



Queensland  
**Human Rights  
Commission**

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# Penalties for assaults on police and other frontline workers

**Submission  
to  
Queensland Sentencing Advisory Council**

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9 January 2020

## Table of Contents

About the Commission .....	2
Application of Human Rights Generally .....	2
Rights Engaged and Upheld.....	3
Existing Provisions .....	5
Approach in other human rights jurisdictions .....	7
Mandatory Minimum Sentences .....	7
Tailored and aggravated offences .....	10
Non-Legislative Responses.....	11
Definition of frontline workers and other public officers.....	13
Disproportionate impact on certain members of the community .....	14
Conclusion .....	15

## About the Commission

1. The Queensland Human Rights Commission (the Commission) has functions under the *Anti-Discrimination Act 1991* and the *Human Rights Act 2019* to promote an understanding and discussion of human rights in Queensland, and to provide information and educative services about human rights.
2. The Commission supports the important purpose of deterring assaults on frontline workers, noting this review was initiated in recognition that assaults on corrective services officers, police and other frontline emergency service workers, such as paramedics and hospital emergency department staff, continue to raise concern for the safe working environment of these officers. These workers are critical to Queenslanders feeling safe and secure in their communities. Among their core duties is protecting the human rights of others. Therefore, the protection of the human rights and wellbeing of such workers is critical. The Commission also appreciates there is value in simplifying and harmonising penalties for all frontline workers, which also reflects community expectations about the importance of protecting all such workers.
3. Nonetheless, based on the experience of other jurisdictions, higher penalties imposed for assaults against such workers, including how such workers are defined, will give rise to human rights limitations. Human rights are not absolute, and may be limited in certain circumstances. This submission provides the Council with a framework for how to best consider the options for change to achieve the important purpose of this review.
4. This may include:
  - seeking relevant data on the effectiveness of increased penalties;
  - considering how maximum penalties are applied currently;
  - demonstrating how increased penalties will address risks to the specific frontline workers identified. This is particularly critical if mandatory custodial penalties are considered, which are a significant limitation on rights; and
  - considering if non-legislative change will achieve, or assist in achieving, the same purpose.

## Application of Human Rights Generally

5. As the Terms of Reference note, other Australian and International jurisdictions have taken different approaches to protect police and other frontline emergency service workers, corrective service offices and other public offices.

6. This submission identifies common human rights issues that may arise by imposing higher penalties for assaults on police and other frontline workers. However, given the broad terms of reference, it may be that proposals emerge that are not considered in this submission that give rise to further human rights limitations. The Commission welcomes the opportunity to continue discussing proposals with the Council as it completes its review.
7. As detailed further below, human rights limitations must be justified as a proportionate way of achieving the purpose of legislation, provided there is evidence that it is the least restrictive option. The Commission is not directly involved in the operation of the current provisions and further evidence may also emerge from stakeholders as part of this review. In particular, the terms of reference require the Council to have regard to any relevant statistics, research, reports or publications regarding causes, frequency and seriousness of offending against police officers and other frontline emergency service workers, corrective services officers and other types of public officers.
8. Therefore, while general observations are made about the human rights proportionality of various options in this submission, the Commission appreciates that further justification may exist to demonstrate why a particular approach is the most reasonable and proportionate way of achieving the purpose.

### Rights Engaged and Upheld

9. The imposition of higher penalties based on the type of victim of an offence will likely engage several human rights protected in the *Human Rights Act 2019* (HRA) including:
  - right to equality;<sup>1</sup>
  - right to liberty and security;<sup>2</sup>
  - right to a fair hearing;<sup>3</sup> and
  - protection from cruel, inhuman or degrading treatment.<sup>4</sup>
10. The HRA draws upon rights in the International Covenant on Civil and Political Rights (ICCPR). Article two of the ICCPR obliges state parties to respect the rights of all individuals, and where not already provided for by existing legislation, take steps to amend laws to recognise rights. The United Nations Human Rights Committee has commented that this obligation includes ensuring individuals are protected not only by the

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<sup>1</sup> *Human Rights Act 2019* s 15

<sup>2</sup> HRA s 29

<sup>3</sup> HRA s 31

<sup>4</sup> HRA s 17

State, but against violations of their rights by private persons. This includes taking appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.<sup>5</sup>

11. In this context, imposing higher penalties that are demonstrated to protect frontline workers will uphold the rights of those workers including the:
  - right to life;<sup>6</sup>
  - right to equality;<sup>7</sup> and
  - right to liberty and security of the person.<sup>8</sup>
12. The requirements for limitations on ICCPR rights are legality, necessity, and proportionality. The substantive requirements of these obligations are interrelated, which is reflected in the provision for the limitation of human rights in the HRA.<sup>9</sup> Section 13(2) of the Human Rights Act sets out criteria for deciding whether a limit on a right is reasonable and justified including:
  - a. the nature of the human rights involved;
  - b. the nature and purpose of the limitation (including whether it is consistent with a free and democratic society based on human dignity, equality and freedom);
  - c. the relationship between the proposed limitations and their purpose (including whether each limitation helps to achieve the purpose);
  - d. whether there are any less restrictive and reasonable ways to achieve the purposes;
  - e. the importance of the purposes of the limitations;
  - f. the importance of preserving the human rights; and
  - g. balancing these matters.
13. The terms of reference provide useful background to the nature and purpose of any limitation and why it is important:
  - the Queensland Government and community expect that police officers and other frontline emergency service workers, corrective

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<sup>5</sup> United Nations Human Rights Committee, *General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 80<sup>th</sup> session, CCPR/C/21/Rev.1/Add. 1326, May 2004 (29 March 2004).

<sup>6</sup> HRA, s 16

<sup>7</sup> HRA, s 15

<sup>8</sup> HRA, s 29.

<sup>9</sup> HRA, s 13.

services officers and other public officers who face inherent dangers in carrying out their duties, should not be the subject of assault;

- the significance of police officers and other frontline emergency service workers, corrective service officers and other public officers needing to have confidence that the criminal justice system properly reflects the inherent dangers they face in the execution of their duty and the negative impacts that an assault in the course of their duties has on those workers, their colleagues and their families;
- the importance of the penalties provided for under legislation and the sentences imposed for assault of frontline public officers being adequate to meet the relevant purposes of sentencing under section 9(1) of the *Penalties and Sentences Act 1992*.

14. As the terms of reference indicate, the *Penalties and Sentences Act 1992* has overarching aims in sentencing that must be considered in any reform. The Governing Principles in Part 2 of the Act, and in particular the sentencing guidelines in s 9 provide a framework for the consideration of sentencing. Section 9(1) states that the only purposes for which sentences may be imposed on an offender are:

- a. to punish the offender to an extent or in a way that is just in all the circumstances; or
- b. to provide conditions in the court's order that the court considers will help the offender to be rehabilitated; or
- c. to deter the offender or other persons from committing the same or a similar offence; or
- d. to make it clear that the community, acting through the court, denounces the sort of conduct in which the offender was involved; or
- e. to protect the Queensland community from the offender; or
- f. a combination of 2 or more of the purposes mentioned in paragraphs (a) to (e).

These aims will be relevant to any proposed reform and its impact on human rights.

## Existing Provisions

15. Under s 335 of the *Criminal Code Act 1899 (Qld)* (Criminal Code) the maximum penalty for common assault is imprisonment for 3 years. Section 340(1)(b) of the Criminal Code sets a higher maximum penalties for 'serious assaults' which include:

- the assault of another with intent to resist or prevent the lawful arrest or detention of themselves or of any other person;
  - the assault, resistance or wilful obstruction of a police officer while they are acting in the execution of their duties, or any person acting in aid of a police officer while so acting; or
  - unlawfully assaulting any person while the person is performing a duty imposed on the person by law;
  - assaulting a person because the person is performing a duty imposed on the person by law.
16. Section 340(2AA) further provides that a serious assault occurs when a person unlawfully assaults, or resists or wilfully obstructs, a public officer while the officer is performing a function of the office, or assaults a public officer because the officer has performed a function of the officer's office.
17. Public officer is defined to include:
- a member, officer or employee of a service established for a public purpose under an Act (with the example of the Queensland Ambulance Service);
  - a health service employee under the *Hospital and Health Boards Act 2011*;
  - an authorised officer under the *Child Protection Act 1999*; and
  - a transit officer under the *Transport Operations (Passenger Transport) Act 1994*.
18. The general maximum penalty for such serious offences is 7 years imprisonment. However, the maximum penalty is doubled to 14 years imprisonment if in assaulting a police officer or public officer the offender:
- bites or spits on the officer or throws at, or in any way applies to, the officer a bodily fluid or faeces;
  - causes bodily harm to the officer;
  - is, or pretends to be, armed with a dangerous or offensive weapon or instrument.
19. Section 340(2) also provides that a prisoner who unlawfully assaults a working corrective services officer is guilty of a crime and is liable to imprisonment for 7 years.
20. As prescribed offences under the *Penalties and Sentences Act 1992*, offenders may also be sentenced to a community service order if the offender was adversely affected by an intoxicating substance at the time of the offence. It also an aggravating factor under s 161Q if at the time of the offence the offender was a participant in a criminal organisation or the offence was connected in some way with a criminal organisation.

21. Section 790 of the *Police Powers and Responsibilities Act 2000* also makes the assault or obstruction of a police officer unlawful but imposes a maximum penalty of 40 penalty units or 6 months imprisonment, unless the assault or obstruction happens within or around a licensed premises. In the latter case the maximum penalty is increased to 60 penalty units or 12 months in jail.
22. Similarly, section 124(b) of the *Corrective Services Act 2006* states a prisoner must not assault or obstruct a staff member who is performing a function or exercising a power under this Act or is in a corrective services facility. The maximum penalty is two years imprisonment.
23. As the terms of reference indicate, there is significant difference in the maximum penalties between these provisions. The Commission understands the charges laid depend on the seriousness of the assault and nature of any injuries incurred by the police officer. The access to criminal compensation where a conviction has been recorded in a higher court may also be a relevant factor in proceeding by way of indictment. If the provisions were to remain in their current form, the Commission anticipates that as Public Entities under the HRA, police and the Director of Public Prosecutions would consider relevant human rights of the offender and victim in determining the appropriate charge(s) to lay.
24. There may be other human right issues in the construction of these offences, and how potential defences apply to them, but this submission is focussed on the penalties imposed in light of the terms of reference.

## Approach in other human rights jurisdictions

25. Other jurisdictions have adopted a range of approaches to discourage violence against police, emergency workers and other frontline workers. This submission canvasses the most recent and relevant in relation to human rights.

## Mandatory Minimum Sentences<sup>10</sup>

26. In 2016 the Victorian Government amended the *Sentencing Act 1991* to create two groups of serious offences, known as 'Category 1 offences' and 'Category 2 offences'.<sup>11</sup> Sentencing options for offences in these categories was diminished, requiring a court to impose a mandatory minimum custodial order for a Category 1 offence, and for Category 2

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<sup>10</sup> While some mandatory sentences exist under Queensland law, they are not directly relevant to the terms of reference and so not considered in this submission.

<sup>11</sup> *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016*



offences the court must impose a custodial order unless certain special reasons exist.

27. In 2018, offences involving assault of emergency workers and custodial workers were added to these categories.<sup>12</sup> The changes included narrowing 'special reason' exceptions to those involving mental or cognitive impairment or where the offender had assisted law enforcement authorities. The statement of compatibility accompanying the changes noted that mandatory minimum sentences limit the:

- protection from being punished in a cruel, inhuman or degrading way.<sup>13</sup> Similarly, such mandatory sentences limit the protection from arbitrary detention and only being deprived of liberty on grounds, and in accordance with procedures, established by law.<sup>14</sup>
- right to fair hearing, which enshrines the right of a person charged with a criminal offence to have the charge decided by a competent, independent and impartial court of tribunal after a fair hearing.<sup>15</sup>
- right to equality may also be engaged, particularly in relation to offenders with mental or cognitive impairment, as reflected in the nature of the special reason exceptions.<sup>16</sup>

28. Despite the Government suggesting the changes were compatible with human rights, the Federation of Community Legal Centres Victoria and the Law Institute of Victoria made a joint submission to the Victorian Parliamentary Scrutiny of Acts and Regulations Committee (SARC) questioning the compatibility of the changes. The submission was particularly concerned about proposals requiring judges to give less weight to the personal circumstances, previous good behaviour or prospects of rehabilitation of the offender in favour of general deterrence and denunciation. SARC also questioned if the changes would achieve their purpose, which is a key threshold to human rights compatibility:

There is a real question about whether available evidence supports mandatory sentencing as the best way to achieve a deterrent effect. In the absence of this evidence, it will not be possible for a statement of compatibility to declare that the part of the legislation that establishes minimum sentencing is compatible with human rights. It is incumbent on Government to provide clear and cogent evidence that supports the introduction of any legislation that is contrary to rights protected in the Charter.<sup>17</sup>

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<sup>12</sup> *Justice Legislation Miscellaneous Amendment Bill 2018*.

<sup>13</sup> Also protected in HRA, s 17(b).

<sup>14</sup> HRA, s 29(2) and 29(3).

<sup>15</sup> HRA, s 31(1).

<sup>16</sup> HRA, s 15.

<sup>17</sup> Scrutiny of Acts and Regulations Committee, Parliament of Victoria, *Alert Digest 10* (2018), 54.

29. Certain aspects of the 2018 changes were acknowledged by the Victorian Government as incompatible with the right to fair hearing.<sup>18</sup> These changes provided different appeal rights for offenders and the prosecution. If an offender successfully appeals a mandatory minimum sentence, the Director of Public Prosecutions (DPP) may appeal. However, the inverse does not apply. That is, an offender cannot appeal a decision of a higher court not to overturn a mandatory minimum sentence.<sup>19</sup>
30. Internationally, the proportionality of mandatory sentences with respect to human rights compatibility has turned on the specific circumstances. The Canadian Supreme Court found imposing mandatory minimum custodial sentences for firearms offences was a disproportionate limitation on the right not to be subjected to cruel and unusual punishment, including because such regimes did not deter criminal behaviour and that there were less restrictive ways of achieving the purpose of the laws.<sup>20</sup> However, the Supreme Court has stopped short of finding that all mandatory custodial sentences will be inherently disproportionate, and instead must be assessed against the purpose of the limitation. For example, in *R v Morrison* the majority declined to make a decision about the proportionality of a mandatory one year sentence for an offence of luring children on the internet.<sup>21</sup> The European Court of Human Rights has similarly not definitively ruled on all mandatory minimum sentences, but noted that the inability for a defendant to argue mitigating or special circumstances makes them 'much more likely' to be grossly disproportionate to the offence.<sup>22</sup>
31. The Commission is not supportive of the introduction of new mandatory minimum sentences in Queensland, which is incongruent with the aims of the HRA to build a human rights culture. Significant evidence is required to demonstrate that mandatory minimum sentences are the least restrictive manner of achieving the purposes of this review and sentencing generally. Other jurisdictions have sought to achieve these same purposes without resorting to minimum custodial sentences.

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<sup>18</sup> Also protected in HRA, s 31. Like the Victorian *Charter of Rights and Responsibilities Act 2006*, the HRA does provide for the Government to introduce laws that it acknowledges are incompatible with rights.

<sup>19</sup> The statement of partial incompatibility noted that the right to fair trial includes equality before the courts.

<sup>20</sup> See *R v Nur* [2015] 1 SCR 773

<sup>21</sup> 2019 SCC 15

<sup>22</sup> See for example *Harkins and Edwards* [2012] ECHR 45, [138] involving the potential extradition of two British men to the USA on charges of murder where they would face the death penalty or life imprisonment without parole.

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## Tailored and aggravated offences

32. In addition to mandatory minimum sentences, Victoria has introduced tailored offences with increased penalties:
- intentionally exposing an emergency worker, a custodial officer or a youth justice custodial worker to risk by driving (maximum 20 year term of imprisonment);
  - recklessly exposing an emergency worker, a custodial officer or a youth justice custodial worker to risk by driving (maximum 10 year term of imprisonment);
  - damaging an emergency services vehicle (maximum five-year term of imprisonment);
  - a mandatory minimum term of imprisonment of two years if an adult offender intentionally exposed an emergency worker to risk to safety by driving and in so doing so caused an injury to the emergency worker while they are on duty;
  - intentionally or recklessly exposing an emergency worker to risk to safety by driving will require the imposition of a custodial sentence if the offence is committed in certain aggravating circumstances, for example, where the motor vehicle is stolen.<sup>23</sup>
33. The compatibility statement accompanying these changes stated that these offences did not limit human rights (apart from those applying mandatory custodial sentences). The Victorian SARC similarly identified no significant human rights issues with those offences.<sup>24</sup>
34. The ACT, also a human rights jurisdiction, recently introduced similarly tailored offences, seeking to address the risks faced by specific frontline workers. The Crimes (Protection of Police, Firefighters and Paramedics) Amendment Bill 2019, introduced in October 2019, creates new offences for:
- assaulting police officers, firefights and paramedics, with a maximum penalty of two years imprisonment;
  - intentionally or recklessly driving at a police officer and exposing a police officer to a risk to safety, with a maximum penalty of 15 years imprisonment;
  - driving at and causing damage to a police vehicle, with a maximum penalty of five years imprisonment.
35. The offences also further limited rights by applying strict liability to certain elements of the offence, thus differentiating the offence from other forms of assault (even though the maximum penalty is the same).

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<sup>23</sup> *Crimes Legislation Amendment (Protection of Emergency Workers and Others) Act 2017.*

<sup>24</sup> Scrutiny of Acts and Regulations Committee, Parliament of Victoria, *Alert Digest 16* (2017).

36. The Explanatory Statement justifies these changes on the basis ‘police officers, firefighters and paramedics have duties and responsibilities which mean they are routinely called upon to attend emergency incidents and render assistance in volatile and dangerous situations where they are exposed to an increased risk of violence’. The specific offences regarding driving intentionally or recklessly ‘recognise the special vulnerability these workers experience while executing their duties on our roads’. Such a change also provides a deterrence by clearly signalling that this behaviour will be treated seriously.
37. Even though the new offences impose in some cases higher maximum penalties, which engages the right to liberty,<sup>25</sup> the Explanatory Statement provides justification which contrasts this approach from mandatory minimum sentences. It states that the offences ‘do not impact on a person’s ability to respond to the allegations made against them, to advocate for leniency in sentencing, to appeal the decision of a court or to have their matters determined consistently with the rules of procedural fairness, criminal procedures and other sentencing laws’.<sup>26</sup>
38. The ACT Legislative Assembly is also considering a Private Member’s Bill which seeks to add new offences relating to frontline workers and add new aggravating factors for other offences.<sup>27</sup> A key difference noted by the ACT Parliamentary Justice and Community Safety Committee compared to the Government’s bill was the burden placed on the defendant to prove, that the defendant did not know and could not reasonably have known that the victim was a frontline worker.<sup>28</sup> This engages the presumption of innocence, but as noted by the Committee is justified in the Explanatory Statement.<sup>29</sup>

### Non-Legislative Responses

39. To be demonstrably the least restrictive option, increased penalties should be coupled with a consideration of whether any non-legislative changes will better achieve the purpose.
40. In the United Kingdom certain offences carry a higher penalty (via an aggravating factor in sentencing) if the victim is an identified worker

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<sup>25</sup> HRA, s 19.

<sup>26</sup> The Explanatory Statement also notes that the maximum penalty of 2 years for one of the new offences is in line with the existing penalty for common assault. However the strict liability that applies to certain parts of the offence differentiate it from the existing offence.

<sup>27</sup> Crimes (Offences Against Frontline Community Service Providers) Amendment Bill 2019

<sup>28</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny Role), ACT Legislative Assembly, *Scrutiny Report 37* (19 November 2019), 8.

<sup>29</sup> Protected in HRA, s 32(1).

including constable, prison officer, fire and rescue service worker, and health provider:<sup>30</sup>

41. Nonetheless, commentators and professional bodies in the UK have sought additional alternative strategies. While supportive of the new offences, the College of Paramedics also advocates for de-escalation training for its members to reduce risk of harm.<sup>31</sup> John Ambrose, paramedic programme manager at Liverpool John Moores University has called for a broader public conversation about protecting health care workers as a way of preventing assaults.<sup>32</sup>
42. This echoes suggestions raised by paramedics in an international survey across 13 countries, with responses identifying a need for better training, better options for restraint, improved communication and advanced warning, improved public education, better situational awareness and improved inter-agency cooperation.<sup>33</sup> The study nonetheless concludes more research is needed into what strategies are most effective at protecting paramedics.<sup>34</sup>
43. Even if penalties are increased, such changes should also be coupled with consideration of strategies to reduce confrontation which results in harm. This is central to the purpose of changing behaviour and reducing assault. This should include an assessment of current training and policies, including working with people from cultural diverse backgrounds, with mental illness, in crisis or with cognitive impairment. Such consideration is also consistent with the new obligations on Public Entities under the HRA to act and make decisions consistently with human rights, and would support both frontline worker's right to security and a safe workplace, and an individual's right to not be disproportionately deprived of their liberty.

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<sup>30</sup> *Assaults on Emergency Workers (Offences) Act 2018*

<sup>31</sup> College of Paramedics (UK), *Position Statement: Acute Behavioural Disturbance October 2018*, (Position Statement, 4/10/18) <<https://www.collegeofparamedics.co.uk/news/position-statement-management-of-acute-behavioural-disturbance-abd#>>.

<sup>32</sup> Ambrose J, Over 1,500 assaults on paramedics a year – but new law won't stop the violence, *The Conversation* (online, 10 July 2018) <<http://theconversation.com/over-1-500-assaults-on-paramedics-a-year-but-new-law-wont-stop-the-violence-98734>>

<sup>33</sup> Central Queensland University, 'Properly Tested Solutions Needed to Tackle Violence Against Paramedics' (Media Release 18 March 2019) <<https://www.cqu.edu.au/cquinews/stories/general-category/2019/properly-tested-solutions-needed-to-tackle-violence-against-paramedics>>.

<sup>34</sup> Brian J. Maguire, Matthew Browne, Barbara J. O'Neill, Michael T. Dealy, Darryl Clare and, Peter O'Meara (2018) 'International Survey of Violence Against EMS Personnel: Physical Violence Report' *Prehospital and Disaster Medicine* 33(5), 526-531. Abstract at <<https://www.cambridge.org/core/journals/prehospital-and-disaster-medicine/article/international-survey-of-violence-against-ems-personnel-physical-violence-report/04FB890CA7AA1D019C757FD1E6DBCF97#>>

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## Definition of frontline workers and other public officers

44. While various jurisdictions have introduced increased penalties to protect particular workers, the definition of a frontline worker differs. This reflects that specific local evidence about the importance of protecting that particular profession is necessary to demonstrate human rights compliance.
45. Although all of the professions proposed in the terms of reference undoubtedly have inherent risks in their work, the nature of that risk may differ. There is clear evidence that frontline workers such as police, corrective services officers and frontline emergency service workers are subject to greater risks of assault in their work. Research by Central Queensland University has found that paramedics in Australia have the highest rate of occupational injury and assaults.<sup>35</sup> That research is based on an analysis of Safe Work Australia data, which also indicates that the risk of injury is not necessarily the same for all workers categorised as ‘public officers’.<sup>36</sup>
46. In Queensland 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 officers and corrective services officer. The Commission suggests more information may be needed to demonstrate that this approach is a proportionate limitation on the right to security and liberty of the person.
47. The Commission recommends that each occupation identified for such increased penalties must be specifically justified based on the particular risks faced by that profession, rather than a blanket approach. This may include demonstrating how differences in penalties can achieve the change in behaviour sought towards frontline workers.
48. Finally, as the terms of reference refer to relevant statistics, the Commission notes that under s 669A of the Criminal Code the Attorney-General may appeal against any sentence and the Court may in its unfettered discretion vary the sentence and impose such a sentence as the Court sees proper.<sup>37</sup> The Council may wish to assess how often the Attorney-General has exercised this power in relation to offences against police and other frontline workers and if there is scope for this power to be

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<sup>35</sup> 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.

<sup>36</sup> The study notes that ‘no other group identified by Safe Work Australia [SWA] has a higher injury rate than paramedics’.

<sup>37</sup> In *Lacey v Attorney General (Qld)* [2011] HCA 10 a majority of the High Court found this appeal still relied on the appellate court determining an error in the original sentence.



used further if there are concerns that penalties imposed by the courts for such offences are not currently adequate.

## Disproportionate impact on certain members of the community

49. Related to the human rights limitations that may arise in how frontline workers and other public officers are defined, is the possibility that particular members of the community may be disproportionately impacted upon by the new penalties because they are more likely to engage with frontline workers. This potentially engages the right to equality under s 15 of the HRA. The United Nations Committee against Torture has previously called on Australia to repeal mandatory minimum sentences, noting the disproportionate impact they have on Aboriginal and Torres Strait Islander peoples.<sup>38</sup>
50. In its submission regarding the 2018 Victorian changes, the Federation of Community Legal Centres Victoria and Law Institute of Victoria noted that people of African appearance are at least 2.4 times more likely to be stopped by police than anyone else.<sup>39</sup>
51. The Commission has previously noted that while Aboriginal and Torres Strait Islander people make up 4% of the Queensland population, Aboriginal and Torres Strait Islander women account for:
  - 35% of women in prison;
  - 33% of women on remand;
  - 40% of women held in high security prisons;
  - 49% of all breaches of discipline;
  - 48% of separate confinements;
  - 44% of safety orders; and
  - were more likely than non-Indigenous women to return to prison for breach of parole.
52. Aboriginal and Torres Strait Islander men represented 32% of the male prison population in 2015/16.<sup>40</sup> Further, compared to the general population, both female and male prisoners in Queensland have a higher rate of intellectual disability than the general population and a significantly higher number of Aboriginal and Torres Strait Islander prisoners identify with intellectual disability.<sup>41</sup>

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<sup>38</sup> UN Committee against Torture, *Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Australia*, UN Doc CAT/C/AUS/CO/4-5 (23 December 2014), [12].

<sup>39</sup> Scrutiny of Acts and Regulations Committee, Parliament of Victoria, *Alert Digest 10* (2018), 54.

<sup>40</sup> Anti-Discrimination Commission Queensland, *Women in Prison 2019: A human rights consultation report*, 2019, 63-64.

<sup>41</sup> *Ibid*, 80.

53. In its submission to the Queensland Productivity Commission's inquiry into imprisonment and recidivism, Queensland Advocacy Incorporated noted that two percent of the population have an intellectual disability, and ten percent of Queensland prisoners have intellectual disability. QAI suggest that up to 30% of prisoners have some form of disability and recidivism of Queensland prisoners who have intellectual disabilities is twice that of other prisoners.<sup>42</sup>
54. In relation to members of the community with mental illness, police have been described as at 'the front line of caring for people with severe mental illness'.<sup>43</sup> Similarly, the number of people in prison with mental illness has been estimated as high as 74 per cent.<sup>44</sup> The Commission's own work in Queensland suggests between a quarter and one-third of all prisoners have been referred to psychiatric or psychological services at the time of admission.<sup>45</sup>
55. These statistics indicate that people with disabilities have higher rates of interaction with the criminal justice system than other Australians. We note with grave concern the high rate of disability among Aboriginal and Torres Strait Islander peoples and that they are over-represented in Australian prisons.
56. The right to equality of these groups should be considered in any proposal to increase penalties for assaults upon frontline workers. This should include an assessment, if possible, of the incidence of contact with frontline workers among these groups compared with the general population.

## Conclusion

The experience in human rights jurisdictions suggests that any increase in penalties for assaults upon frontline workers will limit rights and must be demonstrably proportionate and justified based on evidence. Further, new offences targeting particular behaviour, as opposed to imposing mandatory minimum sentences, will be a less restrictive option to addressing such behaviour. However even these changes must be shown to achieve their purposes, including reducing risk of assault to specifically identified frontline workers.

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<sup>42</sup> Queensland Advocacy Incorporated, Submission IRIP-016 to Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (25 October 2018), 7.

<sup>43</sup> Police Federation of Australia, Submission to Senate Community Affairs Committee, Parliament of Australia, *Inquiry into Mental Health Services in Australia*, (31 July 2007).

<sup>44</sup> Percentage of NSW prison detainees cited in Senate Select Committee on Mental Health, Parliament of Australia, *First Report*, (Report March 2006), [13.25]

<sup>45</sup> Anti-Discrimination Commission Queensland, *Women in Prison 2019: A human rights consultation report*, 2019, 80



There may be alternative strategies other than increased penalties that may better achieve the purpose of the new offences, while reducing any limitation on rights. The Commission suggests that all options must be exhausted before a significant limitation on rights through the introduction of mandatory minimum custodial sentences is considered.

The Commission suggests that in considering the reference the Council seek cogent evidence for any proposed changes that increase penalties for assaults against particular victims, including how often maximum sentences are applied under the current provisions.

Further, the Council may wish to periodically review increased penalties for assaults on frontline workers to assess if they are achieving the aim of reducing assaults and the overall purposes of sentencing as reflected in s 9(1) of the Penalties and Sentencing Act.