

**Penalties for assaults on public officers
DCSYW Feedback and Response to Issues Paper Questions**

<p>General Comments</p>	<ul style="list-style-type: none"> • While the Department of Child Safety, Youth and Women (DCSYW) acknowledges that women are more likely to work in some of the sectors being considered and are therefore perhaps more likely to be assaulted, this does not influence the penalties being considered. • DCSYW notes that in some jurisdictions, the offence of assault is aggravated if committed on a female and/or a pregnant female and queries whether this has been considered in Queensland.
<p align="center">Issues Paper Question</p>	<p align="center">Response</p>
<p>Issues Paper Question 1: Should an assault on a person while at work be treated by the law as more serious, less serious, or as equally serious as if the same act is committed against someone who is not at work, and why?</p>	<p>DCSYW acknowledges that public officers should not be the subject of assault during the execution of their duties and considers <u>all</u> 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.</p>
<p>Issues Paper Question 2: If an assault is committed on a public officer performing a public duty, should this be treated as more serious, less serious, or as equally serious as if the same act is committed on a person employed in a private capacity (e.g. as a private security officer, or taxi driver) and why?</p>	
<p>Issues Paper Question 3: Should the law treat assaults on particular categories of public officers as being more serious than other categories of public officer, and why?</p>	
<p>Issues Paper Question 4: Does the current sentencing process in Queensland adequately meet the needs of public officer victims?</p>	
<p>Issues Paper Question 5: Should any changes be considered to the current approach to better respond to victim needs? If so, what reforms should be considered?</p>	
<p>Issues Paper Question 6: Who should be captured within the definition of a 'public officer' and how should this be defined?</p> <p>Are the current definitions under sections 1 and 340 of the Criminal Code sufficiently clear, or are they in need of reform?</p> <p>For example:</p> <p>a) Should the definition of 'public officer' in section 340 of the Criminal Code be expanded to expressly recognise other occupations, including public transport drivers (e.g. bus drivers and train drivers) and public transport workers?</p> <p>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?</p>	
<p>DCSYW notes that the definition of a 'public officer' has an inclusive (but not exhaustive) definition in section 340 of the Criminal Code, which is distinct from the definition outlined in section 1 of the Criminal Code.</p> <p>DCSYW notes that the current definition of a 'public officer' under s340, includes authorised officers under the <i>Child Protection Act 1999</i>; including Child Safety Officers.</p> <p>The definition also includes any person who is discharging a duty imposed under an Act or of a public nature – including public service employees (as a broad category).</p> <p>DCSYW notes that employees of licensed residential and foster care services are captured as public entities under the <i>Human Rights Act 2019 (Qld)</i> (HR Act)</p> <p>Under the HR Act, public entities are bodies such as government departments and agencies, public service employees, police officers and ministers, as well as other organisations that perform functions of a public nature on behalf of the state.</p>	

	<p>Residential workers are employed by non-government organisations that the government funds to deliver functions of a public nature. Similarly, foster and kinship carers are volunteers who receive reimbursements but are also considered public entities.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>DCSYW supports the view that amendments are necessary in Queensland to ensure interstate public officers are extended the same protections as Queensland-based officers when performing functions in Queensland. This is particularly relevant for interstate public officers performing child protection or domestic violence roles in other states close to Queensland borders.</p>
<p>Issues Paper Question 7: Should assaults on people employed in other occupations in a private capacity, working in particular environments (e.g. hospitals, schools or aged care facilities) or providing specific types of services (e.g. healthcare providers or teachers) also be recognised as aggravated forms of assault?</p> <p>For example:</p> <p>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;</p> <p>b) by stating this as a circumstance of aggravation for sentencing purposes under section 9 of the <i>Penalties and Sentences Act 1992</i> (Qld);</p> <p>c) Other?</p>	<p>DCSYW supports 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.</p> <p>Due to the nature of the work and intersection with Child Safety staff, DCSYW does not consider it appropriate that there should be a higher penalty for assaults on Child Safety Officers versus residential care staff.</p> <p>A separate category of victim could be created under section 340 of the Criminal Code to recognise people providing public services in a private capacity similar to those already captured within the definition of a 'public officer'.</p>
<p>Issues Paper Question 8: If section 340 of the Criminal Code is retained in its current form or amended form, is there a need to retain subsection (2) which applies to assaults by prisoners on working corrective services officers (as defined for the purposes of that section), or can this type of conduct be captured sufficiently within subsection (2AA)?</p> <p>What are the benefits of retaining subsection (2)?</p>	<p>Nil response</p>

<p>Issues Paper Question 9: Should assaults against public officers continue to be captured within a specific substantive offence provision (serious assault) or, alternatively, should consideration be given to:</p> <p>a) making the fact the victim was a public officer performing a function of their office, or the offence was committed against the person because the person was performing a function of their office an aggravating factor that applies to specific offences as a statutory circumstance of aggravation (meaning a higher maximum penalty would apply); and/or</p> <p>b) amending section 9 of the <i>Penalties and Sentences Act 1992</i> (Qld) to statutorily recognise the fact the victim was a public officer an aggravating factor for sentencing purposes (in which case it would signal the more serious nature of the offence, but would not impact the upper limit of the sentence that could be imposed)?</p>	<p>Refer to response to questions 1-5 above.</p>
<p>Issues Paper Question 10: What benefits are there in retaining multiple offences that can be charged targeting the same or similar behaviour (e.g. sections 199 and 340 of the <i>Criminal Code</i> as well as sections 655A and 790 of the <i>Police Powers and Responsibilities Act 2000</i> (Qld), sections 124(b) and 127 of the <i>Corrective Services Act 2006</i> (Qld), and other summary offences)?</p>	<p>Nil response</p>
<p>Issues Paper Question 11: Should any reforms to existing offence provisions that apply to public officer victims be considered and if so, on what basis.</p>	<p>Nil response</p>
<p>Issues Paper Question 12: What sentencing purpose/s are most important in sentencing people who commit assaults against police and other frontline emergency service workers, corrective services officers and other public officers? Does this vary by the type of officer or context in which the assault occurs, and in what way?</p>	<p>DCSYW notes that courts must consider a range of sentencing purposes as factors when sentencing, including those set out under section 9 of the PSA.</p> <p>DCSYW supports the view that general deterrence, rehabilitation and the prioritisation of staff and community safety and protection are most important in sentencing people who commit assaults against public officers.</p> <p>DCSYW notes the issues identified in the Issues Paper in relation to deterrence as a general sentencing purpose, including evidence that many people who commit assaults against public officers are drug and/or alcohol affected, young people, mentally ill and/or have a cognitive impairment. Thus while mandatory and presumptive penalties may guarantee that a particular level of punishment will (or will usually) be applied, it may not prevent such assaults occurring or stop the person who has committed it from committing the same type of offence again.</p>
<p>Issues Paper Question 13: Does your answer to Question 12 change when applied specifically to children/young offenders?</p>	<p>DCSYW acknowledges 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.</p> <p>DCSYW also notes that age can already be considered as an aggravating factor for sentencing purposes.</p>

	<p>DCSYW considers the objective and principles under sections 2 and 3, and the sentencing powers under section 175 of the <i>Youth Justice Act 1992</i>, to be important factors to be taken into consideration when sentencing children/young people who commit assaults against police, public officers and other frontline workers.</p> <p>DCSYW notes that, while considered, the Council did not examine the sentencing of juvenile offences in Queensland in detail.</p>
<p>Issues Paper Question 14:</p> <p>Do existing offences, penalties and sentencing practices in Queensland provide an adequate and appropriate response to assaults against police and other frontline emergency service workers, corrective services officers and other public officers? In particular:</p> <p>a) Is the current form of section 340 of the <i>Criminal Code</i> as it applies to public officers supported, or should changes be made to the structure of this section?</p> <p>b) Are the current maximum penalties for serious assault (7 years, or 14 years with aggravating circumstances) appropriate in the context of penalties that apply to other assault-based offences such as:</p> <ul style="list-style-type: none"> • common assault (3 years); • assault occasioning bodily harm (7 years, or 10 years with aggravating circumstances); • wounding (7 years); • grievous bodily harm (14 years)? <p>c) Should any changes be made to the ability of section 340 charges to be dealt with summarily on prosecution election? For example, to exclude charges that include a circumstance of aggravation?</p> <p>d) Are the 2012 and 2014 reforms to section 340 (introduction of aggravating circumstances which carry a higher 14 year maximum penalty) achieving their objectives?</p> <p>e) Are the current penalties that apply to summary offences that can be charged in circumstances where a public officer has been assaulted appropriate or should any changes be considered?</p> <p>f) Do the current range of sentencing options (e.g. imprisonment, suspended sentences, intensive correction orders, community service orders, probation, fines, and good behaviour bonds) provide an appropriate response to offenders who commit assaults against public officers, or should any alternative forms of orders be considered?</p> <p>g) Similarly, do the current range of sentencing options for children provide an appropriate response to child offenders who commit assaults against public officers, or should any alternative forms of orders be considered?</p> <p>h) Should the requirement to make a community service order for offences against section 340(1) (b) and (2AA) of the</p>	<p>Nil response</p>

<p><i>Criminal Code</i> and section 790 of the <i>Police Powers and Responsibilities Act 2000</i> (Qld), in accordance with section 108B of the <i>Penalties and Sentences Act 1992</i> (Qld) (unless the court is satisfied that, because of any physical, intellectual or psychiatric disability of the offender, they are not capable of complying) be retained and if so, on what basis?</p>	
<p>Issues Paper Question 15: If the Government was to introduce sentencing reforms targeting assaults on public officers in general, or specific categories of public officers, on the basis that current sentencing practices are not considered adequate or appropriate, what changes would you support or not support?</p>	<p>Nil response</p>
<p>Issues Paper Question 16: What issues contribute to, or detract from, the community's understanding of penalties and sentencing for assaults on public officers?</p>	<p>The primary issues that detract from the community's understanding of penalties and sentencing for assaults on public officers include the limited understanding of the penalty framework, as well as the factors that impact on sentencing.</p>
<p>Issues Paper Question 17: How can community knowledge and understanding about penalties and sentencing for assaults on public officers be enhanced?</p>	<p>This contributes to the lack of awareness and understanding of children and young people who already have a particularly limited understanding of sentencing practices.</p> <p>DCSYW supports QSAC's position of identifying ways to promote and enhance public understanding of sentencing practices and procedures.</p> <p>DCSYW acknowledges suggestions in the Issues Paper, including the use of improved data collection, education campaigns and the continued publication of information of the kind the QSAC routinely produces, such as sentencing fact sheets and statistical publications to be valuable resources in increasing shared knowledge and understanding.</p>