

Chapter 1 Introduction

1.1 Background

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

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

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

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

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

1.2 Terms of Reference

The Terms of Reference issued to the Council outline matters the Council was asked to consider in reporting to the Attorney-General. These are:

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

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

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

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

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

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

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

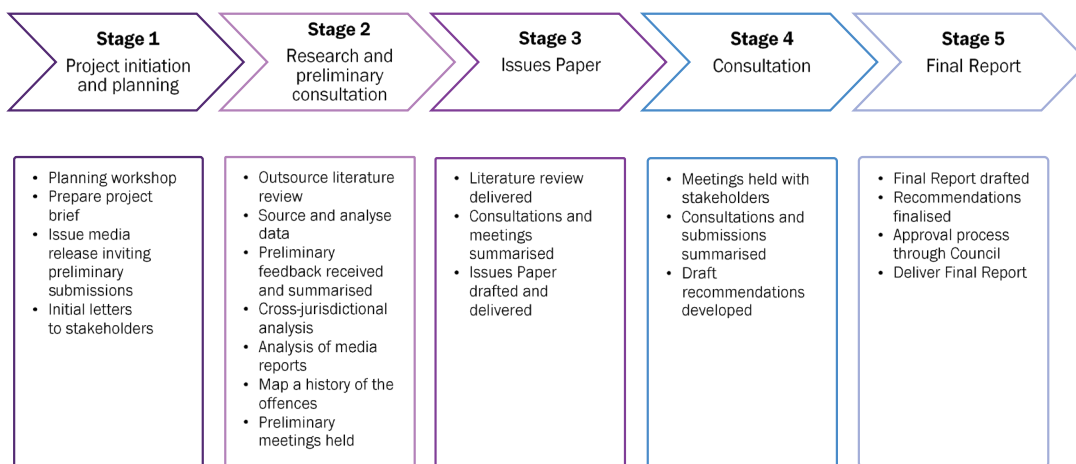
The Terms of Reference are set out in full at **Appendix 1**.

1.3 The Council’s approach

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

Key stages of the project are shown in Figure 1 below.

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



During the initial stage of the project, the Project Board commenced work on the Terms of Reference by developing a project plan, which was approved by the full Council, and inviting early submissions from stakeholders about what should be considered during the project. Preliminary submissions were initially sought by 10 January 2020, but this was later extended to 28 January to provide stakeholders with adequate time to respond. The Council received 35 submissions during this initial consultation phase.

Stage 2 of the project involved the commencement of work on key aspects of the research program, including data and legislative analysis, documenting the history of the relevant legislative provisions, holding preliminary meetings with data custodians and undertaking an analysis of media reports on the issue. During this phase of the project the Council published an initial high-level analysis of relevant data on serious assault as part of its Sentencing @ a glance series, as well as an information sheet on penalties for assaults of public officers. These two documents were placed on the Council’s website and were intended to assist stakeholders in identifying areas for further investigation.

During Stage 3, the Council released an Issues Paper, the development of which was informed by preliminary submissions received and a literature review prepared by the Griffith Criminology Institute. The issues paper posed 17 questions and invited submissions on the issues raised. The Council received 32 submissions from individuals and stakeholder agencies, including legal professional bodies, employee unions and government departments. A list of submissions is at **Appendix 2**.

Following the release of the issues paper in April, the Council held a series of individual meetings, and a roundtable focusing on issues for Aboriginal and Torres Strait Islander peoples, women and people in circumstances of vulnerability. Over 60 people participated in these meetings and roundtable discussions from May to early July. The

majority of meetings took place by videoconference in compliance with social distancing guidelines issued as part of the government's COVID-19 public health response. A list of stakeholder consultations is at **Appendix 2**.

Data presented in the Issues Paper on sentencing for these offences revealed some interesting demographic patterns indicating that Aboriginal and Torres Strait Islander peoples and women were overrepresented among those sentenced for these offences. In order to better understand the reasons for these demographic patterns, the Council undertook some additional work. This comprised:

- additional consultation with key stakeholders, including the Council's Aboriginal and Torres Strait Islander Advisory Panel, seeking views about these demographic findings;
- the seeking of an expert report from an Aboriginal and Torres Strait Islander academic to provide an additional view about these demographic findings; and
- an analysis of relevant sentencing remarks using a stratified sample³ to understand whether the circumstances of these offences were different for different offender cohorts.

The publication of this report, which presents the Council's final advice and recommendations, represents the final stage of the project.

1.4 Scope of the project

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

A data-linkage exercise was undertaken by the Council using administrative data provided by the Department of Youth Justice, the Queensland Police Service (QPS) and Queensland Corrective Services (QCS) in an endeavour to fill some of these data gaps. The data provided by these crime-data agencies highlighted a number of challenges in seeking to report on victim type, and potential areas to enhance existing data collection. These data challenges are discussed throughout this report and are also the subject of Recommendation 13–1 in Chapter 12 of this report.

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

The Council agreed that fatal assaults also would not be considered in responding to these Terms of Reference. This decision was made on the basis that the main focus of the reference was on the offence of serious assault under section 340 of the *Criminal Code*, and other assault-related offences, and that these offences would probably be prosecuted as a homicide.

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

The Council did not undertake a detailed analysis regarding the sentencing regime for juveniles in Queensland or in other jurisdictions, although it has considered these issues in the context of the specific advice it has been asked to provide about the appropriateness of sentencing responses more generally. Nor did the Council consider matters dealt with by the Mental Health Court, on the basis that this court is not a sentencing court and the orders made are not sentencing orders. Submissions and consultations suggested that the arrangements for dealing with people who come within the jurisdiction of the Mental Health Court are generally poorly understood and that this is an important area of focus for community education.

³ A stratified sample is one that ensures a subgroup or subgroups are adequately represented in the sample for a research project.

Finally, the Council considered that the issue of what offence a person is charged with – that is, the charging practices of police officers – would be a much broader issue that could not be adequately addressed as part of this reference. The Council has therefore devoted limited attention to charging practices, although it has made a recommendation supporting the development by the QPS of additional internal guidance to support appropriate charges being laid in response to specific concerns raised in submissions and during consultations. With this limited exception, the Council considers decisions by police officers as to which offence they decide to initially charge is a matter that precedes prosecution and sentencing, and therefore falls outside the Council’s functions.

1.5 Data used in this paper

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

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

The Department of Youth Justice, QCS, and the QPS all provided unit record data for all perpetrators who were involved in the assault of a staff member.

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

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

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

- serious assault of a police officer, corrective services officer, or other public officer (*Criminal Code* ss 340(1)(b)–(d) and (2AA));
- assault or obstruction of a corrective services officer (*Corrective Services Act 2006* (CSA) s 124(b));
- assault or obstruction of a watch-house officer (*Police Powers and Responsibilities Act 2000* (PPRA) s 655A);
- assault or obstruction of a police officer (PPRA s 790);
- resisting a public officer (*Criminal Code* s 199);
- GBH (*Criminal Code* s 320);
- torture (*Criminal Code* s 320A);
- AOBH (*Criminal Code* s 339(1));
- wounding (*Criminal Code* s 323); and
- common assault (*Criminal Code* s 335).

Sentencing for this broader range of assault offences was sought to enable comparison of sentencing trends for different types of assault and assault-related offences. Much of these data are presented in Chapters 2, 3, 4 and 7 of this report.

1.6 Limitations of the data

In conducting its review, the Council has identified two major difficulties in working with administrative data in the criminal justice sector. A summary of the difficulties that beset the research and analysis during this review is given below.

Inadequate data on the circumstances of offending

No agency in the criminal justice sector collects quantitative data on the circumstances of a person's offending in a way that can be analysed. For example, there are no data available on the type or extent of injury that may have been caused, the type of weapon that may have been used, or the type of bodily fluid that was used (e.g. blood, saliva, faeces, etc.).

Where a public officer is the victim of a serious assault charged under section 340(2AA), there is little data available on the victim's occupation. To overcome this deficiency, the Council requested information from the QPS on victim occupation as recorded in court briefs (QP9s). This process involved a QPS officer manually reviewing case files and extracting relevant information on the occupation of the victim in each case. The findings from this analysis are available in Chapter 3.

There are also limited data recorded on whether a victim has been assaulted during the course of their work, which means it is not clear how many public officers are victims of offences other than serious assault, such as common assault, AOBH, GBH or wounding. To provide some insight into this matter, the Council requested offender-level data from the Department of Youth Justice and QCS for all assaults of staff members that have occurred within corrective or detention facilities. Similar data were requested from the QPS on assaults of on-duty police officers. Data provided by these agencies were matched to Queensland Courts data to assist the Council to better understand the range of offences charged involving public officer victims and associated sentencing outcomes. The findings of this analysis are available in Chapter 7 of this report.

Inadequate data sharing between agencies

The Council encountered difficulties in obtaining identifiable data from agencies outside the criminal justice sector due to the absence of clear data-sharing protocols. As these agencies were unable to include the personal information of their staff members who were the victims of assaults in the workplace, it was not possible to match data on workplace assaults to courts data to determine the sentencing outcomes for these offences.

Within the criminal justice sector, each agency maintains separate administrative data systems. Although many agencies are using a shared person identifier to recognise unique offenders, these fields were sometimes missing or had not been updated to reflect changes made by other agencies. As a result, the data held by different criminal justice agencies were not linked, and a considerable amount of work had to be undertaken by Council researchers to create a cohesive dataset to get the full picture of the wider criminal justice sector.

1.7 Literature review

To assist the Council in understanding the causes, frequency and seriousness of assaults of public officers, and the impact of sentencing reforms aimed at addressing these types of assaults, the Council commissioned the Griffith Criminology Institute at Griffith University to undertake a literature review focusing on these questions. It should be noted that the views contained in the literature review are those of the authors and not necessarily those of the Council. The full report is on the Council's website.⁴

1.8 Outline of this report

The remaining chapters of this report are set out below:

PART A – Nature and extent of assaults on public officers

Chapter 2 How frequent are assaults on public officers?

Chapter 3 Who is involved in assaults on public officers?

Chapter 4 What are the circumstances in which public officers are assaulted?

PART B – The impact of assaults on victims of crime

Chapter 5 The impact on victims

⁴ Christine Bond et al, *Assaults on Public Officers: A Review of Research Evidence* (Griffith Criminology Institute for Queensland Sentencing Advisory Council, March 2020) iii to vi.

PART C – The current sentencing framework and sentencing practices

Chapter 6 Current legislative framework and sentencing practices

Chapter 7 How are assaults on public officers dealt with by the courts?

PART D – Reforms to offences, penalties and sentencing for assaults on public officers and other vulnerable workers

Chapter 8 Reforms to the offence of serious assault

Chapter 9 Summary assault and obstruct offences

Chapter 10 Reforms to the sentencing framework

PART E – Improving institutional responses and community understanding

Chapter 11 Institutional responses

Chapter 12 Enhancing community knowledge and understanding