



QSAC inquiry into penalties for assaults on public officers

Response to the Penalties for assaults on public officers: Issues paper

June 2020

About the Office of the Public Guardian

The Office of the Public Guardian (OPG) is an independent statutory office which promotes and protects the rights and interests of children and young people in out-of-home care or staying at a visitable site, and adults with impaired decision-making capacity. The purpose of OPG is to advocate for the human rights of our clients.

The OPG provides individual advocacy to children and young people through the following functions:

- the child community visiting and advocacy function, which monitors and advocates for the rights of children and young people in the child protection system including out-of-home care (foster and kinship care), or at a visitable site (residential facilities, youth detention centres, authorised mental health services, and disability funded facilities), and
- the child legal advocacy function, which offers person-centred and legal advocacy for children and young people in the child protection system, and elevates the voice and participation of children and young people in decisions that affect them.

The OPG provides an entirely independent voice for children and young people to raise concerns and express their views and wishes. When performing these functions, the OPG is required to seek and take into account the views and wishes of the child to the greatest practicable extent.

The OPG also promotes and protects the rights and interests of adults with impaired decision-making capacity for a matter through its guardianship, investigations and adult community visiting and advocacy functions:

- The guardianship function undertakes both supported and substituted decision-making in relation to legal, personal and health care matters, supporting adults to participate in decisions about their life and acknowledging their right to live as a valued member of society.
- The investigations function investigates complaints and allegations that an adult with impaired decision-making capacity is being neglected, exploited or abused or has inappropriate or inadequate decision-making arrangements in place.
- The adult community visiting and advocacy function independently monitors visitable sites (authorised mental health services, community care units, government forensic facilities, disability services and locations where people are receiving NDIS supports, and level 3 accredited residential services), to inquire into the appropriateness of the site and facilitate the identification, escalation and resolution of complaints by or on behalf of adults with impaired decision-making capacity staying at those sites.

When providing services and performing functions in relation to people with impaired decision-making capacity, the OPG will support the person to participate and make decisions where possible, and consult with the person and take into account their views and wishes to the greatest practicable extent.

The *Public Guardian Act 2014* and *Guardianship and Administration Act 2000* provide for the OPG's legislative functions, obligations and powers. The *Powers of Attorney Act 1998* regulates the authority for adults to appoint substitute decision makers under an advance health directive or an enduring power of attorney.

Submission to the Inquiry into penalties for assaults on public officers

Position of the Public Guardian

The Office of the Public Guardian (OPG) welcomes the opportunity to provide a submission to the Queensland Sentencing and Advisory Council (QSAC) inquiry into penalties for assaults on public officers. The views contained in this submission are that of the OPG and do not purport to represent the views of the Queensland Government.

This submission addresses the issues and recommendations raised in the issues paper where they relate to the experiences of the OPG and the people that we serve.

As stated in our response to the terms of reference in January of this year, the OPG fully supports measures to provide protection to frontline workers who face heightened risks to their safety in undertaking their responsibilities. The OPG relies on police and other frontline officers to protect our clients in any number of situations, and we are aware of the unique challenges these officers face in performing their duties on a daily basis.

The OPG also commends QSAC on producing a comprehensive issues paper that addresses a number of matters raised by the OPG in our preliminary submission. Specifically, QSAC's examination of the impact any increased penalties would have on people with impaired decision-making capacity, including appropriate sentencing options for this cohort. However, we are concerned that the questions themselves posed in the issues paper do not prompt specific consideration of matters relating to the capacity of the alleged perpetrators of these offences. While mentioned in the body of the issues paper, we believe these matters (identified below) warrant specific consideration from stakeholders in order to develop preventative strategies for this type of offending. Given the breadth of the issues paper, it would have been beneficial to highlight the issue of impaired capacity in the questions themselves for stakeholder input.

Response to the issues paper

The OPG reiterates below the recommendations from our preliminary submission for ongoing consideration by QSAC.

The Public Guardian recommends:

- That diversionary options be identified for people with impaired decision-making capacity, particularly options that address the reasons why people with impaired decision-making capacity may commit offences against public officers.
- That the offence, penalty and sentencing framework require the context of offending behaviour by a person with impaired decision-making capacity against a public officer to be considered at each stage of the process in addressing the offence.
- That information on a person's capacity, trauma history, and previous engagement in therapeutic and rehabilitative programs, be formally reported on prior to sentencing.

- That QSAC examine what value community education on the penalties for this type of offending will have as a preventative measure for adults with impaired decision-making capacity, and consider appropriate alternatives for this cohort.
- That mandatory sentencing not be considered for assaults against public officers that are committed by people with impaired decision-making capacity.
- That specific consideration be given to the impact any changes would have on children and young people who engage with the justice system.

We also wish to take this opportunity to bring to QSAC's attention specific issues raised in our previous submission that were not fully addressed in the issues paper and warrant further discussion, specifically in relation to people with impaired decision-making capacity and children and young people.

Our additional recommendations are below.

The Public Guardian recommends:

- That government prioritise early intervention and stronger collaboration between service systems to identify and appropriately respond to the needs of children and young people.
- That resources be dedicated to targeted crime intervention programs for children with cognitive or intellectual disability.

Diversivory strategies

As stated in our previous submission, it is the experience of the OPG that any sentences imposed by courts do little to deter further offending for adults with impaired decision-making capacity who may be unable to control their behaviour without positive support and cognitively assess potential consequences. Custodial sentences have minimal impact, apart from detaining those with impaired decision-making capacity for an extended period in an environment not equipped to address the underlying cause of their anti-social behaviour.

Rather than focusing on sentencing options and increasing penalties, the OPG recommends developing strategies and diversionary options that would address the underlying reasons why people are committing these offences. The prevalence of such incidences amongst adults with impaired decision-making capacity indicates the need for appropriate mental health services and funding of support for people with intellectual disabilities and acquired brain injury. If investment was made in preventative strategies, as opposed to increasing punitive measures, we would anticipate the prevalence of offending would significantly decrease.

Mandatory sentencing

In the OPG's previous submission we cautioned against any consideration of a mandatory sentencing regime for assaults on frontline officers, similar to that introduced in Western Australia. OPG appreciates the merit of discussing the raft of sentencing options that could be made available in Queensland in the issues paper; however, OPG is concerned that mandatory sentencing could potentially compromise the legal framework that has been designed to take into account the mental illness or impairment and culpability of accused persons. Should mandatory sentencing be adopted in Queensland for offences against public officers, it is imperative that clear protections are in place,

without exception, for persons who lack the capacity to understand the consequences of their actions. Failing to do so would only further isolate adults with impaired decision-making capacity from the opportunity to lead positive and productive lives.

Children and young people

The issues paper provides that QSAC has elected not to undertake a detailed analysis regarding the sentencing regime for juveniles in Queensland or in other jurisdictions, apart from in the context of sentencing responses more generally. The OPG strongly believes that any discussion on penalties must include targeted consideration of the issues with the current penalties and sentencing system as it relates to children and young people, as well as diversionary strategies that, if implemented in childhood, could prevent any such assaults against public officers occurring in adulthood.

Age of criminal responsibility

A long held concern for the OPG is the age of criminal responsibility in Queensland, which currently sits at 10 years of age. There are a raft of serious consequences that flow on from children as young as 10 being deemed criminally responsible for anti-social behaviour and receiving a court imposed penalty. The impact of this exposure to the youth justice system can be profound and act as a contributing factor to these children acting out and committing assaults against public officers.

As discussed in our previous submission, the OPG has long recommended that the age of criminal responsibility be increased from 10 to 14. Contact with the criminal justice system for children as young as 10 increases the chances of re-incarceration, leading to an almost inevitable progression the adult corrections system. In fact, the Australian Institute of Health and Welfare (AIHW) data indicates that the younger a person was at their first supervised sentence (community based or detention), the more likely they were to return to sentenced youth justice supervision.¹ This has negative consequences not only for the child but the broader community. In the context of assaults against public officers, this early exposure to the criminal justice system can lead to a distrust of police and corrections officers, and potentially an increased risk of these children committing assaults against public officers.

Preventative strategies for children and young people

It is critical that instead of criminalising children as young as 10, early intervention and stronger collaboration between service systems be employed to identify and appropriately respond to the needs of children and young people. This is particularly the case for children with cognitive or intellectual disability whose behaviour can lead to early exposure to the criminal justice system. These children and young people may exhibit behaviours of concern for a number of reasons, particularly if their needs are not being met by the people or the service systems on which they rely. There is a risk that these behaviours are attributed with criminal intent and the child is prosecuted by the criminal justice system, rather than supported by other appropriate service systems. Again, this interaction with the justice system by a 10 year old child with complex needs can do lasting damage to their development.

True protection of the community from criminal behaviours, including public officers, relies on the community recognising the value of investment in early interventions that promote children and young people's education, health and wellbeing and prevent them from engaging in offending behaviour from the outset.

¹ <https://www.aihw.gov.au/reports/children-youth/australias-children/contents/justice-and-safety/children-under-youth-justice-supervision>

The [QFCC report](#) details a number of programs designed to address anti-social or potentially criminal behaviour and those at risk of entering the criminal justice system in the future, including the [youth and family support service](#) offered in Queensland. The QFCC report also discusses (at page 32) the youth justice diversionary strategies in New Zealand whereby criminal proceedings are deemed to be a last resort, with the vast majority of youth offending handled by the police through issuing cautions, initiating alternative action plans or holding family group conferences. In New Zealand, youth justice conferences must be held before matters are referred to Youth Court.

The OPG also recommends consideration be given to the strategies discussed in the report prepared by Toni Craig for the Winston Churchill Memorial Trust of Australia, [Strategies to improve outcomes for children at risk of offending](#). The report includes a detailed analysis of innovative ways in which youth crime is addressed in world-leading countries. The report noted Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) as having an enviable record with respect to low rates of youth offending and youth incarceration. In particular, Norway was mentioned as a country with high quality innovative responses to youth and adult crime.

We urge QSAC to consider the importance of preventative strategies for children and young people at risk as an element of this inquiry. Addressing the problem of assaults against public officers must include examination of why these assaults are occurring and the strategies that can be employed to prevent vulnerable children and young people who may become adult offenders under sentencing for assaults against public officers. We as a community must prioritise early intervention and stronger collaboration between service systems to appropriately address childhood trauma and the resulting anti-social behaviours, long before the child or young person is at crisis point and at risk of entering detention.

Recommendations:

- That government prioritise early intervention and stronger collaboration between service systems to identify and appropriately respond to the needs of children and young people.
- That resources be dedicated to targeted crime intervention programs for children with cognitive or intellectual disability.