



Department of
Agriculture and Fisheries

Our ref: CTS 09722/20
Your ref: 592302/1; 5188417

Mr John Robertson
Chair
Queensland Sentencing Advisory Council
GPO Box 2360
BRISBANE QLD 4001

Dear Mr Robertson

Thank you for your letter of 30 April 2020 inviting submissions to the Queensland Sentencing Advisory Council (QSAC) on the adequacy and potential reform of the current offence, penalty and sentencing framework for assaults on public officers and others.

The Department of Agriculture and Fisheries makes this submission as an agency responsible for the delivery of public services. Officers of the Department interact with members of the public in a number of different capacities. Most relevantly for this submission, Departmental officers undertake duties monitoring compliance with the legislation administered by the Department, investigating non-compliances and enforcing the legislation where non-compliances are identified.

Against this background, the Department is particularly grateful for the opportunity to comment on the significant matter of assaults on public officers.

In responding to your questions, consultation has been undertaken and assistance received from representatives of the officers of the Queensland Boating and Fisheries Patrol (QBFP) and of Biosecurity Queensland (BQ). These officers perform a compliance role that often involves direct contact with members of the public in stressful situations, with the associated heightened emotions. Thankfully, assaults on these officers are infrequent. However, they have considered your questions and attempted to provide the most useful answers possible, employing their experience to inform their responses.

PRELIMINARY:

The Department appreciates the invitation to provide submissions on the issues of offences, penalties and sentences for assaults on public officers.

However, the Department wishes to take this opportunity to highlight that its focus is on prevention of these assaults on its officers wherever possible.

The Department's responses below should not be taken as an indication that the Department has a significant problem with assaults on its officers. As indicated above, these assaults are relatively infrequent.

The Department presently considers that the following would be useful to reduce the risk of assaults against officers:

- a. Departmental officers having offline access to the Queensland Police "QPrime" database; and
- b. Departmental officers having offline access to the Department of Transport and Main Road vehicle and vessel registration databases.

Access to the information contained within these databases would allow officers to make rapid assessments of the identity of persons they were likely to encounter during compliance or investigation activities and whether those persons had a recent history of violence. If the risk was assessed as being too high, officers could avoid the situation and develop an action plan with the Queensland Police Service if required.

The Department would appreciate any comment or assistance the Sentencing Advisory Council could provide on co-operation and information sharing between government agencies as a means of reducing the incidence of assaults on public officers by helping officers to avoid potentially dangerous situations.

QUESTIONS:

- 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?**

The Department asks QSAC to consider the following submission:

The Department submits that the fact of physically being 'at work' is less relevant than the fact that a person is assaulted because of the work they do. For example, an officer could be assaulted outside of work hours for actions they performed while at work, or simply because they are recognised as a particular type of public officer. The Department submits that the more relevant factor is that the person is assaulted due to their status or actions as a worker, that is, they are assaulted for something that they are required to do because they are performing their job.

If an officer is assaulted, whether they are assaulted while performing that duty or at another time as a result of performing that duty is less relevant. The fact that the assault occurs because of the performance of the duty is what makes it more serious than the same assault on a person who is not a public officer.

- 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?**

The Department asks QSAC to consider the following submission:

The Department recognises that the law and Courts appropriately treat all assaults on a person as serious regardless of the occupational status of the victim. The Department submits, however, that the categorisation of the victim of the assault as a public officer ought to be recognised as a circumstance of aggravation, or a factor justifying a more significant sentence being imposed, by the adjudicating Court.

- 3. Should the law treat assault on particular categories of public officers as being more serious than other categories of public officer, and why?**

The Department asks QSAC to consider the following submission:

The Department submits that within the spectrum of public service (including police), there likely exists a variation in risk of assault in one occupation type versus another. The Department also recognises that there is a level of preparation, expectation/vigilance, and training associated with higher risk occupations in light of the recognised risk. While this does not diminish the seriousness of the offence, the Department submits that all assaults should be treated on their merits, rather than by categorisation.

The Department is concerned that categorisation may be too prescriptive, in that it may not offer a Court dealing with an assault offence sufficient scope to ensure the sentence imposed properly reflects the individual circumstances and facts.

- 4. Does the current sentencing process in Queensland adequately meet the needs of public officer victims?**

The Department does not wish to make submission in response to this question beyond expressing the view that the sentencing process ought to implement meaningful sentences upon conviction for assaults on public officers.

5. **Should any changes be considered to the current approach to better respond to victim needs? If so, what reforms should be considered?**

The Department does not wish to make a submission in response to this question.

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?**

The Department does not wish to make a submission in response to this question beyond noting that if it is deemed necessary to categorise public officers for the purposes of dealing with assaults on public officers, the Department has no concerns with all persons rendering services or functions consistent with a public service being included.

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?**

The Department asks QSAC to consider the following submission:

The Department has no objection to persons that are employed by a private entity but performing a 'public service', such as the examples given in the question, having their performance of that service recognised in sentence proceedings for assaults against them. The Department recognises that there is a significant risk of conflict and harm associated with the performance of these services.

Consistent with the Department's other responses, the Department submits that this is more appropriately dealt with as a circumstance of aggravation or a relevant factor considered by a sentencing Court, rather than by special categories of victims or special offence provisions.

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)?**

The Department does not wish to make a submission in response to this question.

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 as 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)?**

The Department asks QSAC to consider the following submission:

Consistent with previous responses, the Department submits that it is most appropriate to reflect that the victim of an assault is a public officer in either or both of a circumstance of aggravation and an aggravating factor for sentencing purposes. The Department submits that this would provide a sentencing Court with the means to consider the nuances of the circumstances of the assault when imposing a penalty. The Department would be content with the removal of the separate offence provision.

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), section 124(b) and 127 of the *Corrective Services Act 2006* (Qld), and other summary offences)?**

The Department does not wish to make a submission in response to this question.

11. Should any reforms to existing offence provisions that apply to public officer victims be considered and if so, on what basis?

The Department does not wish to make a submission in response to this question.

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?

The Department asks QSAC to consider the following submission:

The Department submits that the following purposes are paramount in sentencing offenders for assaults on its officers:

- a. An appropriate outcome for the victim, involving a recognition of the wrong that has been done and a penalty that is adequate considering all of the circumstances of the case; and
- b. An outcome that provides both personal and general deterrence.

The Department further submits that the type of public officer is less important as a factor in sentencing than the type of situation the officer is in when the assault occurs. Officers can be required to put themselves in situations where they are particularly vulnerable in order to perform their duties. Assaults that occur in these situations should be visited with penalties that reflect the advantage taken by the offender of that vulnerability. The Department otherwise does not wish to make a submission in response to this question.

13. Does your answer to Question 12 change when applied specifically to children/young offenders?

The Department does not wish to make a submission in response to this question. Departmental officers report that their interactions with children have not resulted in any physical altercations.

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 the section?

The Department does not wish to make a submission in response to this question.

- 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:**
- i. **Common assault (3 years);**
 - ii. **Assault occasioning bodily harm (7 years, or 10 years with aggravating circumstances);**
 - iii. **Wounding (7 years);**
 - iv. **Grievous bodily harm (14 years)?**

The Department asks QSAC to consider the following submission:

The Department submits that the current maximum penalty for serious assault is appropriate.

- 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?**

The Department asks QSAC to consider the following submission:

The Department submits that the current position, namely that charges can be dealt with summarily on prosecution election, should be retained without change.

- 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?**

The Department does not wish to make a submission in response to this question.

- 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?**

The Department asks QSAC to consider the following submission:

The Department submits that the current maximum penalties are appropriate.

- 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?**

The Department asks QSAC to consider the following submission:

The Department submits that the current range of penalty options are appropriate.

- 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?**

The Department does not wish to make a submission in response to this question.

- 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 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?**

The Department does not wish to make a submission in response to this question.

As a general response to all matters raised in question 14, the Department wishes to note that it would not support any measures that would be certain or likely to result in a decrease in penalties imposed on offenders that assaulted Departmental officers.

- 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?**

The Department does not wish to make a submission that directly responds to this question. However, the Department notes that introducing reforms targeting assaults on specific categories of officers may not adequately deal with the nuances of the problem of sentences appropriately reflecting the seriousness of particular assaults. Departmental officers have observed that the situation in which the assault occurs may be more relevant than the category of public officer. For example, officers of the Queensland Boating and Fisheries Patrol are often required to interact with members of the public in confined spaces such as on a fishing vessel. This affords them limited opportunity to leave in order to escape a dangerous situation. This particular vulnerability is relevant to the sentencing exercise if they are assaulted, more so than the fact they are a particular type of public officer.

Similarly, and as noted earlier, Departmental officers are thankfully rarely physically assaulted. This is welcome, but does mean that Departmental officers are accordingly not trained or equipped like other public officers who deal more regularly with aggressive and combative members of the public. Again, the Department submits that this shows the category of officer does not necessarily reflect the level of vulnerability existing at the time of an assault.

16. What issues contribute to, or detract from, the community's understanding of penalties and sentencing for assaults on public officers?

The Department asks QSAC to consider the following submission:

The Department submits that the community's understanding is significantly affected by the manner of reporting of offending and the penalties imposed on offenders. In particular, in the immediate aftermath of an incident often the maximum penalty is reported. The community therefore forms a false picture of the penalties that are actually being imposed.

The Department submits that clear communication of the particular penalties imposed and the basis on which they are imposed would enhance community understanding and the deterrent effect of significant penalties.

17. How can community knowledge and understanding about penalties and sentencing for assaults on public officers be enhanced?

The Department asks QSAC to consider the following submission:

Consistent with the Department's response to question 16, the Department submits that more reporting and public access to actual penalties imposed for assaults on public officers would enhance community knowledge and understanding about the penalties.

If you require any further information, please contact [REDACTED]

Yours sincerely

[REDACTED]
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