

## **Assaults on Emergency Services Workers**

Sentencing Council - NSW

The Attorney General has asked the Sentencing Council – NSW to review the sentencing for offences involving assaults on police officers, correctional staff, youth justice officers, emergency services workers and health workers.

Submissions should respond to the terms of reference.

### **TERMS OF REFERENCE:**

The Sentencing Council is to review the sentencing for offences involving assaults on police officers, correctional staff, youth justice officers, emergency services workers and health workers and make recommendations for any reform it considers appropriate.

### **In undertaking the review, the Sentencing Council should consider:**

- Recent trends in assaults on these workers and in sentencing decisions;
  - Characteristics of offenders, including characteristics of reoffending offenders;
    - Sentencing options to deter this behaviour;
    - Sentencing options to reduce reoffending;
  - A comparison of NSW sentencing decisions for assaults on these workers with equivalent sentencing decisions in other Australian jurisdictions;
  - A comparison of NSW sentencing decisions for assaults on these workers with equivalent sentencing decisions for assaults generally;
  - Sentencing principles applied by NSW courts;
- and • Any other matter the Council considers relevant.

### **They may also respond to the following questions:**

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

Dear Sentencing Council Members,

I have previously submitted a submission in relation to 'review of sentencing for murder and manslaughter' (MU16).

Within this submission, I have included a section on increasing the penalty in the event of a murder of a 'correctional officer'. I once again submit this relevant information within section (1) and additional information within section (2) for the Sentencing Council to consider within this current review.

### **Section 1. Assault on Emergency Service Workers**

It is my recommendation that their should be amendments to the imposing of a Life Sentence for murder as I outlined within my previous submission (MU16), they are;

- *The murder occurred whilst the commissioning of a number of violent crimes, such as, sexual assault, robbery, arson, assassination, kidnapping;*
- *The murder involved torture, cruelty or was particularly violent;*
- *The murder involved terrorist acts and the use of bombs, vehicles, weapons of destruction;*
- *The murder involved criminal gangs, multiple victims;*
- *The murder victim was a **law enforcement officer** performing his/her duties;*
- *The victim was a Judge/Prosecutor/Judicial Officer, Witness or Juror that was murdered to prevent the performance of their duties, and;*
- *The offender had a previous conviction for murder or a serious violent offence.*

Their should be changes to encompass a Life Term for a '*law enforcement officer*' and not only a 'Police Officer'.

Specifically a '**Correctional Officer**' would fall within this category.

In NSW we have had a number of Correctional Officers (CO) who have been killed whilst performing their duties. CO's are a sworn officer of the crown and on a daily basis have to deal with very dangerous and volatile situations within the prison system.

Unlike Police Officers and Fire & Rescue Officers which receive a lot of public accolades, praise and their actions are readily seen by members of the public. CO duties are very broad, either working within the confined walls/fences of a prison, escorting inmates outside the walls of the prisons and perform these duties with limited resources and under

extremely dangerous conditions. And as a result of the volatile environment that they work within, are victims to fatal assaults and violent acts.

There has been 12 recorded deaths of correctional officers in NSW. The most recent was in 2007 when a senior correctional officer was violently attacked by an inmate in December 2006, however died later in hospital in January 2007.

Reference is made to comments by 'Judge Roy Ellis at the time of sentencing Carl Edward Little – 6 August 2009 for the vicious attack on the Officer';

*During sentencing at Parramatta District Court, the Judge, Roy Ellis, said the crime was "inexplicable".*

*"It's hard to imagine a worse example of a determined effort to kill a man for no real reason," he said. "Mr Little kicked him and continued to kick him even when he was being dragged away by numerous correctional officers."*

*Little will serve a maximum sentence of 20 years and six months and will be eligible for parole in 2023.*

Given the risk that front line CO's face and encounter in their employment, dealing with very violent and dangerous inmates within the prison and whilst escorting inmates external to the prison walls, their needs to be some form of deterrent which ensures that inmates will not attack/ambush a CO.

Reference is made to 'The Crimes Amendment (Murder of Police Officers) Act 2011 amended the Crimes Act 1900 by inserting s 19B';

#### *Murder of police officers*

*The Crimes Amendment (Murder of Police Officers) Act 2011 amended the Crimes Act 1900 by inserting s19B. Section 19B requires a court to impose a sentence of life imprisonment where a police officer is murdered in the course of executing his or her duty; or as a consequence of, or in retaliation for, actions undertaken by any police officer in the execution of their duty where the person knew or ought to have known that the person killed was a police officer. The person must have intended to kill the police officer, or have been involved in criminal activity that risked serious harm to police officers. Section 19B applies to offences committed after 23 June 2011: s 19B(7).*

It is my opinion that there is minimal difference in the responsibilities and risk that CO's have, as compared to that of police officers when dealing with dangerous and violent offenders;

Changes to Legislation would be as follows;

*Mandatory life sentence if murder was committed: (a) while the correctional officer was executing his or her duty, or (b) as a consequence of, or in retaliation for, actions undertaken by that or any other correctional officer in the execution of his or her duty, and if person: (c) knows that the person killed was a correctional officer, and (d) intended to kill the correctional officer or was engaged in criminal activity that risked serious harm to correctional officers.*

### **NSW Correctional Officers killed in the line of duty:**

2007: Wayne Smith, Silverwater. Attacked and bashed by Carl Edward Little while escorting him to a new cell. Succumbed to his injuries six weeks later.

1997: Geoffrey Pearce, Long Bay. Stabbed with a HIV-positive needle by Graham Farlow in 1990 and died from AIDS eight years later.

1979: John Mewburn, Long Bay. Bashed to death by convicted murderer Peter Schneidas.

1974: Carl Faber, Parramatta. Bashed to death by a group of prisoners during an unsuccessful escape bid. Died from his injuries four years later.

1959: Cecil Mills, Emu Plains. Bashed to death by prisoners during an attempted escape.

1959: Albert Hedges, Berrima. Bashed and locked in a shed during an escape attempt. He survived and after rehabilitation returned to work. However his injuries were so severe he was medically retired and passed away several years later.

1958: Alan Cooper, Bathurst. Bashed to death by two prisoners at the front gate of the jail during a failed escape.

### **Section 2. Double the maximum sentence for an assault on Correctional Officers.**

Correctional officers (CO) are responsible for maintaining order and daily operations of the prison and are responsible for the care, safe custody, containment and control of inmates. A CO has a responsibility to control inmates who may be dangerous and that the Judicial system have deemed necessary to be detained in prison and removed from the community and society. A CO must always prevent disturbances, assaults and escapes by supervising activities and work placements of inmates. CO's have a responsibility to protect the public from incarcerated criminals, protect fellow officers from inmates and

protect inmates from other inmates at all times, protect visitors that visit a prison, this is referred to a 'duty of care' requirement.

A CO must be alert, vigilant and aware of any and all movement taking place inside the prison and external to the prison. Prevention is one of the key components to an officer's duties. CO's can utilise prevention by routinely searching inmates and their accommodation areas, employment and program service locations for potential threats such as, mobile phones, weapons or drugs (contraband). A CO must make their presence known at all times and remain assertive and not be intimidated. An CO must be a disciplinarian and enforce the rules and sanctions when rules are violated and above all, a CO must have personal integrity.

CO's also must take full concern for the health and safety of the prison. CO's check for unsanitary conditions, fire hazards, and/or any evidence of tampering or damage to locks, bars, grilles, doors, and gates. CO's must screen all incoming and outgoing mail as well as all visitors as a prevention method for future issues that could cause risk to safety and security of the facilities, inmates, staff and visitors. CO's also must assist in transportation responsibilities that may include transfers to other facilities, medical appointments, court appearances and other approved locations. The duties and responsibilities of a CO are paramount and are a crucial member of the Law Enforcement Agencies and Criminal Justice System.

The doubling of a custodial sentence for an offence such as an assault against a CO, is a welcomed initiate within correctional services and law enforcement. On to many occasions have CO's been the victim of not only abuse and intimidation by an inmate, but serious assaults have also been inflicted on an officer carrying out his/her duties. In order to maintain security and compliance with rules and regulations of the prison, a CO has the legal authority to issue directions to an inmate. In order to maintain law and order within a prison, an inmate is required to comply with the rules and routine of the prison.

An inmate who is not compliant with prison rules and routine and poses a security threat to the good order and discipline of a prison, is also a threat to a CO. On many reported occasions, officers have been seriously injured when attempting to control an inmate who is exhibiting acts of aggression towards other inmates and staff members. In order to prevent and deter an inmate from engaging in violent behaviour and reducing the risk of injury to a staff member, changes to legislation are required to ensure that the courts are able to impose an increase of a sentence for an inmate that assaults and injures a CO.

Section 60A of the *Crimes Act* 1900 provides for a number of offences relating to 'Assault and other actions against law enforcement officers (other than police officers).

Subsection (1) of that section states: "*A person who assaults, throws a missile at, stalks, harasses or intimidates a law enforcement officer (other than a police officer) while in execution of the officer's duty, although no actual bodily harm is occasioned to the officer, is liable to imprisonment for 5 years.*"

Subsection (2) of that section states: *“A person who assaults a law enforcement officer (other than a police officer) while in execution of the officer’s duty, and by the assault occasions actual bodily harm, is liable to imprisonment for 7 years.”*

Subsection (3) of that section states: *“A person who by recklessly by any means: (a) wounds a law enforcement officer (other than a police officer), or (b) inflicts grievous bodily harm on a law enforcement officer (other than a police officer), While in the execution of the officer's duty is liable to imprisonment for 12 years.”*

Subsection (4) of that section states: *For the purpose of this section, an action is taken to be carried out in relation to a law enforcement officer while in the execution of the officers duty, event though the officer is not on duty, if it is carried out; (a) as a consequence of, or in retaliation for, actions undertaken by that officer in the execution of the officer's duty, or, (b) because the officer is a law enforcement officer.”*

### **Recommended amendments to current Legislation would be:**

Include 'Correctional Officer' within Section 60A of the Crimes Act 1900, where applicable. Subsection (1) 10 years imprisonment, Subsection (2) 14 years imprisonment & Subsection (3) 24 years.

The real challenge to be encountered are for the courts willingness to use the powers within amendments to the legislation to sentence an inmate to additional time. Once a couple of hefty sentences are imposed and the prison population realises the fact that they would not get away with assaulting correctional officers, their behaviour may well change. It is about time the important and dangerous role that CO's provide within the Justice portfolio are recognised and actually receive support from the Government, Attorney General and the Courts.

Other services such as Ambulance Officers and Paramedics have also become targets for violent individuals and need to be protected. You would only have to draw up the assault statistics across all services, look at the injuries suffered and the time lost for those injured. Some may never return to their profession and all their years of training and loyal service has been lost. Their life's are turned upside down, firstly suffering the assault, family trauma and then the prospect of being unable to return to work.

The officers are not the only people that lose, the general public will not have a service to call on in their time of need. We are aware of officers who have suffered a 'horrific working experience in prison' and had to move on, meaning the loss of trained officers and the need to recruit replacements. For some, they will never make a full recovery.

It is extremely important that the Government, Attorney General and CSNSW stands behind and supports officers that work within the correctional service system, that work bravely every day without fear or trepidation, despite the possibility of facing serious injuries as a result of being assaulted.

With the risk of receiving a double penalty for an assault on a correctional officer, the long term benefits are;

- Minimising the risk of assaults on correctional officers as a deterrent on increased penalties,
- Less recorded injuries to correctional officers - meeting CSNSW KPI's.
- Reduced instances of time off work, (sick leave, workers compensations claims),
- Reduction in loss of Correctional Officers leaving the service as a result of assaults.

Every day CO's risk their lives walking the narrow grey corridors to and from their assigned posts, having nothing but a duress alarm and two-way radio to communicate with as their life line to safety and assistance. Every day, they walk among the prison population and handle whatever comes their way in a manner prescribed by law and training. They do this with rarely any recognition and not even as much as a thank you for performing a good job.

Unlike the past, CO's are being assaulted frequently as the prison population has turned more violent and more risky in an already volatile setting as it is. In today's climate, reports are constant of a number of assaults that are taking place inside a prison against a CO. Staff ratios vary from prison to prison and under the current CSNSW 'Benchmarking Reforms', staffing ratio per inmate is being reduced to dangerous levels.

These management changes within the NSW correctional system will only increase the already high risk environment that CO's are confronted with. Regardless if CO's are working within a maximum, medium or minimum security environment or working with extremely dangerous inmates such as those convicted of terrorists offences or other violent offences, the ever present threat of assault is constant.

History of serious assaults against CO's within minimum security correctional centres indicates the constant risk presented to CO's and does not discriminate because of the inmates lower classification rating. Either way, it is a dangerous situation to be put in without some sort of safety net.

***In NSW, eleven Correctional Officers have been killed while on duty. As recently as 2007 a Correctional Officer at Silverwater Correctional Centre died after an attack by an inmate.***

***While the focus of this report is on Correctional Officers, other correctional staff and their Justice Health & Forensic Mental Health Network partners are also vulnerable to workplace abuse and violence. Cashmore et al. (2006b: 188) report that 76% of NSW Justice Health & Forensic Mental Health Network survey participants had experienced some form of workplace abuse. They further report that 93% of incidents of workplace violence were initiated by an inmate or forensic patient and that 90% of the victims were nurses and 66% were female (Cashmore et al. 2006b: 1).***

***The extent of the potential for violence in correctional centres is reflected in the increased provision of interventions for violent inmates. The CSNSW Annual Report 2011-12 (2012: 67) records that in 2011-12, participation in aggression and violence programs in custody increased by 25% from the participation rate in the previous year, with a particular increase in individuals attending the CALM program, the Violent Offenders Therapeutic Program and its maintenance course.***

***Some researchers have noted that the persistent threat of inmate violence stems from the fact that inmates are receiving longer sentences, resulting in less incentive for good behaviour and an increase in the numbers of mentally ill and violent inmates (Finn 1998:65-74; Brough & Williams 2007: 555).***

***CSNSW research has identified that more than half of all inmates serving a sentence of full-time custody on 20 March 2005 had been convicted of a violent offence or have displayed violent behaviour whilst in custody. Although the majority of these inmates are male, over a third of the sentenced female inmate population is also incarcerated for a violent offence or institutional violence (Galouzis 2008: 1). US research has demonstrated that there is a correlation between this offence profile and assaults on staff, with inmates serving sentences for violent offences being four times more likely than property and other non-violent offenders to perpetrate serious assaults on staff (Sorensen et al. 2011: 144, 149).<sup>1</sup>***

The Sentencing Council of NSW consists of 16 members, one of whom should have expertise in or experience in corrective services.

***Crimes (Sentencing Procedures Act) 1999 No 2 - Part 8 B - NSW Sentencing Council, Section 100I Clause 2 (f) one is to have expertise or experience in corrective services<sup>2</sup>***

Forwarded for your consideration,

Domenic Pezzano JP

26 August 2020

---

<sup>1</sup> Inspector Custodial Services – Report No.1 – The invisibility of Correctional Officer Work

<sup>2</sup> Crimes (Sentencing Procedures Act) 1999 No 2 - Part 8 B - NSW Sentencing Council, Section 100I Clause 2 (f)