Queensland Sentencing Advisory Council

Penalties for assaults on public officers

Final Report: Executive summary

August 2020

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.

---

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.

---

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.

---

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.

---

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.