

14 May 2020

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

Via email: [QSAC-Policy@sentrancingcouncil.qld.gov.au](mailto:QSAC-Policy@sentrancingcouncil.qld.gov.au)

Dear Mr Robertson,

**Re: Your reference: 592302/1; 5188417**

Thank you for your correspondence to my office dated 7 May 2020 about the Queensland Sentencing Advisory Council's (QSAC's) Issue Paper associated with penalties for assaults on police and other frontline emergency service workers, corrective services officers and other public officers.

As you may be aware, I am appointed under the *Guardianship and Administration Act 2000* to undertake systemic advocacy on behalf of people with impaired decision-making capacity. My primary role is to promote and protect the rights and interests of Queenslanders with impaired capacity and to support their autonomy and participation in all aspects of community life.

Unfortunately, there is an over-representation of people with impaired decision-making capacity in every part of the criminal justice system. People reporting a history of mental illness, in particular, are between twice and four and a half times more likely than the average Australian to be in police custody, on remand, before courts or in prison. Statistics of note include:

- In a national study of police detainees, 43% of men and 55% of women reported a previous diagnosed mental illness.<sup>1</sup>
- A New South Wales study found that 55% of court defendants had one or more psychiatric disorders.<sup>2</sup>
- Nationally, 40% of prison entrants reported having been told at some stage of their life that they had a mental illness, including substance use disorders (Queensland's rates were similar at 39%).<sup>3</sup> Much higher rates of mental illness amongst Aboriginal and Torres Strait Islander men (73%) and women (between 86% and 92%) have been reported.<sup>4</sup>
- A study of prisoners on remand at a major Brisbane remand centre found that 82% of men and 94% of women reported significant psychological distress.<sup>5</sup>

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<sup>1</sup> L Forsythe and A Gaffney, 'Mental disorder prevalence at the gateway to the criminal justice system, *Trends and Issues in Criminal Justice*', Australian Institute of Criminology, 2012 <<https://aic.gov.au/publications/tandi/tandi438>>.

<sup>2</sup> C Jones and S Crawford, 'The Psychosocial Needs of NSW Court Defendants', *Crime and Justice Bulletin* No 108, NSW Bureau of Crime Statistics and Research, 2007, p 6, cited in NSW Law Reform Commission, *People with cognitive and mental health impairments in the criminal justice system*, Report No 135 (June 2012) p 66.

<sup>3</sup> Australian Institute of Health and Welfare, *The health of Australia's prisoners 2018*, AIHW, (30 May 2018), <<https://www.aihw.gov.au/reports-data/population-groups/prisoners/overview?>>>.

<sup>4</sup> Human Rights Watch, 'I Needed Help, Instead I Was Punished' Abuse and Neglect of Prisoners with Disabilities in Australia; J Ogloff, J Patterson, M Cutajar, *Koori Prisoner Mental Health and Cognitive Function Study*, Centre for Forensic Behavioural Science, Monash University, 2013.

<sup>5</sup> EB Heffernan, JB Saunders, G Byrne and J Finn, 'Substance-use disorders and psychological distress among police arrestees, *Medical Journal of Australia*, Vol 179, No. 8, 2003, pp 408-411.

In relation to the issue at hand, being penalties for assaults on front-line workers, it is anticipated that people with impaired decision-making capacity will be affected by any sentencing reforms introduced in this area.

Many people with impaired decision-making capacity can exhibit challenging behaviours when they have difficulty communicating things like pain or discomfort. This behaviour has the potential to be interpreted as aggression by people not fully trained or attuned to the needs of people with disability (and particularly cognitive impairments), which can include front-line workers in the occupation categories included in the issues paper.

In making these observations, I do acknowledge that many people with impaired decision-making capacity, when facing charges associated with the assault of a front-line worker, are diverted from the mainstream court system and into the Mental Health Court, and subsequently placed under a forensic order as opposed to receiving a custodial sentence.

However, for those deemed fit for trial, any reforms made potentially need to consider the communication difficulties some people with impaired decision-making capacity may face and the resulting behaviours that may be interpreted as aggression.

I therefore respectfully suggest that the issues paper include consideration of those people with impaired decision-making capacity that exhibit challenging behaviours, potentially maintaining the range of sentencing options currently available to the courts in this area, as opposed to the narrowing of alternatives and/or the introduction of mandatory sentencing.

Consideration of the needs of people with impaired decision-making capacity may extend beyond the scope of legislation to include the mandatory training of front-line staff. This would ensure they are better equipped to deal with people with a range of disabilities and conditions and able to recognise behaviours related to communication difficulties or an expression of pain or discomfort. This could potentially reduce the number of people with impaired decision-making capacity being charged with offences of this nature in the future.

Thank you for the opportunity to provide input into this issues paper. If you would like to discuss any of these matters in greater detail, please do not hesitate to get in touch with my office.

Kind regards



Mary Burgess

**Public Advocate**