THE LAW SOCIETY OF NEW SOUTH WALES
young LAWYERS

Assaults on emergency services workers

16 October 2020

Submission to the NSW Sentencing Council review of the sentencing for offences involving assaults on police officers, correctional staff, youth justice officers, emergency services workers and health workers.

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The NSW Young Lawyers Criminal Law Committee (Committee) makes the following submission in response to the NSW Sentencing Council's review of sentences for offences involving assaults on emergency service workers.

NSW Young Lawyers

NSW Young Lawyers is a division of The Law Society of New South Wales. NSW Young Lawyers supports practitioners in their professional and career development in numerous ways, including by encouraging active participation in its 16 separate committees, each dedicated to particular areas of practice. Membership is automatic for all NSW lawyers (solicitors and barristers) under 36 years and/or in their first five years of practice, as well as law students. NSW Young Lawyers currently has over 15,000 members.

NSW Young Lawyers Criminal Law Committee

The Committee is responsible for the development and support of members of NSW Young Lawyers who practice in, or are interested in, criminal law. The Committee takes a keen interest in providing comment and feedback on criminal law and the structures that support it, and consider the provision of submissions to be an important contribution to the community. The committee aims to educate the legal profession and the wider community about criminal law developments and issues. The committee also facilitates seminars and programs that help to develop the careers of aspiring criminal lawyers, with the aim of providing a peer support network and a forum for young lawyers to discuss issues of concern. The Committee's members are drawn from prosecution, defence (both private and public), police, the courts and other areas of practice that intersect with criminal law.

Summary of submissions and recommendations

The Committee makes the following submissions and recommendations in response to the NSW Sentencing Council's review of sentencing for offences involving assaults on police officers, correctional staff, youth justice officers, emergency service workers and health workers and the associated terms of reference.

1. In respect of the offences under sections 58, 60, 60A, 60B and 546C of the *Crimes Act 1900* (NSW) ("the *Crimes Act*") the Committee considers that the sentencing trends that have developed are appropriate and consistent with general sentencing principles.

2. In respect of the offences under sections 58, 60, 60A, 60B and 546C of the *Crimes Act*, the Committee does not consider there to be any need for changes to the applicable statutory maximum penalties, as those penalties are adequate.

3. The Committee recommends that, either by way of amending the existing section 60A or by the inclusion of new provision/s, the Crimes Act ought to specifically address assaults and other acts referred to in the current s. 60A when such acts are committed against healthcare workers. In that respect:

    a. The offences should attract a maximum penalty that would be equivalent to the current maximum penalties for assaults and other acts committed against law enforcement officers pursuant to s. 60A of the *Crimes Act*;

    b. The offences should prohibit any act of violence perpetrated against healthcare workers as a consequence of, or in retaliation for, actions undertaken by healthcare workers in the execution of their duties, or because the person is a healthcare worker; and

    c. The statutory definition of 'healthcare workers' ought to be broader and more inclusive than that which is contained in the *Crimes (Protection of Frontline Community Service Providers) Amendment Act 2020* (ACT).

4. The Committee sees little utility in and therefore does not support the legislating of specific offences criminalising assaults against other emergency services personnel, including firefighters and rescue workers.

5. The Committee supports an amendment to clarify the definition of "health worker" in s. 21A(2)(a), and is of the view that this definition should encompass, at least, the healthcare workers as defined in relation to the proposed new offence. The Committee is of the view

that this clarification should occur regardless of whether a new offence provision is created that is analogous to s. 60A to apply to healthcare workers.

6. The Committee recommends that legislative reform be supplemented with the following measures:

   a) A continuing focus on violence prevention strategies to be implemented by the responsible agencies and departments, such as those recommended by the Legislative Assembly Committee on Law and Safety in its Review of Violence Against Emergency Services Personnel. These measures should recognise that drugs, mental illness and alcohol use often contribute to assaults committed against emergency services workers and specifically address these risk factors.

   b) Measures should be implemented to increase public access to sentencing data, and to allow sentences involving victims who are emergency services personnel to be easily identified.

Sentencing patterns and penalties for offences involving assaults on police and other emergency workers

Throughout this submission, the Committee uses the term "relevant offences" to refer to the offences contained within the following sections of the Crimes Act: ss. 58 (second paragraph); 60, 60A, 60B, 546C.

According to the Judicial Information Research System ("JIRS"), offenders convicted of assaults against police or law enforcement officers under the relevant offences:

1. Have a significantly higher chance of receiving a custodial sentence than an offender who has assaulted a person who was not a police officer and was convicted of an offence against ss. 33, 35, 58 (first and third para), 59, 59A(1) or 61 of the *Crimes Act*; but

2. The lengths of those custodial sentences are comparable to those given to persons convicted of offences against ss. 33, 35, 58 (first and third para), 59, 59A(1) or 61 of the *Crimes Act*.

That is, while those convicted of assaulting a police or law enforcement officer are less likely to receive a non-custodial sentence, the custodial sentences they do receive are not markedly longer than those received by persons who have been sentenced to imprisonment for an assault or similar offences where the victim is not a police officer or law enforcement officer.

While the higher rate of custodial sentences can be readily explained by the higher maximum penalties applicable to the relevant offences, in the Committee's view there are three further primary factors that influence the abovementioned sentencing patterns and are relevant to the Committee's conclusions in respect of the Sentencing Council's questions set out later in this submission. Those factors are:

1. The jurisdictional limit on the Local Court's sentencing jurisdiction;

2. The criminal antecedents of individual offenders; and

3. The (refused) guideline judgment of *Attorney General's Application under s 37 of the Crimes (Sentencing Procedure) Act 1999 (No 2 of 2002)* (2002) 137 A Crim R 196.

The Local Court's sentencing jurisdiction

All of the relevant offences are 'Table' indictable offences and thus are to be dealt with summarily unless the prosecutor elects otherwise, with the exception of s. 546C of the *Crimes Act* which is a summary offence.[1] In the experience of Committee members, many of these Table offences are finalised in the Local Court, rather than on indictment in the District Court. This is also reflected in the sentencing data provided by the Sentencing Council.[2]

Due to the Local Court's jurisdictional limitations,[3] the custodial sentences it imposes tend to fall significantly below the applicable maximum penalty. That does not mean that lengthy sentences are not present in statistics, however, it provides some explanation for the pattern that most custodial sentences are not longer than two years despite the maximum penalty referred to in the offence provisions for these offences. The Committee notes, however, that despite the jurisdictional limit, a magistrate must still have regard to the maximum penalty specified in the legislation when sentencing for the offence.[4]

The Committee notes that in a report published in December 2010, the Sentencing Council considered whether 'the jurisdictional limits of the Local Court are leading to sentences in respect of personal violence cases that are not commensurate with the objective seriousness of those offences'.[5] The Sentencing Council was of the view that there should be no general increase in the Local Court's jurisdiction as the proportion of cases in which the maximum penalty was imposed was generally small. The Council viewed the solution being to ensure that referrals for election for trial in the District Court are appropriately and consistently dealt with by the NSW Police and ODPP in cases that may warrant a sentence in excess of the Local Court's jurisdictional limit.[6] The Committee agrees with the Sentencing Council's remarks as to the importance of ensuring consistent and well-informed decisions to elect to have matters dealt with in the District Court.

The Committee submits that the fact that most of the relevant offences are 'Table offences' provides prosecutors with an opportunity to assess the objective seriousness of the case and, in appropriate cases, elect for matters proceed to summary trial efficiently, utilising Court time and resources appropriately, and potentially reducing the stress placed on victims and witnesses.

[1] *Criminal Procedure Act 1982* (NSW) sch 1, table 2, pt 1(1).
[2] NSW Department of Communities and Justice, 'Assaults on emergency services workers' *NSW Sentencing Council* (Web page, 11 August 2020) http://www.sentencingcouncil.justice.nsw.gov.au/Pages/Assault-police-background.aspx.
[3] The Local Court has a jurisdictional limit of two years' imprisonment for a single offence: see ss. 267(2) (for Table 1 offences) and 268(1A) (for Table 2 offences) of the *Criminal Procedure Act 1986.* See also s. 58 *Crimes (Sentencing Procedure) Act 1999* for limitations on consecutive sentences imposed by the Local Court.
[4] See, eg, *R v Doan* (2000) 50 NSWLR 115, [35]; *Lapa v The Queen* [2008] NSWCCA 331, [15] [17].
[5] NSW Sentencing Council, *An Examination of the Sentencing Powers of the Local Court in NSW* (Report, December 2010) para 4.4.
[6] Ibid, para 4.10.

The criminal antecedents of individual offenders

As with any exercise of sentencing discretion, the offender's criminal antecedents are of relevance. However, in respect of offences of personal violence against police and law enforcement officers, an offender's criminal history appears to have a particularly strong influence on the sentence he or she receives. An offender with no prior convictions is more likely to receive a non-conviction option or a conviction with a fine, whilst offenders with prior convictions are more likely to receive a custodial sentence.

The Committee observes that offenders with prior convictions constitute the bulk of the demographic for the relevant offences. JIRS statistics indicate these offenders are predominantly male, over 18 years of age, sentenced with other offences on the Court Attendance Notice/indictment, and have prior recorded convictions. From the firsthand experience of one Committee member employed as a defence practitioner, these offenders tend to be low income earners or government supported, suffer from mental health and/or addiction issues and are already known to Police.

The Committee notes that the incarceration of individuals who may be considered vulnerable due to their mental health and addiction issues has the potential to reduce the likelihood of successful reintegration into the community and may exacerbate those existing vulnerabilities.

Guideline judgment

The Attorney General unsuccessfully sought a guideline judgment from the Court of Criminal Appeal in relation to offences under s 60(1): *Attorney General's Application under s 37 of the Crimes (Sentencing Procedure) Act 1999 (No 2 of 2002)* (2002) 137 A Crim R 196. While the Court declined to issue a guideline judgment, this case is informative as to how the courts are to approach such a sentence in both the Local and District Courts.[7] The Court recognised that offences under s 60(1) encompass a wide range of behaviour, and that whether a custodial sentence is required will depend on the nature of the assault.[8] The Court also recognised the importance of general deterrence in sentencing of these offences:

> "In cases involving assaults against police there is a need to give full weight to the objective of general deterrence and, accordingly, sentences at the high end of the scale, pertinent in the light of all the circumstances, are generally appropriate in such cases. Hence, general deterrence will feature prominently in any sentence for such an offence against a Police officer: *R v Paris [2001] NSWCCA 83*": at [26].

While the guideline judgement was only sought in relation to police officers, from the experience of a Committee defence practitioner this passage is often quoted regarding assaults on emergency personnel and healthcare workers as well. The judgement is often quoted when considering aspects of general deterrence for offenders with prior convictions.

[7] *Attorney General's Application under s 37 of the Crimes (Sentencing Procedure) Act 1999 (No 2 of 2002)* (2002) 137 A Crim R 196, [27].
[8] Ibid, [38]-[39].

Other observations

The Committee has also considered the sentencing data provided by the Sentencing Council,[9] and notes that for the offences of wounding or grievous bodily harm with intent to resist or prevent lawful arrest or detention (s 33(2)), reckless wounding or grievous bodily harm to a police officer (s 60(3)) and reckless wounding or grievous bodily harm to a police officer during a public disorder (s 60(3A)), no offenders were sentenced in the Local Court between January 2016 and December 2019; all offenders sentenced for the offence between January 2008 and September 2019 were sentenced in the District and Supreme Courts.

In contrast, for the offences of reckless grievous bodily harm (s 35(2)) and reckless grievous bodily harm in company (s. 35(1)), a number of offenders were sentenced in the Local Court in the same time period: 312 for offences contrary to s. 35(3), and 21 for offences contrary to s. 35(1)). In addition, a number of offenders were also sentenced in the District and Supreme Courts for those offences between January 2008 and September 2019: 537 offenders for offences contrary to s. 35(2) and 201 for offences contrary to s. 35(1). This data indicates that offenders charged with reckless grievous bodily harm under the specific offence provisions for police officers were more likely to be sentenced in a higher court (which is not subject to the jurisdictional limits of the Local Court) than those charged under the more general offence provisions for recklessly causing grievous bodily harm.

[9] NSW Sentencing Council, *Assaults on Emergency Services Workers* (11 August 2020) Department of Communities and Justice <http://www.sentencingcouncil.justice.nsw.gov.au/Pages/Assault-police-background.aspx?>.

Question 1:

Are the sentencing patterns for offences involving assaults on police and other essential services personnel adequate? Why / why not?

When considering this question, the Committee has considered the purposes of sentencing set out in s. 3A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) ("CSP Act").[10]

The Committee accepts that some sentences for the relevant offences may appear to be less punitive than what at least some members of the community would think appropriate, for instance, when offenders do not have a prior criminal history. However, the Committee is of the view that it is unsurprising that the sentencing trend is for persons with no prior convictions to receive lesser sentences than persons with prior convictions, due to the relevance of a person's antecedents to the sentencing process.[11] The Committee notes that the statistics demonstrate that offences pursuant to s. 33(2), 60(3)) and s. 60(3A) were finalised in the District and Supreme Courts between 2008 and 2019, and none of these offences were finalised in the Local Court between January 2016 and December 2019 which appears to be consistent with the higher maximum penalties for these offences.

Further, on review of the sentencing patterns for the relevant offences as reflected in JIRS, it is submitted that there are very few outlier sentences that are unjustly lenient, and that the sentencing pattern for these offences reflects the seriousness of these offences. In reaching this conclusion, the Committee observes the relevance of factors such as the jurisdictional limits of the Local Court, which limits the maximum penalties that may be opposed when the relevant offences are finalised in that Court. The Committee also notes, from anecdotal experience of its members, that the Courts recognise the importance of general deterrence when sentencing for offences against police officers and law enforcement officers, as well as when sentencing for assaults on emergency personnel and healthcare workers.[12] Other Committee members have also noted that, in their experience, correctional facilities often deal with minor incidents involving threatening and combative behaviour by way of an institutional offence, rather than by pursuing a criminal conviction, thus distinguishing between minor and serious incidents, and also reducing rates of institutionalisation amongst offenders by avoiding further sentences of imprisonment in appropriate cases. As such, the Committee is of the view that the current sentencing trends are adequate.

Recommendation 1

In respect of the offences under sections 58, 60, 60A, 60B and 546C of the *Crimes Act 1900* (NSW), the Committee considers that the sentencing trends that have developed are appropriate and consistent with general sentencing principles.

[10] These comprise punishment deterrence, protection of the community, rehabilitation, making offenders accountable for their actions, denunciation and recognition of the harm done to the victim of crime and the community.
[11] See, eg, *Veen v The Queen* (No 2) (1988) 164 CLR 465; *R v McNaughton* (2006) 66 NSWLR 566 regarding the manner in which prior convictions can be taken into account in the sentencing process.

Question 2

Are the penalties for offences involving assaults on police and other essential services personnel (including the maximum penalties and any standard non-parole periods) adequate? Why / why not?

The Committee submits that denunciation and deterrence (both specific and general) are of particular significance when considering assaults against emergency services workers due to the important public safety, public health, and law enforcement roles performed by emergency services workers. These workers have particular exposure to situations of danger. These officers also may be subject to acts of retribution and violence arising from the performance of their duties. Similarly, correctional workers and youth justice workers are particularly exposed to the risk of assaults, intimidation, and injury in the course of their employment. Such assaults can be quite serious, involving the use of prison-made weapons or extreme threats towards the life and personal safety of corrections officers and their families.

In the Committee's view, it is appropriate that specific offences recognise this risk, include maximum penalties that would deter persons from carrying out acts such as assaulting, harassing, intimidating or obstructing such workers, as well as denounce and punish persons responsible for such acts. The Committee observes that most of the relevant offences are already indictable offences with a maximum penalty of more than two years imprisonment, [13] and that the statutory standard non-parole period ('SNPP') for conduct that falls under subsections 60(3) or 60A(3) of the *Crimes Act* is higher than the maximum penalties and SNPPs for similar offences where the victim is not a police officer or law enforcement officer. The Committee also notes that the maximum term of imprisonment for s 60(1) and s. 60A(1) offences is five years, even though actual bodily harm does not need to be inflicted if the police officer or law enforcement officer is assaulted in the course of their duty. The Committee is of the view that these are significant terms of imprisonment and that the maximum penalties do not need to be altered.

Recommendation 2

In respect of the offences under sections 58, 60, 60A, 60B and 546C of the *Crimes Act 1900* (NSW), the Committee does not consider there to be any need for changes to the applicable statutory maximum penalties, as those penalties are adequate.

[13] The exceptions (summary offences) include: s. 546C of the *Crimes Act 1900* (resisting or hindering, or inciting any person to assault, resist or hinder a police officer which carries a maximum penalty of one year imprisonment), s. 61 of the *Crimes Act 1900* (common assault which carries a maximum penalty of two years imprisonment), s 67J(1) of the *Health Services Act 1997* (NSW) (obstructing or hindering an ambulance officer which carries a maximum penalty of two years imprisonment) and s. 54 of the *Crimes Act 1900* (grievous bodily harm which carries a maximum penalty of two years imprisonment).

Question 3: Should other categories of emergency services workers be specified in these or other offences? If so, which categories of emergency services workers and which offences?

The Committee has considered whether the definition should be further expanded to also encompass other emergency services workers not currently specified in the relevant offences. The Committee notes that the United Kingdom has introduced legislation which applies to a broader range of emergency workers (*Assaults on Emergency Workers (Offences) Act 2018*). Under this act an assault against emergency workers as defined can result in an imprisonment term of up to 12 months or a fine or both. The definition of Emergency Workers includes constables, prison officers, fire and rescue workers, search workers, and NHS (National Health Service) employees. The Committee also notes the *Crimes (Protection of Frontline Community Service Providers) Amendment Act 2020* (ACT) which creates an offence of assaulting a frontline community provider, which is defined as:

> (a) a police officer; or
>
> (b) a corrections officer; or
>
> (c) a health practitioner who provides a health service at
>
> > (i) a hospital, including a day hospital; or
> >
> > (ii) a correctional centre; or
>
> (d) an emergency service member.

This offence attracts a maximum penalty of five years imprisonment.

The *CSP Act* already sets out under s. 21A(2)(a) an aggravating factor for all NSW offences that "(a) the victim was a police officer, emergency services worker, correctional officer, judicial officer, council law enforcement officer, health worker, teacher, community worker, or other public official, exercising public or community functions and the offence arose because of the victim's occupation or voluntary work", which applies when the fact of that person's status is not already an element of the offence.

Section 21A(2)(a) was introduced by way of an amendment bill to the *CSP Act* passed by Parliament on 21 November 2002, with the aim of providing 'further guidance and structure to judicial discretion'. In his Second Reading Speech to the Legislative Assembly, the Hon Bob Debus MP noted that in so doing, the amendments to the *CSP Act* 'ensure that the criminal justice system is able to recognise and assess the facts of the individual case… when, in an individual case, extenuating circumstances call for considerations of mercy, considerations of mercy may be given.'[14]

[14] New South Wales, *Parliamentary Debates,* Legislative Assembly, 23 October 2002, para 4 (Hon Bob Debus MP).

The Committee also notes that there are offences under s. 67J of the *Health Services Act 1997* (NSW) pertaining to obstructing or hindering ambulance workers, with a maximum sentence of five years under s. 67J(2) for obstructing an ambulance worker by an act of violence. There is no specific offence for assaulting healthcare workers in the course of performing their duties as healthcare workers however. Nor does there seem to be a clear definition of what constitutes a health worker for the purpose of s. 21A(2)(a) the *CSP Act.* The Committee notes the concerns raised in the Report of the Legislative Assembly Committee on Law and Safety Review of Violence Against Emergency Services Personnel of the lack of clarity in this definition,[15] and notes that this issue does not appear to have been addressed since the publication of that report in 2017.

The Committee notes its answers to Questions 1 and 2 in relation to the sentencing trends and applicable maximum penalties in relation to offences under sections 58, 60, 60A, 60B and 546C of the *Crimes Act* which relate to law enforcement officers and police officers. The Committee is of the view that if the specific offences are to be expanded, it would be appropriate to expand the application of s. 60A of the *Crimes Act* to apply to healthcare workers, or to create an equivalent standalone section that mirrors s. 60A. The Committee notes with concern reports of assaults and alleged assaults against healthcare workers such as paramedics, midwives and nurses in NSW and other Australian states and territories.[16] The Committee observes that unlike police officers, who due to the nature of their jobs, are trained and equipped for situations where assaults or other dangerous situations arise, healthcare workers may not have such training and are not armed to respond to physical assaults, and are therefore even more vulnerable to assaults. This puts these workers at a risk of being assaulted in the course of performing their duties in occupations which promote public health. These healthcare workers may experience both physical and lasting psychological injuries as a result of such assaults.[17]

In these circumstances, it is the Committee's view that expansion of s. 60A, or the inclusion of a new section in the *Crimes Act* to capture acts committed against healthcare workers in the course of their

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[15] Legislative Assembly, Committee on Law and Safety, Violence Against Emergency Services Personnel, 2017, p. 68 [4.40].

[16] See, eg, Elizabeth Bryan, Sydney paramedics allegedly assaulted on the job (25 July 2020) Nine News < https://www.9news.com.au/national/nsw-ambulance-paramedics-allegedly-attacked/26853282-5753-4ee2-9506-699f788e0593#:~:text=Paramedics%20who%20were%20called%20to,pulled%20the%20mask%20off%20another>; Julie Power, *Bitten, punched and thrown: Assaults on ambos skyrocket* (28 April 2018) <https://www.smh.com.au/national/nsw/bitten-punched-and-thrown-assaults-on-ambos-skyrocket-20180427-p4zbzb.html>; Lydia Lynch, *Assaults on Queensland hospital staff jump by 40 per cent* (12 January 2020) Brisbane Times <https://www.brisbanetimes.com.au/politics/queensland/assaults-on-queensland-hospital-staff-jump-by-40-per-cent-20200112-p53qsi.html>; Chelsea Heaney, *Paramedics speak out against assault rate as staff told to delay treatment in the face of violence* (18 January 2020) ABC News <https://www.abc.net.au/news/2020-01-18/paramedic-assaults-rising-northern-territory-st-johns-ambulance/11872420>; *Anonymous, Anonymous paramedic reveals what really happens on the job* (21 May 2019) SBS News <https://www.sbs.com.au/news/insight/anonymous-paramedic-reveals-what-really-happens-on-the-job>; Dr Jacqui Pich, *Violence in Nursing and Midwifery in NSW: Study Report* (February 2019) University of Technology Sydney and Nurses and Midwives' Association https://www.nswnma.asn.au/wp-content/uploads/2019/02/Violence-in-Nursing-and-Midwifery-in-NSW.pdf>; Brian J Maguire, "Violence against ambulance personnel: a retrospective cohort study of national data from Safe Work Australia", 28(1) *Public Health Research Practice* https://doi.org/10.17061/phrp28011805; Geoff Thompson, *Rates of violence against nurses in hospitals increasing rapidly* (11 June 2019) ABC News 7.30 <https://www.abc.net.au/news/2019-06-11/rates-of-violence-against-nurses-rising-rapildy/11196716>.

[17] See, eg, Dr Jacqui Pich, *Violence in Nursing and Midwifery in NSW: Study Report* (February 2019) University of Technology Sydney and Nurses and Midwives' Association <https://www.nswnma.asn.au/wp-content/uploads/2019/02/Violence-in-Nursing-and-Midwifery-in-NSW.pdf>.

duties, would recognise the important public interest in protecting persons who perform these roles, and the seriousness with which such assaults and acts of violence are viewed. The Committee's view is that this legislative change should, like the current s. 60A, include a provision that an action is taken to be carried out in relation to a healthcare worker while in the execution of the healthcare worker's duty, even though the healthcare worker is not on duty at the time, if the action occurs as a consequence of, or in retaliation for, actions undertaken by that healthcare worker in the execution of the healthcare worker's duty, or because the person is a healthcare worker. The Committee's preference is that the new offences be included as a standalone provision, and not incorporated into the current s 60A, and that the provision be included in the *Crimes Act* rather than the *Health Services Act 1997* (NSW) to emphasise the seriousness of these offences.

The Committee submits that should an equivalent provision for s. 60A be created for healthcare workers, the definition of a 'healthcare worker' should at least encompass all doctors, nurses, paramedics and other healthcare staff, including psychiatrists and psychologists providing health services in NSW hospitals, correctional facilities and community health services/clinics and similar facilities. Whilst a number of reported assaults of healthcare workers occur in the hospital context, the Committee is of the view that workers in community health services may also be at risk, and that the definition should be broad enough to encompass those workers. Therefore, the definition should be broader than that included in the *Crimes (Protection of Frontline Community Service Providers) Amendment Act 2020* (ACT) (see above).

However, despite supporting the creation of such offence, the Committee is of the view that judicial discretion must be preserved. Although a maximum penalty that would be equivalent to the maximum penalty in s. 60A is appropriate and signifies the seriousness of the offences, there will need to remain scope for judges to take into account the individual factors of each case. Healthcare workers, particularly paramedics and workers in hospital emergency departments and drug and alcohol services, may be brought into contact with persons suffering from mental illness, including psychosis, as well as those under the influence of drugs, and may be assaulted by those persons. The usual sentencing considerations when sentencing such offenders will continue to apply in these cases.[18] There should be scope for offenders who commit serious assaults against healthcare workers to receive lengthy custodial sentences, whilst still allowing the judiciary (and prosecutors in electing whether Table offences are to be dealt with on indictment) to exercise their discretion, including being able to have regard to 'considerations of mercy' in circumstances that warrant them. [19]

The Committee also supports an amendment to clarify the definition of "health worker" in s. 21A(2)(a), as the Committee is of the view that there is currently a lack of clarity as to what this means. The definition of "health workers should encompass at least the "healthcare workers" as defined above in relation to the proposed new offence. Consideration should also be given as to whether this definition should include security staff at hospitals.[20] The Committee is of the view that

[18] See eg the application of general sentencing principles in *R v Valahulu* [2011] NSWDC 64 at [28]-[31]. The Committee also notes the continuing availability of defences (such as the defence of insanity), provisions relating to fitness, or an application under ss. 32 and 33 of the *Mental Health (Forensic Provisions) Act 1999* if applicable to particular cases.
[19] See above at n 16
[20] Legislative Assembly, Committee on Law and Safety, Violence Against Emergency Services Personnel, 2017, 80-81 [4.94].

this clarification should occur regardless of whether a new offence provision is created analogous to s. 60A to apply to healthcare workers, and notes the continuing relevance of s. 21A(2)(a) to all offences where the victim's status is not already an element of the offence. .

The Committee does not support the expansion of offences such as those contained in s. 60A to other emergency services personnel such as firefighters and rescue workers. The Committee is of the view that there is no clear need for such specific offences, as the statistics and reported cases do not appear to demonstrate that assaults and acts of violence occur as frequently in relation to these types of emergency services personnel in comparison to healthcare workers.[21] Although the Committee recognises that this is perhaps a fine distinction, the Committee is of the view that it is a distinction that can be made between these different categories of emergency personnel.

The Committee notes the continuing relevance of s. 21A(2)(a) of the *CSP Act* when sentencing offenders who have committed offences against other types of emergency services workers. The inclusion of this aggravating factor in the *CSP Act* demonstrates parliament's recognition that offences committed against these victims are of particular concern, and that the victim's status aggravates the seriousness of the offence. Ultimately the judicial officer who has the facts of the matter before them, as well as the offender's criminal antecedents, is best placed to determine the correct sentence. Whilst increased maximum penalties and particular offences are appropriate for certain types of public officers such as police officers and law enforcement officials (and in the Committee's view for healthcare workers, who appear to be particularly exposed to the risk of assaults), the Committee is concerned that these categories should not be extended too far.

Recommendation 3

The Committee recommends that, either by way of amending the existing section 60A or by the inclusion of new provision/s, the Crimes Act 1900 (NSW) ought to specifically address assaults and other acts referred to in the current s.60A when such acts are committed against healthcare workers. In that respect:

1. The offences should attract a maximum penalty that would be equivalent to the current maximum penalties for assaults and other acts committed against law enforcement officers pursuant to s. 60A of the *Crimes Act*;

2. The offences should prohibit any act of violence perpetrated against healthcare workers as a consequence of, or in retaliation for, actions undertaken by healthcare workers in the execution of their duties, or because the person is a healthcare worker; and

3. The statutory definition of 'healthcare workers' in relation to these offences ought to be broader and more inclusive than that which is contained in the *Crimes (Protection of Frontline Community Service Providers) Amendment Act 2020* (ACT).

[21] Ibid, 2-7.

Recommendation 4

The Committee sees little utility in and therefore does not support the legislating of specific offences criminalising assaults against other emergency services personnel, including firefighters and rescue workers.

Recommendation 5

The Committee supports an amendment to clarify the definition of "health worker" in s. 21A(2)(a), and is of the view that this definition should encompass at least the healthcare workers as defined in relation to the proposed new offence. The Committee is of the view that this clarification should occur regardless of whether a new offence provision is created analogous to s. 60A to apply to healthcare workers.

Other recommended measures

The Committee acknowledges that the inclusion of a new offence should not be seen as a "band aid" solution to reducing violence against health care workers. Instead, there needs to be a continuing focus on violence prevention strategies to be implemented by the responsible agencies and departments, such as those considered and recommended by the Legislative Assembly Committee on Law and Safety's Review of Violence Against Emergency Services Personnel.[22] The experience of some Committee members has been that a number of offenders who assault police and law enforcement officers also have mental health issues which have contributed to their offending, and the significance of these issues should not be downplayed. Further, the Committee notes statistics that mental illness, alcohol and drugs contribute to assaults on other emergency services workers,[23] and is of the view that such issues need to be addressed in order to reduce the occurrence of such assaults. All emergency services personnel are entitled to a safe workplace. Comprehensive violence prevention strategies, which address both workplace environments and training for personnel to avoid violence, are essential to contributing to safe workplaces.

The Committee also supports recommendations to increase public access to sentencing data, and would support measures that would make it easier for the public to more easily identify the sentences that are imposed in cases involving victims who are emergency services personnel.[24] The Committee is of the view that this may assist in decreasing levels of public dissatisfaction with the length of sentences by demonstrating long term trends, and removing the risk of public dissatisfaction which may occur when only certain cases are widely publicised.

[22] Legislative Assembly, Committee on Law and Safety, Violence Against Emergency Services Personnel, 2017,vi – xv..
[23]Ibid, 8-9..
[24]Ibid, Recommendations 42 and 43, viii and ix

Recommendation 6

The Committee recommends that legislative reform be supplemented with the following measures

1. A continuing focus on violence prevention strategies to be implemented by the responsible agencies and departments, such as those recommended by the Legislative Assembly Committee on Law and Safety Review of Violence Against Emergency Services Personnel. These measures should continue to recognise that drugs, mental illness and alcohol use often contribute to assaults committed against emergency services workers.

2. Measures should be implemented to increase public access to sentencing data, and to allow sentences involving victims who are emergency services personnel to be easily identified.

Concluding Comments

NSW Young Lawyers and the Committee thank you for the opportunity to make this submission. If you have any queries or require further submissions please contact the undersigned at your convenience.

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