

Chapter 1 Introduction

1.1 Background

The Queensland Sentencing Advisory Council ('the Council') was established in 2016 to inform, engage and advise the community and government about sentencing in Queensland.

The Council's six legislative functions are outlined in section 199 of the *Penalties and Sentences Act 1992* (Qld) ('PSA'), one of which is to provide advice to the Attorney-General on matters relating to sentencing, when requested. Other relevant functions of the Council are:

- to give information to the community to enhance knowledge and understanding of matters relating to sentencing;
- to publish information about sentencing;
- to research matters about sentencing and publish the outcomes of the research; and
- to obtain the community's views on sentencing and matters about sentencing.

In December 2019, the Attorney-General and Minister for Justice, the Honourable Yvette D'Ath MP, requested the Council undertake a review of penalties for assaults on police and other frontline emergency service workers, corrective services officers and other public officers (hereafter, referred to collectively as 'public officers').

In April 2020, in response to a request made by the Council, the Attorney-General granted an extension, extending the Council's reporting date from 30 June 2020 to 31 August 2020.¹ The extension was granted on the basis of the emergence of the COVID-19 pandemic, and the Council's concerns about the need for stakeholders to have additional time to respond given their necessary focus on delivering essential services to the community during this challenging period.

This issues paper has been prepared to gather and present information about sentencing for assaults of public officers to assist stakeholders and community members to provide their views to the Council on the sentencing of offences involving assaults of public officers.

1.2 Terms of Reference

The Terms of Reference issued to the Council outline matters the Council must consider in reporting to the Attorney-General. These include:

- the expectation of the community and government that public officers carrying out their duties should not be the subject of assault during the execution of their duties;
- the need for public officers to have confidence that the criminal justice system properly reflects the inherent dangers they face in the execution of their duties, and the negative impacts that such an assault can have on those workers, their colleagues and their families; and
- the importance of the penalties provided for under legislation and sentences imposed for these offences being adequate to meet the purposes of sentencing under section 9(1) of the PSA while also taking into account the individual facts and circumstances of the case, the seriousness of the offence concerned and offender culpability.

¹ Notified by the Attorney-General and Minister for Justice, Yvette D'Ath, on 29 April 2020.

The Terms of Reference then outline a series of issues that must be addressed by the Council in providing its advice. These include:

- analysis of penalties and sentencing trends for offences sentenced under section 340 (Serious assaults) of the *Criminal Code*,² including the impact of the 2012 and 2014 legislative amendments that introduced high maximum penalties, to determine whether they are in accordance with stakeholder expectations;
- advice about whether the current structure of section 340 of the *Criminal Code* should be retained as it currently stands, or whether such offending should instead be targeted in a separate provision or provisions, possibly with higher penalties, or through the introduction of a circumstance of aggravation;
- advice about whether the definition of ‘public officer’ in section 340 of the *Criminal Code* should be expanded to recognise other occupations, including public transport drivers;
- a review of related provisions in other legislation that targets the same offending to assess the suitability of retaining these separate offences, and advice about whether penalties for these other offences reflect stakeholder expectations;
- analysis of the approach in other Australian and relevant international jurisdictions to address this type of offending and presentation of any evidence of the impact of any reforms introduced in these jurisdictions;
- identify ways to enhance community knowledge and understanding of the penalties for this type of offending.

In undertaking its work, the Terms of Reference require the Council to:

- consider any relevant statistics, research, reports or publications regarding causes, frequency and seriousness of relevant offending;
- consult with stakeholders;
- advise on options for reform to the current offence, penalty and sentencing framework to ensure it provides an appropriate response to this kind of offending; and
- advise on any other matters relevant to this reference.

The Council is required to report to the Attorney-General and Minister for Justice by 31 August 2020. The Terms of Reference are provided in full at Appendix 1.

1.3 The Council’s approach

As with all Terms of Reference projects, work is governed by a project management policy which was established early in the life of the Council. The Council’s practice is to nominate several Council members to sit on a separate Project Board that meets throughout the life of the project and governs all decisions relating to the progress of the project. The Project Board for this Terms of Reference has met monthly and is responsible for ensuring a high quality response to the Terms of Reference.

The Project Board commenced work on the Terms of Reference by developing a project plan which was approved by the full Council, and inviting early submissions from stakeholders about what should be considered during the project. Preliminary submissions were initially sought by 10 January 2020, but this was later extended to 28 January to provide stakeholders with adequate time to respond.

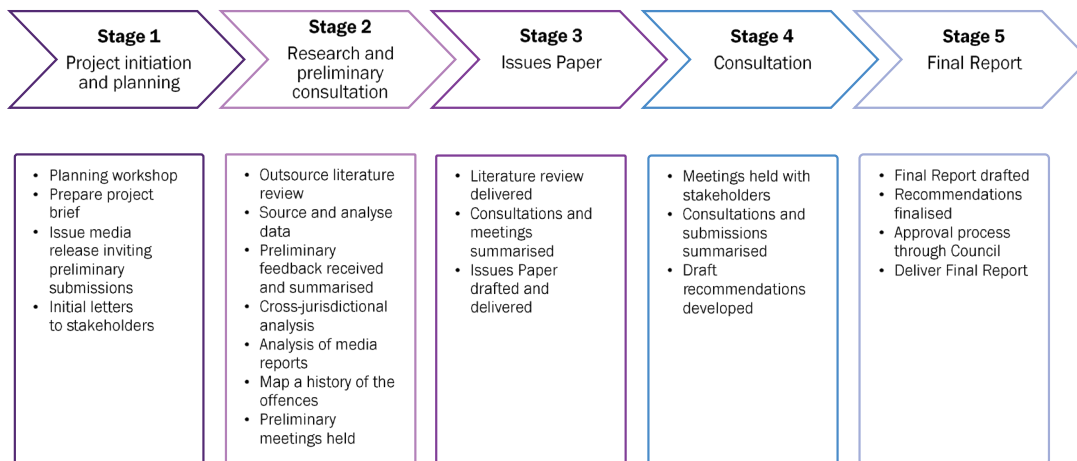
Stage 2 of the project involved the commencement of work on key aspects of the research program, including data and legislative analysis, documenting the history of the relevant legislative

² *Criminal Code Act 1899 (Qld)* sch 1 (‘*Criminal Code*’).

provisions, holding preliminary meetings with data custodians and undertaking an analysis of media reports on the issue. During this phase of the project the Council published an initial high-level analysis of relevant data on serious assault as part of its *Sentencing @ a glance* series, as well as an information sheet on penalties for assaults of public officers. These two documents were placed on the Council’s website and were intended to assist stakeholders in identifying areas for further investigation.

The publication of this issues paper – representing Stage 3 of the project – marks the mid-point of the reference, as shown in Figure 1 below.

Figure 1-1: The Council’s approach to the Terms of Reference



Following publication of this issues paper, the Council originally envisaged a four-week consultation period for stakeholders to respond to the issues raised to meet its original reporting deadline of 30 June 2020. Stakeholder feedback on the issues raised is critical to inform the Council’s deliberations and the development of its recommendations.

However, the Council is conscious that the emergence of the COVID-19 pandemic is placing increasing burdens on a number of frontline and emergency service agencies and employee unions whose staff and members are also those most likely to be directly affected by any recommendations the Council might make. Responding to the current health crisis must necessarily take priority.

The recent extension granted by the Attorney-General has allowed the Council to extend the consultation period to 8 weeks to provide stakeholders with additional time to consider and respond to the number of complex issues this paper raises.

To ensure the safety of all those involved in consultation, and in compliance with Commonwealth and State government advice about the importance of social distancing, the Council has determined that any consultation will be undertaken by phone, videoconferencing and email, with written submissions also strongly encouraged.

The Council’s website is the best place to get the latest information about the review and applicable timeframes.

The final report will be drafted in Stage 5.

1.4 Scope of the project

Early in the life of the project, the Council considered whether there were any matters that should be excluded from the analysis undertaken for the project. Some of these issues have arisen as a result of the quality of data recorded and maintained in relation to sentencing for assault offences. For example, the Council was not able to determine whether there were assaults on public officers charged under general offence provisions under the *Criminal Code* such as the offences of grievous bodily harm (s 320), wounding (s 323) and assault occasioning bodily harm (s 339). This is because the identity of the victim is not recorded in a reliable way in the data. Even if the victim's occupation was reliably recorded, it would not be possible to identify whether the victim was assaulted while at work or because of a function performed in their work capacity. Consequently, only sentencing outcomes for the offence of serious assault and specific offences that, by their nature, are committed against identified classes of public officers (e.g. police and corrective services officers) could be examined for the purposes of the Council's work.

Offences that resulted in an outcome of a police caution or other diversionary option were excluded, as these are not sentences imposed under the PSA or the *Youth Justice Act 1992* (Qld).

The Council agreed that fatal assaults also would not be considered as part of this Terms of Reference, taking into account the main focus of the reference was on the offence of serious assault under section 340 of the *Criminal Code*, and other assault-related offences, and that these offences would be likely to be prosecuted as a homicide.

The Council also scoped out the *Criminal Code* offences of assault with intent to commit rape (s 351) and sexual assault (s 352) from being investigated as part of this review. Assaults with a sexual motivation may well be committed against public officers while they are working, but the Council is concerned that including this kind of offending in the Council's analysis could distort findings and distract from the main emphasis of the Terms of Reference. There was no suggestion by stakeholders in preliminary submissions that specific sexual offences should be examined.

The Council did not undertake a detailed analysis regarding the sentencing regime for juveniles in Queensland or in other jurisdictions, although it has considered these issues in the context of the specific advice the Council has been asked to provide about the appropriateness of sentencing responses more generally. Nor did the Council consider matters dealt with by the Mental Health Court, on the basis this court is not a sentencing court and the orders made are not sentencing orders.

Finally, the Council considered that the issue of what offence a person is charged with – that is, charging practices of police officers – would be a much broader issue that could not be adequately addressed as part of this reference although, in response to preliminary feedback received, the issue of whether additional guidance is required is discussed and views invited in relation to this matter. As outlined in Chapter 3, an assault of a public officer could result in a number of different charges, depending on the level of harm arising from the offence. Decisions by police officers as to which offence they decide to initially charge was regarded by the Council as a matter that precedes prosecution and sentencing, and therefore falls outside the Council's functions.

1.5 Data used in this paper

In the early stages of the project, the Council wrote to a number of public sector agencies to seek access to information about assault incidents occurring against their staff that had been reported internally during the period 2014–15 to 2018–19. Data were provided by:

- Queensland Health;
- the Queensland Police Service;
- the Queensland Ambulance Service;

- Queensland Fire and Emergency Services;
- Queensland Corrective Services;
- the Department of Justice and Attorney-General;
- the Department of Youth Justice; and
- the Department of Education.

In addition, the Council wrote to WorkCover Queensland and received unpublished claims data for the period 2015–16 to 2018–19, which documents accepted claims regarding assault of a public officer. Additional data was sought and obtained from Victim Assist Queensland on claims made by public officers that resulted from an assault in the workplace. As part of their submission to the Council, the Office of Industrial Relations provided data extracted from its incident notifications dataset, which records reported incidents of workplace violence.

The Council also wrote to the Public Service Commission and received data on numbers of officers employed in the Queensland public service. These figures were used to calculate rates and contextualise the number of assaults that occurred in the public sector.

As is usual practice for the Council when undertaking a Terms of Reference project, the Council also used sentencing data from the Queensland Government Statisticians Office (QGSO). For the purposes of this reference, it looked at all sentencing outcomes for the period 2009–10 to 2018–19 where the case involved:

- serious assault of a public officer (*Criminal Code* s 340(2AA));
- assault or obstruction of a corrective services officer (*Corrective Services Act 2006* (Qld) s 124(b));
- assault or obstruction of a watch-house officer (*Police Powers and Responsibilities Act 2000* (Qld) s 655A);
- assault or obstruction of a police officer (*Police Powers and Responsibilities Act 2000* (Qld) s 790);
- resisting a public officer (*Criminal Code* s 199);
- grievous bodily harm (*Criminal Code* s 320);
- torture (*Criminal Code* s 320A);
- assault occasioning bodily harm (*Criminal Code* s 339(1));
- wounding (*Criminal Code* s 323); and
- common assault (*Criminal Code* s 335).

Sentencing for this broader range of assault offences was sought to enable comparison between sentencing trends for different types of assault and assault-related offences.

Data is presented in Chapters 2 and 5 of this report.

1.6 Outline of the issues paper

The remaining chapters of this issues paper are set out below:

- Chapter 2 – A profile of assaults on public officers
- Chapter 3 – Current offence framework in Queensland
- Chapter 4 – Sentencing process and framework in Queensland
- Chapter 5 – Sentencing outcomes for assaults on public officers
- Chapter 6 – The approach in other jurisdictions
- Chapter 7 – Aggravated assault based on victim status
- Chapter 8 – Responding to the needs of victims
- Chapter 9 – Offence and sentencing framework – issues and options
- Chapter 10 – Enhancing community knowledge and understanding.