



Queensland Sentencing
Advisory Council

Penalties for assaults on public officers

Final Report

August 2020

Warning to readers

This report contains subject matter that may be distressing to readers. Material describing assaults committed on police, other emergency services personnel, corrective services officers and other public officers, including case studies drawn from sentencing remarks, and descriptions of the impact these offences can have on victims are included in this report. If you need to talk to someone, support is available:

Lifeline Australia: 13 11 14

Victim Assist Queensland: 1300 546 587 (business hours) or email: VictimAssist@justice.qld.gov.au

You may also be able to seek advice and support from your current employer and/or employee union. Visit their websites for more information.

Penalties for assaults on public officers: Final Report

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Content from this report should be attributed as – Penalties for assaults on public officers: Final Report, Queensland Sentencing Advisory Council, August 2020.

ISBN: 978-0-6485965-1-6

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The Queensland Sentencing Advisory Council

The Queensland Sentencing Advisory Council is established by section 198 of the *Penalties and Sentences Act 1992* (Qld). The Council provides independent research and advice, seeks public views and promotes community understanding of sentencing matters. The Council's functions, detailed in section 199 of the Act, include to:

- inform the community about sentencing through research and education;
- engage with Queenslanders to understand their views on sentencing; and
- advise the Attorney-General on matters relating to sentencing, at the Attorney-General's request.

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Letter to the Attorney-General

31 August 2020

The Honourable Yvette D'Ath
Attorney-General and Minister for Justice, Leader of the House
GPO Box 149
Brisbane Qld 4001

Dear Attorney-General

I am pleased to provide the Queensland Sentencing Advisory Council's *Penalties for assaults on public officers: Final Report*.

This final report addresses the Terms of Reference you referred to the Council on 2 December 2019.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Robertson', with a long horizontal line extending to the right.

John Robertson
Chair
Queensland Sentencing Advisory Council

Preface

This report represents the Council's work to understand and reform sentencing for assaults on public officers.

While the Council is committed to the principle that all individuals should be considered equal before the law, it is a historical fact that assaulting a police officer has always been an offence that attracts a higher penalty in Queensland than assaults of others in the community. Section 340 ('Serious assaults'), which formed part of the original *Criminal Code* from its commencement in 1901, extended this protection to those performing duties imposed by law, and who were assaulted in other defined circumstances.

Over time, and with incremental amendment to section 340, more and more classes of people have been recognised and included in the offence, which attracts a significant maximum penalty of 14 years' imprisonment for the aggravated form where committed against a police officer, corrective services officer, or other public officer. Compounding this complexity, there are a number of alternative charge options scattered throughout the statute books creating offences of resist, assault or obstruct a public officer carrying out a range of public roles in the community. Furthermore, a range of offences for assault and offending causing very serious physical harm apply to any victim, regardless of occupation.

The Council affirms the right of all workers in our community to be able to do their job safely. We have had the benefit of hearing the personal accounts of individuals who have been directly affected by assault in the workplace, and also the broader work being done and planned to be done as a priority by industries and organisations to prevent workplace violence. We acknowledge that the criminal justice process can be a daunting and disempowering experience for many victims of crime, and that restorative justice conferencing may deliver improved outcomes for all concerned.

Worker safety is particularly important for those in our midst whose jobs are designed to protect the community and respond to emergencies. Since the advent of COVID-19, the importance of the work of frontline and emergency workers has been starkly demonstrated. We expect a great deal from our public health and other emergency workers in this environment, who are at the forefront of halting the spread of the virus. Along with these workers, we also expect much from our police and corrective services officers, who enforce the law and deal daily with criminal behaviour, as well as our paramedics, firefighters, defence force members and other health and emergency staff. Not one of these officers should ever consider that violence is 'just part of the job'.

Another critical consideration for the Council has been to gain an understanding of the circumstances of these offences. Whether it be a police call-out to a noise complaint, a paramedic called to a health crisis, or someone lashing out in a correctional centre, emergency situations very often involve the most vulnerable members of our community. People who have mental health or cognitive impairment, people with drug or alcohol dependence, people in situations of domestic and family violence, people who have experienced significant and ongoing trauma in their lives. Many of these individuals have had negative and confrontational experiences with first responders and often react accordingly. In most of these situations, knowledge that they may be subject to a higher penalty if they assault someone in authority will not deter them from doing so in that moment. Sentencing options that aim to address chronic health and social issues have a role to play, as do the services that can assist people to address their problems.

Our report recommends several important changes to the structure of offences and penalties for assault in the workplace. Firstly, we recommend the introduction of an aggravating sentencing factor in section 9 of the *Penalties and Sentences Act 1992* (Qld) to signal that if a victim of an offence that involved violence or physical harm was made vulnerable because of their job, no matter what their job is, this should be treated more seriously for sentencing purposes.

Secondly, we recognise the unique occupational vulnerability of frontline and emergency workers in the proposed re-worded offence of 'assault of a frontline or emergency worker' (formerly 'serious assault'). These are workers whose job it is to intervene in potentially dangerous situations. They have been trained for and tasked with community protection and to assist in an emergency, and we acknowledge the increased seriousness of an assault on these workers.

We hope to see, in time, the repeal of a range of resist, assault or obstruct offences in legislation outside the *Criminal Code* through the creation of a new summary offence, and we recommend an increase from two to three years' imprisonment as the maximum penalty for the more serious offence of resisting public officers in section 199 of the *Criminal Code*, taking into account that acts of obstruction, as distinct from assaults, will no longer be caught within scope of the new section 340.

Finally, we recommend that assaults against other classes of vulnerable people currently included in section 340 – those aged over 60 years and those who rely on a guide, hearing or assistance dog, wheelchair or other remedial device – which carry higher maximum penalties should be relocated to a new offence section separate from the re-worded section 340, which will deal exclusively with assaults of 'frontline and emergency workers'.

We acknowledge the work of those Council members who sat on the Project Board, which has been responsible for all decisions associated with this report. We are indebted to the many stakeholders we met with and who provided a submission – for all your efforts and contributions to our work, we thank you. And finally, our gratitude to the Council Secretariat, who provide the evidence and analysis that gives the Council the ability to make recommendations based on informed consideration. Their work is of the highest quality and underpins the extensive work done by the Council in 2020, including this reference, under the cloud of the COVID-19 crisis. We are proud and fortunate to work with such a committed and talented group of people.



John Robertson

Chair



Cheryl Scanlon

Project Sponsor

Acknowledgments

The Council's inquiries are informed by the knowledge and expertise of its members, research and policy analysis undertaken by its staff, and the contribution of key criminal justice agencies, other stakeholders and community members.

The Council would like to acknowledge the contributions of all those who made submissions, attended meetings to discuss issues relating to the review, and provided information to inform the development of this Final Report. While not exhaustive, those who have contributed submissions to the review included:

- Aboriginal and Torres Strait Islander Legal Service (Qld);
- Australasian College for Emergency Medicine;
- Australasian Railway Association;
- Australian Lawyers Alliance;
- Bus Industry Confederation;
- Bar Association of Queensland;
- Department of Agriculture and Fisheries;
- Department of Child Safety, Youth and Women;
- Department of Communities, Disability Services and Seniors;
- Department of Education;
- Department of Environment and Science;
- Department of Housing and Public Works;
- Department of Justice and Attorney-General;
- Department of Youth Justice;
- Dispute Resolution Branch, DJAG;
- GoldlinQ Pty Ltd (Gold Coast Light Rail);
- Independent Education Union (Queensland and Northern Territory Branch);
- Legal Aid Queensland;
- Office of Industrial Relations;
- Office of the Information Commissioner;
- Office of the Public Guardian;
- Prisoners' Legal Service;
- Public Advocate; Queensland Advocacy Incorporated;
- Queensland Corrective Services;
- Queensland Catholic Education Commission;
- Queensland Council of Unions;
- Queensland Health;
- Queensland Human Rights Commission;
- Queensland Fire and Emergency Services;
- Queensland Law Society;
- Queensland Nurses and Midwives' Union;
- Queensland Police Service;
- Queensland Police Union of Employees;
- Queensland Teachers' Union;
- Rail, Tram and Bus Union;
- Security Providers Association of Australia Limited;
- Sisters Inside;
- Together Queensland;
- TrackSAFE Foundation;
- Transport Workers' Union (Queensland Branch);
- United Workers Union; and
- local and interstate criminal justice agencies and academic researchers.

Following the release of our Issues Paper on this topic, the Council met with a number of stakeholders who had made submissions and a number of other professional and industry bodies with an interest in the review, including the Australian Medical Association; the Office of the Director of Public Prosecutions; Queensland Rail; and the Royal Australian College of General Practitioners. The Council thanks all those who gave so generously of their time and expertise in informing the review and providing the Council with a more detailed understanding of the operating contexts and issues for those employed in their industries.

The Council looked at a range of sentencing data to inform the findings in this paper, and would like to thank the following agencies for providing data for this review:

- Court Services Queensland (DJAG);
- DJAG;
- Department of Education;
- Department of Transport and Main Roads;
- Department of Youth Justice
- Queensland Ambulance Service;
- Queensland Corrective Services;
- Queensland Fire and Emergency Services;
- Queensland Health;
- Office of Industrial Relations;
- Public Service Commission;
- The QPS;
- Victim Assist Queensland;
- WorkCover Queensland.

The Council would also like to acknowledge the Griffith Institute of Criminology, which was commissioned to conduct a literature review on the sentencing of assaults on public officers, and Associate Professor Chelsea Bond and her research team at the School of Social Science at The University of Queensland for work undertaken on an expert report to the Council on potential contributing factors to Aboriginal and Torres Strait Islander overrepresentation among those charged with these offences.

In an effort to better understand issues for Aboriginal and Torres Strait Islander peoples, women and people in circumstances of vulnerability, the Council hosted a roundtable attended by several legal and advocacy bodies. The Council thanks all those who participated for sharing valuable insights into the particular impacts of any sentencing reforms on these vulnerable cohorts, deepening our understanding of the contexts in which assaults on public officers commonly occur.

The Council also acknowledges the input and advice provided by the Council's Aboriginal and Torres Strait Islander Advisory Panel. The Council appreciates the input of the panel on this project and thanks the members of the panel for their engagement and advice, which continues to be invaluable to the Council in responding to complex questions regarding potential sentencing reforms.

It is the Council's practice to establish a Project Board for every inquiry. The Council acknowledges the contributions of Project Board members and thanks board members for giving so generously of their time during all stages of the review. It particularly recognises Assistant Commissioner Cheryl Scanlon APM for her outstanding contribution and leadership as the Project Sponsor for the review, and the contributions of Council Chair John Robertson, who acted as the Project Sponsor for a period due to Assistant Commissioner Scanlon's competing work commitments and also led consultations with legal stakeholders.

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Abbreviations

ABS	Australian Bureau of Statistics
ACEM	Australasian College of Emergency Medicine
ALA	Australian Lawyers Alliance
ALRC	Australian Law Reform Commission
ANZSOC	Australian and New Zealand Standard Offence Classification
AOBH	assault occasioning bodily harm
ARJC	adult restorative justice conferencing
ASOC	Australian Standard Offence Classification scheme
ATSILS	Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd
BAQ	Bar Association of Queensland
CCO	community correction order
COVID-19	COVID-19 is a disease caused by a new strain of coronavirus
CSA	<i>Corrective Services Act 2006 (Qld)</i>
CSO	corrective services officers
DFV	domestic and family violence
DJAG	Department of Justice and Attorney-General
DPP	Director of Public Prosecutions
ED	Emergency Department (of a hospital)
ERP	estimated resident population
GBH	grievous bodily harm
HRA	<i>Human Rights Act 2019 (Qld)</i>
ICO	intensive correction order
LAQ	Legal Aid Queensland
MSO	most serious offence
ODPP	Office of the Director of Public Prosecutions (Queensland)
OPG	Office of the Public Guardian
OPM	<i>Operational Procedures Manual (of the QPS)</i>
PIN	penalty infringement notice
PSA	<i>Penalties and Sentences Act 1992 (Qld)</i>
PPRA	<i>Police Powers and Responsibilities Act 2000 (Qld)</i>
QAI	Queensland Advocacy Incorporated
QCA	Queensland Court of Appeal
QC	Queen's Counsel
QCS	Queensland Corrective Services
QCU	Queensland Council of Unions
QFES	Queensland Fire and Emergency Services
QGSO	Queensland Government Statistician's Office
QHRC	Queensland Human Rights Commission
QLS	Queensland Law Society
QNMU	Queensland Nurses and Midwives' Union
QOVSU	Queensland Occupational Violence Strategy Unit

QP9	Queensland Police Form 9 or police court brief
QPC	Queensland Productivity Commission
QPS	Queensland Police Service
QPU	Queensland Police Union of Employees
QSAC	Queensland Sentencing Advisory Council
QSI	Queensland Sentencing Information Service
QTU	Queensland Teachers' Union
QWIC	Queensland Wide Inter-Linked Courts database
SNPP	standard non-parole period
SPAAL	Security Providers Association of Australia Limited
SVO	serious violent offence
TSAC	Tasmanian Sentencing Advisory Council
TWU	Transport Workers' Union (Qld)
UK	United Kingdom
UWU	United Workers' Union
VIS	victim impact statement
VLRC	Victorian Law Reform Commission
VOCCA	<i>Victims of Crime Assistance Act 2009</i> (Qld)
VSAC	Victorian Sentencing Advisory Council
WHS	Workplace health and safety
YJ	Department of Youth Justice
YJA	<i>Youth Justice Act 1992</i> (Qld)

Glossary

- Appeal** Review of all or part of a court’s decision by a higher court. An appeal against a sentencing decision of a magistrate can be heard by a District Court judge. An appeal against a sentencing decision of a District Court or Supreme Court judge can be heard by the Court of Appeal.
- Average** The average is a measure used to determine where the centre of a distribution lies. The average is calculated by adding up all the values in a dataset and dividing the sum by the total number of values. The average is affected by outliers – extreme scores at either end of the distribution can cause the mean to shift significantly. Also referred to the mean.
- Case law** Law made by courts, including sentencing decisions and decisions on how to interpret legislation. This is also known as **common law**.
- Common law** Law made by courts, including sentencing decisions and decisions on how to interpret legislation. This is also known as **case law**.
- Compensation** Compensation is an amount of money provided for any loss, destruction or damage caused to property, and can also address personal injury suffered by a person (whether or not they are a victim of the offence) because of the commission of a criminal offence.
- Conviction** A determination of guilt made by a court.
- Court of Appeal** A division of the Supreme Court. The Court of Appeal hears appeals against conviction, sentence or both. It usually comprises three judges.
- Crown** The prosecution may be referred to as the Crown. The Crown refers to the Queensland Government representing the community of Queensland.
- Defendant** A person who has been charged with an offence but who has not yet been found guilty or not guilty. Can be used interchangeably with **accused**.
- Denunciation** Communication of society’s disapproval of an offender’s criminal conduct.
- De Simoni (De Simoni principle)** The principle that a person should only be sentenced for an offence for which he or she has been found guilty.
- Deterrence** Discouraging offenders and potential offenders from committing a crime by the threat of a punishment or by someone experiencing a punishment. One of the five statutory sentencing purposes in Queensland.
- Head sentence – imprisonment** The total period of imprisonment imposed. A person will usually be released on parole or a suspended sentence before the entire head sentence is served.
- Mean** The mean is a measure used to determine where the centre of a distribution lies. The mean is calculated by adding up all the values in a dataset and dividing the sum by the total number of values. The mean is affected by outliers – extreme scores at either end of the distribution can cause the mean to shift significantly. Also referred to the average.
- Median** The median is a measure used to determine where the centre of a distribution lies. The median is the middle value (or the halfway point) of an ordered dataset. Half of the values lie above the median, and half below. The advantage of using the median is that, compared to the mean, it is relatively unaffected by extreme scores at either end of the distribution.

1	2	3	6	7	8	10	11	12	14	20	
					Median						

- Most serious offence (MSO)** For this report, the MSO refers to an offender’s most serious offence at a court event. It is the offence receiving the most serious penalty, as ranked by the classification scheme used by the Australian Bureau of Statistics (ABS). An offender records one MSO per court event.

Non-parole period	The time an offender serves in prison before being released on parole or becoming eligible to apply for release on parole.
Offender	A person who has been found guilty of an offence or who has pleaded guilty to an offence.
Parity (principle of parity)	People who are parties to the same offence should receive the same sentence, although matters that create differences must be taken into account.
Parsimony (principle of parsimony)	A sentence must be no more severe than is necessary to achieve the purposes for which the sentence is imposed.
Partially suspended sentence	Imprisonment of up to five years, with some actual prison time followed by release from prison with the remaining period of imprisonment suspended for a set period (called an 'operational period'). If the offender commits a further offence punishable by imprisonment during the operational period, they must serve the period suspended in prison (unless unjust to do so), plus any other penalties issued for the new offence.
Plea	The response by the accused to a criminal charge – 'guilty' or 'not guilty'.
Proportionality (principle of proportionality)	A sentence must be appropriate or proportionate to the seriousness of the crime.
Prosecution	A legal proceeding by the State of Queensland against an accused person for a criminal offence. Prosecutions are brought by the Crown (through the ODPP or police prosecutors).
Remand	To place an accused person in custody awaiting further court hearings dealing with the charges against them. A person who has been denied bail, or not sought it, will be placed on remand. This is also known as 'pre-sentence custody'.
Restitution	Restitution is a specific form of compensation that relates to property damaged or taken in relation to the commission of a criminal offence.
Restorative justice conferencing	Restorative justice conferencing involves a dialogue between the parties (victim and offender) directly affected by a criminal offence, whereby the harm suffered by the victim can be expressed, acknowledged by the offender and an agreement reached about the way to repair the harm, where possible.
Sentence	The penalty the court imposes on an offender.
Sentencing factors	The factors that the court must take into account when sentencing.
Sentencing principles	Principles developed under the common law, which serve as guideposts to assist judges and magistrates to reach a decision concerning the most appropriate sentence to impose. They include parity, parsimony, proportionality, totality, and the De Simoni principle.
Sentencing purposes	The legislated purposes for which a sentence may be imposed. In Queensland there are five sentencing purposes for the sentencing of adults: punishment, deterrence, rehabilitation, denunciation, and community protection.
Sentencing remarks	The reasons given by the judge or magistrate for the sentence imposed.
Supreme Court	The highest state court in Queensland. It comprises the trial division and the Court of Appeal. All trials and sentencing hearings for murder and manslaughter take place in the Supreme Court trial division.
Suspended sentence	A sentence of imprisonment of five years or less suspended in whole (called a 'wholly suspended sentence') or in part (called a 'partially suspended sentence') for a period (called an 'operational period'). If further offences punishable by imprisonment are committed during the operational period, the offender must serve the period suspended in prison (unless unjust to do so), plus any other penalties issued for the new offence.
Totality (principle of totality)	When an offender is convicted of more than one offence, the total sentence must be just and appropriate to the offender's overall criminal behaviour.

Victim impact statement A mechanism for a victim of crime to provide a written account of the impact of an offence on them, which is presented to the sentencing court – most often in a written format to the judge, although sometimes the victim can read the statement to the court. This forms part of the court’s assessment of the seriousness of the offence.

Wholly suspended sentence A sentence of imprisonment of up to five years but with no actual time served in prison as part of the sentence, unless the person commits a further offence during the operational period. If further offences punishable by imprisonment are committed during the operational period, the offender must serve the period suspended (unless unjust to do so), plus any other penalties issued for the new offence.