ODPP
New South Wales

Sentencing Council

Assaults on police and emergency workers

Submission by the Office of the Director of Public Prosecutions (ODPP)

September 2020

Contents

Introduction

Thank you for the opportunity to make submissions on the Council's review into sentencing for offences involving assaults on police officers, correctional staff, youth justice officers, emergency services workers and health workers ("emergency workers")[1] and make recommendations for any reform it considers appropriate.

There are important policy considerations behind ensuring that police and emergency workers are safe in their workplace. They are at the genuine front line of society enforcing the peace and rendering assistance to those in need. Assaults on frontline workers must be firmly denounced. The Queensland Court of Appeal recently said[2] in relation to the "interest that the community has in the maintenance of an effective police force and the protection of police officers from harm" [449]

> The establishment of a state sanctioned body of police serves a number of important and obvious purposes. One of these purposes is to ensure that the community need not rely upon self help or upon vigilantism to protect itself against criminal acts. The community does not need to take such measures because some among us have volunteered to undertake this difficult and hazardous task as members of the Queensland Police Service. There is, therefore, a public interest in ensuring that so far as laws can do so, police officers are protected against harm in the execution of their duties and that offenders are punished when they harm police. [450]

In researching this submission, it is evident that comparable jurisdictions in the last 10 years or so have reformed offences and sentencing laws to deter and denounce this behaviour. Indeed, in NSW there have already been a number of reforms and actions addressing the issue including:

- Sentencing reforms in 2002 that included s21A 2 (a) aggravating feature if the victim was an emergency worker[3] and Standard Non Parole Periods SNPP) for sections 60 (2) assault of a police officer occasioning actual bodily harm and 60 (3) wounding or inflicting grievous bodily harm on a police officer.

[1] In this submission the term emergency worker when used generically is to mean the all workers including police, specific references are made to police and other categories of workers where specified.
[2] R v Patrick (a pseudonym) [2020] QCA 51, 8 [30] (Sofronoff P, Fraser JA, and Boddice agreeing.)
[3] Section 21A (2) (a) provides it is an aggravating feature if "the victim was a police officer, emergency services worker, correctional 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".

- Application for a Guideline Judgment, *Re Attorney General's Application Under Section 37 of the Crimes (Sentencing Procedure) Act 1999 (No. 2 of 2002)* [4]
- Legislative Assembly Committee on Law and Safety Inquiry – Violence against emergency services personnel (Legislative Assembly Inquiry)[5]

In our submission, the policy considerations and actions available to address these concerns are complex and the sentencing of offenders is only part of the solution.

From the preliminary research we have conducted into the relevant sentencing trends and statistics, we consider that the NSW Courts do treat the sentencing of offenders who have assaulted police more seriously than other types of assault that are more prevalent in the community. Consideration of any further measures taken to further increase penalties may have undesirable impacts, including sentencing outcomes that are disproportionate to other types of assault and possible adverse impact on the indigenous community.

Recent trends in assaults on emergency workers and in sentencing decisions

Obtaining data
The ODPP's principal function is to prosecute indictable offences in the District and Supreme Court, that is the more serious assaults concerning grievous bodily harm or death. ODPP also prosecutes appeals from the Local Court to the District Court. Most District Court appeal cases involve an appeal by the offender against the severity of the sentence or the conviction.

The ODPP's data collection about the types of offences we prosecute is limited. For instance, from our data it is not possible to distinguish assaults on emergency workers, aside from offences naming Police Officers and "law enforcement officers" as defined in s60AA *Crimes Act*. Further our information is incomplete as the ODPP does not appear in all matters prosecuted in the Local Court.

The difficulties with analysing any trend in emergency worker assaults was identified in the Legislative Assembly Inquiry[6]. Recommendation 42 of that report was

> NSW Government consider changes to require the NSW Police Force and Courts to record where the victim of an offence is an emergency worker, so that all sentencing statistics that relate to violence against emergency services personnel are clearly identifiable.[7]

[4] [2002] NSWCCA 515; 137 A Crim R 196 at 203-204
[5] Report 1/56 August 2017
[6] Ibid p 68, Recommendation 43 related to taking more judgments out in the Local and District Court

The Government response[8] to this recommendation noted the difficulties associated in capturing data that identified the various categories of emergency services personnel and the different types of offences committed, and the potential costs in capturing that data. It was noted that data can be collected by the Police if a further category field was created. We are not aware if this was done.

Another possible way of identifying cases is to do so through identifying the aggravating circumstances found by the court upon sentence. The ODPP extracts sentencing information from significant appeal judgments and highlights cases by appeal points in our intranet knowledge centre the "DPPdia". Only one matter currently is recorded under the aggravating factor being that the victim was a police officer, that of *R v Nguyen* [2013] NSWCCA 195 (in this case the principal charge was manslaughter).

Another factor in considering the trends is the wide number of offences that may be relevant from murder to common assault. Further a wide variety of conduct is captured in the offence of Assault Police (s60(1)), as Chief Justice Spiegelman noted in the *Application for a Guideline Judgment*[9]

> The first difficulty with the identification of a guideline in the form sought by the Attorney General arises from the nature of the offence. Section 60(1) covers any form of common assault not leading to actual or grievous bodily harm. This encompasses a wide range of offending behaviour. An assault can be constituted merely by tapping on the shoulder or poking in the chest. On the other hand it may be constituted by pointing a gun to the head of a police officer and cocking it. There can be little doubt that in the latter case a custodial sentence would be required. In the former cases that will often not be the case. There is a wide range of behaviour capable of constituting an assault which does not involve the high public purpose of the courts supporting the authority of the police.[38]

A further issue is that the offences of assault police or resist arrest are invariably charged together with the offence giving rise to the arrest. Consequently, it is often difficult to disaggregate the sentence for assault police from other offences charged.

[8] NSW Government response to recommendations from the Legislative Assembly's Inquiry into Violence Against Emergency Services Personnel, undated available on the NSW Parliament website.

[9] [2002] NSWCCA 515; 137 A Crim R 196

Trends

The Police Association press release 19 December 2019 analyses BOCSAR statistics for the period 2014 – 2018, and states there are about 2500 assaults on police a year or about 50 a week. This appears to be a stable rate of offences being charged.

The crime trends from BOCSAR, comparing assault police with other categories of assault are:

	Jul 2015 – Jun 2016	Jul 2016 – Jun 2107	Jul 2017 – June 2018	July 2018 – 2019	July 2019 – Jun 2020
Assault police	2,395	2,334	2,349	2,488	2,537
Non domestic assault	31,434	32,093	32,183	31,812	30,086
Domestic violence related assault	29,308	28,751	28,721	30, 547	30,086

It appears from the above that there is a high rate of assault in the community generally, and that the number of recorded instances is relatively consistent in each reporting year. This high and consistent rate would appear to be despite deterrence and education campaigns addressing the issues such as alcohol fuelled violence and domestic violence within this period.[10]

We have identified from the JIRS data base two District Court Judgments concerning s60(3).

The first is the decision of *R v Benjamin* [2019] NSWDC 190,

> The Accused was serving sentence for assault police and was in the mental health screening unit at the MRRC where he punched three times a correctional officer from behind. The officer was rendered unconscious for a time. Suffered a fracture jaw, required 4 surgical plates to be inserted.
>
> His Honour Judge Colefax, found the offence to be slightly below a midrange offence. He rejected the submission that the occupation of the victim was an aggravating factor, as this was an element of the offence. The accused was psychotic at time, showing signs of schizophrenia, probably through drug abuse. General deterrence was therefore reduced and to an extent the consideration of specific deterrence is reduced. The offset

[10] Eg the NSW Government's Domestic and Family Violence Framework for Reform and the NSW Domestic Violence Justice Strategy.

is that there is an increased need to protect the community. The offender was at the risk of becoming institutionalised.
The offender received a 25% discount for a plea of guilty – if not it would have been 4 years imprisonment. The sentence imposed was 3 years with a parole period of 18 months.

The second is *R v Valajuli* [2011] NSWDCC.

The offender plead guilty to with assault occasioning grievous bodily harm (S60A (3) (a)) on a Sheriffs Officer performing screening duties at court. The victim occasioned serious injuries to his head and eye socket. The offender had a history of assaults, including assault police where he had received prison sentences. At the time he was suffering from a psychosis, probably schizophrenia. Neilsen DCJ in sentencing the offender said:

> 29 The offender's mental health, his psychiatric illness and his reduced moral culpability for this crime make the sentence to be passed upon the offender not an appropriate vehicle for general deterrence. .....the authorities make it clear that sometimes for a violent offender, even with reduced moral culpability, the question becomes not only subjective deterrence but the protection of the community. That would seem to indicate that the offender should be kept out of the community for a lengthier period of time to ensure that others are not the potential victims of some assault that the offender might perpetrate. However, since the offender is prone to assaulting uniformed law enforcement officers, if he is locked up for a lengthy period of time he is exposed to uniformed law enforcement officers, namely Corrective Services officers.
>
> 30 The sentence I pass must deter the offender, must draw to his attention the fact that society cannot tolerate its law enforcement officers being assaulted as they try to carry out their work, for which they often receive little or no thanks or recognition, and the sentence I pass must do something to ensure the safety of our society, to ensure the offender's compliance with his psychiatric treatment, that he continues to take his psychotropic medication, to stay under the care of a mental health team and to ensure that he does not relapse to illicit drug use. I must consider the question of rehabilitation, which is one side of the coin, the other side of which is called the prospects of re-offending. It is hard to make any positive assessment of the prospects of rehabilitation. .....
>
> 31 Bearing in mind the seriousness of this offence, the maximum penalty prescribed by Parliament, the offender's unfortunate criminal history, and the aggravating factor that this offence was committed whilst the offender was on bail, but bearing in mind the offender's reduced moral culpability for the crime, and on this occasion his positive

> response to incarceration, I believe the appropriate starting point for the current sentencing exercise is a head sentence of six years imprisonment. I reduce that by twenty-five per cent on account of the utilitarian value of the offender's plea of guilty at the earliest available opportunity. That fixes a head sentence of four years and six months.

The sentences for the other cases referred to on JIRS sentencing statistics site for s60A (3) were:

- 2 years 6 months NPP 18 months,
- 3 years, NPP 2years,
- 4 years 5 months NPP 2 year 11 months

The above information suggests, that in serious assault cases dealt with in the District Court the offenders are receiving significant custodial penalties.

Characteristics of offenders including characteristics of reoffending offenders

The Queensland Sentencing Advisory Council (QSAC) was tasked with examining and reporting on the penalties for assaults on police officers and other frontline emergency service workers in December 2019[11]. The QSAC commissioned Griffith University to conduct a literature review of the available research evidence.[12]

This research lists the following perpetrator factors[13]

- Substance abuse was found to be a significant predictor of assaults in Canada, UK.
- Mental health
- History of violence – shown as predictive of assault against health care workers.
- Gender – female perpetrators are over-represented in emergency worker assaults.
- Age, under the age of 35
- Education and employment
  "a sense of desperation and despondency associated with poverty can give rise to frustration and aggression that, in the past, have been acted out against [emergency workers] and property".

It is noted that both cases of *Benjamin* and *Vajajuli*, cited above involved offenders who were psychcotic at the time of offending. Sentencing principles provide that the mental state of the accused, reduces the level of moral culpability.

[11] Www.sentencingcouncil.qld.gov.au
[12] Assaults on Public Officers: A review of research evidence, Christine E W Bond, Louise Porter, Margo van Felius, Tiahna Mullholland March 2020.
[13] At page 9

The Victorian Parliament has endeavoured to address the fact that persons in a psychotic state are more likely to offend against emergency workers, by restricting what special reasons may be taken into account on sentence.

In response to a 23% increase in a 6 year period of recorded assaults on emergency workers in 2018 Victoria made amendments to section 10A (2B) *Sentencing Act* 1991 (Vic). Victorian courts are required in deciding whether there are substantial and compelling circumstances on sentence, to regard general deterrence and denunciation as more important that the other sentencing purposes under the Act. Under these new laws, courts must impose a custodial sentence. The court is not able to sentence offenders to a community correction order or other non-custodial outcome except in very limited circumstances. These new laws apply in addition to the statutory minimum sentences introduced for injuring an emergency worker in 2014.

An amendment was passed in June 2020, *Sentencing Amendment (Emergency Worker Harm) Bill* 2020 which further restricts the applicability of special reasons to avoid imprisonment for assaults on emergency workers.

In the 2nd reading speech Jill Hennessy, Attorney General said[14]

> As cases start to come before the courts, we are now beginning to see how the reforms we introduced in 2018 are operating in practice. We have seen a number of recent cases where offenders have been sentenced to terms of imprisonment equal to or greater than the statutory minimum. These cases demonstrate that, while the laws are complex, they are working and are starting to have their intended effect on sentencing outcomes. However, some other recent cases have shown that some sentencing requirements for emergency worker harm offences are causing some confusion and may not be operating in line with the Government and Parliament's intention.
>
> The reforms address sentencing of characteristics of offenders, the first special reason, recognises an offenders impaired mental functioning that is causally linked to the offence, such that it reduces their moral culpability, currently the reason does not apply if due to self induced intoxication. But concerns this is being too easily met, narrows the test to "substantailly due to self induced intoxication". The special reason will not be able to be relied on where there are multiple causes of mental impairment, but the main cause is self-intoxication.
>
> The second special reason for not imposing a statutory minimum sentence applies where the offender faces a substantially and materially greater than ordinary burden or risk of imprisonment due to their impaired mental functioning. In setting an appropriate sentence where the 'burden of imprisonment' is high, the court must have regard to Parliament's intent as to the length of sentence that should ordinarily be imposed.

[14] 4 March 2020

We note the approach taken in Victoria has not had the intended outcomes and has resulted in further restrictions on the application of judicial discretion. We do not consider this to be a desirable approach.

Sentencing options to deter this behaviour

There are significant questions about the effectiveness of general deterrence on incidence of unpremeditated assault. The High Court has noted that general deterrence has limited utility in unpremeditated offences, in *Munda v Western Australia*[15]

> It may be argued that general deterrence has little rational claim upon the sentencing discretion in relation to crimes which are not premeditated. That argument has special force where prolonged and widespread social disadvantage has produced communities so demoralised or alienated that it is unreasonable to expect the conduct of individuals within those communities to be controlled by rational calculation of the consequences of misconduct.

We note with interest the discussion in the QSAC's issue paper on "Penalties for assaults on public officers"[16] on the effectiveness of legislative amendments intended to focus the sentence on deterrence and denunciation.

The paper analyses the effectiveness of legislative approaches, in Victoria, Western Australia and Canada that are founded on elevating general deterence, and removing or minimising the judiciary's ability to tailor the weight ascribed to deterrence on the basis of the facts of different individual cases.

In the Victorian decision *DPP v Haberfield*[17], in considering the Victorian amendments discussed above, Tinney J said

> I suppose one might query whether that class of person who is acting in the way I have described or the way you were, is actually able to be deterred. They are, one would think, highly unlikely, in such a state of intoxication or delusion to calmly reflect on the term of imprisonment that may be waiting in the wings. To suppose that a man who has been so delusional as to flee from his family and hide in a dog kennel, is going to reflect on the legal consequences of his actions, is perhaps not that realistic.
> …Parliament has no doubt considered those matters. Legislation was passed that was designed to remove from the equation very many of the usual excuses and matters raised on the plea. The remorse , the explanation for why someone was acting out of character, the fact that they may otherwise be a fine upstanding person is all well and good, but what assistance is any of that to the injured paramedic to learn several

[15] (2013) 87 ALJR 1035 at [54]
[16] Queensland Sentencing Advisory Council Issues Paper April 2020 from page 180.
[17] [2019] VCA 2082

months after the assault the true context of it. The real context is that they are doing a difficult job at the best of times and that there is no excuse to turn on them. Parliament is saying that we need these assaults to stop. People must understand that an emergency worker on duty is sacrosanct. You do not touch them.

In Western Australia a mandatory sentencing scheme was introduced in 2009. The QSAC, consider close analysis of the impacts of this reform may demonstrate that legislative change cannot conclusively be shown to have reduced offending by deterrence[18].

The QSAC notes that the 2009 amendments introduced mandatory minimum sentences for assaults causing bodily harm or grievous bodily harm to police and prison officers and defined emergency workers. Further amendment in 2013 required that all adult offenders convicted of assaulting a public officer in prescribed circumstances must serve the mandatory minimum sentence before being eligible for parole. There are no exceptional circumstances provisions.

The Western Australian Government has reported that these reforms have been effective in reducing the number of assaults by 33%. However, analysis by the Tasmanian Sentencing Advisory Council in 2013, questioned whether the decrease was a result of mandatory sentencing. It was observed that the decline actually started before the introduction of mandatory sentencing, also there was a substantial decline in public place assaults that matches the pattern of assaults on police officers in the same period, which coincided with a 2008 Commissioners instruction that members of the police not be rostered , directed or encouraged to patrol alone.[19]

In a Government review in 2014 of the reforms, the Director of Public Prosecutions (WA) commented that "where judicial discretion is removed it does not remove discretion so much as redistribute it to other parts of the criminal process." The Chief Judge and Magistrate made similar observations and noted a high degree of not guilty pleas. It was also noted that the numbers of assaults were on the rise again since 2013, which may indicate that the impact of messaging in the public awareness campaigns run at the time of the amendments has waned.

S718.02 of the Canadian *Criminal Code* requires court when sentencing for relevant offences to "shall give primary consideration to the objectives or denunciation and deterrence of the conduct that forms the basis of the offence".

The QSAC draws the following conclusions from the experiences in Victoria, WA and Canada[20]:

- Lack of valid evidence that general deterrence achieves its purpose (with the key consequence that there is no guarantee or likelihood that it in fact increases or protects officer safety on a global level commensurate with its global application).

[18] Ibid p183
[19] Ibid p185
[20] Ibid p197

- Imprisoning vulnerable people, who have different personal circumstances to the general public, when they would otherwise receive a different penalty (which could in fact make them less likely to reoffend in the long term) without addressing underlying causes which can remain latent in a particular person's life
- A reliance on other charges that do not carry a mandatory penalty, in order to avoid unjust outcomes and stress on the system – this further undermines judicial discretion and possibly public and victim confidence. It is a particular challenge regarding charges that cover a very wide range of offending such as assault.
- Lack of certainty around how other important sentencing purposes are given effect to (if they can be).
- Statistical justification that does not acknowledge other relevant factors or vagaries, risks producing misleading results
- There is an increase in not guilty pleas.

Sentencing options to reduce reoffending

In 2017 following the Law Reform Commissions report into sentencing in 2013, the Government passed laws significantly reforming sentencing in NSW. A key component of this reform was recognising that community supervision is more effective than imprisonment to reduce reoffending, the Attorney General Mark Speakman said in introducing the reforms[21]

> I turn first to the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill* 2017, which will introduce new, tough and smart community sentencing options that will promote community safety by holding offenders accountable and tackling the causes of offending. These reforms build on the Law Reform Commission's comprehensive report into sentencing in 2013. We know from Australian and international research that community supervision, combined with programs that target the causes of crime reduce offending. We know that community supervision is better at reducing reoffending than leaving an offender in the community with no supervision, support or programs. We also know that community supervision is better at reducing reoffending than a short prison sentence.

QSAC's literature review[22], considers the research involving the effectiveness of sentencing orders specifically in the context of assaults on public officers[23].

> More broadly, there is a substantial body of empirical research looking at the general effectiveness of different sentencing orders, regardless of offence type (see e.g. Gelb, Stobbs & Hogg, 2019, a recent review commissioned by QSAC). Of particular interest

[21] Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 2017 second reading speech 11 October 2017
[22] Assaults on Public Officers: A review of research evidence, Christine E W Bond, Louise Porter, Margo van Felius, Tiahna Mullholland March 2020.
[23] Ibid p 19

are the findings on the effectiveness of imprisonment, given that the trend in recent responses to assaults against public officers has been to provide penalty enhancements that focus on imprisonment. From these reviews, three conclusions are worth highlighting:

- imprisonment does not, on average, reduce re-offending (i.e. no deterrent effect) (Gendreau, Goggin & Cullen, 1999; Gelb, Stobbs & Hogg, 2019).
- imprisonment has a limited incapacitation effect (Gelb, Stobbs & Hogg, 2019). 20
- shorter terms of imprisonment are associated with higher re-offending rates (Sydes, Eggins & Mazerolle, 2018), although this might be explained by the lack of programs and support generally available to offenders serving short prison terms (Gelb, Stobbs & Hogg, 2019).

Thus, although the imposition of custodial orders can clearly serve to signal social condemnation of the behaviour, the research evidence more generally suggests that we should not expect imprisonment to achieve meaningful deterrent or other preventative effects.

The ODPP supports the proposition that lengthy prison sentences are not more effective in deterring behaviour, than other forms of sentencing.

Comparison of sentencing statistics with other jurisdictions

A preliminary observation is that the very different sentencing approaches in various jurisdictions to address the issue of assault against emergency workers makes comparisons difficult.

As noted in our introductory comments Australian and other comparable common law jurisdictions have in the last 10 years or so addressed concerns about assaults on emergency workers and an increase in the number of assaults. Jurisdictions have responded variously to the need to provide denunciation and deterrence to the offending by increasing penalties and/or creating separate offences focussing the gravamen of the offence on the victim being assaulted in the course of performing essential emergency responses. These amendments have various different points of comparison, including the length of time they have been in operation and significantly differing penalties which will make meaningful comparisons of sentencing statistics difficult.

This can be highlighted by a brief outline of the very different approaches in a few jurisdictions. In the United Kingdom, in response to increase in frequency of assaults on emergency workers introduced *The Assault on Emergency Workers (Offences) Act* 2018. Instead of a maximum penalty of 6 months imprisonment, the maximum penalty rose to 12 months. The legislation also created a statutory aggravating factor of the victim being an emergency worker. In the ACT recently passed the *Crimes (Protection of Frontline Community Service (Providers)*

Amendment Act 2020 (ACT). This Act created a new offence of assault of a "frontline community service provider". The maximum penalty for this offence is 2 years. In South Australia, from 3 October 2019, police may charge an offender for assaulting a prescribed emergency worker under section 20AA *Criminal Law Consolidation Act* 1935. An assault may include intentionally causing human biological material to come into contact with a victim or threatening to do so. There are a range of maximum penalties from 5 to 15 years. While in New Zealand, the *Protection for First Responders and Prison Officers Bill* (2020) creates an offence with a 10-year maximum penalty for intentionally injuring an emergency worker. A further amendment provides for a mandatory 6 months imprisonment unless to impose this penalty it would be manifestly unjust.

Comparison between sentencing statistics for assault generally and for emergency workers

There are two main difficulties in comparing statistics for assault police against other types of assault. Firstly, because there is not specific data collection for some types of emergency workers, some emergency workers will be caught up in the general assaults. Secondly, there are a number of different offences some of which may have different sentencing considerations such as a Standard Non Parole Period (SNPP).

For example:

- The SNPP for 60(3) wounding/gbh police officer is 5 years
- The SNPP for s 35 (2) reckless gbh is 4 years
- The SNPP s 60 (2) assault police aoabh is 3 years
- But there is no SNPP for s 59, aoabh.

Looking at a basic comparison from the JIRS sentencing statistics for 2018/19, for

- s60 (2) assault police abh the imprisonment rate is 40%
- S59 aoabh the imprisonment rate 19 %.

A BOCSAR Statistics Bureau Brief in February 2011, "Sentencing Snapshot for Assault" said

- 23% of offenders convicted of a serious assault causing injury received a prison sentence compared with 5.3% of offenders convicted of a common assault.
- An assault offender with four or more convictions faces a 42.9 % chance of imprisonment.
- The Average minimum term was 9 months and average aggregate sentence was 15 months

A BOCSAR Report in 2015 "Prison penalties for serious domestic and non-domestic assault" found

- Offenders found guilty of serious non-domestic assault do not receive harsher penalties that offenders found guilty of a serious domestic violence related offence.

- Factors related to the severity of the assault and the extent of the offender's criminal history significantly influence the likelihood of a prison sentence.

Sentencing principles applied by NSW Courts

The gravity of offences under s60(1) assault police was noted in the decision of *Re Attorney General's Application Under Section 37 of the Crimes (Sentencing Procedure) Act 1999 (No. 2 of 2002)* [2002] NSWCCA 515; 137 A Crim R 196 at 203-204, Spigelman CJ (Wood CJ at CL, Grove, Sully and James JJ agreeing). In the course of that judgment, Spigelman CJ said at 203 [22]:

> "Offences involving assault of police officers in the execution of their duty are serious offences requiring a significant element of deterrence in the sentences to be imposed. The community is dependent to a substantial extent upon the courage of police officers for protection of lives, personal security and property. The Courts must support the police in the proper execution of their duties and must be seen to be supporting the police, and their authority in maintaining law and order, by the imposition of appropriate sentences in cases where assaults are committed against police."

The Chief Justice continued at 203-204 [26] and [28]:

> "[26] As the facts of the cases summarised for the Court in the course of the present application indicate, significant risks are run by police officers throughout the State in the normal execution of their duties. The authority of the police, in the performance of their duties, must be supported by the courts. 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.

...

> [28] The importance of supporting the police has been recognised by the Parliament in the recently enacted s21A, which identifies in s21A(2)(a), as the first of the list of aggravating factors, the fact that the victim was a police officer or one of a number of other persons performing public functions. This will be of significance for other offences against police, but the offence presently under consideration is, of course, specifically concerned with police."

The decision of Gleeson CJ in *R v Hamilton* 91993) 66 A Crim R 575 at 581 was cited with approval:

> *"It is incumbent upon the court, in dealing with offences of this nature, to show an appropriate measure of support for police officers who undertake a difficult, dangerous and usually thankless task. The risks that were run by the police officers who were involved in the present case were substantial".*

Although the application for a Guideline was refused by the Court it was for reasons other than a support for the need to deal with these offences seriously. Rather, it was because NSW in

2002 had introduced a new sentencing regime, which included section 3A setting out the purposes of sentencing and a number of Standard Non-Parole Periods applying to offences relating to assault police and because there was no clear evidence of a systemic pattern of leniency in sentencing.

We strongly support the approach taken in NSW whereby the authority of emergency service workers, in the performance of their duties, must be supported by the court, by giving full weight to that feature as an aggravating feature of the offending.

Other matters - Organisational Impact and Community Impact Statements.

We note that part of the UK response to the increase in offences against emergency workers, was the establishment of an interagency joint agreement.[24]

This agreement enables in addition to a Victim Impact Statement,

- Organisational Impact Statement – to set out the impact a crime has had on their service, e.g. operational disruption and/or
- Community Impact Statements are also available if evidence of prevalence of the offence is a factor.

On the Crown Prosecution Service website there is legal guidance on the use of community impact evidence. The decision of *R v Marco Bondzie (Practice Note)* [2016] EWCA Crim 552, provides that:

- evidence must be provided to the court by a responsible body or senior police officer,
- the relevant statements or reports must be made available to the Crown and defence in good time so that meaningful representations could be made in connection with that material
- even if such material is provided, the judge would only be entitled to treat prevalence as an aggravating factor if satisfied that the level of harm caused in the particular locality was significantly higher than that caused elsewhere
- the judge would need to be satisfied that the circumstances can be described as exceptional and that it is just and proportionate to increase the sentence for such factors.

Director of Public Prosecutions
September 2020

[redacted]

[24] Joint Agreement, On Offences Against Emergency Workers January 2020, involving the CPA, Nationa Police Chiefs Council, NHS, National Fire Chief's Council and HM Prison and Probation Service.

Office of the Director of Public Prosecutions

Level 17, 175 Liverpool Street
Sydney NSW 2000
Locked Bag A8
Sydney South NSW 1232
DX 11525 Sydney Downtown

Phone 02 9285 8606
Fax 02 9285 8600
TTY 02 9285 8646

odpp.nsw.gov.au