A-G (Qld)* [2005] QCA 219, 6 [18] (de Jersey CJ, dissenting as to the result).

44 *R v Hammond* [1996] QCA 508, 23 (Thomas, Dowsett and White JJ).

45 *R v Taylor; Ex parte A-G (Qld)* (1999) 106 A Crim R 578, 587 [25] (McPherson JA).

46 *Penalties and Sentences (Serious Violent Offences) Amendment Act 1997* (Qld) s 6. For more on serious violent offence provisions, see Queensland Sentencing Advisory Council, Queensland Sentencing Guide (2nd ed, 2019) 25.

47 Queensland, Parliamentary Debates, Legislative Assembly, 19 March 1997, 'Penalties and Sentences (Serious Violent Offences) Amendment Bill — Second Reading', 595 (Denver Beanland, Attorney-General and Minister for Justice).

48 Ibid.

49 Ibid.

> past and must be regarded as statutory amendments that were the result of Parliament's judgment about current community values.[50]

The Court of Appeal had earlier stated that these section 9 amendments:

> reflect a legislative conviction that less hesitation by the courts in requiring a violent offender to undergo the rigours of imprisonment conduces to the protection of the community from the offender and from others who might be tempted to commit similar offences. Nonetheless youth remains a material consideration; for the rehabilitation of youthful, even violent, offenders, especially those without prior, relevant convictions, also serves to protect the community. And among the matters to which the court is required by s. 9(4) to pay primary regard are 'the past record of the offender, including any attempted rehabilitation and the number of previous offences of any type committed' (g), and 'the antecedents, age and character of the offender' (h).[51]

The Court has noted that 'the exercise of the sentencing discretion was affected by amendments to section 9, so as to distinguish offences involving violence from other offences':[52]

> Prior to these 1997 amendments, sentencing courts placed great importance upon the factors, where they existed, of the youth of the offender, the absence of a significant criminal history, the absence of any experience of imprisonment, and the risk that a term of actual imprisonment would make the offender more likely to reoffend.
>
> The dominant consideration is now expressed to be the protection of the safety of the community from any risk of further offences of violence being committed by that offender.[53]

It has observed that while some of the principles in section 9(3) have analogues in the general provision in section 9(2),[54] others are unique to subsection (3)[55] regarding risk of physical harm to any members of the community, the need to protect them, the nature and extent of the violence used or intended and any disregard for public safety. While these could be taken into account for an offence to which section 9(2) still applies by virtue of the catch-all 'any other relevant circumstance' in section 9(2)(r), 'their express articulation in s 9(3) and the absence in s 9(3) of any requirement that imprisonment be considered a sentence of last resort makes s 9(3) an entirely different sentencing regime'.[56] Thus:

> At the forefront of a sentencing judge's consideration of an offender who falls within s 9(2A) must be the risk to the community on the one hand and the interests of the victim of the offender on the other hand. No longer is the sentence to be seen, in the first instance, from the perspective of the offender who should not, except as a last resort, be sentenced to an actual term of imprisonment. Instead, a judge must place at the forefront of the sentencing process the question whether the risk to the public and to the victim, as well as the circumstances of the victim, point to the need for prison.
>
> This is a large difference from s 9(2). It is justified by the community's abhorrence of the use of violence and the community's expectation that the courts will protect the community when necessary from the risk of further violence by incarcerating the offender. That will deter the particular offender, will deter others from offending and will satisfy a justified need for a sense of retribution.
>
> These considerations are not at the forefront of sentencing nonviolent offenders.
>
> Because of this large difference, it is important to be clear about the class of offenders to which this different regime will apply. That class is defined by s 9(2A) of the Act. The subsection distinguishes between two categories of offence. The first category consists of offences that involve "the use of violence". The second category of offences consists of offences in which violence might not actually have been used but in which it was the plain intention of the offender that it should be used.[57]

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50 *R v O'Sullivan; Ex parte A-G (Qld)* [2019] QCA 300, 27 [97] (Sofronoff P, Gotterson JA and Lyons SJA). This paragraph followed a discussion of a broader range of amendments since 1997 relating to violence against children in a domestic context.

51 *R v Lovell* [1999] 2 Qd R 79, 83 (Byrne J, Davies JA agreeing and Pincus JA generally agreeing). This passage was cited with approval in *R v Dullroy; Ex parte A-G (Qld)* [2005] QCA 219, 10 [33] (White J, McMurdo J agreeing). The comment that 'youthfulness remains a material consideration' was noted with approval by de Jersey CJ: *R v Dullroy; Ex parte A-G (Qld)* [2005] QCA 219, 6 [16].

52 *R v Dullroy; Ex parte A-G (Qld)* [2005] QCA 219, 17 [57] (McMurdo P).

53 Ibid 17–18 [58]–[59].

54 Sections 9(3)(d), 9(3)(g), 9(3)(h), 9(3)(i) and 9(3)(j): *R v Oliver* [2019] 3 Qd R 221, 226 [25] (Sofronoff P, Fraser and Philippides JJA agreeing).

55 Sections 9(3)(a), 9(3)(b), 9(3)(e), 9(3)(f) and 9(3)(k): *R v Oliver* [2019] 3 Qd R 221, 226 [25] (Sofronoff P, Fraser and Philippides JJA agreeing).

56 *R v Oliver* [2019] 3 Qd R 221, 226–7 [25] (Sofronoff P, Fraser and Philippides JJA agreeing).

57 Ibid 227 [26]–[29].

10.2.5 The meaning of 'physical harm' in section 9(2A)

Sections 9(2A) and (3) are limited to 'violence' and 'physical harm'. The latter is narrower than other terms present in, or applied by, section 9(2)(c)(i), namely:

- the words 'any physical, mental or emotional harm done to a victim, including harm mentioned in information relating to the victim given to the court under section 179K [victim impact statement]'; and
- the broader term 'suffered harm' in the definition of 'victim' in the *Victims of Crime Assistance Act 2009* (Qld) section 5, itself described as casting 'a broader causal net than the aggravating circumstances in s 340' in *R v Cooney*.[58]

In *R v Barling*,[59] the Court of Appeal held that the arson of a caravan was not violence or physical harm in the section 9(2A) sense. The sentencing judge had held that it applied apparently on the basis of emotional harm because the 'complainant's mother was distraught, believing her daughter was inside the burning van'.[60] On appeal, McMurdo P wrote that:

> I cannot accept … that [section 9(2A)] refers to property offences which result in psychological or emotional distress to complainants. The section is not intended to be so wide. In my view it is intended to refer only to offences against the person.[61]

De Jersey CJ agreed with McMurdo P and confirmed that neither limb of section 9(2A) applied:

> [The prosecution] sought to widen what I would see as the natural meanings of those terms 'violence' and 'physical harm' to include emotional disturbance and the like, or the possibility of it.
>
> I do not think that that would accord with the ordinary construction of the subsection. There is no reason to depart from that natural construction, and especially because the provision potentially affects the level of punishment there is particular reason not to adopt an unnecessarily broad construction.[62]

The harm in cases involving contact with bodily fluids also presents challenges: no bodily harm (a 'bodily injury' that interferes with health or comfort)[63] is caused, yet there is a prolonged and anxious wait for disease test results (emotional harm).

In such cases, section 9(2)(c)(i) may become the most important sentencing factor, whether or not 9(2A) and (3) apply. Those require the sentencing judge's primary regard, yet the judge is not required 'to disregard the factors that are otherwise listed in paras (b) to (r) of s 9(2)'.[64]

Assaults and related provisions do not contain emotional harm as elements (if they did, it would have to be charged and proved). It can therefore be considered under section 9(2)(c)(i).[65]

In *R v Cooney,* the Court of Appeal discussed how emotional harm could be weighed and applied in sentencing for a simpliciter serious assault (based on swinging punches, which did not connect). There, fear of infection resulted from contact with blood, being the unintended consequence of close physical proximity of the police and offender (rather than causation by direct application as would have been required for aggravated serious assault).[66]

Ultimately, the court took into account the emotional harm as evidenced in the officer's victim impact statement, but in the particular circumstances of that case, the sentence for that charge was the same as a second charge that did not involve such emotional harm.[67]

The Court also discussed the test for causation in such scenarios:

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58 *R v Cooney* [2019] QCA 166, 7–8 [38] (Henry J, Gotterson JA and Bradley J agreeing). See further 7–8 [36]–[39].

59 *R v Barling* [1999] QCA 16. This case was also discussed by the Court of Appeal in *Breeze v The Queen* (1999) 106 A Crim R 441, 445 [15]–[16] (Pincus and Davies JJA, Demack J).

60 *R v Barling* [1999] QCA 16, 3 (McMurdo P).

61 Ibid 6 (McMurdo P, de Jersey CJ agreeing).

62 Ibid 8 (de Jersey CJ, McPherson JA agreeing).

63 *Criminal Code* (Qld) s 1.

64 *R v Carlton* [2010] 2 Qd R 340, 364–5 [106] (Mullins J). This case related to analogue sections 9(6A) and (7) which relate to child exploitation material offences.

65 However, in some scenarios, an aggravated form of s 340 would need to be charged so that *De Simoni* issues do not arise and the spitting etc., which is the causal link connecting the emotional harm, can be taken into account. See *R v Cooney* [2019] QCA 166, 6–7 [29]–[35]. This was not required in *Cooney* due to the particular facts of that case.

66 Section 340(1) penalty provision (a)(i) ('applies'): *R v Cooney* [2019] QCA 166, 6–7 [30]–[35] (Henry J, Gotterson JA and Bradley J agreeing). Sections 9(2A) and (3) of the PSA were not discussed.

67 Ibid 12 [60].

> The depositing of blood and consequential emotional harm would not have occurred 'but for' the applicant's offending against both officers necessitating such proximity. The events are sufficiently causally linked for it to be said those outcomes occurred 'because' of that offending.[68]

10.2.6 The meaning of 'violence' in section 9(2A)

The Court of Appeal has considered what 'violence' in sections 9(2A) and (3) means. It has held that section 9(2A)(a) applied to robbery constituted by threatening the victim by gesturing with an implement, without applying direct physical force.[69] The Court commented that this expression is not so broad as to mean 'any act, whether violent in the ordinary sense or not, to which the user of the word strongly objects'.[70]

A recent judgment described that case as an example of threats to do violence 'made under circumstances in which it appeared that the threatened violence would be, or could be, inflicted suddenly',[71] and stated that 'in some circumstances, a threat may be accompanied by actions so that the threat and the actions together may be regarded as violence although no touching has occurred.[72]

10.2.7 Section 9(10A) — a template for assaults on workers?

Section 9(10A), its development and application, are relevant to this review because:

- it is a recent amendment creating an aggravating factor regarding conduct that can span various different offences and result in physical and emotional harm;
- it is analogous in terms of potential challenges with definitions, drafting and duplication of existing aggravating factors in section 9 and common law aggravating circumstances;
- there is Court of Appeal jurisprudence and some data analysis of its impact;
- it was developed alongside a new discrete offence of strangulation, conduct also potentially covered by existing offences against the person in the *Criminal Code*; and
- its development from a policy recommendation involved stakeholder consultation and the alternative option of creating a statutory circumstance of aggravation.

The Special Taskforce Report

The genesis of section 9(10A), which commenced on 5 May 2016, was the 2015 Special Taskforce on Domestic and Family Violence in Queensland report.[73] It acknowledged that domestic and family violence (DFV) behaviours could constitute offences such as assault but noted there was 'no specific criminal offence in Queensland for committing an act of domestic and family violence' and 'where abuse is emotional, psychological or financial it will often not constitute a currently defined crime under the Criminal Code'.[74]

The Taskforce recommended 'that the Queensland Government introduces a circumstance of aggravation of domestic and family violence to be applied to all criminal offences'.[75]

It had also considered, as an alternative 'less intrusive measure', making 'domestic and family violence an aggravating factor' that 'would not place an additional penalty on a perpetrator but would require a sentencing judicial officer to give heavier weight to the severity of the offence if it were committed within the context of domestic and family violence'.[76]

The Queensland Government response

The Queensland Government accepted the recommendation and ultimately proceeded with introducing the aggravated sentencing factor (s 9(10A) into the PSA, on the basis that:

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68 Ibid 8 [41] citing *Royall v The Queen* (1990) 172 CLR 378, 440 as supporting this at 8 [40].

69 *Breeze v The Queen* (1999) 106 A Crim R 441, 445 [14], 447 [22] (Pincus and Davies JJA, Demack J). See the discussion in *R v Oliver* [2019] 3 Qd R 221, 228 [32]–[34] (Sofronoff P, Fraser and Philippides JJA agreeing).

70 *Breeze v The Queen* (1999) 106 A Crim R 441, 445 [17]–[18] (Pincus and Davies JJA, Demack J).

71 *R v Oliver* [2019] 3 Qd R 221, 229 [39] (Sofronoff P, Fraser and Philippides JJA agreeing).

72 Ibid 228 [31].

73 Special Taskforce on Domestic and Family Violence in Queensland, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (Final Report, 28 February 2015).

74 Ibid 300.

75 Ibid 305 Recommendation 118.

76 Ibid 304.

> A circumstance of aggravation increases the maximum penalty for offences. It must be charged by the prosecution and therefore becomes a matter that must be proved beyond reasonable doubt … Stakeholder responses to the discussion paper acknowledge the inherent complexities of applying a circumstance of aggravation across all criminal offences … there was wide support from stakeholders … for an alternative proposal to amend the *Penalties and Sentences Act 1992* to make provision for domestic and family violence as an aggravating factor on sentence.[77]

The Opposition (who, when in government, established the Taskforce) supported this, noting 'the commentary from key stakeholders during debate on this issue'.[78]

Section 9(10A) does not apply when sentencing children

The Attorney-General also addressed concerns raised in her second reading speech as to why the section 9(10A) aggravating factor was not extended to juvenile offenders:

> The sentencing framework for juvenile offenders is quite distinct from the framework applied to adult offenders in the Penalties and Sentences Act … Given the imperatives of the juvenile sentencing framework, an amendment to recognise domestic and family violence as an aggravating factor on sentence would be incongruous with the principles underpinning the Youth Justice Act.[79]

The intent and effect of section 9(10A) — an increase in penalties?

The Government's justification for the amendments was that 'the aggravating factor increases the culpability of the offender which means that the offender should receive a higher sentence within the existing sentencing range up to the maximum penalty for the offence'. This was 'reflective of community attitudes about the seriousness of criminal offences that occur in a domestic and family context and will make these offenders more accountable'.[80]

The explanatory notes to the relevant Bill stated, 'the provision will allow the court to impose a penalty at the higher end of the range of appropriate sentences while retaining their judicial discretion' and justified 'increasing sentences' because it would protect vulnerable community members, denounce relevant offending and 'provide adequate deterrence to perpetrators'.[81]

The Court of Appeal's analysis of section 9(10A)

The Court of Appeal has noted that section 9(10A) is likely to have an effect on sentencing for domestic violence offences over time.[82] For instance, general deterrence may now be a more significant factor.[83] However, 'the effect in any particular case will depend on the balancing of all the relevant factors related to that offending and offender'.[84]

In *R v Hutchinson*[85] in 2018, the Court of Appeal held that section 9(10A) is a procedural, rather than a substantive, provision.[86] This means it is not subject to a presumption against retrospective operation — it applies 'to all

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77 Queensland, Parliamentary Debates, Legislative Assembly, 2 December 2015, 'Criminal Law (Domestic Violence) Amendment Bill (No. 2) — Introduction', 3083 (Yvette D'Ath, Attorney-General and Minister for Justice and Minister for Training and Skills).

78 Queensland, Parliamentary Debates, Legislative Assembly, 19 April 2016, 1031 (Ian Walker).

79 Queensland, Parliamentary Debates, Legislative Assembly, 19 April 2016, 'Criminal Law (Domestic Violence) Amendment Bill (No. 2) — Second Reading', 1030 (Yvette D'Ath, Attorney-General and Minister for Justice and Minister for Training and Skills).

80 Ibid 1028. This reflects Explanatory Notes, Criminal Law (Domestic Violence) Amendment Bill (No. 2) 2015 (Qld) 2.

81 Explanatory Notes, Criminal Law (Domestic Violence) Amendment Bill (No. 2) 2015 (Qld) 3.

82 *R v Hutchinson* [2018] 3 Qd R 505, 515 [40] (Mullins J, Fraser and Morrison JJA agreeing), following *R v Pham* (2009) 197 A Crim R 246, 247–8 [5]–[7] (Keane JA).

83 *R v Castel* [2020] QCA 91, 9 [37] (Mullins JA, Sofronoff P agreeing): 'the enactment of s 9(10A) … necessarily makes general deterrence now a more significant factor for sentencing for the killing of a domestic partner'.

84 *R v Hutchinson* [2018] 3 Qd R 505, 515 [40] (Mullins J, Fraser and Morrison JJA agreeing), following *R v Pham* (2009) 197 A Crim R 246, 24–8 [5]–[7] (Keane JA). See also *R v Castel* [2020] QCA 91, 8 [35] (Mullins JA, Sofronoff P agreeing).

85 *R v Hutchinson* [2018] 3 Qd R 505, 511 [23]. The Court referred to *R v Truong* [2000] 1 Qd R 663, *R v Carlton* [2010] 2 Qd R 340, *R v Pham* (2009) 197 A Crim R 246. It was also noted that *Rodway v The Queen* (1990) 169 CLR 515 was applied in *Truong*.

86 As to the difference between procedural and substantive provisions, the Court of Appeal had earlier stated that 'procedural law is the body of rules setting out the manner, form and order in which matters may be dealt with and enforced in a court. It includes the formal steps in an action including pleadings, process, evidence and practice. On the other hand, substantive law creates, defines and regulates people's rights, duties, powers and liabilities, and contains the

sentencing from its commencement, whether or not the offending was committed before or after the commencement'.[87] The unsuccessful argument against this was based on the presence of the words 'must' and 'aggravating'.[88]

Mullins J wrote that 'the sentencing judge's sentencing discretion remains intact. It is the approach to the exercise of the discretion that is affected … rather than a mandated outcome by following that approach'.[89] She made mention, twice in two successive paragraphs, of the fact that section 9(10A) is but one factor to be considered when assessing '*all the relevant factors'* and repeated this in a different judgment in 2020: 'It is an aggravating factor … added to the other aggravating factors … that has to be balanced with any mitigating factors that relate to the offending and the offender'.[90]

The Court of Appeal also noted the reference to higher sentences within the existing sentencing range up to the maximum penalty, in the explanatory notes to the Bill. It noted that it was not necessary to have regard to them because 's 9(10A) of the Act is neither ambiguous nor obscure' and described them as 'not particularly helpful' because they:[91]

> describe an 'aggravating factor' by reference to 'the existing sentencing range' in a way that does not reflect the sentencing task. … the reference to an 'available range' of sentences for an offender is a 'negative' concept that is applied on an appeal to ascertain whether the discretionary judgment exercised by the sentencing judge resulted in a sentence that was 'so wrong that there must have been some misapplication of principle in fixing it' … that does not translate into 'any positive statement of the upper and lower limits within which a sentence could properly have been imposed'.[92]

The Court noted the previous judgment of *R v Pham,*[93] which dealt with analogous provisions in section 9, was 'apt to describe the effect of s 9(10A) on the sentencing process'.[94] In *Pham*, Keane JA wrote that such sections:

> lay down the principles to be applied by the Court in sentencing an offender. These provisions inform the exercise of the sentencing discretion: they are not concerned to authorise the imposition on an offender of punishment to any particular extent, much less 'to any greater extent than was authorised by the former law'. The extent of the punishment authorised for a given offence is determined by legislation other than s 9 of the PSA.
>
> The application of the sentencing principles in s 9 as amended will not result in the imposition of punishment to a greater extent than might have been imposed prior to the amendment in question. The most that can be said is that the application of the amending sentencing principles may have that effect. That this is so can be understood more clearly when one reflects upon the nature of the sentencing process, described in the High Court in *Markarian v The Queen*, as a process of 'instinctive synthesis'.
>
> In such a process, some of the principles prescribed by s 9 of the PSA may have great weight and others little weight, depending on the circumstances of each offence and each offender. In some cases, some of these principles will have little or no effect upon the outcome of the process because, in the particular circumstances, other principles have an almost overwhelming claim on the sentencing discretion.[95]

The Council data analysis regarding section 9(10A)

The Council examined data for common assaults and AOBH in both simpliciter and aggravated forms dealt with as the most serious offence (MSO) in the Magistrates and higher courts, to determine the effect of the circumstance of aggravation on these offences. Some of the findings (around custodial orders and imprisonment) are discussed here, while the full analysis is at Appendix 6**.**

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actual rules and principles administered by courts, both under statute law and common law': *R v Carlton* [2010] 2 Qd R 340, 350 [35] (McMurdo P, dissenting as to the result).

87 *R v Hutchinson* [2018] 3 Qd R 505, 516 [44] (Mullins J, Fraser and Morrison JJA agreeing).

88 Ibid 511 [24].

89 Ibid 515 [39].

90 *R v Castel* [2020] QCA 91, 8 [35] (Mullins JA, Sofronoff P agreeing).

91 *R v Hutchinson* [2018] 3 Qd R 505, 515 [41] (Mullins J, Fraser and Morrison JJA agreeing), citing s 14B of the *Acts Interpretation Act 1954* (Qld) — Use of extrinsic material in interpretation.

92 *R v Hutchinson* [2018] 3 Qd R 505, 515–6 [41] (Mullins J, Fraser and Morrison JJA agreeing), citing *Barbaro v The Queen* (2014) 253 CLR 58, [24]–[28].

93 *R v Pham* (2009) 197 A Crim R 246. This case concerned sections 9(6A) and (6B) of the PSA, which are analogues of section 9(2A) and (3) regarding sentencing child exploitation material offences.

94 *R v Hutchinson* [2018] 3 Qd R 505, 515 [40].

95 *R v Pham* (2009) 197 A Crim R 246, 247–8 [5]–[7] (Keane JA) citing *Markarian v The Queen* (2005) 228 CLR 357, 383–90 [64]–[84] (McHugh J) (and later 405–6 [133] (Kirby J)).

The analysis involved a comparison of sentencing outcomes for forms of these offences that did, and did not, involve the section 9(10A) aggravating factor ('with DFV').[96]

The data include offences sentenced from 5 May 2016, when section 9(10A) commenced, to 30 June 2019. This analysis does not assess whether sentencing courts were already sentencing assaults that involved DFV to higher sentences prior to the introduction of section 9(10A).

For each offence in each court, custodial penalties were more common for assaults with DFV than without. While this was not always maintained when custodial penalties where broken down into penalty types (e.g. suspended sentences), it remained the case in respect of imprisonment, which was more common for all offences with DFV.

Common assault and section 9(10A)

In the higher courts, nearly half (49.0%) of common assault offences with DFV received a custodial penalty, compared to just over one-third (36.2%) for the same offences without DFV.

In the Magistrates Courts, over one-third (35.7%) of common assaults with DFV (MSO) received a custodial sentence, compared with less than two in five (18.2%) without DFV.

In the higher courts, imprisonment (31.6%) was the most common penalty where the DFV aggravating factor applied, while monetary orders (23.1%) were most common if DFV was not present.

In the Magistrates Courts, probation was the most common penalty type (26.2%), closely followed by imprisonment (24.3%) and monetary orders (23.9%) where DFV was present, while monetary orders (40.4%) were the most common penalty type if DFV was not present.

AOBH and section 9(10A)

In the higher courts, a custodial penalty was the most common penalty for all forms of AOBH, although the impact of the DFV aggravating factor was less pronounced than in Magistrates Courts' sentences.

For non-aggravated AOBH sentences, custodial outcomes comprised 86.7 per cent of sentences for AOBH simpliciter with DFV and 72.4 per cent of sentences for AOBH simpliciter.

For aggravated AOBH, custodial penalties comprised 84.1 per cent of sentences with DFV and 80.1 per cent of sentences without DFV.

In the Magistrates Courts, the percentage of custodial penalties imposed for both aggravated and simpliciter forms of AOBH markedly increased when the DFV aggravating factor was present.

For non-aggravated AOBH, custodial penalties made up 68.3 per cent of non-aggravated AOBH with DFV sentences, and 42.5 per cent of sentences without DFV.

For aggravated AOBH, the result was 80.7 per cent for aggravated AOBH with DFV but 60.9 per cent without.

As to use of imprisonment for non-aggravated AOBH, it was imposed by higher courts in 62.5 per cent of non-aggravated AOBH offences with DFV sentences, as against 47.8 per cent of those without DFV.

In the Magistrates Courts, imprisonment was imposed in 51.3 per cent of non-aggravated AOBH with DFV sentences, as against 25.7 per cent of those without DFV.

Imprisonment for aggravated AOBH, in the higher courts, was imposed in 65.9 per cent of aggravated AOBH offences with DFV as against 53.5 per cent for those without DFV. In the Magistrates Courts, it was imposed in 61.1 per cent of aggravated AOBH offence with DFV sentences, as against 38.9 per cent of those without DFV.

10.2.8 Stakeholder views

Legal stakeholder and advocacy bodies generally supported retaining (or curtailing) the current form of section 340, without the need for separate additional offences or circumstances of aggravation to be introduced. However, several stated that an aggravating factor would be the preferred approach if further recognition of occupation was to be legislated, even though this was described as redundant because courts already take this into account.

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96 It remains possible that some 'non-DFV' offences were in fact sentences for offences that involved domestic and family violence but were not identified as such.

The BAQ emphasised that the aggravating effect of assaults on persons who are working is already taken into account in sentencing, under sections 9(3) (d), (e), (f) and (k) of the PSA (unless the assault is by way of threats only).[97] The BAQ recognised three ways in which specific recognition of 'this present practice' could occur:

1. Amending PSA section 9(3), which the BAQ did not oppose 'as a way of providing a legislative intention as to the sentencing approach. It is assumed any form would be similar to s9(10A) of the PSA'.[98]
2. Enacting circumstances of aggravation to common assault and assault occasioning bodily harm creating higher maximum penalties for those who are assaulted in the course of specified fields of employment or while providing specified services 'that may place them at some risk over and above that of the general public'.[99]
3. Adding categories within the provisions of section 340 of the *Criminal Code*.[100]

The BAQ noted that 'such matters are principally ones of policy and a matter for the legislature'.[101]

Legal Aid Queensland (LAQ) stated that 'in light of how courts currently deal with the issues of acts of violence against public officers and workers in certain circumstances, there does not need to be any change to the current legislation'.[102] LAQ noted the PSA's 'existing sentencing framework' and 'the common law provide adequate scope for a court to take into account the serious nature of offending against public officers and sentence accordingly'.[103] LAQ provided an annexure of cases demonstrating this, concluding: 'consistent with the research outlined in the issues paper, imprisonment whether suspended or actual … is unexceptional'.[104]

LAQ had concerns about creating classes of victims and submitted that 'courts are in an ideal place to assess the circumstances of each case and place weight on particular victim vulnerabilities'.[105] It noted that 'section 9 already allows the court to take into account the particular circumstances of each offence. The purpose of the amendment would therefore be more of a communication exercise than effecting change'.[106]

LAQ concluded that the Council's Issues Paper 'has not demonstrated any evidence-based reasons to enact legislative reforms to the provisions that apply to public officer victims in the criminal law and sentencing process'.[107]

The Queensland Law Society (QLS) noted a more recent legislative trend of directing judicial attention to specific features of the case, mandating aggravating factors and sometimes setting higher maximum penalties for certain victim types. The QLS criticised such statutory directions as telling courts to do what they have always done:[108]

> They fill no gap. Other than to indicate to the courts the seriousness with which the legislature views particular types of offending, they perform no practical function. Some amendments appear designed more to appease the grievances of a particular class of people, rather than to effect any substantive change to the procedures and decisions of the courts.
>
> A problem soon arises with any attempt to classify harm to some categories of victim as more serious than others; it is the sense of grievance aroused in the people excluded.
>
> … Any attempt to make statutory rules classifying harm to a class of victims as more serious than harm to another class is bound to produce ungainly, awkward and troublesome results, inapt to the circumstances of particular cases.[109]

However, the QLS stated that the suggested amendments in the Issues Paper would be an improvement from the current state of the law. It preferred recognition of those categories through aggravating factors in section 9. It took

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97 Submission 27 (Bar Association of Queensland) 5, 7. These sections relate to circumstances of the offence (including death/injury/loss), nature or extent of violence used or intended, disregard for the interests of public safety, anything else about community safety considered relevant.

98 Ibid 7.

99 Ibid 5.

100 Ibid.

101 Ibid.

102 Submission 29 (Legal Aid Queensland) 2.

103 Ibid.

104 Ibid 2–3.

105 Ibid 3.

106 Ibid 5.

107 Ibid 6.

108 Submission 30 (Queensland Law Society) 4.

109 Ibid 4.

no position on where the line of inclusion and exclusion should be drawn between categories of victim: 'this is essentially a political exercise'.[110]

The QLS took no position on whether specific provision is required to deal with offending by spitting or the use of other bodily fluids. The risk of transmitting disease, associated uncertainty of transmission and inherently disgusting nature of the conduct are all matters taken into account on sentence. The maximum penalties available are sufficient: 3 years for common assault, 7 years for doing AOBH, 14 years for GBH, and life for transmitting a serious disease with intent to do so. If it is decided that some specific provision should be retained for assaults by spitting or with bodily fluids, it would be reasonable to extend its operation to all people assaulted in that way, not only 'public officers'.[111]

The Department of Agriculture and Fisheries stated that within the spectrum of public service there likely exists variation in risk and related preparation, expectation/vigilance, and training. All assaults should be treated on their merits rather than by categorisation, because the latter may be too prescriptive in that it may not offer a court dealing with an assault offence sufficient scope to ensure the sentence imposed properly reflects the case's nuances and individual circumstances and facts.[112] The department argued that assaults on private occupations and public officers were best dealt with by a circumstance of aggravation and/or an aggravating factor for sentencing purposes — rather than by special categories of victims or special offence provisions.[113]

The department submitted that 'the category of officer does not necessarily reflect the level of vulnerability existing at the time of an assault':[114]

> The situation in which the assault occurs may be more relevant than the category of public officer. For example, officers of the Queensland Boating and Fisheries Patrol are often required to interact with members of the public in confined spaces such as on a fishing vessel. This affords them limited opportunity to leave in order to escape a dangerous situation. This particular vulnerability is relevant to the sentencing exercise if they are assaulted, more so than the fact they are a particular type of public officer.[115]

Queensland Corrective Services (QCS) supported 'an aggravating circumstance due to the victim being a public officer across Criminal Code offences, in addition to the existing standalone offence', but not an aggravating sentencing factor:[116]

> 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.[117]

The Queensland Catholic Education Commission noted that if an aggravating factor were introduced, its preferred approach would be to ensure appropriate flexibility still be provided for at sentencing, allowing a sentence to be 'judged on the circumstances of each particular case … rather than having an assault of this nature defined by a specific mandatory offence provision'.[118]

The Transport Workers' Union (TWU), in calling for transport industry workers to 'be afforded extra protections in the form of harsher penalties',[119] referred to a number of models operating in other jurisdictions, including section 21A(2)(a) of the *Crimes (Sentencing Procedure) Act* (NSW), which 'provides a further separately listed aggravating factor that the victim was vulnerable, for example, because of the victim's occupation such as a taxi driver, bus driver or other public transport worker'.[120]

The TWU referred to a number of studies, including research in Canada reporting on data from workers' compensation claims that found: 'despite the risk of workplace violence for police and health care workers being more than double the risk of violence in other occupations, bus drivers and taxi drivers, amongst others, are also

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110 Ibid 7 and 9.

111 Ibid.

112 Submission 7 (Department of Agriculture and Fisheries) 3.

113 Ibid 5.

114 Ibid 8 and see 2–3 and 6.

115 Ibid.

116 Submission 21 (Queensland Corrective Services) 15.

117 Ibid.

118 Submission 2 (Queensland Catholic Education Commission) 2.

119 Submission 12 (Transport Workers' Union) 8.

120 Ibid 11.

subject to much higher levels of risk than the general population'.[121] It reported that a state-wide survey of Queensland bus drivers undertaken by the Queensland branch of the TWU in 2016 found a high incidence of abuse, including 27 per cent of the more than 1,000 bus drivers surveyed reporting having been spat on, and 21.2 per cent reporting having been physically assaulted while at the wheel.[122] A NSW survey of 1,100 rideshare operators also found 10 per cent reported being physically assaulted, and 6 per cent sexually assaulted.[123]

10.2.9 Children

The tempered stakeholder acceptance of an aggravating sentencing factor did not extend to applying it to children. Most stakeholders who commented on sentencing of children pointed to the different considerations applying to sentencing of children in the *Youth Justice Act 1992* (Qld) (YJA).[124] For instance, the Queensland Human Rights Commission stated:

> The current sentencing principles acknowledge the vulnerability and specific protections required for children, as reflected in their rights under the [*Human Rights Act 2019* (Qld), sections 26 and 33]. This includes principles under the *Youth Justice Act 1992* (Qld), in particular, that a detention order should be imposed only as a last resort and for the shortest appropriate period. The Commission strongly supports the retention of these principles.[125]

Section 9 (and therefore, sections 9(2A) and (3)) of the PSA, do not apply to children. The Council does not contend this should be otherwise. If an aggravating factor of the nature recommended were to apply to children, it would have to be inserted separately into the YJA.[126] The Council does not recommend or support this in respect of this review.

BAQ noted with approval the 'emphasis on rehabilitation of young offenders' in the YJA:

> Nonetheless, protection of the community and to the extent that general deterrence is required to achieve that remain important sentencing principles. These principles exist within the present legislation and sentencing practices.[127]

The QLS stated that 'the importance of rehabilitation and minimising the risk of further interactions with the criminal justice system must be at the forefront of sentencing considerations' for children or young offenders.[128]

The Office of the Public Guardian recommended that 'specific consideration be given to the impact any changes would have on children and young people who engage with the justice system'.[129]

The Department of Child Safety, Youth and Women noted that:

> the trauma, disability and/or mental health history of some children and young people, particularly those with a care experience, may result in complex behavioural issues which are not appropriately addressed through strong sentencing. Further, data shows children and young people in contact with the child protection system are over-represented in the Youth Justice system, compounding their likelihood to experience poor life outcomes.[130]

10.2.10 Council's view

The Council considers that, on balance, and in conjunction with the recommendations designed to simplify and sharpen sections 199 and 340 of the *Criminal Code*, an aggravating factor linked to section 9(3) of the PSA is the best way to explicitly acknowledge occupation as a sentencing factor across all offences against the person.

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121 Ibid 5 citing Neil Boyd, 'Violence in the Workplace in British Columbia: A Preliminary Investigation' (1995) 37(4) *Canadian Journal of Criminology* 491, 503.

122 Ibid 6.

123 Ibid 7.

124 The relevant YJA provisions are sections 2, 3, 150 and Schedule 1 Charter of youth justice principles. These include special considerations that a non-custodial order is better than detention in promoting a child's ability to reintegrate into the community (s 150(2)(b)), a detention order should be imposed only as a last resort and for the shortest appropriate period (s 150(2)(e)), and a child should be detained in custody for an offence, whether on arrest, remand or sentence, only as a last resort and for the least time that is justified in the circumstances (Schedule 1, Principle 17).

125 Submission 18 (Queensland Human Rights Commission) 14 [51]. See also Submission 5 (Department of Child Safety, Youth and Women) 4.

126 For example, this was done in relation to PSA section 9(9B) and YJA section 150(3), regarding manslaughter of children under 12, where courts must treat the child victim's defencelessness and vulnerability, having regard to the child's age, as an aggravating factor in determining the appropriate sentence.

127 Submission 27 (Bar Association of Queensland) 8.

128 Submission 30 (Queensland Law Society) 12.

129 Submission 24 (Office of the Public Guardian) 4.

130 Submission 5 (Department of Child Safety, Youth and Women) 3.

Importantly, it is an option that can simultaneously achieve symbolic recognition, limit complexity, and maximise judicial discretion and legislative consistency. It would operate independently of, yet complement, a revised section 340.

Discretion, in the context of the weight given to an aggravating factor, remains essential. It allows for the fair application of an otherwise blanket approach. Different workplaces expose people to different levels of risk, and even the same workplace could expose people to different levels of risk based on particular circumstances, at different times.

It does this at the cost of further entrenching specific victim classes and padding out section 9 of the PSA. It directs courts to do what they already do. However, the aggravating factor, as recommended by the Council, would be very broad yet based on a threshold foundation of vulnerability, with court discretion as to whether the particular circumstances of the case merit its application.

By avoiding the alternative of placing statutory circumstances of aggravation to similar effect in offence provisions themselves, this option avoids introducing added complexity into the operation of the *Criminal Code* and related evidentiary challenges for the Crown. While it does not increase maximum penalties, the aggravating factor would operate in existing circumstances where the ordinary statutory presumption against imprisonment is disengaged.

It is designed with the remainder of PSA section 9, and historical expert analysis of the *Criminal Code*, in mind.

This recommendation would complement existing section 9(3), while serving as a more specific guide. It would apply to all offences against the person,[131] provided that the specific facts of the particular case, as proven or admitted, met the threshold regarding violence or physical harm in section 9(2A). It would therefore probably not apply to:

- obstruct or resist offences (or at least to most of these);
- section 340 (provided that the aggravating factor covered the same elements that comprised any reformed version of section 340).

There are potential gaps in this approach.

It does not specifically cover emotional or psychological harm. However, this is covered by section 9(2), which is clearly still relevant despite being inferior to section 9(3) in terms of legislative priority. Emotional harm is often particularly significant in cases involving spitting, biting and application of bodily fluids where bodily harm is not caused. Judicial discretion permits properly thorough consideration and weight to be given to this factor. As with any aggravating factor, the degree of weight to be given to it rests on the quality of evidence establishing it.

Another gap that this option might leave is that the most immediately recognisable maximum penalty for spitting, biting or throwing fluids etc. is markedly different for public officers under section 340 (14 years) and everyone else (from a base of common assault, 3 years). However, the analysis shows that sentences for such conduct under aggravated forms of section 340 do not approach the 14-year maximum, nor regularly exceed the maximum for common assault. Stakeholder warnings of incongruous results at the time of the relevant amendment appear to have been borne out.

This is not to suggest that head sentences for such conduct are too low, but that other more serious offences with maximum penalties equal to or higher than section 340 (but with more neutral and generic offender and victim descriptor language) are being utilised, as harm in particular cases increases. Other offences in the *Criminal Code*, providing maximum penalties of up to life imprisonment (section 317), can instead be relied upon when the harm caused is sufficient — and this is the case regardless of victim class or categorisation.

This recommendation would apply to sexual assaults in workplaces, which extends beyond the scope of the Council's Terms of Reference but is consistent in any event with both logic and existing sentencing practice (i.e. that sexually assaulting a person who is performing their job is likely to be an aggravating feature in most cases of that nature).

The Council has traced the evolution of analogous section 9(10A) of the PSA, from the initial recommendation as a statutory circumstance of aggravation to its enactment as an aggravating factor on sentencing. It has analysed judicial commentary and application of it. This provision had bipartisan parliamentary and stakeholder support when introduced.

The Council has also carried out data analysis of relevant sentencing outcomes showing that custodial penalties are more common for common assault and AOBH where the aggravating factor was present — irrespective of sentencing court.

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131 For instance, ss 317, 320, 320A, 323, 335, 339 of the *Criminal Code* (Qld).

This recommendation has stakeholder acceptance (even if they also describe it as unnecessary).

Each of these two options avoids a more complicated and lengthy definition (often requiring further sub-definitions or references to other legislation).

Further issues to consider when discussing this option go to the goal of striking the right balance in crafting a provision that is as broad, clear and simple as possible. These are:

- Where to place the provision — in section 9(3) or with the other aggravating factor provisions (9B)-(10A) — and whether to emulate existing language.
- Whether to split the provision into two separate parts in order to specifically recognise emergency workers or workers with a public-facing role, or keep as a simple, single whole.
- What language to use in defining the scope of the provision.

Each of these is discussed further below.

1 – Placement within section 9 and emulating existing language

While drafting regarding any recommendation, if accepted, would be a matter for the Queensland Government and the Office of the Queensland Parliamentary Counsel, consideration as to placement of any new provision within section 9 needs to contemplate its interaction with the rest of the section.

The use of the word 'must' is universal throughout section 9, except that 'may' is used twice: first in section 9(1) regarding the overarching purposes of sentence; second in section 9(5) regarding a discretion to consider the closeness in age between offender and victim in the case of child sexual offences (unique in this context because actual imprisonment is mandated for these). It is therefore not suggested that the aggravating factor be applied in a discretionary way through the use of the word 'may'.

The weight to give to the aggravating factor would still remain at the court's discretion and a partial ouster reflecting language present in two other subsections is also recommended.

As to where the factor would sit in section 9, one option is to insert it directly into section 9(3). It would be a factor to which the sentencing court 'must' have 'primary regard'. It would, perhaps curiously, be the only express 'aggravating factor' in section 9(3).

Another option, which the Council prefers, is to form an entirely new subsection modelled on, and placed as part of, existing sections 9(9B) (regarding manslaughter of a child under 12), 9(10) (previous convictions), and 9(10A) (domestic violence offences). Each of these commence with the words 'in determining the appropriate sentence for an offender convicted of' (the relevant offence type), followed by 'the court must treat [the applicable stated factual issue] as an aggravating factor'.

If this were to occur, the phrase 'the court must have regard primarily to the following' in section 9(3) may need to be amended to something in the nature of 'the court must have regard primarily to [section 9 (new aggravating factor) and] the following'. Otherwise, the separately-housed new aggravating provision would purport to link back to sections 9(2) and (3), yet section 9(3) would simultaneously exclude it from being of primary application to the only cases to which it could apply.

Subsections 9(10) and (10A) contain further language that might be useful to emulate in an occupational aggravating factor. Section 9(10) requires previous convictions to be treated 'as an aggravating factor if the court considers that it can be reasonably treated as such', having regard to two factors. Section 9(10A) ends with a potential ouster: 'unless the court considers it is not reasonable because of the exceptional circumstances of the case' (it then provides two non-exhaustive examples).

The Council considers that language such as that used in section 9(10) would be useful in avoiding unintended consequences if too rigid a structure was used (no matter where the factor was housed within section 9). For example, it could include the phrase '… as an aggravating factor if the court considers that it can be reasonably treated as such having regard to particular circumstances of the individual case'. It would be expected that in the majority of cases, such a section would achieve the result of aggravating the sentence.

Furthermore, the Council considers that the new provision should have an example of when it may not be reasonable to apply the aggravating factor (as was done with 'exceptional circumstances' in section 9(10A)) — namely, when the offender's behaviour giving rise to the charge was affected by his or her mental illness. The effect of mental illness on criminal culpability, in particular in respect of its potential to diminish the importance of specific and general deterrence in such cases, is discussed in Chapter 6, section 6.5.3.

This would protect against the risk of perverse outcomes flowing from a universal mandatory application of the provision. Another factual scenario where the aggravating factor may not apply (discussed here for completeness

but not suggested as an example in the section), is where a worker assaults a colleague at their workplace as a result of an argument leading to a consensual fight ending in a disproportionate response from the offender, having no link to any pre-existing bullying or power imbalance. This is criminal, but not the kind of behaviour reflecting workplace risk or vulnerability that this aggravating factor is designed to address.

2 – A single or split provision

The approach taken in NSW is to distinguish between statutory aggravating factors that:

- the victim was a police officer or emergency services worker or other identified category of worker 'exercising public or community functions' and the offence arose because of this; and
- 'the victim was vulnerable' for reasons including their occupation (with the examples provided being a person working at a hospital, other than a health worker captured in the aggravating factor above, taxi driver, bus driver, or other public transport worker, bank teller or service station attendant.[132]

Creating two limbs of a new aggravating factor focused on vulnerability due to victim occupation risks duplication and complicating the wider provision. However, as is the case in NSW, the Council does not propose that these would be identical limbs.

Reflecting in broad terms the NSW approach, the Council suggests that the same terminology (and definition) of 'frontline and emergency worker' be adopted in the first limb of the new aggravating factor as is to apply to the reformed version of section 340. This will ensure consistency and clarity of application.

The second limb, the Council recommends, should be built on the concept of vulnerability due to occupation based on the NSW model. As discussed above, that model uses a non-exhaustive list of examples that includes jobs in private industry with public-facing aspects. It can be extremely wide and cover volunteers.

The alternative approach — to capture both frontline and emergency workers, as well as other workers who are at increased risk due to their occupation — would have the benefit of simplicity of expression. However, it could lose declarative force in terms of the frontline and emergency worker cohort covered by an amended section 340.

Separate identification of victims who are frontline and emergency workers for the purposes of this statutory aggravating factor makes clear that this provision is intended to complement the section 340 reforms. It would apply in the sentencing of an offender for an offence against frontline and emergency workers other than an offence under section 340 — for example, where an offender is charged with assault occasioning bodily harm, wounding and grievous bodily harm. To make the application of this aggravating factor clear the Council supports including an explicit statement that a court is not to have additional regard to this factor in sentencing if it is an element of the offence, consistent with the approach in NSW.[133]

By way of analogy, the section 9(10A) aggravating factor has been held to not apply to the specific offence of choking, suffocation or strangulation in a domestic setting in section 315 of the *Criminal Code*.[134]

3 – Language to define the scope and applicability of the aggravating factor

The examples from the other jurisdictions show the diverse ways in which occupation can be scoped into an aggravating factor — e.g. a reference to a 'working worker', one with a public-facing role, one identifiable by reason of a uniform, listed in a schedule, as part of an exhaustive list and in relation to an assault in the course of the work, because the worker was a worker whether they were working or not, or because of something the worker did while working.

The NSW model simply uses the language, in the first limb: 'the victim was a police officer … exercising public or community functions and the offence arose because of the victim's occupation or voluntary work'.[135] The second limb states 'the victim was vulnerable, for example … because of the victim's occupation' (and lists, inter alia, occupation examples).[136]

The Council is of the view that both limbs of the aggravating factor should be wide enough to cover the scenarios in the revised section 340 as recommended — namely, that they capture assaults committed either while the person

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132 *Crimes (Sentencing Procedure) Act 1999* (NSW) ss 21A(2)(a) and (l).

133 Ibid s 21A(2).

134 *R v MCW* [2019] 2 Qd R 344, 352–3 [35] (Mullins J, Philippides JA and Boddice J agreeing).

135 *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(a).

136 Ibid s 21A(2)(l).

is acting in the execution of that person's duty or employment, or because of any act done in the execution of these duties or employment.

Other relevant sections of the *Criminal Code* deal only with conduct committed 'while engaged in the discharge or attempted discharge of the duties' (s 199) or acts done 'to resist or prevent a public officer from acting in accordance with lawful authority' (s 317). That this is not as wide as section 340 or the proposed aggravating factor is not of concern, as the conduct required for sections 199 and 317 is more specific — resisting or obstructing would not ordinarily be done because of a past-tense victim attribute or behaviour.

The Council suggests this could include a non-exhaustive list of examples, such as bus drivers or other public transport workers, taxi drivers, rideshare drivers, health workers, or security officers, but should not be limited to public sector employees and should include volunteers. It might also include volunteers who undertake emergency management roles who are not captured under the proposed amendments to section 340, such as surf lifesavers and members of volunteer marine rescue groups.

The Council notes that, in respect of children as offenders, section 9(2A) of the PSA is the foundation for the recommended aggravating factor. The contents of that provision are inconsistent with the YJA, which has different sentencing purposes and principles and comprises a separate and distinct 'code for dealing with children who have, or are alleged to have, committed offences'.[137] The YJA contains alternative sentencing options not available when sentencing adults. These recommendations should not apply to children.

Recommendation 10–1: New aggravating factor for assaults on public officers and other workers

(a) A new subsection, modelled on, and placed as part of, existing sections 9(9B) (regarding manslaughter of a child under 12 years), 9(10) (offender who has one or more previous convictions) and 9(10A) (domestic violence offences), should be added to section 9 of the *Penalties and Sentences Act 1992* requiring that when determining the appropriate sentence for an offender convicted of an offence to which subsections (2A) and (3) apply, a court must treat as an aggravating factor the fact that the offence occurred in the performance of the functions of the victim's office or employment, or because of the performance of those functions or employment.

(b) The aggravating factor should apply to two classes of victim within the provision, reflecting the NSW model in the *Crimes (Sentencing Procedure) Act 1999* section 21A(2):

  i. frontline and emergency workers victims adopting the same definition as under the revised section 340 as set out in Recommendation 3–1; and

  ii. other victims who are vulnerable because of their occupation. It could contain a non-exhaustive list of examples, such as bus drivers or other public transport workers, taxi drivers, rideshare drivers, health workers, or security officers, but should not be limited to public sector employees and should include volunteers.

(c) The new section should also have words to the effect that its subject matter must be treated as an aggravating factor if the court considers that it can be reasonably treated as such, having regard to particular circumstances of the individual case. This is consistent with the effect of sections 9(10) and (10A).

  It should also have an example of when it may not be reasonable to apply the aggravating factor — as was done with 'exceptional circumstances' in section 9(10A) — namely, when the offender's behaviour giving rise to the charge was affected by his or her mental illness.

(d) It should be made clear in drafting this new section that the court is not to have additional regard to the victim's occupation in sentencing if that factor is an element of the offence. For example, such an offence would not apply to assaults charged under section 340 of the *Criminal Code*.

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

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

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

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

137 *Youth Justice Act 1992* (Qld) s 2(b).

10.3 Mandatory and presumptive or 'statutory' penalties

This section discusses forms of mandatory and presumptive penalties. It does so on the basis that some stakeholders were supportive of stronger penalties on particular types of workers, and that it was identified by some as a way to achieve this outcome.[138]

10.3.1 What are mandatory minimum and presumptive penalties?

A number of jurisdictions have introduced mandatory minimum penalties or presumptive penalties that apply to assault offences committed against specific types of public officers in specific circumstances.

Mandatory sentences generally involve Parliament prescribing 'a minimum or fixed penalty for an offence'.[139] The Australian Law Reform Commission (ALRC) has identified, '[m]andatory sentencing can take various forms, the chief characteristic being that it either removes or severely restricts the exercise of judicial discretion in sentencing'.[140]

Presumptive sentences are slightly different in that they retain judicial discretion in sentencing, but generally by reference to specific criteria — 'which may be broadly or narrowly defined'.[141]

Another type of presumptive sentencing scheme is that introduced in Victoria for assaults committed on emergency workers, custodial officers, and youth justice custodial officers who are on duty. It applies statutory minimum non-parole periods and terms of imprisonment to certain types of assault offences. This is discussed below in section 10.3.3 'Victoria'.

10.3.2 Mandatory penalties in Queensland for assaults of public officers

There are three circumstances of aggravation that apply mandatory sentencing to specified serious assault sentences.

The first is a mandatory community service order for a prescribed offence if committed with a circumstance of aggravation (committed in a public place while adversely affected by an intoxicating substance).[142] A 'prescribed offence' includes common assault, wounding, AOBH, GBH, serious assault against police and public officers under sections 340(1)(b) and (2AA), and the PPRA section 790 offence.

This does not apply if the court is satisfied the offender is incapable of complying with a community service order because of any physical, intellectual or psychiatric disability.[143]

If it does apply and the person is detained on remand or imprisoned during the period of the community service order, that order is suspended until the person is released, and the period for completing the order is extended by the period the offender was detained or imprisoned.[144]

The second mandatory sentencing circumstance of aggravation is the 'serious organised crime circumstance of aggravation', applicable where the offence is committed as part of the offender's involvement in a criminal organisation.[145] It applies to a prescribed offence (which includes GBH, malicious acts, torture, AOBH if the applicable maximum penalty is 10 years' imprisonment, and serious assault against police if the applicable maximum penalty is 14 years' imprisonment). The sentence must include an extra, mandatory 7 years' imprisonment (which must be served wholly in custody) in addition to, and cumulatively (one after the other) upon, the sentence for the prescribed offence itself.

A third form of mandatory sentencing applies where an offender is convicted of a listed offence (or of counselling, procuring, attempting or conspiring to commit it) while the offender was a prisoner serving a term of imprisonment, or was released on parole.[146] Any sentence of imprisonment imposed for the offence must be served cumulatively

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138 For example, this position was supported by the Queensland Police Union of Employees in its preliminary submission, discussed in section 10.3.5 below.

139 Law Council of Australia, *Mandatory Sentencing: Factsheet 1* (undated).

140 Australian Law Reform Commission, *Same Crime: Same Time: Sentencing of Federal Offenders* (Report No. 103, 2006) 539 [21.54] (citations omitted).

141 Adrian Hoel and Karen Gelb, *Sentencing Matters: Mandatory Sentencing* (Sentencing Advisory Council (Victoria), August 2008) 2.

142 See *Penalties and Sentences Act 1992* (Qld) Part 5, Division 2, Subdivision 2 (ss 108A–D) and *Criminal Code* (Qld) chapter 35A (ss 365A–C).

143 *Penalties and Sentences Act 1992* (Qld) s 108B(2A).

144 Ibid s 108D.

145 See ibid Part 9D (ss 161N–S) and Schedule 1C.

146 Ibid s 156A and Schedule 1.

(one after the other) with any other term of imprisonment the person is liable to serve. Relevant offences include wounding, AOBH, serious assault, GBH, torture and malicious acts. Data on the use of cumulative sentences are presented in section 7.4 of Chapter 7.

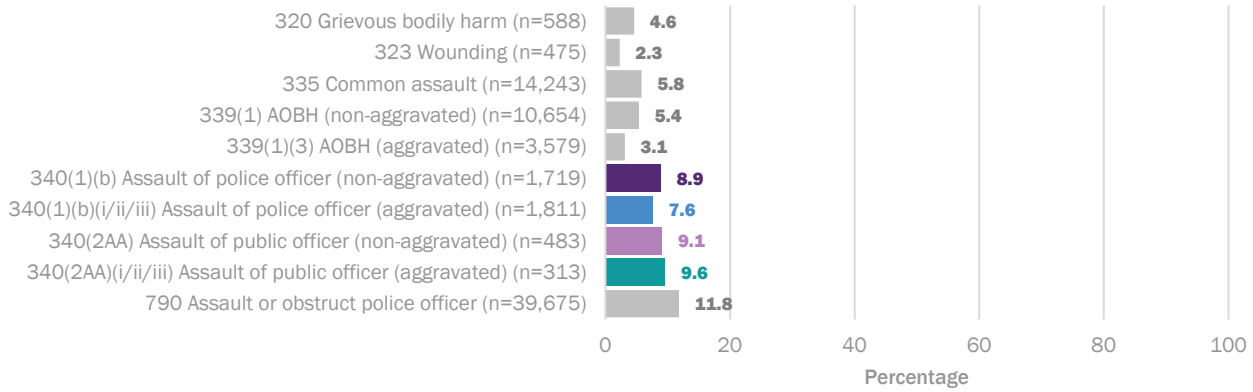
Intoxication in a public place as a circumstance of aggravation (PSA, s 108B)

The circumstance of aggravation under section 108B of the PSA came into operation on 1 December 2014.[147] This circumstance applies to section 340(1)(b) serious assault of a police officer and section 340(2AA) serious assault of a public officer, as well as other prescribed offences, presented in Figure 10-1 below.

The number of juvenile offenders sentenced with the 108B circumstance of aggravation was small (n=245), with three-quarters of those offences being under PPRA 790 assault or obstruct police officer (75.9%). The analysis below includes only offenders sentenced as adults. Due to the small sample sizes, particularly in the higher courts, higher and lower courts have been combined; however, results split by court level are shown in Table A4-11 in Appendix 4.

Of the prescribed offences presented in Figure 10-1, the offence of assault or obstruct a police officer under section 790 of the PPRA had the highest proportion of offences with 108B circumstance of aggravation applied in 11.8 per cent of cases. The serious assault of a public officer was the next highest, with 9.6 per cent of aggravated cases, and 9.1 per cent of non-aggravated cases involving a section 108 circumstance of aggravation. Serious assaults of police officers were also high, with 8.9 per cent of non-aggravated cases and 7.6 per cent of aggravated cases involving this circumstance of aggravation.

Figure 10-1: Proportion of sentenced offences with section 108B PSA intoxication circumstance of aggravation applied

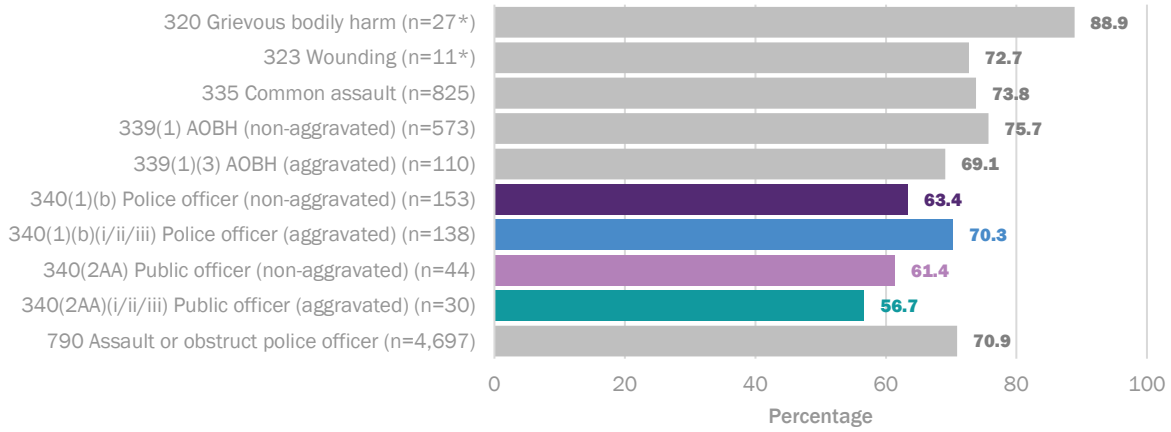


Data include adult offenders, lower and higher courts, offences on or after 1 December 2014, sentenced 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: All numbered references are to sections of the *Criminal Code*, with the exception of '790' which refers to the offence of assault or obstruct police under s 790 of the PPRA.

147 *Safe Night Out Legislation Amendment Act 2013* (Qld) s 92 inserting new pt 5, div 2, sub-div 2 into the *Penalties and Sentences Act 1992* (Qld).

While there is a presumption that a court must make a community service order if the intoxication circumstance of aggravation is applied to the sentenced offence, it is not always imposed. Figure 10-2 shows the proportion of offences with section 108B circumstances of aggravation charged that had a community service order imposed by the offence type. It ranges from 88.9 per cent for GBH down to 56.7 per cent for aggravated serious assault of a public officer. The most likely reason for this is that the sentencing court was satisfied that because of any physical, intellectual or psychiatric disability of the offender, the offender was not capable of complying with a community service order — which provides courts with a discretion not to make such an order.

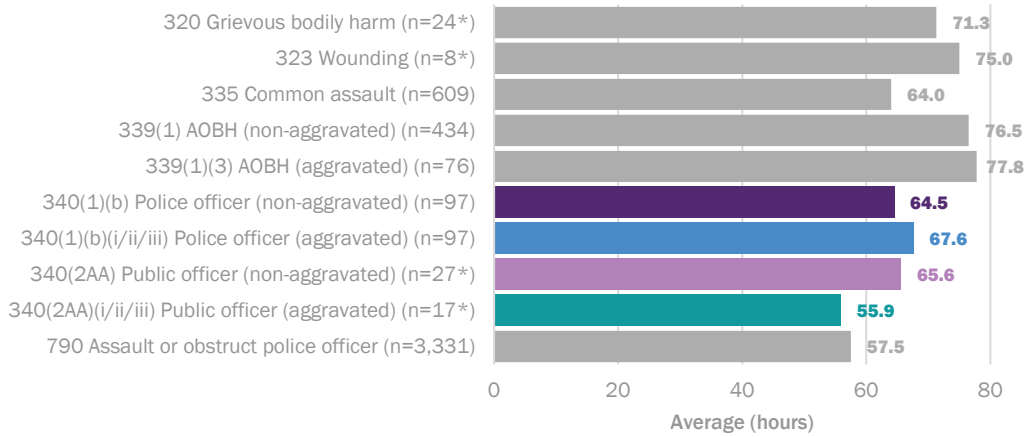
Figure 10-2: Proportion of sentenced offences with section 108B PSA intoxication circumstance of aggravation charged that received a community service order



Data include adult offenders, lower and higher courts, offences on or after 1 December 2014, sentenced 2014–15 to 2018–2019.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) All numbered references are to sections of the *Criminal Code*, with the exception of '790', which refers to the offence of assault or obstruct police under s 790 of the PPRA.
(*) Small sample size

Figure 10-2 shows the average length of community service orders that are made for offences that are charged with section 108B circumstance of aggravation. The average community service order length ranged from 55.9 hours for aggravated assault of a public officer to 77.8 hours for aggravated AOBH. Assault of a police officer offences (non-aggravated) received an average community service order of 64.5 hours.

Figure 10-3: Average community service order sentence (hours) for an offence with 108B



Data include adult offenders, lower and higher courts, offences on or after 1 December 2014, sentenced 2014-15 to 2018-19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) All numbered references are to sections of the *Criminal Code*, with the exception of '790', which refers to the offence of assault or obstruct police under s 790 of the PPRA.
(*) Small sample size

While a community service order must be ordered for offences with a section 108B circumstance of aggravation, unless one of the exclusionary criteria are met, other penalties can also be imposed for the same offence, meaning the community service order may not be the most serious penalty for the offence.

An imprisonment sentence was the most serious penalty imposed most frequently for the following offences with 108B: aggravated AOBH, GBH, non-aggravated assault of a police officer, aggravated assault of a police officer, non-aggravated assault of a public officer, aggravated assault of a public officer, and wounding (see Table A4-12 in Appendix 4). A community service order was most commonly the most serious penalty for the offences of non-aggravated AOBH, assault or obstruct police officer and common assault.

Considering each of the prescribed offences for the purposes of section 108B, the proportion of offenders sentenced with the circumstance of aggravation varies by demographic group. For Aboriginal and Torres Strait Islander female offenders, the largest proportion of offences sentenced with a section 108B circumstance of aggravation was assault of a police officer (non-aggravated) for which 16.1 per cent of offenders had the circumstance of aggravation applied, followed by assault or obstruct police officer (14.7%) and aggravated assault of a police officer (10.6%). Comparatively, non-Indigenous female offenders had the highest proportion of section 108B circumstances of aggravation for assault or obstruct police officer (10.3%) followed by aggravated assault of a public officer (9.6%).

Both Aboriginal and Torres Strait Islander and non-Indigenous male offenders had the highest proportion of a section 108B circumstance of aggravation applied for assault or obstruct police officer (12.8% and 11.6%, respectively), followed by aggravated assault of a public officer (9.6% and 11.0%, respectively).

Table 10-1: Proportion of offences with 108B circumstance of aggravation by demographic group

	Aboriginal and Torres Strait Islander		Non-Indigenous		Aboriginal and Torres Strait Islander		Non-Indigenous	
	Female	Male	Female	Male	Female	Male	Female	Male
Offence	**Number of sentenced offences**				**Proportion with 108B (%)**			
320 Grievous bodily harm	29*	176	22*	356	6.9	2.3	0	5.3
323 Wounding	124	114	68	168	3.2	2.6	0	2.4
335 Common assault	1,261	3,162	1,929	7804	6.2	6.2	5	6
339(1) AOBH (non-aggravated)	642	2,836	1,020	6101	5.8	5.3	6	5.4
339(1)(3) AOBH (aggravated)	372	1,065	320	1795	4	3.2	2	3.1
340(1)(b) Police officer (non-aggravated)	124	441	232	915	16.1	9.5	7.8	8
340(1)(b)(i/ii/iii) Police officer (aggravated)	198	494	313	801	10.6	8.9	6.7	6.5
340(2AA) Public officer (non-aggravated)	56	96	107	222	8.9	9.4	7.5	9.9
340(2AA)(i/ii/iii) Public officer (aggravated)	36	77	73	127	5.6	9.1	9.6	11
790 Assault or obstruct police officer	3,010	8,064	6,316	22109	14.7	12.8	10	11.6

Data include adult offenders, lower and higher courts, offences on or after 1 December 2014, sentenced 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes:
(1) Count is offence based so offenders may be counted more than once if they were sentenced for more than one offence with 108B circumstances of aggravation within the time period.
(2) If the gender and/or Aboriginal or Torres Strait Islander status of an offender is unknown, they have been included in the calculations but not presented.
(3) All numbered references are to sections of the *Criminal Code*, with the exception of '790', which refers to the offence of assault or obstruct police under s 790 of the PPRA.
(*) Small sample size

Table 10-2 shows the number and proportion of cases involving serious assault of a public officer (s 340(2AA)) offences with a section 108B intoxication circumstance of aggravation by the occupation of the victim. It shows that, proportionally, paramedics are the most likely to be assaulted by an intoxicated person in a public place (16.9%), followed by police officers (9.1%). Given the nature of the work of paramedics and police officers, this is not an unexpected result.

Table 10-2: Proportion of offences with 108B circumstance of aggravation by occupational group of victim

Victim category	Sentenced offences (n)	Proportion with s 108B intoxication circumstance of aggravation (%)
Paramedic	319	16.9
Police officer	33	9.1
Compliance officer	18	5.6
Medical/ hospital worker (excluding security)	236	5.1
Security guard	77	3.9
Watch-house officer	51	2
Child safety officer	9	0
Corrective services officer	14	0
Detention centre worker	9	0
Other	15	0
Transport officer (excluding security)	16	0
TOTAL	**797**	**9.3**

Data include adult offenders, lower and higher courts, offences on or after 1 December 2014, sentenced 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) Count is by charge (i.e. victim); therefore the victim may not be unique.
(*) Small sample size

10.3.3 The approach in other jurisdictions

New South Wales

Sentencing discretion in NSW has largely been retained, but a presumptive sentencing scheme applies to some offences in the form of the standard non-parole period (SNPP) scheme.

The SNPP has been in operation in NSW since February 2003. In its current legislative form it 'represents the non-parole period for an offence [as listed in the relevant Table to Division setting these out] that, taking into account only the objective factors affecting the relative seriousness of that offence, is in the middle of the range of seriousness'.[148] The relevant legislation provides the SNPP for an offence is a matter to be taken into account by a court in determining the appropriate sentence for an offender, but without limiting the matters that are otherwise required or permitted to be taken into account in determining the appropriate sentence for an offender.[149] While the court must make a record of its reasons for setting a non-parole period that is longer or shorter than the non-parole period and each factor it took into account,[150] it is not required to identify the extent to which the seriousness of the offence for which the non-parole period is set differs from an offence to which the SNPP is referable.[151]

The current SNPP scheme in NSW operates consistently with the High Court's determination in *Muldrock v The Queen*.[152] In this case, the High Court considered the nature of SNPPs and found that the court is obliged to take

148 *Crimes (Sentencing Procedure) Act 1999* (NSW) s 54A(2).

149 Ibid s 54B(2).

150 Ibid 54B(3). This also applies to aggregate sentences — in which case, a court must first indicate and make a written record of the offences to which a SNPP applies and the non-parole period that it would have set for each offence to which the aggregate sentence relates had it set a separate sentence of imprisonment for that offence, and then record the reasons it would have set a non-parole period that is longer or shorter than the non-parole period for each offence to which a SNPP applies: ss 54B(4)–(5).

151 Ibid s 54B(6).

152 (2011) 244 CLR 120.

into account the full range of factors in determining the appropriate sentence for the offence, with the SNPP, together with the maximum sentence, operating as 'legislative guideposts'.[153]

SNPPs apply to two types of offence relevant to this reference: assault of a police officer while in the execution of that officer's' duty in circumstances where bodily harm is caused (3 years),[154] and wounding or causing GBH to a police officer, being reckless as to whether actual bodily harm will be caused to that officer or another person (5 years).[155]

The NSW scheme does not apply to the sentencing of offenders under the age of 18 years at the time of the commission of the offence,[156] or to matters heard and determined summarily.[157]

Northern Territory and Western Australia

The NT and WA have introduced mandatory minimum terms of imprisonment that apply to assaults on police and some other occupational categories in circumstances where the victim has suffered physical or bodily harm as a result of the assault. The same form of assault if committed in Queensland would constitute aggravated serious assault under section 340 of the *Criminal Code*.

The mandatory minimum penalties that apply in the NT range from a minimum of 3 months' actual imprisonment if physical harm is caused[158] to 12 months' actual imprisonment if the offence involved the actual or threatened use of an offensive weapon, the victim suffered physical harm, and the offender has previously been convicted of a violent offence.[159]

In WA, the penalties for adult offenders range from 6 months' actual imprisonment[160] to 9 months if committed while armed or in company.[161] A mandatory minimum 3-month sentence, to be served by way of imprisonment or in youth detention, also applies to young offenders who committed the offence when aged 16 or 17 years to be served by way of imprisonment or in youth detention.[162]

In WA, a mandatory minimum penalty of 12 months (or 3 months for young offenders) also applies to offenders convicted of GBH committed in 'prescribed circumstances', which includes where the victim of the offence is a police officer.[163]

In the NT, an 'exceptional circumstances' exemption applies to mandatory minimum sentences that, when met, require the court to impose a term of actual imprisonment, but allows the court to order that part be suspended or served by way of home detention.[164] The relevant section providing for this exception states that the following do not constitute exceptional circumstances:

> (a) that the offender was voluntarily intoxicated by alcohol, drugs or a combination of alcohol and drugs at the time the offender committed the offence;
>
> (b) that another person:
>
> (i) was involved in the commission of the offence; or
>
> (ii) coerced the person to commit the offence.[165]

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153 Ibid 132 [27].

154 *Crimes (Sentencing Procedure) Act 1999* (NSW) pt 4, div 1A, Table — Standard non-parole periods — item 5 (applying to offences committed under s 60(2) of the *Crimes Act 1900*).

155 Ibid — item 6 (applying to offences committed under s 60(3) of the *Crimes Act 1900* (NSW)).

156 Ibid s 54D(3).

157 Ibid s 54D(2).

158 *Criminal Code* (NT) s 189A; and *Sentencing Act 1995* (NT) ss 78CA(2) (offence is a level 4 offence if the victim suffers physical harm, and the offence is not a level 5 offence), 78DB (mandatory penalty for a Level 4 offence), 78CA(1)(b), 78D.

159 *Sentencing Act 1995* (NT) s 78DA.

160 *Criminal Code* (WA) ss 318(1)(d)–(e), (1)(h)(i), (j) and (k), 318(4)(b) and 318(5) (definition of 'prescribed circumstances, which includes where the offence is committed against a police officer and the officer suffers bodily harm).

161 Ibid ss 318(1)(l) and 318(4)(a) and 318(5) regarding offences committed in 'prescribed circumstances'.

162 Ibid s 318(2). This applies to offences committed in 'prescribed circumstances' (defined in s 318(5)), which includes where the offence is committed against a police officer and the officer suffers bodily harm.

163 *Criminal Code* (WA) ss 297(4)(a)–(b), (d)(i), (f) and (g), 297(5)(b) (adults) and 297(6)(b) (juveniles) and 297(8) (prescribed circumstances).

164 *Sentencing Act 1995* (NT) s 78DI (exceptional circumstances exemption). This requires a court to comply with s 78DG where the court is satisfied the circumstances of the case are exceptional.

165 Ibid s 78DI(4).

The mandatory minimum sentencing reforms in the NT, as they apply to assaults on police (s 189A of the *Criminal Code* (NT)), were introduced by the *Sentencing Amendment (Mandatory Minimum Sentences) Act 2013* (NT). Section 189A was subsequently amended, in 2019, to apply to other frontline emergency workers. As a result of these changes, the current mandatory minimum sentences that apply to assaults on police where the victim suffered physical harm now apply to assaults against other frontline workers.[166]

The justification for the original form of the WA reforms, when introduced in 2009 under the *Criminal Code Amendment Act 2009* (WA), simply stated, was to implement an election commitment of the then government. Its broader objective, as described by then Attorney-General Christian Porter in introducing the Bill, was 'to take strong and decisive action to ensure that offenders are severely punished' and to 'clearly indicate to others who may contemplate such crimes that the law's response will be swift and firm', serving the purposes of general deterrence.[167]

The amendment Act, as introduced, confined the application of the mandatory minimum penalty to assaults committed against police causing bodily harm. In limiting its scope in this way, the Attorney-General suggested:

> Mandatory sentencing is a tool of criminal law that should be used very cautiously. Only in situations in which there are problems of undeniably crucial public significance and in which other alternatives are or would be ineffective should mandatory sentences be contemplated. However, this government considers this legislation to be the only way to ensure that the sentencing in this area reflects the expectations of the Parliament and our community.[168]

The Bill was subsequently expanded during its debate to include ambulance officers, prison officers and some security officers.

South Australia

The South Australia offence of causing harm to, or assaulting, certain emergency workers introduced in 2019 into the *Criminal Law Consolidation Act 1935* (SA) is discussed in Chapter 8.

The new offence under sections 20AA(1), (2) and (4) is a 'designated offence' under section 96 of the *Sentencing Act 2017* (SA). This has the effect of limiting the availability of wholly suspended sentences in particular circumstances, including where the person is being sentenced as an adult for a designated offence and in the 5 years immediately prior to the new offence date, they had received a suspended sentence of imprisonment or period of detention for another designated offence, or for a specified offence against police, unless there are exceptional circumstances.[169] Where a person has been sentenced for a designated offence the sentencing court may order that the person serve a 'specified period of imprisonment in prison (which, if a non-parole period has been fixed in respect of the defendant, must be a period that is one-fifth of the non-parole period fixed)'.[170]

When considering whether the court must set the period of imprisonment to be at least or exactly one-fifth of the non-parole period, the South Australian Court of Appeal has determined:

> Section 96(5)(a) of the *Sentencing Act* requires a court suspending a sentence of two years or more for a prescribed designated offence to fix a specified period of imprisonment to be served which, if the non-parole period has been fixed, must be a minimum of one-fifth of that non-parole period.[171]

The Court of Appeal, in considering the application of these non-parole period requirements, noted that Parliament's intention when introducing the Criminal Law (Sentencing) (Suspended Sentences) Amendment Bill, was to address the 'total suspension of sentences of serious, violent offenders', and that it would be 'counterintuitive' to require the court to 'fix a specified period at such a low proportion of the non-parole period'.[172]

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166 *Criminal Code Amendment Act 2019* (NT) s 7.

167 Western Australia, *Parliamentary Debates*, Legislative Assembly, 4 December 2008, 965 (C Porter, Attorney-General). Evaluations of this legislation are discussed in Appendix 7.

168 Ibid.

169 *Sentencing Act 2017* (SA) ss 96(3)(c)–(d).

170 Ibid s 96(5)(a).

171 *R v Hayles* [2018] SASCFC 141 (Vanstone J, Kelly and Peek JJ agreeing).

172 Ibid [12].

Tasmania

In Tasmania, by operation of section 16A of the *Sentencing Act 1997* (Tas), a mandatory minimum sentence of 6 months' imprisonment applies to any offence committed against a police officer while the police officer was on duty and the officer suffered serious bodily harm caused by, or arising from, the offence unless there are exceptional circumstances. This minimum sentence applies regardless of whether the offence is punishable by imprisonment, or the maximum penalty is a term of imprisonment less than 6 months.[173]

There is a Bill currently before the Tasmanian Parliament, introduced by the Liberal Government, that, if passed, will introduce the same minimum penalty in circumstances where serious bodily harm has been caused to other frontline workers.[174] During the House of Assembly's debate of the Bill, the Shadow Attorney-General indicated that while the mandatory minimum sentence for serious bodily harm to a police officer has been in place since 2014, only one person has been charged under those mandatory provisions.[175]

Victoria

In 2014, Victoria introduced a statutory (presumptive) minimum term of imprisonment of 6 months, which applies in circumstances where a person, without lawful excuse, has intentionally or recklessly caused injury to an emergency worker on duty, a custodial officer on duty or a youth justice custodial officer on duty in circumstances where the offender knew or was reckless as to whether the victim was such a person.[176] 'Injury' is defined for this purpose to mean any physical injury, or harm to mental health, whether of a temporary or permanent nature.[177]

A youth justice centre order for a term not less than six months may be made if the person is 18 years or over but under 21, in circumstances where the court has received a pre-sentence report and believes there are reasonable prospects for rehabilitation; or that the young person is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison.[178]

Minimum non-parole periods also apply when sentencing an offender for the following offences under the *Crimes Act 1958* (Vic) in circumstances where the offence is committed against an emergency worker on duty, a custodial officer on duty, or a youth justice custodial officer on duty:

- causing injury intentionally or recklessly in circumstances of gross violence[179] (not less than 5 years);
- causing serious injury recklessly under section 17 of the *Crimes Act 1958* (Vic) (not less than 2 years);
- causing serious injury intentionally under section 16 of the *Crimes Act 1958* (Vic) (not less than 3 years).[180]

As for the offence of causing injury intentionally or recklessly, there are special provisions that apply to young offenders (18 years or over but under 21) that, in this instance, enable the court to make a youth justice centre

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173 *Sentencing Act 1997* (Tas) s 16A(3).

174 Justice Legislation (Mandatory Sentencing) Bill 2019 (Tas) passed by the House of Assembly on 26 November 2019 and introduced that same day into the Legislative Council.

175 Tasmania, *Parliamentary Debates*, House of Assembly, 26 November 2019, 70 (Ella Haddad, Shadow Attorney-General).

176 *Crimes Act 1958* (Vic) s 18; *Sentencing Act 1991* (Vic) ss 3 (definition of 'category 1 offence' — which includes an offence against s 18 of the *Crimes Act 1958* (Vic) if the victim falls into one of the identified categories of worker and the offender knew or was reckless as to this fact (para (cc)); 5(2G) (requirement to impose a custodial order for a category 1 offence); and 10AA(4) (requirement to impose a term of imprisonment of not less than 6 months unless the court finds a special reason exists).

177 *Crimes Act 1958* (Vic) s 15 — definition of 'injury'. In the same section, 'physical injury' is defined to include unconsciousness, disfigurement, substantial pain, infection with a disease and an impairment of bodily function, while 'harm to mental health' is defined to include psychological harm, but not an emotional reaction such as distress, grief, fear or anger unless it results in psychological harm.

178 *Sentencing Act 1991* (Vic) ss 10AA(2)–(3). This does not apply if the court makes a finding under section 10A, in which case the court has full sentencing discretion.

179 *Crimes Act 1958* (Vic) ss 15A (Causing serious injury intentionally in circumstances of gross violence) and 15B (Causing serious injury recklessly in circumstances of gross violence). Circumstances of gross violence are constituted by any one of the following: (a) the offender planned in advance to engage in conduct and at the time of planning intended the conduct would cause a serious injury, was reckless as to whether the conduct would cause a serious injury, or a reasonable person would have foreseen the conduct would be likely to result in a serious injury; (b) the offender was in company with two or more other persons; (c) the offender entered into an agreement, arrangement or understanding with two or more other persons to cause a serious injury; (d) the offender planned in advance to have with him or her and to use an offensive weapon, firearm or imitation firearm and used one of these to cause the serious injury; (e) the offender continued to cause injury to the other person after the other person was incapacitated; (f) the offender caused the serious injury to the other person while the other person was incapacitated: *Crimes Act 1958* (Vic) ss 15A(2) and 15B(2).

180 *Sentencing Act 1991* (Vic) ss 10AA(1)–(2).

order for the same minimum term as the minimum non-parole period that would have applied had a prison sentence been imposed.[181]

In the second reading speech introducing these reforms, then Attorney-General Robert Clark described the reforms as recognising 'the very special role played by Victoria's emergency workers, and the need to ensure they receive the full protection of the law when treating, caring for and protecting Victorians at times of emergency'.[182] Longer sentences were said to 'reflect the opprobrium that the community attaches to acts of violence against emergency workers who put themselves on the line in emergency situations on behalf of the community' and to send 'a clear message to perpetrators of these acts that violence against emergency workers will not be tolerated and will be met with strong penalties'.[183]

In 2018, the offences of causing serious injury intentionally or recklessly, and causing injury intentionally or recklessly if the victim was an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty, and the offender knew or was reckless as to this, were categorised as 'category 1 offences' for the purposes of the *Sentencing Act 1991* (Vic). This means that in sentencing an offender for one of these offences committed in these circumstances, a court must make a custodial order (but excluding a sentence of imprisonment imposed with a community correction order).[184]

Importantly, the requirements under the Victorian sentencing provisions discussed above do not apply if a court makes a finding under section 10A of the *Sentencing Act 1991* (Vic) that a special reason exists. This legislative exemption has led some to question whether these provisions should be characterised as mandatory sentencing provisions.[185]

If a court makes a finding that a special reason exists justifying departure from the mandatory sentencing provisions, it must state in writing the special reasons and cause this to be entered in the records of the court.[186]

Section 10A(2) sets out specific guidance about the circumstances in which a court may make a finding that a special reason exists, being that:

> (a) the offender has assisted or has given an undertaking to assist, after sentencing, law enforcement authorities in the investigation or prosecution of an offence; or
>
> (c) the offender proves on the balance of probabilities that—
>
> (i) … at the time of the commission of the offence, he or she had impaired mental functioning[187] [not caused solely by self-induced intoxication] that is causally linked to the commission of the offence and substantially and materially reduces the offender's culpability;[188] or
>
> (ii) he or she has impaired mental functioning that would result in the offender being subject to substantially and materially greater than the ordinary burden or risks of imprisonment;[189] or

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181 *Sentencing Act 1991* (Vic) s 10AA(2).

182 Victoria, *Parliamentary Debates*, Legislative Assembly, 26 June 2014, 2397 (Robert Clark, Attorney-General).

183 Ibid.

184 *Sentencing Act 1991* (Vic) ss 3(1) (definition of 'category 1 offence'), paras (ca), (cb) and (cc) and 5(2G) (requirement to impose custodial order). The amending Act was the *Justice Legislation Miscellaneous Amendment Act 2018* (Vic) s 73.

185 See, for example, Simone Fox Koob, 'The Community Has Been Misled': Chief Judge Slams Commentary Around 'Mandatory' Sentencing Laws', *The Age* (online, 19 February 2020) <https://www.theage.com.au/national/victoria/the-community-has-been-misled-chief-judge-slams-commentary-around-mandatory-sentencing-laws-20200219-p5428u.html>; *DPP v Haberfield* [2019] VCC 2082, 34 [91] (Tinney J); and questions posed to the Victorian Premier, Daniel Andrews, in response to a Question without Notice by the Leader of the Opposition, Michael O'Brien in the Victorian Parliament: Victoria, *Parliamentary Debates*, Legislative Assembly, 20 February 2020, 499–50.

186 *Sentencing Act 1991* (Vic) s 10A(4).

187 Ibid s 10A(1) defined to mean: (a) a mental illness within the meaning of the *Mental Health Act 2014 (Vic)*; (b) an intellectual disability within the meaning of the *Disability Act 2006 (Vic)*; (c) an acquired brain injury; (d) an autism spectrum disorder'; or (e) a neurological impairment, including but not limited to dementia.

188 For a recent judgment in which this finding was made, see *DPP v Haberfield* [2019] VCC 2082.

189 Ibid.

(d) the court proposes to make a Court Secure Treatment Order[190] or a residential treatment order[191] in respect of the offender; or

(e) there are substantial and compelling circumstances that are exceptional and rare and that justify doing so.

In deciding if there are substantial and compelling circumstances, the court is required to:

(a) regard general deterrence and denunciation of the offender's conduct as having greater importance than the other sentencing purposes [under the Act (just punishment, special deterrence, rehabilitation and community protection)]; and

(b) give less weight to the personal circumstances of the offender than to other matters such as the nature and gravity of the offence; and

(c) not have regard to—

(i) the offender's previous good character (other than an absence of previous convictions or findings of guilt); or

(ii) an early guilty plea; or

(iii) prospects of rehabilitation; or

(iv) parity with other sentences.[192]

Further guidance to courts in deciding if there are substantial and compelling circumstances is contained in section 10A(3) requiring courts to have regard to Parliament's intention that:

- a sentence of imprisonment should ordinarily be imposed for the offences of causing serious injury recklessly and causing serious injury intentionally where committed against an emergency worker on duty, a custodial officer on duty or a youth justice custodial worker on duty, and that a non-parole period of not less than the length specified should ordinarily be fixed in respect of that sentence;[193] and
- a sentence of imprisonment of not less than 6 months should ordinarily be imposed for the offence of intentionally or recklessly causing injury committed against an emergency worker on duty, a custodial officer on duty or a youth justice custodial officer on duty.[194]

At the time of introducing the 2014 statutory minimum sentencing provisions, the then Attorney-General indicated that the provisions for departure from the scheme would avoid limiting protection from cruel, inhuman or degrading punishment, consistent with section 10 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic), because where a court is satisfied a special reason exists, it has full sentencing discretion.[195] Later amendments in 2018, which narrowed 'special reasons' exceptions (reflecting their current form), were defended by the then government on the basis that these provisions remained compatible with human rights, targeting 'a narrow and well-defined class of victims' and providing a proportionate response to this form of offending.[196] However, they attracted strong criticism from stakeholders, including the Federation of Community Legal Centres and the Law Institute of Victoria

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190 A court secure treatment order is a sentencing order requiring an offender to be compulsorily taken to, and detained and treated, at a designated mental health service: *Sentencing Act 1991* (Vic) ss 94A and 94B(1). Criteria for the making of the order include: (a) but for the person having a mental illness, the court would have sentenced the person to a term of imprisonment; (b) the court has considered the person's current mental condition, his or her medical, mental health and forensic history and social circumstances; and (c) the court is satisfied based on a psychiatrist's report and other evidence that the person has a mental illness, and needs treatment to prevent serious deterioration in their mental or physical health, or serious harm to the person or another person, and there is no less restrictive means readily available to enable the person to receive the treatment they need: Ibid s 94B(1).

191 Residential treatment orders are orders directing that an offender be detained for a period of up to 5 years in a residential treatment facility: *Sentencing Act 1991* (Vic) s 82AA. These orders can only be made for certain sexual offences, or if an offender has been found guilty of a 'serious offence' as defined in section 3(1) of the Act — which includes a number of offences, including causing serious injury intentionally in circumstances of gross violence (*Crimes Act 1958* (Vic) s 15A), causing serious injury recklessly in circumstances of gross violence (*Crimes Act 1958* (Vic) s 15B), and causing serious injury intentionally (*Crimes Act 1958* (Vic) s 16). The Secretary to the Department of Health and Human Services must first specify that the person is suitable for admission to a residential treatment facility; and specify in the plan of available services, that services are available in a residential treatment facility.

192 *Sentencing Act 1991* (Vic) s 10A(2B).

193 Ibid s 10A(3)(a).

194 Ibid s 10A(3)(ab).

195 Victoria, *Parliamentary Debates*, Legislative Assembly, 26 June 2014, 2395 (Robert Clark, Attorney-General).

196 Victoria, *Parliamentary Debates*, Legislative Assembly, 21 June 2018, 2134 (Martin Pakula, Attorney-General).

in their joint submission to the Victorian Parliamentary Scrutiny of Acts and Regulations Committee. The same justifications were repeated regarding further proposed narrowing of 'special reasons' exceptions in 2020.[197]

The options available to courts as a result of the 2018 Victorian sentencing amendments mean that even where the court has found that a special reason exists for a Category 1 offence, a court's sentencing options are limited. In these circumstances, a court must make either:

- a custodial order (under pt 3, div 2 of the Act), which includes imprisonment, drug treatment orders, youth justice centre and youth residential centre orders; or
- a mandatory treatment and monitoring order[198] (whether or not a sentence of imprisonment is imposed under 44 in combination with a community correction order), a residential treatment order[199] or a court secure treatment order[200] if:

  (a) the offender proves on the balance of probabilities that, at the time of the commission of the offence, the offender had impaired mental functioning [excluding that solely caused by self-induced intoxication] causally linked to the commission of the offence which substantially and materially reduced the offender's culpability; and

  (b) the court is satisfied [one of these orders] is appropriate.[201]

The presumption to impose custodial sentences in Victoria also applies to the offence of common assault in circumstances where the person assaulted is a police officer or protective services officer on duty and involves an offensive weapon, firearm or an imitation firearm if the assault consisted of, or included, the direct application of force.[202] There are stated exceptions to this.[203]

The combined effect of these new provisions has been described by a judge of the County Court of Victoria in the recent appeal decision of *DPP v Haberfield*[204] in the following terms:

> Under these provisions, undoubtedly more people will be sent to prison for these offences, even people who would not be imprisoned in the absence of these laws. That is plainly the intention of Parliament.
>
> The message sent by Parliament could not be clearer. Do not assault emergency services workers. If you do, don't say you have not been warned. Prison will ordinarily be the outcome, whoever you are, whatever your character, whatever the reasons for you so acting, whatever damage may be caused to you in prison.[205]

DPP v Haberfield[206] was the first case applying this complex legislation. At first instance, a magistrate found that the offender had impaired mental functioning caused solely by drug use, yet erroneously found that, on this factual basis, the legislation still permitted the imposition of a non-custodial penalty. The prosecution appealed to the County Court [District Court equivalent], which reheard the matter. The County Court would have had to imprison the offender if the same factual finding was made. However, the judge had a new medical report and evidence from an expert, who had the benefit of information about the offender between the first sentence and the appeal. This led to the judge finding, contrary to the magistrate, that there was an underlying, enduring mental illness, not just a drug-induced psychosis — meaning that the impaired mental functioning was not, in fact, caused solely by drug use (although drugs did play a 'sizeable' role).[207] The offender had (unknown to him) underlying, developing schizophrenia (triggered by drug use). This opened the door to a special reason finding, which permitted

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197 These justifications were repeated for the Sentencing Amendment (Emergency Worker Harm) Bill 2020 — see Victoria, *Parliamentary Debates*, Legislative Council, 19 March 2020, 1254 (Jaala Pulford, Minister for Roads, Minister for Road Safety and the TAC, Minister for Fishing and Boating).

198 Mandatory treatment and monitoring orders are a form of community correction order with mandatory conditions attached, being a judicial monitoring condition and either a treatment and rehabilitation condition, or a justice plan condition, and can also have other conditions attached: *Sentencing Act 1991* (Vic) s 44A.

199 See (n 191).

200 See (n 190).

201 *Sentencing Act 1991* (Vic) ss 3(1) (definition of 'category 1 offence'), paras (ca), (cb) and (cc); and 5(2GA).

202 This requirement arises from the classification of common assault committed in the relevant circumstances and consisting of or including the direct application of force as a 'category 2 offence' for the purposes of the *Sentencing Act 1991* (Vic): see *Sentencing Act 1991* (Vic) ss 3(1)(m) and 5(2H).

203 See *Sentencing Act 1991* (Vic) s 5(2H) (a) to (e). The sentence must, unless otherwise directed by the court, be served cumulatively on any uncompleted sentence or sentences of imprisonment imposed on that offender, whether before or at the same time as that term: s 16(3E).

204 [2019] VCC 2082.

205 Ibid 36–37 [98]–[99] (Tinney J).

206 Ibid.

207 Ibid 26 [72]–[73], 40 [112].

consideration of one form of non-custodial penalty. The County Court judge, being careful to convey that the comments were not intended to criticise Parliament,[208] noted the complexity of the legislation:

> I had great difficulty myself following the legislative framework and ascertaining the consequences of finding the existence of a special reason. Those consequences are not described in section 10A which is the provision setting out the special reasons. Those consequences can only be discovered by going to the definition section of the Act (section 3) and then to a number of further provisions including s 5 ss (2G), s 5 ss (2GA), s 5 ss (2GB) and s 5 ss (2GC). It is a bit cumbersome.[209]

The special reasons provisions are not, in truth, mandatory sentencing provisions:

> A mandatory provision would say that if 'crime X' is committed, 'sentence Y' is the invariable, the only result. No ifs. No buts … That is not the position here at all and never has been. There are a very limited number of special reasons deliberately inserted into section 10A [and if one is] established by an offender on the balance of probabilities, then there is no requirement to impose a 6 month term at all, and in one particular setting contemplated by the legislation, there is no requirement to imprison at all.[210]

Amendments that came into effect on 1 July 2020[211] now require courts to have regard to the fact that a sentence of at least the length of the statutory minimum sentence should ordinarily be imposed, unless the cumulative impact of the circumstances of the case (including the special reason) justifies departure from that sentence.[212] They also narrow the application of special reasons to exclude mental functioning caused 'substantially' rather than 'solely' by self-induced intoxication and direct courts where the 'burden of imprisonment' due to impaired mental functioning is high — a basis for finding 'special reasons' exist when sentencing for a category 2 offence under section 3(2H)(c) — to have regard to Parliament's intent as to the length of sentence that should ordinarily be imposed. This would possibly alter the outcome of a case like *Haberfield* in future: It 'will narrow the range of circumstances in which self-induced intoxication will be able to constitute special reasons for not imposing any applicable statutory minimum sentence'.[213]

Following amendments moved by a Member of Derryn Hinch's Justice Party, supported by the Victorian Government, there is a requirement that the effectiveness of these recent amendments be reviewed after 12 months of operation and that a report on the outcome of the review be laid before both Houses of Parliament on the outcome.[214]

10.3.4 Evidence of the effectiveness of statutory and mandatory minimum sentences for assaults of public officers

The Council commissioned the Griffith Criminology Institute, Griffith University to undertake a literature review focusing on the causes, frequency, and seriousness of assaults on public officers, as well as the impact of sentencing reforms aimed at addressing these types of assaults. Below is a direct extract of the executive summary of this report,[215] which can be found in full on the Council's website.

> **What do we know about the sentencing of assaults on public officers?**
>
> Penalty enhancements or mandatory minimum sentencing schemes for assaults against public officers are not unusual in common law jurisdictions. These types of sentencing frameworks generally mean that perpetrators convicted of assaults against public officers will be sentenced more harshly than those convicted of similar assaults against other individuals. The justification for treating public officers differently is based on arguments that their willingness to provide a service to others, often at risk to themselves, aggravates the seriousness of the offence.
>
> The effectiveness of these penalty enhancements or mandatory minimum sentences depends on the outcome that these sentences are designed to achieve. In general, there are two purposes that are expressed in debate around legislation proposing these sentencing regimes: deterrence, and condemnation and denunciation.
>
> Do penalty enhancements or mandatory minimum sentencing schemes deter future assaults against public officers? There is almost no evidence of the impact of these types of sentences on future assaults on public officers. Since 2009, there have been declines in recorded assaults against police in Western Australia. With the introduction of an amendment to provide mandatory sentences for assaults against police, this trend suggests

208 Ibid 7 [16].

209 Ibid 7 [15].

210 Ibid 5 [13].

211 *Sentencing Amendment (Emergency Worker Harm) Act 2020* (Vic) s 2.

212 Ibid.

213 Explanatory Memorandum, Sentencing Amendment (Emergency Worker Harm) Bill 2020 (Vic) 2, 4.

214 *Sentencing Act 1991* (Vic) s 116A.

215 Christine Bond et al, *Assaults on Public Officers: A Review of Research Evidence* (Griffith Criminology Institute for Queensland Sentencing Advisory Council, March 2020) iv to v.

that such sentencing enhancements may have a deterrent effect. However, there were other significant changes over the same period which could equally explain the reduction in assaults against police, such as the change in policy away from single officer patrols, and a general decline in assaults overall.

Further, if we look at the broader field of sentencing, there is no reliable evidence that these types of offences have a deterrent effect. For example:

- imprisonment, on average, does not achieve the goal of deterrence in studies of general criminal offending. We would not anticipate that this would be different for this type of offending.
- mandatory sentencing has not been found to have a deterrent effect. Harsher penalties have not shown any significant impact on future offending.

Thus, although amendments to sentencing frameworks can clearly communicate the unacceptability of the behaviour, prevention strategies may be a better strategy for reducing the incidence of assaults against public officers. In other words, well-targeted interventions may achieve more in terms of reducing the incidence of these assaults.

The literature review also found that, 'based on the evidence to date, mandatory minimum sentences are unlikely to reduce future incidents of assault against public officers. The problem lies, in part, with the issue that sentencing itself does not address the causes of the assaults'.[216]

Looking to the broader field of sentencing, regardless of offence type, revealed the following:

- More severe penalties, compared to less severe penalties, have not been shown to produce a greater deterrent impact on further offending.[217]
- Shorter terms of imprisonment are associated with higher re-offending rates … although this might be explained by the lack of programs and support generally available to offenders serving short prison terms.[218]
- It is not clear whether penalty enhancements substantially shift sentencing practice.[219]

The literature review acknowledged that sentencing framework amendments can clearly communicate the unacceptability of the targeted behaviour. However, prevention strategies were suggested as a 'better strategy for reducing the incidence of assaults against public officers. In other words, well-targeted interventions may achieve more in terms of reducing the incidence of these assaults'.[220]

In its Issues Paper, the Council also documented in some detail the experience of the WA mandatory sentencing scheme, which demonstrates the difficulty in determining whether legislative change can be categorically shown to have reduced offending by deterrence. It also provides an example of how mandatory sentencing risks transferring decision-making from courts, which operate in an open and transparent way, to prosecution agencies, whose processes are by their nature more opaque (especially where there are not as many charge alternatives of lesser seriousness, as exist in Queensland).

The Council analysed this experience at some length, because it is a recently evaluated Australian example of a relevant legislative scheme, and because it was relied on by some stakeholders as supporting an increase in penalties in Queensland.[221]

In summary, the Council found that the evidence for mandatory sentences contributing to a reduction in assaults to be inconclusive and, more recently, that the evidence for assaults on police and other public officers in that jurisdiction has been rising.

A summary of these findings is at Appendix 7.

10.3.5 Stakeholder views

Views on mandatory and presumptive sentencing approaches

A number of legal associations and professional bodies that made submissions, including the Australian Lawyers Alliance (ALA), the BAQ, LAQ, Sisters Inside, and QLS, expressed concern about the potential for mandatory minimum

216 Ibid 21.

217 Ibid 20.

218 Ibid.

219 Ibid 23.

220 Ibid v.

221 Preliminary submission 5 (Australasian Railway Association and ors), attachment, Letter from Australasian Railway Association and ors to The Hon Cameron Dick MP, Minister for State Development, Manufacturing Infrastructure and Planning, 22 July 2019.

sentences to be recommended as an outcome of the review based on the experience in other jurisdictions and stated their opposition to such penalties.

The Queensland Human Rights Commission was concerned that mandatory minimum sentences 'significantly limit rights' and indicated that 'without further evidence' it would not support this.[222]

These concerns were also reflected in submissions received from a number of employee unions[223] and industry bodies.[224] For example, the United Workers Union (UWU) commented:

> UWU members believe that a holistic and preventative, as opposed to a punitive sentencing, approach is key to successfully addressing the root causes of this issue. UWU members advocate for a sentencing approach that builds on the following guiding principles and veers away from mandatory sentencing as a solution:
>
> - Understand and address the root causes of occupational violence including investments in public campaigns and systemic reforms that address the complexity of occupational violence;
> - Record and unpack every incident of occupational violence to identify the precursors and situations that lead to incidents;
> - Invest in interventions that are research-based, responsive and allowed to evolve, for example the use of the latest drugs in sedation in paramedic and health settings and best practice design, systems, strategies and reporting in schools to prevent incidents of occupational violence in the first place.[225]

Referring to a literature review commissioned by the Queensland Ambulance Service's Paramedic Task Force, the UWU notes that that review cited 'a number of studies that identify the importance of forensically unpacking paramedics' experiences of occupational violence'.[226] This process, it suggests, 'reveals the complexity inherent in emergency situations' and 'calls for reform that simply cannot be realised by sentencing, in particular mandatory sentencing'.[227]

The Queensland Nurses and Midwives' Union, noting the existence of these provisions in some other Australian jurisdictions, voiced concerns that 'there may be unintended consequences including a one-size-fits-all approach that may not suit all cases'.[228]

Reflecting views generally held by legal stakeholders, the ALA indicated its strong opposition to mandatory minimum sentences on the basis 'they are inconsistent with the rule of law, breach international human rights standards and undermine the separation of powers 'by detracting from the independence of the judiciary'.[229] Objections included that mandatory sentences:

- remove courts' ability to 'consider relevant factors such as the offender's criminal history, individual circumstances, or whether there are any mitigating factors' that 'can result in sentencing outcomes that are disproportionately harsh, unjust and anomalous';
- 'tend to transfer decision-making powers in relation to the sentence from the judiciary to the prosecution, and the police given the choice of charge will determine the sentencing outcome';
- are contrary to Australia's international human rights obligations, as set out in the International Covenant on Civil and Political Rights including the right to be free from arbitrary detention, the right to a fair trial, and the right to have one's sentence reviewed by a higher court (given a court on review cannot reduce a mandatory minimum sentence that is imposed);
- 'remove the incentives for offenders to assist authorities with investigations … and for defendants to plead guilty, thereby earning the right to a sentencing discount', in turn resulting in more contested hearings, with associated resourcing impacts;
- increase the 'use of imprisonment', and 'the length of sentences served by offenders, thus increasing the costs to the State';
- fail to provide a general deterrent to relevant offences, and in their aim of 'sending a strong message to the community', being based on 'flawed assumptions about the nature of human decision-making: that a

222 Submission 18 (Queensland Human Rights Commission) 9 [28].

223 For example, Submission 11 (United Workers' Union) 2–7; Submission 13 (Independent Education Union); Submission 14 (Queensland Nurses and Midwives' Union) 4; Submission 20 (Queensland Teachers' Union) 5.

224 For example, Submission 2 (Queensland Catholic Education Commission) 2.

225 Submission 11 (United Workers' Union) 2–3.

226 Ibid 5.

227 Ibid 5 and 7.

228 Submission 14 (Queensland Nurses and Midwives' Union) 4.

229 Submission 8 (Australian Lawyers Alliance) 5.

> more severe sanction will deter more effectively and that imprisoning offenders will necessarily lead to a lower crime rate'.[230]

The Office of the Public Guardian (OPG) was concerned about the potential effect of mandatory sentencing laws on adults with impaired capacity if 'the legal framework designed to take into account the mental illness or impairment and culpability of accused persons is removed or reduced'.[231] It recommended that 'mandatory sentencing not be considered for assaults against public officers that are committed by people with impaired decision-making capacity',[232] and that, should mandatory sentencing be adopted in Queensland, 'clear protections are in place, without exception, for persons who lack the capacity to understand the consequences of their actions'.[233] The OPG cautioned that a failure to provide such protections 'would only further isolate adults with impaired decision-making capacity from the opportunity to lead positive and productive lives'.[234]

Similar issues were raised by Queensland Advocacy Incorporated (QAI), which further identified the high proportion of Aboriginal and Torres Strait Islander offenders who have mental health problems and/or a cognitive or intellectual impairment.[235]

The Department of Education also raised concerns regarding mandatory sentencing for Aboriginal and Torres Strait Islander offenders:

> Education as a service is delivered across all sectors of Queensland society; with many schools located in Aboriginal communities. We note that the Royal Commission into Aboriginal Deaths in custody, 28 years ago, recommended abolishing mandatory sentencing laws because they were seen to be unjust and discriminatory against Aboriginal and Torres Strait Islander people. As such, we urge that the proposed introduction of minimum sentencing of assaults against public officers would need to be reviewed giving careful consideration to the Royal Commission findings.[236]

The deterrent potential of mandatory minimum sentences was questioned by a number of those opposed to their introduction. As discussed earlier in this chapter, the effectiveness of deterrence taking into account the common context in which these assaults occur has been previously questioned.

The use of mandatory sentences for these offences was, however, supported by the Queensland Police Union (QPU) based on its view that the protection of police and emergency workers 'can only be achieved through a minimum sentencing range being imposed by statute'.[237]

To protect against the potential for injustice, the QPU recommends:

> a general provision should be enacted which allows the court to impose an alternate sentence instead of a mandatory sentence where there are exceptional circumstances and imposing the mandatory sentence would cause an actual injustice.[238]

The form of minimum sentence favoured by the QPU varies by the type of offence charged and its seriousness. While for serious assault, it suggests the offender should be required to serve actual prison time, in the case of the assaults of police charged under section 790 of the *Police Powers and Responsibilities Act 2000* (Qld), it suggests this mandatory or statutory minimum sentence might take the form of a community-based order. Although a court must make a community service order in certain circumstances, this requirement is limited to offences committed in certain contexts only.

The Transport Workers' Union also called for tougher penalties supported by a robust community service campaign to enhance community awareness. In doing so, its submission referenced the WA and South Australian schemes.[239]

Mandatory community service orders under section 108B of the PSA

Limited feedback was received on whether section 108B of the PSA is operating as intended and should continue to apply to specified serious assault offences under section 340 of the Code, and section 790 of the PPRA.

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230 Ibid 6–8.

231 Preliminary submission 7 (Office of the Public Guardian) 3.

232 Submission 24 (Office of the Public Guardian) 4.

233 Ibid 4–5.

234 Ibid 5.

235 Submission 23 (Queensland Advocacy Incorporated) 3–4.

236 Submission 4 (Department of Education) 2.

237 Preliminary Submission (Queensland Police Union of Employees) 1.

238 Preliminary Submission (Queensland Police Union of Employees) cover letter, 1–2.

239 Submission 12 (Transport Workers' Union) 8–9.

The Aboriginal and Torres Strait Islander Legal Service (ATSILS) identified what it considered were broader problems with the application of this provision, suggesting:

> there is always an internal inconsistency where the aggravating factor which triggers the imposition of here, a community services order, is that the offender was adversely affected by an intoxicating substance at the material time. If such an order is specifically designed to assist the offender address his or her challenges relating to 'intoxicating substances' — then such should be made clear in the legislation itself. Failing which, it can in effect result in an additional penalty where logically one could argue that an offender who commits the same act, but whilst sober and rational — is actually more culpable for their actions.[240]

The BAQ suggested that the nature of the offence having been committed in a public place while intoxicated 'means that such offences will often be committed by those who are homeless and therefore forced to live in public spaces'.[241] It was noted that '[s]uch people are often suffering from addictions to intoxicants which their homelessness makes much more difficult to treat and can make compliance with community service orders difficult'.[242]

The QLS described these mandatory orders as 'problematic':

> One reason being that by the nature of those offences, the majority of them are committed in public places. This section also has the effect of criminalising intoxication in public. It is accepted that there are antisocial and criminal problems that can and do arise from such conduct, however, this section in effect disproportionately impacts vulnerable and at risk people - those who for instance may be homeless or face other disadvantages, making them more likely to be intoxicated in public rather than in private premises.[243]

10.3.6 Council's view

After reviewing developments in other Australian jurisdictions, the Council's view is that reforms to expand the range of available sentencing options are far preferable to the introduction of mandatory minimum sentencing or presumptive sentencing models — as they avoid the adoption of a 'one size fits all' approach (or 'one size fits most' in the case of presumptive sentences) and retain courts' discretion to set an appropriate sentence that takes into account the individual circumstances of the case.

Further, given the context in which many assaults on public officers occur — involving offenders who are drug and/or alcohol affected, have mental health problems and are in a highly emotional state — the Council is concerned that mandatory penalties are unlikely to deliver on their promise of offering an effective deterrent. This concern is in addition to other risks identified by previous reviews, including that such penalties displace discretion to other parts of the system and increase the risks of reoffending through the more frequent use of imprisonment.

In the Council's view, the fact that Aboriginal and Torres Strait Islander peoples are particularly overrepresented among those charged with assaults on public officers in Queensland (38.7% of those sentenced for serious assault) also risks adopting a reform that is likely to disproportionately impact on First Nations peoples.

In light of the criminogenic impacts of imprisonment, the Council is concerned that any mandatory sentence involving minimum periods of imprisonment may serve to increase, rather than decrease, the likelihood of those convicted of serious assault committing further assaults on public officers.

The complexity of provisions developed in some jurisdictions, such as Victoria, aptly demonstrate the difficulties of balancing the need to retain judicial discretion to avoid injustice in individual cases, with the clear expectation by many that statutory penalties will be applied in all cases. The narrowing of the Victorian provisions and amendments made over time has now made the statutory minimum sentencing scheme as this applies to offences against emergency workers so complex that the Victorian Government has decided that, from 1 March 2021, they will have to be prosecuted by the Office of Public Prosecutions and will only be able to be dealt with on indictment.[244]

In its *Community-Based Sentencing Orders, Imprisonment and Parole: Final Report* released last year, the Council recommended the Queensland Government should initiate a review of mandatory sentencing provisions in Queensland with a view to clarifying the operation of these provisions and considering their modification or repeal, as appropriate, taking into account:

(a) the original objectives of these provisions and whether these objectives are being met;

(b) the importance of judicial discretion in the sentencing process; and

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240 Submission 22 (ATSILS) 7.

241 Submission 27 (Bar Association of Queensland) 11.

242 Ibid.

243 Submission 30 (Queensland Law Society) 16.

244 *Sentencing Amendment (Emergency Worker Harm) Act 2020* (Vic), s 7. This is discussed below in section 10.6.2.

(c) the need to provide courts with flexible sentencing options that enable the imposition of sentences that accord with the principles and purposes of sentencing as outlined in the PSA.

The Council recommended this review should give particular attention to the disproportionate impact of mandatory sentencing provisions on Aboriginal and Torres Strait Islander peoples, as highlighted by the ALRC in its 2017 report *Pathways to Justice — An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, and other people experiencing disadvantage, as highlighted by stakeholders during its review.

Subject to the outcomes of the proposed review, the Council recommends the mandatory community service order provisions (Part 5, Division 2, Subdivision 2) under the PSA should be repealed with the introduction of a new form of community-based order, called a 'community correction order'.

The Queensland Productivity Commission (QPC) in its 2019 final report on its inquiry into imprisonment and recidivism similarly recommended: 'The Queensland Government should review legislated restrictions on judicial discretion, to ensure they are serving their intended purpose', with a suggestion made the review should be undertaken by an independent body, such as the Council, and be completed within 24 months.[245] The Queensland Government response to the QPC's report does not state a position regarding this recommendation.[246]

The Council continues to support its earlier recommendation for mandatory sentencing provisions to be reviewed and considers the continued application of section 108B to the offences under examination as part of the current review, together with other mandatory provisions, are best undertaken as part of any broader review.

10.4 Increasing range of sentencing options

A question asked in the Council's Issues Paper was whether the current range of sentencing options (e.g. imprisonment, suspended sentences, intensive correction orders, community service orders, probation, fines, good behaviour bonds) provides an appropriate response to offenders who commit assaults against public officers, or if any alternative forms of orders should be considered.

In Chapter 7, we presented the Council's findings on the range of sentencing outcomes imposed for assaults on public officers in some detail. Findings included:

- In the Magistrates Courts, across all years examined, a custodial penalty was issued in 64.8 per cent of cases where serious assault of a public officer was the MSO (n=1,641).
- In the higher courts, a custodial penalty was issued in 90.6 per cent of cases where serious assault was the MSO (n=261);
- Across both the higher courts and the lower courts, imprisonment was the most common penalty for adult offenders who committed a serious assault. The proportion was highest for the serious assault of a corrective services officer, where 92.9 per cent of cases in the higher courts, and 85.6 per cent of cases in the lower courts resulted in an unsuspended term of imprisonment being imposed. The next most common penalty type was a suspended sentence of imprisonment — which ranged from 7.1 per cent to 31.5 per cent of sentences imposed depending on the type of offence. The serious assault of a public officer or a police officer with circumstances of aggravation was the most common offence to result in a suspended sentence — in many cases these were partially suspended sentences, with time served in prison.
- Average prison sentence lengths ranged from 6.4 months for non-aggravated assaults of public officers to just under 2.5 years for serious assaults of a police officer while armed.
- In the case of the less serious summary offences that can be charged in place of a serious assault, a custodial penalty was imposed in 83.8 per cent of assault or obstruct a corrective services officer offences dealt with by the lower courts under section 124(b) (MSO), and only 5.8 per cent of offences of assault or obstruct a police officer under section 790 of the PPRA (MSO).
- The most common sentencing outcome for the summary offence of assault of a police officer under section 790 of the PPRA was a monetary penalty (48.7%), with an average amount ordered to be paid of $680.80, followed by a community-based order (either a probation order or community service order).

The Council also reported on sentences of imprisonment that involved 'immediate release' — including immediate release on court-ordered parole, where the entirety of the sentence was fully served as declared pre-sentence

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245 Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Final Report, 2019) 303, Recommendation 12.

246 Queensland Government, *Queensland Productivity Commission Inquiry into Imprisonment and Recidivism: Queensland Government Response* (2020). The Queensland Government's response to the recommendations falling under the general category of increasing sentencing options, including the recommendation to review legislated restrictions on judicial discretion, is set out at page 8.

custody, or where the person was sentenced to the 'rising of the court'. Figure 7-5 in Chapter 7 shows that these types of sentences represent a substantial percentage of all sentences — ranging from 18.4 per cent of non-aggravated assaults of a public officer sentenced in the Magistrates Court to between 44.8 per cent and 50.0 per cent of certain types of aggravated serious assaults sentenced in the higher courts.

The relevance of immediate release is that an offender may have very little opportunity to be supervised or to address their offending behaviour if they have already served the majority of their sentence while awaiting sentence on remand. There are a number of known factors associated with risks of reoffending, including anti-social/criminal thinking and peer groups, family and relationship factors, drug and alcohol misuse and education and employment issues. These factors, by their nature, are very challenging to address in the case of those sentenced to short periods of imprisonment, or who may, under current arrangements, serve only a short period of post-sentence supervision due to the period of time spent in prison on remand prior to being sentenced.

The statistics presented in this report highlight that reoffending is a significant concern for offenders convicted of assaults on public officers. This provides further support for the value of developing sentencing orders and options that are more effective in reducing rates of reoffending to enhance community safety.

The Council has found that close to 40 per cent of people convicted of serious assault of a police officer go on to commit another offence involving some form of assault or assault-related offence within two years of being sentenced and in the community, and an even higher proportion of those convicted of serious assault of a public officer (44.8%) go on to do so. This compares to about a third of those sentenced for common assault (31.3%), 28.3 per cent of those sentenced for AOBH, and just over one in five (22.1%) of those sentenced for wounding.

Recidivism trends for those convicted of assault or obstruct police under section 790 of the PPRA were similar to those convicted of common assault. In this case, trends may not be comparable, given that a large proportion of the PPRA offences are likely to have involved acts of obstruction rather than an assault.

10.4.1 Stakeholder views

Limited stakeholder feedback was provided on whether there was a need to expand existing sentencing options.

The QCEC recognised the value of sentencing options in these cases, noting it 'supports the use of a range of flexible sentencing options to appropriately address relevant cases where a student may commit assault against a public officer'.[247]

QCS noted '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'.[248] While repeating its concern that prisoners might be sentenced to shorter orders of imprisonment to take into account the requirement that this be served cumulatively on any sentence already being served, it concluded that it 'does not consider there is a need to explore alternative options'.[249]

Others supported changes to existing sentencing options, but without providing specific suggestions for reform.

QAI submitted that 'the current range of sentencing options do not provide an adequate or appropriate response to offenders who commit assaults on public officers' and that 'there is a pressing need for sentencing reforms'.[250] In doing so, it noted:

> Prison has a widely-recognised criminogenic effect: time spent in prison increases the probability that a person will commit another offence upon release, so any policy consideration that anticipates an increased use of prison would need to factor in the likely increases in risk to the community in the medium to longer term. Longer sentences may improve community safety in the very short term, but the trade-off is institutionalisation, recidivism, wasted lives, broken families and generational trauma. This is particularly so for offenders with [an] intellectual or cognitive disability who may have impaired capacity to be criminally responsible yet become caught in a perpetuating cycle of criminology.[251]

The Public Advocate, with reference to people with impaired decision-making capacity who exhibit challenging behaviours, suggested 'potentially maintaining the range of sentencing options currently available to courts in this area, as opposed to the narrowing of alternatives and/or the introduction of mandatory sentencing'.[252]

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247 Submission 2 (Queensland Catholic Education Commission) 2.

248 Submission 21 (Queensland Corrective Services) 18.

249 Ibid.

250 Submission 23 (Queensland Advocacy Incorporated) 6.

251 Ibid 6.

252 Submission 1 (Public Advocate) 2.

The BAQ was supportive of any moves to expand the range of sentencing options available to courts, suggesting: 'The more sentencing options that are available, the better equipped judicial officers are to tailor an appropriate sentence to a particular offence and an individual offender'.[253]

10.4.2 Council's view

The Council is concerned that the current rate of recidivism for those sentenced for serious assault is higher than for those sentenced for other assault and assault-related offences. This suggests there may be a need to better target interventions to address the factors associated with offending.

In its *Community-Based Sentencing Orders, Imprisonment and Parole Options: Final Report* released last year, the Council identified a number of reforms to improve the range of sentencing dispositions available to courts and allow for more tailored orders to be applied in response to the individual circumstances of the offender and the offence.

These recommendations included:

- The introduction of a new intermediation sanction — a 'community correction order' ('CCO') — which would subsume probation and community service as conditions of a CCO, rather than as existing as separate forms of sentencing orders (Recommendation 9);
- The availability of a wide range of additional conditions to be ordered as part of a CCO, in conjunction with core conditions, which might include:
  - to perform unpaid community service in the community (minimum of 40 hours up to 300 hours) (community service condition);
  - to submit to supervision by an authorised corrective services officer (supervision condition);
  - to comply with any reasonable directions given by an authorised corrective services officer to attend appointments and/or to participate in activities with a view to promoting the offender's rehabilitation (rehabilitation condition);
  - to submit to assessment and treatment (including testing) for alcohol or drug abuse or dependency, medical assessment or treatment, mental health assessment and treatment, or other treatment, as directed by an authorised corrective services officer (treatment condition);
  - to abstain from consuming alcohol, or not to consume alcohol so as to exceed a specified level of alcohol and submit to monitoring (where alcohol consumption is an element of the offence, or has contributed to the commission of the offence and the person is not alcohol dependent) (alcohol abstinence and monitoring condition);
  - to abstain from drugs, except those prescribed for the person by a medical practitioner (drug abstinence condition);
  - not to contact or associate with a person specified in the order, or a particular class of person specified (for the period of the order or lesser period) (non-association condition);
  - to live at a place specified in the order, or not at a place specified (for the period of the order or lesser period) (residence restriction and exclusion condition);
  - not to enter or remain in a specified place or area (for the period of the order or lesser period) (place or area exclusion condition);
  - to remain at a specified place between specified hours of each day (with ability to specify different places or periods for different days) (for limited number of hours and period) (curfew condition);
  - to pay an amount of money as a bond, whole or part of which is subject to be forfeited for noncompliance (bond condition);
  - to reappear at a time or times directed before the court for a review of compliance with the order (for the period of the order or lesser period) (judicial monitoring condition);
  - to be subject to electronic monitoring for the purpose of monitoring compliance with curfew and/or a place or area exclusion condition (for the period of that condition or lesser period) (electronic monitoring condition); and
  - any other condition the court considers is necessary (Recommendation 22).
- The ability to sentence an offender in respect of one, or more than one, offence to:
  1. a term of imprisonment — including a sentence that is partially suspended but excluding an intensive correction order (ICO) — with a CCO, provided any period of imprisonment to be served (excluding any

[253] Submission 27 (Bar Association of Queensland) 10.

time declared as time served) is no more than 12 months from the date of sentence, in which case the requirements of the CCO should commence on the person's release from custody;

2. a wholly suspended sentence of any length with a CCO; and
3. a fine with a CCO (Recommendation 17).

- Until such time as the CCO is fully operational, the ability of courts to have a power under the PSA to sentence an offender to a wholly suspended sentence or a partially suspended sentence in combination with a probation order or community service order when sentencing an offender for a single offence (Recommendation 37);
- Subject to the implementation of the Council's proposed reforms to community-based sentencing orders and parole, and the outcomes of a review of the effectiveness of parole, amending Part 9, Division 3 of the PSA to remove any form of parole being applicable to sentences of imprisonment of 6 months or less for any offence. Such sentences would instead be served in full, as wholly or partially suspended sentences (with, or without, a community-based order also being made), or by way of intensive correction in the community under an ICO (Recommendation 51).

The Council considers these reforms also have potential to improve sentencing responses to assaults on public officers including:

- providing courts with a broader range of options, including combining the use of imprisonment with community-based orders when sentencing for a single offence;
- encouraging the use of more targeted community-based orders to address the underlying causes of offending — including mental health issues and drug and alcohol issues;
- avoiding the use of parole for short sentences of imprisonment where this might not be appropriate and lead to an increased risk of offenders reoffending.

The Council has not made specific recommendations regarding sentencing options that should be available for assaults on public officers, given that these proposed reforms, set out in its earlier report, already address substantially the same issues.

There is no legislative requirement for the Attorney-General or the Queensland Government to formally respond to the Council's reports. However, the Queensland Government's response to the QPC's report on its inquiry into imprisonment and recidivism acknowledged the Government's commitment to:

> broadening the capacity of Queensland's justice system to deliver the most effective and appropriate sanctions to offenders through an expanded range of sentencing options that:
>
> - Provide meaningful and proportionate sanctions
> - Target the causes of offending
> - Support community safety.[254]

In doing so, it indicated that: '[o]pportunities to expand sentencing options will be explored in the context of QSAC's [report]'.[255]

Consistent with the Council's recommendations, the QPC proposed that a community correction order be established and that restrictions on the use of community-based orders, or on the combination of these orders with other sentences, should be removed.[256]

The Council recognises that the implementation of these reforms is likely to prove challenging in the current fiscal environment. However, it continues to support such investment to reduce the longer-term costs to the community of reoffending and crime victimisation.

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254 Queensland Government, *Queensland Productivity Commission Inquiry into Imprisonment and Recidivism: Queensland Government Response* (2020) 8.

255 Ibid.

256 Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Final Report, 2019) 303, Recommendation 9.

10.5 Other issues raised by stakeholders

10.5.1 Children and young people: a different system

While several stakeholders recognised that different sentencing legislation applies to children, they did not call for reform relating directly to sentencing. There was no concrete suggestion regarding alternative sentencing factors or tools.[257]

The Queensland Human Rights Commission (QHRC) strongly supported the 'current sentencing principles [which] acknowledge the vulnerability and specific protections required for children' including those 'under the *Youth Justice Act 1992* (Qld) [YJA], in particular, that a detention order should be imposed only as a last resort and for the shortest appropriate period'.[258]

The Department of Child Safety, Youth and Women also supported the youth justice sentencing principles as 'important factors to be taken into consideration when sentencing children/young people who commit assaults against police, public officers and other frontline workers'[259] and as noted in [10.2.9] that a child's 'trauma, disability and/or mental health history … may result in complex behavioural issues which are not appropriately addressed through strong sentencing'.[260]

The Queensland Teachers' Union supported the current YJA and noted that:

> There are limitations, as there should be, captured within the [YJA] as to what can be actioned in relation to a student who has assaulted a teacher. The act of charging a child with assault has complex ramifications for the community as a whole and for the education system.[261]

The BAQ expressed its support for 'any efforts to expand the sentencing tools available to judicial officers'[262] and stressed that 'any new sentencing options introduced for sentencing children be evidence-based and formulated around the Charter of Youth Justice Principles found in Schedule 1 of the [YJA] and the objectives of that Act as set out in section 2'.[263]

LAQ stated that 'the options currently available for the sentencing or diversion of children are appropriate'[264] and added:

> The [YJA] places emphasis on the need to divert children from the criminal justice system. A significant percentage of children who commit offences against public officials have been affected by trauma or have significant cognitive deficits. Most children who enter the youth justice system have been deprived of childhoods where parents have taught them how to appropriately regulate their emotions or deal with stressful situations. The availability of conferencing for offending against any public officers assists children in understanding the perspective of victims and allows youth justice to work with children in dealing with anger or aggression.[265]

Similarly, the QLS stated that:

> when sentencing children or young offenders the importance of rehabilitation and minimising the risk of further interactions with the criminal justice system must be at the forefront of sentencing considerations.[266]

The OPG stated that a discussion of penalties:

> must include targeted consideration of the issues with the current penalties and sentencing system as it relates to children and young people as well as diversionary strategies that, if implemented in childhood, could prevent any such assaults against public officers occurring in adulthood…[267]

True protection of the community from criminal behaviour, including public officers, relies on the community recognising the value of investment in early interventions that promote children and young people's education,

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257 Some stakeholders raised the issue of raising the age of criminal responsibility for children from 10 years of age, to 14 (Submission 18 (Queensland Human Rights Commission) 15 [54] and Submission 24 (Office of the Public Guardian) 5). This issue is not within scope of the review.

258 Submission 18 (Queensland Human Rights Commission) 14 [51].

259 Submission 5 (Department of Child Safety, Youth and Women) 4.

260 Ibid 3.

261 Submission 20 (Queensland Teachers' Union) 4.

262 Submission 27 (Bar Association of Queensland) 11 and see 8.

263 Ibid.

264 Submission 29 (Legal Aid Queensland) 7.

265 Ibid 6.

266 Submission 30 (Queensland Law Society) 12.

267 Submission 24 (Office of the Public Guardian) 5.

health and wellbeing and prevent them from engaging in offending behaviour from the outset.[268] As noted above in Recommendation 10–3, the Council opposes the replication of the recommended aggravating sentencing factor regarding victim vulnerability due to occupational status in the YJA sentencing principles, in recognition of the very different principles that apply to the sentencing of children, and their generally lower level of psychosocial maturity and capacity to regulate their behaviour. As noted by the Court of Appeal (in a judgment extract reproduced in greater detail at the end of Chapter 6):

> Immaturity in thinking that hampers a child's judgment, as well as a child's lack of experience, means that children often commit offences without being conscious of the potential consequences. For this reason, the moral blameworthiness of a child for the consequences of offending cannot always be the same as that of an adult. The [YJA] embodies this as a fundamental premise and requires judges to sentence accordingly.[269]

10.5.2 Cognitive impairment and mental health issues — answers beyond the scope of this review

Another strong theme in stakeholder feedback was put as follows by ATSILS:

> The group of people most over-represented in the criminal justice system and in custody are those suffering intellectual disability, cognitive development issues, mental health issues and behavioural issues. There is a significant proportion who suffer from the effects of trauma, including intergenerational trauma … Inevitably in times of severe distress, including attempted suicide, they are going to have increased interactions with police and medical frontline services, often disastrously. For those who are charged for assault or serious assault, their sentencing options are limited.[270]

The OPG recommended that the:

> offence, penalty and sentencing framework require the context of offending behaviour by a person with impaired decision-making capacity against a public officer to be considered at each stage of the process in addressing the offence.
>
> That information on a person's capacity, trauma history, and previous engagement in therapeutic and rehabilitative programs, be formally reported on prior to sentencing.[271]

The Department of Education noted that:

> any proposed reform in relation to penalties for assaults on public officers needs to be considered and balanced against the complex needs of people with disabilities, and the complexity of other socio-economic factors across Queensland communities.[272]

Many of the submissions explained why the difficulties experienced by such members of the community can increase the likelihood of their interacting with public officers, and the likelihood that those interactions can be volatile. There are, as the Independent Education Union put it, 'systemic inequalities that give rise to conflict in the first instance'.[273]

The Public Advocate noted that 'people reporting a history of mental illness, in particular, are between twice and four and a half times more likely than the average Australian to be in police custody, on remand, before courts or in prison'[274] and explained that challenging behaviours may not be what they seem:

> Many people with impaired decision-making capacity can exhibit challenging behaviours when they have difficulty communicating things like pain or discomfort. This behaviour has the potential to be interpreted as aggression by people not fully trained or attuned to the needs of people with disability (and particular cognitive impairments), which can include front-line workers … any reforms made potentially need to consider the communication difficulties some people with impaired decision-making capacity may face and the resulting behaviours that may be interpreted as aggression.[275]

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268 Ibid 5.

269 *R v Patrick (a pseudonym)* [2020] QCA 51, 10 [45]–[46] (Sofronoff P, Fraser JA and Boddice J agreeing).

270 Submission 22 (Aboriginal and Torres Strait Islander Legal Service) 6.

271 Submission 24 (Office of the Public Guardian) 3.

272 Submission 4 (Department of Education) 2.

273 Submission 13 (Independent Education Union) 1.

274 Submission 1 (Public Advocate) 1. On this issue see also Submission 17 (Sisters Inside) 4, Submission 21 (Queensland Corrective Services) 4 and Submission 23 (Queensland Advocacy Incorporated) 3.

275 Submission 1 (Public Advocate) 2. Note the proposed example of mental health issues as an ouster in respect of the recommended aggravating sentencing factor in Recommendation 10–1(c).

QAI stated:

> it is important to acknowledge the context which gives rise to offences. People with disability and mental illness have and continue to face significant restrictions and violations of fundamental human rights. Denials of liberty and autonomy can provoke offending behaviour.[276]

The UWU pointed to 'the need to emphasise effective, targeted methods of aggression de-escalation training rather than gaol terms' and the benefit of awareness, training and safety needs.[277] It gave real-world examples:

> A significant proportion of people who require paramedical services are those suffering from the effects of alcohol, drugs, prolonged periods of pain or an overwhelming sense of fear, and may be acting out of very basic 'fight or flight' responses that they will come to later identify and regret.
>
> … In schools, many of the instances of occupational violence reported by UWU members were perpetrated by students with special needs, who are also unlikely to have an understanding of any punitive consequences to their actions.[278]

Sisters Inside stated that in their experience: 'women charged under section 340 usually have a cognitive or psychosocial disability and/or were intoxicated at the time of the incident'.[279]

A 'heightened imbalance of power' is experienced by women who are survivors of domestic violence or sexual assault 'when dealing with male police officers, paramedics or corrective services officers'. It can be 'very triggering' for these women to be required to be restrained or strip searched.[280]

Sisters Inside said women were:

> routinely charged with a serious assault for an incident occurring after they have called the ambulance or presented to the hospital because they were experiencing a severe mental health crisis or an adverse reaction to drugs or alcohol … Criminalising people in this context undermines the integrity and purpose of our public health services and does nothing to reduce crime or increase community safety.[281]

The QHRC pointed to a recent QPC report,[282] which found that:

> many risk factors associated with imprisonment interact with one another and become compounded over time—for example, a cognitive disability may increase the risk of substance abuse, which in turn further inhibits executive function. These risk factors are exacerbated by socio-economic disadvantage.[283]

The common theme regarding change was beyond the scope of the Council's Terms of Reference, relating to the importance of a holistic response beginning before charging, let alone sentencing.[284] This includes different training for public officers and increased resources for diversionary options. This is discussed further in Chapter 11.

10.5.3 Aboriginal and Torres Strait Islander peoples

As discussed earlier in Chapters 1 and 2 of this report, the Council undertook additional work to understand the drivers of the marked overrepresentation of Aboriginal and Torres Strait Islander peoples for serious assault of a public officer. That work included: seeking an expert report from an Aboriginal and Torres Strait Islander academic; targeted consultation with key stakeholders, including the Council's Aboriginal and Torres Strait Islander Advisory Panel; and contextual analysis of sentencing remarks for these offences (see Chapter 4, section 4.2).

Key stakeholders at a roundtable meeting on 22 June 2020 identified several issues contributing to this overrepresentation in the criminal justice system, including high rates of Aboriginal and Torres Strait Islander people with a mental illness and/or acquired brain injury, intergenerational trauma and fundamental levels of social and economic disadvantage setting people on their life course, and a disconnection for many between family, culture and community.

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276 Submission 23 (Queensland Advocacy Incorporated) 4.

277 Submission 11 (United Workers' Union) 3–6.

278 Ibid 2–3.

279 Submission 17 (Sisters Inside) 3.

280 Ibid. This point was also strongly made by ATSILS: 'The situation of those who have been sexually or physically abused in the past is especially acute … coming out of a spell of unconsciousness and being held down will lead to behaviours to escape the "aggressors" at all costs' (Submission 22 (Aboriginal and Torres Strait Islander Legal Service) 6).

281 Submission 17 (Sisters Inside) 3.

282 Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Final Report, 2019) xviii.

283 Submission 18 (Queensland Human Rights Commission) 11 [38].

284 See, for example, Submission 1 (Public Advocate) 2, Submission 23 (Queensland Advocacy Incorporated) 2 and 6 and Submission 24 (Office of the Public Guardian) 3–6.

In their submissions, advocacy bodies and legal stakeholders informed the Council about the vulnerabilities of Aboriginal and Torres Strait Islander people with respect to issues of disadvantage and trauma and shared their concerns about potential legislative reforms contributing to overrepresentation.

As noted by stakeholders in section 10.5.2, people with intellectual disabilities, cognitive impairment, mental health disorders and behavioural disorders are overrepresented in the criminal justice system. QAI observed that people with multiple vulnerabilities, such as Aboriginal and Torres Strait Islander peoples with cognitive impairments or mental illness, were found to be the 'most common alleged offenders in a study of defendants at NSW country courts'.[285] QAI advised that many of its clients, particularly 'Aboriginal persons with intellectual or cognitive impairment and/or mental illness' were over-policed — noting over-policing was more common for trivial public order offences, which 'can provoke or trigger the commission of a more serious offence'.[286]

QAI was also concerned that any 'increase in penalties around assaulting police will primarily serve to disadvantage Aboriginal people, whose relations with police have historically been strained, and continue to be'.[287]

Sisters Inside expressed similar views to QAI, noting that cognitive impairments and mental illness vulnerabilities were compounded for Aboriginal and Torres Strait Islander women: 'by the systemic racism and intergenerational trauma they have experienced, which make them more likely to be targeted by police and more likely to have a negative interaction with the police'.[288]

Sisters Inside submitted that due to 'a power imbalance and intergenerational trauma and systemic racism', an Aboriginal and Torres Strait Islander person is likely to experience an interaction with a public officer very differently, even if a matter is considered benign.[289]

The Queensland Human Rights Commission (QHRC) noted in its submission that the Council had previously promoted discussion of Gladue reports in Queensland, and suggested that these reports be further considered 'as a way of promoting understanding within the justice system (and wider community) about the impacts of intergenerational poverty and trauma on Indigenous peoples'.[290] The QHRC was of the view that 'specialist Aboriginal sentencing reports to complement pre-sentence reports' may help to address the 'over-representation of Aboriginal peoples and Torres Strait Islander peoples in prison', referring to the ALRC's observations of Gladue reports:

> This context may include an examination of complex issues of an historical and cultural nature that are unique to, and prevalent in, Canadian Aboriginal communities, including intergenerational trauma, alcohol and drug addiction, family violence and abuse, and institutionalisation.[291]

In its report *Community-based sentencing orders, imprisonment and parole options: Final report*, released in July 2019, the Council considered the existing use of cultural reports to the Murri Court and mainstream courts, prepared by Community Justice Groups (CJG) in addition to sentencing submissions by legal practitioners.[292] Where an offender is an Aboriginal or Torres Strait Islander person, section 9(2)(p) of the PSA requires a sentencing court to have regard to, among other matters, submissions made by a representative of a CJG in the offender's community relevant to sentencing, including:

- the offender's relationship to their community;
- any cultural considerations; or
- any considerations relating to programs and services established for offenders in which the CJG participates.[293]

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285 Submission 23 (Queensland Advocacy Incorporated) 3–4 citing Susan Hayes, 'Prevalence of Intellectual Disability in Local Courts' (1997) 22(2) *Journal of Intellectual and Developmental Disability* 71.

286 Ibid 5.

287 Ibid 4.

288 Submission 17 (Sisters Inside) 3. See also Submission 18 (Queensland Human Rights Commission) 10 [37], citing Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Report, 2019) 76: 'Aboriginal and Torres Strait Islander women had 14 times more frequent contact with police than non-Indigenous women'.

289 Ibid.

290 Submission 18 (Queensland Human Rights Commission) 16.

291 Ibid, citing Australian Law Reform Commission, *Pathways to Justice — An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report 133, December 2017) 203.

292 Queensland Sentencing Advisory Council, *Community-based Sentencing Orders, Imprisonment and Parole Options (*Final Report, July 2019) 428.

293 Ibid 427.

In its report, the Council noted 'the use and impact of cultural reports is … an important area for future research'. The Council continues to support further work in this area to ensure sentencing is informed by the full range of considerations that may help explain the context in which this form of offending may occur, and how specific experiences of disadvantage impact at an individual level. For example, as highlighted by the Council's Advisory Panel, a fear of police due to past interactions may engender a 'fight-or-flight' response (or acute stress response), which may help explain why an Aboriginal person has been apparently uncooperative and the circumstances leading up to an assault. Cultural reports and pre-sentence reports more generally are also important in supporting courts in determining how best to tailor sentencing orders to meet the needs of the offenders and to reduce the risks of reoffending.

10.6 Summary disposition of serious assault charges

The Terms of Reference for the review require the Council to 'advise on any matters relevant to this reference'. The legislative framework determining the court level that can sentence serious assault offences goes directly to the maximum penalty that can be imposed. This is also relevant to the time and cost required to resolve matters. Hence, the Council asked in its Issues Paper: '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?' (question 14(c)).

10.6.1 The current position

Queensland's three courts — the Magistrates, District and Supreme Courts — all have criminal jurisdiction.

The Magistrates Courts have power to impose a prison sentence of up to, and including, 3 years' imprisonment, even if the legislated maximum penalty is greater.[294] This means that while different maximum penalties apply, the maximum penalty that can be imposed by those courts is the same for common assault, serious assault and AOBH. (During consultation, it became clear that some stakeholder groups were not aware of this, even though the vast majority of such cases are finalised in the Magistrates Courts.)

However, this does not mean that the higher 7-year and 14-year maximum penalties are ignored by sentencing magistrates. A sentencing court, including a Magistrates Court, must have regard to the maximum penalty prescribed for the offence.[295]

The *Criminal Code* offences of common assault and resisting public officers, as well as the non-Code offences (all of which do not have maximum penalties exceeding 3 years' imprisonment) must be finalised (by trial or sentence, or both) in Magistrates Courts.[296] These charges can be joined with more serious charges for sentence in either of the higher courts for sentence, in certain circumstances.[297]

For two of the offences key to the Council's review, one of the parties to the case has the right to decide which court determines the charge:

- Serious assault (including aggravated serious assault) must be dealt with in the Magistrates Courts if the prosecution so chooses.[298]
- AOBH without a circumstance of aggravation must be dealt with in the Magistrates Courts, unless the defendant elects for jury trial (which means the charge would ultimately be heard in the District Court).[299] However, case law confirms that AOBH with a circumstance of aggravation can be dealt with summarily if the defendant so elects.[300]

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294 *Criminal Code* s 552H; although a sentence of up to 4 years' imprisonment can be imposed by a Magistrates Court sitting as the Drug and Alcohol Court, and Magistrates Courts can suspend the 'operational periods' of sentences of imprisonment up to general legal maximum of five years.

295 *Penalties and Sentences Act 1992* (Qld) s 9(2)(b).

296 *Criminal Code* (Qld) s 552BA for the *Criminal Code* offences; *Justices Act 1886* (Qld) s 139 for the remainder.

297 See *Criminal Code* ss 651 and 652.

298 Ibid s 552A(1)(a).

299 Ibid s 552B(1)(b).

300 See *Fullard v Vera* [2007] QSC 050 (Cullinane J).

These options are subject to the overriding rule that a Magistrates Court must not deal with such charges if satisfied that the defendant, if convicted, may not be adequately punished in that court, given its three-year imprisonment ceiling.[301]

The District Court of Queensland deals with the remainder of the offences discussed in this section.[302]

The Council found that over the data period (2009–10 to 2018–19), the overwhelming majority of relevant offences (as the MSO), which could potentially be dealt with in the Magistrates Courts, were finalised there. These were:

- 95.4 per cent (n=1,253) of non-aggravated serious assaults;
- 84.9 per cent (n=1,280) of aggravated serious assaults; and
- 92.1 per cent (n=8,144) of AOBH offences with no circumstances of aggravation.

As noted in Chapter 2,[303] most cases involving a serious assault are heard in the Magistrates Courts (with over 80% of seven of the eight public officer categories assessed, being sentenced summarily — the eighth still recording 73.9% summary sentences). Serious assaults of working corrective services officer by prisoners who are either in prison or on parole are the most likely type of serious assault to be sentenced in the higher courts (26.1%). The non-aggravated assault of a public officer is the least likely type of serious assault to be dealt with by the higher courts, with 90.4 per cent of these cases sentenced in the Magistrates Courts.

It is the decision of independent prosecution agencies (generally the Queensland Police Service (QPS) or the Office of the Director of Public Prosecutions, Queensland (ODPP)), using their discretion and assessment of the evidence, as to whether a person is charged, what charge or charges are used, and how any jurisdictional discretion held by prosecution agencies is exercised.

The ODPP, under a statutory power, publishes the *Director's Guidelines*, 'designed to assist the exercise of prosecutorial decisions to achieve consistency and efficiency, effectiveness and transparency'.[304] They are issued to ODPP staff, others acting on the ODPP's behalf, and to police.[305]

If a summary charge (dealt with in the Magistrates Court) is an option, the *Director's Guidelines* state it should be preferred when choosing what to charge or which court to sentence in, unless this would not provide adequate punishment, or there is some relevant connection with an offence that must be dealt with in a higher court.[306] The guidelines set further requirements regarding deciding whether to choose to deal with serious assault of police officers in the Magistrates Courts:

> Care must be taken when considering whether a summary prosecution is appropriate for an assault upon a police officer who is acting in the execution of his duty. Prosecutors should note the following:-
>
> (a) Serious injuries to police:-
>
> … Serious injuries which fall short of a grievous bodily harm or wounding should be charged as assault occasioning bodily harm under section 339(3) or serious assault under section 340(b) of the Code. The prosecution should proceed upon indictment.
>
> (b) In company of weapons used:-
>
> A charge of assault occasioning bodily harm with a circumstance of aggravation under section 339(3) can only proceed on indictment, subject to the defendant's election.
>
> (c) Spitting, biting, needle stick injury:-

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301 *Criminal Code* s 552D(1). Section 552D also contains other reasons, such as exceptional circumstances, which can include that the charge in question is sufficiently connected to others which are being dealt with in a higher court, and they should all be tried together.

302 See *District Court of Queensland Act 1967* (Qld) ss 60 and 61. The Supreme Court would only deal with the offences discussed in this paper if they were joined to more serious charges already before it (or the Court of Appeal, being a division of the Supreme Court, was dealing with an appeal against conviction or sentence: s 64).

303 Figure 2.6 in Chapter 2.

304 Office of the Director of Public Prosecutions (Queensland), *Director's Guidelines* (30 June 2019) 1. The *Director of Public Prosecutions Act 1984* (Qld) s 11 gives the director power to 'furnish guidelines in writing to—(i) crown prosecutors and other persons acting on the director's behalf; or (ii) the commissioner of the police service; or(iii) any other person; with respect to prosecutions in respect of offences'.

305 'The Director of Public Prosecutions (State) Guidelines (DPPG) should be complied with': Queensland Police Service, 'Chapter 3 — Prosecution Process', *Operational Procedures Manual* (31 July 2020, Issue 77, Public Edition) 15 [3.4.5] 'Director of Public Prosecutions (State) guidelines'.

306 Office of the Director of Public Prosecutions (Queensland) (n 304) 15, 17–18 ('13. Summary Charges').

The prosecution should elect to proceed upon indictment where the assault involves spitting, biting or a needle stick injury if the circumstances raise a real risk of the police officer contracting an infectious disease.

(d) Other cases:-

In all other cases an assessment should be made as to whether the conduct could be adequately punished upon summary prosecution.

Generally, a scuffle which results in no more than minor injuries should be dealt with summarily. However, in every case all of the circumstances should be taken into account, including the nature of the assault, its context, and the criminal history of the accused.

A charge of assault on a police officer should be prosecuted on indictment if it would otherwise be joined with other criminal charges which are proceeding on indictment.

Where the prosecution has the election to proceed with an indictable offence summarily, that offence must be dealt with summarily unless:

(a) The conduct could not be adequately punished other than upon indictment having regard to:
- The maximum penalty able to be imposed summarily;
- The circumstances of the offence; and
- The antecedents of the offender

(b) The interests of justice require that it be dealt with upon indictment having regard to:
- The exceptional circumstances of the offence/s;
- The nature and complexity of the legal or factual issues involved;
- The case involves an important point of law or is of general importance

(c) There is some relevant connection between the commission of the offence and some other offence punishable only on indictment, which would allow the two offences to be tried together (see section 552D Criminal Code).[307]

Even if a police prosecutor elects to proceed on indictment, the ODPP makes the final determination about whether or not to indict on the charge once it has been 'committed up' from the Magistrates Courts.[308]

While the *Director's Guidelines* currently only refer to assaults on police officers, it is the Council's understanding that these guidelines are currently under review.

10.6.2 The position in other jurisdictions

Victoria

Victorian amendments,[309] which are to come into operation on 1 March 2021 (if not proclaimed before), will amend 'the *Criminal Procedure Act 2009* to require all offences committed against emergency workers, custodial officers, or youth justice custodial officers, to which a statutory minimum sentence applies, to be prosecuted by the Office of Public Prosecutions in the County Court or Supreme Court'.[310]

This was said to be 'in recognition of the complexity of the law and high public interest in its application' and 'consistent with Parliament's intention that such offending be viewed as serious in nature and ensure that such cases are progressed by senior and experienced legal and judicial officers'.[311]

In a press release, the Victorian Attorney-General referred to 'the complexity of the laws and the gravity of the offences', with the stated benefit that the change 'will also facilitate the development of specialisation in the prosecution of these complex cases'.[312]

The amendment requires offences under section 18 of the *Crimes Act 1958* (Vic) of causing injury intentionally or recklessly where committed against an emergency worker, custodial officer or youth justice custodial officer on duty

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307 Ibid 17–18 ('13. Summary Charges').

308 *Criminal Code* (Qld) s 560.

309 *Sentencing Amendment (Emergency Worker Harm) Act 2020 (Vic)* s 7.

310 Explanatory Memorandum, Sentencing Amendment (Emergency Worker Harm) Bill 2020 (Vic) 5.

311 Victoria, Parliamentary Debates, Legislative Council, 19 March 2020, Sentencing Amendment (Emergency Worker Harm) Bill 2020, Second Reading Speech, 1258 (Jaala Pulford, Minister for Roads, Minister for Road Safety and the TAC, Minister for Fishing and Boating).

312 Attorney-General (Victoria), 'Protecting Emergency Workers from Harm' (Media Release 3 March 2020).

(carrying a presumptive minimum penalty of 6 months' imprisonment) to be prosecuted by the Office of Public Prosecutions in the higher courts.[313]

Such offences not alleged to have been committed against that cohort will be able to be dealt with summarily, if the court considers that it is appropriate for the charge to be determined summarily and the accused consents to a summary hearing.[314]

The maximum penalty for section 18 offences is 10 years if the injury was caused intentionally, or 5 years if it was committed recklessly.

New South Wales

A NSW inquiry into violence against emergency services personnel undertaken by the Legislative Assembly Committee on Law and Safety, which reported in August 2017, recommended that the NSW Government consider asking the NSW Sentencing Council to conduct a further review of the sentencing power of the NSW Local Court.[315] The review was recommended in the context of the Local Court's current jurisdictional limit of 2 years for a single offence, or up to 5 years if imposing a new sentence of imprisonment to be served wholly or partly consecutively with an existing sentence of imprisonment.[316] There are some exceptions to this.[317]

The NSW Government has indicated that further consideration of the recommendation is required because, while 'further examination of the sentencing powers of the NSW Local Court would be beneficial', any increase in the sentencing jurisdiction of the NSW Local Court may have broader impacts.[318]

The NSW Legislative Assembly Committee on Law and Safety was issued Terms of Reference on 23 July 2020 asking it to inquire into and report on assaults on members of the NSW Police Force.[319] As part of that inquiry, the NSW Sentencing Council has been asked to review sentencing for assault offences against police officers, correctional staff, youth justice officers, emergency service workers and health workers. It is unclear whether current sentencing powers will be explored as part of this review, but there is no explicit reference to this issue in the Terms of Reference.[320]

Western Australia

WA has indictable charges that are designated as 'either way charges',[321] which carry maximum penalties for the offence dealt with on indictment, as well as 'summary conviction penalties' applicable if the charge is sentenced summarily.[322]

There is a general statutory presumption towards summary disposition of such charges, unless the prosecution or accused apply, before a plea is entered, to the magistrate and the court decides the charge is to be tried on indictment, or another written law expressly provides to the contrary.[323]

Grounds for deciding such a charge should be tried on indictment are listed and include that summary punishment would not be adequate, given the alleged circumstances of offending and that there are links to other offences that must be tried on indictment.[324]

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313 *Sentencing Amendment (Emergency Worker Harm) Act 2020* (Vic) s 7, amending sch 2 to the *Criminal Procedure Act 2009* (Vic).

314 Ibid, new (pending) s 4.1A in sch 2 to the *Criminal Procedure Act 2009* (Vic), read with ss 28 and 29 of that Act.

315 Committee on Law and Safety, Parliament of NSW, *Violence Against Emergency Services Personnel* (Report 1/56, 2017) Recommendation 44, xvi.

316 *Criminal Procedure Act 1986* (NSW), ss 267–8 and *Crimes (Sentencing Procedure) Act 1999* (NSW), ss 58(3) and (3A).

317 See *Crimes (Sentencing Procedure) Act 1999* (NSW) s 58.

318 NSW Government, *NSW Government Response to Recommendations from the Legislative Assembly's Inquiry into Violence Against Emergency Services Personnel* (Tabled 8 February 2018) 13.

319 Terms of Reference are available at: <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2608#tab-termsofreference?>.

320 The Terms of Reference issued to the Council are available at: <http://www.sentencingcouncil.justice.nsw.gov.au/Pages/Assault-police-TOR.aspx>. They refer to matters including 'recent trends in assaults on these workers', sentencing options to deter this behaviour and reduce reoffending and sentencing outcomes and principles, as well as 'any other matters the Council considers relevant'.

321 See *Criminal Procedure Act 2004* (WA) s 40.

322 *Criminal Code* (WA) s 5.

323 Ibid s 5(2).

324 Ibid s 5(3).

A WA Magistrates Court that convicts an offender can still commit the offender to a higher court for sentence, where the indictable penalty applies, if the magistrate considers that any sentence the court could impose on the accused for the offence would not be commensurate with the seriousness of the offence.[325]

Relevant WA *Criminal Code* 'either way charges', and the relevant maximum penalties are:

- Section 172 Obstructing public officer — 3 years' imprisonment (summary conviction penalty: 18 months' imprisonment and $18 000 fine).
- Section 317 Assault causing bodily harm — 7 years' imprisonment (aggravated)/5 years (simpliciter) (summary conviction penalty: 3 years/ imprisonment and $36 000 fine (aggravated)/2 years' imprisonment and $24 000 fine (simpliciter).
- Section 318 Serious assault — 10 years' imprisonment (aggravated)/7 years' imprisonment (simpliciter) (summary conviction penalty — simpliciter offences only: 3 years' imprisonment and $36 000 fine).

10.6.3 Stakeholder views

The Department of Agriculture and Fisheries[326] and LAQ[327] supported the current position in respect of section 552A providing election discretion to the prosecution.

QCS also supported the existing prosecution election but added that 'if the circumstance of aggravation is introduced in subsection 340(2) for serious assaults against CSOs [as it has], QCS would question whether it is appropriate for this offence to be dealt with summarily, given the seriousness of the offending'.[328]

The BAQ position was the opposite of the current situation: 'a person being charged with an indictable offence ought to have the right to trial by jury unless they make a decision to forego that right'.[329] However, the BAQ stated that:

> If the prosecution election is to be retained … the remaining offences for which the prosecution has the election under section 552A all have a maximum penalty of no more than 7 years. It is certainly anomalous that an offence involving violence carrying a maximum penalty of 14 years imprisonment is able to be dealt with summarily at all, let alone on the election of the prosecution. Indeed, section 552B precludes summary trial on a defendant's election for any offence involving an assault if the maximum penalty is more than 7 years … aggravated charges under section 340 ought to be tried on indictment before a jury.[330]

This was a view shared by the QLS:

> Such election should be by the defendant, as it is for a charge of assault occasioning bodily harm. If the offence is not serious enough to warrant an indictment, then the prosecution have the option of charging a simple offence under the PPRA. If the offence is too serious to be adequately punished in the Magistrates Court then the prosecution can argue for committal under section 552D.[331]

The QLS noted that the current position deprives a defendant of power over whether he or she has the right to a jury trial for an indictable offence:

> That can be especially important where the credibility of police officers is in issue, or where the question is the reasonableness of force used. It also makes available to a defendant the cheaper and quicker option of summary disposition if they choose to waive their right to a jury trial. The defendant can also have regard to the fact that a conviction in the Magistrates Court becomes spent after 5 years rather than 10, as in the District Court.[332]

The QLS identified further reasons for retaining the ability for the Magistrates Courts to deal with aggravated serious assaults even if election is given to the defendant:

- '… in the vast majority of cases the Magistrates Court would have adequate jurisdiction to appropriately sentence offenders for offences under section 340'.[333]
- Section 552D is, and would remain, an appropriate check and balance in that process.[334]

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325 Ibid ss 5(9), (10).

326 Submission 7 (Department of Agriculture and Fisheries) 7.

327 Submission 29 (Legal Aid Queensland) 7.

328 Submission 21 (Queensland Corrective Services) 17.

329 Submission 27 (Bar Association of Queensland) 10.

330 Ibid 10.

331 Submission 30 (Queensland Law Society) 11.

332 Ibid 11.

333 Ibid 14.

334 Ibid.

Sisters Inside stated that 'the requirements for establishing whether an action should be charged as a summary or indictable offence are not clear and too much discretion is afforded to police'. Sisters Inside referred to a client's case where police ordered a strip search and she threw her underwear at the officer. The woman was charged with aggravated serious assault (s 340), attracting the maximum penalty of 14 years, rather than a summary offence like section 790(1)(b) of the PPRA (maximum penalty of 6 months).[335]

10.6.4 Council's view

The Council considered the following options regarding jurisdictional election:

- No change to section 552A of the *Criminal Code* (prosecution election regarding any section 340 offence).
- Move section 340 to section 552B — require section 340 charges to be heard and decided summarily unless the defendant elects for a jury trial, aligning arrangements for summary disposition of serious assault charges with those that apply to AOBH charged under section 339(1).
- Excluding aggravated forms of serious assault from the scope of section 552A, meaning that these offences will be required to be dealt with on indictment. This would bring aggravated serious assault into line with the arrangements that apply to other offences carrying a 14-year maximum penalty, such as GBH and torture, taking into account that existing provisions under the Code generally restrict the ability to deal with an offence involving an assault summarily to offences carrying a maximum term of imprisonment of not more than 7 years.[336]
- Require all section 340 offences to be dealt with summarily, unless a magistrate decided to abstain from hearing the particular case, which should proceed on indictment (under section 552D). This would effectively require section 340 to be made a 'relevant offence' under section 552BA, although they are defined in that section as being offences with penalties of 3 years' imprisonment or less).

The Council noted that the *Review of the Civil and Criminal Justice System in Queensland* (referred to as the 'Moynihan review' after its author), in reviewing what offences should be capable of being dealt with summarily, acknowledged:

> a widely and justifiably held view that trial by jury should not be lightly dispensed with, given the serious consequences which may follow conviction of a criminal offence and the consequences for the community as a whole, in some offences or categories of offences. The constantly recurring issue is that of proportionality: are the processes and resources that are employed in response to particular offences, or categories of offences, proportionate to the seriousness of the offence from the aspect of the community and from that of the consequences for the accused if convicted? Does a matter warrant an allocation of the public resources of the District or Supreme Court, at a cost of $3988 and $5903 per finalisation, or does it warrant the allocation of the resources of the Magistrates Court at a cost of $314 per finalisation?[337]

At a time when section 340 offences attracted a 7-year maximum penalty in all cases, being prior to this section being amended to introduce circumstances of aggravation, that review noted:

> There is no clear rationale as to why certain offences attract a prosecution election and others a defence election. It is incongruous that the prosecution has the election with regard to serious assault (s 340 of the Criminal Code), yet the defence has the election for assault occasioning bodily harm (s 339).[338]

It recommended that the list of 'offences be heard and determined summarily' include (inter alia) offences with a maximum penalty of less than 3 years' imprisonment, matters currently prescribed section 552A (which included s 340), common and serious assault (not being of a sexual nature) and AOBH.[339]

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335 Submission 17 (Sisters Inside) 4.

336 Note, making section 340 strictly indictable would have consequences for children dealt with under the *Youth Justice Act 1992* (Qld), as an aggravated serious assault will meet the definition of being a 'serious offence' under s 8 of that Act unless otherwise exempted. LAQ submitted: 'Any increase in sentencing outcomes for assaults that involve public officials must take into account the need for speedy resolution of children's matters and the desirability of children who commit such offences being able to participate in restorative justice processes. At present the categorisation of offences pursuant to the *Youth Justice Act* allows all assault matters (other than GBH) to be dealt with summarily' (Submission 29 (Legal Aid Queensland) 8).

337 Martin Moynihan, *Review of the Civil and Criminal Justice System in Queensland* (2008) 134–5, citing Productivity Commission *Report on Government Services 2008*, Table 7A.23 Real net recurrent expenditure per finalisation, criminal, 2006-07 at <www.pc.gov.au/gsp/reports/rogs/2008/justice> accessed 18 September 2008.>.

338 Ibid 142.

339 Ibid 157, Recommendation 34.

The next recommendation was that 'all serious offences continue to be dealt with on indictment'. These included (inter alia) sexual offences committed against children under the age of 14, where the prosecution will seek a custodial sentence in excess of 2 years' imprisonment and offences relating to GBH and torture.[340]

A further recommendation was that 'all other offences may be heard and determined summarily, at the election of the ODPP'.[341]

The Council considered the points raised by stakeholders as well as practical advantages of the current application of section 552A to all serious assaults, including expediency of resolution of charges (for both the defendant and the complainant) and saving of higher court resources (particularly where the reason for the amendment would be defendant election for jury trial).

As noted above in this chapter, the doubling of the maximum penalty for aggravated serious assault in section 340 was an election commitment and was not supported by any clear rationale as to the level at which it was set. It has since been replicated twice without further analysis. Not only does this impact on the provision's relationship with other Code offences, it also causes incongruities with the election provisions.

However, as the Moynihan review noted, there was incongruity in how sections 552A and B dealt with offence provisions 339 and 340 well before the aggravated circumstances were added to section 340, and its global maximum penalty stood at 7 years' imprisonment.

It would appear that the system has evolved to make this work. It is clear from the statistics that the prosecution elects summary jurisdiction on the vast majority of section 340 offences (including aggravated ones). It is also clear that the defence rarely elects a jury trial for section 340 AOBH simpliciter offences.

There are other actors who can become involved in the jurisdictional decision — magistrates can refuse to sentence an offence that would otherwise be resolved in the Magistrates Courts, and the ODPP uses its statutory power to both issue state-wide guidelines regarding how to exercise the election discretion for police and ODPP prosecutors, and to decline to indict charges committed to the District Court.

While the Council acknowledges the arguments made by the stakeholders supporting change, on balance it does not believe that change is necessary.

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

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

340 Ibid 157–8, Recommendation 35.

341 Ibid 158, Recommendation 36.

PART E — Improving institutional responses and community understanding

Chapter 11 Institutional responses

This chapter begins by outlining the importance of creating an environment where employees are encouraged to report an assault in the workplace. In this context, the Council outlines a discussion about two critical issues — that of under-reporting of workplace assaults, and the need for better data and information about occupational violence to monitor and enhance institutional responses to this issue. The chapter then sets out how institutions — both the organisations that employ victims of occupational violence, as well as the agencies that form part of the criminal justice system — currently respond to assaults on workers. The chapter focuses specifically on the potential for adult restorative justice conferencing as a response that might better serve those involved in occupational violence, either as victims, offenders or employers.

11.1 The importance of strong responses to workplace assault

As is clearly illustrated by the case studies provided to the Council and discussed in Chapter 5 of this report, the process of recovering from a workplace assault can be lengthy and complex. The investment in training and developing professionals — police, teachers, nurses and others — to perform their jobs effectively is substantial. While the Council has not calculated the financial and economic impact on the community incurred by having individual workers offline for short or longer periods, or in having workers decide to move out of their occupation altogether, it is presumably significant. The cost of retraining others to replace workers who permanently opt-out of frontline work must be considered.

One of the most important ways of ensuring there are effective responses to workplace assaults is to ensure there are appropriate systems to encourage the reporting of such incidents, and that the right forms of responses and interventions are available to respond to the harm done.

11.1.1 Under-reporting of occupational violence

Under-reporting is an issue identified and discussed in the Griffith University literature review, which summarises the key reasons why victims may choose not to report an assault. These are:

- the complexity of the internal process for reporting the incident;
- a lack of support for the victim following the assault;
- lack of satisfaction with managerial responses;
- a view that workplace violence is seen as 'part of the job'; and
- a view that reporting the incident is unlikely to make any difference.[1]

These barriers to reporting have been confirmed in submissions from professional bodies and employee unions representing workers. For example, the Australasian College for Emergency Medicine (ACEM) submitted:

> Violence in EDs [Emergency Departments] is under-reported due to perceptions among ED staff that it is an inherent part of the job. ED staff who are exposed to workplace violence also under-report incidents due to barriers associated with complex and lengthy reporting systems, lack of time, unclear policies and procedures, confidentiality issues, peer pressure, the sigma of victimisation, and fear of retaliation by hospital administrators. This culture of under-reporting suggests that the quantitative evidence on violence in EDs is limited and of poor quality. For instance, few studies have monitored trends in ED violence or evaluated the effectiveness of interventions over time. To understand the cumulative effects of violence on ED staff, as well as appropriate prevention and intervention strategies, instituting a culture of reporting is essential.[2]

The Queensland Teachers' Union (QTU) noted the following barriers to reporting for teachers:

- a perception that the organisation will take no action and not provide support;
- a perception that the needs of children are valued over the issue of worker safety; and
- an expectation that assaults by children will not be prosecuted due to the age of the offenders.[3]

As noted in Chapter 5, QTU advised that students or teachers and principals may be required to change schools following an assault. This is another potential barrier for teachers and principals to report, as their careers may be severely affected. QTU provided a case study example of a deputy principal who was professionally set back after

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1 Christine Bond et al, *Assaults on Public Officers: A Review of Research Evidence* (Griffith Criminology Institute for Queensland Sentencing Advisory Council, March 2020) 17.

2 Submission 19 (Australasian College for Emergency Medicine) 1.

3 Preliminary Submission 13 (Queensland Teachers' Union) 7.

an assault in 2016. As of mid-2020 she has been unable to secure an ongoing position at the same level, in her field, and continues to experience ongoing anxiety, which affects her performance in interview processes.[4]

Submissions from the QTU and the Independent Education Union suggest there is a lack of data available about the scope and extent of occupational violence experienced by staff in schools and TAFE. Without having a system to collect information about this issue, little can be done to respond to violence and improve prevention strategies in these workplaces. There is also no way of measuring the extent of under-reporting. However, the QTU note the longer-term nature of the relationships a school and its staff will have with a particular family, with very few options to have a child excluded from a school:

> In effect, this means that even when a student or family member at a state school infringes on community standards of behaviour established under law, a state school and the Department of Education must continue to interact with that person or risk infringing other legal obligations.[5]

The Independent Education Union echoed this concern about data[6] and ongoing relationships:

> In the context of schools, an occupational violence approach is consistent with the need for school staff to maintain working relationships with parents and students in order to achieve educational outcomes. This is particularly acute for teachers working in State Schools, where exclusion of students/families is more challenging.[7]

It is likely this will contribute in such cases to the under-reporting of assaults to police.

11.1.2 Increasing visibility — better and improved data collection

A number of submissions raised the need for accurate data collection of all incidents of occupational violence by individual organisations, to assist with risk identification and response. In line with the argument for improved preventative measures, several submissions raised the importance of understanding the nature and extent of the problem to provide an evidence base for future work.

The Queensland Council for Unions was concerned that a failure by employers to keep aggregate data could raise questions about whether that employer is complying with their duties under the *Work Health and Safety Act 2011* (Qld):

> As stated, a PCBU [Person Conducting a Business of Undertaking] has a duty [under the *Work Health and Safety Act 2011*] to put in place controls to, so far is reasonably practicable, eliminate, or where this is not able to be done reasonably practicably, to implement measures to minimise risks to workers. The PCBU further has a duty to maintain and review those control measures. It is doubtful that an employer, who is not keeping aggregate data on such a prevalent and seemingly escalating risk, is complying with these duties.[8]

The ACEM point out that there are few studies monitoring trends and responses to violence in Emergency Departments (EDs), and that a culture of reporting is central to understanding the effects of violence on ED staff, as well as what might be effective in prevention and intervention. The issue of data gaps was particularly raised by the United Workers Union and the Independent Education Union in relation to the education sector:

> Reporting and recording instances of occupational violence in Queensland schools is currently inconsistent, and instances of violence often remain unaddressed.[9]
>
> For the purposes of this submission, we acknowledge that there is a lack of data related to prevalence and seriousness of occupational violence experienced by teachers and other school staff and would encourage Governments, and/or other agencies, to support collection of data to inform future prevention strategies.[10]

The Transport Workers' Union also raised the importance of data collection in its submission to the Council:

> We also emphasise the importance of collecting relevant data, and making information available to guide the assessment of risks, as well [as] improving reporting avenues and responding to the needs of victims more effectively.[11]

From the Council's perspective, the availability of high-quality data is critical to provide an evidence-based response to assaults on workers, including the way the criminal justice system responds to such incidents. In preparing data

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4 Submission 20 (Queensland Teachers' Union) Annexure 2–3.

5 Preliminary Submission 13 (Queensland Teachers' Union). 6

6 Submission 13 (Independent Education Union) 3.

7 Ibid.

8 Submission 16 (Queensland Council of Unions) 2.

9 Submission 11 (United Workers Union) 4.

10 Submission 13 (Independent Education Union) 1.

11 Submission 12 (Transport Workers' Union) 11.

to inform the Council's work, it has become evident that information about victims of crime that can be linked to offender-related data is not collected with any reliability. Nor is there any information about the circumstances of offences that is collected in a way that can easily be reported on.

The only readily available source of information to the Council on the broader context within which offending and sentencing occurs is through the time-consuming and manual process of analysing sentencing remarks, which are only available from the higher courts. However, the qualitative analysis of sentencing remarks comes with its own set of limitations, as was discussed in section 4.2.1 of Chapter 4. Whenever the Council observes particular trends that require further investigation, a separate set of research activities must be designed to understand why these trends are occurring.

11.2 Preventing assault — applying a workplace health and safety lens

11.2.1 Findings of the Griffith Criminology Institute's literature review

In reviewing the issue of the effectiveness of penalty enhancements or mandatory minimum sentencing schemes, the Griffith Criminology Institute's literature review concludes:

> although amendments to sentencing frameworks can clearly communicate the unacceptability of the behaviour, prevention strategies may be a better strategy for reducing the incidence of assaults against public officers. In other words, well-targeted interventions may achieve more in terms of reducing the incidence of these assaults.[12]

The literature review outlines that interventions explored in the research essentially fall into three groups:

- Those focusing on the *relationship of the officer with the 'client'* (e.g. appropriate risk assessment tools, training in skills to de-escalate interactions, clearer instructions and policies for the public).
- Those focusing on the *workplace environment* (e.g. physical barriers, the organisation of the workplace, public awareness/education posters, surveillance technology).
- Those focusing on the *relationship of the officer with the organisation* (e.g. simpler and clearer internal reporting processes, supportive management, a culture of safety).

The literature review reports that evidence about the effectiveness of these kinds of interventions is 'ad hoc' and that using a crime prevention framework, including strategies like target hardening[13] and reducing opportunities, might assist in this regard.[14]

11.2.2 *The Work Health and Safety Act 2011*

The legislative framework that supports the health and safety of workers in Queensland and aims to reduce the risks of workplace accidents and injuries in Queensland is the *Work Health and Safety Act 2011* (Qld) (WHS Act). The WHS Act requires that a business or undertaking must ensure, as far as is reasonably practicable, the health and safety of workers while at work.[15] This primary duty of care requires a person conducting a business or undertaking to exercise due diligence to ensure they comply with this duty.[16] Section 27(5) of the Act further describes due diligence as including taking steps to:

- acquire and keep up-to-date knowledge of work health and safety matters;
- gain an understanding of the nature of the operations of the business or undertaking and generally of the hazards and risks associated with those operations;
- ensure that the person conducting the business or undertaking has appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business or undertaking; and
- ensure the person conducting the business or undertaking has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information.

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12 Bond et al (n 1) v.

13 'Target hardening' refers to strategies aimed at reducing the risk of an offence occurring, commonly through the use of physical barriers and other security measures. For example, the use of physical barriers on buses: Ibid 22.

14 Ibid.

15 *Work Health and Safety Act 2011* (Qld) s 19(1).

16 Ibid s 27(1).

Section 28 of the Act imposes duties on a worker to:

- take reasonable care for his or her own health and safety and to ensure his or her acts or omissions do not adversely affect the health and safety of others;
- comply with reasonable instructions to allow the person conducting the business or undertaking to comply with the Act; and
- cooperate with any reasonable policy or procedure relating to health and safety in the workplace.

The Act establishes offence provisions relating to breaches of these obligations.

11.2.3 Stakeholder perspectives

Many submissions were concerned that the Council acknowledge that sentencing is only one small aspect of what must be a much broader response to the issue of occupational violence. This was expressed best by John Martin from the Queensland Council of Unions (QCU) in a meeting with the Council:

> To the extent that sentencing will impact upon creating a safer workplace we support it … To some extent it's putting the ambulance at the bottom of the cliff rather than the guardrail at the top of the cliff.[17]

Given so many assaults on workers occur in the context of heightened emotions, mental health breakdown, drug and alcohol misuse, and where rational thought and an understanding of consequences are not present, there were concerns that increasing maximum penalties and introducing mandatory sentencing are unlikely to have the effect of deterring this behaviour. Many stakeholders spoke about the need to use a workplace health and safety approach to the issue of occupational violence and made valuable suggestions about what additional measures could be taken to reduce and prevent workplace assaults.

In relation to the delivery of health services, the Queensland Nurses and Midwives' Union (QNMU), for example, described penalties and sentencing as unlikely to create a safe working environment on their own. Its submission lists a range of preventative measures that should be in place to provide safe workplaces, including adequate staffing, appropriate training, policies and procedures, and appropriate workplace design.[18]

The promotion of a preventative approach was echoed in submissions from the Transport Workers' Union, UWU, QCU, Queensland Advocacy Incorporated, Sisters Inside, the Aboriginal and Torres Strait Islander Legal Service, and the Queensland Human Rights Commission (QHRC):

> We would also support the introduction of initiatives that would provide training and support for public officers in working with vulnerable people, people with disabilities and other initiatives that invest in treatment and preventative strategies which address root causes of offending, and de-escalate and reduce conflict.[19]

> The QCU takes a workplace health and safety (WHS) approach to violence against public officials and other workers … We also adopt a position that it is far better to prevent risk rather than consider what is to be done after the event … Consultations with our affiliate unions have indicated that a focus on prevention, through elimination or minimising risks, does not occur across all industries or sectors.[20]

> … strategies that cater to students' individual learning needs and support both teachers and teacher aides to do their best jobs possible are far more vital to the well-being of all parties involved than mandatory sentencing. Indeed, enforcing legislation in schools serves staff and students best when it is focused on workplace health and safety, by making sure that measures to prevent and risk injury are adequately implemented and subject to regular evaluation … Unpacking these events reveals the complexity inherent in emergency situations and how understanding challenging behaviour is often of more use to frontline workers than the implementation of penalties to perpetrators … Interventions that can be controlled by organisations, such as strictly adhering to WHS legislation, education and training, internal and external communication, developing resources and targeted research, are of more use to frontline UWU workers than mandatory sentencing. Employers must equip frontline workers with targeted skills, training, communication strategies and research findings that evolve with new information and the dynamic contexts in which paramedics and health workers interact with patients, and teacher aides interact with students.[21]

> There is a need for improved education and training for all public officers. In particular, there is a need for improved de-escalation training for police and emergency response workers. Preventing offending by changing police procedures on the targeting of people with mental illness, people with cognitive disabilities and Aboriginal and

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17 Consultation with John Martin, Queensland Council of Unions (Queensland Sentencing Advisory Council, 17 June 2020).

18 Submission 14 (Queensland Nurses and Midwives' Union) 4.

19 Submission 12 (Transport Workers' Union) 11.

20 Submission 16 (Queensland Council of Unions) 2.

21 Submission 11 (United Workers Union) 3–5.

> Torres Strait Islander people is likely to be a more effective tactic to reduce assaults on public officers than increasing the severity and scope of serious assault provisions.[22]
>
> We propose that the Council should make recommendations directed at reducing assaults on public officers, rather than increasing penalties and criminalisation … All prison staff should be trained to interact with women within a health and wellbeing framework. Women's mental health, wellbeing and dignity are too readily subjugated to prison management's first priority: 'safety'. For instance, women who are at risk of self-harm or suffering from an acute psychosocial disability episode should be treated at a hospital; they should not be aggressively restrained or placed in solitary confinement … We recommend proactive policy changes that address the causes of conflict between civilians and public officers:
>
> - Invest in the community by redistributing police and prison funding into more publicly funded rehabilitation and mental health services;
> - Invest in education and employment pathways for Aboriginal and Torres Strait Islander people in frontline public officer roles;
> - Prioritise trauma-informed and cultural competency training for frontline public officers (including CSOs);
> - Facilitate a shift in police culture to prioritise risk-assessment and de-escalation.[23]
>
> In our view, changes in laws, policies and procedures to support greater use of de-escalation (for the majority of cases) and containment (for the minority of cases) would be the greatest course of improvement for frontline safety.[24]
>
> In our earlier submission we noted an international survey of paramedics across 13 countries, which found that to address violence there was a need for better training, better options for restraint, improved communication, advanced warning, improved public education, better situational awareness, and improved inter-agency cooperation… We also support the submissions of other stakeholders that investment in prevention will perhaps be the best means of addressing the issues identified in the Terms of Reference, particularly over the long term. These include more training for staff on de-escalation and managing vulnerable clients.[25]

The QHRC goes on to recommend:

- … the policy development process more broadly, would be assisted by the introduction of a Justice Impact Test,[26] as recently recommended by the Queensland Productivity Commission.
- Effective alternative measures are available to help address many of the issues identified in the Terms of Reference, including:
  - Addressing the underlying causes of offending behaviour;
  - A renewed focus on justice reinvestment initiatives; and
  - A greater recognition of victims in the Human Rights Act.[27]

The QHRC cited the finding of the NSW Inspector of Custodial Services that inmates serving longer sentences have fewer incentives for good behaviour, and therefore, perversely, longer terms of imprisonment may increase the risk of assault on correctional officers. This report also found:

> violence [in correctional centres] was linked to structural or situational factors such as prison design, security levels, management practices, population profile, activity levels, and outside environmental influences (such as overcrowding)'.[28]

The need for a focus on a strong workplace health and safety framework was also expressed in one of the case studies included in a submission made by the Queensland Occupational Violence Strategy Unit:[29]

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22 Submission 23 (Queensland Advocacy Incorporated) 6.

23 Submission 17 (Sisters Inside) 2, 5, 6.

24 Submission 22 (Aboriginal and Torres Strait Islander Legal Service) 7.

25 Submission 18 (Queensland Human Rights Commission) 6 [20], 15–16 [57].

26 A 'Justice Impact Test' as envisaged by the Queensland Productivity Commission, is one that would assess all costs and benefits of the proposal; impacts on key stakeholders, including community members, government and community agencies; and alternative options: Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Final Report, August 2019) Recommendation 4. This is based on a similar model that operates in the UK. For example, changes introduced under the *Assaults on Emergency Workers (Offences) Act 2018* were required to be the subject of a separate assessment by the Ministry of Justice to estimate the impact of the maximum penalties for the new offence of assault or battery on emergency workers and the statutory aggravating factor — including costs to the criminal justice system and impact on the prison population: Explanatory Notes, Assaults on Emergency Workers (Offences) Bill (UK) [35].

27 Ibid 17 [61].

28 Ibid 5 [16].

29 Submission 9a (Queensland Occupational Violence Strategy Unit) , Appendix 1 (confidential, reproduced with permission).

> The job can never be 'safe', but it can be safer, or at least have better control measures in place. (Case study 4)

Like the QHRC, the Office of the Public Guardian (OPG) emphasised that preventative approaches that aim to address the underlying causes of anti-social behaviour by adults with impaired decision-making capacity are more important than 'sentencing options and increased penalties'.[30] Further noting:

> The prevalence of such incidences amongst adults with impaired decision-making capacity indicates the need for appropriate mental health services and funding support for people with intellectual disabilities and acquired brain injury. If investment was made in preventative strategies, as opposed to increasing punitive measures, we would anticipate the prevalence of offending would significantly decrease.[31]

The OPG also voiced concerns about the importance of preventative strategies for children and young people. It noted that children with cognitive or intellectual disabilities may have early exposure to the criminal justice system due to their behaviours, and that such early interaction 'can do lasting damage to their development'.[32] The OPG suggested that:

> True protection of the community from criminal behaviours, including public officers, relies on the community recognising the value of investment in early interventions that promote children and young peoples' education, health and wellbeing and prevent them from engaging in offending behaviour from the outset.[33]

11.2.4 Current workplace responses by public sector agencies in Queensland

During the consultation process, several agencies referred the Council to their work to create safer workplaces for their staff in relation to occupational violence and followed up with additional information in their written submissions.

The Queensland Police Service (QPS) indicated to the Council that they have done considerable work in the area of addressing assaults on frontline officers, based on research into trends in officer assault and on analysis of injury reports:

> Research suggests that reducing officer assaults requires strategies that enhance officer preparedness during confrontations, as well as broader strategies aimed at enhancing community safety and perceptions of police as well as addressing social issues (i.e. substance misuse) (Hine et al 2018, Barrick, Hickman and Strom 2014, Bierie 2017).[34]

The QPS outlined their implementation of a range of strategies to help their frontline staff to manage situations in which assault may occur:

- verbal and non-verbal communication skills and de-escalation training;
- use of personal protection equipment;
- alternative less-lethal use of force options (i.e. taser and capsicum spray);
- dynamic interactive scenario training (including situational use of force);
- incorporation of body-worn cameras;
- cultural awareness training for interacting more effectively with people from Aboriginal and Torres Strait Islander and other culturally diverse backgrounds;
- mandatory mental illness and substance misuse training;
- mental health partnerships to support officers responding to an individual affected by mental illness;
- support for First Year Constables and Field Training Officers;
- promotion of procedural justice to enhance police-community relationships and maximise police legitimacy; and
- addressing substance misuse within community to mitigate risk of officer assault.[35]

As part of operational skills training, the QPS requires all police and recruits in Queensland to practise de-escalation and communication as core skills to achieve the goals of using the minimum amount of force required to resolve a situation. The *Policing with Influence — Tactical Communications* training forms part of the assessment process for

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30 Submission 24 (Office of the Public Guardian) 4.

31 Ibid.

32 Ibid.

33 Ibid 5.

34 QPS, *Assault on Frontline Officers*, 30 September 2019, unpublished internal briefing provided via personal communication on 7 July 2020.

35 Email from Strategic Policy Branch, Policy and Performance, Queensland Police Service to Manager — Policy, Queensland Sentencing Advisory Council 7 July 2020 citing Queensland Police Service, Strategy and Tactics, Intelligence and Covert Services Command, 'Assault on Frontline Officers' (30 September 2019) 1–2.

recruits and for annual refresher training for sworn police officers and has been shared across other Queensland Government departments to inform communication training in sectors such as corrections, health, youth justice, and transport.[36]

In addition, contact between members of the police service and people who are vulnerable or who have cultural needs is guided by chapter 6 of the *Operational Procedures Manual* (OPM). This guidance aims to support police in accommodating their responses to vulnerable people to ensure they are not placed at a disadvantage in their interactions with police.[37] The QPS has established a Cultural Engagement Unit that develops and maintains relationships with non-English-speaking and Aboriginal and Torres Strait Islander communities to create stronger relationships with these communities. The Police Liaison Officer program is also intended to provide a communication role between police and diverse community groups to build greater trust and understanding in order to enhance informal connection and discussion.[38]

The QPS has indicated they undertake continual review of current practices, policies, training and prevention activities in line with the research evidence to ensure effective prevention of frontline assault remains a key focus.

A submission to the Council from QCS provided information about training for corrective services officers (CSOs):

> 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.[39]

In response to a report titled *Occupational Violence Prevention in Queensland Health's Hospital and Health Services Taskforce Report 31 May 2016*, Queensland Health established the Queensland Occupational Violence Strategy Unit (QOVSU) and the Occupational Violence Implementation Committee to implement the 20 recommendations made in the Taskforce Report. The QOVSU is responsible for developing, trialling, implementing and evaluating initiatives to prevent and respond to occupational violence in healthcare settings.[40]

The QOVSU provided the Council with copies of the following resources it has developed and implemented since its establishment in 2016:

- a poster campaign titled 'Respect our Staff';
- an occupational Violence Incident Response Kit, developed to provide managers with a resource to support employees when they have been subject to occupational violence;
- the Healthcare Security Officer *Clinical Insider Series,* developed to provide resources to security staff on a range of clinical conditions that may have an impact on the security–patient interaction;
- a fact sheet series;
- the Occupational Violence Competency Framework, which outlines training against a series of core competencies to improve staff skills to prevent occupational violence, techniques to use during a violent incident, and post-incident support processes;
- the Unacceptable Behaviour — Discharge from Care framework, which provides staff with guidance regarding the steps to take when they feel at immediate risk of harm due to violent or aggressive behaviour displayed by a patient, with the aim to use discharge as a last resort; and
- the Peer Support Program, which establishes a trained network of Peer Support Responders who can deliver psychological first aid and provide a 'caring ear for their peers to reach out to in times of need but also provide information to link staff with additional services when needed'.[41]

Some of these initiatives have been evaluated, and many have been rolled out state-wide.

Several stakeholders identified that people with disability, including cognitive impairment, are likely to be overrepresented among those sentenced for assaults on public officers. Although there is no evidence or data to underpin this, other than knowing that people with a mental illness are considerably overrepresented in the prison

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36 Ibid.

37 Ibid.

38 Ibid.

39 Submission 21 (Queensland Corrective Services) 7.

40 'About Us', material provided by Clinical Lead, Queensland Occupational Violence Strategy Unit, Queensland Health by e-mail to Manager — Policy, Queensland Sentencing Advisory Council, 1 June 2020.

41 Ibid.

population more generally,[42] this is very likely to be the case. A submission received by the Council from the Public Advocate emphasised the need for a broader understanding among frontline staff about the needs and likely behavioural problems that may be displayed by people with disability, and the need for greater awareness of this group in the community:

> Consideration of the needs of people with impaired decision-making capacity may extend beyond the scope of legislation to include the mandatory training of front-line staff. This would ensure they are better equipped to deal with people with a range of disabilities and conditions and able to recognise behaviours related to communication difficulties or an expression of pain or discomfort. This could potentially reduce the number of people with impaired decision-making capacity being charged with offences of this nature in the future.[43]

Another mechanism for managing aggressive and violent behaviour from people with disability or mental illness is a suite of interventions known as 'restrictive practices'. These primarily include restraint (chemical, mechanical, social or physical) and seclusion with the primary aim of protecting the person or others from harm. They have the effect of restricting the rights or freedom of movement of a person with disability or mental illness.[44] The use of restrictive practices is authorised under the *Mental Health Act 2016* (Qld) under certain circumstances.[45]

In its submission to the Council, the ACEM spoke about the use of restrictive practices in the ED as being, in many instances, 'a symptom of system failure':

> ACEM acknowledges that restrictive practices (including sedation or physical restraint) are often needed to manage agitated or violent patients who pose a risk to themselves, staff or other patients and when all other de-escalation techniques have been unsuccessful. Evidence suggests that patients who are intoxicated with alcohol or other drugs are less likely to respond to verbal forms of de-escalation and are more likely to require sedation compared to patients with a sole diagnoses of mental illness. [46]

The submission goes on to indicate that while the use of restrictive practices is strongly regulated in most jurisdictions, the use of these mechanisms is not routinely documented and data do not exist to indicate how often these approaches are being used in the ED. This indicates a concerning policy gap in relation to the lack of regulation of restrictive practices in Queensland, which the ACEM recommends be addressed by creating clear clinical governance frameworks, standardised documentation tools and clear reporting pathways to enable the issue to be monitored. The Council notes that the National Safety and Quality Health Service (NSQHS) Standards (second edition), released in November 2019, include the following standard requirements for restrictive practices:

> Where restraint is clinically necessary to prevent harm, the health service organisation has systems that:
>
> - Minimise and, where possible, eliminate the use of restraint
> - Govern the use of restraint in accordance with legislation
> - Report use of restraint to the governing body[47]

The primary aim of the NSQHS Standards is 'to protect the public from harm and to improve the quality of health service provision'. All public and private hospitals in Australia are required to be accredited to the NSQHS Standards.[48]

11.2.5 Council's view

Most occupational groups the Council spoke to, or who provided submissions, viewed the issue of occupational violence from a workplace health and safety perspective. As outlined here, it has become clear to the Council that a great deal of effort has been invested into preventing and responding to this issue by some industries and agencies. Some workplaces have done a very thorough and extensive job of putting in place mitigation strategies to prevent or reduce the likelihood of staff assault. Others have further to go.

The Council sees great scope for collaboration across workplaces and industry groups to learn from one another about the different approaches taken to prevent and respond to occupational violence. While it has not been the

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42 Submission 1 (The Public Advocate) 1.

43 Ibid 2.

44 Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws* (Report 124, August 2014) 243.

45 See *Mental Health Act 2016* (Qld) s 24.

46 Submission 19 (Australasian College for Emergency Medicine) 2.

47 Australian Commission on Safety and Quality in Health Care, *National Safety and Quality Health Service Standards* (2nd ed, 2017) 46.

48 Australian Commission on Safety and Quality in Health Care, 'Assessment to the NHQHS Standards', (Web Page) <https://www.safetyandquality.gov.au/standards/national-safety-and-quality-health-service-nsqhs-standards/assessment-nsqhs-standards>.

primary focus of this review, the Council can see merit in government considering the establishment of a cross-agency working group that includes union membership to advance the work being done in this area. In particular, this work should ensure frontline officers are trained in effective forms of de-escalation, and that approaches involving the use of restraint or force be reserved as options of last resort.

Finally, as indicated in the literature review undertaken by the Griffith Criminology Institute, prevention strategies to reduce and minimise occupational violence require greater research and evaluation, where a crime prevention focus may prove beneficial.[49]

11.3 Victims and the criminal justice system

For most victims of crime, the criminal justice response is a critical aspect of acknowledging the full consequences of the offending they have experienced. For each individual victim of crime, what they seek from the criminal justice system may differ. For some, simply reporting the incident to police regardless of the outcome is a symbol that they have taken an important stance against violence at work. For others, a criminal conviction and a substantial term of imprisonment is the outcome they seek.[50]

The sentencing purpose of denunciation encapsulates the function of sentencing as a means of public condemnation of the offending behaviour, thereby reaffirming the core community values that the offender has violated. In publicly denouncing relevant conduct, the court is conveying the community's disapproval. This process is intended to provide an important symbolic acknowledgement that community standards of morality have been offended through the damage done to the dignity of the individual.[51] This was noted in 2013 by the High Court in this way:

> the long-standing obligation of the state to vindicate the dignity of each victim of violence, to express the community's disapproval of that offending, and to afford such protection as can be afforded by the state to the vulnerable against repetition of violence.[52]

The Queensland Court of Appeal expanded on this sentiment more recently:

> The rational connection between sentencing, denunciation and the moral sense of the community has to be explored further in order to understand the role played by s 9(1)(d) of the *Penalties and Sentences Act*. The late Professor Jean Hampton offered an explanation for the relationships between these ideas. Professor Hampton distinguished between wrongs that result only in loss or harm to an individual and wrongs that, whether or not they also cause loss or harm, violate moral standards in a way that constitutes an affront to a victim's value or dignity. Such an affront causes a moral injury. A wrongful act might result in compensable loss but might also be morally excusable – particularly if the wrongdoer accepts responsibility and immediately offers recompense. On the other hand, when a wrong is constituted by an action that treats the victim as worth less as a human being than the offender, or treats the victim as entirely worthless, the commission of the wrong is both an affront to the victim's dignity and an affront to shared community values. The wrong done to the victim constitutes an insult to the community because it disparages one of the community's essential values, namely the value placed upon each precious individual. If permitted, such affronts might eventually corrode general acceptance of such values.[53]

Another interpretation of the principle of denunciation is that, in invoking this as part of the sentencing process, it has the effect of 'social rehabilitation':

> the process of social and personal recovery which we attempt to achieve in order to ameliorate the consequences of a crime can be impeded or facilitated by the responses of the courts. The imposition of a sentence often constitutes both a practical and ritual completion of a protracted painful period. It signifies the recognition by society of the nature and significance of the wrong that has been done to affected members, the assertion of its values and the public attribution of responsibility for that wrongdoing to the perpetrator. If the balancing of values and considerations represented by the sentence which, of course, must include those factors which militate in favour of mitigation of penalty, is capable of being perceived by a reasonably objective member of the community as just, the process of recovery is more likely to be assisted. If not, there will almost certainly be created a sense of injustice in the community generally that damages the respect in which our criminal justice system is held and

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49 Christine Bond et al, *Assaults on Public Officers: A Review of Research Evidence* (Griffith Criminology Institute for Queensland Sentencing Advisory Council, March 2020) 22.

50 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I and II* (Royal Commission into Institutional Responses to Child Sexual Abuse, 2017) 159–160. While these comments were made in relation to child sexual abuse victims, they echo the needs of the victim groups more broadly.

51 Arie Freiberg, Hugh Donnelly and Karen Gelb, *Sentencing for Child Sexual Abuse in Institutional Context* (Royal Commission into Institutional Responses to Child Sexual Abuse 2015) 39–40.

52 *Munda v The State of Western Australia* [2013] HCA 38 [54] as cited in Freiberg, Donnelly and Gelb (n 51) 40.

53 *R v O'Sullivan; Ex parte A-G (Qld)* [2019] QCA 300, 36–7 [144] (Sofronoff P and Gotterson JA and Lyons SJA) (citation omitted).

> which may never be removed. Indeed, from the victim's perspective, an apparent failure of the system to recognise the real significance of what has occurred in the life of that person as a consequence of the commission of the crime may well aggravate the situation.[54]

In this way, an effective criminal justice response is central to ensuring victims of crime have the confidence in the system to report criminal conduct.[55] In turn, the individual experiences of victims of crime have an important flow-on effect. When a victim of crime has a negative experience (which can exacerbate the victim's trauma), or where a victim's expectations of the criminal justice response are not met, this can influence the views of other members of the community, leading to broader community dissatisfaction and higher levels of under-reporting of offences. As the Council found during its work on sentencing for child homicide offences, better information and support for victims of crime can greatly enhance their experience of the criminal justice system[56] and has potential to contribute to building greater public confidence in the system.

This rest of this chapter considers the current approach to incorporating the 'voice' or experience of a victim of crime in the prosecution and sentencing of an offence, and alternative approaches.

11.3.1 Current approach

The rights of victims of crime

The Queensland Charter of Victims' Rights sets out the rights and entitlements of victims of crime in Queensland.[57] In summary, these rights include:

- to be treated with courtesy, compassion, respect and dignity, taking into account each victim's needs;
- to have their personal information protected from unauthorised disclosure, and to be protected against unnecessary contact with the accused, or violence or intimidation during court proceedings by the accused, defence witnesses and family members and supporters of the accused;
- to be informed at the earliest practicable opportunity about services (including support services) and remedies available to them;
- to be informed about the progress of the criminal justice process, including progress of the investigations, charges brought against the defendant and substantial changes to these charges or acceptance of a plea of guilty to a lesser charge, and details of court proceedings.

Under the Charter and the provisions of the *Penalties and Sentences Act 1992* (Qld) (PSA), victims also have a right to make a Victim Impact Statement (VIS), which is described further below.

The rights of victims as outlined in the Charter reflect different aspects of procedural justice. Adherence to these principles is important to victims feeling heard and part of the process.

Criminal justice agencies are required to meet certain minimum standards in providing support and assistance to victims. These standards are set out under the *Victims of Crime Assistance Act 2009* (Qld) or VOCAA. Significant changes were introduced to the VOCAA on 1 July 2017 following a review of the legislation,[58] to ensure the legislation 'continues to provide an effective response to assist victims of crime'.[59]

Changes included replacing the former 'Fundamental Principles of Justice for Victims of Crime' in the Act with the current Charter.[60] The Charter informs victims about what they can expect from government departments and non-government agencies that support crime victims. It also places an onus on relevant agencies to provide information to victims proactively, if appropriate and practical to do so. The Charter applies to the QPS and the Office of the Director of Public Prosecutions (ODPP) — the key agencies involved in investigating and prosecuting offences — as well as to non-government agencies funded to provide support to victims.

Information to be provided under the Charter includes:

- the progress of a police investigation (unless this may jeopardise the investigation);

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54 *DPP v DJK* [2003] VSCA 109 [18], cited in Freiberg, Donnelly and Gelb (n 51) 40–1.

55 See *DPP v Twomey* [2006] VSCA 90 [22]–[24], cited in Freiberg, Donnelly and Gelb (n 51) 41.

56 Queensland Sentencing Advisory Council, *Sentencing for Criminal Offences Arising from the Death of a Child* (Final Report, October 2018) 171–2.

57 *Victims of Crime Assistance Act 2009* (Qld) sch 1AA, pt 1, divs 1–2.

58 These amendments were made by the *Victims of Crime Assistance and Other Legislation Amendment Act 2017* (Qld).

59 Explanatory Notes, Victims of Crime Assistance and Other Legislation Amendment Bill 2016 (Qld) 1.

60 *Victims of Crime Assistance Act 2009* (Qld) ch 2 and sch 1AA.

- major decisions made about the prosecution of an accused person, including the charges brought against the accused person (or a decision not to bring charges), any substantial changes to the charges, and the acceptance of a plea of guilty to a lesser or different charge;
- the name of the person charged;
- information about court processes including hearing dates and how to attend court, and the outcome of criminal court proceedings against the accused person, including the sentence imposed and the outcome of any appeal; and
- if the victim is a witness at the accused's trial, information about the trial process and the victim's role as a witness.[61]

There are processes that provide for a victim to make a complaint if they feel the Charter has not been followed, but the Charter does not create enforceable legal rights. Victim Assist Queensland (VAQ) can receive complaints about breaches of the Charter relating to any agency, although complaints can also be made directly to the agency concerned.

In the case of a serious assault that occurs in circumstances where the victim is a police officer, the QPS's OPM provides that, where practicable, investigation of the offence should be undertaken by an independent investigation office, such as criminal investigation branch, or child protection investigation unit.[62] There are a number of matters set out to which a senior officer, who is not involved in the relevant incident, must have regard when determining whether an independent officer should investigate the assault including the serious nature of the assault, the injuries sustained, the complexity of the incident, the number of victims and witnesses, the number of suspects, and the availability of resources.[63] It further states as a relevant consideration that 'where practicable the investigator should be senior in rank to the victim'.[64]

Victims impact statements

The criminal trial in the adversarial legal system is centred on the principle of the independent, impartial and fair prosecution of criminal offending.[65] In the adversarial system, offences are prosecuted by the state rather than by the individual victim of the offence; victims, therefore, appear in court as a witness and/or observer during the process.[66]

As discussed in Chapter 6, where an offence involved the use of, or attempted use of, violence against another person, or that resulted in physical harm, a court must have regard primarily to a number of additional factors. These include the need to protect any members of the community from the risk of physical harm if a custodial sentence were not imposed, the nature and extent of the violence used, or intended to be used, in the commission of the offence, and the personal circumstances of any victim.[67]

The primary way courts currently take the impact on the victim into account is through the use of a victim impact statement (VIS). A VIS is a mechanism for a victim of crime to provide a written account of the impact of an offence on them, which is presented to the sentencing court — most often in a written format to the judge, although sometimes the victim can read the statement to the court, or the prosecutor can read it to the court.[68] This forms part of the court's assessment of the seriousness of the offence and may be accompanied by other evidence of harm tendered to the court in the schedule of facts, a document that generally presents the agreed facts relevant to the case before the sentencing court.

All Australian states and territories have now introduced legislation to facilitate the use of a VIS in the sentencing process, which generally provides:

- who may give a VIS;
- the form a VIS must take; and
- what information a VIS can contain.

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61 Ibid sch 1AA, pt 1, div 2.

62 Queensland Police Service, 'Chapter 2 — Investigative Process', *Operational Procedures Manual* (31 July 2020, Issue 77, Public Edition) 26 [2.5.3] 'Investigation of serious assault offences where police officers performing duty are victims'.

63 Ibid.

64 Ibid.

65 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (Victorian Law Reform Commission 2016) 133.

66 Edna Erez, 'Victim Impact Statements' (1991) *Trends and Issues in Crime and Criminal Justice* (33) 1.

67 *Penalties and Sentences Act 1992* (Qld) ss 9(2A)–(3).

68 Ibid ss 179M–179N.

There is no mandatory requirement for a person to provide a VIS, nor can a court draw any inference about the level of harm caused to a person if no VIS has been provided. The court has discretion to determine how they take the information contained in a VIS into account and how much weight to give to information provided in a VIS. The content of a VIS may also be challenged, particularly if detail contained in the VIS is inconsistent with information previously provided by the person in a police statement or in evidence given to a court.

The statutory requirements applying to the use of victim impact statements were summarised by the Queensland Court of Appeal in *R v Evans:*[69]

- section 15 of the VOCAA [since omitted — but inserted in a modified form in s 179K of the PSA] allows for a VIS to be given to a sentencing court detailing the harm caused to the victim by the offence for the purpose of informing the sentencing court, with provision for the prosecutor to determining what details (if any) are appropriate to be given to the sentencing court, but having regard to the victim's wishes; however, the fact the details of the harm caused to a victim by the offence are absent at sentencing does not give rise to an inference the offence caused little or no harm to the victim;
- section 15 of the PSA provides that 'In imposing sentence on an offender, a court may receive any information … that it considers appropriate to enable it to impose the proper sentence';
- in accordance with section 132C of the *Evidence Act 1977* (Qld), a sentencing judge or magistrate may act on an allegation of fact that is admitted or is not challenged or, if the allegation of fact is not admitted or is challenged, to act on it if satisfied on the balance of probabilities that the allegation is true (the level of satisfaction varying according to the consequences, adverse to the person being sentenced, or finding the allegation to be true).[70]

In this same judgment, Chesterman JA acknowledged that a VIS not only may serve a therapeutic purpose, but 'may serve other purposes, such as informing the court of 'details of the harm caused … by the offence', which is often a factor relevant to the level of sentence imposed'.[71]

The potential benefits of using a VIS in sentencing have been identified as including that they:

- allow the victim greater input into the formal court process, thereby reducing the perception of the victim's lack of involvement in the criminal justice process;
- provide a cathartic and psychological benefit to the victim as the victim is allowed to prepare the statement in their own words with less formality than police statements;
- contribute to proportionality[72] and accuracy in sentencing as a result of information provided about the harm experienced by the victim;[73]
- assist in making the sentencing process more transparent and more reflective of the community's response to crime; and
- aid the sentencing court in making an informed decision, particularly when the offender has pleaded guilty and the court has not had an opportunity to hear the complainant's testimony.[74]

However, other commentators have raised concerns about the use and utility of VISs. For example, having the ability to submit a VIS may create unrealistic expectations for victims regarding the level of influence their VIS will have on the sentence outcome.[75] It has been suggested that if victim expectations are not realised in the sentencing process, there is a risk of amplifying victim resentment and disappointment with the criminal justice system, which is contrary to the aims of a VIS.[76] There is also potential for inequity based on the literacy competence of the victim preparing the VIS, and the ability for the victim to clearly understand and articulate the likely future impacts of the crime. This is particularly the case where the real impacts on a victim's life are not evident for some time and may not yet have become apparent at the time of sentencing.

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69 [2011] 2 Qd R 571.

70 Ibid 574 [4] — 576 [7] (McMurdo P, Chesterman JA agreeing as to this approach at 577 [15]–[19]).

71 Ibid 577 [17] (Chesterman JA).

72 Proportionality is a sentencing principle that sets out that the punishment of an offender should fit the crime. See further Chapter 6.

73 Edna Erez, 'Victim Participation in Sentencing: Rhetoric and Reality' (1990) 18(1) *Journal of Criminal Justice* (1990) 19.

74 Joan Baptie, 'The Effect of the Provision of Victim Impact Statements on Sentencing in the Local Courts of New South Wales', (2004) 7(1*) Judicial Review* 73.

75 Erez (n 73).

76 Sam Garkawe, 'The Effect of Victim Impact Statements on Sentencing Decisions' (Conference Paper, Sentencing: Principles, Perspectives and Possibilities, 10–12 February 2006).

Others have suggested that the subjective contents contained in a VIS may:

- have the effect of skewing an objective process with the inclusion of possible emotional and vengeful content;
- influence the court to give too great a weight to the effect of the crime on the victim, neglecting other considerations such as the rehabilitation of the offender;
- result in inconsistent sentences when one victim complains of greater psychological injury than another more robust victim; and
- undermine the court's impartiality from unacceptable public pressures.[77]

It is not known how many victims of serious assault provide a VIS as part of the sentencing process in Queensland.

Financial assistance and support for victims of crime

Victims of an act of violence[78] can apply for financial assistance under the VOCAA of up to $75,000 to aid in their recovery, which may include reimbursement of medical and counselling expenses, incidental travel expenses, loss of earnings of up to $20,000, loss or damage to clothing, and other exceptional circumstance expenses (e.g. relocation expenses or costs of securing a place of residence). In addition, they can be eligible to be granted up to $500 in legal assistance incurred by the victim in applying for assistance under the VOCAA.[79]

However, financial assistance cannot be granted under the VOCAA if the person who is the victim of the crime has received, or will receive, payment of an amount in relation to the act of violence from another source.[80] For victims of serious assault, therefore, an application for assistance from WorkCover must be made and finalised before applying for financial assistance under the VOCAA.

Chapter 2 presents information from WorkCover regarding applications for assistance by workers who have been victims of workplace violence.

In its submission to this review, Legal Aid Queensland proposed two potential amendments to this framework, as follows:

- that the limitations imposed under Part 3 of VOCAA in relation to the payments of special assistance could be removed to enable public officers injured in the course of their duties to be paid a special recognition payment regardless of whether they are paid any lump sum payment under the *Workers' Compensation and Rehabilitation Act 2003* (Qld) if an act of violence has been committed against them while they have been performing duties; and
- amendment to the circumstances listed in section 1(3) of Schedule 2 to enable an 'uplift' from a lower to a higher category in special assistance payments on the basis that the victim was a public officer injured in the course of their duties.[81]

The QNMU noted the financial impact to nurses and midwives who must attend court, which is often during their work hours. The QNMU acknowledged assistance may be provided by the hospital and health service but believes 'it is worth considering as part of responding to a victim's needs'.[82]

The Council has not specifically addressed these recommendations on the basis that they do not directly relate to the request to provide advice about the current offence, penalties and sentencing framework that guides responses to these offences. However, to the extent that these sorts of measures may contribute to greater support for victims of these offences, they may be matters worthy of further investigation.

Restitution and compensation

As part of the sentencing process, and in addition to any other sentence imposed, a court may order that an offender:

- make restitution of property that has been damaged or taken in association with the commission of an offence (a restitution order);

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77 Erez (n 66); William Cox, 'Sentencing and the Criminal Law: Address at the University of Tasmania Faculty of Law Graduation Ceremony' (2005) 24(2) *University of Tasmania Law Review* 173.

78 See *Victims of Crime Assistance Act 2009* (Qld) s 21.

79 Ibid ss 37–39.

80 Ibid s 21(4).

81 Submission 29 (Legal Aid Queensland) 4.

82 Submission 14 (Queensland Nurses and Midwives' Union) 4.

- pay compensation to a person for loss or destruction of property in connection with the commission of an offence (a compensation order);
- pay compensation for an injury suffered by someone because of the commission of an offence (a compensation order).[83]

Restitution 'means the return or redelivery of particular property', as distinct from 'compensation for damage to it'.[84] Therefore, 'It follows that compensation orders for damage or loss to property or the person will be made in the majority of cases'.[85]

> Such orders are not a form of punishment [although they are part of the sentence] but a summary and inexpensive method of compensating a person, avoiding the need to institute separate proceedings to establish civil liability. The potentially punitive consequences of such an order are relevant in considering the appropriateness of the overall sentence taking into account here that the applicant might be sent to prison for non-payment of the compensation.[86]

Any order made by the court under section 35 of the PSA can include details as to the amount of money to be paid by way of restitution or compensation, the person to whom the money is to be paid, the timeframe within which the money must be paid, and the details of how the money must be paid.[87] The court may also order that the offender may be imprisoned if they fail to pay the restitution or compensation. On written application to the court, the length of time to pay may be extended.[88]

The PSA twice states that, if necessary, the imposition of a fine comes second to compensating a victim. A sentencing court must give preference to making an order for compensation — but may also impose a sentence other than imprisonment — if the offender cannot pay both the compensation and the fine or similar amount, even though both would be appropriate.[89] Also, where it would be appropriate both to impose a fine and to make a restitution or compensation order, a sentencing court must give more importance to restitution or compensation, if the offender does not have the means to pay both.[90]

The imposition of a term of imprisonment may mean that compensation is not a reasonable prospect. The Court of Appeal has stated that:

> In the absence of cogent evidence that an offender has the capacity to pay compensation after release from a term of actual imprisonment imposed as part of a sentence, courts are reluctant to order offenders to pay compensation after serving a term of imprisonment. To do so may jeopardise the offender's prospects of rehabilitation; it would be apt to amount to a crushing sentence and would risk setting up the offender to fail at the time of release from prison when most in need of support to reintegrate into society.[91]

In that case, the default term of imprisonment the offender was liable to serve if he or she failed to pay the compensation upon his or her release, would, as a matter of law, be cumulative on the term imposed for the offence itself — 'the court held that this order made the overall sentence manifestly excessive'.[92]

Table 11-1 shows that Court data from the Courts Database for the period 2012–13 to 2018–19 indicates that, of the 7,912 cases involving a serious assault, 14.5 per cent involved one or more compensation orders (n=1,150). The average amount of compensation ordered was $773.42, and the highest amount of compensation was $14,500.00. Unfortunately, the data are unable to differentiate between compensation that relates to property and compensation that relates to a personal injury, so this detail cannot be provided. These compensation orders relate only to sentencing orders made under section 35 of the PSA and do not include compensation or financial assistance provided to victims that is not part of the sentencing process, such as a victim's right to seek

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83 *Penalties and Sentences Act 1992* (Qld) s 35.

84 *R v Ferrari* [1997] 2 Qd R 472, 475 (McPherson JA, Davies JA and White J agreeing), citing *R v Beldan*, *Ex parte A-G* [1986] 2 Qd R 179, 198.

85 John Robertson and Geraldine MacKenzie, Thomson Reuters, *Queensland Sentencing Manual* (online at 3 March 2020) [15.2050].

86 *R v Allison* [2012] QCA 249, 5 [27] (Douglas J, Fraser and White JJA agreeing), citing *R v Ferrari* [1997] 2 Qd R 472, 477 for the first sentence, and *R v Matauaina* [2011] QCA 344, [35] for the second. As to the statutory power to provide a set period of time within which to pay (or referral under the *State Penalties Enforcement Act 1999* (Qld)) and power to order imprisonment if the offender fails to comply with the order, see *Penalties and Sentences Act 1992* (Qld) ss 36–39.

87 *Penalties and Sentences Act 1992* (Qld) s 36.

88 Ibid s 38.

89 Ibid s 14.

90 Ibid s 48(4).

91 *R v Flint* [2015] QCA 275, 9 [24] (McMurdo P, Morrison JA and Jackson J agreeing). See also *R v Jacobs* [2016] QCA 028.

92 Robertson (n 85) [15.2125]. See also [15.2120] discussing *R v Silasack* [2009] QCA 88.

compensation by making a WorkCover claim and, once their WorkCover application has been finalised, to seek financial assistance under VOCAA.

Restitution orders were imposed in 137 cases involving a serious assault (1.7% of cases) with an average amount of $729.10 per case.

Table 11-1: Restitution and compensation orders for serious assaults of a public officer

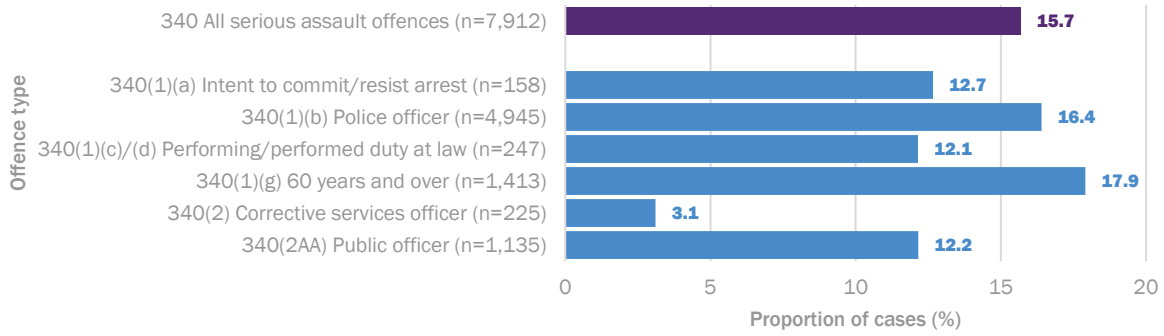
Order	N (cases)	% (of all cases)	Average amount (by case)	Minimum	Maximum
Compensation	1,150	14.5%	$773.42	$10.00	$14,500.00
Restitution	137	1.7%	$729.10	$8.90	$5,000.00

Data include adult and juvenile, lower and higher courts, sentenced 2012–13 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: Orders within a case were summed to create a total compensation amount and a total restitution amount per case and then averaged.

In the subsequent analyses, restitution orders and compensation orders are examined collectively. Due to the small number of cases involving restitution, and the fact that the data do not distinguish between compensation involving property and compensation involving personal injury, it was not possible to analyse these penalties separately.

Approximately one in six serious assault cases involved a compensation and/or restitution order (15.7%). This percentage was slightly higher when the offence was serious assault of a person aged 60 years and over (17.9%) or a police officer (16.4%). Assault of a corrective services officer was the least likely to result in a compensation and/or restitution order being made — see Figure 11-1.

Figure 11-1: Proportion of serious assault cases receiving a compensation and/or restitution order

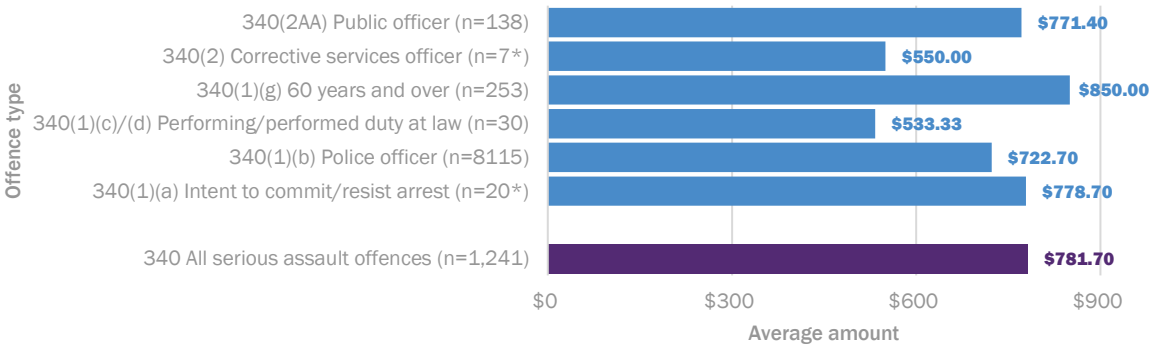


Data include adult and juvenile, lower and higher courts, sentenced 2012–13 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

The average amount of compensation and/or restitution was $781.70 per case. The average payment was highest when the assault involved a victim aged 60 years and over at $850.00, and lowest for assault of a person performing/performed a duty at law — see Figure 11-2.

For more information about the amount of restitution and/or compensation for specific subsections of section 340, please refer to Table A4-4 in Appendix 4.

Figure 11-2: Average amount of compensation and/or restitution ordered for serious assault cases



Data include adult and juvenile, lower and higher courts, sentenced 2012–13 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: (*) Small sample sizes

Submissions commenting on the criminal justice system response, and the many technical issues associated with it in the prosecution and sentencing for assaults on public officers, have been cited throughout this report. Victims of workplace assault have provided comments that are set out in Chapter 5.

11.3.2 Council's view

Many victims of crime who shared their stories with the Council spoke about their dissatisfaction with the criminal justice system. A 2019 report on imprisonment and recidivism by the Queensland Productivity Commission (QPC), discussed further below, eloquently describes the criminal justice system as being strongly built around offenders, leaving victims little role to play:

> The criminal justice system mainly focuses on criminals, not on the victims of crime.
>
> In criminal matters, the state is currently the litigant and victims largely play a passive role in the process. The offender's 'debt' is paid to the state, often in the form of a prison sentence. The victim plays no role in the setting of the sentence and typically receives no compensation from the offender for the harm done and there is little opportunity for restoration.[93]

The Council's 2018 report on sentencing for offences arising from the death of a child observed the need for improvement in the provision of information and support for family members who engage with the criminal justice system through prosecution of homicide offenders. The Council made specific recommendations for this sub-group of victims, whose considerable loss was acknowledged and deserving of much better assistance through the court process than was available at the time.[94]

It is clear that more could be done to ensure all victims of crime, particularly victims of personal offences, are supported and kept informed about the progress of court matters once they have reported an assault to police.

The QPC recommends that a victim restitution and restoration system be adopted in Queensland. In its response to the recommendations made by the QPC in its report, the Queensland Government has acknowledged the potential for restitution and restorative justice approaches to deliver improved outcomes for victims, offenders and communities and has committed to 'develop an updated Adult Restorative Justice Conferencing model and will consider opportunities to expand the use of restorative justice conferencing in Queensland with a view for improving outcomes for victims of crimes and offenders'.[95]

The Council endorses an approach to improving the experience of victims of crime that includes adult restorative justice conferencing.

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93 Queensland Productivity Commission (n 26) xxxii.

94 Queensland Sentencing Advisory Council (n 56) xxxix-xl.

95 Queensland Government, *Queensland Productivity Commission Inquiry into Imprisonment and Recidivism: Queensland Government Response* (Queensland Government, January 2020) 7.

11.4 Restorative justice — the potential for improved outcomes

Restorative justice is commonly defined as follows:

> A process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.[96]

Restorative justice conferencing has been a mechanism in place for children for several decades. Conferencing was initially trialled in Queensland in 1997 as a dual diversion and sentencing option. Following its evaluation it was expanded until, in 2013, court-referred conferencing was ended as part of the then government's election commitment, leaving only police referrals for conferencing. After a change of government in 2015, both diversionary and court-ordered restorative justice processes were reinstated and have been a key feature of the youth justice system ever since.[97]

A youth justice restorative justice process can take the form of a conference or an alternative diversion program.[98] Police can refer children to conferencing, diverting them from the court system.[99] Courts can make:

- a court diversion referral, to allow the offence to be appropriately dealt with without making a sentence order;[100] or
- a pre-sentence referral (to help the court make an appropriate community-based order or detention order).[101]

A restorative justice conference under the *Youth Justice Act 1992* (Qld) involves a meeting between (amongst others entitled to participate) a young person who has committed an offence, the victim of the offence (or victim participation through attendance of their representative or a representative of an organisation that advocates on behalf of victims of crime, or the victim's pre-recorded communication),[102] a trained convenor and a support person for both parties, with the aim being to restore the harm done through an agreement between the parties.[103]

The conference ends with the making of a 'conference agreement' or when the convenor ends it because the child fails to attend or denies committing the offence at the conference or the convenor concludes that an agreement is unlikely to be made due to 'a participant's conduct or failure' or is unlikely to be made within an appropriate time.[104]

The signed conference agreement involves the child admitting to having committed the offence and undertaking to address the harm caused. It cannot 'provide for the child to be treated more severely for the offence than if the child were sentenced by a court or in a way that contravenes the sentencing principles' in the YJA.[105]

An evaluation of the Restorative Justice Project, which reinstated court-referred conferencing and enhanced the existing model, was published in 2018 and demonstrated that after the first 12 months, the following outcomes had been reached:

- There was a high rate of compliance with completing the agreements reached during conferencing, with 96 per cent having been completed during the 12-month period. These resulted in apologies, restitution, completion of volunteer work and participation of young people in therapeutic or educational programs.
- Of the 300 young people who had participated, 59 per cent did not reoffend in the six months following the conference, 7 per cent showed a substantial decrease in the magnitude of reoffending, and 11 per cent showed a small decrease in the magnitude of their offending;

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96 Tony F Marshall, *Restorative Justice: An Overview* (Home Office: London, 1999).

97 Department of Child Safety, Youth and Women, *Restorative Justice Project: 12-Month Program Evaluation* (Queensland Government, 2018) 13–14 [1.2]–[1.3]. See Part 3 of the *Youth Justice Act 1992* (Qld) ('Restorative justice processes').

98 *Youth Justice Act 1992* (Qld) s 31. 'An alternative diversion program is a program, agreed to by the chief executive and the child, that involves the child participating in any of the following to address the child's behaviour — (a) remedial actions; (b) activities intended to strengthen the child's relationship with the child's family and community; c) educational programs': Ibid s 38(1). It must be designed to '(a) help the child to understand the harm caused by his or her behaviour; and (b) allow the child an opportunity to take responsibility for the offence committed by the child': s 38(2).

99 Ibid s 22. The referral is done instead of bringing the child (who must admit to committing the offence and be willing to comply with the referral) before a court for the offence.

100 Ibid ss 163(1)(d)(i) and 164.

101 Ibid ss 163(1)(d)(ii) and 165.

102 Ibid s 35(1).

103 Ibid s 34.

104 Ibid s 35(5).

105 Ibid s 36.

- Most victims (89%) and young people (85%) indicated they were satisfied with the outcome of the conference.[106]

In the context of adult offending, the model is similar in the practical operation of conferences, but there is no explicit statutory power in sentencing legislation to order, or recognition of, such a procedure.[107] It is called 'adult restorative justice conferencing' (ARJC) and was previously known as justice mediation. The ability to use the process as a pre-sentence option stems from the courts' powers to adjourn matters.[108] Queensland Government information notes that:

> Participation in adult restorative justice conferencing is always voluntary. The court, police, prosecutor or corrective services can refer people to conferencing. Victims, defence solicitors and barristers can also suggest it … A conference usually occurs before a court hearing or sentencing, but can happen at any stage of the criminal justice process.[109]

The key gatekeeper in terms of a matter's eligibility for ARJC is the Department of Justice and Attorney-General's Dispute Resolution Branch. The Dispute Resolution Branch applies eligibility criteria that are detailed in the relevant court referral form:

a) that a person has been charged, or there is sufficient evidence to charge the offender at law

b) that both the victim and offender express a willingness for the matter to be referred to an Adult Restorative Justice process

c) the offender does not have a history of related offences within the last five (5) years; nor a conviction dealt with on indictment in the District or Supreme Court

d) the offender is not in breach of any order at the time of the commission of the current offence

e) the offender has not participated in an Adult Restorative Justice process previously

f) the offence is not arising out of conduct about which an application for a domestic violence / protection order is based, has been made and/or any breach of such order

g) the offender is not in breach of any release conditions

h) there are no orders or conditions (including undertakings as to bail), which prevent contact between the parties for the purposes of an Adult Restorative Justice process.[110]

Being resource-specific, ARJC is not necessarily available in every court in Queensland. The QPS OPM notes that 'qualified mediators from the Dispute Resolution Branch (DRB) of the Department of Justice and Attorney-General (DJAG) provide ARJC under the Dispute Resolution Centres Act for criminal matters'[111] in Magistrates Courts at nine locations: Brisbane City, Holland Park, Ipswich, Gold Coast, Coolangatta, Cleveland, Richlands, Townsville and Cairns. Further, 'ARJC is provided from four offices in Southport, Brisbane, Townsville and Cairns. Additionally, the

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106 Department of Child Safety, Youth and Women (n 97) 8–9.

107 However, Magistrates Courts have power, after a summons is issued (but before the matter is before the court) to 'order the complainant to submit the matter to mediation under the *Dispute Resolution Centres Act 1990* … [if] the magistrate or clerk considers that the matter would be better resolved by mediation than by proceeding on the summons; or … the complainant consents to the order': *Justices Act 1886* (Qld) s 53A. 'If the complainant gives the clerk of the court written notice that the dispute has been resolved by mediation … the summons may not be served, and no other action may be taken on the summons': s 54(5)(b). See Queensland Police Service, 'Chapter 3 – Prosecution Process', *Operational Procedures Manual* (31 July 2020, Issue 77, Public Edition) 11 [3.3.3] 'Clerk or Magistrate order for referral for restorative justice conferencing after proceedings have been commenced'. Note that a summons includes a notice to appear: s 53B (note), citing *Police Powers and Responsibilities Act 2000* (Qld), s 388(2)(a). 'Mediation includes— (a) the undertaking of any activity for the purpose of promoting the discussion and settlement of disputes; and (b) the bringing together of the parties to any dispute for that purpose, either at the request of 1 of the parties to the dispute or on the initiative of a director; and (c) the follow-up of any matter the subject of any such discussion or settlement': *Dispute Resolution Centres Act 1990* (Qld) s 2.

108 See, for instance, *Justices Act 1886* (Qld) s 88(1B): 'The power to adjourn a hearing conferred upon justices or a justice by subsection (1) includes power to adjourn a hearing to enable the matter of a charge of a simple offence or breach of duty to be the subject of a mediation session under the *Dispute Resolution Centres Act 1990*'.

109 Queensland Government, 'About adult restorative justice conferencing' (15 June 2018), https://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/settling-disputes-out-of-court/restorative-justice/about.

110 Queensland Government, *Adult Restorative Justice Conferencing Conference Referral* (Form 1a) 3 <https://www.justice.qld.gov.au/__data/assets/pdf_file/0011/561917/referral-form-adult-restorative-justice-conferencing.pdf>.

111 Queensland Police Service, 'Chapter 3 — Prosecution Process', *Operational Procedures Manual* (31 July 2020, Issue 77, Public Edition) 9 [3.3] 'Adult Restorative Justice Conferencing'.

local Community Justice Groups from Mornington Island (Junkuri Laka) and Aurukun provide restorative justice services'.[112]

The QPS's OPM defines and describes the ARJC process as follows:

> A restorative justice conference (RJC) generally involves a face-to-face meeting between an offender and a victim to discuss the impact of the offender's actions and reach agreement in relation to reparation for the harm caused to the victim and/or community by the offence committed by the offender. The RJC provides an opportunity for the offender to take responsibility for the offender's actions, and for the victim to hold the offender accountable in a way that is meaningful for the victim.
>
> Restorative justice approaches conceptualise crime as a violation of another (the victim) which causes harm, rather than a violation of the law to be punished by the State. This violation creates obligations for the person who caused the harm (the offender), including the responsibility to make amends for the harm caused by:
>
> (i) accepting responsibility for the offender's actions;
>
> (ii) providing a meaningful apology;
>
> (iii) other steps, such as the provision of restitution or compensation; and/or
>
> (iv) completing counselling or other programs.
>
> Restorative justice has unique benefits including increased victim satisfaction, offender responsibility for actions and compliance with outcomes compared with prosecution.
>
> The objectives of restorative justice are:
>
> (i) supporting victims and enabling them to participate in the resolution process;
>
> (ii) repairing relationships damaged by crime;
>
> (iii) denouncing criminal behaviour as unacceptable and reaffirming community values;
>
> (iv) encouraging offenders to take responsibility for their behaviour;
>
> (v) identifying restorative, forward-looking outcomes; and
>
> (vi) reducing recidivism.[113]

In relation to the eligibility criteria for adult restorative justice conferencing, police are instructed to follow listed criteria, which largely reflect the Dispute Resolution Branch listed above.

The QPS criteria further stipulate that the offence is one that 'is dealt with summarily or, where appropriate, an indictable offence which cannot be dealt with summarily [and] can be substantiated by sufficient evidence'.[114]

The offender must have been an adult at the time of the offence and accept 'the general circumstances of the matter and expresses a willingness for the matter to be referred', and must not have been, at the time of the commission of the offence, subject to a community-based order, serving a term of imprisonment, on parole, or subject to a suspended sentence. Despite the criteria, the officer in charge 'of the relevant police prosecution corps may authorise the referral of a matter to ARJC'.[115]

The OPM notes that there are two forms of adult restorative justice conference open to police:

> (i) investigating officers, as an alternative to commencing proceedings for the offence ('police referral'); or
>
> (ii) police prosecutors, after proceedings for the offence have been commenced ('prosecutor referral').[116]

It further notes that:

> Referrals can also be made pre-sentence after a guilty finding in the Court, and post-sentence for an offender who is serving a term of imprisonment or who is being managed by Queensland Corrective Services in the community. [117]

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112 Ibid 10.

113 Ibid 9.

114 Ibid 10.

115 Ibid.

116 Ibid.

117 Ibid. See also at 11 [3.3.2] 'Responsibilities for Adult Restorative Justice Conferencing'.

The current OPM contains a direction to police:

> Officers and prosecutors are not to refer a matter involving a victim, who is an officer and was in the performance of the officer's duties at the time of the offence, to ARJC.[118]

In discussions with the Adult Restorative Justice Conferencing team within the Dispute Resolution Branch, which delivers conferencing in Queensland, it appears this was a policy decision made by DJAG in 2014 due to the potential conflict of interest that may operate in having police, who are the victims of an assault, but who are also bringing the charge, being involved in making the referral for a conference.[119] The Council has been advised that DJAG has now commenced work with the QPS to design a policy response to resolve potential conflicts of interest and overcome barriers for police officer complainants to access ARJC.[120]

Referral statistics provided by DJAG demonstrate that the number of referrals for adult restorative justice conferencing has been in decline since 2009–10. Referrals for serious assault offences are generally below 5 per cent of all referrals, although Table 11-2 shows that the highest proportion of referrals for serious assault were made in 2018–19. DJAG advised that it is important to note that, as regards the numbers in Table 11-2 below, there is no differentiation between serious assaults against police and other public officers and those against people over 60 — and the majority of these referrals may be for serious assaults against people over 60.[121]

Table 11-2: Serious assault referrals for adult restorative justice conferencing as a percentage of all referrals, 2009–10 to 2018–19

Year	Total referrals	Serious assault	Per cent
2009–10	786	0	–
2010–11	717	0	–
2011–12	540	3	0.5
2012–13	524	20	3.8
2013–14	497	15	3
2014–15	513	18	3.5
2015–16	410	10	2.4
2016–17	440	20	4.5
2017–18	338	9	2.7
2018–19	333	23	6.9

Source: Unpublished data provided by Adult Restorative Justice Conferencing, Dispute Resolution Branch, DJAG.
Note: Data on serious assault in this table do not identify which s 340 victim category is the subject of these referrals. Victims of serious assault can include public officers, people aged over 60 years, and people who rely on a guide, hearing or assistance dog, wheelchair or other remedial device.

A successful ARJC process will usually see the charges discontinued in court. As the OPM explains:

> The completion of a restorative justice conference (RJC), including finalisation of all terms of the agreement, should result in the discontinuation of the investigation or prosecution of a matter. Continuation of an investigation or prosecution despite a successful RJC outcome may undermine the value of Adult Restorative Justice Conferencing.
>
> Upon being notified by the Dispute Resolution Branch, Department of Justice and Attorney-General the restorative justice conference (RJC) has been successful, the investigating officer or prosecutor is to finalise the matter in the public interest …
>
> Continuing the investigation or prosecution of the matter despite a successful restorative justice conference should only occur if there are exceptional circumstances.
>
> If it is determined an investigation or prosecution should proceed despite the completion of a RJC and the successful fulfillment of the terms of the Restorative Outcome Plan, the participation of the defendant may be submitted as mitigating factors at the sentence hearing.[122]

The QPC's Final Report, *Inquiry into Imprisonment and Recidivism*, devoted an entire chapter to 'A victim-focused system'. Recommendation 8 was that 'the Queensland Government should introduce victim-focused restitution and

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118 Ibid 10.

119 Consultation with Richard Denning, Manager, Adult Restorative Justice Conferencing, 26 May 2020.

120 Email from Manager, Adult Restorative Justice Conferencing, Dispute Resolution Branch DJAG to Director, Queensland Sentencing Advisory Council, 11 August 2020.

121 Ibid.

122 Queensland Police Service, 'Chapter 3 — Prosecution Process', *Operational Procedures Manual* (31 July 2020, Issue 77, Public Edition) 12 [3.3.6] 'Finalisation of an Adult Restorative Justice Conferencing referral'.

restoration into the sentencing process'. While its scope extends beyond an acceptance and even expansion of ARJC, it was highly supportive of ARJC as a part of sentencing in Queensland and included:

- giving victims the option of engaging in a pre-sentence restitution and restoration process;
- charging and/or the sentencing process which take into account agreements reached between the victim and offender; and
- making these options available for any offence where a victim is identifiable.[123]

It noted that 'the very small scale of adult restorative justice processes in Queensland forecloses one avenue for addressing high recidivism rates' and that 'restorative justice conferencing can reduce reoffending' and that 'in-prison restorative justice programs can also assist in reducing recidivism'.[124] Furthermore:

- For victims and offenders for whom restorative justice practices are suitable, the processes have been found to increase victim satisfaction with the criminal justice system.
- Consultations and stakeholder submissions provided strong support for an expansion of existing restorative justice processes.[125]

In its response, the Queensland Government acknowledged 'the potential for restitution and restorative justice approaches to improve outcomes for victims, offenders, and communities' and stated:

> Consistent with the QPC's call for an expansion in the use of restitution and restorative justice, the Queensland Government will develop an updated Adult Restorative Justice Conferencing model and will consider opportunities to expand the use of restorative justice conferencing in Queensland with a view for improving outcomes for victims of crimes and offenders.
>
> Specific QPC proposals will be considered as part of this process.[126]

The Council has been made aware of a Victorian report published in 2018 that raises the important issue of equality of access to diversionary mechanisms. The diversion schemes available in Victoria, such as restorative justice conferencing, can only be considered for a matter where the prosecution consents to its use. This report raises the potential need for some form of guidance to scaffold the discretion of Victoria Police informants and prosecutors to make referrals for diversionary schemes, to avoid inconsistent decisions being made in this regard.[127] Any enhanced adult restorative justice conferencing scheme in Queensland would need to ensure appropriate guidance is in place so access to such schemes is considered for all eligible cases.

11.4.1 Stakeholder views

Submissions made by the Bar Association of Queensland, the Queensland Law Society, the Queensland Council of Unions, and Legal Aid Queensland all supported the potential for increased use of adult restorative justice conferencing for offences of assault on a public officer:

> An element lacking in the sentencing process for adult offenders is the disconnect between the defendant and public officer victim. There is a superficial or general understanding of the impact violent actions have upon an individual complainant by the defendant, and in the reverse, no consistent means of complainants obtaining an understanding of the personal situation of the defendant.[128]
>
> … a process that may be considered is a pre-sentence conference between the victim and defendant, though the availability and utility of such a conference will depend on the victim's willingness to participate and the defendant's remorse. Where adopted, the process could be therapeutic for both the victim and the defendant, allowing the victim to confront the defendant and the defendant to express their remorse.[129]
>
> A further initiative which could be considered in lieu of harsher or increased penalties is the use of restorative justice, as a means of addressing in particular repeat offenders and potentially to reduce recidivism in certain cases, and the costs to the criminal justice system. In particular, restorative justice could be considered an appropriate policy response in circumstances, where there is an ongoing relationship between the parties, such

123 Queensland Productivity Commission (n 26) 276.

124 Ibid 259.

125 Ibid 250.

126 Queensland Government (n 95) 7.

127 Liberty Victoria and Rights Advocacy Project, *Justice Diverted? Prosecutorial Discretion and the Use of Diversion Schemes in Victoria* (Rights Advocacy Project 2018).

128 Submission 27 (Bar Association of Queensland) 3.

129 Submission 30 (Queensland Law Society) 3.

> as between teachers, parents and/or children within the school system and local communities, which could otherwise result in the under-reporting of assaults or other forms of abuse.[130]
>
> Restorative justice measures for adults are presently underutilised or deemed not suitable. Given personal deterrence is a significant factor in sentencing for these types of offences and the significance of the victim's role and duties in the circumstance of the offence, LAQ sees great benefit in broadening this option in these matters.[131]
>
> A potential to enhance the process could be an adult restorative justice program to run parallel with the sentencing process. There could be a referral process at the point a plea of guilty is indicated and the process resolved prior to the matter finalising as a sentence. Not all of matters would require active involvement of the complainant, a victim liaison body could appear and place before the defendant any relevant issues on a complainant's behalf. In recent times the court has adapted to allow video link processes for sentence procedures involving prisoners. Similarly, incarcerated defendants could undergo restorative justice in this way. The public officer victim would have greater ownership or at least a platform to articulate their needs whilst adding an additional rehabilitative component to the sentencing process.[132]

The Aboriginal and Torres Strait Islander Legal Service (ATSILS) suggested that there might even be benefits in considering a 'compulsory mediation process', drawing on models that exist in personal injury cases and some other areas of law, which it suggested could provide 'a powerful contributor to improved frontline safety'.[133] It saw this as potentially avoiding this option being 'refused or discounted' without proper consideration first being given to its benefits.

The Queensland Teachers' Union saw potential in developing specialist responses that might be applied in a school context, commenting:

> Some schools across Queensland currently use restorative justice principles to guide student behaviour management. It is not, therefore, a stretch to imagine that the system could be developed and enhanced in consultation with all stakeholders, but especially students, teachers, principals and parents, to uphold current protections under the law while delivering effective responses to victims of assaults in a school setting. The QTU does not have a formed view on what such a system might look like. The emphasis here is on development by and for the school communities of Queensland where such a system might be applied.[134]

This option was also viewed positively by a nurse victim of assault interviewed by the Council:

> Yes. Absolutely. People need to know that I had to explain to my kids that when I went to do my job, I came home because you punched me, and I couldn't talk to them properly for two weeks. I couldn't eat properly for two weeks. Because they've [the offender] probably never thought about it again. That would be great. And I'm sure not everyone would want to do that. But I would. Absolutely. They need to know what they've done because I think they just don't see the impact.

11.4.2 Council's view

The Council considers there is substantial merit in the Queensland Government investigating the expanded use and availability of adult restorative justice conferencing as part of a broader criminal justice response to assaults on public officers and others who are assaulted at work. This program, which gives victims the ability to meet face-to-face with the offender in a supportive environment, was viewed very positively by a wide range of stakeholders during consultations and in submissions.

Although restorative justice conferencing may not be an option all victims wish to pursue, many stakeholders commented on its potential to improve victim satisfaction by giving victims a role as active participants in the process and allowing them to communicate the harm that has been caused by the offender's actions other than through the making of a victim impact statement. It may also provide victims with greater confidence in the outcome.

In the case of less serious forms of offending — such as matters that otherwise might have been dealt with by way of a summary charge of assault or obstruct — such a process may operate as an effective diversionary measure. In other circumstances, involving more serious forms of offending and conduct, such as indictable charges dealt with under section 340 of the *Criminal Code*, such an option may be more suitably conceived as a supplementary option occurring either post-plea, but prior to sentencing, or following sentencing.

In any context in which it is used, it clearly needs to suit the circumstances of both the victim and the offender and must be carefully managed with appropriate safeguards in place to realise the potential benefits of this approach.

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130 Submission 16 (Queensland Council of Unions) 3.

131 Submission 29 (Legal Aid Queensland) 8.

132 Submission 27 (Bar Association of Queensland) 3.

133 Submission 22 (Aboriginal and Torres Strait Islander Legal Services) 6–7.

134 Submission 20 (Queensland Teachers' Union) 6–7.

There may also be suitable alternative options for those direct victims of an assault who do not wish to participate in an adult restorative justice conference — for example, a representative of the organisation who employs the victim, or a union representative acting on the victim's behalf might discuss the impact of these types of offences on victims of assault, while preserving the wishes of the victim not to be directly involved.

The Council notes that the Queensland Government has made a commitment to update and potentially expand the availability of adult restorative justice conferencing in response to the QPC's recent report on imprisonment and recidivism. In the context of this work, it would be desirable to see this form of conferencing expanded to include offences of assault of police officers, as well as seeing an increase in referrals for conferencing being made across the board for assaults of frontline and emergency service workers. The Council also notes the need for equal access to any expanded adult restorative justice conference for all offenders, and that appropriate guidance is provided to ensure such a system is delivered consistently across Queensland.

Recommendation 12–1: Review of Adult Restorative Justice Conferencing

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

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

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

Chapter 12 Enhancing community knowledge and understanding

12.1 Introduction

Among those matters the Council has been asked to report on, the Terms of Reference ask it to 'identify ways to enhance community knowledge and understanding of the penalties for this type of offending'.

In this chapter we discuss strategies to improve public knowledge and understanding of assaults on public officers and the penalties that may be applied with a view to reducing the incidence of such offences. We also discuss ways to increase awareness of sentencing practices and the principles that guide courts in sentencing in such cases.

12.2 Raising public awareness — public awareness campaigns

12.2.1 What makes an effective public awareness campaign?

One means of enhancing community knowledge of penalties for assaults on public officers is through the use of public awareness campaigns.

The use of public awareness campaigns was supported by a number of stakeholders who made submissions. For example, the Transport Workers' Union suggested 'the introduction of tougher penalties combined with a robust public service campaign to enhance community awareness would assist in reduction of further instances of violent assaults within the transport industry'.[1]

The Queensland Teachers' Union believes that prevention is more effective than penalties. To this end it recommended that a 'targeted awareness campaign that puts focus on the role of different public sector workers (explicitly including teachers and principals) and their right to be free from violent attack and aggression in their workplaces' be funded;[2] further noting that 'it is imperative that a cohesive community campaign delivers a clear expectation of an active culture of zero tolerance in relation to violence directed at school staff', as well as the broader community.[3]

An entire literature exists in the public relations and marketing field that focuses on how to achieve behavioural change on a large scale. Public communication campaigns:

> use the media, messaging, and an organised set of communication activities to generate specific outcomes in a large number of individuals and in a specified period of time. They are an attempt to shape behaviour toward desirable social outcomes. To maximise their chances of success, campaigns usually coordinate media efforts with a mix of other interpersonal and community-based communication channels.[4]

There are two categories of public communication campaign — the first aims to achieve behavioural change in individuals to address broader social problems, and the second, to raise public awareness about a particular issue to bring about policy change.[5]

Some of the most effective public awareness campaigns have accomplished far-reaching and long-lasting results through the combination of powerful creative concepts, legislative responses, enforcement, education programs, changes to physical environments, and community partnerships. Some campaigns have simply caught the attention of the public through relatable and emotive means, or even simply by using 'scare tactics'.

Public awareness campaigns have achieved many things:

1. **Road safety** — 'major reductions in road trauma and related public health improvements through sustained policies…[such as] a range of behavioural programs targeting drink driving, seatbelt usage and speeding'.[6]

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1 Submission 12 (Transport Workers' Union) 12.

2 Submission 20 (Queensland Teachers' Union) 7.

3 Ibid.

4 Julia Coffman, *Public Community Campaign Evaluation: An Environmental Scan of Challenges, Criticism, Practice and Opportunities* (Harvard Family Research Project, 2002) 2.

5 Ibid.

6 Public Health Association Australia, *Top 10 Public Health Successes Over the Last 20 Years*, Public Health Association Australia Monograph Series No. 2 (Public Health Association of Australia, 2018), 12.

2. **Public health** — Various public health campaigns have achieved behavioural change in relation to smoking,[7] immunisation and disease elimination, sun exposure, sustained low prevalence of HIV and AIDS and early bowel and breast cancer screening,[8] and increased use of pool fencing to prevent child drownings.
3. **Environmental issues** — Other campaigns have targeted issues such as air quality, littering and recycling.[9]

In many respects, the exercise of raising public awareness and achieving behavioural change through mass media is not dissimilar to advertising campaigns that aim to sell products to individuals, only the target behaviour is much more complex. Brad Hesse from the Communication and Informatics Research Branch at the National Cancer Institute (in the United States) says:

> Communication campaigns are more successful if they are tailored to the context, values, language and resources available to local audiences. Priorities for which audiences to reach are usually set by an understanding of who is most vulnerable.[10]

Various approaches can be considered as part of a campaign, including the use of paid advertising using a mass media commercial, identifying a well-known spokesperson, using social media, interactive web advertising, posters and brochures,[11] community events and outdoor advertising such as transit and billboard displays.

The best outcomes are achieved when campaign objectives or intended results are clearly defined, target audiences are identified (including characteristics such as age, income, gender, ethnicity, education and language) and careful research has been done to develop the message — be it written, spoken or visual — for the intended audience, and available communication channels and message deliverers determined, usually to reach the highest number within the target population.

While mass media campaigns are cost-effective in reaching large populations, they can result in passive indifference in audiences if the receiver of the message does not identify its personal relevance. An advertisement can be easily dismissed if it does not relate directly to one's own situation or focuses on factors that the individual does not consider important.[12]

This has been borne out in research undertaken in WA, which focused on campaigns to prevent child drownings using focus groups to explore message comprehension, acceptability and attractiveness in public awareness advertising. The study was able to identify that while using celebrities to deliver key messages was seen as useful in attracting attention to the issue, the messages were thought to be most effective when delivered by parents and, to a lesser extent, when including a child in the video.[13]

12.2.2 What are the challenges of mass media campaigns in the context of assaults on public officers?

From a public awareness perspective, mass media campaigns may support improved awareness of the issue of occupational violence and the penalties that may be applied.

However, the Office of the Public Guardian (OPG) noted that some target groups are ill-suited for broader mass media messaging. For example, people with impaired decision-making capacity are not likely to, or are unable to, change their behaviour, and the OPG urged the Council to:

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7 Trish Cotter, Sarah Durkin and Megan Bayly, *Mass Media Public Education Campaigns: An Overview* (The Cancer Council Website, November 2019) <https://www.tobaccoinaustralia.org.au/chapter-14-social-marketing/14-1- social-marketing-and-public-education-campaig>.

8 Public Health Association Australia (n 6).

9 Tom Evison and Adam D Read, 'Local Authority Recycling and Waste – Awareness Publicity/Promotion' 32(3–4) *Resources, Conservation and Recycling; Zero Waste Scotland, 7 of the Best Litter Prevention Campaigns from Around the World*, 2020 (Zero Waste Scotland Limited Website).

10 Lacey Mayer, *Are Public Awareness Campaigns Effective?* (Cure: Cancer Updates, Research and Education Website, 10 March 2008) <https://www.curetoday.com/publications/cure/2008/spring2008/are-public- awareness-campaigns-effective>.

11 Ibid.

12 Michael S LaTour, and Herbert J Rotfeld, 'There are threats and (maybe) fear-caused arousal: Theory and confusions of appeals to fear and fear arousal itself' (1997) 26(3) *Journal of Advertising Research*, 45.

13 Mel Denehy et al, 'This much water: A qualitative study using behavioural theory to develop a community service video to prevent child drowning in Western Australia' (2017) 7(7), *BMJ Open*.

> examine what value community education on the penalties for this type of offending will have as a preventative measure for adults with impaired decision-making capacity, and consider appropriate alternatives for this cohort.[14]

A public awareness campaign for any important social or health issue must consider the needs of all members of the community. This has been most recently and importantly highlighted in the context of the needs of non-English-speaking communities in Victoria who may have missed public health information regarding the COVID-19 pandemic, thereby potentially undermining the important health gains made in that state in the early stages of this public health emergency.[15]

The fact that many offences of assault on public officers are committed by those who are drug and/or alcohol affected, have significant mental health disorder, and who may be in a heightened emotional state means that it may be difficult for these campaigns to be effective in bringing about behavioural change. They do, however, send an important message to the community that assaults on people who are simply doing their job should not be tolerated — particularly those who may be at heightened risk of assault due to the nature of the role.

The extension of public awareness campaigns to internal messages — those aimed at public officers working in organisations including law enforcement, healthcare settings and schools — may also be important to modify attitudes or behaviour relating to either a tolerance for workplace violence or the reluctance to report incidents. Comments in a submission from Queensland Health are particularly relevant here:

> Community awareness regarding the enforcement of penalties for assault on public officers is essential. Clear and concise messaging around what to expect and 'actual' sentencing outcomes is critical in restoring the faith in the community, particularly amongst healthcare workers who have historically deemed sentencing outcomes as unjust.[16]

The Council understands that discussions have been initiated about the need for a whole-of-government approach to workplace violence, which provides a potential opportunity to address such issues.

While the United Workers Union (UWU) in its submission supported investment in communicating the impact of assaults on workers as a means of raising public awareness, it cautioned there is a need to continue to trust in the professionalism of workers to manage difficult interactions with clients. The UWU raised concerns that adopting a 'zero tolerance' stance can sometimes lead to escalation, and that public messaging requires a more considered, nuanced and research-based approach:

> As a strategy and intervention, communicating zero tolerance does convey the message that violence is intolerable but in some cases this places a heavy burden on professionals interacting with the people they aim to assist; removing a person's ability to express irritation can cause a situation to escalate. Instead, UWU members have identified the need for more sophisticated public communication campaigns that will foster greater understanding between professionals like paramedics, health workers and teacher aides, the people they work for and the wider public. Developing research-based public health and workplace safety messaging and campaigns that do not diminish the professional knowledge of paramedics, health workers and teacher aides, but are instead built on their expertise and professional needs will ensure communication, as an intervention, serves frontline staff and their clients and students more effectively.[17]

The importance of a consistent understanding, description or definition of what workplace assaults include that carries across different occupational groups — using common language — may assist in strengthening integrated messages that encourage public officers and other workers to report assaults across all sectors and that reassure officers of local management and broader departmental support. This is articulated in a report by the Queensland Health Taskforce on Occupational Violence Prevention: 'An endorsed and commonly shared definition enables the quantification of the issue to be better understood with less likelihood of differing interpretations.'[18]

Knowing what language or messaging will be effective in a public awareness campaign — be it primary or sub-themed messaging — or how it will be received by the target audience must begin with evaluating the campaign before it begins, as well as during and after it has been run.

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14 Submission 24 (Office of the Public Guardian) 4.

15 Alexandra Grey, 'Australia's multilingual communities are missing out on vital coronavirus information', *The Conversation* (online, 29 June 2020) https://www.abc.net.au/news/2020-06-29/coronavirus-multilingual-australia-missing-out-covid-19-info/12403510.

16 Submission 9a (Queensland Occupational Violence Strategy Unit), Appendix 1 (confidential, reproduced with permission).

17 Submission 11 (United Workers Union) 6.

18 Queensland Health, *Occupational Violence Prevention in Queensland Health's Hospital and Health Services: Taskforce Report*, (Queensland Health 2016) 31.

Evaluation of a public awareness campaign is a significant challenge. The literature documents the difficulty of measuring the impact of a public communication campaign due to their complexity, the unpredictable nature of their interventions, the context and other factors that can confound outcomes, and the difficulty in finding control or comparison groups.[19]

To this end, a public awareness campaign could help in delivering an effective mass media campaign that enhances community knowledge and understanding of the penalties for assaults on workers, and on particular classes of worker. Such a campaign should incorporate the use of formative consumer research and evaluation, and the interrogation of available data to develop and test the campaign themes, messages and communication elements, and assess the need for, and feasibility of a campaign,[20] before creative concepts are pre-tested and settled.

Specific focus might be given to understanding the target audience segments, attitudes towards assaults of workers, causal factors contributing to the incidence of assault in different environments and with different occupational groups, actual behaviour, and the concurrent availability of services and products, availability of community-based programs, and policies that support behavioural change.[21]

Evaluating an awareness campaign that utilises mass media as a dominant tactic during its active phase may enhance community knowledge and the understanding of the penalties for workplace assault through providing evidence as to whether the campaign is achieving its objectives or if the mass media element needs to be built on or modified.

This might include reach and retention surveys — advertisement recall, understanding of the message, personal relevance, cultural appropriateness, whether people are talking about assaults on public officers and the penalties for the offending behaviour, whether the advertisements have changed individual attitudes or behaviour intent — and a more traditional assessment of exposure though Target Audience Rating Point (the percentage of a specific target audience viewing a particular program at the time the advertisement is shown) and/or Gross Rating Points (the sum of individual Target Audience Rating Points for a TV campaign). Gross Rating Points indicate the total weight of a schedule or gross audience (including duplication), impressions, and hits.

Finally, a strong investment in evaluating the impact of a campaign — whether it has reached its objectives — is important in assessing the level of community awareness that has been achieved, to understand if increased awareness has resulted in behavioural change, and the nature of the behavioural change observed. Such evaluative research focused on campaign outcomes can also help inform future campaign designs.

12.2.3 Public awareness campaigns on workplace violence in Queensland

Over recent years, a number of public awareness campaigns have aimed to raise awareness of the issue of assaults of public officers, including campaigns that have specifically focused on making it clear that strong penalties apply to this behaviour.

As part of a broader campaign to improve pay and conditions for police, the Queensland Police Union issued a series of advertising campaigns in 2007 and 2010, one of which depicted the need for higher penalties for people who assault police.[22]

When the maximum penalty for aggravated serious assault of public officers was raised from 7 to 14 years' imprisonment as part of the Safe Night Out Strategy,[23] this was supported by an awareness campaign highlighting the new maximum penalty. The campaign featured images of some of the typical injuries received by nurses, doctors and paramedics as a result of assault, see below.

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19 Julia Coffman, *Public Community Campaign Evaluation: An Environmental Scan of Challenges, Criticism, Practice and Opportunities* (Harvard Family Research Project, 2002) 2.

20 Anne Grunseit et al, *Mass media campaigns addressing physical activity, nutrition and obesity in Australia: An updated narrative review 1996–2015* (The Australian Prevention Partnership Centre, 2016).

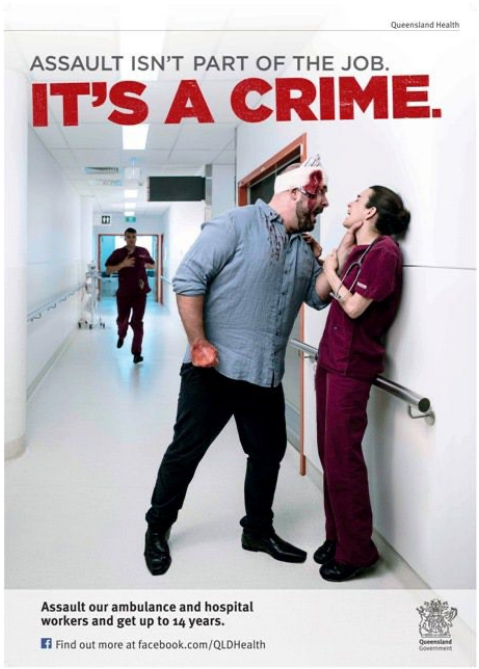
21 Melanie A Wakefield, Barbara Loken and Robert C Hornik, 'Use of mass media campaigns to change health behaviour', 376(9748), 2010 *Lancet*, 1261.

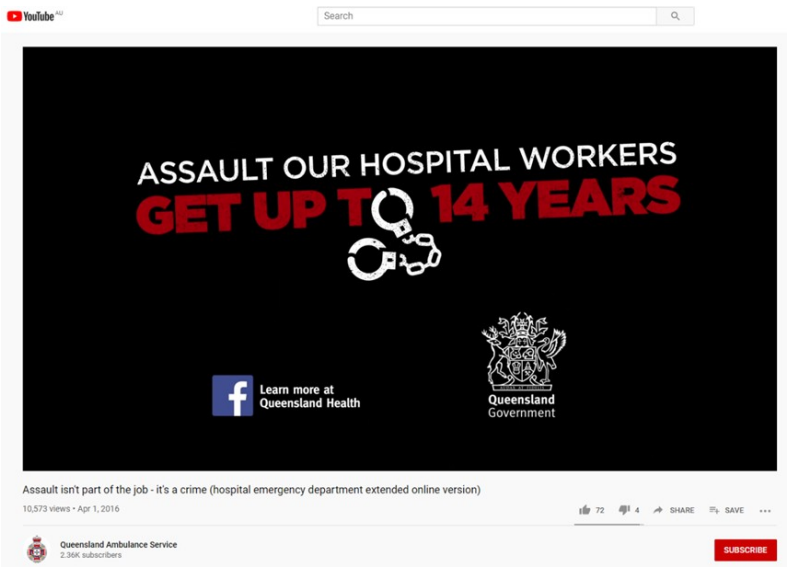
22 ABC News, 'Police Union Steps Up TV Ad Campaign' (online, 29 July 2007) <https://www.abc.net.au/news/2007- 07-29/police-union-steps-up-tv-ad-campaign/2516400>; 'Queensland Police Union Rejects 'Insulting' 2.5% Pay Rise and Start Advertising Campaign for Better Pay', *The Sunday Mail* (online, 11 July 2010) <https://www.couriermail.com.au/news/queensland-police-union-rejects-insulting-25-pay-rise/news-story/ea734ce478f552b5aeef897698398fcd>.

23 Queensland Government, *Safe Night Out Strategy* (June 2014).

A Safe Night Out at Work

Since then, an advertising campaign was designed by Queensland Health in 2016, which aimed to prevent assaults on paramedics and frontline emergency workers with a mix of advertising on social and digital media, television, on billboards and on bus stops.[24] This campaign included reference to the 14-year maximum penalty for aggravated forms of serious assault. The image used as part of the social media campaign is below, accompanied by an associated YouTube clip.





24 Queensland Health, 'To Violence, We Say No' (Web Page) <https://www.health.qld.gov.au/news- events/news/160401-occ-vi accessed 18 March 2020>.

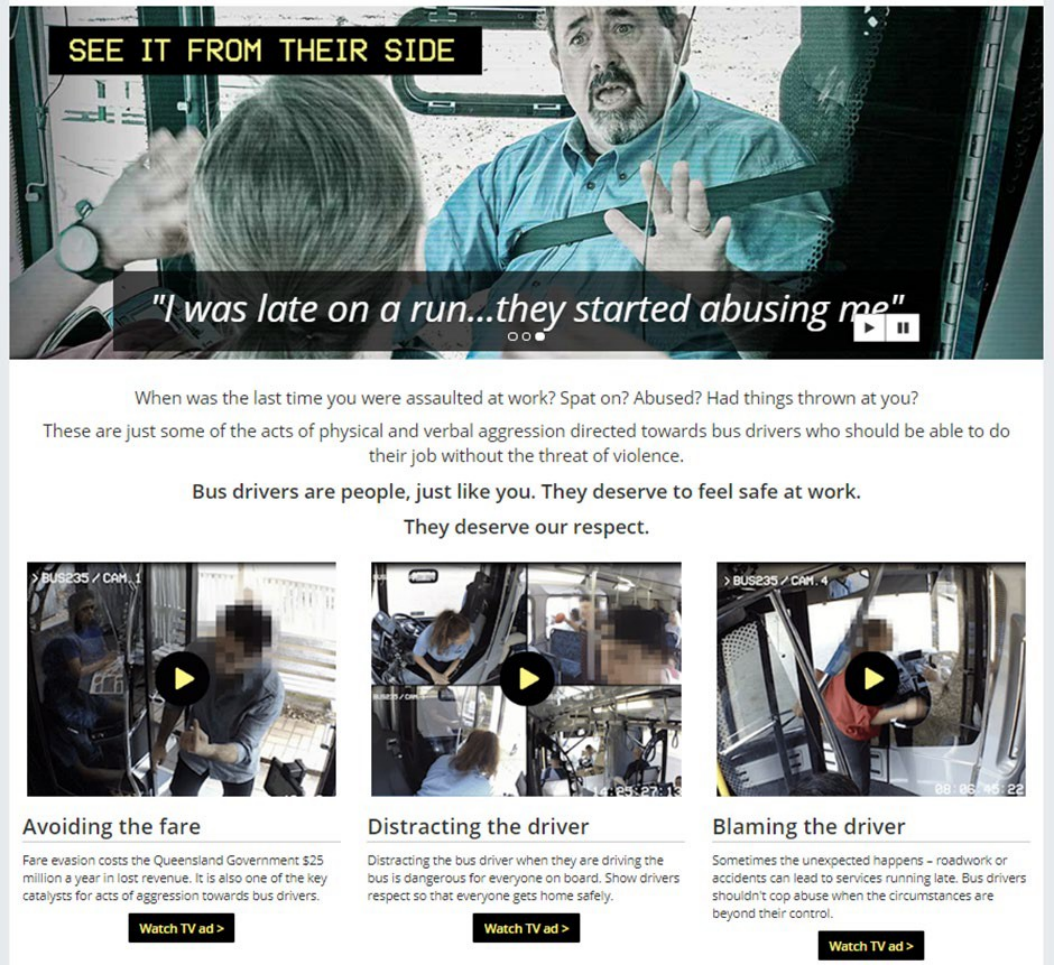
Following a state-wide Paramedic Safety Taskforce Report delivered in 2016, a campaign titled 'Respect our Staff' was launched by the Queensland Government in 2019 and included interviews with paramedics speaking about their experiences. The campaign used the slogan 'Violence in the workplace affects much more than me', highlighting that paramedics are also parents, partners and friends with their own lives, interests and contributions to the community.[25]

Queensland Health launched a campaign to raise awareness about the problem of violence against nurses, with a short video depicting the impact of violence on staff and patients (see the online ABC article below, with links to the video).

Also in 2019, the Queensland Government launched a public awareness campaign in conjunction with a raft of new measures to improve bus safety, with the message of zero tolerance for violence against bus drivers. The campaign involved a series of television advertisements depicting real-life violent scenarios faced by drivers. Other companion measures included a 12-month trial of an increased presence of officers on particular services, and more driver safety barriers and anti- shatter windows.[26]

25 Jude Skatssoon, 'Queensland Targets Violence Against Paramedics', Government News (online, 25 April 2019) <https://www.governmentnews.com.au/qld-targets-violence-against-ambulance-workers/>.

26 Mark Bailey, 'Palaszczuk Government Strengthens Bus Safety Commitment' (Media Statement, 30 September 2019).



The Department of Transport and Main Roads has indicated that preliminary evaluation of the 'See it from their side' campaign has shown it successfully delivered on its aim to set standards for acceptable behaviour on public transport while instilling and growing a culture of safe and accessible public transport services.[27] It is unknown whether the other campaigns have been evaluated, so it is unclear whether these efforts have resulted in a reduction of assaults against specific types of public officer.

What stands out about these mass-reach campaigns is that they have been sector-specific. While the theme of workplace violence has been clear, consistent messaging has been absent, reflecting a lack of coordinated effort across different occupational groups to purposely address assaults on public officers more broadly.

The Council supports continued efforts across government to raise awareness of assaults and the penalties that apply to relevant offences that can be charged. The Council's recommendations are presented below.

12.3 Role of the media

A number of studies have found the primary way the general public is informed about sentencing is via the media.[28]

Sentencing commentators have observed that in the sentencing of offenders: 'Courts often declare that they intend to "send a message" to the community through the sentencing process and that the behaviour in question "will not be tolerated"'.[29] However, the achievement of this objective 'assumes that the sentences, or reports of them in the media, will be known and understood'.[30]

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27 Submission 3 (Department of Transport and Main Roads). Confidential submission quoted with permission.

28 Karen Gelb, *More Myths and Misconceptions, Research Paper* (Sentencing Advisory Council (Victoria), 2008) 6.

29 Arie Freiberg, *Sentencing: State and Federal Law in Victoria* (Lawbook Company, 3rd ed, 2014) 254.

30 Ibid.

As discussed in section 6.5.1 of Chapter 6, there is a long line of Queensland Court of Appeal authority that recognises deterrence and denunciation as primary sentencing considerations where assaults on police and other public officers are concerned. These sentencing purposes bring into sharp focus the importance of the community being aware of what sentences are imposed in such cases.

Some stakeholders noted the media's important influencing role when it comes to community understanding of sentencing. The Queensland Law Society commented:

> The significant factor detracting from the community's understanding of penalties and sentencing for assaults on public officers (and all sentencing proceedings) is the media and sensationalised journalism. The media has a significant impact on community perceptions of the effectiveness of the criminal justice system and, in particular, sentencing. The media often reports on stories that elicit negative perceptions of the criminal justice system for the sake of entertainment. Often the community are not given all of the information that was before the judge or magistrate sentencing an offender. This in turn reduces the community's faith in the system. The reporting needs to provide an accurate account of the entire matter.[31]

The Department of Agriculture and Fisheries also noted the disconnect that can occur when the maximum penalty available for an incident is reported, instead of the more likely sentencing outcome:

> The Department submits that the community's understanding is significantly affected by the manner of reporting of offending and the penalties imposed on offenders. In particular, in the immediate aftermath of an incident often the maximum penalty is reported. The community therefore forms a false picture of the penalties that are actually being imposed. The Department submits that clear communication of the particular penalties imposed and the basis on which they are imposed would enhance community understanding and the deterrent effect of significant penalties.[32]

The Bar Association of Queensland (BAQ) considered that 'there is broad misunderstanding of sentencing practices, principles and realities in the broader community'.[33] It identified 'ill-informed and often inflammatory reporting of sentencing proceedings' as 'the primary contributor to much of the community's perception and understanding of sentencing', with a focus on proceedings of 'a more emotive nature'.[34] Further specifics of the issue were as follows:

> Reporting usually contains very few details of the offences, even less detail about the offender and little analysis of why a particular sentence was imposed (including for example, substantial periods of pre-sentence custody), choosing to focus, instead, on matters which would tend to inflame public anger and resentment. Such matters often include personal attacks on judicial officers perceived by those in the media to have a pattern or history of "weak" sentencing. These judicial officers are also prevented by virtue of the nature of their jobs from participating in the public 'debate' that ensues.
>
> This is then, commonly, bolstered by politicians making public remarks about these particular sentences, often quite apparently without the benefit of any knowledge of the details of a particular case.[35]

The BAQ suggested that, short of regularly broadcasting proceedings 'for matters other than those of the greatest interest to the general public … community understanding can only be enhanced through increased education and engagement opportunities such as those provided by Law Week community presentations'.[36]

It noted that 'the public's understanding of sentencing practices and realities' is 'vital' to general deterrence as a purpose of sentencing in section 9 of the *Penalties and Sentences Act 1992* (Qld).[37] General deterrence, as a concept, requires public knowledge of the sentences imposed on offenders; if the public are not aware that offenders are actually imprisoned or imprisoned for longer periods, then there can be no real deterrent effect from those sentences or increases in them.[38]

In recognition of the important role that journalists play in helping the Queensland community understand sentencing, the Council developed a *Court Reporting Guide for Journalists* in 2019 in consultation with print and radio journalists, media advisors from the Supreme and District Courts and the Queensland Law Society.[39] The

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31 Submission 30 (Queensland Law Society) 18.

32 Submission 7 (Department of Agriculture and Fisheries) 9.

33 Submission 27 (Bar Association of Queensland) 11.

34 Ibid 12.

35 Ibid.

36 Ibid.

37 Ibid.

38 Ibid, citing Davies GL and Raymond KM, 'Do Current Sentencing Practices Work?' (2000) 24 *Criminal Law Journal* 236.

39 Queensland Sentencing Advisory Council, *Court Reporting Guide for Journalists* (Queensland Sentencing Advisory Council, 2019).

guide, which is available on the Council's website, provides a simple, plain English overview of the courts and court processes, as well as commonly used terms, to assist journalists to cover court proceedings and report sentencing outcomes accurately.

However, with the limited time and coverage the media can devote to an issue, even with a commitment to report on such cases, journalists are unlikely to be able to provide a comprehensive understanding of what the sentencing judge took into account to determine an appropriate sentence.

A complex case may only have some elements reported on, or, in some instances, legislative restrictions mean key sentencing information that influenced the sentence cannot be reported.

The Victorian Sentencing Advisory Council found media reporting is selective, often choosing stories with the aim of entertaining rather than informing, focusing on criminal cases that are unusual, dramatic and violent.[40] This means the public may be given only a partial picture, and at times a distorted view, of what really took place, which may contribute to community dissatisfaction with sentencing outcomes. The issue of assault of public officers has been regularly reported on over the last decade, with a number of calls for increases in penalties having been made over that time by union organisations and employee groups, as well as reports of rising numbers.

12.4 Role of the Council

The Council's statutory functions under section 199 of the *Penalties and Sentences Act 1992* (PSA) include:

1. to give information to the community to enhance knowledge and understanding of matters relating to sentencing;
2. to publish information about sentencing;
3. to research matters about sentencing and publish the outcomes of the research; and
4. to obtain the community's views on sentencing.

Information published as part of this review, together with consultation activities, is one way the Council is contributing to community understanding about the context in which assaults on public officers occur, the current offence and penalty framework, as well as sentencing practices and what factors impact on sentencing.

The Council's role in informing community views through its research and communication functions was recognised by the Queensland Productivity Commission in its 2019 report into imprisonment and recidivism, which also recommended that this role should be expanded.[41]

The Queensland Human Rights Commission,[42] Queensland Law Society[43] (QLS) and the Department of Child Safety, Youth and Women[44] were among those stakeholders who indicated their support for this work continuing. The QLS indicated its support, in particular, for community education, submitting:

> This is being achieved through events and programs such as Judge for Yourself conducted by the Sentencing Advisory Council. Further, surveys of the true opinion of the community to a particular sentence after having been provided with all of the information are likely to confirm satisfaction in the sentence provided. This in turn would increase the public's perception of the adequacy of sentencing.[45]

12.5 Overcoming barriers to community understanding

Chapter 1 identifies that an existing barrier to the Council's ability to accurately report on sentencing outcomes is: the lack of consistently and reliably recorded information about victims in the Courts data; and, where the Queensland Police Service data may record a victim's occupation, the inability to determine the context in which an alleged assault occurred. For example, the victim's occupation might be recorded as 'paramedic', but without specifying whether the victim was assaulted in the course of their work. The context in which an assault is alleged to have occurred might only be obtained by reviewing the relevant court brief (known as a 'QP9') or case file.

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40 Gelb (n 28) 6.

41 Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Final Report, 2019) I, with reference to Recommendation 13.

42 Submission 18 (Queensland Human Rights Commission) 15 [56].

43 Submission 30 (Queensland Law Society) 18.

44 Submission 5 (Department of Child Safety, Youth and Women) 5.

45 Submission 30 (Queensland Law Society) 18.

These issues will continue to make it difficult following the adoption of any reforms recommended by the Council to identify assaults that have occurred outside of the particular contexts captured within the reformed section 340, and those that might be captured under the proposed new aggravating factors to apply under section 9 of the PSA.

The NSW Legislative Assembly Committee on Law and Safety in its 2017 report on violence against emergency services personnel made a similar observation as this applied to its current legislative scheme, finding:

> access to information about sentencing patterns for violence against emergency services personnel is limited. While sentencing data is available for the specific offences against particular victims … there is a lack of sentencing data where a person who has been violent towards emergency services personnel has been charged with a general offence under *the Crimes Act 1900*. This is because any sentencing data that is published about such offences is indistinguishable from the data that relates to offences against general members of the public.

For example, if a person assaults a police officer and is charged and sentenced under one of the specific 'assault police' provisions of the *Crimes Act 1900*, it will be clear from the statistics that are published that the victim was a police officer. In contrast, if a person assaults a paramedic and is charged and sentenced under one of the general assault provisions of the *Crimes Act 1900,* there will be no way of knowing from the published statistics whether it was a paramedic assault or some other type of assault.

> In short, the fact that the victim is emergency services personnel is not recorded for statistical purposes. While the victim's status as an emergency services worker is taken into account as an aggravating factor in sentencing … aggravating factors are not recorded.[46]

The Parliamentary Committee noted that the fact that most cases of violence against emergency services personnel were heard in the Local Court (the equivalent to the Queensland Magistrates Courts) also limited access to this information given that 'sentencing remarks in the Local Court and District Court are not routinely transcribed or published'.[47] This reflects the position in Queensland. The Committee recommended:

> That the NSW Government consider changes to require the NSW Police Force and the Courts to record where the victim of an offence is an emergency services worker, so that all sentencing statistics that relate to violence against emergency services personnel are clearly identifiable.[48]

It further recommended that, 'the NSW Government consider additional funding so that a greater number of judgments of the Local and District Courts of NSW can be transcribed and published on the NSW Caselaw website'.[49] The Committee viewed the broader availability of this information as important to promote community confidence that those who offend against emergency services personnel are being dealt with appropriately.[50]

Citing 2007 reforms to enable the identification of offences committed in a domestic violence context, similar to reforms introduced in Queensland, it suggested '[a] similar approach may be able to be taken to identify offences committed against emergency services personnel', which could be built into the existing Judicial Information Research System database.[51]

In its response to the Committee's report, the NSW Government noted it would refer the issue of the recording of victim status to the NSW Police Force to determine the most appropriate method of recording this additional information in its police database.[52]

12.6 Conclusion and Council's view

The above discussion has identified a number of potential areas of focus to improve community knowledge and understanding of the penalties that apply to offences of assault committed against public officers and sentencing practices.

Improving the data collected about victims would enhance the Council's ability to report on relevant sentencing trends, given some assaults are likely to be charged under one of the general offence provisions rather than, for example, the offence of serious assault or other offences readily identified as involving a public officer victim. The issue of improved data collection was raised in several submissions as a means of increasing public visibility of the

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46 NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel* (Report 1/56, 2017) 65 [4.27]–[4.20].

47 Ibid 65–66 [4.30].

48 Ibid 68, Recommendation 42.

49 Ibid, Recommendation 43.

50 Ibid [4.38].

51 Ibid [4.39].

52 NSW, *NSW Government Response to Recommendations from the Legislative Assembly's Inquiry into Violence Against Emergency Services Personnel* (2018) 12.

issue. The Council acknowledges that system limitations and costs associated with any system enhancements need to be carefully explored to determine the best way of overcoming these data challenges.

The Council suggests any future investigation of how to record information on victim status is best led by the Queensland Government Statistician's Office, in consultation with relevant agencies which hold this data, to ensure that the reforms recommended in this report can be appropriately monitored and tracked without the need to resort to a resource-intensive manual review of court briefs and files.

The Council notes that this type of data capture, which allows these organisations to track the court outcomes of assaults on their staff, is already occurring in some agencies, such as Queensland Corrective Services and Queensland Rail, which have existing close working relationships with specialist units established within the QPS.

As acknowledged in our Issues Paper, there are also a range of strategies that could be implemented to better inform the community about sentencing for these offences at relatively little cost. This might include the continued provision of information of the kind the Council routinely produces, such as sentencing fact sheets, the Council's *Queensland Sentencing Guide* and statistical publications, as well as engagement with the media, tertiary and secondary education institutions, and organisations representing professions.

The Council recognises, in particular, the importance of continuing to focus on engagement with the media around sentencing, given it continues to be a key source of information for the public on sentencing. The Victorian Chief Judge in recent years has spoken about the importance of using existing media channels to communicate the work of the courts, given much of the public criticism of the courts concerns criminal law and sentencing.[53]

Members of the Supreme Court of Queensland have made comment on the importance of supporting informed media commentary by making accurate transcripts available to the public 'as soon as is reasonably possible';[54] also allowing hyperlinks to be included in media reports to their decisions.[55]

The Council agrees with comments made that making sentencing decisions more readily available is an important and practical strategy that can be adopted by courts to promote more informed public and media commentary consistent with the principle of open justice.[56]

The Supreme Court Library of Queensland has undertaken significant work to make more judgments and sentencing remarks publicly available on its website.

The Council continues to support this work being led by the Supreme Court Library and Court Services Queensland in partnership with the judiciary to make more sentencing remarks publicly available, including those delivered in the District Court. While cases sentenced in the District Court do not represent the majority of assault cases involving public officers, they are important to illustrate at an individual case level how these offences are dealt with by the courts and guiding principles with a view to improving community knowledge and understanding.

This year, the Council also launched a new '*Case in Focus*' series, which features appellate court decisions of particular interest or relevance. This series aims to provide accessible summaries of appeal decisions to promote community understanding of how sentencing principles are applied in a broad range of cases, including those involving charges of serious assault.

Both the Council and criminal law practitioners can also continue to support the process of enhancing community understanding in Queensland by providing the media and the public with relevant information about the principles and factors that guide sentencing, including in these cases, and explaining the range of matters to which courts must have regard in setting an appropriate sentence. In this way, public understanding of the complex range of matters that inform sentencing and the application of the law can be enhanced.

Finally, as discussed earlier in this chapter, submissions and consultation highlighted different areas of possible education, public awareness, and public officer support and empowerment that could form the basis of coordinated public-sector-wide mass media messaging with sub-themed messaging.

The Council acknowledges that significant work has already been done by a number of agencies to raise public awareness of the problem of assault on frontline workers, and to highlight relevant maximum penalties that apply, and is strongly supportive of this work continuing.

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53 Karin Derkley, 'Going public in the court's defence', *Law Institute Journal* (online, 8 March 2019) <https://www.liv.asn.au/Staying-Informed/LIJ/LIJ/March-2019-(1)/Going-public-in-Court%E2%80%99s-defence>.

54 The Hon Justice Peter Applegarth, 'Coverage and Criticism of Courts' (Address to the Judicial Conference of Australia Colloquium, Darwin, 8 June 2019) 27–8.

55 Ibid 7.

56 Ibid.

Key themes worthy of exploration include:

- Emphasising that assault is a crime, and there are penalties for this behaviour.
- That violence hurts everyone — the victim, the perpetrator, those around witnessing, family, friends.
- That 'this is assault', featuring everything from pushing, spitting, throwing bodily fluids, punching, threatening.
- The theme of 'respect', for the person doing their job, or the help they provide the community.
- The theme of 'choice' — the worker has made a choice to help the community, you can make a choice to treat them with respect when they are doing their job.

Consultation with stakeholders who regularly work with people with impaired decision-making capacity, low levels of literacy, and from a range of cultural background in the development of these resources would be beneficial to ensure messages are appropriately targeted.

An opportunity also exists for the specific identification of public officer audiences and targeted messages that help modify attitudes or behaviours relating to either the tolerance of 'some' workplace violence or the reluctance to report the offending behaviour — messages that encourage public officers to report assault and show that support is available for those who experience it.

Recommendation 13–1: Improving reporting capabilities on sentencing outcomes

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

Recommendation 13–2: Enhancing access to sentencing remarks

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

Recommendation 13–3: Community awareness campaigns

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

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

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

12.6.1 Future directions: exploring the drivers of Aboriginal and Torres Strait Islander overrepresentation

As discussed in Chapter 3 of this report, the Council received an expert report in July 2020, authored by Associate Professor Chelsea Bond, Dr David Singh and Helena Kajlich from the School of Social Science at The University of Queensland, presenting an interpretation of the drivers of overrepresentation of Aboriginal and Torres Strait Islander peoples sentenced for offences of assault involving public officer victims, applying Critical Race Theory.

Bond, Singh and Kajlich suggest 'A number of quantitative and qualitative initiatives may be undertaken to better understand the nature of the local encounter between Aboriginal and Torres Strait Islander people and public officers', including:

- Further interrogating the statistical account illustrating the over-representation of Aboriginal and Torres Strait Islander people on charges of assault against public officers and examining the intersection of other factors such as associated charges, location of offence, types of public officers in addition to the 'perpetrator factors' as identified by [Christine] Bond et al (2020);
- Commissioning further research that examine narrative accounts from Aboriginal and Torres Strait Islander people who have had encounters with public officers … [to] furnish a greater understanding of the nature and outcome of contact between community [members] and public officer[s] that juridical accounts leave little room for; Examining more specifically Aboriginal and Torres Strait Islander women's experiences of

> encountering public officers. Presently little is known about the intersectional nature of this statistical over-representation, so a more gender focused analysis is clearly called for; Investigating the role of training in de-escalating or exacerbating fractious encounters with Aboriginal and Torres Strait Islander people; Reviewing the effectiveness of various campaigns and measures designed to prevent the assault of public officers; Examining remedial responses sought by Aboriginal and Torres Strait Islander peoples who have been victims of serious assaults by public officers, such as formal complaint processes, legal and therapeutic measures.

While the Council's focus has been on consideration of the current offence, penalty and sentencing framework that guides sentencing for assaults on public officers, it supports future work being undertaken that might provide a richer understanding of the drivers of overrepresentation and practical strategies to address contributing factors.

Appendix 1: Terms of Reference

QUEENSLAND SENTENCING ADVISORY COUNCIL

PENALTIES 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(I) 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(1) 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(b) 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: Stakeholder consultation and submissions

Agencies consulted — Stage 4 (May–July 2020)

Date	Agency
28 May 2020	Aboriginal and Torres Strait Islander Advisory Panel, Queensland Sentencing Advisory Council
29 May 2020	Department of Child Safety, Youth and Women
1 June 2020	Queensland Occupational Violence Strategy Unit, Queensland Health
2 June2020	Queensland Nurses and Midwives' Union
2 June 2020	Australian Medical Association of Queensland
3 June 2020	Queensland Teachers' Union of Employees
10 June 2020	Transport Workers' Union (Queensland)
11 June 2020	Royal Australian College of General Practitioners
12 June 2020	Together Union
16 June 2020	Office of the Director of Public Prosecutions
16 June 2020	Legal Aid Queensland
17 June 2020	Queensland Council of Unions
17 June 2020	Bar Association of Queensland
19 June 2020	Name withheld
22 June 2020	Stakeholder roundtable: Representatives from Aboriginal and Torres Strait Islander Legal Service, Caxton Legal Centre, Department of Aboriginal and Torres Strait Islander Partnerships, Department of Communities, Disability Services and Seniors, Intergovernmental Relations Dispute Resolution Department of Justice and Attorney-General, Office of the Public Guardian, Office of the Public Advocate, Prisoners' Legal Service, Queensland Advocacy Incorporated, Queensland Council of Social Service, Queensland Human Rights Commission, Queensland Mental Health Commission, Sisters Inside, Victim Assist Queensland Department of Justice and Attorney-General
23 June 2020	Australasian Railway Association
25 June 2020	Aboriginal and Torres Strait Islander Advisory Panel, Queensland Sentencing Advisory Council
8 July 2020	The Queensland Police Service
13 July 2020	Queensland Rail

Preliminary submissions (to February 2020)

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.	GoldlinQ 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.	Confidential
11.	Confidential
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.	Confidential
18.	Queensland Nurses and Midwives' Union
19.	Office of the Information Commissioner Queensland
20.	Confidential
21.	Sisters Inside
22.	Legal Aid Queensland
23.	Queensland Police Union of Employees
24.	Transport Workers' Union (Queensland Branch)
25.	Confidential
26.	Prisoners' Legal Service
27.	Department of Justice and Attorney-General
28.	Confidential
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

Issues Paper submissions (May 2020)

No.	Person/Organisation
1.	Public Advocate
2.	Queensland Catholic Education Commission
3.	Department of Transport and Main Roads — confidential submission (some information referenced in this report with permission)
4.	Department of Education
5.	Department of Child Safety, Youth and Women
6.	Confidential
7.	Department of Agriculture and Fisheries
8.	Australian Lawyers Alliance
9.	Queensland Occupational Violence Strategy Unit, Queensland Health
9a.	Appendix 1 — confidential (some information referenced in this report with permission)
10.	Confidential
11.	United Workers Union
12.	Transport Workers' Union
13.	Independent Education Union (Queensland and Northern Territory Branch)
14.	Queensland Nurses and Midwives' Union
15.	Australasian Railway Association
16.	Queensland Council of Unions
17.	Sisters Inside
18.	Queensland Human Rights Commission
19.	Australian College for Emergency Medicine
20.	Queensland Teachers' Union
21.	Queensland Corrective Service
22.	Aboriginal and Torres Strait Islander Legal Service (Queensland)
23.	Queensland Advocacy Incorporated
24.	Office of the Public Guardian
25.	The Queensland Police Service
26.	Department of Environment and Science
27.	Bar Association of Queensland
28.	Department of Housing and Public Works
29.	Legal Aid Queensland
30.	Queensland Law Society
31.	Confidential
32.	Queensland Fire and Emergency Services

Appendix 3: Methodologies

WorkCover data methodology

Data provided by WorkCover included all accepted claims where the policy was listed as a government policy and the injury occurred on or after 1 July 2010 in relation to an assault on a public officer. Claims were included where the injury mechanism was either 'exposure to workplace or occupational violence' or 'being assaulted by a person or persons'. WorkCover conducted text mining to identify possible further assault/occupational violence claims, using the following keywords:

> 'abuse', 'aggression', 'altercation', 'assault', 'attack', 'bite', 'choke', 'defending', 'escalation', 'fight' (for Education Queensland this was adjusted to 'break up fight') , 'grab', 'head-butt', 'hit', 'kick', 'kneed', 'lash', 'punch', 'push', 'restrain', 'scratch', 'slap', 'spit', 'stab', 'strangle', 'struck', 'takedown', 'throw', 'violent'

Further exclusions were made based on the context of the incident and other key words used.

The Council conducted a manual review of the data received from WorkCover and excluded claims where the incident did not meet the requirements of an assault of a public officer. All remaining cases were included in the analysis.

Unless specified otherwise, the monetary amount analysed includes the sum of any statutory payment (income replacement, compensation to cover permanent impairment, and hospital/medical expenses) and does not include any common law payments (awarded by the courts as damages, can include economic loss, pain and suffering, legal costs, and medical/hospital costs).

Recidivism methodology

There are considerable challenges in measuring recidivism. For the purposes of the present exercise, the Council operationalised recidivism as any sentencing event that was followed by another sentencing event within two years of an offender's expected release from custody.

An offender's expected release from custody was calculated using information known at the time of sentencing and is not reflective of the actual date that the offender was released from custody. For community-based sentencing orders and wholly suspended sentences (where no time is spent in custody post-sentence) the expected release from custody was the day that the penalty was given. For partially suspended sentences, the expected release date is the date of sentence, plus any days of actual imprisonment to be served, less any days of declared pre-sentence custody. For sentences of imprisonment, the expected release date is either the parole release date or the date an offender becomes eligible for parole. If no parole date is specified at sentencing, parole eligibility is estimated at 50 per cent of the sentence (less any pre-sentence custody), or 80 per cent for cases where a serious violent offence declaration is made.

Offenders sentenced from 2010–11 to 2013–14 form the basis of this analysis. Cases sentenced within this period that involved any of the following types of offences were analysed for recidivism:

- assaults under the *Criminal Code*, including s 335 common assault, s 339 assaults occasioning bodily harm, s 320 grievous bodily harm, s 323 wounding, and s 320A torture;
- assaulting, resisting or obstructing a public officer, including assault or obstruction of a police officer under s 790 of the PPRA, and assaulting or obstructing a staff member in a corrective services facility under s 124(b) of the CSA;
- all forms of serious assault under s 340 of the *Criminal Code*.

The following offence categories were not analysed due to a small number of cases sentenced: resisting a public officer under section 199 of the *Criminal Code* (n=2), serious assault involving conspiracy in trade under s 340(1)(f) (n=1), and serious assault (not further defined) (n=3).

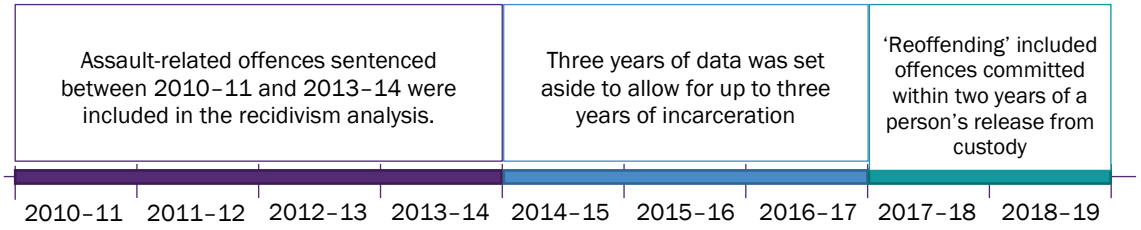
If the recidivism involved a traffic offence that was dealt with in court, it was not included in this analysis. However, recidivism of any other type of offence was analysed.

For offenders sentenced to up to 3 years' imprisonment, three years of data were set aside to account for the period of incarceration. A two-year window of data following the expected release from custody was analysed for occurrences of reoffending. Offences that were committed while a person was incarcerated (such as the assault of a prison officer) were also included in the analysis. Hence, offenders who were sentenced to a period of actual imprisonment will have a longer period of time in which they were eligible for inclusion in this analysis. That is, if a person is sentenced to a term of actual imprisonment, this analysis would identify any reoffending that occurred

while the person was in custody, and any reoffending that occurred within two years of their expected release from custody.

Almost all cases involving an act intended to cause injury received less than three years of actual incarceration (see, for example, Figure 8-1 and Figure 8-2). Of the 58,544 assault-related cases sentenced from 2010–11 to 2013–14 that were analysed for recidivism, 99.8 per cent did not receive more than three years of actual time in custody.

Figure A3-1: Recidivism methodology



Analysis of victim occupation methodology

The Council was provided with additional data on the occupation of victims from Queensland Court Services, which was extracted from the administrative system used by courts — Queensland-Wide Interlinked Courts (QWIC). Victim occupation data are recorded as a free-text field in QWIC.

Victim occupation is not a mandatory field within QWIC and data were not available for all cases. For cases that were missing victim occupation data and were sentenced in the higher courts, sentencing remarks were accessed from the Queensland Sentencing Information Service (QSIS) to determine the victim's occupation.

If the victim occupation was not available from QWIC or QSIS, or it did not provide enough information to accurately classify the victim's occupation, the Council requested information from the QPS on the occupation and/or employer of the victim as recorded in court briefs (QP9s). This process involved an officer manually reviewing case files and extracting relevant information on the occupation of the victim in each case.

Occupations were coded into broad categories by the Council's Research and Statistics team. Table A3-1 below provides a brief description of the roles included in each category. One category that warrants further explanation is 'security guard', which includes a variety of roles within a security setting. Nearly half (46.1%) of the security guards were employed at a Queensland Health facility or hospital. A further 8.7 per cent were employed in other Queensland Government facilities, such as courts. Over one-in-five (21.9%) were security at a licensed premise such as a pub or club. Security guards at train stations or on trains comprised nearly 5 per cent (4.6%). The employer of the remaining security guards was not known (5.5%).

Table A3-1: Definition of victim occupations

Victim type	Occupation inclusions
Carer	Carer, guardian, or community care officer, employed by a community service, support centre, care facility or Queensland Health.
Child safety officer	Child safety officer or case worker, employed by Department of Child Safety or Department of Communities.
Compliance officer	State government, council and local government employees who enforce compliance with local laws and regulations. Includes: parking inspectors, parks and wildlife rangers, RSPCA officers, animal compliance officers, transport inspector, city safety officers.
Corrective services officer	Prison officer, prison guard, employed by Queensland Corrective Services.
Detention centre worker	Detention youth worker or youth worker, employed by the Department of Youth Justice, a youth detention centre or Department of Justice and Attorney-General and/or where the offence occurred in a youth detention facility.
Education worker	Teacher, principal, teacher aide.
Firefighter/fire investigator	Firefighter, officers who investigate the cause of fires, employed by Queensland Fire and Emergency Service.
Medical/hospital worker (excluding security)	Officers who work in hospital or medical field, such as: doctors, nurses, orderlies, pharmacist. Does not include security staff at hospital (see security guard).
Other government role (state or federal)	Officers employed by Queensland Government of Australian Federal Government where the role did not fit with other occupation types or there was not enough information to code them elsewhere.
Paramedic	Paramedic, ambulance officer, or similar employed, by Queensland Ambulance Service.
Police officer	Police officer, employed by Queensland Police Service.
Security guard	Security guard or security officer. These are primarily employed by Queensland Health (i.e. security at hospitals) or other government agencies. It also includes security/bouncers at licensed venues and those employed at train stations or on trains. Some private security guards are also included such as those employed at private shopping centres.
Staff at licensed premised (excluding security)	Staff employed at, or owners of, a licensed premised such as pub, club, bar or hotel. Does not include security guards or bouncers (see security guard).
Transport officer (excluding security)	Transit officer, ticket inspector, customer service officer, senior network officer, rail officer, bus driver or TransLink officer. Employed by Queensland Rail, TransLink, or Brisbane City Council.
Unknown	Not enough information was available from any source (or combination) to determine the occupation of the victim.
Watch-house officer	Role stated as watch-house officer, may be employed by Queensland Police Service, often as a civilian officer.
Youth worker	Youth workers employed by a community service or agency. Not employed by the Department of Youth Justice, a youth detention centre or Department of Justice and Attorney-General and where the offence did not occur in a youth detention facility.

Appendix 4: Data tables

Table A4-1: Number of serious assault cases sentenced by financial year and type of serious assault

		Financial year (of sentence)									
Section	**Offence**	**2009-10**	**2010-11**	**2011-12**	**2012-13**	**2013-14**	**2014-15**	**2015-16**	**2016-17**	**2017-18**	**2018-19**
340	Serious assault, nfd*	0	0	1	2	0	0	0	0	0	0
340(1)(a)	Intent to commit/resist arrest	52	35	49	21	18	27	28	17	21	26
340(1)(b)	Police officer	538	483	572	579	666	719	766	735	740	740
340(1)(c)	Performing duty at law	17	18	21	37	30	18	22	28	26	19
340(1)(d)	Performed duty at law	4	6	6	21	14	11	9	6	2	6
340(1)(f)	Conspiracy in trade	0	0	0	0	1	0	0	1	1	0
340(1)(g)	60 years and over	66	96	127	117	127	191	178	234	255	311
340(1)(h)	Person with a disability	3	3	5	3	5	4	2	8	3	4
340(2)	Corrective services officer	12	22	33	33	13	20	19	43	50	47
340(2AA)	Public officer	46	62	60	99	114	121	165	196	230	244

Data include higher and lower courts, adult and juvenile cases sentenced between 2009–10 and 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Note: (*) nfd = not further defined — these cases could not be classified into specific subsections.

Table A4-2: Number of cases in which serious assault was the most serious offence (MSO) by financial year and type of serious assault

		Financial year (of sentence)									
Section	**Offence**	**2009-10**	**2010-11**	**2011-12**	**2012-13**	**2013-14**	**2014-15**	**2015-16**	**2016-17**	**2017-18**	**2018-19**
340	Serious assault, nfd*	0	0	1	1	0	0	0	0	0	0
340(1)(a)	Intent to commit/resist arrest	34	19	33	13	10	9	20	8	11	12
340(1)(b)	Police officer	434	378	472	463	545	604	600	575	560	560
340(1)(c)	Performing duty at law	14	16	15	23	21	13	15	17	14	12
340(1)(d)	Performed duty at law	4	6	4	13	8	8	7	3	2	5
340(1)(f)	Conspiracy in trade	0	0	0	0	0	0	0	1	0	0
340(1)(g)	60 years and over	49	77	106	86	100	156	153	177	189	236
340(1)(h)	Person with a disability	2	2	4	3	4	4	1	7	2	3
340(2)	Corrective services officer	10	16	27	27	9	14	14	31	33	32
340(2AA)	Public officer	29	37	30	60	68	68	103	121	127	132

Data include higher and lower courts, adult and juvenile cases (MSO) sentenced between 2009–10 and 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: *nfd = not further defined — these cases could not be classified into specific subsections.

Table A4-3: 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	427	493	506	444	570
Other/Unknown	6	5	8	7	13
Department of Justice and Attorney-General					
Youth Worker	39	35	73	19	
Prison Officer	46	76	100	34	
Other/Unknown	8	2	11	3	2
Queensland Corrective Services					
Prison Officer				52	94
Other/Unknown				5	13
Department of Child Safety, Youth and Women					
Youth Worker				38	80
Prison Officer				1	18
Other/Unknown				9	25
Department of Communities Child Safety & Disability Services					
Aged/Disabled/Residential Care Officer	22	27	28	10	
Other/Unknown	22	29	23	12	
Department of Communities Disability Services and Seniors					
Aged/Disabled/Residential Care Officer				17	23
Other/Unknown				3	14
Department of Health					
Health Professionals	15	44	29	19	26
Medical Practitioners	3	7	2	5	2
Nursing Assistant	35	54	45	51	49
Nursing Professionals	129	126	144	157	155
Other/Unknown	48	56	48	51	52
Department of Education					
Teacher	203	188	221	263	314
Teacher Aide	94	106	107	151	193
Other/Unknown	32	40	32	67	74
Department of Transport and Main Roads					
Other/Unknown	2	10	9	12	12
Queensland Fire and Emergency Services					
Firefighter			1	1	
Queensland Ambulance Service					
Ambulance Operative	24	38	24	21	34
Other					
Other/Unknown	2	3	6	1	9
Guards and Security Officers					
Queensland Police Service	1		2	2	4
Department of Justice and Attorney-General	3	2	14	7	
Queensland Corrective Services				6	9
Department of Child Safety, Youth and Women					3
Department of Health	10	25	32	34	28
Department of Transport and Main Roads		1	2	2	1
Other	3	7			
Total	**1,174**	**1,374**	**1,467**	**1,504**	**1,817**

Source: WorkCover — unreported data, 2014–15 to 2018–19.
Notes: (1) 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 A4-4: WorkCover amount due to assault-related claims, by occupation group, 2014–15 to 2018–19

Victim occupation	Average ($)	Median ($)	Proportion that received statutory payment (%)
Police Officer (n=2,440)	6,264	464	93.4%
Teacher (n=1,189)	9,908	485	96.0%
Other/Unknown (n=786)	10,436	877	95.9%
Nursing Professional (n=711)	16,560	1,640	93.5%
Teacher's Aide (n=651)	5,063	346	95.1%
Prison Officer (n=421)	15,823	1,518	95.2%
Youth Worker (n=284)	15,145	1,064	93.0%
Nursing Assistant (n=234)	17,183	1,481	92.3%
Guards and Security Officers (n=198)	12,560	1,166	95.5%
Ambulance Operative (n=141)	5,628	560	97.9%
Health Professionals (n=133)	11,018	1,543	94.7%
Aged/Disabled/Residential Care Officer (n=127)	14,268	1,698	96.9%
Medical Practitioners (n=19)	7,111	909	94.7%
Firefighter (n=2*)	-	-	-
Total	**9,817**	**638**	**94.5%**

Source: WorkCover Queensland — unpublished data, 2014–15 to 2018–19.
Notes: (1) Monetary amounts include statutory payments and do not include common law payments.
(*) Small sample size

Table A4-5: Recidivism — number of occurrences of reoffending, by type of offence

Type of offence	No reoffending	Reoffended once	Reoffended 2-4 times	Reoffended 5+ times
Torture (n=29)	75.9%	13.8%	3.4%	6.9%
Serious assault — Person with a disability (n=16)	56.3%	6.3%	18.8%	18.8%
Grievous bodily harm (n=899)	55.7%	20.5%	19.5%	4.3%
Wounding (n=575)	48.7%	23.1%	23.8%	4.3%
Assault occasioning bodily harm (n=9,631)	47.1%	19.3%	25.3%	8.3%
Serious assault — 60 years and over (n=467)	44.8%	22.1%	23.3%	9.9%
Common assault (n=11,359)	44.5%	18.0%	25.9%	11.6%
Assault or obstruct police officer (n=34,448)	41.3%	18.3%	28.0%	12.4%
Assault occasioning bodily harm (aggravated) (n=4,082)	40.9%	20.0%	28.3%	10.8%
Serious assault — Intent to commit/resist arrest (n=123)	35.8%	21.1%	27.6%	15.4%
Serious assault — Police officer (n=2,300)	33.1%	20.2%	33.7%	13.0%
Serious assault — Public officer (n=335)	29.0%	20.9%	31.3%	18.8%
Serious assault — Corrective services officer (n=101)	27.7%	21.8%	38.6%	11.9%
Serious assault — Performing duty at law (n=106)	24.5%	9.4%	41.5%	24.5%
Assault or obstruct corrective services staff (n=40)	22.5%	27.5%	40.0%	10.0%
Serious assault — Performed duty at law (n=47)	19.1%	12.8%	40.4%	27.7%
Total	**42.6%**	**18.7%**	**27.3%**	**11.4%**

Data include adult and juvenile cases sentenced between 2010–11 and 2013–14 where reoffending occurred within two years of the offender's expected release from custody.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

Table A4-6: Offender demographics by victim occupation

Victim occupation	TOTAL	Aboriginal and Torres Strait Islander		Non-Indigenous	
		Female (%)	Male (%)	Female (%)	Male (%)
Police officer	8,886	11.2	28.6	15.7	44
Paramedic	612	15.5	19	24.4	40.4
Detention centre worker	442	4.1	83.3	12.2	0.2
Corrective services officer	420	8.3	26.4	9	56
Medical/hospital worker (excluding security)	377	13.8	21.5	26	38.5
Security guard	219	7.3	16.9	24.2	50.7
Watch-house officer	130	15.4	20	18.5	46.2
Transport officer (excluding security)	62	16.1	14.5	4.8	64.5
Child safety officer	46	19.6	8.7	43.5	28.3
Compliance officer	31	0	19.4	9.7	71
Education worker	28	7.1	39.3	10.7	39.3
Carer	16	12.5	18.8	62.5	6.3
Unknown	16	6.3	50	12.5	31.3
Staff at licensed premised (excluding security)	14*	7.1	21.4	21.4	50
Firefighter/fire investigator	10*	0	20	20	60
Other government role (state or federal)	8*	0	37.5	25	37.5
Youth worker	7*	0	28.6	14.3	57.1
TOTAL	**11,324**	**11.1**	**29.4**	**16**	**43.1**

Data include lower and higher courts, adult and juvenile offenders, s 340(1)(b), s340(1)(c) and s340(1)(d), (2), and (2AA), cases sentenced from 2009–10 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019, QSIS and the QPS.
Notes:
(1) Cases where gender and/or Aboriginal and Torres Strait Islander status was unknown have been included in the calculations but not presented, therefore the percentages may not total 100%;
(2) Count is by charge (i.e. victim) therefore the victim may not be unique and if an offender had multiple victims the demographic of the offender will be counted more than once;
(3) Victims entered as 'prison officer' or 'correctional officer' or under section s 340(2) where the offender was sentenced as a child have been coded as 'detention centre worker'.
(*) Small sample size

Table A4-7: 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 include 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.
Note: (*) Includes offences under ss 340(1)(b), 340(1)(c), 340(1)(d), 340(2), 340(2AA).

Table A4-8: 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 include 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.
Note: (*) Includes offences under ss 340(1)(b)(i/ii/iii) and 340(2AA)(a/b)(i/ii/iii).

Table A4-9: 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 include 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.
Note: (*) Includes offences under ss 340(1)(b), 340(1)(c), 340(1)(d),s 340(2), 340(2AA).

Table A4-10: Offences identified as a weapons offence and sentenced with a common assault offence as the MSO

Act	Section number	Offence description	Frequency
Criminal Code (Qld)	69(1)	Going armed so as to cause fear	200
Criminal Code (Qld)	69(1) & 47(9)	Going armed so as to cause fear — domestic violence offence	7
Weapons Act 1990	50	Unlawful possession of weapons	17
Weapons Act 1990	50(1)(c)(i)	Unlawful possession of weapons category d/h/r weapon	15
Weapons Act 1990	50 & (c)(ii)	Unlawful possession of weapons category c/e weapon	1
Weapons Act 1990	50 & (c)(iii)	Unlawful possession of weapons category a, b or m	61
Weapons Act 1990	50(c)(i)	Unlawfully possess category d, h or r weapon	9
Weapons Act 1990	50a	Possess unregistered firearm	3
Weapons Act 1990	51(1)	Possession of a knife in a public place	320
Weapons Act 1990	56(2)	A person must not, without reasonable excuse, discharge a weapon on or across private land without the express consent of the owner	1
Weapons Act 1990	56(3)	Carry weapon private land	1
Weapons Act 1990	57(2)	A person must not, without reasonable excuse, carry a weapon exposed to view in a public place	4
Weapons Act 1990	57(3)	A person must not, without reasonable excuse, carry in a public place a loaded firearm or a weapon capable of being discharged	1
Weapons Act 1990	57(4)	Discharge weapon public place	2
Weapons Act 1990	58(2)	Dangerous conduct with weapon	29
Weapons Act 1990	59(2)	Possession of a weapon whilst under the influence of liquor or a drug	5
Weapons Act 1990	61(b)	Possess shortened firearms	9
Weapons Act 1990	67(1)	Possessing and acquiring restricted items	32
Weapons Act 1990	67(1) & 47(9)	Possessing/acquiring restricted items — domestic violence offence	1

Data include MSO, adult offenders, offences occurring on or after 5 September 2014, sentenced 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

Table A4-11: Proportion of sentenced offences with section 108B PSA intoxication circumstance of aggravation applied

Offence	Sentenced offences (N)	Sentenced offences with 108B		N with community service	Proportion 108B that received CSO	Average CSO length
	N	n	%	n	%	hours
Higher courts						
s 320 Grievous bodily harm	588	27	4.6	24	88.9	71.3
s 323 Wounding	472	11	2.3	8	72.7	75.0
s 335 Common assault	2,024	31	1.5	24	77.4	67.1
s 339(1) AOBH (non-aggravated)	1,675	33	2.0	28	84.8	77.1
s 339(1)(3) AOBH (aggravated)	1,285	25	2.0	21	84.0	76.7
s 340(1)(b) Serious assault police officer (non-aggravated)	219	4	1.8	2	50.0	70.0
s 340(1)(b)(i/ii/iii) Serious assault police officer (aggravated)	349	25	7.2	22	88.0	64.8
s 340(2AA) Serious assault public officer (non-aggravated)	49	5	10.2	5	100.0	46.0
s 340(2AA)(i/ii/iii) Serious assault public officer (aggravated)	57	3	5.3	1	33.3	40.0
s 790 Assault or obstruct police officer	1,151	84	7.3	44	52.4	55.7
Lower courts						
s 320 Grievous bodily harm	0	-	-	-	-	-
s 323 Wounding	3*	0	-	-	-	-
s 335 Common assault	12,219	794	6.5	585	73.7	63.9
s 339(1) AOBH (non-aggravated)	8,979	540	6.0	406	75.2	76.5
s 339(1)(3) AOBH (aggravated)	2,294	85	3.7	55	64.7	78.3
s 340(1)(b) Serious assault police officer (non-aggravated)	1,500	149	9.9	95	63.8	64.4
s 340(1)(b)(i/ii/iii) Serious assault police officer (aggravated)	1,462	113	7.7	75	66.4	68.4
s 340(2AA) Serious assault public officer (non-aggravated)	434	39	9.0	22	56.4	70.0
s 340(2AA)(i/ii/iii) Serious assault public officer (aggravated)	256	27	10.6	16	59.3	56.9
s 790 Assault or obstruct police officer	38,524	4,613	12.0	3,287	71.3	57.6

Data include adult offenders, offences on or after 1 December 2014, sentenced 2014–15 to 2018–2019.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) All numbered references are to sections of the Criminal Code, with the exception of '790' which refers to the offence of assault or obstruct police under s 790 of the PPRA.
(*) Small sample size

Table A4-12: Most serious penalty for offences with 108B circumstance of aggravation (intoxication)

Offence	Custodial penalty				Non-custodial penalty				
	Imprisonment	Intensive correction order	Partially suspended	Wholly suspended	Probation	Community service	Good behaviour, recognisance	Monetary	Convicted, not further punished
	%	%	%	%	%	%	%	%	%
s 320 Grievous bodily harm (n=27*)	59.3	0	14.8	25.9	0	0	0	0	0
s 323 Wounding (n=11*)	81.8	0	9.1	9.1	0	0	0	0	0
s 335 Common assault (n=825)	20.5	0.7	1.1	6.9	4.7	56.4	0.7	8.1	0.9
s 339(1) Assault occasioning bodily harm (non-aggravated) (n=573)	31.1	0.9	2.6	14.8	3.5	41.9	0.4	4.9	0
s 339(3) Assault occasioning bodily harm (aggravated) (n=110)	47.3	0.9	5.5	21.8	6.4	17.3	0	0.9	0
s 340(1)(b) Serious assault of police officer (non-aggravated) (n=153)	34.6	1.3	0.7	15	6.5	34	0.7	5.9	1.3
s 340(1)(b)(i/ii/iii) Serious assault of police officer (aggravated) (n=138)	54.4	0	4.4	13.8	3.6	21.7	0	1.5	0.7
s 340(2AA) Serious assault of public officer (non-aggravated) (n=44)	43.2	0	2.3	4.6	13.6	34.1	0	2.3	0
s 340(2AA)(i/ii/iii) Serious assault of public officer (aggravated) (n=30)	76.7	0	3.3	3.3	0	13.3	0	3.3	0
s 790 Assault or obstruct police officer (n=4,697)	8.6	0.1	0.3	3.2	4	65.3	1.6	14.5	2.3

Data include adult offenders, lower and higher courts, offences on or after 1 December 2014, sentenced 2014–15 to 2018–2019.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) All numbered references are to sections of the Criminal Code, with the exception of '790' which refers to the offence of assault or obstruct police under s 790 of the PPRA.
(*) Small sample size

Table A4-13: Sentence length for all relevant offences, adult offenders

		Magistrates Courts					Higher courts				
		Imprisonment (months)									
Section	Description	N	Avg	Median	Min	Max	N	Avg	Median	Min	Max
340(1)(b)	Police officer (non-aggravated)	278	8.0	6	(rise) 0	36	20	12.8	9	(12 days) 0	42
340(1)(b)(i)	Police officer (bodily fluid)	303	8.7	9	1	30	70	12.3	12	4	36
340(1)(b)(ii)	Police officer (bodily harm)	148	10.1	10	2	36	41	17.5	12	6	60
340(1)(b)(iii)	Police officer (armed)	103	10.3	9	1	30	17	29.6	30	5	60
340(1)(c)/(d)	Performing/performed duty at law	19	7.4	6	2	24	2*	-	-	-	-
340(2)	Corrective services officer	77	8.8	7	1	36	13	12.8	8	(10 days) 0	36
340(2AA)	Public officer (non-aggravated)	65	6.4	6	(4 days) 0	18	5*	-	-	-	-
340(2AA)(i)	Public officer (bodily fluid)	59	8.1	6	1	24	16	9.0	9	1	15
340(2AA)(ii)	Public officer (bodily harm)	25	8.6	9	3	18	4*	-	-	-	-
340(2AA)(iii)	Public officer (armed)	8*	-	-	-	-	0	-	-	-	-
124(b)	Assault/obstruct corrective services staff	32	2.9	3	(7 days) 0	6	0	-	-	-	-
790(1)(a)	Assault police officer	162	3.7	3	(2 days) 0	12	0	-	-	-	-
790(1)(b)	Obstruct police officer	166	2.6	2	(rise) 0	12	0	-	-	-	-
655A	Assault/obstruct watch-house officer	0	-	-	-	-	0	-	-	-	-
199	Resisting public officers	1*	-	-	-	-	0	-	-	-	-
		Suspended sentence (months)									
Section	Description	N	Avg	Median	Min	Max	N	Avg	Median	Min	Max
340(1)(b)	Police officer (non-aggravated)	150	4.7	4	(7 days) 0	18	6*	-	-	-	-
340(1)(b)(i)	Police officer (bodily fluid)	159	5.1	4	1	12	35	8.7	9	4	15
340(1)(b)(ii)	Police officer (bodily harm)	69	5.5	4	1	15	9*	-	-	-	-
340(1)(b)(iii)	Police officer (armed)	36	5.1	4	2	18	4*	-	-	-	-
340(1)(c)/(d)	Performing/performed duty at law	14	4.6	4	2	12	0	-	-	-	-
340(2)	Corrective services officer	7*	-	-	-	-	1*	-	-	-	-
340(2AA)	Public officer (non-aggravated)	54	4.1	3	1	12	3*	-	-	-	-
340(2AA)(i)	Public officer (bodily fluid)	18	6.6	6	3	15	7*	-	-	-	-
340(2AA)(ii)	Public officer (bodily harm)	10	5.6	6	2	8	2*	-	-	-	-
340(2AA)(iii)	Public officer (armed)	4*	-	-	-	-	1*	-	-	-	-
124(b)	Assault/obstruct corrective services staff	10	2.0	2	(14 days) 0	3	0	-	-	-	-
790(1)(a)	Assault police officer	153	2.6	2	(7 days) 0	12	0	-	-	-	-
790(1)(b)	Obstruct police officer	153	2.2	2	(7 days) 0	18	0	-	-	-	-
655A	Assault/obstruct watch-house officer	0	-	-	-	-	0	-	-	-	-
199	Resisting public officers	0	-	-	-	-	0	-	-	-	-
		Intensive correction order (months)									
Section	Description	N	Avg	Median	Min	Max	N	Avg	Median	Min	Max
340(1)(b)	Police officer (non-aggravated)	18	7.8	6	3	12	0	-	-	-	-
340(1)(b)(i)	Police officer (bodily fluid)	10	7.5	9	3	12	3*	-	-	-	-
340(1)(b)(ii)	Police officer (bodily harm)	3*	-	-	-	-	2*	-	-	-	-
340(1)(b)(iii)	Police officer (armed)	2*	-	-	-	-	0	-	-	-	-
340(1)(c)/(d)	Performing/performed duty at law	1*	-	-	-	-	0	-	-	-	-
340(2)	Corrective services officer	0	-	-	-	-	0	-	-	-	-
340(2AA)	Public officer (non-aggravated)	0	-	-	-	-	0	-	-	-	-
340(2AA)(i)	Public officer (bodily fluid)	1*	-	-	-	-	0	-	-	-	-
340(2AA)(ii)	Public officer (bodily harm)	0	-	-	-	-	0	-	-	-	-
340(2AA)(iii)	Public officer (armed)	0	-	-	-	-	0	-	-	-	-
124(b)	Assault/obstruct corrective services staff	0	-	-	-	-	0	-	-	-	-
790(1)(a)	Assault police officer	5*	-	-	-	-	0	-	-	-	-
790(1)(b)	Obstruct police officer	1*	-	-	-	-	0	-	-	-	-
655A	Assault/obstruct watch-house officer	0	-	-	-	-	0	-	-	-	-
199	Resisting public officers	0	-	-	-	-	0	-	-	-	-
		Community service (hours)									
Section	Description	N	Avg	Median	Min	Max	N	Avg	Median	Min	Max
340(1)(b)	Police officer (non-aggravated)	104	85.0	75	40	240	2*	-	-	-	-
340(1)(b)(i)	Police officer (bodily fluid)	30	107.2	100	40	240	1*	-	-	-	-
340(1)(b)(ii)	Police officer (bodily harm)	36	104.0	100	40	240	2*	-	-	-	-
340(1)(b)(iii)	Police officer (armed)	11	110.9	100	50	200	0	-	-	-	-
340(1)(c)/(d)	Performing/performed duty at law	5*	-	-	-	-	1*	-	-	-	-
340(2)	Corrective services officer	0	-	-	-	-	0	-	-	-	-
340(2AA)	Public officer (non-aggravated)	26	88.3	80	40	200	1*	-	-	-	-
340(2AA)(i)	Public officer (bodily fluid)	4*	-	-	-	-	1*	-	-	-	-
340(2AA)(ii)	Public officer (bodily harm)	4*	-	-	-	-	0	-	-	-	-
340(2AA)(iii)	Public officer (armed)	0	-	-	-	-	0	-	-	-	-

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		Magistrates Courts					Higher courts				
		Probation (months)									
Section	Description	N	Avg	Median	Min	Max	N	Avg	Median	Min	Max
124(b)	Assault/obstruct corrective services staff	0	-	-	-	-	0	-	-	-	-
790(1)(a)	Assault police officer	376	61.7	50	40	240	0	-	-	-	-
790(1)(b)	Obstruct police officer	1,111	45.5	40	40	150	4*	-	-	-	-
655A	Assault/obstruct watch-house officer	0	-	-	-	-	0	-	-	-	-
199	Resisting public officers	0	-	-	-	-	0	-	-	-	-
340(1)(b)	Police officer (non-aggravated)	160	14.1	12	6	36	5*	-	-	-	-
340(1)(b)(i)	Police officer (bodily fluid)	56	15.5	13	6	30	1*	-	-	-	-
340(1)(b)(ii)	Police officer (bodily harm)	43	15.5	15	6	30	4*	-	-	-	-
340(1)(b)(iii)	Police officer (armed)	45	16.0	15	6	36	2*	-	-	-	-
340(1)(c)/(d)	Performing/performed duty at law	13	14.8	12	9	24	0	-	-	-	-
340(2)	Corrective services officer	1*	-	-	-	-	0	-	-	-	-
340(2AA)	Public officer (non-aggravated)	33	14.5	12	6	36	1*	-	-	-	-
340(2AA)(i)	Public officer (bodily fluid)	11	17.1	18	6	30	1*	-	-	-	-
340(2AA)(ii)	Public officer (bodily harm)	14	15.2	12	9	24	2*	-	-	-	-
340(2AA)(iii)	Public officer (armed)	3*	-	-	-	-	0	-	-	-	-
124(b)	Assault/obstruct corrective services staff	0	-	-	-	-	0	-	-	-	-
790(1)(a)	Assault police officer	255	11.7	12	6	36	0	-	-	-	-
790(1)(b)	Obstruct police officer	144	10.5	9	6	36	0	-	-	-	-
655A	Assault/obstruct watch-house officer	2*	-	-	-	-	0	-	-	-	-
199	Resisting public officers	0	-	-	-	-	0	-	-	-	-
		Monetary (dollars)									
Section	Description	N	Avg	Median	Min	Max	N	Avg	Median	Min	Max
340(1)(b)	Police officer (non-aggravated)	144	1,012.6	775	200	6,000	0	-	-	-	-
340(1)(b)(i)	Police officer (bodily fluid)	17	1,579.4	800	350	6,800	0	-	-	-	-
340(1)(b)(ii)	Police officer (bodily harm)	23	1,082.6	1,000	350	3,000	0	-	-	-	-
340(1)(b)(iii)	Police officer (armed)	11	731.8	700	400	1,000	0	-	-	-	-
340(1)(c)/(d)	Performing/performed duty at law	11	795.5	500	400	2,000	0	-	-	-	-
340(2)	Corrective services officer	3*	-	-	-	-	0	-	-	-	-
340(2AA)	Public officer (non-aggravated)	40	767.5	525	100	3,000	0	-	-	-	-
340(2AA)(i)	Public officer (bodily fluid)	5*	-	-	-	-	0	-	-	-	-
340(2AA)(ii)	Public officer (bodily harm)	2*	-	-	-	-	0	-	-	-	-
340(2AA)(iii)	Public officer (armed)	1*	-	-	-	-	0	-	-	-	-
124(b)	Assault/obstruct corrective services staff	4*	-	-	-	-	0	-	-	-	-
790(1)(a)	Assault police officer	1,086	620.8	500	60	6,500	0	-	-	-	-
790(1)(b)	Obstruct police officer	4,726	414.5	350	50	6,500	0	-	-	-	-
655A	Assault/obstruct watch-house officer	3*	-	-	-	-	0	-	-	-	-
199	Resisting public officers	3*	-	-	-	-	0	-	-	-	-
		Good behaviour, recognisance (months)									
Section	Description	N	Avg	Median	Min	Max	N	Avg	Median	Min	Max
340(1)(b)	Police officer (non-aggravated)	12	9.8	9	4	24	1*	-	-	-	-
340(1)(b)(i)	Police officer (bodily fluid)	0	-	-	-	-	1*	-	-	-	-
340(1)(b)(ii)	Police officer (bodily harm)	1*	-	-	-	-	0	-	-	0	0
340(1)(b)(iii)	Police officer (armed)	1*	-	-	-	-	0	-	-	-	-
340(1)(c)/(d)	Performing/performed duty at law	3*	-	-	-	-	0	-	-	-	-
340(2)	Corrective services officer	0	-	-	-	-	0	-	-	-	-
340(2AA)	Public officer (non-aggravated)	9*	-	-	-	-	0	-	-	-	-
340(2AA)(i)	Public officer (bodily fluid)	1*	-	-	-	-	1*	-	-	-	-
340(2AA)(ii)	Public officer (bodily harm)	1*	-	-	-	-	0	-	-	-	-
340(2AA)(iii)	Public officer (armed)	0	-	-	-	-	0	-	-	-	-
124(b)	Assault/obstruct corrective services staff	0	-	-	-	-	0	-	-	-	-
790(1)(a)	Assault police officer	167	7.8	6	1	24	0	-	-	-	-
790(1)(b)	Obstruct police officer	659	6.5	6	1	18	0	-	-	-	-
655A	Assault/obstruct watch-house officer	0	-	-	-	-	0	-	-	-	-
199	Resisting public officers	2*	-	-	-	-	0	-	-	-	-

Data include adult offenders, offences occurring on or after 5 September 2014, cases sentenced from 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) Sentence lengths have not been calculated for cells with a sample size of less than 10. Some categories have been combined to increase sample sizes: wholly suspended and partially suspended sentences were combined into the category of 'suspended sentences'; serious assault of a person performing a duty at law and serious assault of a person who performed a duty at law were also combined.
(2) A small proportion of s 790 PPRA cases were excluded as they couldn't be classified as an assault or an obstruction (n=281).
(*) Small sample sizes

Table A4-14: Sentence length for all relevant offences, young people

Section	Description	Young people — all courts				
		Detention (months)				
		N	Avg	Median	Min	Max
340(1)(b)	Police officer (non-aggravated)	9^	5.6	4	1	10
340(1)(b)(i/ii/iii)	Police officer (aggravated)	15	5.3	4	1	14
340(1)(c)/(d)	Performing/performed duty at law	6^	4.3	4	3	6
340(2AA)	Public officer (non-aggravated)	2*	-	-	-	-
340(2AA)(i/ii/iii)	Public officer (aggravated)	12	9.1	6	2	42
790(1)(a)	Assault police officer	7^	4.2	3	2	9
790(1)(b)	Obstruct police officer	0	-	-	-	-
		Conditional release order (months)				
		N	Avg	Median	Min	Max
340(1)(b)	Police officer (non-aggravated)	11	2.7	3	1	3
340(1)(b)(i/ii/iii)	Police officer (aggravated)	16	2.9	3	2	3
340(1)(c)/(d)	Performing/performed duty at law	1*	-	-	-	-
340(2AA)	Public officer (non-aggravated)	1*	-	-	-	-
340(2AA)(i/ii/iii)	Public officer (aggravated)	9^	2.9	3	2	3
790(1)(a)	Assault police officer	11	2.6	3	1	3
790(1)(b)	Obstruct police officer	2*	-	-	-	-
		Community service (hours)				
		N	Avg	Median	Min	Max
340(1)(b)	Police officer (non-aggravated)	19	51.1	50	20	100
340(1)(b)(i)	Police officer (bodily fluid)	20	57.5	50	20	150
340(1)(b)(ii)	Police officer (bodily harm)	6^	81.7	80	40	150
340(1)(b)(iii)	Police officer (armed)	8^	58.1	60	20	130
340(1)(c)/(d)	Performing/performed duty at law	2*	-	-	-	-
340(2AA)	Public officer (non-aggravated)	1*	-	-	-	-
340(2AA)(i/ii/iii)	Public officer (aggravated)	9^	75.6	60	30	200
790(1)(a)	Assault police officer	22	46.6	45	20	120
790(1)(b)	Obstruct police officer	19	28.2	20	20	80
		Probation (months)				
		N	Avg	Median	Min	Max
340(1)(b)	Police officer (non-aggravated)	42	8.3	6	5	24
340(1)(b)(i)	Police officer (bodily fluid)	65	8.5	9	3	24
340(1)(b)(ii)	Police officer (bodily harm)	21	9.6	9	3	24
340(1)(b)(iii)	Police officer (armed)	9^	9.7	12	6	12
340(1)(c)/(d)	Performing/performed duty at law	3*	-	-	-	-
340(2AA)	Public officer (non-aggravated)	2*	-	-	-	-
340(2AA)(i/ii/iii)	Public officer (aggravated)	15	8.8	8	3	24
790(1)(a)	Assault police officer	40	7.2	6	3	12
790(1)(b)	Obstruct police officer	12	6.7	6	2	12
		Good behaviour, recognisance (months)				
		N	Avg	Median	Min	Max
340(1)(b)	Police officer (non-aggravated)	13	5.7	6	3	12
340(1)(b)(i)	Police officer (bodily fluid)	11	9.4	10	3	12
340(1)(b)(ii)	Police officer (bodily harm)	8^	7.9	7	4	12
340(1)(b)(iii)	Police officer (armed)	5^	6.6	6	6	9
340(1)(c)/(d)	Performing/performed duty at law	0	-	-	-	-
340(2AA)	Public officer (non-aggravated)	0	-	-	-	-
340(2AA)(i/ii/iii)	Public officer (aggravated)	3*	-	-	-	-
790(1)(a)	Assault police officer	38	5.5	6	2	12
790(1)(b)	Obstruct police officer	53	5.4	6	2	12

Data include lower and higher courts, young offenders, offences occurring on or after 5 September 2014, cases sentenced from 2014–15 to 2018–19.
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.
Notes: (1) Sentence lengths have not been calculated for cells with a sample size of less than 5. Some categories have been combined to increase sample sizes: aggravating circumstances were reported separately when there were a sufficient number of cases and otherwise reported in aggregate; serious assault of a person performing a duty at law and serious assault of a person who performed a duty at law were combined.
(2) Some penalty types were not reported due to small sample sizes, these included boot camp orders (n=2), intensive supervision orders (n=1) and monetary penalties (n=5).
(3) The serious assault of a corrective services officer was not reported due to small sample sizes (n=3).
(4) A small proportion of s 790 PPRA cases were excluded as they couldn't be classified as an assault or an obstruction (n=22).
(*) Small sample sizes (less than 5), not enough data to present; ^ small sample sizes (less than 10), exercise caution when interpreting results.

Appendix 5: Cross-jurisdictional analysis — Australian 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	*Criminal Code* (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.		If the official is a judicial officer or Commonwealth law enforcement officer: 13 years Otherwise: 10 years
New South Wales	*Crimes Act 1900* (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.		5 years
	Crimes Act 1900 (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'.		(1) 5 years (1A) 7 years
	Crimes Act 1900 (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	*Criminal Code* (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 (ii) the victim suffered physical harm as a result of the offence, it is a Level 5 offence for the purposes of the *Sentencing Act 1995* (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 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 If Level 4 offence: (irrespective of previous): 3 months' actual imprisonment (*Sentencing Act 1995* (NT) ss 78CA, 78D, 78DA and 78DB) Exceptional circumstances exemption (ss 78DI, DG) – must still impose a term of actual	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
			imprisonment. Suspension or home detention can be ordered for some but not all of the order.	
	Police Administration Act 1978 (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.		8 penalty units, or 6 months imprisonment
Queensland	*Criminal Code* (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
	Police Powers and Responsibilities Act 2000 (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)
South Australia	*Criminal Law Consolidation Act 1935* (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))	An offence under s 20AA(1), (2) or (4) is a 'designated offence' under s 96 of the *Sentencing Act 2017* (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	(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

Jurisdiction	Provision	Nature of act/s constituting offence	Minimum penalty	Maximum penalty
		(4) hinder or resist a police officer acting in the course of official duties, causing harm (s 20AA(4).	period of detention for another designated offence, unless there are exceptional circumstances.	
Tasmania	*Criminal Code* (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.		21 years^
Victoria	*Crimes Act 1958* (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.		5 years
	Summary Offences Act 1966 (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.		60 penalty units or 6 months' imprisonment
Western Australia	*Criminal Code* (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 — (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. Aggravated as to the maximum penalty (but does not enliven mandatory sentence): s 318(1A): (temporary, for 12 months only from 4 April 2020) if: (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	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), 3 months' imprisonment or youth detention.	7 years 10 years (aggravated)

Jurisdiction	Provision	Nature of act/s constituting offence	Minimum penalty	Maximum penalty
		that creates a belief, suspicion or fear that the offender has COVID-19.		
OVERSEAS JURISDICTIONS				
Canada	*Criminal Code* (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.		5 years
	Criminal Code (R.S.C., 1985, c. C-46) s 270.01	As above and, in committing such assault the offender: (a) carried, used or threatened to use a weapon or imitation weapon; or (b) caused bodily harm to the officer.		10 years
England and Wales	*Assaults on Emergency Workers (Offences) Act 2018* (UK) s 1	Common assault or battery against an emergency worker (includes a constable) acting in the exercise of their functions.		Fine, 12-months' imprisonment, or both
	Police Act 1996 (UK) s 89	Assault constable acting in the execution of his or her duty.		Level 5 fine, 6 months' imprisonment or both
New Zealand	*Summary Offences Act 1981* (NZ) s 10	Assault a constable (or prison officer or traffic officer) acting in the exercise of his or her duty.		$4,000 fine or 6 months' imprisonment

Note:
^ 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				
Australian Capital Territory	*Crimes Act 1900* (ACT) s 26A (Assault of a frontline community service provider)	A person commits an offence it – (a) The person assaults another person; and (b) The other person is a frontline community service provider; and (c) The person knows, or is reckless about whether, the other person is a frontline community service provider; and (d) The assault is committed – (i) When the frontline community service provider is exercising a function given to the person as a frontline community service provider; or (ii) As a consequence of, or in retaliation for, action taken by the person in exercising a function as a frontline community service provider; or (iii) Because the person is a frontline community service provider.		2 years
Commonwealth	*Criminal Code* (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.		10 years, or 13 years if official is judicial officer or law enforcement officer
New South Wales	*Crimes Act 1900* (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.		5 years
	Crimes Act 1900 (NSW) s 60A (Assault and other actions against law enforcement officers, (other than police officers)	(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.		(1) 5 years (2) 7 years (3) 12 years

Jurisdiction	Provision	Nature of act/s constituting offence	Minimum penalty	Maximum penalty
		(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.		
	Crimes Act 1900 (NSW) s 60E (Assaults etc. at schools)	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. Assault occasioning actual bodily harm. Wound or cause grievous bodily harm.		(1) 5 years (2) 7 years (3) 12 years
	Health Services Act 1997 (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)
	Public Health Act 2010 (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
Northern Territory	*Criminal Code* (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

Jurisdiction	Provision	Nature of act/s constituting offence	Minimum penalty	Maximum penalty
	Criminal Code (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 *Criminal Code* (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 *Sentencing Act 1995* (NT) (see s 78CA(1) of that Act) 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 *Sentencing Act 1995* (NT), it is a Level 4 offence (see s 78CA(2) of that Act).	If Level 5 offence, and first time convicted of a 'violent offence', 3 months' actual imprisonment (*Sentencing Act 1995* (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
Queensland	*Criminal Code* (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)).		7 years
	Criminal Code (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).		7 years
	Criminal Code (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 *Child Protection Act 1999*; 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.
	Corrective Services Act 2006 (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)).		2 years

Jurisdiction	Provision	Nature of act/s constituting offence	Minimum penalty	Maximum penalty
	Fire and Emergency Services Act 1990 (Qld) s 150C (Obstruction of persons performing functions)	Obstruct (including assault) an authorised person in the performance of a function under the act.		100 penalty units, or 6 months' imprisonment
	Police Powers and Responsibilities Act 2000 (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.		40 penalty units or 6 months' imprisonment
South Australia	*Criminal Law Consolidation Act 1935* (SA) s 20AA (Causing harm to, or assaulting, certain emergency workers etc.)	Various conduct captured: (1) cause harm to a prescribed emergency worker 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)). '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.	An offence under s 20AA(1) or (2) is a 'designated offence' under s 96 of the *Sentencing Act 2017* (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 .
Victoria	*Crimes Act 1958* (Vic) s 31(1)(b) (Assaults)	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. 'Emergency worker' includes ambulance officers, hospital emergency staff, fire and emergency services officers, volunteer firefighters.		5 years

Jurisdiction	Provision	Nature of act/s constituting offence	Minimum penalty	Maximum penalty
	Summary Offences Act 1966 (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.		60 penalty units or 6 months' imprisonment
	Summary Offences Act 1966 (Vic) ss 51A 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.		60 penalty units or 6 months' imprisonment
Western Australia	*Criminal Code* (WA) s 318(1) (Serious assault)	Assault of: • 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 — (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))	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. For a 16 or 17-year-old offender, 3 months' imprisonment or youth detention.	7 years 10 years (aggravated)

Jurisdiction	Provision	Nature of act/s constituting offence	Minimum penalty	Maximum penalty
		• a contract worker performing functions under the *Prisons Act 1981* (s 318(1)(k). Aggravated form: at or immediately before or immediately after the commission of the offence — (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. Aggravated as to the maximum penalty (but does not enliven mandatory sentence): s 318(1A): (temporary, for 12 months only from 4 April 2020) if: (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	*Criminal Code* (R.S.C., 1985, c. C-46) s 270 (Assault a peace officer)	Assault a public officer or peace officer engaged in the exercise of his or her duty. 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.		5 years
	Criminal Code (R.S.C., 1985, c. C-46) s 270.01 (Assaulting peace officer with weapon or causing bodily harm)	As above and, in committing such assault the offender: (a) carried, used or threatened to use a weapon or imitation weapon; or (b) caused bodily harm to the officer.		10 years
England and Wales	*Assaults on Emergency Workers*	Common assault or battery against an emergency worker acting in the exercise of their functions.	Fine, 12 months' imprisonment, or both	

Jurisdiction	Provision	Nature of act/s constituting offence	Minimum penalty	Maximum penalty
	(Offences) Act 2018 (UK) s 1 (Common assault and battery)	'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.		
New Zealand	*Summary Offences Act 1981* (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.		$4,000 fine or 6 months

Notes:
(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).
^ '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.

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	*Criminal Code* (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)
	Criminal Code (NT) s 174D (Recklessly endangering serious harm)	As above.		10 years (cf 7 years if non-aggravated)
South Australia	*Criminal Law Consolidation Act 1935* (SA) s 5AA (Aggravated offences)	Aggravated offence if committed against: • 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)).		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	*Sentencing Act 1991* (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. '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.	Minimum NPP (some exceptions where 'special reason' exists) for following *Crimes Act 1958* offences: s 15A (Causing serious injury intentionally in circumstances of gross violence): 5 years s 15B (Causing serious injury recklessly in circumstances of gross violence): 5 years 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] 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] Minimum sentence (unless 'special reason' exists) for following *Crimes Act 1958* offence: 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]	Same maximum penalties as for non-aggravated offences

Jurisdiction	Provision	Aggravated form of offence	Minimum penalty	Maximum penalty
	Crimes Act 1958 (Vic) s 320A (Maximum term of imprisonment for common assault in certain circumstance)	Common assault if: (1) (a) at the time of the assault, the offender has an offensive weapon readily available; and (b) the victim is a police officer on duty or a protective services officer on duty; and (c) the offender knows or is reckless as to whether the victim is a police officer or a protective services officer; and (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 (e) the offender knows conduct would be likely to cause apprehension or fear or should have known this. (2) As above, but the weapon involved is a firearm or imitation firearm.		(1) Offensive weapon: 10 years (2) Firearm: 15 years
Western Australia	*Criminal Code* (WA) s 297 (Grievous bodily harm)	Aggravated offence if committed against: • 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.	Adult offender against certain victim types: 12 months' actual imprisonment (s 297(5)(b)) Young offender against certain victim types: 3 months' imprisonment or 3 months' detention (s 297(6)(b))	GBH: 14 years (s 297(4)) (10 years where not aggravated due to job type and no other aggravating circumstance)

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	*Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2) (Aggravating factors)	(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; (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). [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.']	General application
Canada	*Criminal Code* (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.	Specific offences: s 264.1(1)(a) (Uttering threats – to cause death or bodily harm to any person) s 266 (Assault) s 267 (Assault with a weapon or causing bodily harm s 268 (Aggravated assault) s 269 (Unlawfully causing bodily harm)
England and Wales	*Assaults on Emergency Workers (Offences) Act 2018* (UK) s 2 (Aggravating factor)	Offence committed against an emergency worker acting in the exercise of functions as such a worker. Definition of 'emergency worker' includes: • 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; • a person employed or engaged to provide, search and/or rescue services; • a person employed or engaged to provide— (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. Requirement to state in open court the offence is so aggravated (s 2(2)(b)).	Specific offences: *Offences against the Person Act 1861* (UK): s 16 (Threats to kill); s 18 (Wounding with intent to cause GBH); s 20 (Malicious wounding); s 23 (Administering poison etc.); s 28 (Causing bodily harm by gunpowder etc.); s 29 (Using explosive substances etc. with intent to cause GBH); s 47 (Assault occasioning actual bodily harm). s 3 of the *Sexual Offences Act 2003* (Sexual assault) Manslaughter Kidnapping An ancillary offence in relation to the above

Jurisdiction	Provision	Aggravating factor/s	Specific offence or general application?
New Zealand	*Sentencing Act 2002* (NZ) s 9 (Aggravating and mitigating factors)	Victim was: • 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)). 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)). Prosecution must prove beyond reasonable doubt the existence of any disputed aggravated fact (s 24(2)(c)).	General application

Appendix 6: An analysis of section 9(10A) PSA

Domestic violence aggravating sentencing factor: common assaults and assaults occasioning bodily harm (simpliciter and aggravated)

The Council data analysis regarding section 9(10A)

The Council examined data for common assaults and assaults occasioning bodily harm (simpliciter and aggravated) dealt with as the most serious offence (MSO) in the Magistrates and higher courts. This involved a comparison of sentencing outcomes for forms of these offences that did, and did not, involve the section 9(10A) aggravating factor ('with DFV').[1] The data include offences sentenced from 5 May 2016, when the section commenced, to 30 June 2019. This analysis necessarily does not assess whether sentencing courts were already sentencing assaults that involved DFV to higher sentences prior to the introduction of section 9(10A).

As is common with sentencing where the Magistrates Courts are an option for disposition, the numbers of assaults dealt with in those courts far exceeded those in the higher courts.

Common assault and section 9(10A)

Table A6-1 shows the proportion of common assaults that received a custodial penalty with and without DFV. It also shows some information on the length of custodial penalties for these offences.

For common assaults, custodial penalties were more common for assaults occurring in a DFV context than without, irrespective of sentencing court.

In the higher courts, nearly half (49.0%) of common assault offences (MSO) with DFV received a custodial penalty, compared with just over one-third (36.2%) for the same offences without DFV. However, on average, non-DFV offences received a slightly longer sentence at 0.7 years, compared with 0.6 years for those with DFV.

In the Magistrates Courts, over one-third (35.7%) of DFV common assault (MSO) received a custodial sentence with an average sentence length of 0.6 years. Less than two in five (18.2%) common assaults (MSO) received a custodial penalty, with an average sentence length of 0.4 years.

Table A6-1: Summary of custodial penalties for common assault offences (MSO)

		Custodial order length (years)			
Offence	**% custodial**	**Average**	**Median**	**Minimum**	**Maximum**
Higher courts					
s 335 Common assault (n=130)	36.2%	0.7	0.5	0.1	2.5
s 335 Common assault — DFV offence (n=98)	49.0%	0.6	0.5	(rise) 0.0	2
Magistrates courts					
s 335 Common assault (n=5,161)	18.2%	0.4	0.3	(rise) 0.0	2.3
s 335 Common assault — DFV offence (n=1,578)	35.7%	0.6	0.5	(5 days) 0.0	2.5

Data include adult offenders, MSO, cases sentenced on or after 5 May 2016 (following the introduction of DFV as an aggravating factor).
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

[1] It remains possible that some 'non-DFV' offences were in fact sentences for offences that involved domestic and family violence but were not sentenced as such.

Table A6-2 breaks down each of the specific sentencing orders that were made for common assault offences with and without DFV. It shows that, across all courts, imprisonment and partially suspended sentences were much more common for DFV common assaults. There was less of a difference in the use of wholly suspended sentences between the two types of offences.

For common assault offences (MSO) that did not involve DFV, monetary penalties were the most common penalty in all courts. Monetary penalties were more prevalent in the Magistrates Courts for this offence, making up 40.4 per cent of all penalties (23.1% in higher courts).

Where the DFV aggravating factor was applied, imprisonment was the most common penalty in the higher courts at 31.6 per cent, followed by probation (23.5%). In the Magistrates Courts, probation was the most common penalty type (26.2%), closely followed by imprisonment (24.3%) and monetary orders (23.9%).

Table A6-2: Summary of penalty types for common assault offences (MSO)

	s 335 Common assault			
	Higher courts		Magistrates courts	
Penalty type	**No DFV (n=130)**	**With DFV (n=98)**	**No DFV (n=5,161)**	**With DFV (n=1,578)**
Imprisonment	18.5%	31.6%	10.2%	24.3%
Partially suspended	1.5%	5.1%	0.6%	1.0%
Wholly suspended	14.6%	11.2%	7.0%	9.7%
Intensive correction order	1.5%	1.0%	0.5%	0.7%
Community service	8.5%	6.1%	10.4%	4.7%
Probation	15.4%	23.5%	15.5%	26.2%
Monetary	23.1%	10.2%	40.4%	23.9%
Good behaviour, recognisance	16.2%	10.2%	13.6%	9.0%
Convicted, not further punished	0.8%	1.0%	1.8%	0.5%
TOTAL	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Data include adult offenders, MSO, cases sentenced on or after 5 May 2016 (following the introduction of DFV as an aggravating factor).
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

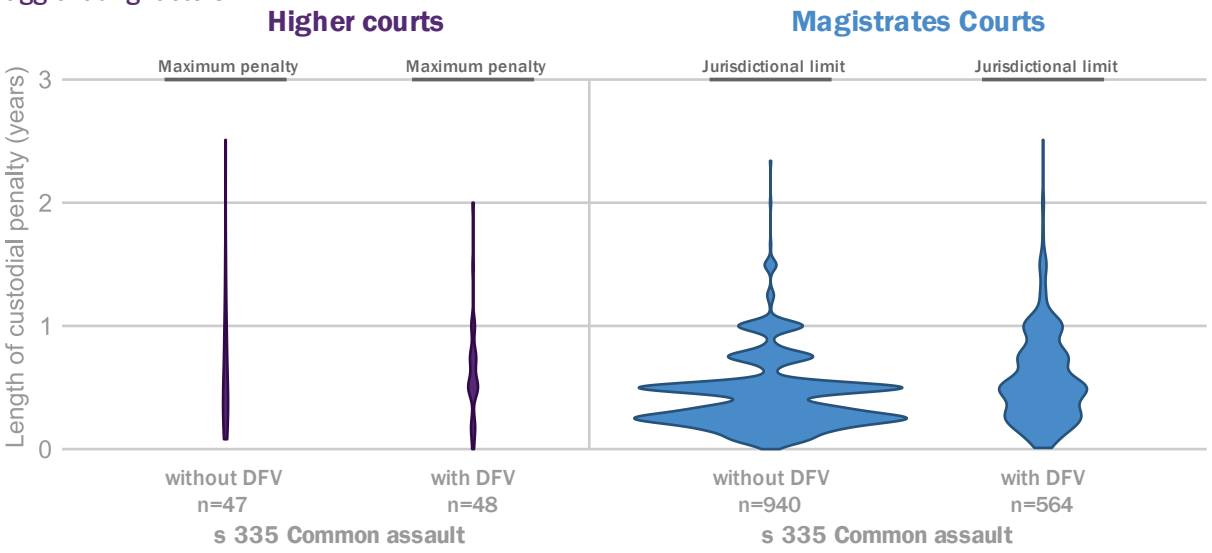
Figure A6-1 shows the distribution of custodial penalties for common assault offence with, and without, DFV. The fatter the portion of the chart, the greater the number of offences sentenced.

In both the Magistrates and higher courts, the 3-year maximum penalty was not reached. In the higher courts the longest sentence was 2.5 years for common assault without DFV. In the Magistrates Courts the longest sentence was 2.5 years for common assault with DFV.

In the Magistrates Courts, for offences without DFV there are clear spikes at each three-month interval below one year, with the highest number of cases receiving either 3 months or 6 months. For offences with DFV, clustering is less clear with the majority of penalties occurring at all sentence lengths up to and just over one year; the largest amount of offences received the median sentence of 6 months.

Higher court penalty lengths were more evenly spread, with the majority of cases receiving less than one year for offences without DFV. For cases with DFV, the majority of cases received less than one year, with a larger amount clustering around the 6–9-month mark.

Figure A6-1: Distribution of custodial penalties for common assault offences (MSO), with without DVF aggravating factors



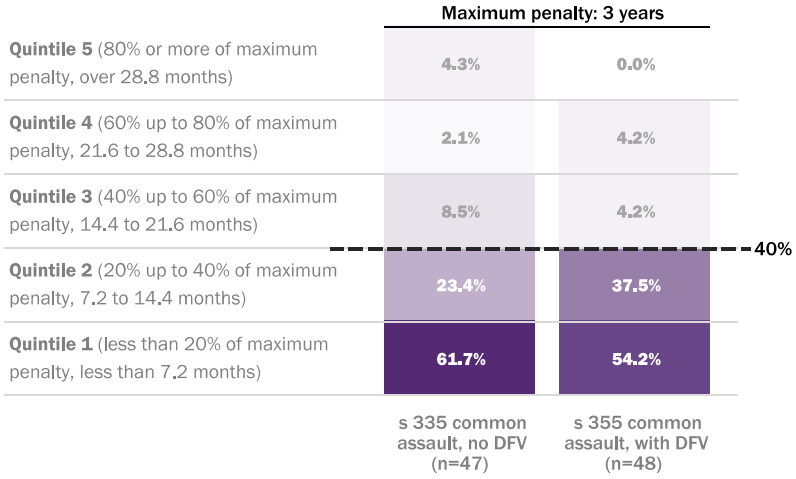
Data include adult offenders, MSO, cases sentenced on or after 5 May 2016 (following the introduction of DFV as an aggravating factor).
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

Figure A6-2 provides an alternative representation of the distribution of custodial sentences in the higher courts (i.e. the data displayed in the purple 'violins' in the previous figure above).

For common assault (MSO) with no DFV sentenced in the higher courts, 85.1 per cent of custodial sentence lengths were less than 40 per cent of the 3-year maximum penalty (approximately 1.2 years or 14 months). Where DFV was involved in a common assault (MSO) sentenced in the higher courts, 91.7 per cent of custodial penalties were less than 40 per cent of the 3-year maximum penalty.

Common assault without DFV was the only offence to have sentence lengths at or over 80 per cent of the available maximum penalty, and this only accounted for 4.3 per cent of these offences.

Figure A6-2: Higher court custodial penalty length as a proportion of the maximum penalty for common assault offences (MSO) with and without DFV



Data include adult offenders, MSO, higher courts only, custodial penalties, cases sentenced on or after 5 May 2016 (following the introduction of DFV as an aggravating factor).
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

AOBH and section 9(10A)

Under section 339 of the *Criminal Code*, non-aggravated assaults occasioning bodily harm (AOBH) have a 7-year maximum penalty. This increases to 10 years for aggravated AOBH, where the offender does bodily harm, and is or pretends to be armed with any dangerous or offensive weapon or instrument or is in company. However, Magistrates Courts cannot impose a sentence of more than 3 years' imprisonment for any offence.

In the higher courts, a custodial penalty was the most common penalty for all forms of AOBH (MSO) — see Table A6-3. Offences with DFV received a higher proportion of custodial penalties compared with offences without DFV; however, the impact of the DFV aggravating factor was less pronounced than in Magistrates Courts sentences.

In the Magistrates Courts, the offence of aggravated AOBH with DFV was both the most likely to receive a custodial sentence (80.7%) and had the longest average sentence (1.1 years). In those courts, the percentage of custodial penalties imposed for both aggravated and simpliciter forms of AOBH markedly increased when the DFV aggravating factor was present.

Table A6-3: Summary of custodial penalties for assault occasioning bodily harm offences (MSO)

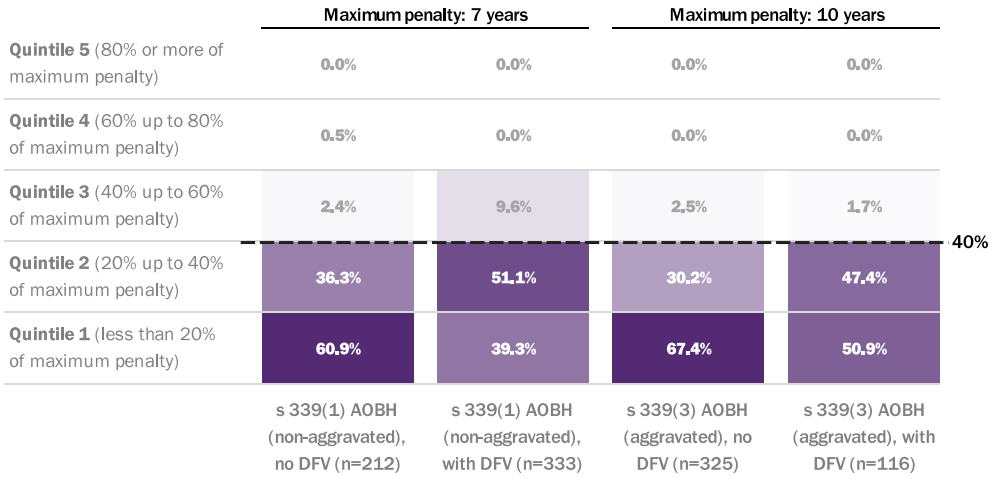
		Custodial order length (years)			
Offence	**% custodial**	**Average**	**Median**	**Minimum**	**Maximum**
Higher Courts					
s 339(1) AOBH (non-aggravated) (n=293)	72.4%	1.3	1.2	0.1	5
s 339(1) AOBH (non-aggravated) DFV offence (n=384)	86.7%	1.6	1.5	0.3	4
s 339(3) AOBH (aggravated) (n=406)	80.1%	1.6	1.5	(6 days) 0	5
s 339(3) AOBH (aggravated) DFV offence (n=138)	84.1%	1.8	1.8	0.4	4
Magistrates Courts					
s 339(1) AOBH (non-aggravated) (n=4,061)	42.5%	0.8	0.8	(5 days) 0	3
s 339(1) AOBH (non-aggravated) DFV offence (n=1,994)	68.3%	1	1	(14 days) 0	3
s 339(3) AOBH (aggravated) (n=1,138)	60.9%	0.9	0.8	(14 days) 0	3
s 339(3) AOBH (aggravated) DFV offence (n=419)	80.7%	1.1	1	0.1	3

Data include adult offenders, MSO, cases sentenced on or after 5 May 2016 (following the introduction of DFV as an aggravating factor).
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

In the higher courts, sentences for AOBH were predominately below 40 per cent of the available maximum penalty, regardless of circumstances of aggravation or DFV factors. For non-aggravated AOBH without DFV, 97.2% of custodial sentences were below 40 per cent of the 7-year maximum penalty (less than 2.8 years or approximately 34 months), while for non-aggravated AOBH with DFV 90.4 per cent of cases were below this 40 per cent threshold. For aggravated AOBH, nearly all sentences were below 40 per cent of the 10-year maximum penalty (4 years or less), at 97.5 per cent of offences without DFV and 98.3 per cent of offences with DFV.

There were almost no cases with sentence lengths at or above 60 per cent of the maximum penalty.

Figure A6-3: Higher court custodial penalty length as a proportion of the maximum penalty for assault occasioning bodily harm offences (MSO) with and without DFV



Data include adult offenders, MSO, higher courts only, custodial penalties, cases sentenced on or after 5 May 2016 (following the introduction of DFV as an aggravating factor).
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

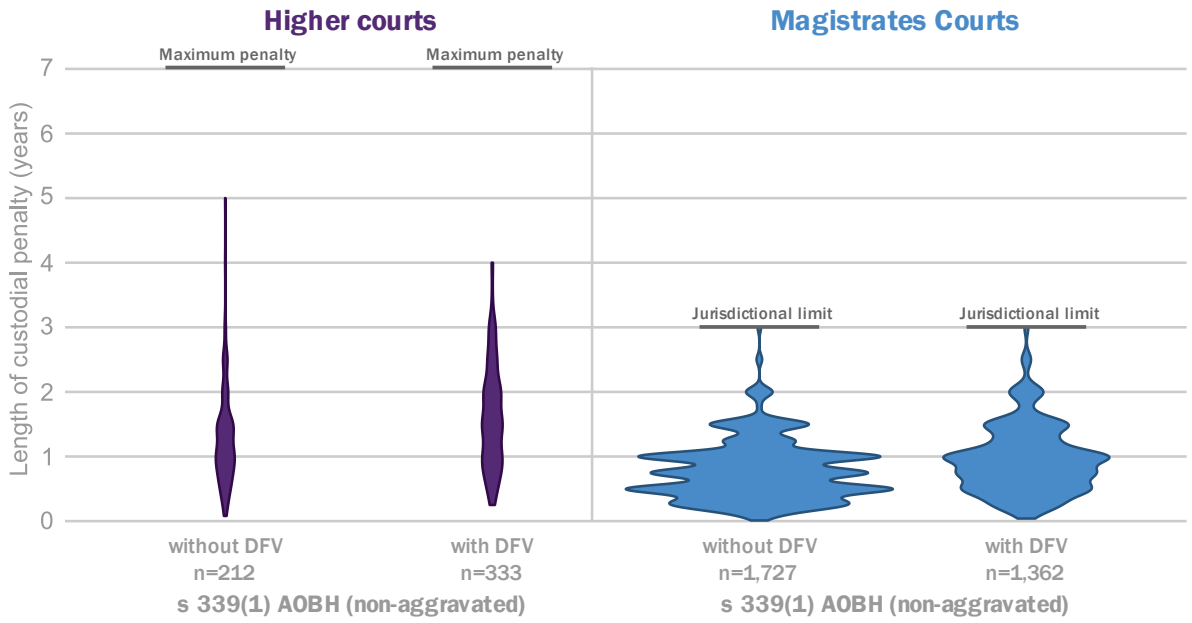
Non-aggravated AOBH

Figure A6-4 illustrates the length of custodial sentences for non-aggravated AOBH with and without DFV in the higher and lower courts.

In the higher courts, non-aggravated AOBH cases with DFV generally received longer sentences, with a relatively high proportion of cases receiving custodial sentences longer than 2 years. On the other hand, non-aggravated AOBH offences without DV tended to be shorter, with the majority of sentences below 2 years. No cases reached the maximum penalty of 7 years. The longest custodial penalty in the higher courts was 5 years.

In the Magistrates Courts, the maximum penalty for non-aggravated AOBH reached the 3-year jurisdictional limit – both for offences with and without DFV as an aggravating factor. Generally, cases with DFV had longer sentences, with a relatively high proportion getting sentences longer than 12 months. For offences without DFV, there were clear spikes in sentence lengths at each 3-month interval – particularly at the 6-month and 12-month mark.

Figure A6-4: Distribution of custodial penalties for non-aggravated assault occasioning bodily harm offences (MSO) with and without DFV



Data include adult offenders, MSO, cases sentenced on or after 5 May 2016 (following the introduction of DFV as an aggravating factor).
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

Table A6-4 provides a breakdown of all the types of penalties that are ordered for non-aggravated AOBH with and without DFV.

Imprisonment was the most common penalty regardless of whether DFV was a factor in both the higher courts and the Magistrates courts. However, for offences in the lower courts where DFV was not a factor, monetary orders very closely followed imprisonment (25.7% of cases received imprisonment, compared with 25.3% of cases with a monetary penalty).

Custodial penalties were more common for AOBH simpliciter offences with DFV, compared with offences without DFV, irrespective of the sentencing court. Imprisonment and partially suspended sentences were much more common for AOBH simpliciter offences with DFV; whereas community-based orders and monetary penalties were more common for offences without DFV.

Table A6-4: Summary of penalty types for non-aggravated assault occasioning bodily harm offences (MSO)

	s 339(1) AOBH			
	Higher courts		Magistrates courts	
Penalty type	**No DFV (n=293)**	**With DFV (n=384)**	**No DFV (n=4,061)**	**With DFV (n=1,994)**
Imprisonment	47.8%	62.5%	25.7%	51.3%
Partially suspended	3.4%	8.1%	1.4%	2.6%
Wholly suspended	18.8%	14.8%	14.6%	13.5%
Intensive correction order	2.4%	1.3%	0.8%	0.9%
Community service	7.5%	1.8%	9.8%	2.7%
Probation	12.3%	6.5%	18.9%	18.7%
Monetary	5.8%	3.9%	25.3%	7.8%
Good behaviour, recognisance	1.7%	0.8%	3.3%	2.3%
Convicted, not further punished	0.3%	0.3%	0.3%	0.2%
TOTAL	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Data include adult offenders, MSO, cases sentenced on or after 5 May 2016 (following the introduction of DFV as an aggravating factor).
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

Aggravated AOBH

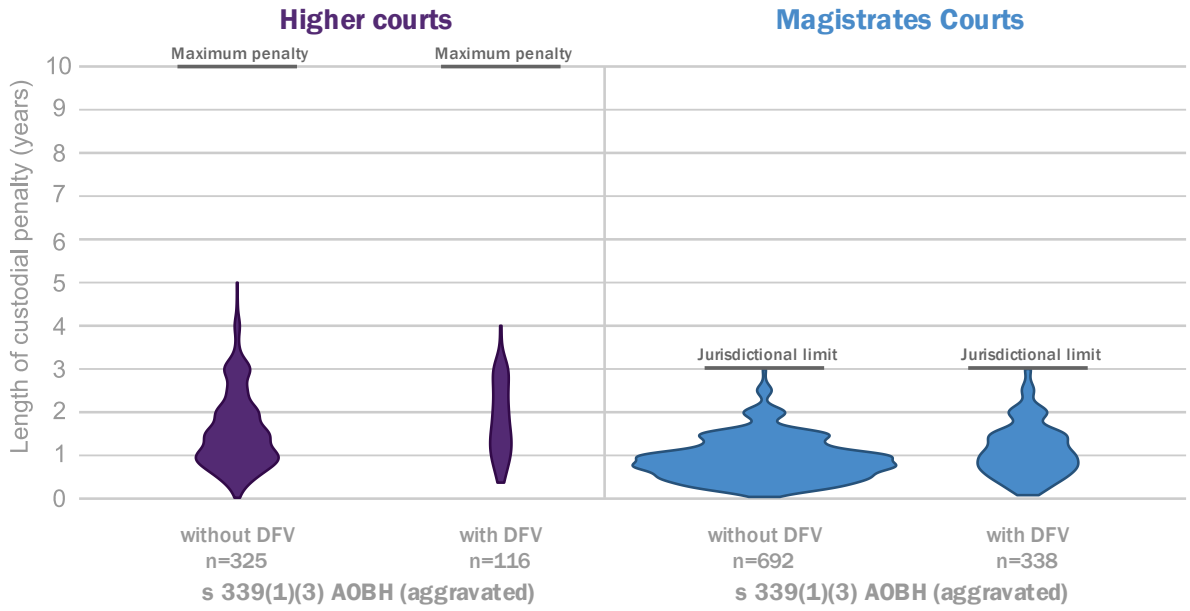
Figure A6-5 shows the distribution of custodial sentence lengths for aggravated AOBH offences sentenced in the higher and lower courts with and without DFV.

The longest custodial sentence for aggravated AOBH was 5 years — half of the 10-year maximum penalty. This was the same as the longest sentence for non-aggravated AOBH — see above.

In the higher courts, aggravated AOBH offences without DFV tended to receive shorter sentences compared with cases that did have DFV. Sentences for cases without DFV were generally less than 2 years in length, whereas offences with DFV commonly received sentences between 1 and 3 years.

In the Magistrates Courts, aggravated AOBH offences both with and without DFV reached the 3-year jurisdictional limit. For offences without DFV, sentences were generally shorter, clustering around one year; however, where DFV was involved, sentences were spread more evenly up to the 2-year mark.

Figure A6-5: Distribution of custodial penalties for aggravated assault occasioning bodily harm offences (MSO) with and without DFV



Data include adult offenders, MSO, cases sentenced on or after 5 May 2016 (following the introduction of DFV as an aggravating factor).
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

Table A6-5 provides a breakdown of the most common penalties imposed for aggravated AOBH with and without DFV factors in the higher courts and the Magistrates Courts. For all aggravated AOBH offences, the most common penalty was imprisonment. This was highest for offences involving DFV. While imprisonment was the most common penalty for AOBH without DFV in the Magistrates Courts, it made up a lower proportion of penalties overall compared to other categories, accounting for only two in five penalties (38.9%). Monetary orders were considerably higher than for the other categories, comprising 12.2 per cent of penalties in the Magistrates Courts for cases without DFV.

As for common assaults and AOBH simpliciter, during the data period, custodial penalties were more common for aggravated AOBH with DFV than without, irrespective of sentencing court, except that in the higher courts partially suspended sentences were more common for offences without DFV. Imprisonment was much more common for aggravated AOBH with DFV than without.

Table A6-5: Summary of penalty types for aggravated assault occasioning bodily harm offences (MSO)

	s 339(3) AOBH			
	Higher courts		Magistrates courts	
Penalty type	**No DFV (n=406)**	**With DFV (n=138)**	**No DFV (n=1,138)**	**With DFV (n=419)**
Imprisonment	53.5%	65.9%	38.9%	61.1%
Partially suspended	7.9%	5.8%	2.0%	3.6%
Wholly suspended	17.5%	12.3%	18.5%	14.8%
Intensive correction order	1.2%	0.0%	1.4%	1.2%
Community service	5.2%	1.5%	7.4%	2.9%
Probation	10.8%	13.8%	17.2%	13.6%
Monetary	2.0%	0.7%	12.2%	2.2%
Good behaviour, recognisance	1.7%	0.0%	2.1%	0.7%
Convicted, not further punished	0.3%	0.0%	0.2%	0.0%
TOTAL	**100.0%**	**100.0%**	**100.0%**	**100.0%**

Data include adult offenders, MSO, cases sentenced on or after 5 May 2016 (following the introduction of DFV as an aggravating factor).
Source: QGSO, Queensland Treasury — Courts Database, extracted November 2019.

Appendix 7: A review of evidence of the effectiveness of the WA mandatory sentencing reforms

WA Government characterisation of effectiveness (2010–2016)

The former WA government repeatedly cited statistics to announce that the mandatory sentencing laws introduced in 2009 had resulted in a significant drop in assaults against police and public officers.

- A 2010 press release indicated that 'reported assaults against police officers had decreased by 28 per cent since the Liberal–National Government introduced the legislation. They asserted that this decrease in assaults was directly attributable to the mandatory sentencing that came into force in 2009'.[2]
- A 2014 press release, accompanying the statutory report discussed below, stated:[3]
  - A 33 per cent reduction in 'the number of assaults against police officers' (from 1,346 to 892) since the introduction of the mandatory sentencing laws in 2009.
  - A 27 per cent reduction 'in the number of charges of' assaulting a public officer prescribed under the legislation and causing bodily harm (numbers not stated).
  - A 30 per cent reduction 'in the number of charges' of obstructing a public officer, 'which may indicate that members of the public are more cautious in their dealings with police and other public officers' (numbers not stated).
- A 2016 press release (which post-dates the evaluations discussed below) stated a 34 per cent reduction in 'incidents' of police assaults in 2015 compared with 2009 (800 incidents, down from 1,227). It also stated a 26 per cent reduction in assaults against public officers (1,185 incidents, down from 1,613). Incidents of obstructing public officers had also reduced by 35 per cent (1,758, down from 2,718).[4]

Instead, statistics regarding various forms of assault rates were generally rising from 2013 to 2019 (discussed below). These were attributed in part, on an apparently anecdotal presumption, to a change in community attitudes (this time in the negative).

WA analysis — Tasmanian Sentencing Advisory Council (2013)

A 2013 TSAC report examined the evidence regarding the WA position at that time, and noted that, in respect of the 2010 media release, 'whether this decrease was, in fact, the result of mandatory minimum legislation has not been substantiated'.[5] TSAC obtained records from the Business Intelligence Office, WA Police:

- Annualised number of reported assaults on police officers from June 2006 to December 2010 showed a trend in offences that appears to indicate a substantial decline in the number of assaults since the introduction of mandatory sentencing in September 2009.
- Additional records from the same office indicate the monthly number of reported assaults on police officers from July 2005 to January 2011 … indicate that the decline in reported assaults began prior to the introduction of mandatory sentencing in September of 2009.[6]

TSAC recounted a WA Police explanation that this pre-amendment decline may be due to community behaviour being influence by 'the introduction of the mandatory sentencing bill and the public protest in March 2009 in support of the legislation and subsequent debate in Parliament'.[7]

TSAC noted two other factors that could explain the decline in assaults on police officers. The first was 'a substantial decline in public place assaults that matches the pattern of assaults on police officers for the same period' with the financial years 2009–2010 to 2010–2011 'showing the largest decline relative to previous years'.[8]

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2 Sentencing Advisory Council (Tasmania), *Assaults on Emergency Service Workers* (Final Report No. 2, March 2013) 29, citing Rob Johnson and Christian Porter, 'Assaults against Police Plummet under Mandatory Sentencing Laws' (Media Release, 22 September 2010) and noting an apparent further release: Rob Johnson and Christian Porter, 'Reported Assaults against Police Continue to Decline' (Media Release, 23 June 2011). Government media releases are also discussed in Western Australian Police Union of Workers, *Mandatory Sentencing Report* (April 2013) 22–3.

3 Liza Harvey and Michael Mischin, Government of Western Australia, 'Assaults on WA Police officers cut by 33 per cent' (Media Release, 26 June 2014).

4 Liza Harvey and Michael Mischin, Government of Western Australia, 'Tough laws see drop in assaults against police' (Media Release, 19 August 2016).

5 Sentencing Advisory Council (Tasmania), (n 2) 29. The analysis therein was noted in Western Australian Police Union of Workers, *Mandatory Sentencing Report* (April 2013) (n 2) 39–40.

6 Sentencing Advisory Council (Tasmania) (n 2) 29.

7 Ibid.

8 Ibid.

The second was an April 2008 Commissioner's instruction, just prior to the implementation of the mandatory sentencing legislation, 'that members of the police service were not to be "rostered, directed or encouraged" to patrol alone'.[9] A WA Police publication separately described that policy change as 'a significant part of Union history regarding protection of our Members and was achieved after 24 years of constant lobbying'.[10] TSAC noted that it was 'a factor that could have contributed to this recent decline, apart from the introduction of the mandatory minimum penalty legislation in September 2009'.[11]

Single-officer patrols — literature review (2012)

A 2012 Australian Institute of Criminology literature review found that there was 'no Australian research available that has evaluated single person patrol strategies to determine the effects — either positive or negative — were the same after its widespread implementation'.[12] Most research was from the 1980s in the United States and 1990s in Australia.[13] The little research available 'found no statistical difference in safety between the single and two person patrols' and 'officers were assaulted at the same rate regardless of their assignment to single or two person patrols'.

However, 'the likelihood of sustaining injury during an assault [the threshold for the WA mandatory sentencing regime] was statistically more likely for those patrolling alone compared with those patrolling in pairs [and] this might indicate that although the rates of assault may appear similar, the severity of injury could be greater for those officers working alone'.[14] Use-of-force incidents had been found to have occurred for more two-person patrols than single-person patrols.[15]

WA Police Union report (April 2013)

A WA Police Union report questioned the WA Government's statements that the assaults on police officers causing bodily harm would see the offender inevitably incarcerated, finding an apparent 'disconnect between what was promised by politicians and what is the reality of the legislation'.[16]

The Union expressed concern about data and evaluation. Data that it obtained 'from WA Police … and other agencies not only demonstrated fluctuations in the numbers of assaults since the introduction of the legislation but also highlighted some inherent concerns about the inter-agency recording of the specific data'.[17] A 'different picture' to the reduction acknowledged in Ministerial media statements and media reports was painted by 'reviewing the statistics since the amendments to the *Criminal Code* were enshrined':[18]

There is undoubtedly a drop in the number of assaults in 2011 when compared with 2010, and also when compared with the year before the legislation was enacted. However, if one refers solely to the 2010–2012 percentage change, the number of assaults on public officers has increased since the inception of the mandatory sentencing legislation [number of incidents of assaults on public officers up 5.4 per cent; number of offences up 8.6 per cent].[19]

> When analysing the data obtained from the DPP, [WA Police] and the Minister's Office, the number of imprisonments resulting from the Assault Public Officer (Prescribed Circumstances) charge has increased from the legislation's enactment. However, this increase in imprisonments … has moved in tandem with the increase in assaults on public officers in general … most notably in the year 2012.[20]

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9 Ibid.

10 Dave Lampard, '10 years of OSH', *WA Police News* (October 2013) 24 <http://www.rotary7610.org/documents/POLICE%20NEWS%20OCT2013-%20(A)%20Members.pdf>.

11 Sentencing Advisory Council (Tasmania) (n 2) 29. For a more detailed discussion of this change in police policy, see Jessica Anderson and Kym Dossetor, 'First-Response Police Officers Working in Single Person Patrols: A Literature Review' (AIC Reports, Technical and Background Paper No 49, 2012) 27–9.

12 Anderson and Dossetor (n 11) 45 and see x.

13 Ibid 41 and see further vii, 3, 47.

14 Ibid viii and see further 16, 17.

15 Ibid ix.

16 Western Australian Police Union of Workers, *Mandatory Sentencing Report* (April 2013) 3.

17 Ibid 3.

18 Ibid 41.

19 Ibid 20-1, Tables 5 and 6 — WA Police data obtained by the Union. The WA DPP would later note 'that there has however been an overall 33% reduction in the number of assaults on public officers (not limited to police officers) over a four year period (from 1392 per annum to 892) and submitted that on this basis it was incorrect to state that the initial decrease had been "reversed"': Western Australian Government, *Statutory Review: Operation and Effectiveness of the 2009 Amendments to sections 297 and 318 Criminal Code* (26 June 2014) 9.

20 Western Australian Police Union of Workers (n 16) 41.

The Union noted the matters raised in the TSAC review and queried: 'is the data the Government includes in its media statements about declines in assaults from the inception of the legislation skewed?'[21]

It had concerns about a lack of publicity (as at 2013) driving the deterrent effect of the new scheme:

> Could the increase in the number of assaults on public officers mean that the wider community's interest in protecting the safety and wellbeing of public officers, and more specifically Police Officers, has waned? Since the year beyond the introduction of the legislation and the Government's 'Assault a Police Officer, go straight to jail' catch-cry, there have been no advertising or continued awareness campaigns run by the Government … Given mandatory sentencing is considered to be a deterrent for both offenders and would-be offenders, and it is acknowledged that debate in 2009 had the community baying for reform, has the deterrent effect worn off because this topical issue has been left to fall by the wayside?[22]

The Union urged the DPP, WA Police and the Minister's Office to produce regular, public reports regarding trends, patterns, fluctuations in assaults, specific data about categories of public officers assaulted and how charges progress:[23]

> Consistency in the data reporting is pivotal. Given the differences in the data the Union obtained from the various agencies, it appears there is no consistency in how assaults and the Assault Public Officer (Prescribed Circumstances) charges are recorded. In order to accurately indicate how the legislation is being applied and its efficacy, it is vital that all the data is recorded appropriately, consistently, in a timely fashion and perhaps within a centralised database.[24]

While the Union unreservedly supported the 2009 amendments,[25] it raised strong concerns about too narrow a filter being applied to internal police guidelines (Laying of Charges — Assault Public Officer (Prescribed Circumstances)). The concern was with how the gatekeeping prosecutors applied the guidelines (with charges being downgraded or discontinued),[26] not the guidelines themselves.[27] Separate from DPP guidelines, they were developed in response to the mandatory sentencing regime with the purpose of ameliorating 'the harsh effects of the operation of this law on assaults at the lower end of the scale of assaults'.[28] Requirements included approval prior to charging (often, it would appear, by a DPP representative).

The guidelines required satisfaction not only of statutory bodily harm, but bodily harm that is 'fairly and medically assessed as reaching a level of significance which would exclude any reasonable description of the injury as being insignificant or trivial or minor or transient'.[29]

The report also discussed concerns raised by some in Parliament that the intention of the legislation might be frustrated by (the executive) prosecutorial application of guidelines regarding whether to charge a mandatory sentence offence or an alternative charge that retained 'full discretion'.[30]

WA Government department statutory review (26 June 2014)

The 2009 amending legislation required a review 'of the operation and effectiveness of the amendments' as soon as practicable after the third anniversary of commencement (September 2012)'.[31] The report was tabled in Parliament on 26 June 2014.[32] It relied on lower court data,[33] and did not mention the change in patrol policy.

The review examined only charges involving bodily harm. No charges involving GBH with the relevant 'prescribed circumstances' had been lodged since the amendment: 'This may reflect the fact that assaults on public officers which result in grievous bodily harm are rarer than the less serious assaults encompassed by section 318 [bodily harm]'.[34] The 2013 and 2014 amendments were not required to be reviewed.

The review resolved apparent confusion about whether the DPP or police determined whether a charge with the mandatory sentence was prosecuted [it would appear, in the Magistrates Court]. Due to a 30 June 2013 change,

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21 Ibid 42.
22 Ibid.
23 Ibid 48.
24 Ibid 49.
25 Ibid 53.
26 Ibid 42–3.
27 Ibid 44.
28 Ibid 10. See also Western Australian Government (n 19) 4.
29 Western Australian Police Union of Workers (n 16) 10–11 and 14–15.
30 Ibid 12–14.
31 *Criminal Code Act Compilation Act 1913* (WA), sch ('*Criminal Code*)'s 740A.
32 Western Australian Government (n 19).
33 Ibid 4: 'For the most part these matters are heard before magistrates rather than in the higher courts'.
34 Ibid 1.

'decisions regarding summary prosecutions under the mandatory sentencing provisions of section 318 are made within WA Police'.[35] This discretion was being exercised by a three-person panel from the Prosecuting Services Division (Assistant Divisional Officer, Prosecuting Regional Coordinator and Senior Solicitor). Police prosecutors had no authority to 'downgrade' charges by remove prescribed circumstances without the Panel's consent.[36]

About half of the surviving charges leading to conviction in the Magistrates Court were downgraded so that the mandatory sentencing scheme did not apply (45 of 84).

The numbers of charges in lower courts, for the three-year period since commencement, were as follows.[37]

- 106 section 318 charges with a specified mandatory component were lodged in lower courts (89 in the Magistrates Court, 17 in the Children's Court).
- 20 of those 106 charges were later dismissed or withdrawn and three were yet to be finalised.
- Of the remaining 86 charges that were finalised and resulted in a conviction:
  - 39 had the mandatory component of the legislation enforced, with a mandatory period of imprisonment or detention.
  - 45 charges finalised were 'downgraded' to remove the 'prescribed circumstances' component of the charge [and so mandatory sentences did not apply].
  - 'Two outcomes [were] still under investigation'.

The review compared information about charges lodged for both the bodily harm and GBH sections for the periods three years before and three years after commencement of the amendments. Lower-court case management system information showed that during the first three years following the 2009 amendments, there was a:

- 27 per cent decrease in section 318 charges, and
- even though the number of total charges lodged decreased, charges for offences related to section 297 remained constant.[38]

The review report noted that:

> These figures suggest that either the rate, the reporting or the prosecution of these assaults has decreased. It is notable that charges for obstructing a public officer have also decreased [by 30 per cent]; this may suggest that members of the public are exercising more caution in their interactions with public officers. One must however be cautious about attributing these statistics to the impact of the 2009 amendments. In particular, it should be noted that crime rates overall decreased during this period, even as the Western Australian population increased — all charges for criminal offences (including traffic offences) decreased by 14% over the same period.[39]

The 2014 and 2016 press releases did not mention this need for caution and the general reduction. The 2014 release stated that the 'legislation [was] shown to be working as intended' and 'the laws had prompted a cultural shift in the way WA police officers were treated in the community'.[40] The 2016 release stated: 'the continuing reduction in assaults indicates [the legislation] has been successful … the mandatory sentencing legislation has proven to be an effective deterrent against violence'.[41]

Stakeholder feedback to the 2014 statutory review regarding the effectiveness of the new scheme was more muted and did not draw conclusions as the media releases did. The WA Police Commissioner advised: 'To determine if the legislation is achieving its intended objectives and meeting community expectations, it is likely that a formal longer-term study and evaluation will be required'. He advised information provided by the WA Police Prosecuting Services Division indicated that in real terms there had been an overall 33% reduction in the number of assaults on police from 1346 to 892 over a four-year period, although it was unclear whether this reduction could be attributed to the amendments as it was not known what other factors may have contributed.[42]

The WA DPP noted:

> a slight increase in the total number of assaults (892) in the third year following the passage of the mandatory sentencing amendments when compared to the second year (850). He noted that there has however been an

35 Ibid 2.

36 Ibid 2–3.

37 Ibid 3.

38 Ibid 3.

39 Ibid 4.

40 Harvey and Mischin (n 3); Government of Western Australia (n 19).

41 Harvey and Mischin (n 4); Government of Western Australia, 'Tough Laws See Drop in Assaults Against Police' (Media Release, 19 August 2016).

42 WA Government (n 19) 5.

> overall 33% reduction in the number of assaults on public officers (not limited to police officers) over a four-year period (from 1392 per annum to 892).[43]

The DPP 'noted that the existence of the PSD [WA Police Prosecuting Service Division] Guidelines reflects the fact that 'where judicial discretion is removed it does not remove discretion so much as redistribute it to other parts of the criminal process'.[44]

So did the Chief Judge of the District Court (the operation of the amendments 'has a tendency to transfer sentencing discretion from courts to police and prosecution authorities')[45] and the Mental Health Law Centre ('by the choosing of a particular offence provision, individual officers … decide, in effect, whether or not the accused will go to jail if found guilty').[46] The Chief Judge explained:

> Where an offence has been committed for which a mandatory sentence of imprisonment is required … but the facts of the offence or the personal circumstances of the offender may make it unjust for a term of imprisonment to be imposed, there is a prospect that the prosecution will not be for the offence committed but for a lesser offence … it is highly undesirable for police or prosecuting authorities to need to consider charging a person with an offence which is less serious than the offence which has been committed by reason of mandatory sentencing provisions. Unlike sentencing decisions, prosecution decisions are not public decisions and the reasons for the decisions are not always disclosed. Further, the decisions are not subject to review upon appeal.
>
> … It would be far preferable for prosecutions to be for offences that have been committed and for judicial officers to have an unfettered sentencing discretion. Judicial officers would express all the factors they have taken into account in imposing a sentence and their decisions would be subject to appeal in the ordinary way.[47]

The WA Chief Magistrate advised that people charged under section 318 with a mandatory-penalty offence:

- pleaded not guilty at much higher rates than the general rate of not guilty pleas in the Magistrates Court;
- the 'consequence of a mandatory term of imprisonment would appear to have clearly influenced the decision to plead not guilty to the matters';
- a high rate of not guilty pleas 'would indicate an increase in the workload of the Magistrates Court';
- it 'would also appear likely that there were greater delays and more appearances … whilst matters were negotiated resulting in either the withdrawal or downgrading of charges'; and
- 'the overall impact of the higher rate of not guilty pleas in respect of these charges was not significant in the context of the volume of work in the Magistrates Court'. Given 'the relatively small number of charges under section 318 in prescribed circumstances'.[48]

The St John Ambulance Service 'did not provide any figures but advised that the service "continued to see assaults on ambulance officers and believed the legislation is not acting as a suitable deterrent" and rates of assaults on ambulance officers seemed to have remained the same since the amendments'. The point was also made that: 'Alcohol affected or drug-affected people and psychiatric patients who are moved to assault an officer are unlikely to be inclined to think about the existence of legislation'.[49]

The WA Department of Corrective Services advised in 2013 'there had been no assaults on prison officers resulting in a conviction under section 297 or 318 … it was not considered appropriate to prosecute under these provisions for the assaults that had occurred (including a serious assault on a prison officer in 2012)'.[50]

The WA Department of Transport 'advised that since 2009 there had been three prosecutions for assaults on Transit Officers under section 318, all relating to an incident on 20 November 2011' resulting in imprisonment and considerable media attention. It presumed 'that the profile of the incident and the significant penalties imposed have acted as a deterrent' and noted no further instances of serious assaults on transit officers occurred since that time.[51]

The statutory review concluded:

> One problem identified in stakeholder consultation was what is seen as a lack of transparency in the process of determining whether to charge an alleged offender with assault in prescribed circumstances … Unlike judges' sentencing decisions, prosecuting decisions are not made public, and it seems the process adopted has

43 Ibid 9.
44 Ibid 6.
45 Ibid 7.
46 Ibid 8.
47 Ibid 7.
48 Ibid 8.
49 Ibid 7.
50 Ibid 6.
51 Ibid.

> engendered confusion and resentment among some of the public officers sought to be protected as well as concern on the part of advocates for the mentally impaired.
>
> It is difficult to express any conclusion on the practical operation of these amendments from an investigative or prosecutorial viewpoint given the recent change in the process for determining when a person is to be charged with the summary offence in section 318 in 'prescribed circumstances'. The alleged problems set out in, for instance, the Police Union report, may no longer be relevant but it is too early to assess whether this will be the case.
>
> … The statistics gathered by the Department would tend to support the proposition that assaults on public officers have decreased as a result of the 2009 amendments, yet they do not prove that this is the case.[52]

It recommended 'that a further review of the operation and effectiveness of the amendments made by the *Criminal Code Amendment Act 2009* be conducted in five years' time' [June 2019].[53] This was also announced by the government in Parliament[54] and in a press release.[55] The Council is not aware of any further review taking place.

Accepting a second recommendation, the Government undertook to 'investigate the feasibility of a narrowly focused exemption in respect of people with mental illness, cognitive impairment or relevant disabilities, which would permit a judicial decision-maker to consider any mental impairment an accused may have when imposing a sentence'.[56] The Council is uncertain what progress has been made on the implementation of this recommendation.

Office of the Inspector of Custodial Services report — assaults on Staff in Western Australian prisons (20 July 2014)

A 2014 report covered a five-year period but concluded that 'as the Department does not maintain a register of when a prisoner is given a mandatory sentence, it is impossible to determine the effect of the new [2009 mandatory sentencing] law on people in custody'.[57] It also noted that:

> Given the broad definition afforded to 'bodily harm', the mandatory penalties for 'serious assaults' under the criminal law are of potentially broad scope. However, the Department's policy documents use very different and much narrower definitions. Whilst Parliament considers that assaults occasioning bodily harm to prison officers deserve a minimum of six months' imprisonment, very few of these would meet Departmental definitions of a 'serious assault'.[58]

The report came 'at a time when assaults on staff have been widely reported in the media', with a spike of assaults on prison staff in September 2013.[59]

The rate of assault was 0.46 assaults per 100 prisoners, the highest monthly rate since November 2004. However, very little detail surrounding these assaults was furnished in media reports. For example, little distinction was made between assaults requiring hospitalisation and assaults where the victim received no physical or psychological injuries.[60]

The report also noted that 'generalised counts and records do not reflect the particular circumstances in which assaults occur or the type of behaviour involved', illustrating this point by the following example:

> The figures also need to be placed in the context of what is being recorded, a point well-illustrated by data from September 2013. That month, there was a distinct spike in assaults, with 24 recorded cases, three times more than the average. However, almost a third of these assaults were committed by the same woman, in three incidents, over two days … Two mornings in a row, she threw her breakfast at a staff member, each incident constituting an assault. The third incident occurred later on the second day. She was under escort after a visit to a mental health nurse and lashed out at staff, punching, scratching and kicking them. Five staff members sustained scratches and bruises and because there were five victims, five assaults were recorded. This illustrates how quickly the assault rate can rise based on the behaviour of certain individuals or the presence of multiple staff in a single incident.[61]

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52 Ibid 11.

53 Ibid.

54 Western Australia, *Parliamentary Debates,* Legislative Council, 26 June 2014, 4645 (Michael Mischin, Attorney-General).

55 Harvey and Mischin (n 3) and Government of Western Australia (n 19).

56 Western Australian Government ((n 19) 11 and Harvey and Mischin (n 3).

57 Neil Morgan, Office of the Inspector of Custodial Services, Government of Western Australia, *Assaults on Staff in Western Australian Prisons* (July 2014) 35 [8.5].

58 Ibid 4 [3.16].

59 Ibid 2 [3.9].

60 Ibid 2 [3.9].

61 Ibid i.

Further developments in WA

There have been a number of Questions on Notice in the WA Parliament in recent years regarding assaults on police. All relate to high-level figures provided by the WA Police Force. None of them are at a level of specificity that would allow analysis of the application of the mandatory sentencing provisions. While the numbers vary (as they relate to different questions or incidents versus charges, and often carry a caveat that they were subject to revision), two points to note are that:

- assault rates appear to be rising; and
- blame has been attributed to negative changes in community attitudes and methylamphetamine.

A March 2018 media story[62] reported an almost 9 per cent increase in people charged with assaulting a public officer in 2017 (1,094 in 2017, 1,004 in 2016) (note, however, that this does not specifically identify bodily harm offences triggering the mandatory sentencing provisions).

The WA Police Minister was quoted as 'suspecting' that 'a proportion of the increase could be connected with the meth problem'. The Shadow police minister (the Opposition was in government when the mandatory sentencing provisions were introduced) was quoted as saying that 'in 2009 there were more than 1,300 assaults against police officers, so mandatory sentencing continues to have an impact, despite the significant increase in our population and the scourge of meth'.

The article stated that a count of 962 offences of assaulting a police officer in 2017 was 'the highest in almost 10 years' and 'assaults on police officers have been increasing each year for the past four years, rising from 800 cases in 2014'.

The article reproduced a statement made to other media by the outgoing police commissioner the previous year: '[Mandatory sentencing is] a very easy thing to implement, it's expensive in the long run, but it doesn't really solve the problems, and I would like to have seen more money spent on the other end of the spectrum than on the mandatory sentencing end'.

On 13 June 2019, the Minister for Police provided three separate sets of figures. All showed increases. Firstly, the number of unique police officers assaulted in each calendar year from 2013 to 2019 to date (in response to the question 'How many police officers were seriously assaulted?'):[63]

2013	2014	2015	2016	2017	2018	2019
652	669	684	781	759	761	257 (to 8 April)

Second, the number of people charged with 'Assault of Public Officer' under section 318(1)(d) of the *Criminal Code* (this includes occupations other than police):[64]

2013	2014	2015	2016	2017	2018	2019
816	792	848	926	969	994	293 (to 8 April)

Third, the number of charges under section 318(1)(d) in each of the following years (again, this includes occupations other than police):[65]

2013	2014	2015	2016	2017	2018	2019
1,040	1,074	1,098	1,273	1,421	1,392	392 (to 8 April)

62 Dylan Caporn 'Three Public Officers Assaulted Each Day on Average Due to WA's Meth Crisis', *The West Australian* (Web Page, 19 March 2018) < https://thewest.com.au/news/wa/three-public-officer-assaulted-each-day-on-average-due-to-was-meth-crisis-ng-b88775293z>. This is likely derived from Police Force figures provided in Parliament (save for the twelfth month of the second year). One question was: How many people have been charged with assaulting a police officer, with the officer suffering bodily injury, that attracts a mandatory minimum sentence? The response was 'data on sentencing and court outcomes should be sought from the Department of Justice as the agency responsible': Western Australia, *Parliamentary Debates*, Legislative Council, 13 March 2018, 565–6 (Stephen Dawson, Minister for the Environment and Disability Services).

63 Western Australia, *Parliamentary Debates*, Legislative Assembly, 13 June 2019, 4259–60 (Michelle Roberts, Minister for Police; Road Safety). The Western Australian Police Force provided this information.

64 Ibid 4260–1 (Michelle Roberts, Minister for Police). The Western Australian Police Force provided this information. 'Persons charged per year is a count of unique persons charged under s. 318(1)(d) … As such a person charged multiple times within a year would be counted once. A person charged in different years would be counted against each relevant year. Charges per year is a count of unique charges under "Assault Public Officer" as defined in s. 318(1)(d) … where an associated brief has been created from 01 January 2013 to 08 April 2019 inclusive'.

65 Ibid.

On 20 August 2019, it was stated that 'as of 25 July 2019, there were 975 reports of assaults on police officers during the financial year 2018–19'.[66]

On 15 October 2019, the following statistics were provided.[67] The number of charges under section 318(1)(d) was:

2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19
1,137	1,059	1,025	1,178	1,426	1,360	1,409

Most recently, on 17 March 2020, the following was provided in response to the question 'How many police officers were assaulted?'. These statistics cover all assault offences against police officers (including both 'serious' and 'common' assaults):[68]

2017	2018	2019	2020
759	764	787	122 (to 16 Feb)

On 3 September 2019, statistics regarding 'the number of assault incidents reported' on paramedics in WA, as of 22 August 2019, from St John Ambulance, was:[69]

2015–16	2016–17	2017–18	2018–19
98	140	142	115 (to 22 August)

On 22 August 2019, the Minister for Regional Development stated that:

> The government accepts that there has been a change of behaviour in the community. General standards and the level of respect for authority in the community has been driven in part, but not exclusively, by a massive meth problem. It provides real challenges for the community, police officers, and … firefighters. We also acknowledge that it provides challenges, of course, for people in the medical profession.[70]

The Deputy Leader of the Opposition (in government when the mandatory sentencing provisions were introduced) noted an increase in assaults on police to 975 in 2018–19, up from 911 in 2017–18:

> Most of those assaults were due either to people being liquored up, or to the meth crisis—people who are in a highly agitated state and not fully responsible for their actions, and engage in assaulting police officers. However, it is also indicative of the mindset of our society. That needs to be corrected. Instead of looking at how we can change the laws to ensure that people who assault police officers, or other public officers, and cause them bodily harm are punished and put away for longer, in order to act as a deterrent, we have resorted to police wearing body armour. Our police officers could drive around in armoured cars. That is hardly protecting police officers. That is isolating them from society. That is doing nothing to address the societal issue.[71]

On 29 October 2019, a possible decline in methamphetamine use was canvassed: 'Meth consumption in metropolitan Perth has decreased 25 per cent since October 2016 … That is what the wastewater testing shows. Meth consumption in regional Western Australia has decreased 25 per cent since the peak in August 2016'.[72]

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66 Western Australia, *Parliamentary Debates*, Legislative Council, 20 August 2019, 5744–5 (Stephen Dawson, minister representing the Minister for Police). The Western Australia Police Force provided this information.

67 Western Australia, *Parliamentary Debates*, Legislative Council, 15 October 2019, 7617–8 (Stephen Dawson, minister representing the Minister for Police).

68 Western Australia, *Parliamentary Debates*, Legislative Assembly, 17 March 2020, 1494 (Michelle Roberts). The Western Australia Police Force provided this information.

69 Western Australia, *Parliamentary Debates*, Legislative Council, 3 September 2019, 6180 (Alanna Clohesy, parliamentary secretary representing the Minister for Health).

70 Western Australia, *Parliamentary Debates*, Legislative Council, 22 August 2019, 5859 (Alannah MacTiernan, Minister for Regional Development).

71 Ibid 5861 (Michael Mischin, Deputy Leader of the Opposition).

72 Western Australia, *Parliamentary Debates*, Legislative Assembly, 29 October 2019, 8459 (Mark McGowan, Premier). See also 8458.

Queensland Sentencing Advisory Council

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