

11 February 2020

Our ref: KS-CrLC

Queensland Sentencing Advisory Council
GPO Box 2360
Brisbane QLD 4001

By email: [REDACTED]

&
[REDACTED]

Dear Madam/Sir

Terms of reference - Penalties for assaults of public officers

Thank you for the opportunity to provide comments on the Terms of Reference for the Queensland Sentencing Advisory Council's (**QSAC**) review into penalties for assaults on police and other frontline emergency service workers, corrective services officers and other public officers. The Queensland Law Society (**QLS**) appreciates being consulted on this important review.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled by members of the QLS Criminal Law Committee, whose members have substantial expertise in this area. We make the following comments in relation to the Terms of Reference.

Many lawyers in criminal practice regularly deal with people charged with offences under section 340 (Serious assaults) of the Criminal Code (**the Code**) and section 790 *Police Powers and Responsibilities Act 2000* (Offence to assault or obstruct police officer). QLS is of the view the courts are appropriately dealing with people guilty of these offences.

Whilst the courts have a discretion to impose a range of penalties, it is common to expect that imprisonment will be the outcome in offences of this nature where the facts suggest serious misconduct. Appellate decisions also reflect that the range of penalties imposed by the courts for offences under section 340 of the Code can routinely include either wholly suspended or actual imprisonment.

It is therefore appropriate for section 340 to continue to apply to police officers and other frontline emergency service workers and other public officers and for judicial discretion with respect to such offending to be preserved. QLS reaffirms our long held position of the

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importance of retaining judicial discretion in sentencing. Any mandatory sentencing provisions will likely have an impact on increasing remand and custody rates.

The Society would be opposed to targeting offences of assaults of public officers through the creation of a separate provision or provisions, or through the introduction of a circumstance of aggravation. QLS considers that section 340 is already appropriately targeted to public officers. The creation of a new offence provision or a circumstance of aggravation would be entirely redundant. QLS submits that current laws are apt to deal with the range of criminal conduct envisaged by the reference.

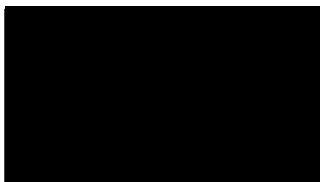
QSAC will necessarily approach its review of any suggested reforms from an evidence and/or research based approach. QLS notes that any changes to sentencing laws must also take into account the implications of the *Human Rights Act 2019* and in particular:

- Section 26 – Protection of families and children,
- Section 27 & 28 – Cultural rights,
- Section 31 – Right to fair hearing,
- Section 15 - Right of equality before the law,
- Section 17 – Protection from torture, cruel, inhuman, or degrading treatment.

At this stage the Society does not hold a firm view as to whether 'public officer' in section 340 should be expanded to recognise other occupations including public transport drivers. To enable a considered response to be provided, we require further information regarding frequency and seriousness of offending. However, some refinement may be necessary to remove ambiguity. We will await the requested further information from QSAC in this regard.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] or by phone on [REDACTED]

Yours faithfully



Luke Murphy
President