

Penalties for Assaults on Public Officers Review

Submission of
Queensland Council of Unions

June 2020



**Queensland
Council of Unions**

The Queensland Council of Unions (QCU) has a number of affiliated unions that have a particular interest in the subject matter of the Queensland Sentencing Advisory Council (QSAC) inquiry into Penalties for assaults on police and other frontline emergency service workers, corrective service officers and other public officers. In all cases, affiliated unions have demonstrated their concern, either through this inquiry or in other forums, for the increasing levels of work-related violence that has been experienced by their respective members.

The QCU takes a workplace health and safety (WHS) approach to violence against public officials and other workers. In that regard we do not delineate between workers injured at work based on their type of employer, and whether that be public, private or non-government sectors. Our central principle is that all workers have the right to attend work without being subjected to physical or psychological violence and/or abuse. We also adopt a position that it is far better to prevent risk rather than consider what is to be done after the event.

Under the relevant WHS legislation, the *Work Health and Safety Act 2011*, employers, as the Person Conducting a Business or Undertaking (PCBU), have the primary duty of care, to ensure so far as is reasonably practicable the health and safety of workers, while the workers are at work in the business or undertaking. This primary duty of care includes providing a safe system of work,¹ and includes a duty to so far as is reasonably practicable, eliminate, or to minimise risks, including risks to the physical or psychological health of workers.²

Consultations with our affiliate unions have indicated that a focus on prevention, through elimination or minimising risks, does not occur across all industries or sectors. For example, the Queensland Teachers' Union submission³ identifies the following in relation to the collection of data:

The Department of Education does not, as far as we are aware, deliberately keep aggregated data on incidents of occupational violence in schools.

TAFE Queensland does not, as far as we are aware, deliberately keep aggregated data on incidents of occupational violence in TAFE Institutes.

As stated, a PCBU has a duty to put in place controls to, so far as is reasonably practicable, eliminate, or where this is not able to be done reasonably practicably, to implement measures to minimise risks to workers⁴. The PCBU further has a duty to maintain and review those control measures.⁵ It is doubtful that an employer, who is not keeping aggregate data on such a prevalent and seemingly escalating risk, is complying with these duties. It is also arguable that the current control measures to illuminate or reduce risk, to the extent that they exist, are fit for purpose.

¹ Section 19 (3) *Work Health and Safety Act 2011* (Qld).

² Section 17 *Work Health and Safety Act 2011* (Qld).

³ Queensland Teachers' Union preliminary response to Queensland Sentencing Advisory Council inquiry into penalties for assaults on police and other frontline emergency workers, corrective services officers and public officers.

⁴ Sections 35 and 36 *Work Health and Safety Regulation 2011* (Qld).

⁵ Section 37 *Work Health and Safety Regulation 2011* (Qld).

Other government agencies do keep data on occupational violence such as Queensland Health. From those areas of employment where such aggregate data is available it is easy to establish that there has been a substantial upward trend in work related violence,⁶ even before the most recent COVID 19 pandemic. The unanswered question is why there has been a dramatic increase in work related violence and aggression? From a WHS perspective, urgent attention needs to be given to the causes of the dramatic increases in work-related violence such as the 360 per cent increase in assaults on correctional officers reported by the Together Union⁷. In this case, over-crowding of correctional facilities and restrictions on prisoner interactions with visitors during the pandemic could go some way to explaining this significant increase in the incidence of occupational violence.

It is also noted that the Together Union submission highlights a potential inconsistency between Sections 340(2) and 340(2AA) of the Queensland Criminal Code. It is difficult to reconcile why the penalty should be greater for an assault against a police officer than a correctional officer and if there is an inconsistency, that inconsistency should be resolved by further amendment. It is understood that there are amendments before the Parliament to overcome this potential inconsistency.

A further initiative which could be considered in lieu of harsher or increased penalties is the use of restorative justice,⁸ as a means of addressing in particular repeat offenders and potentially to reduce recidivism in certain cases, and the costs to the criminal justice system.⁹ In particular, restorative justice could be considered an appropriate policy response in circumstances where there is an ongoing relationship between the parties, such as between teachers, parents and/or children within the school system and local communities, which could otherwise result in the under-reporting of assaults or other forms of abuse.

The potential for underreporting is of concern to the union movement in a variety of areas associated with WHS. The literature review undertaken for this inquiry sets out a range of reasons as to why there is a potential for under-reporting workplace violence,¹⁰ including:

- lengthy and complicated processes for reporting internally within their organisations;
- lack of internal support and guidance after the assault, including fear of retaliation;
- dissatisfaction with the response of administrators and managers; and

⁶ Queensland Nurse and Midwives Union submission to Queensland Sentencing Advisory Council inquiry into penalties for assaults on police and other frontline emergency workers, corrective services officers and public officers; penalties for assaults on police and other frontline emergency workers, corrective services officers and public officers; Together Queensland submission to Queensland Sentencing Advisory Council inquiry into penalties for assaults on police and other frontline emergency workers, corrective services officers and public officers; penalties for assaults on police and other frontline emergency workers, corrective services officers and public officers.

⁷ Together Queensland submission to Queensland Sentencing Advisory Council inquiry into penalties for assaults on police and other frontline emergency workers, corrective services officers and public officers; penalties for assaults on police and other frontline emergency workers, corrective services officers and public officers.

⁸ Queensland Sentencing Advisory Council Penalties for assaults on public officers Issues Paper April 2020 p 142.

⁹ Furman, J An Economic Analysis of Restorative Justice The University of Massachusetts Boston August 2012.

¹⁰ Bond, C, L Porter, M van Felius and T Mulholland Assaults on Public Officers: A review of research evidence Griffith University March 2020 p 17

- a perception that reporting incidents will not make a difference.

These reasons for under-reporting are also reiterated by the Queensland Teachers' Union in that teachers have a similar range of reasons not to report occupational violence:¹¹

- based on lived experience, there is no value in reporting as there is an expectation that no action will be taken by the employer for support,
- children and their needs are valued by the system above the protection of workers – workers in schools believe that they are largely invisible and their plight unheeded,
- they expect no support from the courts or legal processes because the perpetrators are often children, some as young as 4 ½ years of age.

Finally, a concern on the part of the victim for their own ongoing employment could also be another reason for under-reporting. Other research has demonstrated concerns amongst employees for the confidentiality of employer-sponsored employee assistance schemes.¹² Psychosocial injuries associated with assaults, having the potential for longer lasting effects than assault itself, could also potentially go under-reported if victims believe that reporting could endanger their future employment.

In summary, the QCU is supportive of a preventative approach to address the causation of increased assaults on a range of public officers, applying the risk management approach from the Work Health and Safety regulatory framework and focusing on the legal duties of a person conducting a business or undertaking to ensure, so far as is reasonably practicable, the health and safety of all workers, while they are at work in the business or undertaking.

The QCU is also interested in exploring further options around adoption of a restorative justice approach to repeated offences within particular industry sectors or workplaces that experience high rates of occupational violence.

¹¹ Op cit QTU submission.

¹² Gardner, B, K-L Afrey, C Vandelanotte, and A Rebar "Mental health and well-being concerns of fly-in fly-out workers and their partners in Australia: a qualitative study" *BMJ Open* 2018;8 p 7; Martin, J FIFO Rosters and workers' health and safety: a case study of the impacts of extended shift rosters on electrical workers in construction in the resources sector. Unpublished paper June 2020.