

Via email to: [REDACTED]

Edocs ref: 5033478; 592302/1

Dear Mr Robertson

Thank you for the opportunity to provide preliminary comment on the Terms of Reference referred to the Queensland Sentencing Advisory Council (QSAC) concerning penalties for assaults on police and other frontline emergency service workers, corrective service officers and other public officers.

The Office of the Public Guardian (OPG) is an independent statutory office which promotes and protects the rights and interests of children and young people in out-of-home care or staying at a visitable site, and adults with impaired decision-making capacity. The purpose of the OPG is to advocate for the human rights of our clients.

The OPG fully supports measures to provide protection to frontline workers who face heightened risks to their safety in undertaking their responsibilities. The OPG relies on police and other frontline officers to protect our clients in any number of situations and we are aware of the unique challenges these officers face in performing their duties on a daily basis.

Below is the OPG's feedback on the matters raised to assist in identifying key issues to be explored in responding to the terms of reference, largely in the context of the OPG's clients. In summary, the OPG recommends the following:

- That diversionary options be enshrined into the Criminal Code for people with impaired capacity, particularly options that address the reasons why people with impaired capacity commit offences against public officers.
- That the offence, penalty and sentencing framework require the context of offending behaviour by a person with impaired 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.
- That QSAC examine what value community education of the penalties for this type of offending will have as a preventative measure for adults with impaired capacity, and consider appropriate alternatives for this cohort.
- That mandatory sentencing not be considered in the terms of reference.
- That specific consideration be given to the impact any changes would have on children and young people who engage with the justice system.

We note your query whether the OPG holds any data or information that might be of assistance in responding to the reference, including information about individuals involved in relevant assaults which may be used for data matching purposes. The OPG does not collect statistical data of this nature but can provide individual case examples to illustrate the issues raised in this response on request.

Preventative v. punitive measures

The Public Guardian acknowledges that custodial sentencing is an important deterrent measure in Queensland's criminal justice system, particularly in the context of assaults against police and other public officers. However, we are concerned that should the inquiry focus only on community perceptions and expectations of strong penalties for such offences, this may be to the detriment of vulnerable people with impaired capacity.

In reviewing penalties for assaults on public officers, it is important to recognise that custodial sentences are not an effective deterrent mechanism for people with impaired capacity. The OPG frequently provides guardianship services and advocates for clients with impaired decision making capacity who have been charged with an assault against a public officer under s 340 of the *Criminal Code*. In our experience, any sentences that are imposed by courts do little to deter further offending for this cohort, given that adults with impaired capacity may be unable to control their behaviour and think through potential consequences. Custodial sentences have minimal impact, apart from detaining those with impaired capacity for an extended period in an environment not equipped to address the underlying cause of their anti-social behaviour.

Rather than increasing penalties, the OPG recommends developing strategies and diversionary options in the Criminal Code that would address the reasons why people are committing these offences in the first place. The prevalence of such incidences amongst adults with impaired capacity indicates the need for appropriate mental health services and funding of 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.

Recommendation:

- That diversionary options be enshrined into the Criminal Code for people with impaired capacity, particularly options that address the reasons why people with impaired capacity commit offences against public officers.

Considerations prior to charges and sentencing

To ensure the offence, penalty and sentencing framework provides an appropriate response to the relevant offending, consideration must be given to the circumstances surrounding the offence for a person with impaired capacity. The OPG is aware of an instance in which a client was charged with assault against a public officer for grabbing the lanyard of a staff member on the front desk of a secure mental health ward. While we acknowledge that a public officer in a mental health unit should never expect to be assaulted and any offending behaviour cannot be ignored, charging an adult with impaired capacity with such a serious offence in that context is disproportionate, considering they are resident in the facility because they require treatment for anti-social behaviours.

We further recommend it be a legislative requirement that information on a person's capacity, trauma history, and any previous engagement with therapeutic and rehabilitative programs be presented to the court prior to sentencing. This is particularly critical for children and adults in disability housing and mental health facilities, and for children in child protection services and youth detention. It is important that the capacity of these cohorts be formally reported on before sentencing occurs, as many of these alleged offenders do not have capacity to be charged, let alone sentenced.

Recommendation:

- That the offence, penalty and sentencing framework require the context of offending behaviour by a person with impaired 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.

Community education

In considering community education measures to enhance knowledge and understanding of the penalties for relevant offending, the OPG fully supports greater education of the general population as a means to reduce offending behaviour. However, OPG questions the value this approach would have for OPG clients, particularly adults with impaired capacity. These adults may be unlikely to benefit from efforts to enhance community knowledge due to factors such as the nature and degree of their impairment, limited education, low IQ, and lack of appropriate role modelling. Adults with impaired capacity may not only have difficulty acquiring knowledge, but also may not be equipped to apply any information they have learnt when they are put in a stressful situation and have reached crisis point.

Recommendation:

- That QSAC examine what value community education of the penalties for this type of offending will have as a preventative measure for adults with impaired capacity and consider appropriate alternatives for this cohort.

Mandatory sentencing

While not referred to in the terms of reference, OPG cautions against any consideration of a mandatory sentencing regime for assaults on frontline officers, similar to that introduced in Western Australia. The potential effect of minimum mandatory sentencing laws on adults with impaired capacity is that the legal framework designed to take into account the mental illness or impairment and culpability of accused persons is removed or reduced. As discussed above, a custodial sentence is unlikely to have any deterrent effect on a person with impaired capacity, given their limited ability to understand the wrongfulness of their actions or the ability to control them. A mandatory sentence that must be imposed regardless of a person's capacity to understand the consequences of their actions would only further isolate adults with impaired capacity from the opportunity to lead positive and productive lives.

Recommendation:

- That mandatory sentencing not be included as a sentencing option in the terms of reference.

Children and young people

The OPG notes that the current terms of reference do not explicitly seek feedback on penalties for young people who commit assault on frontline workers. We strongly recommend that specific consideration be given to the impact any changes would have on children and young people engaging with the justice system should they be charged with assaulting a police officer, frontline

emergency service worker or other public officer. The OPG would welcome the opportunity to provide a detailed submission regarding issues relating to children and young people when the terms of reference are finalised and formal consultation commences. In the interim, we wish to raise the following matters for your initial consideration.

➤ *The age of criminal responsibility*

The OPG has long recommended that the age of criminal responsibility be increased from 10 to 14. At a minimum, we support recommendations of the Atkinson *Report on Youth Justice* (2018) and findings of the Queensland Family and Child Commission (QFCC) in *The age of criminal responsibility in Queensland* (2017) to raise the age of criminal responsibility to 12, or alternately legislating so that children under 12 cannot be sentenced to youth detention.

Given the age of criminal responsibility in Queensland has not increased in line with these findings, it is important that the review of penalties for assaults on frontline officers consider that children as young as 10 could be made subject to any increased penalties and the impact this could have on a child.

➤ *Criminalisation of children and young people in care*

In reviewing penalties, a matter requiring further discussion is the risk of the continued criminalisation of children and young people in the child protection system. This is particularly the case for those young people who are charged with residential-based offences and those with significant mental health needs and behaviours, which are resulting in a police response rather than a therapeutic mental health response. In the OPG's experience, a significant proportion of children and young people within youth detention have a range of prejudicial circumstances that impact on their behaviour. In reviewing the penalties and sentencing regime for assaults on frontline officers, the best interests of these children must be accounted for.

Recommendation:

- That specific consideration be given to the impact any changes would have on children and young people engaging with the justice system.

Thank you again for the opportunity to comment on the terms of reference for the QSAC inquiry into assaults on police and other frontline officers. We look forward to contributing further to the inquiry as it progresses.

Should you require further information regarding this matter, please contact Ms Kelly Unsworth, Manager, Policy and Reporting, Office of the Public Guardian, by email at

Yours sincerely


Christina Thompson
Acting Public Guardian