# Chapter 10 Enhancing community knowledge and understanding

# **10.1** Introduction

Among those matters the Council has been asked to report on, the Terms of Reference ask the Council to 'identify ways to enhance community knowledge and understanding of the penalties for this type of offending'.

In Chapter 9, we discussed deterrence and denunciation as two of the primary purposes of sentencing for assaults on police and other frontline emergency service workers and other public officers. For these two purposes to have any chance of being met the consequences of committing an assault (including an aggravated form of assault) on a public officer need to be known (in support of effective deterrence), as do the sentencing outcomes and penalties imposed.

Sentencing commentators have observed that in the sentencing of offenders: 'Courts often declare that they intend to "send a message" to the community through the sentencing process and that the behaviour in question "will not be tolerated"'.942 However, the achievement of this objective 'assumes that the sentences, or reports of them in the media, will be known and understood'.943

There are many who question whether deterrence 'works', including as an effective means of reducing assaults on police and other frontline emergency service workers, corrective services officers and other public officers. If deterrence is to have any impact, general awareness about the maximum penalties and any minimum penalties that apply is of central importance.

Increasing community knowledge and understanding of the incidence and impacts of assaults on public officers is important, however, for other reasons, including because it may support behavioural change by making clear that such behaviour is unacceptable, thereby reducing the likelihood of public officers being subjected to violence.

The importance of clearly communicating legislative change to the general public was discussed in Chapter 9 (section 9.6.3) in the context of the implementation of WA's mandatory sentencing regime. In that jurisdiction, a positive change in community attitudes towards police was advanced by the government as a possible reason for the claimed success of the reform. The Police Union raised concerns about a lack of advertising or continued public awareness campaigns following the introduction of the mandatory provisions. Some years later, both the Government and Opposition sought to attribute a rise in assault rates to negative change in community attitudes. These issues were not evaluated other than at an anecdotal level.

#### 10.2 **Raising public awareness**

An entire literature exists in the public relations and marketing field that focuses on how to achieve behaviour change on a large scale. Public communication campaigns:

use the media, messaging, and an organised set of communication activities to generate specific outcomes in a large number of individuals and in a specified period of time. They are an attempt to shape behaviour toward desirable social outcomes. To maximise their chances

Arie Freiberg, Sentencing: State and Federal Law in Victoria (Lawbook Company, 3rd ed, 2014) 254. 943 Ibid.

of success, campaigns usually coordinate media efforts with a mix of other interpersonal and community-based communication channels.<sup>944</sup>

There are two categories of public communication campaign — the first aims to achieve behaviour change in individuals to address broader social problems, and the second, to raise public awareness about a particular issue to bring about policy change.<sup>945</sup>

Public awareness campaigns have been used since the 1970s to achieve many things:

- **Road safety** Combined with policing and stronger penalties, very successful public advertisements have reduced the incidence of drink driving and speeding, and resulted in an increase in the number of people who wear seatbelts and bike helmets;<sup>946</sup>
- **Public health** Various public health campaigns have achieved behaviour change in relation to smoking,<sup>947</sup> sun exposure, drinking and smoking while pregnant, and obesity management;<sup>948</sup> and
- **Environmental issues** Other campaigns have targeted issues such as air quality, littering and recycling.<sup>949</sup>

In many respects, the exercise of raising public awareness and achieving behaviour change is not dissimilar to any advertising campaign which aims to sell products to individuals, only the target behaviour is much more complex. Brad Hesse from the Communication and Informatics Research Branch at the National Cancer Institute (in the United States) says:

Communication campaigns are more successful if they are tailored to the context, values, language and resources available to local audiences. Priorities for which audiences to reach are usually set by an understanding of who is most vulnerable.<sup>950</sup>

Various approaches can be considered as part of a campaign, including the use of paid advertising using a mass media commercial, identifying a well-known spokesperson, using social media, interactive web advertising, posters and brochures.<sup>951</sup> The best outcomes are achieved, however, when careful research work has been done to develop the message in an appropriate way for the intended target audience, and then ensuring the medium used will reach the highest number within the target population.

A significant challenge documented in the literature, however, is the difficulty of measuring the impact of a public communication campaign due to their complexity, the unpredictable nature of

<sup>&</sup>lt;sup>944</sup> Julia Coffman, Public Community Campaign Evaluation: An Environmental Scan of Challenges, Criticism, Practice and Opportunities (Harvard Family Research Project, 2002) 2.

<sup>945</sup> Ibid.

<sup>&</sup>lt;sup>946</sup> Barry Elliott, Road Safety Mass Media Campaigns: A Meta Analysis (The Federal Office of Road Safety, 1993).

<sup>&</sup>lt;sup>947</sup> Trish Cotter, Sarah Durkin and Megan Bayly, Mass Media Public Education Campaigns: An Overview (The Cancer Council Website, November 2019) <<u>https://www.tobaccoinaustralia.org.au/chapter-14-social-marketing/14-1-social-marketing-and-public-education-campaig>.</u>

<sup>&</sup>lt;sup>948</sup> Public Health Association Australia, *Top 10 Public Health Successes Over the Last 20 Years*, Public Health Association Australia Monograph Series No. 2 (Public Health Association of Australia, 2018).

<sup>&</sup>lt;sup>949</sup> Tom Evison and Adam D Read, 'Local Authority Recycling and Waste – Awareness Publicity/Promotion' 32(3-4) Resources, Conservation and Recycling; Zero Waste Scotland, 7 of the Best Litter Prevention Campaigns from Around the World, 2020 (Zero Waste Scotland Limited Website) <<u>https://www.zerowastescotland.org.uk/litter-flytipping/top-campaigns</u>>.

<sup>&</sup>lt;sup>950</sup> Lacey Mayer, Are Public Awareness Campaigns Effective? (Cure: Cancer Updates, Research and Education Website, 10 March 2008) <<u>https://www.curetoday.com/publications/cure/2008/spring2008/are-public-awareness-campaigns-effective</u>>.

<sup>951</sup> Ibid.

their interventions, the context and other factors that can confound outcomes and the difficulty in finding control or comparison groups.<sup>952</sup> A strong investment in evaluation of a campaign can not only document the nature of behaviour change that has been achieved, but can also help refine what approach has the best impact for the message and the target audience.

### 10.2.1 Public awareness campaigns on workplace violence

Over recent years, a range of strategies, including public awareness campaigns, have aimed to raise the issue of assaults of public officers, including campaigns that have specifically aimed to make it clear that strong penalties apply to this behaviour.

As part of a broader campaign to improve pay and conditions for police, the Queensland Police Union issued a series of advertising campaigns in 2007 and 2010, one of which depicted the need for higher penalties for people who assault police.<sup>953</sup> When the maximum penalty for aggravated serious assault of public officers was raised from 7 to 14 years imprisonment as part of the Safe Night Out Strategy,<sup>954</sup> this was supported by an awareness campaign highlighting the new maximum penalty. The campaign featured images of some of the injuries received by nurses, doctors and paramedics as a result of assault, see below.



A Safe Night Out at Work

Since then, an advertising campaign was designed by Queensland Health in 2016, which aimed to prevent assaults on paramedics and frontline emergency workers with a mix of advertising on social and digital media, television, on billboards and on bus stops.<sup>955</sup> This campaign included reference to the 14 year maximum penalty for aggravated forms of serious assault. The image used as part of the social media campaign is below, and an image accompanying a YouTube clip is also included on the next page.

<sup>&</sup>lt;sup>952</sup> Coffman (n 944).

<sup>953</sup> ABC News, 'Police Union Steps Up TV Ad Campaign' (online, 29 July 2007) <<u>https://www.abc.net.au/news/2007-07-29/police-union-steps-up-tv-ad-campaign/2516400</u>>; 'Queensland Police Union Rejects 'Insulting' 2.5% Pay Rise and Start Advertising Campaign for Better Pay', *The Sunday Mail* (online, 11 July 2010) <<u>https://www.couriermail.com.au/news/queensland-police-union-rejects-insulting-25-pay-rise/news-story/ea734ce478f552b5aeef897698398fcd</u>>.

<sup>&</sup>lt;sup>954</sup> Queensland Government, Safe Night Out Strategy (June 2014).

<sup>&</sup>lt;sup>955</sup> Queensland Health, 'To Violence, We Say No' (Web Page) <<u>https://www.health.qld.gov.au/news-events/news/160401-occ-vi accessed 18 March 2020>.</u>





Following a statewide Paramedic Safety Taskforce Report delivered in 2016, a campaign titled 'Respect our Staff' was launched by the Queensland Government in 2019 and included interviews with paramedics speaking about their experiences. The campaign used the slogan 'Violence in the workplace affects much more than me', highlighting that paramedics are also parents, partners and friends with their own lives, interests and contributions to the community.<sup>956</sup>

Queensland Health launched a campaign to raise awareness about the problem of violence against nurses, with a short video depicting the impact of violence on staff and patients (see the online ABC article below, with links to the video).



Also in 2019, the Queensland Government launched a public awareness campaign in conjunction with a raft of new measures to improve bus safety, with the message of zero tolerance for violence against bus drivers. The campaign involved a series of television advertisements depicting real-life violent scenarios faced by drivers. Other companion measures included a 12-month trial of an increased presence of officers on particular services, and more driver safety barriers and anti-shatter windows.<sup>957</sup>

<sup>&</sup>lt;sup>956</sup> Jude Skatssoon, 'Queensland Targets Violence Against Paramedics', *Government News* (online, 25 April 2019) < https://www.governmentnews.com.au/qld-targets-violence-against-ambulance-workers/>.

<sup>&</sup>lt;sup>957</sup> Mark Bailey, Minister for Transport and Main Roads, 'Palaszczuk Government Strengthens Bus Safety Commitment' (Media Statement, 30 September 2019).



It is unknown whether an evaluation of the impact of these public awareness campaigns has been undertaken, so whether these efforts have resulted in a reduction of assaults against specific types of public officer is not known.

#### **10.2.2** Role of the media

While the impact on the public of recent public awareness campaigns is unknown, numerous studies have found the primary way the general public is informed about sentencing is via the media.<sup>958</sup>

In recognition of the important role that journalists play in helping the Queensland community understand sentencing, the Council developed a *Court Reporting Guide for Journalists* last year in consultation with print and radio journalists, media advisors from the Supreme and District Courts and the Queensland Law Society.<sup>959</sup> The guide, which is available on the Council's website, provides a simple, plain English overview of the courts and court processes, as well as commonly used terms, to assist journalists to cover court proceedings accurately.

However, with the limited time and coverage the media is able to devote to an issue, journalists are unlikely to be able to provide a comprehensive understanding of what the sentencing judge took into account to determine an appropriate sentence.

<sup>&</sup>lt;sup>958</sup> Karen Gelb, *More Myths and Misconceptions*, Research Paper (Sentencing Advisory Council (Victoria), 2008) 6.

<sup>&</sup>lt;sup>959</sup> Queensland Sentencing Advisory Council, Court Reporting Guide for Journalists (2019).

A complex case may only have some elements reported on, or in some instances, legislative restrictions mean key sentencing information that impacted on the sentence cannot be reported.

The Victorian Sentencing Advisory Council found media reporting is selective, often choosing stories with the aim of entertaining rather than informing, focusing on criminal cases which are unusual, dramatic and violent.<sup>960</sup> This means the public may be given only a partial picture, and at times a distorted view, of what really took place, which may contribute to community dissatisfaction with sentencing outcomes. The issue of assault of public officers has been regularly reported on over the last decade, with a number of calls for increases in penalties having been made over that time by union organisations and employee groups, as well as reports of rising numbers.

### **10.2.3** Role of the Council

The Council's statutory functions under section 199 of the PSA include:

- 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.

Information published as part of this review, together with consultation activities, is one way the Council is contributing to community understanding about the context in which assaults on public officers occur, the current offence and penalty framework, as well as sentencing practices and what factors impact on sentencing.

However, one barrier, as reported in Chapter 5, is the ability to accurately report on sentencing outcomes where the offence charged is one other than serious assault, or one of the other defined categories of simple offences committed against specific classes of public officer. This is because victim status is not consistently and reliably recorded in the Courts data, and linked data from the Queensland Police Service may record a victim's occupation, but not the context in which an alleged assault occurred. For example, the victim's occupation might be recorded as a 'paramedic', but without specifying whether the victim was assaulted in the course of their work. The context in which an assault is alleged to have occurred might only be obtained by reviewing the relevant court brief (known as a 'QP9') or case file.

The NSW Legislative Assembly Committee on Law and Safety in its 2017 report on violence against emergency services personnel, made a similar observation, finding:

access to information about sentencing patterns for violence against emergency services personnel is limited. While sentencing data is available for the specific offences against particular victims ... there is a lack of sentencing data where a person who has been violent towards emergency services personnel has been charged with a general offence under the *Crimes Act 1900*. This is because any sentencing data that is published about such offences is indistinguishable from the data that relates to offences against general members of the public.

For example, if a person assaults a police officer and is charged and sentenced under one of the specific 'assault police' provisions of the *Crimes Act 1900*, it will be clear from the statistics that are published that the victim was a police officer. In contrast, if a person assaults a paramedic and is charged and sentenced under one of the general assault provisions of the *Crimes Act 1900* there will be no way of knowing from the published statistics whether it was a paramedic assault or some other type of assault.

<sup>&</sup>lt;sup>960</sup> Gelb (n 958).

In short, the fact that the victim is emergency services personnel is not recorded for statistical purposes. While the victim's status as an emergency services worker is taken into account as an aggravating factor in sentencing ... aggravating factors are not recorded. <sup>961</sup>

The Parliamentary Committee noted that the fact that most cases of violence against emergency services personnel were heard in the Local Court (the equivalent to the Queensland Magistrates Courts) also limited access to this information given that 'sentencing remarks in the Local Court and District Court are not routinely transcribed or published'.<sup>962</sup> This reflects the position in Queensland. The Committee recommended:

That the NSW Government consider changes to require the NSW Police Force and the Courts to record where the victim of an offence is an emergency services worker, so that all sentencing statistics that relate to violence against emergency services personnel are clearly identifiable.<sup>963</sup>

It further recommended that, 'the NSW Government consider additional funding so that a greater number of judgments of the Local and District Courts of NSW can be transcribed and published on the NSW Caselaw website'.<sup>964</sup>

The Committee viewed the broader availability of this information as important to promote community confidence that those who offend against emergency services personnel are being dealt with appropriately.<sup>965</sup>

Citing 2007 reforms to enable the identification of offences committed in a domestic violence context, similar to reforms introduced in Queensland, it suggested '[a] similar approach may be able to be taken to identify offences committed against emergency services personnel' which could be built into the existing Judicial Information Research System database.<sup>966</sup>

In its response to the Committee's report, the NSW Government noted it would refer the issue of the recording of victim status to the NSW Police Force to determine the most appropriate method of recording this additional information in its police database.<sup>967</sup> The Department of Justice was tasked with considering whether there is scope to increase the number of District Court and Local Court sentencing remarks that are transcribed and published online, while noting 'any increase will require additional resources'.<sup>968</sup>

# 10.2.4 Preliminary submissions

The Council received some limited feedback on this issue during the initial period of consultation.

The Office of the Public Guardian indicated its support for 'education of the general population as a means to reduce offending behaviour' but questioned the value of this approach for its clients, 'particularly adults with impaired capacity'.<sup>969</sup> The Office of the Public Guardian recommended the

<sup>968</sup> Ibid 13.

<sup>&</sup>lt;sup>961</sup> NSW, Legislative Assembly Committee on Law and Safety, Violence Against Emergency Services Personnel (Report 1/56, 2017) 65 [4.27]–[4.20].

<sup>&</sup>lt;sup>962</sup> Ibid 65–66 [4.30].

<sup>&</sup>lt;sup>963</sup> Ibid 68, Recommendation 42.

<sup>&</sup>lt;sup>964</sup> Ibid, Recommendation 43.

<sup>&</sup>lt;sup>965</sup> Ibid [4.38].

<sup>&</sup>lt;sup>966</sup> Ibid [4.39].

<sup>&</sup>lt;sup>967</sup> NSW, NSW Government Response to Recommendations from the Legislative Assembly's Inquiry into Violence Against Emergency Services Personnel (2018) 12.

<sup>&</sup>lt;sup>969</sup> Preliminary submission 7 (Office of the Public Guardian) 3.

Council consider specific alternatives for this cohort, who may have difficulty applying information in a situation where they are 'in a stressful situation and have reached crisis point'.<sup>970</sup>

The Queensland Teachers' Union (QTU) identified a need for accurate data to be collected and made available on occupational violence more generally to better understand the scope of the problem, to support the assessment of risks and to ensure responses are appropriate and properly targeted.<sup>971</sup> In the absence of this data it was concerned 'it is difficult to contemplate how the Queensland Sentencing Advisory Council can assess the impact of current legislation or predict the impact of prospective legislative changes'.<sup>972</sup>

The QTU further commented there is:

a general lack of awareness among educators of legal protections afforded to them both in terms of workplace health and safety and section 340 of the Criminal Code. Indeed, most teachers and principals are surprised to learn that they are protected by the same legislative framework as that which underpins the high-profile media campaign around health workers, paramedics and ambulance officers.<sup>973</sup>

While the QTU referred to its role in informing educators about current legal provisions in professional learning sessions, it noted this 'does little to educate the general population about the expected standards of behaviour in schools and the consequences for inappropriate behaviour choices'.<sup>974</sup> It therefore supported a need for '[a]ctions to enforce standards, correct poor choices of behaviour and protect all who learn and work in schools' being 'visible to the whole community'.<sup>975</sup>

Queensland Advocacy Incorporated identified a number of areas of potential focus, including 'better health education for Queensland emergency service personnel, particularly education that dispels myths about the transmission risks of communicable diseases'.<sup>976</sup>

#### 10.2.5 Issues

The above discussion has identified a number of potential areas of focus to improve community knowledge and understanding of the penalties that apply to offences of assault committed against public officers and sentencing practices.

Improving the data collected about victims may enhance the Council's ability to report on relevant sentencing trends given some assaults are likely to be charged under one of the general offence provisions rather than, for example, the offence of serious assault or other offences readily identified as involving a public officer victim. However, the Council acknowledges that system limitations and costs associated with any system enhancements may make the adoption of such measures prohibitive.

Another suggestion made by the NSW Legislative Assembly's Inquiry into Violence Against Emergency Services Personnel was to have more sentencing judgments for these offences transcribed and made available to the general public, given that most of these matters are dealt

<sup>970</sup> Ibid.

<sup>&</sup>lt;sup>971</sup> Preliminary submission 13 (Queensland Teachers' Union) 5–6.

<sup>&</sup>lt;sup>972</sup> Ibid 6.

<sup>&</sup>lt;sup>973</sup> Ibid 8.

<sup>&</sup>lt;sup>974</sup> Ibid 8.

<sup>&</sup>lt;sup>975</sup> Ibid 9.

<sup>&</sup>lt;sup>976</sup> Preliminary submission 35 (Queensland Advocacy Incorporated) 10.

with in the lower courts and District Court. The practicality and costs associated with such an approach may make a commitment by the courts to adopt such an approach challenging.

There are, however, a range of strategies that could be implemented to better inform the community about sentencing for these offences at relatively little cost. This might include the continued provision of information of the kind the Council routinely produces, such as sentencing fact sheets and statistical publications, as well as engagement with the media.

As discussed above, the media continue to be a key source of information for the public on sentencing. The Victorian Chief Judge in recent years has spoken about the importance of using existing media channels to communicate the work of the courts given much of the public criticism of the courts concerns criminal law and sentencing.<sup>977</sup> Both the Council and criminal law practitioners can continue to actively support this process in Queensland by providing the media and the public with relevant information about the principles and factors that guide sentencing, including in these cases, and explaining the range of matters to which courts must have regard in setting an appropriate sentence. In this way, public understanding of the complex range of matters that inform sentencing and the application of the law can be enhanced.

Preliminary submissions have further highlighted the importance of relevant data and information being collected and made available to guide the assessment of risks, and to help give confidence to those who are subject to such assaults that it should be reported. The benefits of broader community education have also been identified.

The Council welcomes views on these issues to inform its final advice and recommendations.

#### **Questions: Community understanding**

- **16.** What issues contribute to, or detract from, the community's understanding of penalties and sentencing for assaults on public officers?
- **17.** How can community knowledge and understanding of penalties and sentencing practices for<br/>assaultsagainstpublicofficersbeenhanced?

# **10.3** Other issues

A range of other matters were raised in preliminary submissions to the review.

The Office of the Public Guardian made a number of recommendations to improve current responses regarding defendants with impaired capacity, including:

- legislating diversionary options to focus on preventative rather than punitive measures;
- considering offence context at each stage of the offence, penalty and sentencing framework;
- legislating a requirement for formal pre-sentence reports on capacity, trauma history and previous engagement with therapeutic and rehabilitative programs;
- examining the value of public education for adults with impaired capacity and alternative measures for them;

<sup>&</sup>lt;sup>977</sup> Karin Derkley, 'Going Public in the Court's Defence', *Law Institute Journal* (online, 8 March 2019) < https://www.liv.asn.au/Staying-Informed/LIJ/LIJ/March-2019-(1)/Going-public-in-Court%E2%80%99s-defence>.

• specifically considering the impact of any changes on children and young people engaging with the criminal justice system.<sup>978</sup>

A number of other stakeholders also supported attention being focused on the prevention of incidents rather than the adoption of more punitive responses, including the Council's Aboriginal and Torres Strait Islander Advisory Panel.

The Prisoners' Legal Service (PLS) suggested: 'Many use of force incidents initiated by correctional staff could be avoided if more appropriate communication methods [were] adopted when communicating with vulnerable people in prison'. In its submission, the PLS also referenced concerns raised with the Crime and Corruption Commission (CCC) previously about unlawful or disproportionate use of force by correctional staff against prisoners – the majority of whom had spent 'extended periods of time in solitary confinement'.<sup>979</sup>

Both Sisters Inside and the PLS supported frontline workers being provided with appropriate training to support them in their interactions with vulnerable persons to reduce the likelihood of staff being subject to acts of violence.<sup>980</sup> Taskforce Flaxton, referencing a submission made by the PLS and by the Human Rights Watch, found that prisoners who require health care are particularly vulnerable to assault and the excessive use of force.<sup>981</sup>

Taskforce Flaxton identified prison overcrowding has a number of potential impacts, including increasing prisoners' anger and frustration and the risk of conflict, violence and serious assaults against prisoners and staff.<sup>982</sup> It reported: 'An analysis of data from the last five years shows that as the utilisation rate (a measure of overcrowding) of Queensland prisons increased, so too did prisoner-on-prisoner and prisoner-on-staff assaults, self-harm incidents, and incidents requiring the use of force'.<sup>983</sup> It also identified a greater risk of corrupt conduct as 'greater volatility in the correctional environment ... reduces the capacity of custodial correctional officers ... to maintain order and security and increases the risk of excessive force to deter poor behaviour'.<sup>984</sup>

Based on the findings of a survey of staff and prisoners, the CCC identified that the use of physical assault or use of excessive force against prisoners was likely to be under-reported as while 20 per cent of staff and 58 per cent of prisoners indicated they had seen a staff member assault or use excessive force against someone in the last six months, 68 per cent of those staff and 75 per cent of those prisoners indicated they did not report this.<sup>985</sup>

Views on the need for better public awareness campaigns to reduce incidents of violence, including by the QTU, are discussed above.

While the focus of this review is on the appropriateness of the current penalty, sentencing and offence framework to respond to assaults on public officers, the Council welcomes views about other strategies that might be put in place to minimise the incidence of violence against public officers, thereby improving the safety of those involved in undertaking these critical roles.

<sup>&</sup>lt;sup>978</sup> Preliminary submission 7 (Office of the Public Guardian). These recommendations are discussed in more detail in Chapter 9 and above in this Chapter under 10.2.4.

<sup>&</sup>lt;sup>979</sup> Preliminary submission 26 (Prisoners' Legal Service) 2.

Preliminary submission 21 (Sisters Inside) 7; and Preliminary submission 26 (Prisoners' Legal Service) 2.

<sup>&</sup>lt;sup>981</sup> Crime and Corruption Commission Queensland, *Taskforce Flaxton: An Examination of Corruption Risks and Corruption in Queensland Prisons* (2018) 8.

<sup>&</sup>lt;sup>982</sup> Ibid 5.

<sup>983</sup> Ibid.

<sup>&</sup>lt;sup>984</sup> Ibid.

<sup>&</sup>lt;sup>985</sup> Ibid 13.