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*Sisters Inside Inc. is an independent community organisation which exists to advocate for the human rights of women in the criminal justice system*

**28 January 2020**

Queensland Sentencing Advisory Council

C/- Council Secretariat

**By email only:** [REDACTED]

Dear Council Secretariat

### **Review of penalties for assaults on police and other frontline emergency service workers, corrective service officers and other public officers**

We refer to your letter dated 6 December 2019. Thank you for the opportunity to provide feedback on preliminary consultation questions to inform the Council's review of penalties for assaults on police and other frontline emergency service workers, corrective service officers and other public officers.

Sisters Inside is an independent community organisation that advocates for the collective human rights of women and girls in prison, and their families, and works alongside criminalised women and girls to address their immediate, individual needs. This submission is informed by our direct work with criminalised women and girls.

Through our work, we have observed that prison has become a 'first resort' for women with needs that are deemed too complex by the social services system (e.g. homelessness, substance use, disability, mental illness and poverty). We believe that all changes to sentencing legislation and practice must support *decarceration* - a reduction in the numbers of women in prison or subject to formal supervision by Queensland Corrective Services.

Sisters Inside does not support increased penalties or mandatory sentencing provisions for assaults on police and other frontline emergency service workers, corrective service officers and public officers. We do not support the expansion of the definition of 'public officer' to include public transport operators, security guards or other professions.

### **Terms of reference**

Sisters Inside has identified the following key issues for comment in the terms of reference:

- 1. Examine the penalties and sentencing trends and the impact of the 2012 and 2014 amendments to introduce higher maximum penalties, and determine if this is in accordance with stakeholder expectations**

## Impact of the 2012 & 2014 amendments

The 2012 and 2014 amendments went too far in increasing the penalties for assaulting police and public officers. As a stakeholder that represents women and girls, Sisters Inside opposes any further penalty increases on the grounds that they are unwarranted, unjust and unlikely to have a deterrent effect. We submit that the severe penalties for serious assaults and aggravated serious assaults disproportionately impact people with vulnerabilities or disabilities.

The 2012 amendments to the serious assault provisions in s 340 of the *Criminal Code Act 1899* (Qld) ('Criminal Code') doubled the maximum penalty for the serious assault of a police officer in circumstances where the person bites, spits, throws bodily fluids, causes bodily harm, threatens with a weapon, or pretends to do so.<sup>1</sup> The maximum penalty was doubled from 7 to 14 years. In 2014, the same amendments, and the related maximum penalty, were extended to serious assaults on public officers.<sup>2</sup>

Our position is that imposing a maximum penalty of 14 years for a serious assault on a police officer or public officer is disproportionate to the penalties imposed on comparable and more serious offences in the Criminal Code.<sup>3</sup> We assess that this has the effect of unfairly criminalising people and punishing people unduly.

Under s 340, if a person assaults a police officer they are liable to serve 7 years in prison for an action, which, if perpetrated against a civilian, would be categorised as common assault, and attract a maximum 3 year penalty.<sup>4</sup> If the assault on the police or public officer is 'aggravated' by causing bodily harm it attracts a penalty of up to 14 years in prison;<sup>5</sup> by contrast, assault occasioning bodily harm to a civilian attracts a penalty of up to 7 years in prison.<sup>6</sup> Per the section, spitting at a police or public officer also counts as an aggravated form of serious assault and attracts the maximum penalty of 14 years in prison.<sup>7</sup> It is our submission that it is not appropriate for spitting and grievous bodily harm to attract the same maximum penalty; there are substantial differences in the characters of those actions.

Relevantly, Western Australia is the only other Australian jurisdiction that imposes a maximum penalty of 7 years for assaulting an officer without causing bodily harm.<sup>8</sup> Every other state and territory imposes a maximum penalty of 5 years or fewer.<sup>9</sup>

The harm suffered by a police or public officer is the same as experienced by a civilian exposed to the same offending. We submit that it is inappropriate that the legislation creates different penalties for the same action, with the only relevant distinction between cases being the claimant's profession. This is especially problematic considering how low the threshold is for making out a charge of serious assault.

## Evidence

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<sup>1</sup> *Criminal Law Amendment Act 2012* (Qld) s 4.

<sup>2</sup> *Safe Night Out Legislation Amendment Act 2014* (Qld) s 4.

<sup>3</sup> *Criminal Code 1899* (Qld) ss 245, 335, 339, 320 ('*Criminal Code*').

<sup>4</sup> *Ibid* s 335.

<sup>5</sup> *Ibid* s 340(1)(b)(ii).

<sup>6</sup> *Ibid* s 339.

<sup>7</sup> *Ibid* s 340(1)(b)(i).

<sup>8</sup> *Criminal Code Act 1913* (WA) s 318(1)(m).

<sup>9</sup> *Crimes Act 1958* (Vic) s 31; *Crimes Act 1900* (NSW) s 60; *Criminal Law Consolidation Act 1935* (SA) s 20AA; *Criminal Code Act 1983* (NT) s 187; *Crimes Act 1900 (ACT)* s 24, 26; *Criminal Code Act 1924* (Tas) s 114.

Following the 2012 and 2014 amendments, we have seen a trend in many more women being charged and sentenced to imprisonment for the offence of serious assault. In particular we have seen a significant increase in the number of First Nations women who are being charged with serious assault under s 340.

Our work with women illustrates that under the current legislation the penalties carried with these offences are adversely impacting vulnerable people, especially women who are homeless or experience significant mental health issues, brain injuries, developmental disabilities or cognitive impairments which require specialist services.

For instance, Tracey\*<sup>i</sup> is an Aboriginal woman who was charged under s 340(2AA)(a) of the Criminal Code for spitting at a bus driver. After a trivial dispute with the driver, Tracey was denied entry onto the only transport to her destination. Tracey has significant long-term mental health issues and sometimes reacts negatively to what she perceives to be unfair or disrespectful use of authority. Her significant history of trauma causes her to display strong emotional outbursts when she experiences feelings of disconnection or unfairness. In this case, Tracey reacted by swearing and spitting at the bus driver. Tracey was charged with serious assault and now faces a maximum penalty of 14 years in prison for spitting at a public officer, an action which is characterised by the legislation as an *aggravated* form of 'serious assault.' If she had spat on a civilian, she would most likely have been charged with common assault and be facing a maximum sentence of 3 years. We submit that this is unjust; the maximum penalty should not be 11 years higher for an offence committed against a police or public officer compared to a civilian.

### **Mandatory sentencing amendments**

The 2014 amendments also added s 340(1C), which provides that the court must make a community service order if the person committed the serious assault against a police or public officer in a public place, while adversely affected by an intoxicating substance. This provision is problematic because it appears to hold intoxicated people to a higher standard than sober people in full control of their faculties. We oppose mandatory sentencing because it does not allow the court to take into account individual circumstances and this can lead to injustice.

### **Consideration of the purpose of the amendments**

The 2014 amendments to s 340 are contained in the *Safe Night Out Legislation Amendment Act 2014* (Qld). This legislation aimed primarily at reducing assaults on frontline workers engaging with intoxicated or drug-affected people. The explanatory memorandum to these amendments state that 'The Bill seeks to address alcohol and drug related violence by ensuring bad behaviour is not tolerated, providing safe and supportive entertainment precincts and through working to change the culture by making it clear that everyone is responsible.'<sup>10</sup> It is unlikely that increasing penalties can have the deterrent effect desired by the legislators. The Act specifically seeks to protect police and public officers working with intoxicated people; yet intoxicated people are often incapable of considering the consequences of their actions and are unlikely to know about or consider the increased penalties.

The argument that increasing penalties will effect a change in 'culture' and increase personal responsibility is flawed. It fails to recognise that a substantial proportion of the people who behave aberrantly enough to attract the attention of the police are likely to be under the influence of drugs or alcohol, or affected by mental health conditions, or cognitive or behavioural impairments. These are people in a vulnerable position who may not be capable of understanding the consequences of their actions or controlling their behaviours.

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<sup>10</sup> Explanatory Memorandum, *Safe Night Out Legislation Amendment Bill 2012* (Qld), 1.

- 2. Determine whether it is appropriate for section 340 of the Criminal Code to continue to apply to police officers and other frontline emergency service workers, corrective services officers and other public officers ('public officers') or whether such offending should be targeted in a separate provision or provisions.**
  - a. Possibly with higher penalties**
  - b. Possibly through the introduction of a circumstance of aggravation**

The 2012 and 2014 amendments have already doubled the maximum penalties; to increase them further is unnecessary and inappropriate. Furthermore, the 2012 and 2014 amendments already introduced aggravating circumstances, firstly by prescribing that certain types of assault (biting, spitting, throwing bodily fluids, causing bodily harm, threatening with a weapon, or pretending to do so) attract a higher maximum penalty and, secondly, by introducing mandatory sentencing provisions for offences occurring while the person was intoxicated and in a public place.<sup>11</sup> We do not support increasing penalties or introducing further circumstances of aggravation it is unwarranted considering the recent 2012 and 2014 amendments. We oppose mandatory sentencing

- 3. Determine whether the definition of public officer in section 340 of the Criminal Code should be expanded to recognise other occupations, including transport drivers (e.g. bus drivers and train drivers)**

Currently the definition of public officer does include transit officer.<sup>12</sup> As outlined in Tracey's case, this suggests that, in practice, bus drivers may already be treated as a 'transit officer' for the purpose of charging a person with serious assault, rather than common assault.

We do not support widening the definition of public officer for the purposes of s 340. Per the Explanatory Memorandum of the 2014 amendments, the justification for why public officers were added to the serious assault section is 'to protect Queensland's front line officers from the dangers inherent in their duties and to ensure the appropriate punishment and deterrence of such offending conduct.'<sup>13</sup> We contend that there are no 'inherent dangers' in the duties of bus drivers. For contrast, the work of a taxi or Uber driver, while not a public role, could not be said to be less dangerous than that of a public transport driver. We hold that it is arbitrary to assign greater penalties to assaults on public transit officers than to civilians doing similar work. People should be treated equally before the law, regardless of their profession.

- 4. Review section 790 of the Police Powers and Responsibilities Act 2000 (Qld) and section 124(b) of the Corrective Services Act 2006 (Qld) and assess the suitability of providing for separate offences in different Acts targeting the same offending.**
  - a. Do the penalties imposed on offenders convicted of these offences reflect stakeholder expectations?**

#### ***Police Powers and Responsibilities Act 2000 (Qld)***

The *Police Powers and Responsibilities Act 2000* (Qld) ('PPRA') and the Criminal Code contain different offences for obstruction and assaults on police officers. The salient difference being that the PPRA creates a summary offence and the Criminal Code creates an indictable offence. We contend that it is desirable to maintain this duality so that people have the benefit of being charged with the lesser, summary offence contained in s 790 of the PPRA, when that is appropriate. However, currently the requirements for establishing whether an action should be charged as a summary or indictable offence are not clear. We

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<sup>11</sup> *Criminal Code* (n 3) ss 340 (1)(b), (1C), (2AA)(a).

<sup>12</sup> *Ibid* s 340 (3).

<sup>13</sup> Explanatory Memorandum, *Safe Night Out Legislation Amendment Bill 2012* (Qld), 1.

submit that the legislation requires clarification to ensure that less serious assaults and obstructions are not punished disproportionately.

For example Ruby\* was arrested by police and taken to the watch house. The police determined that she might be in possession of drugs and attempted to conduct a strip search. Ruby did not want to be strip-searched so she wrapped her arms around her chest to close off access to her body and refused to cooperate. At no point did Ruby make any physical contact with the police. The police charged Ruby with wilful obstruction under s 340(1)(b) of the Criminal Code, which attracts the maximum penalty of 7 years. Given the minor and harmless nature of Ruby's behaviour it was open to the police to charge her with the summary offence of obstruction under s 790(1)(b), which attracts a maximum penalty of 6 months in prison.

Interactions with police can be stressful, intimidating and triggering for many people, especially those with vulnerabilities, disabilities, mental health conditions or substance dependencies. With this in mind, it is often inappropriate to charge a person with an indictable offence, particularly when they have not caused physical injury to the officer. It is important to recognise that actions on the lower end of the spectrum that do not cause bodily harm should rightly remain summary offences.

As it stands, police have discretion whether to charge under the PPRA or the Criminal Code. There is a relatively low threshold for satisfying serious assault under the Criminal Code and there is no explicit delineation between acts occasioning bodily harm and those that do not. This means that the police and prosecuting authority lack clear guidelines for determining whether to charge the person with a summary or indictable offence. Legislation governing obstruction and assaults on police and public officers in other Australian jurisdictions demonstrate how greater specificity could be incorporated into Queensland's legislation, particularly with respect to differentiating thresholds for summary and indictable assaults. In New South Wales, the Northern Territory, Victoria, the Australian Capital Territory, Tasmania and South Australia the legislation governing assaults on police and relevant public officers explicitly differentiate penalties in relation to whether bodily harm was caused.<sup>14</sup>

For example, the New South Wales legislation specifies that where no actual bodily harm is caused to the officer (or specified person) the maximum penalty is 5 years, whereas assaults that cause bodily harm attract a maximum penalty of 7 years and assaults amounting to grievous bodily harm have a maximum penalty of 12 years.<sup>15</sup> In Victoria the legislation provides that assaulting, threatening, resisting or obstructing a police officer<sup>16</sup> carries a maximum penalty of 5 years.<sup>17</sup> Assault is defined in the section as the direct or indirect application of force.<sup>18</sup> In Victoria, if a person commits a more serious assault they are charged under the serious injury and gross violence provisions elsewhere in the Act, which apply equally to civilians and police or public officers.<sup>19</sup> We submit that the Queensland Acts should incorporate greater specificity, as in other Australian jurisdictions, in order to reduce the occurrence of unwarranted criminalisation.

### ***Corrective Services Act 2006 (Qld)***

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<sup>14</sup> *Crimes Act 1958* (Vic) s 31; *Crimes Act 1900* (NSW) s 60; *Criminal Law Consolidation Act 1935* (SA) s 20AA; *Criminal Code Act 1983* (NT) s 187; *Crimes Act 1900 (ACT)* s 24, 26; *Criminal Code Act 1924* (Tas) s 114.

<sup>15</sup> *Crimes Act 1900* (NSW) ss 60(1), (1A), (3).

<sup>16</sup> Police officers are defined as belonging to the class of emergency service workers, see *Crimes Act 1958* (Vic) s 31(2A).

<sup>17</sup> *Crimes Act 1958* (Vic) s 31(1)(b).

<sup>18</sup> *Ibid* s 31(2).

<sup>19</sup> *Ibid* ss 15, 15A, 15B, 16.

The penalty for assaulting a corrective services officer differs depending on whether the person is charged under the *Corrective Services Act 2006* (Qld) ('CSA') or the Criminal Code. Under the CSA the maximum penalty is 2 years,<sup>20</sup> compared to 7 under the Criminal Code.<sup>21</sup> The threshold for establishing assault under the CSA compared to serious assault under the Criminal Code is not clearly delineated in the Acts, which means that people in prison are often charged with serious assault for actions that should have been dealt with under the CSA.

For example, Urshula\* is a woman in prison who suffers from mental health conditions and severe cognitive impairments. During the night Urshula asked correctional staff for a blanket. The next day, when that request was again denied, Urshula became highly agitated and used the back of her hand to hit a cup of hot water through the meal hatch in the door. The hot water made contact with a correctional staff member. The hot water was not boiling and did not burn the staff member. Urshula was charged under s 340 for the serious assault of a corrective services officer and faces a maximum penalty of 7 years.

The Australian Institute of Health and Welfare conducted a national review of prisoner health in 2018 and reported that 40% of all prisoners said that they had been diagnosed with a mental health condition at some point in their lives.<sup>22</sup> The prevalence of mental health issues experienced by women is more pronounced, with 65% of women in prison reporting a history of mental health conditions.<sup>23</sup> This demonstrates the vast criminalisation of women with mental health conditions. Given the prevalence of mental health conditions and cognitive impairments in the prison population it is often more reasonable to treat assaults on prison staff as a by-product of the person's health conditions. If someone is 'acting out' because of their mental health conditions they should not be charged with an offence, they should be supported with health services. We should not criminalise people's behaviour if it is related to their mental health or cognitive characteristics, i.e. impulsiveness and the lack of ability to self-regulate.

### **Double punishment**

With respect to assaults against corrective services officers, it should be taken into account that in addition to charges under the CSA or the Criminal Code, imprisoned people will invariably also be punished internally. The CSA prescribes that, 'A prisoner must not be charged with an offence because of an act or omission if the prisoner has been punished for the act or omission as a breach of discipline.'<sup>24</sup> We have observed that, in practice, the legislation does not ensure that internal punishments are taken into account when pressing charges or sentencing, and that women are frequently subject to double punishments. Internal disciplinary procedures in prison include placement in solitary confinement and loss of privileges. Assaults on prison staff will also result in a 'breach of discipline,' which is recorded on the woman's prison violation record and can influence her security classification, placement in prison and her chance of obtaining parole.

For example, in Urshula's case, following the incident where she spilled hot water on a staff member, she was kept in solitary confinement for several months in addition to being charged with serious assault under s 340 of the Criminal Code. Given that she is a woman who suffers from mental health conditions and cognitive impairments it is not appropriate that she be punished criminally or internally for this objectively minor infraction. Currently there is not sufficient transparency or oversight to ensure that women are not subjected to double punishments.

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<sup>20</sup> *Corrective Services Act 2006* (Qld) s 124(b).

<sup>21</sup> *Criminal Code* (n 3) s 340.

<sup>22</sup> The Australian Institute of Health and Welfare, *The Health of Australia's Prisoners* (2018) 28.

<sup>23</sup> *Ibid* 27.

<sup>24</sup> *Corrective Services Act 2006* (Qld) s 115(2).

#### **4. Advise on options for reform to the current offence, penalty and sentencing framework to ensure it provides an appropriate response to this form of offending**

##### **Legislative amendments**

Our key recommendation is that the threshold for the summary and indictable offences should be clearly delineated and defined. It is also desirable to specify different maximum penalties depending on whether or not bodily harm was caused and the seriousness of that harm. The legislation should facilitate greater judicial discretion by requiring that individual circumstances and vulnerabilities be taken into account during sentencing.

The aggravating circumstances contained in s 340(1)(b)(i)-(iii) and s 340(2AA) of the Criminal Code should be reconsidered. No other Australian jurisdiction specifies spitting as an aggravating feature of an assault on a police or public officer. The s 340(1C) mandatory sentencing provision should be eliminated; intoxication in a public place should not be an aggravating circumstance to an assault.

The different thresholds for charging a person for assaulting prison staff under the CSA and the Criminal Code should be clarified and made more detailed. There should be different charges and penalties depending on whether bodily harm was caused and how serious that harm was. Furthermore, measures should be put in place to create greater transparency and accountability around internal prison punishments. It is not fair for people in prison to be punished significantly internally, and also under the Criminal Code or the CSA.

##### **Support services & training**

The 2014 amendments were aimed primarily at reducing assaults on frontline workers engaged with intoxicated or drug-affected people. Increasing penalties for low-level assaults on police and public officers is unlikely to have the deterrent effect desired by the legislators. A more appropriate and effective strategy for reducing intoxicated and drug-affected misbehaviour and violence is to invest in mental health and rehabilitation support services. Increasing access to affordable mental health and substance abuse rehabilitation programs is a proactive, rather than reactive method of reducing drug and alcohol related violence.

We recommend that police, public officers and other relevant frontline workers be provided with training and departmental supports to facilitate more productive interactions with volatile, intoxicated or mentally unwell members of the public. Frontline workers could be empowered to reduce conflict by learning to identify symptoms of mental ill health, how to de-escalate conflict and the importance of a trauma-informed approach to working with vulnerable people. Increasing penalties is unlikely to have the deterrent effect desired by the legislators; it is more useful to implement practical, bottom-up measures that will increase frontline workers' safety and job satisfaction and also improve the quality of service they provide to the public.

Yours faithfully



Hannah Stadler  
Policy Officer

**Sisters Inside Inc**

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<sup>i</sup> \*Names have been changed to maintain confidentiality.