

Penalties for assaults on public officers: Issues paper summary

April 2020

Background (chapter 1)

In December 2019, Terms of Reference were issued to the Queensland Sentencing Advisory Council by the Attorney-General, the Honourable Yvette D'Ath MP, asking the Council to report on penalties for assaults on police and other frontline emergency service workers, corrective services officers and other public officers. The Council has been asked to consider the current offence, penalties and sentencing framework which supports sentencing, and to advise on its appropriateness in responding to this form of offending, taking into account current sentencing practices, stakeholder views and the approach in other jurisdictions.

The current definition of a 'public officer' includes frontline emergency workers, such as paramedics and public health workers, child safety officers and transit officers. The offences under consideration are serious assault (*Criminal Code (Qld)*, s 340) and other assault-based offences involving public officers as victims. While general criminal offences, such as assault occasioning bodily harm (AOBH) and wounding, can also be charged where a public officer is assaulted, victim status is not reliably recorded and these offences have not been examined in detail. More information about offences and maximum penalties, as well as mandatory penalties that apply in some cases, can be found [here](#).

Current approach (chapters 3 and 4)

Assaults by members of the public on police and other public officers are treated as more serious at law in most states and territories. In Queensland, serious assault carries a 7 year maximum penalty, which increases to 14 years if the victim is a police officer or public officer and certain aggravating circumstances apply. These factors include that bodily harm was caused, or the person was spat on, bitten, or had bodily fluid or faeces thrown at or applied to them. This compares to 3 years for common assault, 7 years for both wounding and AOBH (with no aggravating circumstances), and 14 years for torture and grievous bodily harm (GBH). Acts intended to cause GBH and other malicious acts carries a maximum penalty of life.

Courts must consider a range of sentencing purposes as factors when sentencing, including those set out under section 9 of the *Penalties and Sentences Act 1992* (Qld). Unless legislation fixes a mandatory penalty, the discretionary nature of the judgment required means that there is no single sentence that is just in all the circumstances or an objectively correct sentence.

Sentencing outcomes (chapter 5)

Magistrates Courts deal with the majority of serious assault cases (89.8%). Of cases sentenced in these courts, over half (54.5%) of non-aggravated serious assaults result in a custodial sentence compared to just one in five (21.5%) cases where common assault is the most serious offence sentenced. The average custodial sentence is 0.6 years (or just over 7 months) for serious assault, compared to 0.5 years (6 months) for common assault. Three in four sentences for serious assault with aggravating circumstances (74.8%) are custodial, with an average custodial sentence length of 0.7 years (or 8.4 months) compared to half of sentences for AOBH (50.3%), with an average custodial sentence length of 0.8 years (or 9.6 months). For cases sentenced in the higher courts, the proportion of custodial penalties imposed for aggravated serious assault is even higher at 93.0 per cent (compared to 80.0% of sentences for AOBH), with an average sentence length of 1.1 years, compared to 1.5 years for AOBH and 2.1 years for wounding.

The most common penalty for assault of a police officer under section 790 of the *Police Powers and Responsibilities Act 2000* is a monetary penalty/fine (65.2%), with the average amount ordered to be paid being \$651. Custodial penalties are imposed in just over 1 in 10 cases (12.3%).

Almost all cases involving the assault or obstruction of a corrective services officer under section 124(b) of the *Corrective Services Act 2006* are sentenced in the Magistrates Courts. Of these, 83.8 per cent result in a custodial penalty, with an average sentence length of 0.2 years (2.4 months).

Approach in other jurisdictions (chapter 6)

As is the case in Queensland, some jurisdictions, such as the Northern Territory (NT), South Australia and Western Australia, have established stand-alone offences that apply to assaults on public officers. The form of these offences and maximum penalties vary between jurisdictions. Aggravated forms of general criminal offences, such as AOBH, and GBH, generally carrying higher maximum penalties, exist in the NT and South Australia. Victoria has introduced minimum non-parole periods and minimum sentences for certain assault offences committed on emergency service workers. Yet another approach is to treat the victim's status as a public officer as a general aggravating factor for the purposes of sentencing, such as in Canada, England and Wales, NSW and New Zealand. The types of assault victim captured within these provisions differ. These approaches are not mutually exclusive, and some jurisdictions have introduced more than one of these approaches that apply in different circumstances.

Mandatory minimum penalties and presumptive penalties (chapters 6 and 9)

Mandatory minimum penalties and presumptive penalties (which state a minimum sentence that must be imposed unless special circumstances are established) reduce a court's discretion in sentencing as generally they require courts to impose both a particular type of penalty (e.g. imprisonment) and set the minimum length of sentence. These types of penalties have been introduced in some jurisdictions for assaults on public officers, for example:

- Northern Territory: assault of a police officer or emergency worker where physical harm caused: minimum 3 months' imprisonment;
- Western Australia: assault of police officer, prison officer, youth custodial officer, transit officer, ambulance officer and others where officer suffers bodily harm: minimum 6 months' imprisonment, or 9 months if the offender is armed or in company;
- Victoria: causing injury intentionally or recklessly where victim is an emergency worker, custodial officer or youth justice custodial worker on duty: minimum 6 months' imprisonment, unless the court finds a 'special reason' exists.

One of the primary reasons mandatory penalties have been introduced is for the purpose of general deterrence – to discourage members of the public from assaulting public officers. However, one of several criticisms of this approach is that it may result in injustice in individual cases. For example, there is evidence that many people who commit assaults on police, emergency service personnel and others are drug and/or alcohol affected, youths, mentally ill and/or have a cognitive impairment (such as a low IQ or acquired brain injury). This means they are unlikely to have the capacity or maturity to logically think through the consequences of their actions. While mandatory and presumptive penalties may guarantee that a particular level of punishment will (or will usually) be applied, it may not prevent such assaults occurring or stop the person who has committed it from committing the same type of offence again. Other criticisms include that such penalties may reduce the rate of guilty pleas and shift discretion to other parts of the system as police and other prosecuting authorities must decide whether a person should be charged with an offence carrying a mandatory penalty or another (possibly less serious) offence which does not.

Responding to victim needs (chapter 8)

Several preliminary submissions to the Council referred to the significant impact of assaults on public officers. A recent national survey of the mental health and wellbeing of police and emergency services workers found rates of psychological distress, mental health conditions and suicidal ideation were higher among the 21,014 volunteers and employees who participated in the survey than for members of the general community. Experiencing verbal abuse and physical assault was one factor associated with these findings.

Existing mechanisms in Queensland to ensure victim harm is recognised and victims are supported include the ability of victims to make a Victim Impact Statement to inform sentencing, to lodge a claim with WorkCover for a work-related injury, and to seek financial assistance under the *Victims of Crime Assistance Act 2009* (Qld). Courts can also make orders for restitution and/or compensation at the time of sentence. Victims can also participate in a restorative justice conference which brings together the parties directly affected by an offence.

Community education (chapter 10)

The Terms of Reference ask the Council to 'identify ways to enhance community knowledge and understanding of the penalties for this type of offending'. Strategies to improve knowledge and understanding may include public awareness campaigns, the reporting of cases and relevant sentencing outcomes by the media, and the Council's work in publishing information and data on sentencing. Preliminary submissions made to the Council further suggest that it is important that victims of these offences have access to this information to encourage the reporting of workplace assaults.

Submissions

Closing date: Thursday, 25 June 2020, 5.00pm

The Council invites submissions on whether the current offence, penalty and sentencing framework that exists in Queensland is adequate or in need of reform. It also invites views on who should have special protections from being assaulted by members of the public, such as through the application of higher maximum penalties, and why. Information about how to make a submission is available [here](#).

Submissions from those who have been the victim of an assault while at work, agencies responsible for the delivery of public services, and employee unions representing the interests of their members, are particularly welcome. Of particular interest to the Council is:

1. 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?
2. 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?
3. Should the law treat assaults on particular categories of public officers as being more serious than other categories of public officer, and why?
4. Does the current sentencing process in Queensland adequately meet the needs of public officer victims?
5. Should any changes be considered to the current approach to better respond to victim needs? If so, what reforms should be considered?
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?
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?
8. If section 340 of the *Criminal Code* is retained in its current form 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)?
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)?
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)?
11. Should any reforms to existing offence provisions that apply to public officer victims be considered and if so, on what basis?
12. 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?
13. Does your answer to Question 12 change when applied specifically to children/young offenders?
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:
 - common assault (3 years);
 - assault occasioning bodily harm (7 years, or 10 years with aggravating circumstances);
 - wounding (7 years);
 - 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*, in accordance with section 108B of the *Penalties and Sentences Act 1992* (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?
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?
16. What issues contribute to, or detract from, the community's understanding of penalties and sentencing for assaults on public officers?
17. How can community knowledge and understanding about penalties and sentencing for assaults on public officers be enhanced?