



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: CLC:RHrg1970544

30 September 2020

The Hon Peter McClellan AM
Chairperson
NSW Sentencing Council
GPO Box 31
Sydney NSW 2001

By email: sentencingcouncil@justice.nsw.gov.au

Dear Mr McClellan,

Review of sentencing for assaults on emergency services workers

The Law Society welcomes the opportunity to make a submission to the review into sentencing for assaults against emergency services workers.

The Law Society notes the important and valuable work of our emergency services personnel. Every individual has the right to work in a safe environment and sufficient and appropriate protections from violence should be available to those working within a high-risk environment.

The Law Society considers the existing sentencing options available in NSW are sufficient to adequately address the varied nature of the offending behaviour against emergency services workers.

In our view, the broad range of offences contained within the *Crimes Act 1900* appropriately captures violent conduct against emergency services personnel and that the maximum sentences available for such offences provide sufficient sentencing scope for the Court to determine the appropriate sentence.¹

The Law Society considers that the existing maximum penalties for the various offences provide appropriate discretion for the courts to adequately punish even the most serious of attacks. We note that defendants already appear to receive harsher sentences when assaults are against police officers,² and there is therefore no need to increase penalties for these offences. Additionally, s21A(2)(a) of the *Crimes (Sentencing Procedure) Act 1999* provides for

¹ We note that, as part of its review, the Sentencing Council will consider the recently passed [*Crimes \(Protection of Frontline Community Services Providers\) Amendment Act 2020 \(ACT\)*](#). This Act created a new offence of assault of a "frontline community service provider". We note that the maximum penalty for this offence is 2 years, lower than the 5 year maximum penalty for the similar offence in NSW (s58 *Crimes Act 1900*).

² NSW Sentencing Council, *Assaults on emergency service workers - data*, 28 July 2020. The percentage of offenders sentenced to imprisonment in the Local Court: assault on a police officer – 14%, compared to common assault – 8%; assault on a police officer occasioning actual bodily harm – 38%, compared to assault occasioning actual bodily harm – 20%.

aggravating factors to be taken into account by the Court in determining the appropriate sentence for an offence, which includes where the victim was an emergency services worker.

Many of the issues the review is considering were canvassed by the Legislative Assembly's Committee on Law and Safety's (Committee) 2017 inquiry into violence against emergency services personnel. In its report, the Committee found that it was not necessary to create new offences or penalties to appropriately punish offenders for violence against emergency services personnel,³ nor did it support the creation of any further mandatory minimum sentences.⁴ The Committee found that the provisions of the *Crimes Act 1900* and the *Crimes (Sentencing Procedure) Act 1999* were sufficient to punish offenders for violence against emergency services personnel.

In reaching this position, the Committee considered whether the offences that exist in the *Crimes Act 1900* for assault and murder of police officers should extend to other emergency services personnel. The Committee agreed with the view of various legal experts that if such provisions were created it would over-complicate the law, raising further questions about why other categories of employee were not included.⁵ The Committee heard that the focus should turn to measures to prevent violence from happening in the first place, rather than creating new offences and penalties to deal with people after the fact, particularly as new offences and penalties would do little to deter people from committing these types of offences, which are often linked to mental illness, drugs and alcohol.⁶ The Law Society agrees that increasing a maximum penalty does not have a significant deterrent effect in relation to offences that are not pre-meditated or where offenders suffer from a mental condition.

We agree with the Committee's emphasis on the importance of educating the public and the media about the sentencing process, and support the recommendation to increase public access to sentencing data and decisions.⁷ Research has shown that the public's dissatisfaction with sentencing can be caused by a lack of information.⁸

Given that an appropriate range of offences and penalties currently exists, it appears that there are limited gains to be made through changes to maximum penalties, in terms of deterring assaults on emergency services workers. In preparing its consultation paper, we suggest the Sentencing Council look internationally for novel sentencing options that could be implemented within the current regime, and other initiatives that may address the needs and behaviour of offenders and reduce offending. Further research into the characteristics of the relevant cohort of offenders may assist in informing more effective alternative options.

We look forward to further consultation with the Sentencing Council as the review progresses.

The Law Society contact for this matter is Rachel Geare, Senior Policy Lawyer, who can be reached on [REDACTED] or at [REDACTED].

Yours sincerely,

[REDACTED]

Richard Harvey
President

³ Legislative Assembly, Committee on Law and Safety, *Violence against emergency services personnel*, 2017, Finding 12, xvi.

⁴ *Ibid.*, p71.

⁵ *Ibid.*, p73.

⁶ *Ibid.*, p71.

⁷ *Ibid.*, recommendation 42 and 43, xv.

⁸ *Ibid.* p70-71.