



Queensland Advocacy Incorporated

Our mission is to promote, protect and defend, through advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

Systems and Individual Advocacy for vulnerable People with Disability

20 February 2020

Queensland Sentencing Advisory Council
GPO Box 2360
Brisbane QLD 4001

By email: submissions@sentencingcouncil.qld.gov.au

Dear Madam/Sir

Inquiry into Penalties for Assaults of Public Officers

Please accept the following submission by Queensland Advocacy Incorporated to the Council's Inquiry into **Penalties for assaults of public officers**.

Yours sincerely,



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QAI endorses the objectives, and promotes the principles, of the Convention on the Rights of Persons with Disabilities.

Patron: His Excellency The Honorable Paul de Jersey AC

About QAI

Queensland Advocacy Incorporated (QAI) is a member-driven, non-profit advocacy organization for people with disability. Our mission is to promote, protect and defend, through advocacy, the fundamental needs, rights and lives of the most vulnerable people with disability in Queensland.

QAI's Human Rights and Mental Health legal services offer advice and representation on guardianship, administration and mental health matters. The Justice Support and NDIS Appeals and Decision Support advocacy programs provide non-legal advice and support to people with disability in the criminal justice system and the NDIS respectively. Our newly established Disability Royal Commission (DRC) Individual Advocacy Support Program assists vulnerable people with disability to engage and participate in the DRC. QAI's Education Advocacy Service provides advocacy support for students with complex matters in the state education system or home schooling.

Individual advocacy helps us to understand the challenges, needs and concerns of people with disability, and informs our campaigns at local, state and federal levels for change in legislation and policy.

QAI's constitution holds that every person is unique and valuable and that diversity is intrinsic to community. People with disability comprise the majority of our board and their lived experience of disability informs our work.

Recommendations

- Current maximum sentences for serious assault provide adequate scope for courts to impose sentences of appropriate length.
 - Increases in the *severity* of penalties have no corresponding effect on offending.¹ Higher penalties and longer sentences are unlikely to reduce the risk of assault for emergency personnel.
 - The statistical trends offer no compelling reason to increase penalties under 340 of the *Criminal Code Act 1899* (Qld) (CCA) as a way to deter potential offenders. Deterrence theory is based on the assumption that people are able to make rational choices when they offend. When considering the specific offence of “Serious assault” (e.g. on police officer; paramedic; medical officer etc.) the available evidence suggests that these offences are often committed by people acting out of factors other than rational choice.
- QAI supports the removal of the maximum penalty provision at 340(a) (i) of the CCA: “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”.

A maximum of 14 years for this offence is disproportionate. The risk of disease transmission is negligible. There are no reported cases of HIV transmission, for example, in such circumstances. Rather than focus on increasing deterrence, our justice system must educate officers about the real risks (and properly train them in de-escalation and containment techniques) and not increase their anxiety by perpetuating urban myths in our criminal legislation.

- Better training in de-escalation techniques and the involvement of professionals with mental health training are more likely to substantially to reduce the risks to emergency services workers.
- Police powers around public nuisance and order offences must be used judiciously and in some instances curtailed.

¹ Donald Ritchie, Sentencing Advisory Council. 2011. *Does Imprisonment Deter?*, page 2.

Introduction

We offer the following general observations, followed by those that are specific to some of the terms of reference.

On mandatory penalties: QAI does not support excessive parliamentary interference in the courts or the passing of 'one size fits all' penalties, including for offences such as serious assault. Our view is that mandatory sentencing provisions are contrary to fundamental legislative principles, because in the determination of appropriate punishment they undermine court discretion to weigh the relevance of offenders' cognitive disabilities, mental illness, Aboriginality, along with mitigating factual circumstances.

Mandatory sentencing further undermines Queensland's justice process which in our view already neglects criminogenic² factors: this state incarcerates people with intellectual disabilities at more than five times the rate of the general population,³ and Aboriginal and Torres Strait Islander people at 10 times the rate of the general population.⁴

Overrepresentation: This review of the relevant provisions and associated penalties for assault must consider that, while accurate statistics are not publicly available, people with disabilities likely are overrepresented for these offences and certainly are overrepresented throughout the criminal justice system as victims, suspects, defendants and prisoners. Approximately 10% of people in Queensland prisons, for example, were found to have an intellectual disability during the most recent comprehensive survey in 2002.⁵ Available interstate data suggests that this may be an underestimate: the 2010 national prisoner health census determined that 33% of people in Australian prisons had a mental illness;⁶ Hayes' research at NSW country courts determined that 56.9% of defendants had intellectual disability or borderline intellectual disability;⁷ and the most recent comprehensive survey of Victorian prisoners found that 42 per cent of male prisoners had an acquired brain injury.⁸

The offences for which people with cognitive disability are imprisoned are overwhelmingly in the lowest severity categories, and often for 'public nuisance' offences including assault, resist arrest and assault police. Offenders with intellectual disability tend to commit either relatively minor but repeated offences, or a major, violent or sexual crime.⁹

Offenders who have cognitive impairments or mental illness *and* who are Aboriginal or Torres Strait Islander are by definition criminals *and* among Queensland's most vulnerable and disadvantaged groups. At the intersection of cognitive impairment, mental illness and Aboriginality the overrepresentation is staggering: 73.9% of Hayes' NSW sample were Indigenous Australians.¹⁰ It

² Criminogenic means causing or likely to cause criminal behaviour.

³ People with intellectual disability make up approximately 2% of the population.

⁴ ABS. 4517.0 - Prisoners in Australia, 2018.

⁵ Based on figures from the most recent comprehensive survey (Corrective Services Queensland. 2002. *Intellectual Disability Survey*) and on comparable data from a number of NSW studies.

⁶ Australian Institute of Health and Welfare. 2011. *The Health of Australia's Prisoners 2010*. Australian Institute of Health and Welfare.

⁷ Hayes, S & McIlwain D. The prevalence of intellectual disability in the new South Wales prison population: an empirical study (Criminology Research Council, Canberra, 1988).

⁸ M Jackson et al. *Acquired Brain Injury in the Victorian Prison System*. Corrections Research Paper Series No. 04 (Department of Justice, Melbourne, 2011).

⁹ J Simpson, 2014. *Participants, or Just Policed?* Guide to the role of the NDIS - people with intellectual disability who have contact with the criminal justice system

¹⁰ Hayes S. Prevalence of intellectual disability in local courts (1997) *Journal of Intellectual and Developmental Disability* 22(2) 71-85.

should be noted that Queensland (4%) has a higher proportion of Indigenous people than NSW (2.9%).

A 2012 Queensland prisoner survey found that 72.8 % of Indigenous men and 86.1 % of Indigenous women had at least one mental health episode in the preceding twelve months, against a 20% rate in the general community. The remand sample was higher: 84.4 % compared with 70.4 % overall.¹¹ In view of this intersectional over-representation, QAI is concerned that an increase in penalties around assault police primarily will serve to disadvantage Indigenous people, whose relations with police historically have been strained, and continue to be.

It is a generation past, but the 1991 Moss Report¹² on racist violence in Australia noted that “it was clear from all the evidence presented to the Inquiry that the treatment of Aboriginal and Islander people by police was an issue of national significance”. The great majority of the submissions to the inquiry detailed racist violence *by police* against Aboriginal and Torres Strait Islander people. The majority of those submissions were from Queensland, for example:

*.. the Townsville Aboriginal and Islander Legal Service offered evidence of police harassment and assaults on Aboriginal and Islander people in Townsville. In one incident an Aboriginal person was allegedly told that he was being arrested for being 'black in a public place'. There were two witnesses to the statement **and the later police assault**.*¹³

The Moss Report detailed the typical chain of events that would culminate in the arrest of an Aboriginal person on the charge of assault police:

*The type of language allegedly used by police included 'coon', 'nigger', 'abo', 'boong', 'black dog', 'black cunt', 'black arsehole' etc. The use of such derogatory language, besides being racist in its content, is also important in relation to the provocation involved and the likely consequences of further charges (**assault police, resist arrest, offensive language**) should Aboriginal people retaliate to the abuse in some manner.*¹⁴

QAI notes that many of the Moss Report recommendations, and many of those of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) (1987–1991) aimed at reducing the over-policing of Aboriginal Australians, and in the case of the latter, reducing the incarceration rates of Aboriginal Australians. Instead, Aboriginal incarceration rates have risen by almost 40% during the last two decades, from approximately 1,800 per 100,000 in 1999 to 2,500 per 100,000 in 2019.¹⁵

In Queensland, Aboriginal and Torres Strait Islanders represent about 3% of the total Queensland adult population,¹⁶ but 32% of adults in custody in 2017.¹⁷ When accounting for age differences in the population, Indigenous adults were 11 times more likely to be incarcerated than non-Indigenous adults.¹⁸

¹¹ E Heffernan, K Andersen, A Dev, S Kinner. 2012. 'Prevalence of mental illness among Aboriginal and Torres Strait Islander people in Queensland prisons'. *Medical Journal of Australia*. 197(1):37-41.

¹² Report of National Inquiry into Racial Violence 1991

¹³ Report of National Inquiry into Racial Violence 1991, page 95.

¹⁴ Report of National Inquiry into Racial Violence 1991, page 99.

¹⁵ Australian Bureau of Statistics, 4512.0 – Corrective Services Australia, September Quarter 1999; ABS, 4512.0 – Corrective Services, Australia, September Quarter 2019.

¹⁶ Queensland Government Statisticians Office, 2017.

¹⁷ ABS 2018

¹⁸ Ibid.

Increased penalties have little deterrent effect: In relation to ‘street’ and public order offenses, QAI also has opposed any increase of criminal penalties associated with public order offences when parliament directs that increase towards general or specific deterrence.¹⁹ Rational choice commonly has been the theoretical assumption behind calls for a strengthened deterrence component, but offender behaviour, particularly the ‘impulsive’ behaviour usually associated with assault, is driven more by offenders’ immediate physical, emotional and physiological circumstances.

Arrest often results in ‘anger on the part of the person arrested and an escalation of the situation, leading to the person resisting arrest and assaulting the police’.²⁰ There is no one-size-fits-all deterrence.²¹

[t]he willingness... to engage in the ‘calculation’... on which deterrence depends will vary widely according to the type of offender and the kind of offence. [At] one end of the spectrum of ‘consideration’ prior to offending may lie commercial drug trafficking by a non-addict, run as an illegitimate business, involving the offender making ongoing calculations of the costs and benefits of crime. At the other end of the spectrum may lie a violent assault by an intoxicated young offender, reacting impulsively to a perceived threat or provocation.

Assault is impulsive, particularly assault of police and emergency personnel. Alcohol and other drugs are involved in between 23-73% of assaults^{22,23} and ‘in light of those estimates and estimates of the prevalence of mental illness among prisoners, *‘there are significant limitations on general deterrence and [on] the type of offenders that the threat of punishment can possibly deter’.*²⁴

Overall, the evidence from empirical studies of deterrence suggests that while the threat of imprisonment generates a small *general* deterrent effect, increases in the *severity* of penalties have no corresponding effect on offending.²⁵ 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 cycling.

De-escalation training for police is more effective than increasing penalties: Preventing offending by changing police procedures on the targeting of people with mental illness, people with cognitive disabilities and Aboriginal and Torres Strait Islander people is likely to be a more effective tactic to reduce police assaults than increasing the severity and scope of serious assault provisions.

Anecdotally, QAI frequently sees an over-policing of our clients, many of whom are Indigenous people with cognitive impairments and/or mental illness. We particularly see an over-policing of trivial public order offences. Such police interventions frequently amount to provocation and escalation that draws a vigorous response from the suspect. That response results in what is commonly known as the

¹⁹ 28 June 2012- QAI Submission to the Legal Affairs and Community Safety Committee on the Criminal Law (Two Strike Child Sex Offenders) Amendment Bill 2012 (Qld).

²⁰ DPP (NSW) v Carr (2002) 127 A Crim R 151, 159 [35] (Smart AJ).

²¹ Donald Ritchie, Sentencing Advisory Council. 2011. *Does Imprisonment Deter?* Page 17.

²² Briscoe S & Donnelly N 2001b. Assaults on licensed premises in inner-urban areas. *Alcohol studies bulletin* no.

² [http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/AB02...\\$file/AB02.pdf#target='_blank'](http://www.lawlink.nsw.gov.au/lawlink/bocsar/ll_bocsar.nsf/vwFiles/AB02...$file/AB02.pdf#target='_blank')

²³ Doherty SJ & Roche AM 2003. *Alcohol and licensed premises: best practice in policing. A monograph for police and policy makers.*

Adelaide: Australasian Centre for Policing Research. <http://www.nceta.flinders.edu.au/pdf/licensed-premises/licenced-premises.pdf>

²⁴ Donald Ritchie. *Ibid.* page 17.

²⁵ Donald Ritchie, Sentencing Advisory Council. 2011. *Does Imprisonment Deter?* Page 2.

'trifecta'. A minor public order offence under the *Summary Offences Act 2005* (Qld) such as urinating in public too often escalates to more serious charges of resist arrest and assault police.²⁶

In Queensland, the likelihood that police would charge persons with intellectual impairments with public space offences increased with the passage of the *Summary Offences Act 2005* (Qld), which also increased the range and scope of public nuisance offences. The typical consequence of a public nuisance offence is the imposition of a fine which may carry a default period of imprisonment.²⁷

Police may be drawn into situations where a person is disoriented and in distress, for example, during an acute psychotic episode or, in the case of persons with intellectual impairment or brain injury, when their attempts to communicate go unanswered. These situations present specific dangers and may trigger police deployment of 'command and control' tactics to subdue the person, leading to a serious escalation of the incident and in some cases the deployment of lethal force.

Persons with intellectual impairments are subject to a higher level of police surveillance and suspicion than most members of the public, who are more likely to experience discomfort in the presence of people who are perceived as different or dangerous and may seek police assistance in moving them on. Persons with disability are therefore particularly susceptible to being charged with public nuisance offences, whether or not there has been wrongdoing.

Public space policing typically involves verbal directions to take certain action, such as to move on. Persons with disability may find it difficult to comprehend directions, remember them or act in accordance with them, leading to an escalation in law enforcement interventions based on the mistaken belief that the person is wilfully disobeying a police instruction. For some people with cognitive impairment or mental illness, talking loudly or calling out is a communication tool and not necessarily intended to offend or annoy anyone. 'Resisting arrest' can simply be being loud or yelling out - something that a person with cognitive impairment or mental illness may do when apprehended by more than one officer.

Police officers encounter people with mental illness, too, every day - as suspects, victims and witnesses of crime, or because the police have been called for assistance by concerned members of the public. A survey of Sydney police officers determined that police on average spend around 10% of their time dealing with people who appear to be mentally ill.²⁸ Victorian police reported that around one-fifth of potential offenders they encountered appeared to have a mental illness.²⁹ In 2013 alone, NSW police responded to more than 40 000 mental health incidents,³⁰ while in Victoria, the police apprehend an average of one person every two hours and take them to hospital for assessment.

²⁶ Aboriginal and Torres Strait Islander Social Justice Commissioner, 'Indigenous Deaths in Custody: 1989 to 1996' (Report, Australian Human Rights Commission 1996) .

²⁷ Monica Taylor (Coordinator, Homeless Persons' Legal Clinic, Queensland Public Interest Law Clearing House) And Dr Tamara Walsh (T.C. Beirne School Of Law, University Of Queensland) With: Megan Breen, Binny De Saram, Lindsay Nicholson, Hillary Nye, Marianna O'gorman And Davina Wadley . 2006. *Nowhere To Go: The Impact Of Police Move-On Powers On Homeless People In Queensland* Monica Taylor (Coordinator, Homeless Persons' Legal Clinic, Queensland Public Interest Law Clearing House) And Dr Tamara Walsh (T.C. Beirne School Of Law, University Of Queensland) With: Megan Breen, Binny De Saram, Lindsay Nicholson, Hillary Nye, Marianna O'gorman And Davina Wadley

²⁸ Godfredson JW, Ogloff JP, Thomas SDM & Luebbers S. 2010. 'Police discretion and encounters with people experiencing mental illness'. *Criminal Justice and Behaviour* 37(12): 1392. Three-quarters of police participants reported that they had dealt with people in this category in the past month.

²⁹ Kesic D, Thomas SDM & Ogloff JP. 2010. 'Mental illness among police fatalities in Victoria 1982-2007: Case linkage study'. *Australian and New Zealand Journal of Psychiatrists* 44(5): 463.

³⁰ LR Steele, L Dowse & J Trofimovs. 2013. *Section 32: A Report on the Human Service and Criminal Pathways of People Diagnosed with Mental Health Disorder and Cognitive Disability in the Criminal Justice System Who Have Received Orders Under the Mental Health (Forensic Provisions) Act 1990 (NSW)*.

Surprisingly few police are trained to deal with mentally ill people in crisis; fewer than 10% of frontline officers in New South Wales, for example, have had mental health training, and the Queensland Coronial Inquiry into the Death of Laval Zimmer heard evidence of the same in Queensland, and made recommendations for improvement.³¹ These findings are broadly consistent with comparative studies internationally.³²

Qualitative data from interviews with mental health consumers have uncovered a perception that police fear this group, and fear prompts police to pre-emptively escalate conflict.³³ Like the general community, those with mental health issues are also likely aware, through the extensive media coverage of this issue, that police have been involved in (if not responsible for) a number of gunshot and Taser deaths. Despite, or perhaps partly because of the Queensland Coroner's exoneration of the police officers involved in the deaths of Scott Taylor, Antonio Galeano, Alan Dyer, Laval Zimmer and others,³⁴ the perception amongst some mental health consumers is that police are afraid of them and that this fear can lead to pre-emptive aggressive/defence responses by police officers in crisis situations. That police can lawfully kill in self-defence when they have a reasonable apprehension of death or grievous bodily harm³⁵ is no consolation for people who feel vulnerable to deadly force.

Police need comprehensive policy guidance and training and support that provides them with alternative ways of interacting with people with various forms of intellectual impairment and mental illness. To better serve the public and to interrupt suspects' cycling through the system police must develop practices that allow them to fulfil both their duty to investigate crime and their obligations to people with disability subject to the *Convention on the Rights of Persons with Disabilities*.

Unreliable Statistics

An article published in the Brisbane Courier-Mail on 7 November 2017,³⁶ claimed that there is an increasing trend of serious assaults on police officers both at police stations and in the homes of defendants where the police have been called to deal with disputes states that "a series of police reports, released by the service, show offenders, including children, are breaking into police stations and threatening and attacking officers up to five times a month".

QAI notes that the *Courier Mail* reported, without demur, these claims by the Queensland Police Service, yet in April 2017 a *Courier Mail* article noted the Queensland Audit Office's scathing condemnation of QPS reporting of crime statistics, which the QAO described as "incomplete, inaccurate and wrongly classified....questionable at best and unreliable at worst, and should be treated with caution".³⁷

One source of skewed data was, according to the QAO, the soliciting of victims to withdraw complaints and the adoption, in some police districts, of a three strikes policy, where if police cannot contact victims after three attempts, they change the complaint to withdrawn. These complaints related to offences including assault (both serious and less serious), burglary, stealing, and wilful damage

³¹ Queensland Coroner. 2016. Inquest into the death of Laval Zimmer.

https://www.courts.qld.gov.au/_data/assets/pdf_file/0011/466373/cif-zimmer-ld-20160503.pdf

³² Kesic D, Thomas SDM & Ogloff JP. 2010. 'Mental illness among police fatalities in Victoria 1982-2007: Case linkage study'. *Australian and New Zealand Journal of Psychiatrists* 44(5): 463.

³³ V Herrington *et al* 2009. 'The Impact of the NSW Police Force Mental Health Intervention Team: Final Evaluation Report' Charles Sturt University Centre for Inland Health Australian Graduate School of Policing.

http://www.police.nsw.gov.au/_data/assets/pdf_file/0006/174246/MHIT_Evaluation_Final_Report_241209.pdf

³⁴ See 'Findings – Queensland Coroners Court' <https://www.courts.qld.gov.au/courts/coroners-court/findings>

³⁵ *Criminal Code 1899* (Qld) s 271.

³⁶ 2017. 'Assault on Queensland Police' *The Courier Mail*.

³⁷ Queensland Audit Office. *Criminal justice system— reliability and integration of data Report 14: 2016–17*

offences. If assaults generally were under-reported, then the proportion of assaults against police, we note, are likely to be over-represented in the data. Over-represented or not, statistics sourced from the QPS must be treated with caution.

Specific Responses

[D]etermine whether it is appropriate for section 340 [...] to continue to apply to police officers and other frontline workers [...]

QAI submits that no change is appropriate, other than removing or reducing the maximum penalty provision at s 340(a) (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”.

Police, correctional and emergency services personnel need more information about disease transmission. Police officers, for example, appear to share a common misconception that spitting and assault with other bodily fluids carry a high risk of disease transmission. In *R v Cooney*,³⁸ to take one of many examples, a victim impact statement from the complainant referred to the psychological stress of fear of HIV contamination.

A recent review³⁹ of 742 UK records of spitting at or biting of emergency services personnel found no published cases of HIV transmission attributable to spitting, and concluded that being spat on by an HIV-positive individual carries no possibility of transmitting HIV.

The United States Centres for Disease Control website states that regarding spitting and throwing faeces at correctional officers, “there are no documented cases of HIV or HBV transmission in this manner and transmission by this route would not be expected to occur.”⁴⁰

In 2012, a Canadian judge in the province of Saskatchewan ruled that spitting in the face of a police officer is a simple assault that does not result in a risk of serious diseases such as HIV, hepatitis C or herpes.

If we want to deter suspects from spitting on police officers, we need to educate these officers about the real risks involved, and not perpetuate their anxiety by repeating urban myths.⁴¹

[It is] an “urban myth” that police get serious injuries after being spat at and the intense anxiety that officers and their families feel about saliva is not justified.

When we in the justice system perpetuate this myth without question, without evidence of the risk, without any fact-based analysis, we are feeding into this irrational anxiety.⁴²

³⁸ [2019] QCA 166.

³⁹ Cresswell FV et al. *A systematic review of risk of HIV transmission through biting or spitting: implications for policy*. HIV Med, online edition. DOI: 10.1111/hiv.12625 (2018).

⁴⁰ United States Centres for Disease Control. ‘Guidelines for Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health-Care and Public-Safety Workers A Response to P.L. 100-607 The Health Omnibus Programs Extension Act of 1988’ <https://www.cdc.gov/mmwr/preview/mmwrhtml/00001450.htm> .

⁴¹ R. v. Ratt [2012] SKPC 154, S.J. No. 590 at #44. < <http://www.aidslaw.ca/site/wp-content/uploads/2014/02/Addl.Ratt2012-EN.pdf>>

⁴² Judge Felicia Daunt during sentencing of a 36 year-old woman following her guilty plea for impaired driving and assaulting a police officer (by spitting into the right into the eye of a female arresting officer).

Spitting and biting cases tend to attract sentences up to three months imprisonment.⁴³ Murray was sentenced to 15 months imprisonment with parole release after serving five months. After reviewing the authorities, Fraser JA, with whom the other members of this Court agreed, concluded:

[T]he 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.

If 15 months, made with 'fullest possible allowance' for the maximum is 'out of kilter' with current sentencing, there is no justification to retain the current maximum either.

QAI notes that Queensland also has laws that allow for mandatory testing of individuals accused of sexual offences and serious assaults. Although not within the scope of this inquiry, we note that 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.

Examine relevant offence, penalty and sentencing provisions in other Australian and relevant international jurisdictions [...]

Queensland provisions for serious assault already stand at the severe end of Australian penalties for equivalent offences. In NSW there is a clear progression from 5-14 years across section 60 of the *Crimes Act 1900*, and similarly in the Northern Territory under section 188A of the *Criminal Code 1983*, but the ACT, for example, does not have a separate charge of assaulting police, and the charge will be brought as a simple Common Assault under section 26 of the *Crimes Act 1900*, carrying a maximum penalty of two years' prison, or perhaps as an Assault Occasioning Actual Bodily Harm under Section 24, carrying five years. The fact that the person assaulted is a police officer is seen only as an aggravating feature and is taken into account at sentence, but always under the lesser statutory penalties that apply in the ACT. Tasmania does not have a provision related to the aggravated assault of a police officer.

Identify ways to enhance community knowledge and understanding of the penalties for this type of offending

QAI recommends better health education for Queensland emergency service personnel, particularly education that dispels myths about the transmission risks of communicable diseases.

Definition of frontline workers and other public officers

While the work of any frontline personnel undoubtedly can be risky, the nature of the risk varies. Paramedics, for example, have the highest rate of occupational injury and assaults,⁴⁴ yet s 340 of the Criminal Code already imposes the same maximum penalty for assault on a person performing any duty imposed on the person by law as that for police and corrective services officers.

⁴³ Holmes JA in *R v Brown* [2013] QCA 185.

⁴⁴ Brian J Maguire, 'Violence against ambulance personnel: a retrospective cohort study of national data from Safe Work Australia' (2018) 28 *Public Health Research and Practice* 1.

Each occupation identified for such increased penalties must be justified based on the particular risks faced by that profession. Parliament must change provisions around the definition of public officers only in response to reliable evidence that there has been a change in the risk of assault to particular classes of those officers operating in Queensland, and not in response to anecdotal media, police or other accounts that are often from other jurisdictions and often vastly exaggerate risk.

.....