



## THE CHIEF MAGISTRATE OF THE LOCAL COURT

30 September 2020

The Hon Peter McClellan AM  
Chairperson  
New South Wales Sentencing Council  
GPO Box 31  
SYDNEY NSW 2001

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Dear Chairperson

### **Re: Assaults on emergency service workers**

Thank you for your recent invitation to make a submission in relation to the review of sentencing for offences involving assaults on police officers, correctional staff, youth justice officers, emergency service workers and health workers (referred to collectively herein as 'emergency service workers').

I understand as part of this review consideration will likely be given to the adequacy of current penalties available for assaults against emergency service workers, as well as sentencing considerations. While these are ultimately matters for government, the Local Court suggests consideration be given to the impact of section 58 of the *Crimes (Sentencing Procedure) Act 1999* on the imposition of current penalties for these offences. As you would be aware, this provision prohibits the Local Court from imposing a new sentence of imprisonment on an offender who is serving an existing term of imprisonment which would subject them to consecutive sentences of imprisonment of 5 years or more.

In February 2019, the Court wrote to the Department of Communities and Justice requesting the limitations in this provision be reviewed on the basis they may be preventing magistrates from imposing effective sentences on offenders for discreet offences in the Local Court (see attached). One of the concerns which prompted this request was the practical difficulties encountered by magistrates in matters involving Table offences prosecuted summarily in the Local Court where the offender has a significant criminal record. As is outlined in the attached, a possible unintended consequence of a decision to prosecute such an offence summarily is that the offender's record prevents the Local Court from imposing a sentence of imprisonment where, but for section 58, such a sentence would be warranted.

The Court raises this issue in the context of this review for two reasons. Firstly, a number of existing assault offences under the *Crimes Act 1914*, including those specific to some emergency service workers, are Table offences:

<b>Table 1</b>	<b>Table 2</b>
Assault occasioning actual bodily harm (AOABH) of police officer in execution of duty (100pu or 7 years): s 60(2)	Assault with intent to commit serious indictable offence on police or correctives officer (50pu and/or 5 years): s 58
AOABH of police officer in execution of duty during public disorder (100pu or 9 years): s 60(2A)	AOABH ( 50 pu and/or 5 years; in company 7 years): s 59
AOABH of law enforcement officer (not police officer) in execution of duty (100pu or 7 years): s 60A(2)	Assault etc police officer in execution of duty w/o occasioning actual bodily harm (50 pu and/or 5 years): s 60(1)
	During public disorder, assault etc police officer in execution of duty w/o causing actual bodily harm (7 years): s 60(1A)
	Assault of law enforcement officer (not police officer) in execution of duty (50pu and/or 5 years): s 60A(1)

Where such offences are committed when the offender is serving an existing term of imprisonment (including where on parole or subject to an ICO), magistrates may encounter the sentencing issues outlined above (and in the attached) where the assaults are prosecuted summarily in the Local Court. That is, section 58 may prevent the imposition of an effective sentence.

Secondly, the Court seeks to raise the issue of the interaction of the limitations outlined in section 58 and the requirements set out in section 56 of the *Sentencing Procedure Act* in relation to sentences for assaults committed by convicted inmates against correctional officers. Section 56 effectively provides a sentence of imprisonment imposed for such an offence must be served consecutively unless the court finds there are special circumstances for a direction that the sentence be served concurrently (or partly concurrently). The Court queries the effectiveness of these requirements in the scenario where the inmate is serving a substantial existing sentence, yet the assault is prosecuted summarily in the Local Court. Where the magistrate considers the threshold in section 5A has been crossed, it is possible the effectiveness of the sentence imposed by magistrates may be undermined by the jurisdictional limitations - a finding of special circumstances may be made on the basis of these limits in order to impose a concurrent or partly concurrent sentence. The Court queries whether this is the intent of section 56(3A).

Thank you for the opportunity to raise these matters for the Council's consideration. Should you wish to discuss any details further, please do not hesitate to contact my Policy Officer, Brooke Delbridge [REDACTED] or [REDACTED]).

Yours sincerely,

A large black rectangular redaction box covering the signature area.

Judge Graeme Henson AM  
**Chief Magistrate**