# Queensland Sentencing Advisory Council issues paper on penalties for assaults on police and other frontline emergency workers, corrective services officers and other public officers

Submission by Legal Aid Queensland

Legal Aid QUEENSLAND

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# Introduction

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the Legal Aid Queensland Act 1997, LAQ is established for the purpose of "giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way" and is required to give this "legal assistance at a reasonable cost to the community and on an equitable basis throughout the State". Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ's services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ's lawyers in the day to day application of the law in courts and tribunals. We believe that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

LAQ is comprised of various divisions. The Criminal Law Services division is the largest criminal law legal practice in Queensland, representing disadvantaged persons charged with the full range of indictable and summary offences. As we noted in our original feedback, we have teams of lawyers in our criminal practice, throughout the state, that deal regularly with people charged with offences under s340 *Criminal Code*, and s790 *Police Powers and Responsibilities Act* 2000. Our lawyers are at the front line of criminal justice, especially our duty lawyers who service Magistrates Courts every day.

LAQ also provides legal advice services and limited representation services to victims of crime through our Civil Justice Service and is therefore able to respond from both a criminal defence practice and also a victims and crime representation perspective.

# Response to questions

We wish to state at the outset that in light of how courts currently deal with the issues of acts of violence against public officers and workers in certain circumstances, there does not need to be any change to the current legislation. The various offences set out in the Criminal Code and *Police Powers and Responsibilities Act 2000* adequately cover a multitude of circumstances. The existing sentencing framework outlined in the *Penalties and Sentences Act 1992* and through the common law provide adequate scope for a court to take into account the serious nature of offending against public officers and sentence accordingly.

Should change be recommended, then we believe it needs to be consistent and ensure that the discretion of the court is maintained in the sentencing process.

### Questions 1 – 2

*Should an assault on a person while at work be treated by the law as more serious, less serious, or as equally serious as if the same act is committed against someone who is not at work, and why?*

*If an assault is committed on a public officer performing a public duty, should this be treated as more serious, less serious, or as equally serious as if the same act is committed on a person employed in a private capacity (e.g. as a private security officer, or taxi driver) and why?*

LAQ is of the view that the sentencing court should impose a sentence having regard to the circumstances of each case and should be equipped to apply a broad discretion in order to do so. On a review of the common law in this area, as outlined in **ANNEXURE A** we conclude that:

i. It is clear the courts when given the opportunity to take into account all the circumstances of the case, do so;

ii. The sentiment regarding aggravating features where the complainant is at work and where the complainant is performing public duty, is taken into account, and;

iii. Consistent with the research outlined in the issues paper, Imprisonment whether suspended or actual as the penalty imposed, is unexceptional.

As outlined in part 3.3 of the issues paper, the original intent of section 340 was to deal with assaults committed in order to resist or prevent arrest, resist or wilfully obstruct police or persons in the execution of duty, resist or obstruct the lawful execution of process, or interfere with commerce or employment. Subsequent amendments specified particular classes of persons. LAQ has concerns about creating classes of victims. We submit that courts are in an ideal place to assess the circumstances of each case and place weight on particular victim vulnerabilities.

### Question 3

*Should the law treat assaults on particular categories of public officers as being more serious than other categories of public officer, and why?*

As demonstrated in the issues paper, there are an array of offences and sentencing methods currently available to courts to allow them to adequately punish for a variety of circumstances. The statistics in the issues paper demonstrate that the courts across all jurisdictions take these matters seriously but also impose a variety of penalties. This is entirely appropriate. We are concerned about a law that treats assaults on particular categories of public officers being more serious than other categories, because it creates classes of victims without due regard to the particular vulnerabilities of each case.

### Questions 4 and 5

*Does the current sentencing process in Queensland adequately meet the needs of public officer victims?*

*Should any changes be considered to the current approach to better respond to victim needs? If so, what reforms should be considered?*

LAQ is of the view that the current sentencing process in Queensland adequately meets needs of public officer of victims. It is clear from the research discussed in the issues paper that courts are treating this offending seriously and imposing adequate penalties. If there are to be amendments, we reiterate that the discretion of the court should be maintained.

From the perspective of the Victims Assist Scheme, consideration could be given to amending the categories of special assistance payable under section 39(h) and Schedule 2 of the *Victims of Crime Assistance Act 2009 (VOCAA)* and the special assistance payable to public officers who are the victims of acts of violence.

- s3 of VOCAA provides the objectives of the Scheme which are to help victims of crime to recover from the acts of violence by giving financial assistance and to give amounts:

  *"representing **a symbolic expression by the State** of the community's recognition of the injuries suffered by them"*

- s3(3) states that the amounts paid under the scheme:

  *"are not intended to reflect the level of compensation to which victims of acts of violence may be entitled at common law or otherwise"*

- s39 details the composition of assistance that can be paid to primary victims which includes "special assistance" – see s39(h).

Special assistance is a recognition payment which is a one-off cash payment that is assessed according to the category of the act of violence. The categories are listed in clauses 2 & 3 of Schedule 2 of *Victims of Crime Assistance Act 2009* and are set out in **ANNEXURE B** to this response.

As the giving of financial assistance under VOCCA is considered under the Act to be a symbolic expression of the community's recognition of the injuries suffered by victims, consideration could be given to the removal of the limitations imposed under Part 3 of VOCCA and in particular section 32 in relation to the payments of special assistance. It would be open to amend section 32 (2)(a)(ii) and section 32(6) to enable public officers injured in the course of their duties to be paid special recognition payment regardless of whether they are paid any lump sum payment under the Workers' Compensation Act.

It would be open for amendments to VOCAA to enable special recognition payments to public officers when acts of violence are committed against them in the performance of their duties, particularly when that risk can be faced daily and as part of their duties.

Additionally, consideration could be given to amending the category circumstances set out in section 1(3) of Schedule 2 of VOCAA to enable uplifts from a lower to a higher category in special assistance payments on the basis that the victim was a public officer injured in the course of their duties.

### Question 6

*Who should be captured within the definition of a 'public officer' and how should this be defined? Are the current definitions under sections 1 and 340 of the Criminal Code sufficiently clear, or are they in need of reform? For example:*

*a. Should the definition of 'public officer' in section 340 of the Criminal Code be expanded to expressly recognise other occupations, including public transport drivers (e.g. bus drivers and train drivers) and public transport workers?*

*b. Should people employed or engaged in another state or territory or by the Commonwealth to perform functions of a similar kind to Queensland public officers who are on duty in Queensland, also be expressly protected under section 340?*

a) The current definition of "public officer" is broad and allows for many categories of victims to be included. Courts equipped with broad sentencing discretions are in the best position to assess the circumstances of each case, place due weight on the vulnerabilities of the victim and formulate an appropriate sentence.

b) We believe that there should be no distinction between state, territory or Commonwealth employees and a one in - all in approach should be taken.

### Question 7

*Should assaults on people employed in other occupations in a private capacity, working in particular environments (e.g. hospitals, schools or aged care facilities) or providing specific types of services (e.g. health care providers or teachers) also be recognised as aggravated forms of assault? For example:*

*a. by recognising a separate category of victim under section 340 of the Criminal Code – either with, or without, providing for additional aggravating circumstances (e.g. spitting, biting, throwing bodily fluids, causing bodily harm, being armed) carrying a higher maximum penalty;*

*b. by stating this as a circumstance of aggravation for sentencing purposes under section 9 of the Penalties and Sentences Act 1992 (Qld);*

*c. other?*

As mentioned above, the current definition of "public officer" is broad and allows for many categories of victims to be included. Courts equipped with broad sentencing discretions are in the best position to assess

the circumstances of each case, place due weight on the vulnerabilities of the victim and formulate an appropriate sentence without the need anticipating and legislating for every known category of victim.

Historically it would seem the policy behind these types of provisions relates to the ability to punish those who do not respect authority where the authority is granted through a public purpose and to allow those tasked with a public responsibility to carry out their work.

Amendments in the form suggested in Q7(a) run the risk of unnecessarily overcomplicating section 340 and creating arbitrary barriers to sentencing processes. The section due to its history is already multilayered and slightly removed from its original purpose. Further, creating another category of victim or circumstance under section 9 of the PSA beyond public officer may be beyond the Terms of Reference of the Council in this particular referral. It is also unnecessary given the current sentencing regime under the PSA and approach taken by courts in our experience.

Broadening the definition of "public officer" could lead to unintended consequences. For example a definition extended to include officers who are contracted or employed by the Department of Child Safety who provide care to children or who have a role in parenting the child would entrench the criminalisation of children in care.

### Question 8

*If section 340 of the Criminal Code is retained in its current or amended form, is there a need to retain subsection (2) which applies to assaults by prisoners on working corrective services officers (as defined for the purposes of that section), or can this type of conduct be captured sufficiently within subsection (2AA)? What are the benefits of retaining subsection (2)?*

If the section is retained in its current form, it would be somewhat provocative to remove the specific reference to corrective services officers under subsection (2). In reality given the broad definition of public officer, there is no need to retain any specific reference to particular public officers, police or corrective services officers. Subsection (2AA) would subsume all and incorporates the aggravating features for all.

### Question 9

*Should assaults against public officers continue to be captured within a specific substantive offence provision (serious assault) or, alternatively, should consideration be given to: a. making the fact the victim was a public officer performing a function of their office, or the offence was committed against the person because the person was performing a function of their office an aggravating factor that applies to specific offences as a statutory circumstance of aggravation (meaning a higher maximum penalty would apply); and/or b. amending section 9 of the Penalties and Sentences Act 1992 (Qld) to statutorily recognise the fact the victim was a public officer an aggravating factor for sentencing purposes (in which case it would signal the more serious nature of the offence, but would not impact the upper limit of the sentence that could be imposed)?*

LAQ believes there is merit in retaining a specific substantive offence provision of serious assault. The focus of the offence should be the fact that the victim was a public officer performing a function of office.

It is acknowledged that an alternate way of achieving this that would apply to all offences against public officers is to amend section 9 of the PSA.As mentioned above, in our experience and as demonstrated in **ANNEXURE A**, the courts already treat this fact as an aggravating feature of a case when sentencing. Section 9 already allows the court to take into account the particular circumstances of each offence. The purpose of the amendment would therefore be more of a communication exercise than affecting change.

There may be value in rejigging the legislative framework and leaving section 790 of the PPRA and section 199 to deal with resisting and less serious assaults on public officers. However, we also note there is little evidence of a difficulty with interpreting or application of section 340. Any rejigging would work more as a tidying up of provisions rather than the instigation of systemic change. There is of course always the risk of unintended consequences that may stem from such change.

### Question 10

*What benefits are there in retaining multiple offences that can be charged targeting the same or similar behaviour (e.g. sections 199 and 340 of the Criminal Code as well as sections 655A and 790 of the Police Powers and Responsibilities Act 2000 (Qld), sections 124(b) and 127 of the Corrective Services Act 2006 (Qld), and other summary offences)?*

There is a benefit in retaining multiple offences that can be charged both under the Criminal Code and summarily. The reason for this is that it allows prosecution discretion to proceed with a charge that best fits the factual circumstances of each case.

### Question 11

*Should any reforms to existing offence provisions that apply to public officer victims be considered and if so, on what basis?*

We submit that the issues paper has not demonstrated any evidence-based reasons to enact legislative reforms to the provisions that apply to public officer victims in the criminal law and sentencing process. However, please note above our comments regarding possible amendments to VOCCA.

### Question 12 and 13

*What sentencing purpose/s are most important in sentencing people who commit assaults against police and other frontline emergency service workers, corrective services officers and other public officers? Does this vary by the type of officer or context in which the assault occurs, and in what way?*

*Does your answer to Question 12 change when applied specifically to children/young offenders?*

Both general and personal deterrence are the sentencing purposes that are most important in sentencing people in relation to these offences. It may vary in terms of degree, but not principle in our experience by the type of officer or context in which the assault occurs.

The *Youth Justice Act 1992* places emphasis on the need to divert children from the criminal justice system. A significant percentage of children who commit offences against public officials have been affected by trauma or have significant cognitive deficits. Most children who enter the youth justice system have been deprived of childhoods where parents have taught them how to appropriately regulate their emotions or deal with stressful situations. The availability of conferencing for offending against any public officers assists children in understanding the perspective of victims and allows youth justice to work with children in dealing with anger or aggression.

### Question 14

*Do existing offences, penalties and sentencing practices in Queensland provide an adequate and appropriate response to assaults against police and other frontline emergency service workers, corrective services officers and other public officers? In particular:*

*a. Is the current form of section 340 of the Criminal Code as it applies to public officers supported, or should changes be made to the structure of this section?*

*b. Are the current maximum penalties for serious assault (7 years, or 14 years with aggravating circumstances) appropriate in the context of penalties that apply to other assault-based offences such as:*

*i. common assault (3 years);*

*ii. assault occasioning bodily harm (7 years, or 10 years with aggravating circumstances);*

*iii. wounding (7 years);*

*iv. grievous bodily harm (14 years)?*

*c. Should any changes be made to the ability of section 340 charges to be dealt with summarily on prosecution election? For example, to exclude charges that include a circumstance of aggravation?*

*d. Are the 2012 and 2014 reforms to section 340 (introduction of aggravating circumstances which carry a higher 14 year maximum penalty) achieving their objectives?*

*e. Are the current penalties that apply to summary offences that can be charged in circumstances where a public officer has been assaulted appropriate, or should any changes be considered?*

*f. Do the current range of sentencing options (e.g. imprisonment, suspended sentences, intensive correction orders, community service orders, probation, fines, good behaviour bonds) provide an appropriate response to offenders who commit assaults against public officers, or should any alternative forms of orders be considered?*

*g. Similarly, do the current range of sentencing options for children provide an appropriate response to child offenders who commit assaults against public officers, or should any alternative forms of orders be considered?*

*h. Should the requirement to make a community service order for offences against section 340(1)(b) and (2AA) of the Criminal Code and section 790 of the Police Powers and Responsibilities Act 2000 (Qld), in accordance with section 108B of the Penalties and Sentences Act 1992 (Qld) (unless the court is satisfied that, because of any physical, intellectual or psychiatric disability of the offender, they are not capable of complying) be retained and if so, on what basis?*

We submit that existing offences, penalties, and sentencing practices in Queensland are adequate and do not need to be changed.

a) please refer to our above responses regarding changes to the section,

b) apart from the inclusion of a maximum penalty of 14 years in the aggravated cases, we submit to the maximum penalties that apply to each offence are appropriate. The 14-year maximum is out of step with other categories of offences. It is clear the courts deal with these matters seriously and have done so for some time prior to the amendment,

c) are unable to identify any need to change the elections relating to section 340,

d) the issues paper identifies that if anything assaults on public officers are reducing. Accordingly, there is evidence to suggest that if deterrence (either specific or general) was the focus of increasing the maximum penalties then it has achieved its purpose,

e) there is no evidence to support a change in this regard,

f) we submit that the current range of sentencing options is appropriate. There are a broad range of options and it allows courts to impose sentences according to the circumstances of each case. LAQ would support an increase in the availability of restorative justice options within this category of offending. Assessing appropriateness of each referral on a case by case basis would allow for greater utilising of what has proven in the Youth Justice system to be an effective process for victims and offenders. Both parties would need to be adequately supported through the process to ensure maximum participation and limit any power imbalance.

g) The options currently available for the sentencing or diversion of children are appropriate. Youth Justice conferencing remains an effective intervention for children who have committed assaults.

h) we have no submission to make in relation to this issue.

### Question 15

*If the Government was to introduce sentencing reforms targeting assaults on public officers in general, or specific categories of public officers, on the basis that current sentencing practices are not considered adequate or appropriate, what changes would you support or not support?*

In addition to what we have already outlined, we would not support any mandatory penalty and we reiterate that courts are in the best position to assess the circumstances each case, the particular vulnerabilities of victims, and impose appropriate sentences according to the circumstances of each case.

Any increase in sentencing outcomes for assaults that involve public officials must take into account the need for speedy resolution of children's matters and the desirability of children who commit such offences being able to participate in restorative justice processes. At present the categorisation of offences pursuant to the *Youth Justice Act* allows all assault matters (other than GBH) to be dealt with summarily.

Restorative justice measures for adults are presently underutilised or deemed not suitable. Given personal deterrence is a significant factor in sentencing for these types of offences and the significance of the victim's role and duties in the circumstance of the offence, LAQ sees great benefit in broadening this option in these matters.

### Questions 16 and 17

*What issues contribute to, or detract from, the community's understanding of penalties and sentencing for assaults on public officers?*

*How can community knowledge and understanding about penalties and sentencing for assaults on public officers be enhanced?*

These questions are beyond our field of expertise and as such we have no comment.