

Report

Assaults on emergency services workers

New South Wales
Sentencing Council

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NSW Sentencing Council

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Terms of reference

The NSW Attorney General, the Hon Mark Speakman SC MP, issued the following terms of reference on 27 July 2020:

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.

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Executive summary

- 0.1 In July 2020, the Attorney General asked us to review the sentencing for offences involving assaults on police officers, correctional staff, youth justice officers, emergency services workers and health workers. This report is the product of that review.
- 0.2 There are a range of offences against emergency services workers in NSW. These include offences against police officers and other law enforcement officers, contained in s 60 and s 60A of the *Crimes Act 1900* (NSW) ("*Crimes Act*"), and offences against ambulance officers, contained in s 67J of the *Health Services Act 1997* (NSW) ("*Health Services Act*"). There are also offences of obstructing or hindering rural fire brigade officers, State Emergency Service officers and members of Fire and Rescue NSW.
- 0.3 There is strong stakeholder support for treating assaults against emergency services workers separately from other types of assaults. The current offence regime for assaults against police and law enforcement officers largely achieves this for these groups, although we make recommendations to improve the clarity, consistency and coverage of these offences to enhance their effect.
- 0.4 In contrast, current laws do not effectively recognise assaults against healthcare workers, including ambulance officers. We therefore recommend there should be new offences for assaults against frontline health workers.
- 0.5 We do not recommend introducing new offences for assaults against other types of emergency services workers, like firefighters and rescue workers. We have heard that these workers experience a low level of assaults and new offences would therefore not be necessary.
- 0.6 Assaults against emergency services workers are subject to the general sentencing principles that apply to all offences in NSW. In this review, we focus on sentencing for adult offenders. We use crime and sentencing data from 2019 because 2020 data may not be representative of general trends due to the impact of COVID-19.
- 0.7 In general, the sentencing principles applicable to assaults against emergency services workers are appropriate. We do not recommend introducing specific sentencing rules for these offences, like mandatory minimum sentences or organisational or community impact statements.
- 0.8 Currently, sentences for assaults against correctional officers and juvenile justice officers are to be served consecutively to existing sentences. This is well supported, however, there are concerns that it is not fully implemented in practice. We therefore recommend further education and guidance for police and judicial officers.

Background: offences against emergency services workers (chapter 2)

- 0.9 There are some common characteristics among offenders who assault emergency services workers and the circumstances in which these offences take place.
- 0.10 One is a relatively high rate of mental illness and drug and alcohol use. This can present challenges to developing effective sentencing provisions, as it may limit the relevance of general deterrence.
- 0.11 Another is that Aboriginal people are over-represented among offenders. This is due to multiple complex factors, including systemic issues in the treatment of and responses to Aboriginal people in the criminal justice system.
- 0.12 Assaults against emergency services workers are generally committed during an existing interaction between the offender and the worker, such as when the offender is being treated, questioned, searched, directed to do something or arrested. Assaults against police occur most frequently at night or in the early morning and are most common in the Sydney, Penrith and Campbelltown metropolitan areas.

The current law: offences (chapter 3)

- 0.13 In NSW, there are several separate offences for assaulting emergency services workers. However, not all categories of workers are captured by these. For example, there are no offences for assaults against health workers.
- 0.14 Most offences against police officers are contained in s 60 of the *Crimes Act*. This section includes six offences: three unaggravated offences and three aggravated offences for conduct occurring during a public disorder. The maximum penalties for the aggravated offences are generally two years longer than the equivalent unaggravated offences. There are also offences against police contained in s 58 and s 546C of the *Crimes Act*.
- 0.15 Section 60A of the *Crimes Act* contains offences against law enforcement officers other than police officers. Law enforcement officers include correctional officers, juvenile justice officers, prosecutors, sheriff's officers, animal cruelty investigators and several others. Section 60A is largely identical to s 60, including the maximum penalties. However, unlike s 60, s 60A does not include aggravated offences for conduct occurring during a public disorder.
- 0.16 There are no offences for assaulting other types of emergency services workers in NSW. However, there are offences for obstructing or hindering NSW Ambulance officers (including by an act of violence) and obstructing or hindering NSW Rural Fire Service brigade officers, State Emergency Service officers and staff of Fire and Rescue NSW. These offences are contained in the legislation governing each of these organisations.
- 0.17 All other Australian states and territories contain separate offences for assaults against emergency services workers. However, who is captured by these offences and the

maximum penalties for committing them varies. For example, unlike NSW, some states and territories include assaults against firefighters, rescue workers and/or health workers in these offences. Some states and territories also have mandatory minimum sentences for these offences.

The current law: sentencing provisions (chapter 4)

- 0.18 Offences against emergency services workers are subject to the general sentencing principles that apply to all crimes in NSW. However, some principles are especially relevant to these offences.
- 0.19 The purposes of sentencing are set out in s 3A of the *Crimes (Sentencing Procedure) Act 1999* (NSW) ("*Crimes (Sentencing Procedure) Act*"). Judgments indicate that the principles of deterrence and denunciation are relevant to sentences for assaults against emergency services workers.
- 0.20 Aggravating and mitigating factors are contained in s 21A of the *Crimes (Sentencing Procedure) Act*. One aggravating factor is that 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". This factor will not apply if an offender is charged with one of the separate offences against emergency services workers, but it may apply if the offender is charged with a "general" assault offence (that is, one that does not specify a particular class of victim).
- 0.21 Where a court sentences an offender for more than one offence, or sentences an offender who is already serving an existing sentence, the offender will generally serve these sentences partly or fully concurrently (that is, at the same time). However, if an offender assaults a correctional officer or juvenile justice officer, the offence is to be sentenced consecutively (that is, after) the first sentence. This is intended to deter these offences and ensure the offender is punished separately for the assault.

The prevalence of offences against emergency services workers (chapter 5)

- 0.22 Research shows that violence against emergency services workers is reasonably common. However, the number of recorded offences which come before the NSW criminal justice system is modest. The main reason for this is that many incidents are under-reported. Another reason is that in the case of those that are reported, various challenges can make it difficult to track the outcomes of offences through the criminal justice system.
- 0.23 Data that is available shows that rates of assaults against emergency services workers vary across different categories of workers. The rate of assaults against police officers, ambulance officers and health workers is high. On the other hand, firefighters and rescue workers experience comparatively low rates of violence.
- 0.24 Offenders who commit assaults against police officers, law enforcement officers or ambulance officers are about as likely to commit these offences again as offenders who commit assaults against members of the general public.

Current sentencing trends (chapter 6)

- 0.25 Broadly, charges for offences against emergency services workers are more likely to be proven than charges for “general” assault offences. This may be because evidence from the victims of these offences (that is, emergency services workers) is very persuasive and/or is often corroborated by other eyewitnesses.
- 0.26 People who are charged with assaults against police officers and other law enforcement officers are about as likely to plead guilty as those charged with “general” assaults. This is the case for both Aboriginal and non-Aboriginal offenders.
- 0.27 Matters where the principal offence is an assault against a police officer or other law enforcement officer are generally more likely to be dismissed due to mental illness than matters involving “general” assaults. This is particularly evident for more serious assaults against police officers and law enforcement officers. It is consistent with literature and submissions suggesting that mental illness is a common feature among people who commit these types of offences.
- 0.28 Offenders convicted of assaults against police officers and other law enforcement officers are more likely to receive sentences of imprisonment, and less likely to receive a Community Correction Order or a Conditional Release Order, compared with offenders convicted of a “general” assault.
- 0.29 Generally, Aboriginal offenders are more likely to receive custodial sentences for assault offences than non-Aboriginal offenders. This trend is more marked for assaults against police officers.

Reforming offences of assaulting emergency services workers (chapter 7)

- 0.30 Currently, NSW law does not effectively recognise violence against some emergency services workers. While there are offences for assaults and related conduct against police officers, law enforcement officers, firefighters, rescue workers and ambulance officers, there are no offences for assaults against health workers (other than ambulance officers).
- 0.31 This is a significant gap. Health workers are exposed to similar risks as police and other law enforcement officers and perform an essential public function. Assaults against these workers should be treated equally to those against law enforcement officers in law.
- 0.32 We therefore recommend that new offences against “frontline health workers” should be included in the *Crimes Act* (**Recommendation 7.1**). These offences should cover assaults against hospital medical workers and hospital security staff (**Recommendation 7.2**) (note one Council member does not support Recommendation 7.2).
- 0.33 We also recommend that the offences against ambulance officers in the *Health Services Act* should be repealed and the new offences against frontline health workers should

cover assaults against ambulance officers instead (**Recommendation 7.1**). This is to address several specific problems with the offences in the *Health Services Act*.

- 0.34 The new offences against “frontline health workers” should be inserted in Part 3, Division 8A of the *Crimes Act* and should be largely modelled on s 60 of the *Crimes Act*. There should be seven new offences: a summary offence, three unaggravated assault offences and three aggravated offences for conduct occurring during a public disorder (**Recommendation 7.3**).
- 0.35 If new offences against frontline health workers are introduced, the government should monitor the rate at which these offences are charged and proven, and the sentencing outcomes for offenders convicted of these offences. Specific regard should be had to the proportion of people charged with these offences who are Aboriginal and whether and how sentencing outcomes for Aboriginal defendants differ from the overall population (**Recommendation 7.4**).
- 0.36 We do not recommend that the maximum penalties for existing offences against police and other law enforcement officers (contained in s 60 and s 60A of the *Crimes Act*) should be increased. However, we make recommendations for some improvements to these offences. These are:
- all assault and related offences against police officers should be consolidated into s 60 of the *Crimes Act*, requiring the repeal of s 58 and s 546C (**Recommendation 7.5**)
 - offences against law enforcement officers should be extended to assaults against all correctional staff in correctional centres (**Recommendation 7.6**), and
 - there should be aggravated offences for assaults against law enforcement officers occurring during a public disorder (**Recommendation 7.7**).

Reforming sentencing for assaults against emergency services workers (chapter 8)

- 0.37 We do not recommend introducing mandatory minimum sentences for assaults against emergency services workers. These exist in some other Australian states and territories. However, there are a number of arguments against mandatory minimum sentences, including that evidence does not demonstrate that harsher sentences and sentences of imprisonment have a deterrent effect.
- 0.38 Another option is to introduce a presumption that assaults against emergency services workers will be sentenced to full-time detention or a supervised order. There is currently a similar presumption for sentencing of domestic violence offences in NSW. The intention of this scheme was to increase the proportion of offenders in supervision, rather than to increase the number of offenders sentenced to imprisonment. However, it may be a way of achieving more appropriate sentences for assaults against emergency services workers and the government may wish to consider this option further.

- 0.39 Under s 56 of the *Crimes (Sentencing Procedure) Act*, when a court sentences a person to imprisonment for an assault against a correctional officer or juvenile justice officer, this sentence is generally to be served consecutively to the offender's existing sentence. However, evidence suggests that s 56 is not being fully implemented by courts in practice. We therefore recommend that there should be more education and guidance for police and prosecutors about this provision (**Recommendation 8.2**). We also recommend that this provision should extend to offences committed by inmates on remand (**Recommendation 8.1**).
- 0.40 In NSW, a victim's primary involvement in the sentencing process is through making a Victim Impact Statement ("VIS"). Emergency services workers who are victims of assaults should be encouraged and supported to make these statements where appropriate, including by being made aware that they can nominate someone else to read a VIS on their behalf. However, we do not recommend introducing organisational or community impact statements for these offences in NSW.

Other ways to manage assaults against emergency services workers (chapter 9)

- 0.41 This report focusses on the sentencing of assaults against emergency services workers. However, sentencing only arises because an assault has been committed. It is equally, if not more, important to consider how such offences can be prevented from occurring in the first place.
- 0.42 We recommend there should be more public education about violence against emergency services workers (**Recommendation 9.1**). This has proved to be an effective way of preventing such assaults.
- 0.43 We also put forward other violence prevention and mitigation initiatives, drawn from submissions and other reviews, for consideration by government. These include:
- initiatives to improve the interactions between emergency services organisations and members of certain communities
 - initiatives to improve the safety of the places and situations in which emergency services workers operate, and
 - violence prevention training for emergency services workers.

Recommendations

Recommendation 7.1: New offences for assaulting frontline health workers

- (1) A new section that deals with assaults and other actions against frontline health workers should be inserted in Division 8A of Part 3 of the *Crimes Act 1900* (NSW).
- (2) Section 67J of the *Health Services Act 1997* (NSW) should be repealed.

Recommendation 7.2: A definition of “frontline health worker”

- (1) Section 60AA of the *Crimes Act 1900* (NSW) should include a definition of “frontline health worker” as follows:
 - (a) a person employed or engaged as a medical first responder, or
 - (b) a person employed or engaged to provide health or medical treatment to patients in a hospital, or
 - (c) a person employed or engaged to provide security services in a hospital.

Recommendation 7.3: The structure and penalties of the new offences

- (1) The section dealing with assaults and other actions against frontline health workers should include the following offences:
 - (a) obstructing or hindering a frontline health worker (maximum penalty: imprisonment for 12 months and/or a fine of 20 penalty units)
 - (b) assaulting, throwing a missile at, stalking, harassing or intimidating a frontline health worker (maximum penalty: imprisonment for five years)
 - (c) assaulting, throwing a missile at, stalking, harassing or intimidating a frontline health worker during a public disorder (maximum penalty: imprisonment for seven years)
 - (d) assaulting a frontline health worker occasioning actual bodily harm (maximum penalty: imprisonment for seven years)
 - (e) assaulting a frontline health worker occasioning actual bodily harm during a public disorder (maximum penalty: imprisonment for nine years)
 - (f) wounding or causing grievous bodily harm to a frontline health worker, reckless as to causing actual bodily harm to that worker or any other person (maximum penalty: imprisonment for 12 years)
 - (g) wounding or causing grievous bodily harm to a frontline health worker during a public disorder, reckless as to causing actual bodily harm to that worker or any other person (maximum penalty: imprisonment for 14 years).
- (2) Each of the offences in this section should only apply if the conduct is committed “while in the execution of the worker’s duty”.
- (3) This section should include a sub-section equivalent to s 60(4) and s 60A(4), *Crimes Act 1900* (NSW).

Recommendation 7.4: Monitoring the new offences

- (1) If new offences against frontline health workers are introduced, the NSW Government should monitor:
 - (a) the rate at which these offences are charged and proven, and
 - (b) the sentencing outcomes for offenders convicted of these offences.

- (2) The NSW Government should have particular regard to the proportion of people charged with these offences who are Aboriginal and whether and how sentencing outcomes for Aboriginal defendants differ from the overall population.

Recommendation 7.5: All offences of assaulting police officers should be contained in s 60 of the *Crimes Act*

- (1) A new offence of resisting or hindering a police officer in the execution of the officer's duty should be added to s 60 of the *Crimes Act 1900* (NSW). This offence should be a summary-only offence with a maximum penalty of 12 months' imprisonment and/or a fine of 20 penalty units.
- (2) The offences contained in s 546C of the *Crimes Act 1900* (NSW) and in the second and third paragraphs of s 58 of the *Crimes Act 1900* (NSW) should be repealed.

Recommendation 7.6: Offences against law enforcement officers should be extended to all correctional staff in correctional centres

The definition of "law enforcement officer" in s 60AA of the *Crimes Act 1900* (NSW) should include "a person who is employed at or works from a correctional centre".

Recommendation 7.7: Aggravated offences for assaults against law enforcement officers during public disorders

- (1) Three new offences should be added to s 60A of the *Crimes Act 1900* (NSW):
 - (a) assaulting, throwing a missile at, stalking, harassing or intimidating a law enforcement officer (other than a police officer) during a public disorder (maximum penalty: imprisonment for seven years)
 - (b) assaulting a law enforcement officer (other than a police officer) occasioning actual bodily harm during a public disorder (maximum penalty: imprisonment for nine years)
 - (c) wounding or causing grievous bodily harm to a law enforcement officer (other than a police officer) during a public disorder, reckless as to causing actual bodily harm to that worker or any other person (maximum penalty: imprisonment for 14 years).
- (2) The definition of "public disorder" in s 4 of the *Crimes Act 1900* (NSW) should be amended to clarify that it includes a riot or civil disturbance occurring in a correctional centre.

Recommendation 8.1: Extend sections 56 and 58(3)(a)(ii) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) to offences committed by inmates on remand

Sections 56 and 58(3)(a)(ii) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) should not be limited to offences committed by offenders while a "convicted inmate" or "while a person subject to control". These sections should also apply to all relevant offences committed by inmates on remand.

Recommendation 8.2: Further guidance and training on sections 56 and 58 of the *Crimes (Sentencing Procedure) Act 1999* (NSW)

- (1) The NSW Police Force should provide further training to police prosecutors about s 56 and s 58 of the *Crimes (Sentencing Procedure) Act 1999* (NSW).
- (2) The Judicial Commission of NSW should:
 - (a) include further information about s 56 and s 58 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) in the *Sentencing Bench Book*, and

- (b) adjust the Judicial Information Research System to indicate when consecutive sentences have been imposed.

Recommendation 9.1: A public education campaign

The NSW Government should develop and carry out a public education campaign about:

- (a) the wrongfulness of violence against emergency services workers, and
- (b) the criminal consequences of such violence.

1. Introduction

In Brief

There is a range of assault offences against emergency services workers in NSW. These are serious crimes with substantial maximum penalties. This report considers whether these offences, and their penalties, should be changed to punish and deter these crimes more effectively.

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Terms of Reference

- 1.1 On 27 July 2020, the Attorney General requested that we review sentencing for offences involving assaults on police officers, correctional staff, youth justice officers, emergency services workers and health workers, and recommend appropriate reform. In undertaking the review, the Council was to 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.

Background to this review

1.2 Violence against emergency services workers is an issue of community concern. It is frequently discussed in the media.¹ The NSW Legislative Assembly Committee on Law and Safety (“Committee on Law and Safety”) has recently conducted two reviews on this issue, which we describe below.

1.3 Over the course of this review, we have heard strong concerns about the severe impact of violence against emergency services workers. Assaults can result in both short-term and long-term physical and psychological injuries. In the worst cases, they can end the careers of emergency services workers. We have also heard about the pressure that assaults against emergency services workers place on worker’s compensation schemes, with some organisations reporting large compensation payouts in recent years.²

1.4 While all physical violence is unacceptable, assaults against emergency services workers are particularly serious because the victims work, often in knowingly dangerous situations, to keep the community safe. As the Committee on Law and Safety wrote in 2017:

Our emergency services workers, both paid and voluntary, perform a vital role day in and day out to keep the community safe, and it is essential that they too are safe and secure in the line of duty.³

1.5 Assaults against emergency services workers often occur in difficult, high-pressure situations. These factors pose challenges to developing effective offence and sentencing regimes for these assaults. Mental illness and drug and alcohol abuse are

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1. See, eg, J Power, “Bite, Punch, Throw: Violence against Ambos Soars”, *The Sun-Herald*, 29 April 2018, 6; “Protectors Need our Protection”, *Illawarra Mercury*, 5 April 2018, 19; A Nilsson, “As Booze-Fuelled Violence against Cops Decreases, Thousands Still Assaulted Each Year” *news.com.au* (21 September 2020) <https://www.news.com.au/finance/work/at-work/as-booze-fuelled-violence-against-cops-decreases-thousands-still-assaulted-each-year/news-story/8952310d48f06f70350072d8ab108cb1> (retrieved 2 July 2021).
 2. Roundtable 2, *Consultation ASC02*; NSW Police Force, *Submission AS19*, 26.
 3. NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) iv.

prevalent among offenders. Aboriginal people are significantly over-represented among people charged and sentenced for these offences.

Offences against emergency services workers

- 1.6 There is currently a range of offences against emergency services workers in NSW. The main offences we consider are those contained in s 60 and s 60A of the *Crimes Act 1900* (NSW) ("*Crimes Act*"). These include assaults and other offences against police, and assaults and other offences against other law enforcement officers, respectively. There are also offences against certain officers contained in s 58 and s 546C of the *Crimes Act*.
- 1.7 "Law enforcement officer" is defined in s 60AA of the *Crimes Act*. The definition includes correctional officers, juvenile justice officers, prosecutors, sheriff's officers, animal cruelty investigators and several others.⁴
- 1.8 There are also offences against ambulance officers, rural fire brigade officers, State Emergency Service officers and members of Fire and Rescue NSW. These offences are not contained in the *Crimes Act*. Largely, they are less serious offences with comparatively small maximum penalties. They are also rarely charged.
- 1.9 The general law applies to assaults against emergency services workers that are not covered by special offences. In such cases, an offender may be subject at sentencing to the aggravating factor that the victim was an emergency services worker or other public official.⁵

Terminology used in this report

- 1.10 In this report, we consider many offences. For ease of reference, we refer to two groups of assault offences:
 - "general offences" which may be committed against anyone, and
 - "offences against emergency services workers" which may only be committed against members of specified groups.

The list of offences in each of these groups can be found in appendix A.

- 1.11 In this report, we use the term "emergency services worker" frequently. Unless stated otherwise, we use this expression generically to refer to police officers, correctional and

4. Note that Juvenile Justice is now known as Youth Justice NSW. However, this report uses the term "juvenile justice" as this is used in the relevant legislation: *Crimes Act 1900* (NSW) s 60AA(j)–(k).

5. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(a).

juvenile justice officers, firefighters, members of the NSW Rural Fire Service, members of the NSW State Emergency Service, ambulance officers and healthcare workers.

Past reviews about this issue

- 1.12 In recent years, several reviews around Australia have considered the issue of violence against emergency services workers.
- 1.13 In NSW, the Committee on Law and Safety has published two reports:
- *Violence against Emergency Services Personnel* published in August 2017,⁶ and
 - *Assaults on Members of the NSW Police Force* published in November 2020.⁷
- 1.14 The Queensland and Tasmanian Sentencing Advisory Councils have also conducted reviews on this issue. The Queensland Council released its final report in October 2020,⁸ and the Tasmanian Council released a report in March 2013.⁹
- 1.15 We refer to the findings and recommendations of these reviews throughout this report.

Our approach in this review

- 1.16 This report is the product of research and consultations. We thank everyone who has taken the time to write or speak to us.

Submissions

- 1.17 After receiving our Terms of Reference on 27 July 2020, we invited written submissions to this review. We received 22 submissions, all of which are available on our website.¹⁰ The list of submissions is also available in appendix B.

6. NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017).

7. NSW, Legislative Assembly Committee on Law and Safety, *Assaults on Members of the NSW Police Force*, Report 1/57 (2020).

8. Queensland Sentencing Advisory Council, *Penalties for Assaults on Public Officers*, Final Report (2020).

9. Tasmania, Sentencing Advisory Council, *Assaults on Emergency Service Workers*, Final Report No 2 (2013).

10. NSW Sentencing Council, "Assaults on Emergency Services Workers: Submissions" (30 September 2020) <<http://www.sentencingcouncil.justice.nsw.gov.au/Pages/assault-police-submissions.aspx>> (retrieved 2 July 2021).

Consultations

- 1.18 Between late 2020 and early 2021, we conducted six consultations through video conferencing. These were a mix of roundtable and individual consultations.
- 1.19 A full list of the consultations held can be found in appendix C.

Crime and sentencing data

- 1.20 We obtained crime and sentencing data from the NSW Bureau of Crime Statistics and Research (“BOCSAR”). We refer to the data throughout this report. We thank BOCSAR for its generous assistance.
- 1.21 In this report, we mostly rely on crime and sentencing data from 2019. This is because 2020 data may not be representative of general trends, due to the impact of COVID-19. For example, BOCSAR has reported that in March and April 2020, there was a sharp decline in the number of recorded non-domestic related assaults in NSW. This reduction closely coincided with “the social distancing and isolation measures implemented in response to the COVID-19 pandemic”.¹¹

Outline of this report

- 1.22 This report is organised as follows:
- **Chapter 2: Background: offences against emergency services workers** describes the background and contextual factors that are commonly present in assaults against emergency services workers.
 - **Chapter 3: The current law: offences** summarises current assault offences against emergency services workers in NSW and other Australian states and territories.
 - **Chapter 4: The current law: sentencing provisions** summarises current sentencing provisions relevant to assaults against emergency services workers in NSW and other Australian states and territories.
 - **Chapter 5: The prevalence of offences against emergency services workers** sets out data on the number of assaults committed against emergency services workers in NSW.
 - **Chapter 6: Current sentencing trends** sets out data on the sentences imposed for assaults against emergency services workers in NSW.

11. M-T Kim and F Leung, *COVID-19 Pandemic and Crime Trends in NSW*, Bureau Brief no 147 (NSW Bureau of Crime Statistics and Research, 2020) 14.

- **Chapter 7: Reforming offences of assaulting emergency services workers** presents our recommendations to reform the structure and content of assault offences against emergency services workers.
- **Chapter 8: Reforming sentencing for assaults against emergency services workers** presents our recommendations to reform the sentencing provisions that apply to offences of assaulting emergency services workers.
- **Chapter 9: Other ways to manage assaults against emergency services workers** summarises other ways in which assaults against emergency services workers can be managed.

2. Background: offences against emergency services workers

In Brief

Assaults against emergency services workers occur in a variety of contexts. A high proportion of offenders experience mental illness and/or drug and alcohol use at the time of offending. Aboriginal people are disproportionately represented among offenders. Offences usually occur in the context of a pre-existing interaction with an emergency services worker. The range of circumstances in which these offences arise presents a challenge to developing a uniform sentencing regime.

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- 2.1 This chapter seeks to explain why, when and how often assaults against emergency services workers are committed.
- 2.2 There is limited research on this issue in Australia. Most research comes from the United States and may not translate to the Australian context.¹ Past reviews have recommended commissioning further research into factors that contribute to assaults against emergency services workers.²
- 2.3 Within these limitations, we examine some of the key characteristics of offences against emergency services workers. We focus on offences against police officers, as most research relates to this issue. We draw on the research conducted by the Queensland

1. NSW, Legislative Assembly Committee on Law and Safety, *Assaults on Members of the NSW Police Force*, Report 1/57 (2020) [1.35]–[1.36].

2. NSW, Legislative Assembly Committee on Law and Safety, *Assaults on Members of the NSW Police Force* Report 1/57 (2020) rec 4.

Sentencing Advisory Council in its recent report, *Assaults on Public Officers* (“Queensland Report”).³

Offenders share some common characteristics

- 2.4 Consultations and research for this review demonstrate there are common characteristics among people who commit offences against emergency services workers.
- 2.5 One is a relatively high rate of mental illness and drug and alcohol abuse. This can present challenges to developing effective sentencing provisions, as it may limit the relevance of general deterrence.
- 0.44 Another is that Aboriginal people are over-represented. This is due to multiple complex factors, including systemic issues in the treatment of and responses to Aboriginal people in the criminal justice system, which we consider below.

A disproportionate number of offenders experience mental illness

- 2.6 Several studies have found that people with mental illness are over-represented among those who commit offences against law enforcement officers.⁴ This is especially true for people who assault correctional officers and for people who assault healthcare workers. Assaults against correctional officers may be attributable to the high rate of mental illness in prison populations,⁵ and assaults against healthcare workers may occur while they are providing health services to the offender.⁶
- 2.7 Many frontline organisations have told us that, in their experience, a large number of offenders have a mental illness and/or cognitive impairment.⁷ For example, NSW Ambulance estimated that a third of assaults against ambulance officers are from mental health presentations.⁸ NSW Police reported that 12% of incidents involving an assault on a police officer in 2019 were mental illness-related.⁹

3. Queensland Sentencing Advisory Council, *Penalties for Assaults on Public Officers*, Final Report (2020); C E W Bond and others, *Assaults on Public Officers: A Review of Research Evidence* (Griffith Criminology Institute, 2020).

4. See, eg, C E W Bond and others, *Assaults on Public Officers: A Review of Research Evidence* (Griffith Criminology Institute, 2020) 9–10; NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) [1.35]–[1.42].

5. Australian Institute of Health and Welfare, *The Health of Australia’s Prisoners 2018* (2019) 27.

6. C E W Bond and others, *Assaults on Public Officers: A Review of Research Evidence* (Griffith Criminology Institute, 2020) 9–10.

7. Legal Aid NSW, *Submission AS08*, 3; Roundtable 1, *Consultation ASC01*; Roundtable 2, *Consultation ASC02*.

8. Roundtable 1, *Consultation ASC01*.

9. NSW Police Force, *Submission AS19*, 22.

- 2.8 The high rate of mental illness among people who assault emergency services workers is one reason why not all of these assaults are dealt with in the criminal justice system. Some incidents involving mentally ill offenders are not reported to the police. We have also heard anecdotally that police officers sometimes appropriately exercise discretion not to lay charges for assaults on emergency services workers when the perpetrator is experiencing mental illness.¹⁰ On the other hand, two submissions provide anecdotal evidence that offenders experiencing mental illness are sometimes charged and sentenced for these offences where this may not be appropriate.¹¹

Drug and alcohol use is common

- 2.9 Alcohol and drug abuse is another common feature among offenders who assault emergency services workers.¹²
- 2.10 This was reported to us in submissions and consultations. For example, NSW Police reported that, in 2019, 48% of incidents in which a police officer was assaulted were alcohol related, and 14% were drug related.¹³ We also heard that crystal methamphetamine (“ice”) use is a particular problem in relation to assaults against emergency services workers, as it often makes users combative and aggressive.¹⁴

Aboriginal people are over-represented among offenders

- 2.11 Aboriginal people represent 3.4% of the NSW population.¹⁵ However, it is recognised that they are over-represented within the criminal justice system.¹⁶ This includes among recorded offenders of assaults against emergency services workers.
- 2.12 The table below sets out the number and proportion of defendants with a proven charge for select assault offences in 2019 who were Aboriginal.

10. Roundtable 2, *Consultation ASC02*; Information provided by NSW Ambulance, 2020.

11. Aboriginal Legal Service (NSW/ACT), *Submission AS22*, 4–6; Legal Aid NSW, *Submission AS08*, 3–4.

12. Queensland Sentencing Advisory Council, *Penalties for Assaults on Public Officers*, Final Report (2020) 45; C E W Bond and others, *Assaults on Public Officers: A Review of Research Evidence* (Griffith Criminology Institute, 2020) iv, 9; NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) [1.35]–[1.42].

13. NSW Police Force, *Submission AS19*, 22.

14. Roundtable 1, *Consultation ASC01*.

15. Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians* (catalogue no 3103.0, 31 August 2018).

16. M Schwartz, “Redressing Indigenous Over-Representation in the Criminal Justice System with Justice Reinvestment” (2013) 118 *Precedent* 38, 39; NSW, Department of Communities and Justice, *Reducing Aboriginal Representation in the Criminal Justice System 2018–2021* (C2021) 3; NSW Bureau of Crime Statistics and Research, “Aboriginal Over-Representation in the NSW Criminal Justice System” (3 December 2020) <https://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Aboriginal-over-representation.aspx> (retrieved 2 July 2021).

Table 2.1: Number and percentage of defendants with a proven charge for select assault offences who were Aboriginal, 2019

Conduct	“General” offence ¹⁷	Offence against police officer ¹⁸	Offence against law enforcement officer ¹⁹	Offence against ambulance officer ²⁰
Common assault	25.8% (3258 of 12,626)	40.3% (421 of 1044)	58.7% (64 of 109)	9.1% (1 of 11)
Assault occasioning actual bodily harm	30.0% (1529 of 5098)	38.6% (66 of 171)	70.6% (24 of 34)	9.5% (2 of 21)
Wound or cause grievous bodily harm, reckless as to causing actual bodily harm	32.3% (148 of 458)	40.0% (2 of 5)	50.0% (1 of 2)	N/A

Source: NSW Bureau of Crime Statistics and Research, reference 20-19593, table 1, table 2.

- 2.13 Table 2.1 demonstrates that Aboriginal people are over-represented as recorded offenders of assault offences. This over-representation is more marked for offences against police officers and law enforcement officers than for “general” assaults. Other reports have found a similar trend.²¹
- 2.14 The proportion of defendants with a proven charge who are Aboriginal has remained stable for the above 11 offences over the past five years.²²
- 2.15 The reasons behind the over-representation of Aboriginal people in the Australian criminal justice system are complex and have been considered in numerous reviews. These reviews have identified factors including:
- the long history of conflict and distrust between Aboriginal people and police
 - ongoing racism in Australia, including in the provision of emergency services
 - that Aboriginal communities are subject to higher rates of policing

17. *Crimes Act 1900* (NSW) s 61, s 59(1), s 35(2), s 35(4).

18. *Crimes Act 1900* (NSW) s 60(1), s 60(2), s 60(3).

19. *Crimes Act 1900* (NSW) s 60A(1)–(3).

20. *Health Services Act 1997* (NSW) s 67J(1)–(2). Note that s 67J(2) requires the assault to be committed by “an act of violence” but does not require the victim to suffer actual bodily harm. However, it is the closest analogue so has been used for comparison here.

21. Queensland Sentencing Advisory Council, *Penalties for Assaults on Public Officers*, Final Report (2020) 24.

22. NSW Bureau of Crime Statistics and Research, reference 20-19593, table 1, table 2.

- that Aboriginal people are more likely to be arrested (particularly for minor offences) than non-Aboriginal people, and
 - that Aboriginal people experience higher rates of mental illness.²³
- 2.16 Another factor contributing to the over-representation of Aboriginal people among defendants who are charged and sentenced for these offences is that, generally, Aboriginal people are less likely to be diverted from the criminal justice system than non-Aboriginal people.²⁴ This includes being diverted to mental health and drug and alcohol support services. For example, in chapter 6, we set out data demonstrating that Aboriginal people who are charged with assaults against police officers and law enforcement officers are less likely to have their charges dismissed due to mental illness than offenders generally.²⁵
- 2.17 The low participation rates of Aboriginal people in diversion programs is due to a range of factors, including:
- strict eligibility requirements that disproportionately exclude Aboriginal people
 - inconsistent use of discretion by police and judicial officers to divert a defendant
 - a lack of services and facilities to support the provision of diversionary opportunities in regional and remote areas
 - a lack of culturally appropriate or targeted diversionary opportunities, and

23. Aboriginal Legal Service (NSW/ACT), *Submission AS22*, 2; Australian Law Reform Commission, *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report 133 (2017) [11.52], [14.24]–[14.33]; M Schwartz, “Redressing Indigenous Over-Representation in the Criminal Justice System with Justice Reinvestment” (2013) 118 *Precedent* 38, 39; K A Hine, J L Payne and A R Piquero, “When Suspects Resist Arrest: Prevalence, Correlates, and Implications for Front-Line Policing” (2021) 24 *Police Quarterly* 135, 149–150; Australian Parliament, Senate Finance and Public Administration References Committee, *Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services*, Report (2016) [5.76]–[5.81]; C Bond, D Singh and H Kajlich, *Not a One-Way Street: Understanding the Over-Representation of Aboriginal and Torres Strait Islander Peoples on Charges of Assaults against Public Officers*, Report provided to the Queensland Sentencing Advisory Council (2020) 11–14, 23–24; N Chowdhury and others, “Psychosis and Criminal Offending: A Population-Based Data-Linkage Study” (2021) 48 *Criminal Justice and Behavior* 157, 171–172.

24. National Indigenous Drug and Alcohol Committee, *Bridges and Barriers: Addressing Indigenous Incarceration and Health* (revised ed 2013) 7–8; T Calma, *Preventing Crime and Promoting Rights for Indigenous Young People with Cognitive Disabilities and Mental Health Issues* (Australian Human Rights Commission, 2008) 34.

25. See [6.21].

- a mistrust of the police and legal system, which may discourage Aboriginal offenders from participating in a program.²⁶
- 2.18 Research indicates that increasing the participation rates of Aboriginal people in diversion programs can have a positive impact on rates of recidivism as well as on the health, social and economic outcomes for these offenders and their communities.²⁷ While outside the scope of this review, low participation rates of Aboriginal people in diversionary programs is an issue of concern.

Offences take place in some common circumstances

- 2.19 Generally, assaults against emergency services workers occur within a pre-existing interaction between the offender and the victim. Below, we outline some of the common types of interactions.
- 2.20 The context in which an offence takes place often informs sentencing principles. For example, these offences are rarely pre-meditated, which may mean general deterrence is less important. On the other hand, the fact that they often occur while the victim is trying to assist the offender (or someone else) may mean denunciation of the offender's actions is especially important.

Offences usually occur during an existing interaction

- 2.21 Offences against emergency services workers are rarely committed as an isolated event. More commonly, they occur in an existing interaction between the offender and the worker, such as when the offender is being treated, questioned, searched, directed to do something or arrested. For example, in their submission to this review, NSW Police report that most physical assaults against police officers occur while the officer is arresting or restraining the offender.²⁸ Some assaults and related actions against law enforcement officers may be responses to excessive or improper use of powers.²⁹

26. National Indigenous Drug and Alcohol Committee, *Bridges and Barriers: Addressing Indigenous Incarceration and Health* (revised ed 2013) 7–8, 11; Australian Institute of Health and Welfare, *Diverting Indigenous Offenders from the Criminal Justice System*, Resource Sheet no 24 (Closing the Gap Clearinghouse, 2013) 11, 12–13; T Calma, *Preventing Crime and Promoting Rights for Indigenous Young People with Cognitive Disabilities and Mental Health Issues* (Australian Human Rights Commission, 2008) 34.

27. National Indigenous Drug and Alcohol Committee, *Bridges and Barriers: Addressing Indigenous Incarceration and Health* (revised ed 2013) 11; Australian Institute of Health and Welfare, *Diverting Indigenous Offenders from the Criminal Justice System*, Resource Sheet no 24 (Closing the Gap Clearinghouse, 2013) 4, 9, 12.

28. NSW Police Force, *Submission AS19*, 6.

29. See, eg, *Attalla v State of NSW* [2018] NSWDC 190; *JH v R* [2019] NSWSC 192; *Addouj v R* [2016] NSWDC 47.

2.22 The Queensland Report analysed sentencing remarks in a sample of matters involving serious assaults against public officers.³⁰ It found that the most common circumstance preceding the assault was that the offender was being arrested or restrained. Other common circumstances were:

- the offender was resisting an instruction given by the public officer
- the assault was unprovoked
- the public officer intervened in an ongoing fight or dispute
- the public officer was attempting to provide aid or assistance to the offender
- the offender retaliated to a perceived slight or insult
- the offender “lashed out” following an emotional event, and
- the offender was attempting to prevent the arrest or detention of someone else.³¹

Offenders are often charged with associated offences

2.23 As offences against emergency services workers are usually committed in the context of an existing interaction between the offender and the victim, they are often charged alongside other offences (“associated offences”). This is particularly the case for offences against police officers, as they are often committed while the officer is arresting or apprehending the offender for another crime. It is less common for offences against correctional officers.³²

2.24 The Queensland Report reviewed the associated offences in a sample of matters involving assaults against public officers. Common associated offences were:

- public nuisance
- wilful damage
- possessing illegal drugs

30. This includes offences against *Criminal Code* (Qld) s 340(1)(c) (assault a person while they are performing a duty imposed by law), s 340(1)(d) (assault a person because they have performed a duty imposed by law), and s 340(2AA) (assault, resist or obstruct a public officer while they are performing a function of their office, or because they have performed a function of their office). A “public officer” means a person discharging a duty imposed under an Act or of a public nature, or holding office under the Crown: *Criminal Code* (Qld) s 1 definition of “public officer”.

31. Queensland Sentencing Advisory Council, *Penalties for Assaults on Public Officers*, Final Report (2020) 43–44.

32. Queensland Sentencing Advisory Council, *Penalties for Assaults on Public Officers*, Final Report (2020) 51.

- contravention of a domestic violence order, and
 - other (“general”) assaults.³³
- 2.25 Offensive language is another offence that is historically associated with assaulting police and/or resisting arrest charges.³⁴

Offences are usually committed in public places at night

- 2.26 A recent Australian study found that charges for resisting arrest most commonly occur between midnight and 6:00am and least commonly between 6:00am and noon. They are also more common on weekends.³⁵
- 2.27 In their submission to this review, NSW Police report that the regions with the highest numbers of assaults against police officers are Central Metropolitan (Sydney) and Northern (NSW). The Police Districts with the highest numbers are Nepean, Sydney City and Campbelltown City.³⁶
- 2.28 NSW Police also report that, in 2019, assaults against police officers occurred most often outdoors or in a public place, followed by:
- a residential place
 - a law enforcement venue (like a police station)
 - licensed premises
 - a business or commercial venue, and
 - on public transport.³⁷
- 2.29 One study found that in Australia, lower socioeconomic areas have higher rates of resist arrest charges than higher socioeconomic areas. The authors suggested this is less a

33. Queensland Sentencing Advisory Council, *Penalties for Assaults on Public Officers*, Final Report (2020) 54–55.

34. C Feerick, “Policing Indigenous Australians: Arrest as a Method of Oppression” (2004) 29 *Alternative Law Journal* 188, 188–189, 191; D Bentley Brown, C Cunneen and S Russell, “It’s All About the Benjamins’: Infringement Notices and Young People in New South Wales” (2017) 42 *Alternative Law Journal* 253, 7; M Schwartz, “Redressing Indigenous Over-Representation in the Criminal Justice System with Justice Reinvestment” (2013) 118 *Precedent* 38, 39; R Jochelson, “Aborigines and Public Order Legislation in New South Wales” (1997) 34 *Crime and Justice Bulletin* 3.

35. K A Hine, J L Payne and A R Piquero, “When Suspects Resist Arrest: Prevalence, Correlates, and Implications for Front-Line Policing” (2021) 24 *Police Quarterly* 135, 148.

36. NSW Police Force, *Submission AS19*, 9.

37. NSW Police Force, *Submission AS19*, 11.

consequence of the level of disadvantage in these areas, but rather, because police commands in such areas may be more likely to practice proactive policing.³⁸

38. K A Hine, J L Payne and A R Piquero, "When Suspects Resist Arrest: Prevalence, Correlates, and Implications for Front-Line Policing" (2021) 24 *Police Quarterly* 135, 147.

3. The current law: offences

In Brief

There is a wide range of assault offences in NSW. Most offences against law enforcement officers, including police, are contained in s 60 and s 60A of the *Crimes Act 1900* (NSW). There are also offences against other categories of emergency services workers in other statutes.

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- 3.1 In this chapter, we summarise the law of assault in NSW. We explain the key characteristics of assault, and the variety of current offences.

- 3.2 First, we summarise “general” assault offences. We then examine assault offences against emergency services workers, focussing on offences against police officers and law enforcement officers contained in s 60 and s 60A of the *Crimes Act 1900* (NSW) (“*Crimes Act*”). We also consider assault offences against emergency services workers in other states and territories.
- 3.3 In the next chapter, we summarise the principles that apply when sentencing for these offences, focussing on those that are particularly relevant to offences against emergency services workers.

Overview of assault offences in NSW

- 3.4 There are over 25 assault offences in NSW. These vary in several ways, including by:
- the type of conduct
 - the nature of the injury inflicted
 - the circumstances in which the offence occurs, and
 - the identity of the victim.
- 3.5 The maximum penalties for assault offences range from two years’ imprisonment (for common assault) to 25 years’ imprisonment (for wounding or causing grievous bodily harm with intent to cause grievous bodily harm).¹ Appendix A lists “general” assault offences in NSW (that is, offences that do not specify the identity of the victim).

Some assault offences vary by the offender’s conduct

- 3.6 Most offences require the offender to “assault” the victim. An assault includes any act by which a person intentionally or recklessly causes another to apprehend immediate and unlawful violence. It is not necessary for the offender to touch the victim, although they may.²
- 3.7 Some offences involve throwing a missile at, stalking, harassing or intimidating the victim.³ Other offences involve resisting, hindering or obstructing the victim.⁴ Although these are not strictly “assaults”, they are very similar, and, because they are included in the provisions relating to assaults of police and other law enforcement officers, we treat them as assaults in this report.

1. *Crimes Act 1900* (NSW) s 61, s 33(1).

2. Judicial Commission of NSW, *Criminal Trial Courts Bench Book*, “General Principles” [5-010] (retrieved 12 July 2021).

3. See, eg, *Crimes Act 1900* (NSW) s 60(1)–(1A), s 60A(1), s 60B(1), s 60E(1).

4. See, eg, *Crimes Act 1900* (NSW) s 57, s 58, s 546C.

Some assault offences vary by the victim's injury

- 3.8 Assault offences often vary based on the nature of injury experienced by the victim. More serious injuries typically attract higher maximum penalties. Common categories of injury include:
- no actual bodily harm⁵
 - actual bodily harm⁶
 - wounding,⁷ and
 - grievous bodily harm.⁸
- 3.9 “Grievous bodily harm” includes the destruction of the foetus of a pregnant woman (other than through a lawful abortion), any permanent or serious disfiguring of a person, and any grievous bodily disease.⁹

Some assault offences vary by the circumstances in which they are committed

- 3.10 Some assault offences are more serious because of the circumstances in which they are committed, such as in company¹⁰ or during a public disorder.¹¹ For example, the maximum penalty for assault occasioning actual bodily harm is five years’ imprisonment, but it is seven years’ imprisonment if the assault is committed in company.¹²
- 3.11 If there is no higher maximum penalty for an offence committed in company, this still may be a factor that increases the seriousness of the offence at sentencing.¹³

Some assault offences vary by the victim's identity

- 3.12 Some assault offences only apply to certain victims. This includes offences against certain categories of emergency services workers, which we consider in this review.

5. See, eg, *Crimes Act 1900* (NSW) s 59A(1), 60(1), s 60A(1), s 60E(1), s 61.

6. See, eg, *Crimes Act 1900* (NSW) s 59(1), s 59A(2), s 60(2), s 60A(2), s 60E(2).

7. See, eg, *Crimes Act 1900* (NSW) s 33(1)(a), s 33(2)(a), s 35(3), s 35(4).

8. See, eg, *Crimes Act 1900* (NSW) s 33(1)(b), s 33(2)(b), s 35(1), s 35(2), s 54.

9. *Crimes Act 1900* (NSW) s 4(1).

10. See, eg, *Crimes Act 1900* (NSW) s 35(1), s 35(3), s 59(2). For the meaning of “in company,” see *Markou v R* [2012] NSWCCA 64 [24]–[28].

11. See, eg *Crimes Act 1900* (NSW) s 59A(1)–(2), s 60(1A), s 60(2A), s 60(3A). For the meaning of “public disorder”, see *Crimes Act 1900* (NSW) s 4(1) definition of “public disorder”.

12. *Crimes Act 1900* (NSW) s 59(1)–(2).

13. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(e).

Other examples include offences against members of the clergy and offences against school students and staff.¹⁴

There are several defences to assault offences

- 3.13 There are several defences to criminal charges. Defences are usually general (meaning they can apply to any offence) rather than specific to an offence. The defences most likely to arise in relation to assault are:
- self-defence: this applies if the person believes the assault is necessary to defend themselves or someone else, to prevent or terminate the unlawful deprivation of their or someone else's liberty, to protect property or to prevent or end trespass to land, and their conduct is a reasonable response in the circumstances as they perceive them,¹⁵ and
 - necessity: this applies if the assault was necessary, or the person reasonably believed it was necessary, to avoid or prevent death or serious injury to the person or someone else, and their acts were reasonable and proportionate to this risk.¹⁶
- 3.14 If a person can prove that one of these defences applied when they committed an alleged assault, then they will not be guilty of the offence.¹⁷
- 3.15 A person can claim they were acting in self-defence even if the victim was a police officer or other law enforcement officer.¹⁸ The defence is still available if the officer's conduct was lawful.¹⁹

Offences against emergency services workers in NSW

- 3.16 As we discuss above, there are several assault offences that apply to specific categories of victims. These include offences against some emergency services workers, such as police officers. However, not all categories of emergency services workers are covered by separate offences. For example, there are no offences for

14. *Crimes Act 1900* (NSW) s 56, s 60E(1)–(3).

15. *Crimes Act 1900* (NSW) s 418(2).

16. Judicial Commission of NSW, *Criminal Trial Courts Bench Book*, "Necessity" [6-350] (retrieved 1 July 2021). See also LexisNexis, *Halsbury's Laws of Australia*, "Necessity or Emergency: Duress" [130-7850]–[130-7860] (retrieved 1 July 2021).

17. *Crimes Act 1900* (NSW) s 418(1); Judicial Commission of NSW, *Criminal Trial Courts Bench Book*, "Necessity" [6-350] (retrieved 1 July 2021).

18. *Crawford v R* [2008] NSWCCA 166 [23].

19. *Crimes Act 1900* (NSW) s 422.

assaults against health workers. In chapter 7, we recommend that there should be new offences for assaults against hospital health and security staff.²⁰

- 3.17 If an emergency services worker who is covered by one of the separate offences is assaulted, the offender can be charged with that offence. However, if there is no such offence, the offender can instead be charged with a “general” assault offence. In such a case, the offence may be considered more serious at sentencing, because of the aggravating factor that the victim was an emergency services worker or other public official.²¹ We consider this further in the next chapter.

Offences against police officers

- 3.18 A range of offences apply specifically to assaults (and related conduct) committed against police officers. A full list of these offences can be found at appendix A.

Offences outside s 60, *Crimes Act*

- 3.19 Most assault offences against police officers are contained in s 60 of the *Crimes Act* (which we consider below). However, there are some others:
- s 58 (second paragraph): assault, resist, or wilfully obstruct an officer (maximum penalty: five years’ imprisonment)
 - s 58 (third paragraph): assault with intent to resist or prevent the lawful apprehension or detainer of a person (maximum penalty: five years’ imprisonment), and
 - s 546C: resist or hinder a police officer, or incite any person to assault, resist or hinder a police officer (maximum penalty: 12 months’ imprisonment and/or a fine of \$1110 [10 penalty units]).
- 3.20 Section 58 is the oldest of these offences and was contained in the original NSW criminal legislation.²² Section 546C was inserted in 1979.²³
- 3.21 In chapter 7, we recommend that all assault offences against police officers should be contained in s 60.²⁴

Section 60 of the *Crimes Act*

- 3.22 Most offences against police officers are located in s 60 of the *Crimes Act*. This section includes offences of:

20. Recommendation 7.1–7.3.

21. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(a).

22. *Criminal Law Amendment Act 1883* (NSW) s 52.

23. *Crimes Act 1900* (NSW) s546C inserted by *Crimes (Summary Offences) Amendment Act 1979* (NSW) sch 5 (3).

24. Recommendation 7.8.

- assault, throw a missile at, stalk, harass or intimidate a police officer (maximum penalty: five years' imprisonment)²⁵
 - assault a police officer, occasioning actual bodily harm (maximum penalty: seven years' imprisonment),²⁶ and
 - wound or cause grievous bodily harm to a police officer, reckless as to causing actual bodily harm (maximum penalty: 12 years' imprisonment).²⁷
- 3.23 The offences currently in s 60 were inserted in the *Crimes Act* in 1997.²⁸ In introducing these offences, the then Minister for Police said that s 58 was “not an effective deterrent against assaults on police” as it was “archaic” and “difficult to apply”. Section 60 was intended to introduce “a police officer specific provision which is designed to provide as much protection to police as possible”.²⁹
- 3.24 Section 60 also includes aggravated forms of each of these three offences if they are committed “during a public disorder”.³⁰ These offences each have a maximum penalty which is two years higher than the unaggravated offence.
- 3.25 A “public disorder” is a riot or other civil disturbance that gives rise to a serious risk to public safety. It can be a single event or a series of events.³¹ The aggravated offences were inserted in 2006, following riots in Cronulla (Sydney) in the previous year.³²
- 3.26 The offences in s 60 apply if the conduct occurs “while in the execution of the officer’s duty”. Duties include preventing and investigating crime, as well as other actions reasonably necessary to protect the public, even if they are not directly connected to a criminal offence.³³
- 3.27 The offences in s 60 also apply if the police officer is not on duty, but the conduct is carried out because the victim is a police officer or as a consequence of or in retaliation for actions taken by the officer while they were on duty.³⁴

25. *Crimes Act 1900* (NSW) s 60(1).

26. *Crimes Act 1900* (NSW) s 60(2).

27. *Crimes Act 1900* (NSW) s 60(3).

28. *Crimes Act 1900* (NSW) s 60(1)–(3) inserted by *Crimes Amendment (Assault of Police Officers) Act 1997* (NSW) sch 1.

29. NSW, *Parliamentary Debates*, Legislative Assembly, Second Reading Speech, 19 June 1997, 10800.

30. *Crimes Act 1900* (NSW) s 60(1A), s 60(2A), s 60(3A).

31. *Crimes Act 1900* (NSW) s 4(1) definition of “public disorder”.

32. *Crimes Act 1900* (NSW) s 60(1A), s 60(2A), s 60(3A) inserted by *Crimes Legislation Amendment (Gangs) Act 2006* (NSW) sch 1 [4]–[6]. See NSW, *Parliamentary Debates*, Legislative Assembly, Second Reading Speech, 30 August 2006, 1142–1143.

33. *DPP (NSW) v Gribble* [2004] NSWSC 926 [23]–[29].

34. *Crimes Act 1900* (NSW) s 60(4).

- 3.28 Of the offences contained in s 60, two have a standard non-parole period (“SNPP”). An SNPP represents the non-parole period for an offence that, taking into account only the objective factors affecting the relative seriousness of that offence, is in the middle of the range of seriousness.³⁵ Not all offences have an SNPP. Where one exists, a court must consider it when sentencing an offender.³⁶
- 3.29 The offences in s 60 that have an SNPP are:
- assault a police officer, occasioning actual bodily harm (the SNPP is three years),³⁷ and
 - wound or cause grievous bodily harm to a police officer, reckless as to causing actual bodily harm (the SNPP is five years).³⁸

Maximum penalties for “general” assaults and assaults against police officers

- 3.30 The table below compares the maximum penalties for the offences against police officers in s 60 with equivalent “general” assault offences. In chapter 7, we find that these maximum penalties are appropriate and should not be changed.³⁹

35. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 54A(2).

36. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 54B(2).

37. *Crimes Act 1900* (NSW) s 60(2); *Crimes (Sentencing Procedure) Act 1999* pt 4 div 1A table (5).

38. *Crimes Act 1900* (NSW) s 60(3); *Crimes (Sentencing Procedure) Act 1999* pt 4 div 1A table (6).

39. See [7.69]–[7.75].

Table 3.1: Maximum penalties for assault offences in the *Crimes Act 1900* (NSW)

Offence	“General” offence ⁴⁰	Maximum penalty	Offence against police officer ⁴¹	Maximum penalty
Common assault	s 61	2 years	s 60(1)	5 years
Common assault – during a public disorder	s 59A(1)	5 years	s 60(1A)	7 years
Assault occasioning actual bodily harm	s 59(1)	5 years	s 60(2)	7 years (SNPP: 3 years)
Assault occasioning actual bodily harm – during a public disorder	s 59A(2)	7 years	s 60(2A)	9 years
Wounding (reckless)	s 35(4)	7 years (SNPP: 3 years)	s 60(3)	12 years (SNPP: 5 years)
Assault occasioning grievous bodily harm (reckless)	s 35(2)	10 years (SNPP: 4 years)	s 60(3)	12 years (SNPP: 5 years)
Wounding or assault occasioning grievous bodily harm (reckless) – during a public disorder	N/A		s 60(3A)	14 years

Offences against other law enforcement officers

- 3.31 Section 60A of the *Crimes Act* contains offences against law enforcement officers other than police officers. “Law enforcement officer” is defined to include correctional officers, juvenile justice officers, prosecutors, sheriff’s officers, animal cruelty investigators, and several others.⁴² In chapter 7, we recommend that the definition of “law enforcement officer” should be extended to all correctional staff in correctional centres, not just correctional officers.⁴³
- 3.32 Section 60A is largely identical to s 60. It includes offences of:
- assault, throw a missile at, stalk, harass or intimidate a law enforcement officer⁴⁴

40. *Crimes Act 1900* (NSW).

41. *Crimes Act 1900* (NSW).

42. *Crimes Act 1900* (NSW) s 60AA.

43. Recommendation 7.6.

44. *Crimes Act 1900* (NSW) s 60A(1).

- assault a law enforcement officer, occasioning actual bodily harm⁴⁵ and
- wound or cause grievous bodily harm to a law enforcement officer, reckless as to causing actual bodily harm.⁴⁶

The maximum penalties for these offences are the same as in s 60. Like s 60, the offences in s 60A only apply if the law enforcement officer is acting in the execution of their duties.

- 3.33 However, s 60A does not include aggravated offences for conduct occurring during a public disorder. In chapter 7, we recommend that these offences should be added to s 60A.⁴⁷ There are also no SNPPs for the offences in s 60A.
- 3.34 The offences contained in s 60A were created in 2002.⁴⁸ In introducing the offences, the then Minister for Police said:

The Crimes Act currently has no specific offences for threatening or intimidating law enforcement officers other than police. It is the view of the Government that law enforcement officers who investigate serious crime or corruption, or who perform detention-related duties, require additional protection against threats and harassment.⁴⁹

- 3.35 The offences contained in s 60A apply to assaults committed against correctional staff in prisons and juvenile justice centres. However, not all these assaults lead to charges and prosecution. In their submission to this review, Corrective Services NSW reports that, from 2014 to 2019, only 24%–34% of incidents of assaults against correctional staff were reported to NSW police.⁵⁰
- 3.36 Incidents that are not reported to police may be punished through internal disciplinary systems.⁵¹ The legislative framework for correctional centre discipline is contained in the *Crimes (Administration of Sentences) Act 1999* (NSW),⁵² which is supplemented by the *Custodial Operations Policy and Procedures*.⁵³

45. *Crimes Act 1900* (NSW) s 60A(2).

46. *Crimes Act 1900* (NSW) s 60A(3).

47. Recommendation 7.7.

48. *Crimes Amendment (Police and Other Law Enforcement Officers) Act 2002* (NSW) sch 1 [4].

49. NSW, *Parliamentary Debates*, Legislative Council, Second Reading Speech, 18 June 2002, 3204.

50. Corrective Services NSW, *Submission AS20*, 11–12.

51. Prison Officers Vocational Branch, Public Service Association of NSW, *Submission AS16*, 4.

52. *Crimes (Administration of Sentences) Act 1999* (NSW) pt 2 div 6.

53. Corrective Services NSW, *Custodial Operations Policy and Procedures (COPP)* (2020) <<https://correctiveservices.dcj.nsw.gov.au/csnsw-home/correctional-centres/custodial-operations-policy-and-procedures-copp.html>> (retrieved 1 July 2021).

- 3.37 One submission states that correctional officers who are assaulted may elect to have the incident punished through internal systems because of:
- a perception that NSW Police will not pursue what may be considered a minor assault
 - the fact that punishments imposed through the internal system may be harsher than those imposed by courts
 - a lack of support for the victim through the prosecution process
 - a perception that the effort and stress of prosecuting a matter is not commensurate to the outcome, and
 - the delay in prosecuting a matter through the courts, as compared with the relative swiftness of punishment through the internal system.⁵⁴

Offences against spouses and relatives of law enforcement officers

- 3.38 Section 60B contains offences against people with whom a law enforcement officer (including a police officer) has a domestic relationship. This includes spouses and de facto partners of law enforcement officers, relatives and anyone else who has lived in the same household.⁵⁵
- 3.39 Section 60B(1) makes it an offence to assault, stalk, harass or intimidate a person with whom a law enforcement officer has a domestic relationship, with the intention of causing the law enforcement officer to fear physical or mental harm. The conduct must be done because the officer is a law enforcement officer or as a consequence of or in retaliation for actions taken by the officer in the execution of their duty. The maximum penalty for this offence is five years' imprisonment.
- 3.40 Section 60B was introduced in 2002, following reports that police and crime commission staff had been receiving threats of harm against their families.⁵⁶ Statistics suggest there are few convictions for this offence.⁵⁷

Offences against other emergency services workers

- 3.41 There are also some less serious offences that apply to certain types of emergency services workers. These offences are outside the *Crimes Act*.

54. Prison Officers Vocational Branch, Public Service Association of NSW, *Submission AS16*, 4–5.

55. *Crimes Act 1900* (NSW) s 60B(6); *Crimes (Domestic and Personal Violence) Act 2007* (NSW) s 5(1).

56. *Crimes Amendment (Police and Other Law Enforcement Officers) Act 2002* (NSW) sch 1 [4]; NSW, *Parliamentary Debates*, Legislative Council, Second Reading Speech, 18 June 2002, 3203–3204.

57. Judicial Commission of NSW, "Local Court: Offences against NSW Acts" (2021) *Judicial Information Research System* <<https://jirs.judcom.nsw.gov.au/penstats/nswlc/nsw1900-40A.html>> (retrieved 1 July 2021).

- 3.42 The *Health Services Act 1997* (NSW) ("*Health Services Act*") contains two assault offences against ambulance officers. These are:
- s 67J(1): obstruct or hinder an ambulance officer (maximum penalty: two years' imprisonment and/or a fine of \$5500 [50 penalty units]), and
 - s 67J(2): obstruct or hinder an ambulance officer by an act of violence (maximum penalty: five years' imprisonment).
- 3.43 These offences were enacted in 2010 in response to an increase in the number of reported incidents of aggressive behaviour towards NSW ambulance officers, and to "send the strongest possible message to the community that violence towards ambulance officers carrying out their duties will not be tolerated".⁵⁸
- 3.44 These offences only apply if:
- the victim is a member of staff of the Ambulance Service of NSW, and
 - the conduct occurs while the victim is providing or attempting to provide ambulance services (that is, rendering first aid to, or transporting, sick and injured persons) to another person.⁵⁹
- 3.45 In this review, we heard a range of criticisms of the offences contained in the *Health Services Act*. In chapter 7, we recommend new offences for assaults against ambulance officers.⁶⁰
- 3.46 There are also offences relating to rural fire brigade officers, State Emergency Service officers and members of Fire and Rescue NSW. These offences are almost identical to each other and carry a maximum penalty of two years' imprisonment and/or a fine of \$5500 (50 penalty units). They are:
- obstruct or hinder, or incite any person to obstruct or hinder, an officer of a rural fire brigade⁶¹
 - obstruct or hinder an emergency officer,⁶² and

58. *Health Services Act 1997*(NSW) s 67J inserted by *Health Legislation Amendment Act 2010* (NSW) sch 1 [1.1] (1); NSW, *Parliamentary Debates*, Legislative Assembly, Agreement in Principle Speech, 2 June 2010, 23594.

59. *Health Services Act 1997* (NSW) s 67J(4).

60. Recommendation 7.1–7.3.

61. *Rural Fires Act 1997* (NSW) s 42.

62. *State Emergency Service Act 1989* (NSW) s 24.

- obstruct or hinder a member staff of Fire and Rescue NSW or a member of a fire brigade.⁶³
- 3.47 Finally, there is an offence of wilfully obstructing an employee of a local council, which has a maximum penalty of a fine of \$2200 (20 penalty units).⁶⁴
- 3.48 In chapter 7, we find that there is no need to introduce new offences for assaults against firefighters, rescue workers or council workers.⁶⁵

Assault offences against emergency services workers in other Australian states and territories

- 3.49 All other Australian states and territories have separate offences for assaults against emergency services workers. However, who is covered by these offences and the maximum penalties vary. For example, unlike NSW, some states and territories also include assaults against firefighters, rescue workers and/or health workers.
- 3.50 We summarise the laws across Australia below.

Australian Capital Territory

- 3.51 In the Australian Capital Territory, it is an offence to assault a “frontline community service provider”.⁶⁶ This includes:
- a police officer
 - a protective service officer
 - a corrections worker
 - a member of the ambulance service
 - a member of the fire and rescue service
 - a member of the rural fire service, and
 - a member of the state emergency service.⁶⁷

63. *Fire and Rescue Act NSW 1989* (NSW) s 35.

64. *Local Government Act 1993* (NSW) s 660.

65. See [7.48]–[7.54].

66. *Crimes Act 1900* (ACT) s 26A(1).

67. *Crimes Act 1900* (ACT) s 26A(5); *Emergencies Act 2004* (ACT) dictionary definition of “emergency service”.

- 3.52 The maximum penalty is two years' imprisonment, which is the same as common assault.⁶⁸ It is said that the penalty was not increased beyond this to ensure the offence complies with the *Human Rights Act 2004* (ACT).⁶⁹

Northern Territory

- 3.53 In the Northern Territory ("NT"), it is an offence to assault a police officer or an "emergency worker". This includes:

- a member of the NT Fire and Rescue Service
- a member of the NT Emergency Service
- an ambulance officer, or
- a medical or health practitioner attending or assisting in providing ambulance services.⁷⁰

The maximum penalty is:

- five years' imprisonment, or
- seven years' imprisonment if the worker suffers harm, or
- 16 years' imprisonment if the worker suffers serious harm.⁷¹

In addition, certain serious assaults are aggravated if they are committed against a police officer, corrections officer or law enforcement officer.⁷²

- 3.54 There are also less serious offences of resisting, hindering or obstructing a police officer, which carry maximum penalties of six months' imprisonment and/or a fine of \$1264 (eight penalty units).⁷³

Queensland

- 3.55 In Queensland, it is an offence to assault a police officer, corrective services officer, or "public officer". "Public officer" is defined to include:

68. *Crimes Act 1900* (ACT) s 26.

69. D Samaras, "Assault Laws Pass to Protect all Frontline Workers", (21 May 2020) *Canberra Weekly* <<https://canberraweekly.com.au/assault-laws-pass-to-protect-all-frontline-workers/>> (retrieved 1 July 2021).

70. *Criminal Code* (NT) s 187(2).

71. *Criminal Code* (NT) s 189A(1)–(2).

72. *Criminal Code* (NT) s 174C, s 174D, s 174G(b).

73. *Police Administration Act 1978* (NT) s 158, s 159. Note that at the time of writing, the prescribed penalty unit amount for the 2021–2022 financial year had not been published.

- an employee of a service established for a public purpose (such as the Queensland Ambulance Service)
- a health service employee
- a child protection officer, or
- a transit officer.⁷⁴

The maximum penalty is

- seven years' imprisonment, or
- 14 years' imprisonment if the offender bites, spits on, or throws bodily fluid or faeces at the victim; causes bodily harm to the victim; or is, or pretends to be, armed with a dangerous weapon.⁷⁵

3.56 There are also less serious offences of assaulting or obstructing a police officer, obstructing or resisting a public officer, obstructing or hindering an ambulance officer, obstructing a member of the Fire and Emergency Services, or assaulting or obstructing a corrective services officer.⁷⁶

South Australia

3.57 In South Australia, it is an offence to assault or cause harm to a "prescribed emergency worker". This is broadly defined to include:

- a police officer
- prison officer
- community corrections officer
- youth justice officer
- health worker
- ambulance officer
- firefighter
- state emergency service member

74. *Criminal Code* (Qld) s 340(3).

75. *Criminal Code* (Qld) s 340(1)(b), s 340(2), s 340(2AA).

76. *Police Powers and Responsibilities Act 2000* (Qld) s 790(1); *Criminal Code* (Qld) s 199; *Ambulance Service Act 1991* (Qld) s 46; *Fire and Emergency Services Act 1990* (Qld) s 150C(1); *Corrective Services Act 2006* (Qld) s 124(b).

- law enforcement officer
- animal welfare inspector
- public transport worker, and
- court security officer.⁷⁷

The maximum penalty is:

- five years' imprisonment if no harm is caused
- 10 years' imprisonment for causing harm recklessly (or for causing harm while hindering or resisting a police officer), and
- 15 years' imprisonment for causing harm intentionally.⁷⁸

3.58 There is also a less serious offence of hindering or resisting a police officer, with a maximum penalty of six months' imprisonment or a fine of \$2500.⁷⁹

3.59 Further, certain "general" assault offences attract a higher penalty if the victim is a police officer, prison officer, employee in a youth justice training centre, other law enforcement officer, community corrections officer, community youth justice officer, or is engaged in a prescribed occupation or employment (including emergency work and as a medical or health practitioner).⁸⁰ These offences include assault, causing harm, and acts endangering life or creating risk of serious harm.⁸¹ For example, the maximum penalty for assault causing harm is three years' imprisonment, but it is seven years if the victim falls into one of these categories.⁸²

Tasmania

3.60 In Tasmania, it is an offence to assault, resist, or wilfully obstruct a police officer, "public officer", or "emergency service worker". "Public officer" means "any person acting in good faith in the execution, or intended execution, of an Act or a public duty or authority".⁸³ "Emergency service worker" includes:

77. *Criminal Law Consolidation Act 1935* (SA) s 20AA(9), s 5AA(1)(ka); *Criminal Law Consolidation (General) Regulations 2006* (SA) reg 3A(1).

78. *Criminal Law Consolidation Act 1935* s 20AA(1)–(4).

79. *Summary Offences Act 1953* (SA) s 6(2).

80. *Criminal Law Consolidation Act 1935* (SA) s 5AA(1)(c), s 5AA(1)(ca), s 5AA(ka); *Criminal Law Consolidation (General) Regulations 2006* (SA) reg 3A(1).

81. *Criminal Law Consolidation Act 1935* (SA) s 20(3)(d), s 24(2)(c), s 29(1)(b), s 29(2)(b), s 29(3)(c).

82. *Criminal Law Consolidation Act 1935* (SA) s 20(4)(a), s 20(4)(d).

83. *Police Offences Act 1935* (Tas) s 34B(4).

- a person employed or appointed by the Tasmania Fire Service
- a person employed or appointed by Ambulance Tasmania, and
- an emergency management worker.⁸⁴

The maximum penalty is:

- three years' imprisonment or a fine of \$17,300 (100 penalty units) if the victim is a police officer,⁸⁵ or
- two years' imprisonment or a fine of \$8650 (50 penalty units) if the victim is a public officer or emergency service worker.⁸⁶

3.61 There is another offence of assaulting, resisting or wilfully obstructing a police officer or person assisting them.⁸⁷ As with other offences in the *Criminal Code* (Tas), the penalty for this offence is at large – it does not have a designated maximum penalty.

Victoria

3.62 In Victoria, it is an offence to assault, threaten to assault, resist or obstruct an “emergency worker”, youth justice custodial worker or custodial officer. “Emergency worker” is broadly defined and includes:

- police officers
- protective services officers
- ambulance workers
- emergency health workers
- firefighters
- State Emergency Service workers, and
- people with emergency response duties employed in the Department of Environment, Land, Water and Planning, the Department of Transport or the Department of Jobs, Precincts and Regions.⁸⁸

84. *Police Offences Act 1935* (Tas) s 34B(4).

85. *Police Offences Act 1935* (Tas) s 34B(1)–(1A).

86. *Police Offences Act 1935* (Tas) s 34B(2)–(2A).

87. *Criminal Code* (Tas) s 114(1).

88. *Crimes Act 1958* (Vic) s 31(2A); *Sentencing Act 1991* (Vic) s 10AA(8).

The maximum penalty is five years' imprisonment.⁸⁹

- 3.63 The Victorian Sentencing Advisory Council has recently reported that threats to assault emergency services workers are relatively rare, "compared to both physical assaults of emergency workers and other threats."⁹⁰
- 3.64 There are also less serious offences of assaulting, resisting, obstructing, hindering or delaying an emergency worker, a custodial officer, a youth justice custodial worker, or a member of staff of a local authority. The maximum penalty is six months' imprisonment or a fine of \$10,904.40 (60 penalty units).⁹¹
- 3.65 It is also an offence in Victoria to assault a police officer or protective services officer in circumstances where the offender has an offensive weapon or firearm readily available and enables the victim to see it. The maximum penalty is:
- 10 years' imprisonment in the case of an offensive weapon, or
 - 15 years' imprisonment in the case of a firearm.⁹²

Western Australia

- 3.66 In Western Australia, it is an offence to assault a "public officer", driver of a train, bus or ferry, ambulance officer, fire and emergency worker, health worker, court security worker or corrections officer.⁹³ "Public officer" includes Ministers of the Crown, Parliamentary Secretaries, parliamentarians, public service employees and council employees.⁹⁴
- 3.67 The maximum penalty is:
- seven years' imprisonment, or
 - 10 years' imprisonment if the offender is armed with a dangerous weapon or in company, or
 - 14 years' imprisonment if the victim suffers grievous bodily harm.⁹⁵

89. *Crimes Act 1958* (Vic) s 31(1)(b).

90. Victorian Sentencing Advisory Council, *Threat Offences in Victoria: Sentencing Outcomes and Reoffending* (2021) [2.10].

91. *Summary Offences Act 1966* (Vic) s 51(2)–(3).

92. *Crimes Act 1958* (Vic) s 320A(1)–(2).

93. *Criminal Code* (WA) s 318(1)(d)–(k).

94. *Criminal Code* (WA) s 1 definition of "public officer".

95. *Criminal Code* (WA) s 297(4), s 318(1)(l)–(m).

3.68 There is also a less serious offence of obstructing, preventing, hindering or resisting a public officer, with a maximum penalty of three years' imprisonment.⁹⁶

96. *Criminal Code* (WA) s 172.

4. The current law: sentencing provisions

In Brief

Offences against emergency services workers are subject to the general sentencing principles that apply to all crimes in NSW. However, some aspects of sentencing law are particularly relevant to these offences. These include the purposes of sentencing, guideline judgments, aggravating and mitigating factors, and consecutive and concurrent sentences.

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- 4.1 In this chapter, we consider the sentencing principles that apply when a court sentences an offender for assaulting an emergency services worker.
- 4.2 First, we examine general sentencing principles that apply to every offence in NSW. We then consider aspects of sentencing law that are especially relevant to offences against emergency services workers. These include the purposes of sentencing, guideline judgments, aggravating and mitigating factors, and consecutive and concurrent sentences.

General sentencing principles in NSW

- 4.3 When a court sentences an offender for assaulting an emergency services worker, it must consider the sentencing principles that are applicable to all offences committed in NSW. These include:

- the purposes of sentencing (that is, adequate punishment, deterrence, protecting the community, promoting rehabilitation, making the offender accountable, denunciation, and recognising the harm to the victim and the community)¹
 - the principles of sentencing (including that a sentence must be proportional to the offence,² that there should parity between the sentences of co-offenders,³ that offenders should be sentenced only for the offence of which they are convicted,⁴ and that, where the offender is being sentenced for more than one offence, the sentence must be just and appropriate to the totality of the offending behaviour)⁵
 - the requirement that a sentence of imprisonment should be a penalty of last resort⁶
 - any relevant aggravating and mitigating circumstances from the lists set out in the *Crimes (Sentencing Procedure) Act 1999* (NSW) (“*Crimes (Sentencing Procedure) Act*”)⁷
 - the “guideposts” of the maximum penalty for the offence and, where relevant, the standard non-parole period,⁸ and
 - provisions that allow the court to “discount” sentences in cases where the offender has pleaded guilty, co-operated before and during a trial, or provided assistance to the authorities.⁹
- 4.4 The sentence imposed is the result of the court taking into account all of the relevant considerations through a process of “instinctive synthesis”.¹⁰ In doing so, the court has a wide discretion.
- 4.5 Victims of certain offences may also submit and read out a Victim Impact Statement in sentencing proceedings.¹¹ A court must consider this statement.¹² In chapter 8, we do

1. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 3A.

2. *Veen v R* (1979) 143 CLR 458, 468; *Veen v R (No 2)* (1988) 164 CLR 465, 472–473.

3. *Lowe v R* (1984) 154 CLR 606, 610, 623, 609, 617; *Green v R* [2011] HCA 49, 244 CLR 462 [28]–[30].

4. *R v De Simoni* (1981) 147 CLR 383, 389.

5. *Mill v R* (1988) 166 CLR 59, 62–63.

6. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 5(1).

7. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)–(3).

8. *Muldock v R* [2011] HCA 39, 244 CLR 120 [27].

9. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 22–23.

10. *Muldock v R* [2011] HCA 39, 244 CLR 120 [26], citing *Markarian v R* [2005] HCA 25, 228 CLR 357 [72].

11. *Crimes (Sentencing Procedure) Act 1999* (NSW) pt 3 div 2.

12. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 30E(1)(a).

not recommend any changes to the Victim Impact Statement scheme as it applies to sentencing for assaults on emergency services workers.¹³

- 4.6 The principles for sentencing juvenile offenders are slightly different. Generally, deterrence and retribution are less important and more emphasis is put on rehabilitation.¹⁴ The *Children (Criminal Proceedings) Act 1987* (NSW) sets out certain factors that must be considered in criminal proceedings involving children, including “that children who commit offences bear responsibility for their actions but, because of their state of dependency and immaturity, require guidance and assistance”.¹⁵
- 4.7 In this review, we focus on the sentencing of adult offenders who commit assaults against emergency services workers. We have heard that the number of children and young people who are sentenced for these offences (especially offences against healthcare workers and juvenile justice officers) is relatively low.¹⁶

Aspects of sentencing law relevant to assaults against emergency services workers

- 4.8 Below, we highlight some key considerations in the sentencing of assaults against emergency services workers.
- 4.9 In chapter 8, we consider, but do not recommend, two options to change the sentencing regime for these offences.¹⁷

The purposes of sentencing

- 4.10 The purposes of sentencing are set out in s 3A of the *Crimes (Sentencing Procedure) Act*. They are:
- (a) to ensure that the offender is adequately punished for the offence,
 - (b) to prevent crime by deterring the offender and other persons from committing similar offences,
 - (c) to protect the community from the offender,
 - (d) to promote the rehabilitation of the offender,

13. See [8.54]–[8.70].

14. Judicial Commission of NSW, *Sentencing Bench Book*, “Relevance of Youth at Sentence” [15-015] (retrieved 1 July 2021); *KT v R* [2008] NSWCCA 51 [22].

15. *Children (Criminal Proceedings) Act 1987* (NSW) s 6(b).

16. Children’s Court of NSW, *Consultation ASC04*.

17. See [8.5]–[8.32].

- (e) to make the offender accountable for his or her actions,
- (f) to denounce the conduct of the offender,
- (g) to recognise the harm done to the victim of the crime and the community.

- 4.11 Some sentencing principles may be more relevant to offences against emergency services workers than others.

Deterrence

- 4.12 Courts have previously highlighted the importance of deterrence in sentencing offences against emergency services workers. For example, in 2002, the Court of Criminal Appeal commented:

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.¹⁸

- 4.13 In a 2011 case involving an assault of a sheriff's officer, a District Court judge commented:

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 ...¹⁹

- 4.14 On the other hand, some question the effectiveness of using sentencing to deter assaults against emergency services workers. This is especially because:

- these offences are rarely premeditated,²⁰ and

18. *Attorney General's Application Under Section 37 of the Crimes (Sentencing Procedure) Act 1999 (No 2 of 2002)* [2002] NSWCCA 515 [22].

19. *R v Valahulu* [2011] NSWDC 64 [30].

20. NSW Office of the Director of Public Prosecutions, *Submission AS11*, 10, citing *Munda v Western Australia* [2013] HCA 38, 249 CLR 600 [54].

- these offences are often committed when the offender is under the influence of drugs or alcohol and/or experiencing mental illness.²¹

Punishment and denunciation

- 4.15 Courts have also highlighted the need to punish those who commit assaults against emergency services workers, and to denounce such conduct. For example, the Court of Appeal has noted “offences against the exercise of lawful authority by police officers are regarded as serious, and as meriting ample punishment”.²²
- 4.16 In consultations for this review, several attendees also highlighted the importance of punishment and denunciation in sentencing these offences, given the high individual and community cost of violence against emergency services workers.²³

The absence of a guideline judgment

- 4.17 Guideline judgments are decisions of the Court of Criminal Appeal that give particular guidance to judges in relation to how they should sentence offenders. The *Crimes (Sentencing Procedure) Act* contains a scheme for guideline judgments.²⁴ One purpose of guideline judgments is to reduce inconsistency in sentencing and to make sure like cases are treated alike.
- 4.18 In 2002, the then Attorney General applied to the Court of Criminal Appeal for a guideline judgment on the offence contained in s 60(1) of the *Crimes Act 1900* (NSW) (“*Crimes Act*”).²⁵ At the time, this offence covered assaulting, stalking, harassing or intimidating a police officer (throwing a missile was added later).²⁶
- 4.19 The Attorney General proposed a guideline judgment that, in short, would state that in sentencing an offence against a 60(1), a sentence of imprisonment would be appropriate, and a fine alone would be inappropriate, if:
- any of the aggravating factors in s 21A(2) of the *Crimes (Sentencing Procedure) Act* was present
 - the assault was a significant challenge to the authority of the police
 - the assault occurred in the presence of other members of the public, or

21. Roundtable 1, *Consultation ASC01*; Roundtable 3, *Consultation ASC03*.

22. *Charara v DPP (NSW)* [2001] NSWCA 140 [60].

23. Roundtable 1, *Consultation ASC01*.

24. *Crimes (Sentencing Procedure) Act 1999* (NSW) pt 3 div 4.

25. *Attorney General's Application Under Section 37 of the Crimes (Sentencing Procedure) Act 1999 (No 2 of 2002)* [2002] NSWCCA 515.

26. *Crimes Act 1900* (NSW) s 60(1) amended by *Crimes Legislation Amendment (Gangs) Act 2006* (NSW) sch 1 [3].

- the assault took place on a police officer who was acting alone or in a remote location.²⁷

- 4.20 The Court declined to issue a guideline judgment.²⁸ The Court emphasised that the s 60(1) offence covers “a wide range of offending behaviour”, and while a term of imprisonment may be appropriate for some conduct (for example, “pointing a gun to the head of a police officer and cocking it”), it may not be appropriate for others (for example, “tapping on the shoulder or poking in the chest”).²⁹
- 4.21 The Court also noted that there had been no prosecution appeals of sentences imposed for the offence. While it acknowledged that some recent sentences may be inadequate, it found there was no reason why these could not be addressed by the normal appeal process.³⁰
- 4.22 There are likewise no guideline judgments for any of the other offences against emergency services workers.

Aggravating and mitigating factors

- 4.23 Section 21A of the *Crimes (Sentencing Procedure) Act* contains aggravating and mitigating factors that a court must take into account in sentencing an offender. One aggravating factor is:

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.³¹

- 4.24 This has been amended twice since it was introduced in 2002: first in 2006, to include reference to a victim’s voluntary work; and again, in 2009, to include a “council law enforcement officer”.³²

27. *Attorney General's Application Under Section 37 of the Crimes (Sentencing Procedure) Act 1999 (No 2 of 2002)* [2002] NSWCCA 515 [21].

28. *Attorney General's Application Under Section 37 of the Crimes (Sentencing Procedure) Act 1999 (No 2 of 2002)* [2002] NSWCCA 515 [64].

29. *Attorney General's Application Under Section 37 of the Crimes (Sentencing Procedure) Act 1999 (No 2 of 2002)* [2002] NSWCCA 515 [38].

30. *Attorney General's Application Under Section 37 of the Crimes (Sentencing Procedure) Act 1999 (No 2 of 2002)* [2002] NSWCCA 515 [40]–[44].

31. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(a).

32. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A, inserted by *Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002* (NSW) sch 1 [2], amended by *Crimes (Sentencing Procedure) Amendment Act 2006* (NSW) sch 1 [1], amended by *Crimes (Sentencing Procedure) Amendment (Council Law Enforcement Officers) Act 2009* (NSW) s 3.

- 4.25 A court cannot have regard to an aggravating factor if it is an element of the offence.³³ For example, if an offender is being sentenced for an offence against s 60A(3) of the *Crimes Act* (assault a law enforcement officer occasioning grievous bodily harm or wounding, reckless as to causing actual bodily harm), the court cannot treat the fact that the victim was a law enforcement officer as an aggravating factor.³⁴ This is called “double counting”. However, this aggravating factor may be relevant if the offender was charged with a “general” assault offence committed against a law enforcement officer.
- 4.26 Other jurisdictions have similar aggravating factors. For example, in New Zealand, it is an aggravating factor at sentencing that the victim was:
- a constable, or a prison officer, acting in the course of their duty,³⁵ or
 - an emergency health or fire services provider acting in the course of their duty at the scene of an emergency.³⁶
- 4.27 In the United Kingdom, it is an aggravating factor for certain offences if “the offence was committed against an emergency worker acting in the exercise of functions as such a worker”.³⁷ An “emergency worker” includes a police officer, prison officer, firefighter, rescue worker and health worker.³⁸
- 4.28 The Queensland Sentencing Advisory Council has recently recommended creating a new aggravating factor, when sentencing certain offences, that “the offence occurred in the performance of the functions of the victim’s office or employment, or because of the performance of those functions or employment”.³⁹

Consecutive and concurrent sentences

- 4.29 An element of general sentencing law, which has particular relevance to the offences subject to this review, is consecutive and concurrent sentencing.
- 4.30 Where a court sentences an offender for more than one offence, or sentences an offender who is already serving an existing sentence, the offender will generally serve these sentences partly or fully concurrently (that is, at the same time).⁴⁰ However, under s 56 of the *Crimes (Sentencing Procedure) Act*, certain sentences are to be served

33. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2).

34. See, eg, *R v Benjamin* [2019] NSWDC 190 [11].

35. *Sentencing Act 2002* (NZ) s 9(1)(fa).

36. *Sentencing Act 2002* (NZ) s 9(1)(fb).

37. *Assaults on Emergency Workers (Offences) Act 2018* (UK) s 2.

38. *Assaults on Emergency Workers (Offences) Act 2018* (UK) s 3(1).

39. Queensland Sentencing Advisory Council, *Penalties for Assaults on Public Officers*, Final Report (2020) rec 10-1.

40. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 55(1).

consecutively with (that is, after) another sentence of imprisonment. These are sentences for an assault or other offence against the person committed:

- against anyone, while the offender was a convicted inmate of a correctional centre, or
- against a juvenile justice officer, while the offender was subject to control.⁴¹

4.31 A person is only a “convicted inmate” if they are serving a sentence of imprisonment. This therefore does not apply to assaults committed by offenders who are on remand.⁴² However, the objectives of this provision may still be relevant to those cases.⁴³

4.32 While s 56(2) states that a sentence for an offence “is” to be served consecutively, s 56(3) provides that a court can instead order that the sentence is to be served wholly or partly concurrently. However, if the offence was committed against a correctional officer or juvenile justice officer, it can only be sentenced concurrently if the court is “of the opinion that there are special circumstances justifying such a direction”.⁴⁴ The reasons for such a finding must be stated.⁴⁵

4.33 “Special circumstances” are not defined; it is an open category.⁴⁶ Examples where a court may not order a wholly consecutive sentence for an assault against a correctional officer or juvenile justice officer include where:

- the offender is being sentenced for multiple offences committed in a single period of criminal activity,⁴⁷ or
- the offender is being sentenced for an offence that did not involve any physical contact between the offender and victim.⁴⁸

4.34 The proviso that a concurrent sentence can only be imposed for these offences if special circumstances exist was introduced in 2002.⁴⁹ At the same time, parliament increased the maximum sentence length that the Local Court may impose for these offences (we discuss this below).⁵⁰ The explanatory materials for the legislation

41. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 56(1)–(2).

42. *R v Jeremiah* [2016] NSWCCA 241 [12]; *R v Kurrupu* [2018] NSWDC 322 [62]–[63].

43. *R v Jeremiah* [2016] NSWCCA 241 [12]; *R v Kurrupu* [2018] NSWDC 322 [64]–[65].

44. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 56(3A).

45. *R v Hoskins* [2004] NSWCCA 236 [31]. See also Judicial Commission of NSW, *Sentencing Bench Book*, “Sentences for Offences Involving Assault by Convicted Inmate” [8-240] (retrieved 1 July 2021).

46. *R v Hraichie (No. 3)* [2019] NSWSC 973 [319].

47. *R v Fieldsend* [2017] NSWDC 402 [72].

48. *R v Hraichie (No. 3)* [2019] NSWSC 973 [314], [318], [345].

49. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 56(3A), inserted by *Crimes Legislation Amendment Act 2002* (NSW) sch 5 [4].

50. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 56(6), inserted by *Crimes Legislation Amendment Act 2002* (NSW) sch 5 [6].

introducing this requirement do not set out the reasons for these changes. The intention may have been to punish assaults against correctional officers more harshly, by directing that sentences for these assaults should generally be served consecutively.

- 4.35 During the course of this review, we have heard that s 56 is well supported, but there are concerns that it is not always implemented by courts in practice. In chapter 8, we recommend there should be further education and guidance for police and judicial officers on the operation of s 56.⁵¹

Limits to consecutive sentences in the Local Court

- 4.36 Despite the principle that sentences for assaults committed in correctional centres are generally to be served consecutively, there is one limit on when and how such sentences can be imposed.
- 4.37 Under s 58 of the *Crimes (Sentencing Procedure) Act*, generally, if the Local Court sentences an offender for an offence and the offender is already serving an existing sentence, the total length of both sentences cannot be longer than five years.⁵²
- 4.38 However, the total length of both sentences cannot be longer than five and half years if the new offence is an assault against a correctional officer (committed while the offender was a convicted inmate) or a juvenile justice officer (committed while the offender was a person subject to control), and the offender's original sentence was imposed by the Local Court or Children's Court.⁵³ This period is an extension on the general limit of five years, but it is still limited.
- 4.39 There is no limit on the length of the total sentence (beyond the maximum penalties of the offences) if the offender's original sentence was imposed by a court other than the Local Court (for example, the District Court).⁵⁴
- 4.40 The *Sentencing Bench Book* describes s 58 as "a very technical provision", warning judicial officers that "close attention must be given to the language of the section".⁵⁵
- 4.41 Originally, a total sentence length limit applied to *all* sentences for assaults against a correctional officer or juvenile justice officer imposed in the Local Court, regardless of which court imposed the first sentence. However, in 1980, the limit was removed if the offender's first sentence was imposed by a judge (that is, not a magistrate).⁵⁶ This was

51. Recommendation 8.2.

52. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 58(1).

53. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 58(3)(a)(ii), s 58(3)(b)(ii).

54. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 58(3)(a)(ii), s 58(3)(b)(i).

55. Judicial Commission of NSW, *Sentencing Bench Book*, "Limitation on Consecutive Sentences Imposed by Local Courts" [8-260] (retrieved 1 July 2021). See also *R v Fieldsend* [2017] NSWDC 402 [68]–[69].

56. *Crimes Act 1900* (NSW) s 444, amended by *Crimes (Amendment) Act 1980* (NSW) sch 1 (7).

due to a concern that the total sentence length limit was preventing the Local Court from imposing appropriate sentences for assaults against correctional officers.⁵⁷

- 4.42 The limits on the total length of consecutive sentences that may be imposed by the Local Court are summarised in the table below. Note that in addition to these limits, a court may never impose a sentence for an offence that exceeds the maximum penalty for that offence.

Table 4.1: Maximum length of a consecutive sentence that may be imposed by the Local Court

Original sentence imposed by...	New offence to be sentenced in the Local Court	
	Assault against corrective services officer or juvenile justice officer	Any other offence
Local Court	5 years and 6 months ⁵⁸	5 years ⁵⁹
A court other than the Local Court or Children's Court	No prescribed limit ⁶⁰	5 years ⁶¹

- 4.43 Assaults on correctional officers and juvenile justice officers are not the only offences where the general limit on the total sentence that the Local Court may impose does not apply. There are also exceptions for other offences in correctional centres, like supplying drugs or mobile phones. However, unlike assaults against correctional officers and juvenile justice officers, these exceptions do not differ depending on whether the existing sentence was imposed by the Local Court or another court.⁶²

57. NSW, *Parliamentary Debates*, Legislative Assembly, Second Reading Speech, 26 March 1980, 5969.

58. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 58(3)(a)(ii), s 58(3)(b)(ii).

59. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 58(1).

60. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 58(3)(a)(ii), s 58(3)(b)(i).

61. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 58(1).

62. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 58(3A).

5. The prevalence of offences against emergency services workers

In Brief

It is difficult to measure the rate of assaults against emergency services workers. Assaults are often unreported, and of those that are reported, there are challenges in tracking them through the criminal justice system. Nonetheless, the available data demonstrates that such assaults are reasonably common. The highest rates of violence are against health workers, while assaults against firefighters and rescue workers are less common.

<u>How common are assaults against emergency services workers compared with “general” assaults?</u>	<u>46</u>
<u>The prevalence of assaults against police officers</u>	<u>48</u>
<u>The prevalence of assaults against law enforcement officers</u>	<u>50</u>
<u>The prevalence of assaults against ambulance officers</u>	<u>51</u>
<u>The prevalence of assaults against health workers</u>	<u>52</u>
<u>The prevalence of assaults against firefighters and rescue workers</u>	<u>53</u>
<u>How commonly do people who assault emergency services workers reoffend?</u>	<u>54</u>

- 5.1 Accurately measuring the rate of assaults against emergency services workers in NSW is difficult. Limits on collecting and analysing data on this issue are well recognised:
- many assaults are under-reported, so crime data does not show the overall picture¹
 - most offences are heard in the Local Court, where remarks on sentence are not usually transcribed or published²

1.

Australian Medical Association, *Submission AS09*, 2; Corrective Services NSW, *Submission AS20*, 11; Roundtable 2, *Consultation ASC02*; C E W Bond and others, *Assaults on Public Officers: A Review of Research Evidence* (Griffith Criminology Institute, 2020) 17; NSW Legislative Assembly Committee on Law and Safety, *Assaults on Members of the NSW Police Force*, Report 1/57 (2020) finding 1; NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) finding 2.

2.

NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) [4.30].

- some assaults are charged under “general” offences, so they cannot be individually tracked through the criminal justice system,³ and
 - some assaults against correctional officers are dealt with through internal disciplinary processes rather than through the criminal justice system.⁴
- 5.2 Subject to these limitations, this chapter examines the available data. Much of the data was provided by the NSW Bureau of Crime Statistics and Research. We also draw on data provided by emergency services organisations.
- 5.3 We set out data on the rate at which violence against different emergency services workers is committed. We also compare this against other assault offences. Finally, we examine the rate at which people who commit these offences reoffend.

How common are assaults against emergency services workers compared with “general” assaults?

- 5.4 Research indicates that violence against emergency services workers is reasonably common in Australia. However, the number of offences which come before the NSW criminal justice system is modest. The table below compares the number of finalised charges for selected assault offences against emergency services workers, compared with “general” assaults, in 2019.

3. NSW Office of the Director of Public Prosecutions, *Submission AS11*, 14; NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) [4.28]–[4.29].

4. Roundtable 1, *Consultation ASC01*; Prison Officers Vocational Branch, Public Service Association of NSW, *Submission AS16*, 4.

Table 5.1: The number of finalised charges for selected assault offences, 2019

Conduct	“General” offence ⁵	Offence against police officer ⁶	Offence against law enforcement officer ⁷	Offence against ambulance officer ⁸
Common assault	23,136	1797	194	19
Assault occasioning actual bodily harm	9663	279	62	46
Wound or cause grievous bodily harm, reckless as to causing actual bodily harm	752	6	3	N/A

Source: NSW Bureau of Crime Statistics and Research, reference 20-19593, table 1.

- 5.5 Table 5.1 demonstrates that a much higher number of “general” assaults are committed in NSW, compared with assaults against emergency services workers. This is expected, given the wider pool of victims for the first category.
- 5.6 Beyond this, the numbers of assaults against emergency services workers (recorded in the crime data) vary depending on the category of victim. The rate of assaults against police officers is high as a proportion of the total number of police officers in NSW. Assaults against police officers represented around 7% of all common assaults in 2019, but police officers only make up around 0.2% of the NSW population.⁹
- 5.7 Conversely, the number of assaults against other law enforcement officers and ambulance officers is quite low. However, these figures are likely to be strongly influenced by some of the limitations discussed above, such as under-reporting. Contrary to the number of finalised charges, research demonstrates that ambulance officers and health workers experience high rates of workplace violence.¹⁰

5. *Crimes Act 1900* (NSW) s 61, s 59(1), s 35(2), s 35(4).

6. *Crimes Act 1900* (NSW) s 60(1), s 60(2), s 60(3).

7. *Crimes Act 1900* (NSW) s 60A(1), s 60A(2), s 60A(3).

8. *Health Services Act 1997* (NSW) s 67J(1), s 67J(2). Note that s 67J(2) requires the assault to be committed by “an act of violence” but does not require the victim to suffer actual bodily harm. However, it is the closest analogue so has been used for comparison here.

9. At 30 June 2020, there were 17,348 police officers in NSW: NSW Police Force, *Annual Report 2019–2020* (2020) 6. At 31 December 2020, the population of NSW was 8,172,500: Australian Bureau of Statistics, *National State and Territory Population, December 2020* (catalogue 3101.0, 17 June 2021).

10. J Power, “Bite, Punch, Throw: Violence against Ambos Soars”, *The Sun-Herald*, 29 April 2018, 6; B J Maguire, “Violence Against Ambulance Personnel: A Retrospective Cohort Study of National Data from Safe Work Australia” (2018) 28(1) *Public Health Research and Practice* 1, 2; B J Maguire and others, “Occupational Injury Risk among Australian Paramedics: an Analysis of National Data” (2014) 200 *Medical Journal of Australia* 477, 477–478.

- 5.8 Since 2015, the number of finalised charges for “general” assault offences has been relatively stable. However, there have been slight increases in the number of finalised charges for assaults against police officers, and more marked increases in the number of finalised charges against other law enforcement officers.¹¹ This could be due to an increase in the rate of offending, an increase in the proportion of incidents that are reported to police, and/or an increase in the proportion of incidents that police choose to lay charges for.

The prevalence of assaults against police officers

- 5.9 The table below sets out data on selected assault offences against police officers before the NSW criminal justice system in 2018 and 2019, including the number of finalised charges and the number of defendants with a finalised charge. A “finalised charge” is one which has been fully determined by the court and for which no further court proceedings are required.¹² A defendant may be charged with more than one offence. This is why the number of finalised charges is usually higher than the number of defendants with a finalised charge.

11. NSW Bureau of Crime Statistics and Research, reference 20-19593, table 1.

12. NSW Bureau of Crime Statistics and Research, “Definitions and Explanations: NSW Criminal Court Statistics” (29 October 2020)
<https://www.bocsar.nsw.gov.au/Pages/bocsar_court_stats/court_glossary.aspx> (retrieved 1 July 2021).

Table 5.2: The number of finalised charges and defendants with a finalised charge for selected assault offences against police officers, 2018 and 2019

Section ¹³	Offence Description	2019		2018	
		Finalised charges	Defendants	Finalised charges	Defendants
60(1)	Assault, throw a missile at, stalk, harass or intimidate a police officer	1797	1340	1630	1213
60(1A)	Assault, throw a missile at, stalk, harass or intimidate a police officer during a public disorder	14	9	2	2
60(2)	Assault a police officer, occasioning actual bodily harm	279	245	261	230
60(2A)	Assault a police officer during a public disorder, occasioning actual bodily harm	1	1	2	2
60(3)	Wound or cause grievous bodily harm to a police officer, reckless as to causing actual bodily harm	6	5	7	7
60(3A)	Wound or cause grievous bodily harm to a police officer during a public disorder, reckless as to causing actual bodily harm	N/A	N/A	N/A	N/A
546C	Resist or hinder or incite any person to assault, resist or hinder a police officer	1829	1677	1799	1639

Source: NSW Bureau of Crime Statistics and Research, reference 20-19593, table 1.

- 5.10 Table 5.2 demonstrates that most charges for assaults against police officers in the last two years were for less serious offences. There were reasonably small numbers of charges for more serious offences. This pattern is consistent with that of “general” assault offences.
- 5.11 Since 2015, there has been a slight increase in the number of finalised charges for some of the unaggravated assaults against police officers.¹⁴ This increase was not noticeable for the offences occurring during a public disorder.¹⁵
- 5.12 NSW Police have reported that in 2019, there were 2494 incidents of assaults against a police officer and 2228 police officers were assaulted. In the same year, 1118 officers were physically injured. There were similar incident numbers in 2015, 2016, 2017 and

13. *Crimes Act 1900* (NSW).

14. *Crimes Act 1900* (NSW) s 60(1), s 60(2), s 546C. NSW Bureau of Crime Statistics and Research, reference 20-19593, table 1.

15. *Crimes Act 1900* (NSW) s 60(1A), s 60(2A), s 60(3A). NSW Bureau of Crime Statistics and Research, reference 20-19593, table 1.

2018.¹⁶ Not all these incidents resulted in criminal charges. These incidents may also not capture conduct falling short of assault, such as resisting or hindering officers.

The prevalence of assaults against law enforcement officers

- 5.13 Table 5.3 sets out data on assault offences against law enforcement officers (other than police officers) before the NSW criminal justice system in 2018 and 2019, including the number of finalised charges and the number of defendants with a finalised charge. “Law enforcement officer” is defined in s 60AA of the *Crimes Act 1900* (NSW) (“*Crimes Act*”). It includes correctional officers, juvenile justice officers, prosecutors, sheriff’s officers, animal cruelty investigators and several others. Unfortunately, we do not have the number of assaults for each category of victim.

Table 5.3: The number of finalised charges and defendants with a finalised charge for assault offences against law enforcement officers, 2018 and 2019

Section ¹⁷	Offence Description	2019		2018	
		Finalised charges	Defendants	Finalised charges	Defendants
60A(1)	Assault, throw a missile at, stalk, harass or intimidate a law enforcement officer	194	132	181	137
60A(2)	Assault a law enforcement officer, occasioning actual bodily harm	62	44	34	31
60A(3)	Wound or cause grievous bodily harm to a law enforcement officer, reckless as to causing actual bodily harm	3	3	0	0

Source: NSW Bureau of Crime Statistics and Research, reference 20-19593, table 1.

- 5.14 As table 5.3 demonstrates, there were few finalised charges for all offences against law enforcement officers. While the numbers have been consistently low, there has been an increase in the annual number of finalised charges for these offences between 2015 and 2019. For example, in 2015 and 2016 there were 110 and 128 finalised charges

16. NSW Police Force, *Submission AS19*, 5.

17. *Crimes Act 1900* (NSW).

(respectively) for the offence contained in s 60A(1) of the *Crimes Act*, whereas in 2018 and 2019 there were 181 and 194 charges (respectively).¹⁸

- 5.15 In 2019, there were also three finalised charges for the offence contained in s 60B(1) of the *Crimes Act* (assault, stalk, harass or intimidate any person with whom a law enforcement officer has a domestic relationship). There were consistently low numbers of finalised charges for this offence between 2015 and 2019.
- 5.16 The Prison Officers Vocational Branch, Public Service Association of NSW reports that there were 239 assaults against correctional staff in 2018–2019. This represented an increase on the prior four years.¹⁹ Not all these incidents resulted in criminal charges. As we discuss in chapter 3, some assaults against correctional staff may instead be punished through internal prison disciplinary systems.²⁰
- 5.17 There is little available data on violent incidents against other law enforcement officers, such as sheriff's officers or the staff of certain public agencies.

The prevalence of assaults against ambulance officers

- 5.18 Table 5.4 below sets out data on the number of finalised charges and the number of defendants with a finalised charge for assault offences against ambulance officers in 2018 and 2019.

Table 5.4: The number of finalised charges and defendants with a finalised charge for assault offences against ambulance officers, 2018 and 2019

Section ²¹	Offence Description	2019		2018	
		Finalised charges	Defendants	Finalised charges	Defendants
67J(1)	Obstruct or hinder an ambulance officer	19	18	7	7
67J(2)	Obstruct or hinder an ambulance officer by an act of violence	46	45	28	27

Source: NSW Bureau of Crime Statistics and Research, reference 20-19593, table 1.

18. NSW Bureau of Crime Statistics and Research, reference 20-19593, table 1.

19. Prison Officers Vocational Branch, Public Service Association of NSW, *Submission AS16*, 3.

20. See [3.35]–[3.37].

21. *Health Services Act 1997* (NSW).

- 5.19 Research demonstrates that ambulance officers experience high rates of workplace violence.²² However, as the table above shows, there were few finalised charges for the offences against ambulance officers in 2019, particularly compared with the overall number of ambulance officers (4885 in 2020).²³ This was consistent between 2015 and 2019. In each year, there were less than 20 finalised charges for the offence in s 67J(1) of the *Health Services Act 1997* (NSW) ("*Health Services Act*"), and less than 46 finalised charges for the offence in s 67J(2).²⁴
- 5.20 NSW Ambulance provided data to this review indicating that in the first six months of 2020, there were 145 incidents of physical assaults against ambulance officers.²⁵ Not all these incidents resulted in criminal charges. Some were also charged under "general" assault offences, rather than the offences contained in the *Health Services Act*. These factors are likely to explain why the number of finalised charges for the offences in the *Health Services Act* were low.
- 5.21 During consultations for this review, some attendees observed that the rate of violence against ambulance officers appears to have increased over time, at least in the last five years.²⁶

The prevalence of assaults against health workers

- 5.22 There are no separate assault offences against health workers in NSW, so the prevalence of offending cannot be determined from recorded crime data. While there have been various studies on the prevalence of assaults against public officers, it can be difficult to draw useful conclusions, as studies often use different definitions of assaults, and different sources of data.²⁷

-
22. J Power, "Bitten, Punched and Thrown: Assaults on Ambos Skyrocket" (28 April 2018) *The Sydney Morning Herald* <<https://www.smh.com.au/national/nsw/bitten-punched-and-thrown-assaults-on-ambos-skyrocket-20180427-p4zbzb.html>> (retrieved 1 July 2021); B J Maguire, "Violence Against Ambulance Personnel: A Retrospective Cohort Study of National Data from Safe Work Australia" (2018) 28(1) *Public Health Research and Practice* 1, 2; B J Maguire and others, "Occupational Injury Risk among Australian Paramedics: an Analysis of National Data" (2014) 200 *Medical Journal of Australia* 477, 477–478.
23. NSW Ambulance, "About Us" (30 June 2020) <<https://www.ambulance.nsw.gov.au/about-us>> (retrieved 1 July 2021).
24. NSW Bureau of Crime Statistics and Research, reference 20-19593, table 1.
25. Information provided by NSW Ambulance (August 2020).
26. Roundtable 1, *Consultation ASC01*; Roundtable 2, *Consultation ASC02*.
27. C E W Bond and others, *Assaults on Public Officers: A Review of Research Evidence* (Griffith Criminology Institute, 2020) 5.

- 5.23 However, research suggests that health workers experience a high rate of violence.²⁸ For example, one study of nurses and midwives in NSW found that 24% had experienced physical assaults over their career.²⁹
- 5.24 It has also been reported that the number of violent incidents in NSW hospitals has been increasing in recent years.³⁰ Suggested reasons for this include increased overcrowding in hospitals, reduced staff to patient ratios, and increased patient presentations relating to drug and/or alcohol use.³¹

The prevalence of assaults against firefighters and rescue workers

- 5.25 There are no separate assault offences against firefighters or rescue workers in NSW, so the prevalence of offending cannot be determined from recorded crime data. There have also been very few studies on this issue in Australia.
- 5.26 There are offences of obstructing or hindering, or inciting any person to obstruct or hinder, an officer of a rural fire brigade; obstructing or hindering an emergency officer; and obstructing or hindering a member staff of Fire and Rescue NSW or a member of a fire brigade.³² Of these three offences, there has only been one proven charge in the last four years.³³
- 5.27 During consultations, both Fire and Rescue NSW and the NSW Rural Fire Service reported there are low levels of assaults against firefighters.³⁴ The NSW State Emergency Service reported a similar experience.³⁵ This is consistent with other studies

28. C E W Bond and others, *Assaults on Public Officers: A Review of Research Evidence* (Griffith Criminology Institute, 2020) 7; J Pich and M Roche, "Violence on the Job: The Experiences of Nurses and Midwives with Violence from Patients and Their Friends and Relatives" (2020) 8 *Healthcare* 522, 522.

29. J Pich and M Roche, "Violence on the Job: The Experiences of Nurses and Midwives with Violence from Patients and their Friends and Relatives" (2020) 8 *Healthcare* 526.

30. G Thompson, "Rates of Violence against Nurses in Hospitals Increasing Rapidly" *ABC News* (11 June 2019) <<https://www.abc.net.au/news/2019-06-11/rates-of-violence-against-nurses-rising-rapidly/11196716>> (retrieved 1 July 2021); Roundtable 2, *Consultation ASC02*.

31. Australian Medical Association, *Submission AS09*, 2; Roundtable 2, *Consultation ASC02*.

32. *Rural Fires Act 1997* (NSW) s 42; *State Emergency Service Act 1989* (NSW) s 24; *Fire and Rescue NSW Act 1989* (NSW) s 35.

33. Judicial Commission of NSW, "Local Court: Offences against NSW Acts" (2021) *Judicial Information Research System* <https://jirs.judcom.nsw.gov.au/penstats/nswlc/act_nsw.html> (retrieved 1 July 2021).

34. Roundtable 1, *Consultation ASC01*.

35. Information provided by the NSW State Emergency Service, 19 October 2020.

that indicate firefighters experience the lowest rates of violence among emergency services workers.³⁶

5.28 Reasons for the low number of assaults include:

- firefighters and rescue workers usually work in large groups, making them less vulnerable to assaults
- firefighters and rescue workers do not transport people to hospital
- firefighters and rescue workers are often assisted by NSW Police, and
- assaults are often under-reported or dealt with by the organisation internally.³⁷

How commonly do people who assault emergency services workers reoffend?

5.29 The rate at which people who commit offences against emergency services workers reoffend is one way in which to assess whether the sentencing regime is acting as an effective deterrent (at least against reoffending).

5.30 From 2013 to 2017, the proportion of defendants with a proven charge for any of the offences against emergency services workers who went on to commit one of these offences again within the following two years ranged from 12.1% to 13.6%. The reoffending rate for offenders who committed a proven offence in 2017 was 12.6%.³⁸

5.31 Across the same period, the proportion of defendants with a proven charge for a “general” assault offence who went on to commit a further one of these offences within the following two years ranged from 12.2% to 12.8%. The rate for offenders who committed a proven offence in 2017 was 12.3%.³⁹

5.32 This suggests that offenders who commit assaults against police officers, law enforcement officers or ambulance officers are about as likely to commit these offences again as offenders who commit assaults against the general public. This tends to

36. C E W Bond and others, *Assaults on Public Officers: A Review of Research Evidence* (Griffith Criminology Institute, 2020) 7, 14, 24.

37. Roundtable 1, *Consultation ASC01*; Roundtable 2, *Consultation ASC02*.

38. NSW Bureau of Crime Statistics and Research, reference 20-19593, table 7. This includes offences against *Crimes Act 1900* (NSW) s 33(2), s 58, s 546C, s 60(1)–(3A), s 60A(1)–(3), s 60B(1); *Health Services Act 1997* (NSW) s 67J(1)–(2).

39. NSW Bureau of Crime Statistics and Research, reference 20-19593, table 8. This includes offences against *Crimes Act 1900* (NSW) s 33(1), s 35(1)–(4), s 54, s 58, s 59, s 59A, s 61.

suggest that these offences should not be subject to a different sentencing regime from “general” assaults.

6. Current sentencing trends

In Brief

Assaults against emergency services workers are more likely to be “proven” than “general” assault offences. Sentences imposed are generally more severe than those for “general” assaults, with a higher rate of imprisonment. On the other hand, people who commit assaults against emergency services workers are more likely not to be sentenced due to mental illness than people who commit “general” assault offences.

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- 6.1
- In the previous chapter, we examine the prevalence of assaults against emergency services workers. In this chapter, we consider how those assaults are sentenced. We focus on the conviction and sentencing outcomes for these offences: how often they are proven, how many go to trial versus sentence only, and what types of penalties offenders are given.
- 6.2
- For some of the offences we consider in this review, a very small number of offenders (fewer than 30) are charged each year. We do not report data on these offences in this chapter as it is impossible to draw robust conclusions from such small numbers. This limits our capacity to assess the sentencing of assaults against emergency services workers.
- 6.3
- It is also challenging to compare sentencing outcomes in NSW with those in other Australian states and territories. Offences against emergency services workers vary in the classes of victims and the nature of the conduct required, as well as the maximum penalties. This means we cannot compare sentencing outcomes for “like” offences.¹

1. See, eg, NSW Office of the Director of Public Prosecutions, *Submission AS11*, 13–14.

- 6.4 An understanding of how offences against emergency services workers are currently being sentenced is essential to evaluate the penalty regime. If sentences are appropriate, it is a strong indicator that current maximum penalties are effective.

The rate at which charges are proven

- 6.5 A charge is “proven” if the offender is found guilty. This is either if they plead guilty, or if a court finds them guilty after a trial.
- 6.6 The table below sets out the percentage of charges that were proven for selected assault offences against emergency services workers, compared with “general” assault offences, in 2019.

Table 6.1: Percentage of charges for selected assault offences that were proven, 2019

Conduct	“General” offence ²	Offence against police officer ³	Offence against law enforcement officer ⁴	Offence against ambulance officer ⁵
Common assault	63.7% (14,741 of 23,136)	76.6% (1376 of 1797)	82.0% (159 of 194)	57.9% (11 of 19)
Assault occasioning actual bodily harm	57.4% (5543 of 9663)	69.2% (193 of 279)	72.6% (45 of 62)	47.8% (22 of 46)
Wound or cause grievous bodily harm, reckless as to causing actual bodily harm	61.7% (464 of 752)	100.0% (6 of 6)	66.7% (2 of 3)	N/A

Source: NSW Bureau of Crime Statistics and Research, reference 20-19593, table 1.

- 6.7 Table 6.1 demonstrates that, broadly, charges for offences against emergency services workers were more likely to be proven than charges for “general” assault offences in 2019. This may be because evidence from the victims of these offences (that is, emergency services workers) is very persuasive and/or is often corroborated by other eyewitnesses.

2. *Crimes Act 1900* (NSW) s 61, s 59(1), s 35(2), s 35(4).

3. *Crimes Act 1900* (NSW) s 60(1), s 60(2), s 60(3).

4. *Crimes Act 1900* (NSW) s 60A(1), s 60A(2), s 60A(3).

5. *Health Services Act 1997* (NSW) s 67J(1), s 67J(2). Note that s 67J(2) requires the assault to be committed by “an act of violence” but does not require the victim to suffer actual bodily harm. However, it is the closest analogue so has been used for comparison here.

- 6.8 Since 2015, there has been a slight increase in the rate at which charges for some assault offences are proven. The rate for other offences is stable.⁶
- 6.9 The main exception is charges for offences against ambulance officers, which were *less* likely to be proven than charges for “general” assault offences. However, the number of charges for these offences was very low and should be treated with caution.
- 6.10 The rate at which charges for “general” assaults attached to Aboriginal defendants were proven was broadly similar to the rate of charges proven generally. For example, 64.1% of charges for common assault attached to Aboriginal defendants were proven (compared with 63.7% overall), and 59.2% of charges for assault occasioning actual bodily harm attached to Aboriginal defendants were proven (compared with 57.4% overall).⁷
- 6.11 In contrast, the rate at which charges attached to Aboriginal defendants for assaults against police officers were proven was slightly higher than the overall rate. 80.1% of charges for assault police attached to Aboriginal defendants were proven (compared with 76.6% overall); and 75.5% of charges for assault police occasioning actual bodily harm attached to Aboriginal defendants were proven (compared with 69.2% overall).⁸

Outcomes of court appearances

- 6.12 When an offender appears in court charged with an offence, this can result in a range of outcomes. These include:
- proceeding to a defended trial, which results in either a guilty or not guilty finding
 - proceeding to sentence only (after a guilty plea)
 - charges being withdrawn
 - charges being dismissed due to mental illness, and
 - charges otherwise being disposed of.⁹

6. NSW Bureau of Crime Statistics and Research, reference 20-19593, table 1. Offences with an increase in the rate of proven charges between 2015 and 2019 are those in *Crimes Act 1900* (NSW) s 35(2), s 35(4), s 61, s 60A(1).

7. NSW Bureau of Crime Statistics and Research, reference 20-19593, table 1, table 2.

8. NSW Bureau of Crime Statistics and Research, reference 20-19593, table 1, table 2.

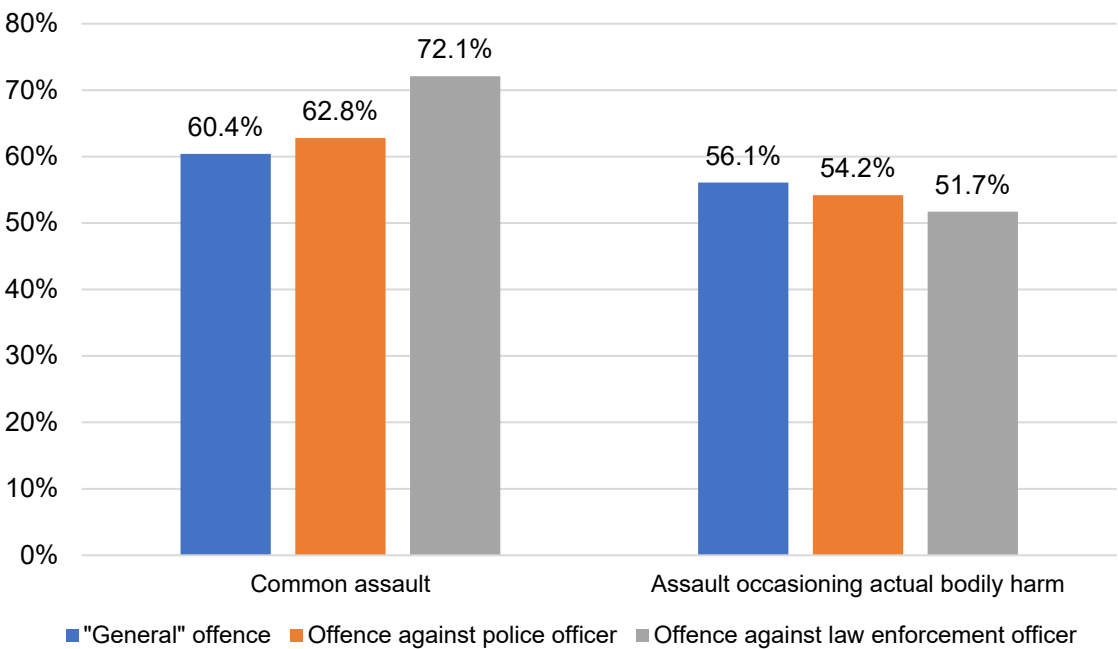
9. Charges “otherwise disposed of” includes where the offender is transferred to the Drug Court or referred to the Mental Health Review Tribunal from a higher court. NSW Bureau of Crime Statistics and Research, “Definitions and Explanations: NSW Criminal Court Statistics” (29 October 2020) https://www.bocsar.nsw.gov.au/Pages/bocsar_court_stats/court_glossary.aspx (retrieved 30 June 2021).

6.13 Below, we consider two of these outcomes in further depth in relation to assaults against emergency services workers: proceeding to sentence only (after a guilty plea) and charges being dismissed due to mental illness.

Defendants who proceed to sentence only

6.14 If a defendant pleads guilty to a charge, this is known as proceeding to “sentence only”. In the chart below, we compare the percentage of defendants charged with a selected “general” assault, assault against a police officer or assault against a law enforcement officer (where this was the principal offence) who proceeded to sentence only, in 2019.¹⁰

Figure 6.1: Percentage of defendants charged with selected assault offences who proceeded to sentence only, 2019



Source: NSW Bureau of Crime Statistics and Research, reference 20-19593, table 3.

6.15 Figure 6.1 demonstrates that defendants were about as likely to plead guilty when the principal offence was an assault against a police officer or other law enforcement officer, or a “general” assault. The main exception is the offence of assault, throw a missile at, stalk, harass or intimidate a law enforcement officer (other than a police officer),¹¹ which had a comparatively high rate of defendants pleading guilty (72.1%).

10. *Crimes Act 1900* (NSW) s 61, s 60(1), s 60A(1), s 59(1), s 60(2), s 60A(2).

11. *Crimes Act 1900* (NSW) s 60A(1).

- 6.16 Since 2015, there has been a slight increase in the proportion of defendants who proceeded to sentence only for some assault offences. The rate for other offences is stable.¹²
- 6.17 The proportion of Aboriginal defendants who proceeded to sentence only for these offences in 2019 – both “general” assaults and assaults against police and other law enforcement officers – were very similar to the rates overall. For example:
- 58.6% of Aboriginal defendants proceeded to sentence only for common assault, compared with 58.6% of defendants overall
 - 61.6% of Aboriginal defendants proceeded to sentence only for assault police, compared with 62.8% of defendants overall
 - 54.9% of Aboriginal defendants proceeded to sentence only for assault occasioning actual bodily harm, compared with 56.1% of defendants overall, and
 - 54.2% of Aboriginal defendants proceeded to sentence only for assault police occasioning actual bodily harm, which was the same as the rate overall.¹³

Defendants whose charges are dismissed due to mental illness

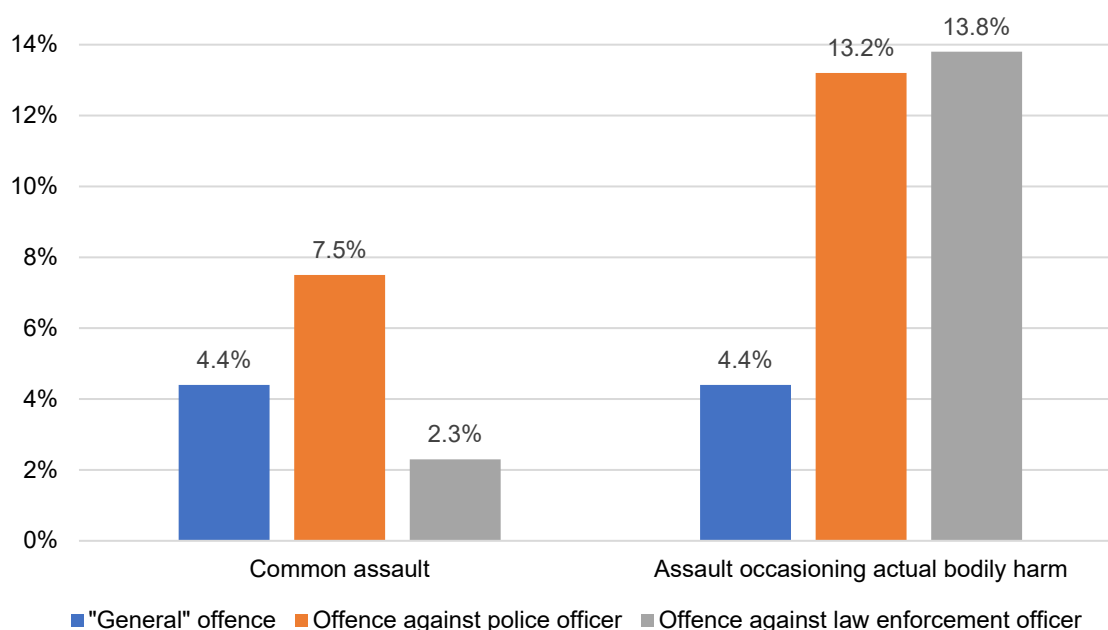
- 6.18 The chart below compares the percentage of defendants charged with a selected “general” assault, assault against a police officer or assault against another law enforcement officer (where this was the principal offence) who had their charges dismissed due to mental illness in 2019.¹⁴

12. NSW Bureau of Crime Statistics and Research, reference 20-19593, table 3. There was an increase in the proportion of defendants who proceeded to sentence only between 2015 and 2019 for appearances where the principal offence was *Crimes Act 1900* (NSW) s 59(1), 60(1), or s 60A(1).

13. NSW Bureau of Crime Statistics and Research, reference 20-19593, table 3, table 4.

14. *Crimes Act 1900* (NSW) s 61, s 60(1), s 60A(1), s 59(1), s 60(2), s 60A(2).

Figure 6.2: Percentage of defendants whose charges for selected assault offences were dismissed due to mental illness, 2019



Source: NSW Bureau of Crime Statistics and Research, reference 20-19593, table 3.

- 6.19 Figure 6.2 demonstrates there was a noticeably higher rate of defendants whose charges were dismissed due to mental illness where the principal offence was an assault against a police officer or, in some cases, another law enforcement officer. This is consistent with literature and submissions suggesting that mental illness is a common feature among people who commit these types of offences.¹⁵
- 6.20 The rate of defendants whose charges were dismissed due to mental illness was relatively stable for all of these offences between 2015 and 2019, with small increases in two offences – assault, throw a missile at, stalk, harass or intimidate a police officer, and assault a law enforcement officer (other than a police officer), occasioning actual bodily harm.¹⁶
- 6.21 The proportion of Aboriginal defendants who had their charges for these offences – both “general” assaults and assaults against police and other law enforcement officers – dismissed due to mental illness in 2019 was lower than the overall population. For example:

15. See [2.7]–[2.9].

16. *Crimes Act 1900* (NSW) s 60(1), s 60A(2); NSW Bureau of Crime Statistics and Research, reference 20-19593, table 3.

- 3.0% of Aboriginal defendants had charges for common assault dismissed due to mental illness, compared with 4.4% of defendants overall
- 5.1% of Aboriginal defendants had charges for assault police dismissed due to mental illness, compared with 7.5% of defendants overall
- 3.3% of Aboriginal defendants had charges for assault occasioning actual bodily harm dismissed due to mental illness, compared with 4.4% of defendants overall, and
- 8.5% of Aboriginal defendants had charges for assault police occasioning actual bodily harm dismissed due to mental illness, compared with 12.6% of defendants overall.¹⁷

Sentences imposed

6.22 If a person is found guilty of a criminal offence, there is a range of penalties they may be given under the new penalty regime that was introduced in NSW in September 2018. These include:

- imprisonment
- an Intensive Correction Order
- a Community Correction Order (with or without supervision)
- a Conditional Release Order (with or without a conviction and with or without supervision)
- a fine
- conviction only, and
- no conviction recorded.

6.23 Penalties that were previously available included home detention, suspended sentences, community service orders and good behaviour bonds.

Types of sentences

6.24 Because we have excluded some offences against emergency services workers from analysis in this chapter due to low numbers, it is difficult to assess overall sentences imposed for those offences, compared with those imposed for “general” assault offences (as we are not comparing pools of “like” offences). A further challenge is that offences against emergency services workers typically have higher maximum penalties than “general” assault offences, so it would be expected that the spread of sentences

17. NSW Bureau of Crime Statistics and Research, reference 20-19593, table 3, table 4.

imposed would be higher. Finally, it is difficult to compare sentences over time given the changes to the penalty regime in 2018.

6.25 However, we can examine sentences imposed for some roughly comparable offences. The chart below compares the sentences imposed in 2019 where the principal offence was one of the following:

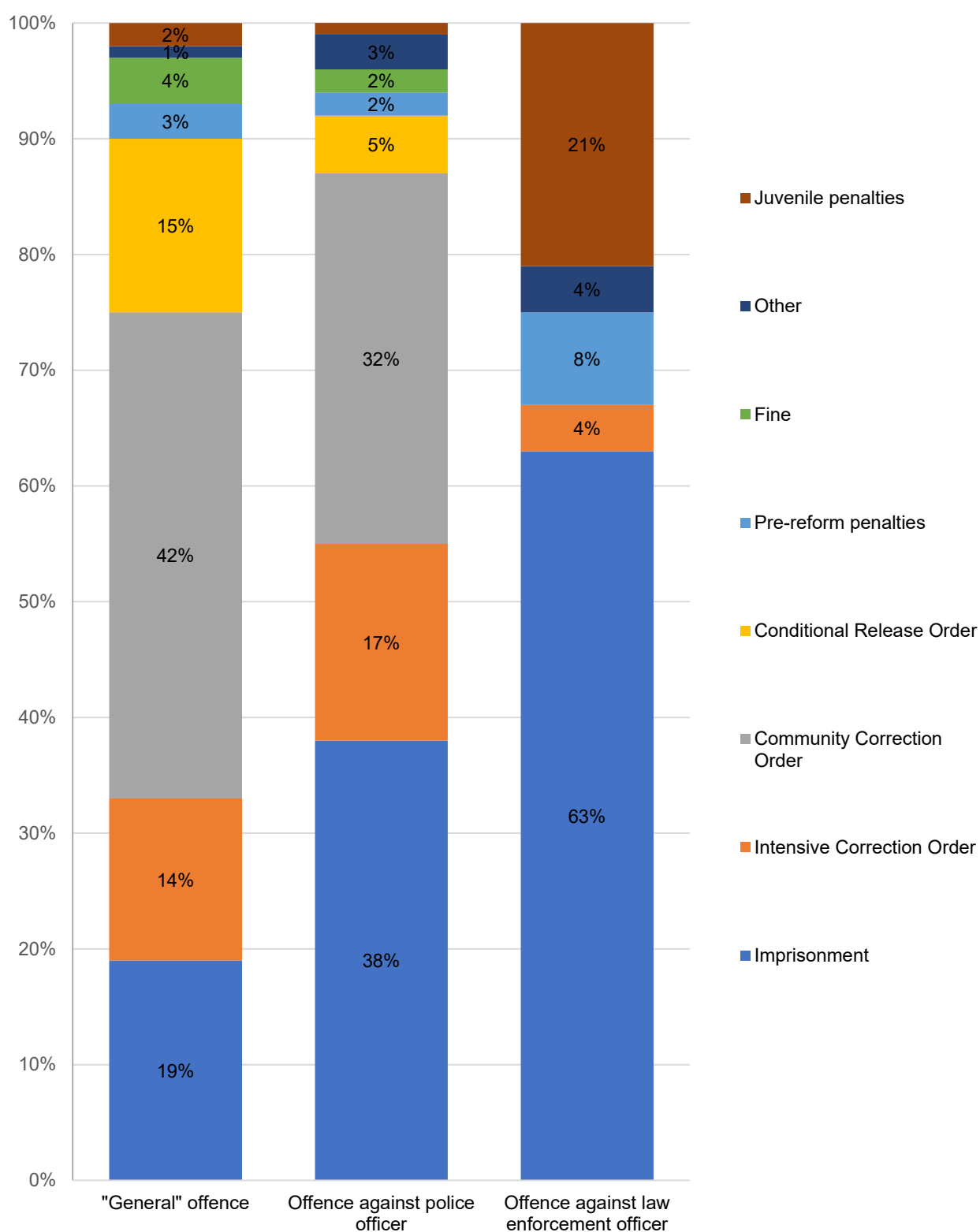
- assault occasioning actual bodily harm (maximum penalty: five years)¹⁸
- assault a police officer, occasioning actual bodily harm (maximum penalty: seven years),¹⁹ and
- assault a law enforcement officer, occasioning actual bodily harm (maximum penalty: seven years).²⁰

18. *Crimes Act 1900* (NSW) s 59(1).

19. *Crimes Act 1900* (NSW) s 60(2).

20. *Crimes Act 1900* (NSW) s 60A(2).

Figure 6.3: Sentences imposed for selected assault occasioning actual bodily harm offences, 2019



Source: NSW Bureau of Crime Statistics and Research, reference 20-19593, table 5.

- 6.26 Figure 6.3 shows that offenders who assaulted police officers and other law enforcement officers were more likely to receive sentences of imprisonment than “general” offenders. They were also less likely to receive a Community Correction Order or a Conditional Release Order.²¹
- 6.27 Figure 6.3 shows that a small number of offenders received juvenile penalties for “general” assaults and for assaults against police officers, with a larger number receiving these penalties for assaults against law enforcement officers. This is provided for information only; as discussed in chapter 4, the focus of this review is on sentencing for adult offenders.²²

Proportion of defendants sentenced to imprisonment

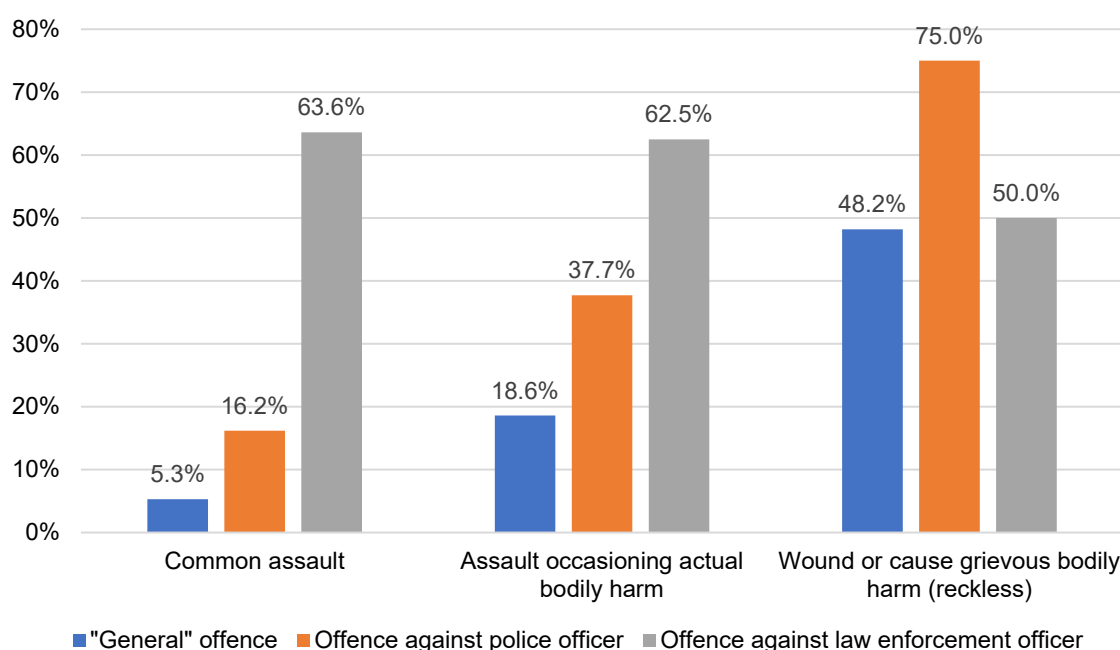
- 6.28 The chart below compares the proportion of defendants who were found or pleaded guilty to a selected assault offence in 2019 (where this was the principal offence) and who were sentenced to imprisonment.²³ Note the figures for assaults against law enforcement officers should be treated with caution, as the number of defendants who were found or pleaded guilty to these offences in 2019 was very low (109 for common assault, 34 for assault occasioning actual bodily harm, and 2 for wounding or causing grievous bodily harm).

21. NSW Bureau of Crime Statistics and Research, reference 20-19593, table 5.

22. See [4.7].

23. *Crimes Act 1900* (NSW) s 61, s 60(1), s 60A(1), s 59(1), s 60(2), s 60A(2), s 35(2), s 35(4), s 60(3), s 60A(3).

Figure 6.4: Proportion of offenders of selected assault offences who received a sentence of imprisonment, 2019



Source: NSW Bureau of Crime Statistics and Research, reference 20-19593, table 5.

- 6.29 Figure 6.4 shows that, generally, in 2019, offenders who assaulted police officers or law enforcement officers were more likely to receive a custodial sentence (where this assault was the principal offence) than offenders of “general” assaults. This is likely to be, at least in part, because these offences have higher penalties than their “general” equivalents. In the case of assaults against other law enforcement officers, the greater proportion of offenders receiving a sentence of imprisonment may be explained by the fact that those who assault correctional officers are already serving a sentence of imprisonment.
- 6.30 However, while the number of charges was very low, offenders who assaulted ambulance officers were *less* likely to receive penalties of imprisonment. Across 2015–2019, of the 55 people who had a finalised court appearance in which the principal offence was an offence against s 67J(1) or s 67J(2) of the *Health Services Act 1997* (NSW) (“*Health Services Act*”), only three were sentenced to imprisonment. However, this may be partly because more serious assaults against ambulance officers are often charged under “general” assault offences, rather than under the offences in the *Health Services Act*. We discuss the adequacy of these offences further in chapter 7.²⁴
- 6.31 In 2019, Aboriginal defendants were more likely to receive a custodial sentence for almost every assault offence reviewed. This was particularly evident for court

24. See [7.14]–[7.23].

appearances in which the principal offence was an assault against a police officer. For example, in 2019:

- 23.8% of Aboriginal offenders received a sentence of imprisonment for assaulting, throwing a missile at, stalking, harassing or intimidating a police officer,²⁵ compared with 11.5% of non-Aboriginal offenders (and offenders whose Aboriginal status was unknown), and
- 51.0% of Aboriginal offenders received a sentence of imprisonment for assaulting a police officer, occasioning actual bodily harm,²⁶ compared with 29.6% of non-Aboriginal offenders (and offenders whose Aboriginal status was unknown) did.

6.32 This is consistent with several reports which have found that Aboriginal people are more likely to be imprisoned for an offence than non-Aboriginal people, across Australia.²⁷

Length of custodial sentences

6.33 The table below sets out the average head sentence and average non-parole period (in months) for offenders sentenced to imprisonment for an assault against a police officer or other law enforcement officer (where this was the principal offence) in 2019.

25. *Crimes Act 1900* (NSW) s 60(1).

26. *Crimes Act 1900* (NSW) s 60(2).

27. See, eg, Australian Parliament, Senate Finance and Public Administration References Committee, *Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services*, Report (2016) [4.1]–[4.9]; E Archibald-Binge, N Gladstone and R Whyman, “Indigenous Offenders Twice as likely to be Jailed: Data” *The Sydney Morning Herald* (17 August 2020) 12–13.

Table 6.2: Average head sentence and average non-parole period imposed for assaults against police officers and other law enforcement officers, 2019

Section ²⁸	Offence description	Maximum penalty (months)	Average duration – head sentence (months)	Average duration – non-parole period (months)
60(1)	Assault, throw a missile at, stalk, harass or intimidate a police officer	60	8.4	5.2
60(2)	Assault a police officer, occasioning actual bodily harm	84	12.6	7.1
60(3)	Wound or cause grievous bodily harm to a police officer, reckless as to causing actual bodily harm	144	34.3	18.7
60A(1)	Assault, throw a missile at, stalk, harass or intimidate a law enforcement officer	60	7.4	5.4
60A(2)	Assault a law enforcement officer, occasioning actual bodily harm	84	14.5	9.1
60A(3)	Wound or cause grievous bodily harm to a law enforcement officer, reckless as to causing actual bodily harm	144	36	18
60B(1)	Assault, stalk, harass or intimidate any person with whom a law enforcement officer has a domestic relationship	60	19.0	11.4
546C	Resist or hinder or incite any person to assault, resist or hinder a police officer	12	4.5	3.5

Source: NSW Bureau of Crime Statistics and Research, reference 20-19717, table 1.

- 6.34 Table 6.2 indicates that, in most cases, the penalties imposed for these offences were substantially below the maximum penalty. However, the maximum penalty is the highest of a range of sentences that can be imposed for an offence. Accordingly, it is only imposed for the worst case category. Further, almost all of these offences are sentenced in the Local Court, meaning the maximum penalty cannot exceed two years' imprisonment.²⁹
- 6.35 Aboriginal offenders received slightly longer custodial sentences for assaults against law enforcement officers in 2019, compared with overall average sentences for Aboriginal and non-Aboriginal offenders. For example, the average head sentence for Aboriginal offenders sentenced to imprisonment for:

28. *Crimes Act 1900* (NSW).

29. *Criminal Procedure Act 1986* (NSW) s 267(2), s 268(1A).

- assault a police officer was 8.7 months, compared with 8.4 months for all offenders
 - assault a police officer occasioning actual bodily harm was 13.6 months, compared with 12.6 months for all offenders
 - assault a law enforcement officer was 8.4 months, compared with 7.4 months for all offenders, and
 - assault a law enforcement officer occasioning actual bodily harm was 15.6 months, compared with 14.5 months for all offenders.³⁰
- 6.36 In contrast, the average lengths of custodial sentences imposed on Aboriginal offenders for “general” assault offences in 2019 were consistent with the overall average. For example, the average head sentence for Aboriginal offenders sentenced to imprisonment for common assault (8.1 months) and assault occasioning actual bodily harm (12.6 months) were exactly the same as the average custodial sentences imposed on offenders overall for these offences.³¹
- 6.37 Table 6.3 compares the average head sentences and average non-parole periods (in months) for offenders sentenced to imprisonment in 2019 for either a selected “general” assault offence or an assault offence against a police officer or other law enforcement officer (where this was the principal offence).

30. NSW Bureau of Crime Statistics and Research, reference 20-19717, table 1, table 2.

31. NSW Bureau of Crime Statistics and Research, reference 20-19717, table 1, table 2.

Table 6.3: Average head sentence and average non-parole period imposed for selected assault offences, 2019

Conduct	“General” offence ³²			Offence against police officer ³³			Offence against law enforcement officer ³⁴		
	Max penalty	Avg head sentence	Avg non-parole period	Max penalty	Avg head sentence	Avg non-parole period	Max penalty	Avg head sentence	Avg non-parole period
Common assault	24	8.1	5.2	60	8.4	5.2	60	7.4	5.4
Assault occasioning actual bodily harm	60	12.6	7.3	84	12.6	7.1	84	14.5	9.1
Wound or cause grievous bodily harm, reckless as to causing actual bodily harm	120 (GBH)	33.1	19.7	144	34.3	18.7	144	36	18
	84 (wound)	23.0	13.4						

Source: NSW Bureau of Crime Statistics and Research, reference 20-19717, table 1.

- 6.38 Table 6.3 demonstrates that, in 2019, custodial sentences for offences against police officers and other law enforcement officers were broadly similar to (or only slightly longer than) custodial sentences for equivalent “general” assault offences.
- 6.39 However, assault offences against police officers and other law enforcement officers carry higher maximum penalties than equivalent “general” assault offences. This means average custodial sentences imposed for these offences represented a comparatively lower percentage of the maximum penalty.
- 6.40 For example, the average head sentence for offenders sentenced to imprisonment for common assault in 2019 (8.1 months) represented 33.8% of the maximum penalty for that offence (24 months). However, for the equivalent offences against a police officer or law enforcement officer, the average sentence represented 14.0% and 12.3% (respectively) of the maximum penalty.
- 6.41 Similarly, for the “general” offence of assault occasioning actual bodily harm, the average head sentence in 2019 was 21.0% of the maximum penalty. However, for the

32. *Crimes Act 1900* (NSW) s 61, s 59(1), s 35(2), s 35(4).

33. *Crimes Act 1900* (NSW) s 60(1), s 60(2), s 60(3).

34. *Crimes Act 1900* (NSW) s 60A(1), s 60A(2), s 60A(3).

comparable offences against a police officer or law enforcement officer, the average sentence was 15.0 and 17.3% (respectively) of the maximum penalty.

7. Reforming offences of assaulting emergency services workers

In Brief

New offences for assaulting “frontline health workers” should be added to the *Crimes Act 1900* (NSW). These should apply to assaults against ambulance officers, hospital health workers and hospital security officers. We also recommend a range of changes to existing offences against police officers and other law enforcement officers to improve clarity and consistency.

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- 7.1 The assault offences against police and other law enforcement officers in the *Crimes Act 1900* (NSW) (“*Crimes Act*”) are broadly appropriate. The range of offences allows for charge discretion and the maximum penalties are commensurate to the level of

criminality. However, we recommend some changes to the form and structure of these offences, to improve clarity and consistency in the law.

- 7.2 These offences do not, alone, adequately criminalise all assaults against emergency services workers in NSW. There are insufficient protections for health workers who are assaulted, including ambulance officers, hospital medical staff and hospital security staff. We recommend creating new offences against “frontline health workers” to address this gap. The new offences should be based on the existing offences against police and law enforcement officers, and be subject to monitoring by the NSW Government to ensure there are no unintended consequences for Aboriginal people.

There should be new offences for assaulting frontline health workers

Recommendation 7.1: New offences for assaulting frontline health workers

- (1) A new section that deals with assaults and other actions against frontline health workers should be inserted in Division 8A of Part 3 of the *Crimes Act 1900* (NSW).
- (2) Section 67J of the *Health Services Act 1997* (NSW) should be repealed.

- 7.3 Currently, NSW law includes assault offences against certain categories of emergency services workers. These offences are intended to signal the seriousness of such assaults, and the need to deter and punish offenders.
- 7.4 However, the current law does not appropriately recognise violence against some emergency services workers. While there are offences for assaults and related conduct against police officers, a wide variety of law enforcement officers, firefighters, rescue workers and ambulance officers, there are no offences for assaults against health workers (other than ambulance officers).
- 7.5 We heard across this review that this is a significant gap in the current law. Health workers are exposed to similar risks as law enforcement officers and perform an essential public function. Some argue that assaults against these workers should be treated equally in law.¹
- 7.6 We therefore recommend that new offences against “frontline health workers” should be included in the *Crimes Act*. These offences would cover assaults against hospital medical workers and hospital security staff.

1. NSW Young Lawyers Criminal Law Committee, *Submission AS21*, 12–13; Roundtable 3, *Consultation ASC03*.

- 7.7 These offences would also cover assaults against ambulance officers. We therefore recommend the repeal of s 67J of the *Health Services Act 1997* (NSW) (“*Health Services Act*”). We discuss the reasons for this below.
- 7.8 The recommended offences should be inserted in a new section of Part 3, Division 8A of the *Crimes Act*. The structure of the new section should be based on s 60 of the *Crimes Act*.
- 7.9 The new offences against frontline health workers would not, and are not intended to, criminalise conduct which is not already criminalised. It is currently an offence to assault a health worker, security officer or ambulance officer – just as it is an offence to assault any person. The intended effect of the new offences is for these assaults to be recognised separately within the criminal law, and to be subject to higher penalties.

The definition of “frontline health worker”

Recommendation 7.2: A definition of “frontline health worker”

Section 60AA of the *Crimes Act 1900* (NSW) should include a definition of “frontline health worker” as follows:

- (a) a person employed or engaged as a medical first responder, or
- (b) a person employed or engaged to provide health or medical treatment to patients in a hospital, or
- (c) a person employed or engaged to provide security services in a hospital.

- 7.10 “Frontline health worker” should be defined as:
- a person employed or engaged as a medical first responder, or
 - a person employed or engaged to provide health or medical treatment to patients in a hospital, or
 - a person employed or engaged to provide security services in a hospital.
- 7.11 The definition of “frontline health worker” should be included in s 60AA of the *Crimes Act*.
- 7.12 We explain this definition further below.
- 7.13 One member of the Council does not support Recommendation 7.2. The recommended definition of “frontline health worker” (and the discussion below) represents the view of the remainder of the Council.

The definition should include ambulance officers

- 7.14 As we describe in chapter 3, there are currently two NSW offences involving violence against ambulance officers.² Both are contained in the *Health Services Act*. These are:
- s 67J(1): obstruct or hinder an ambulance officer (maximum penalty: two years' imprisonment and/or a fine of \$5500 [50 penalty units]), and
 - s 67J(2): obstruct or hinder an ambulance officer by an act of violence (maximum penalty: five years' imprisonment).
- 7.15 We recommend repealing these offences and instead including violence against ambulance officers in new offences against frontline health workers in the *Crimes Act*. This is because:
- the current offences may be overlooked, as they are outside the *Crimes Act*
 - this signals that offences against all law enforcement and frontline health workers are equally serious, and
 - this ensures better consistency and clarity in the law.³
- 7.16 The NSW Legislative Assembly Committee on Law and Safety ("Committee on Law and Safety") has previously recommended moving all offences against emergency services workers to the *Crimes Act*.⁴
- 7.17 There are also several specific concerns with the offences in the *Health Services Act*. Moving them to the *Crimes Act* would not resolve these problems. The better approach is to create new offences altogether.
- 7.18 One of the concerns is that the offences in the *Health Services Act* are not aligned with the offences against law enforcement officers. For example, there are no offences for assaults against ambulance officers that result in actual bodily harm, grievous bodily harm, or wounding.⁵ This means that a person who assaults and injures an ambulance officer may only be charged with a "general" assault offence. The maximum penalty is the same as if the victim was a member of the general public. There are also no

2. See [3.42]–[3.45].

3. NSW Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel* (Report 1/56, 2017) [4.88]–[4.89]; Australian Paramedics Association (NSW), *Submission AS05*, 3.

4. NSW Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) rec 45.

5. Australasian College of Paramedicine, *Submission AS13*, 2–3.

offences for stalking, harassing or intimidating an ambulance officer, despite evidence that ambulance officers may be subject to these types of conduct.⁶

- 7.19 Further, of the existing offences against ambulance officers, the maximum penalties are lower than equivalent offences against police and other law enforcement officers. For example, the maximum penalty for obstructing or hindering an ambulance officer is a fine of \$5500 (50 penalty units) and/or imprisonment for two years, whereas the maximum penalty for resisting or obstructing a police officer or prison officer is five years' imprisonment.⁷
- 7.20 The new offences against "frontline health workers" would address this issue, by introducing graduated offences for assaults against ambulance officers based on the level of injury sustained. The maximum penalties for these offences would be aligned with the penalties for offences against police and other law enforcement officers. This approach was well supported in submissions and consultations.⁸
- 7.21 Creating new offences against frontline health workers, including ambulance officers, would also address concerns that certain situations aren't covered by the offences in the *Health Services Act*. These offences only apply if the ambulance officer is "providing or attempting to provide ambulance services to another person or persons".⁹ "Ambulance services" is defined as "the work of rendering first aid to, or transporting, sick and injured persons".¹⁰
- 7.22 Some are concerned that this does not capture all of the work done by ambulance officers, and may also exclude situations where the perpetrator is the person who is being provided with ambulance services.¹¹ This would be addressed by removing the requirement that offences must be committed while the ambulance officer is "providing or attempting to provide ambulance services to another person or persons", and instead providing that they must be committed "while in the execution of the worker's duty" (Recommendation 7.3(2)).
- 7.23 Some are also concerned that the current offences only apply to assaults committed against ambulance officers employed by Ambulance NSW, and do not apply to assaults committed on other ambulance officers, such as those engaged by St John's

6. Australian Paramedics Association (NSW), *Submission AS05*, 2.

7. *Health Services Act 1997* (NSW) s 67J(1); *Crimes Act 1900* (NSW) s 58.

8. Australian Paramedics Association (NSW), *Submission AS05*, 2–3; Roundtable 1, *Consultation ASC01*; Roundtable 2, *Consultation ASC02*; Roundtable 3, *Consultation ASC03*.

9. *Health Services Act 1997* (NSW) s 67J(1)–(2).

10. *Health Services Act 1997* (NSW) s 67J(4).

11. Australian Paramedics Association (NSW), *Submission AS05*, 2; Roundtable 1, *Consultation ASC01*; Roundtable 2, *Consultation ASC02*.

Ambulance or Hatzolah, Community First Responders, or clinical volunteers.¹² This would be addressed by defining “frontline health worker” to include “a person employed or engaged as a medical first responder” (that is, not limited to a person employed by Ambulance NSW) (Recommendation 7.2(a)).

The definition should include health workers in hospitals

- 7.24 Currently there are no separate offences for assaults against healthcare workers such as doctors, nurses or allied health professionals. Where these occur, they are charged as “general” assaults. However, these offences may be considered aggravated for the purposes of sentencing.¹³
- 7.25 We recommend that health workers should be included within the definition of “frontline health worker” and be captured by the new offences, so that assaults against hospital health workers are treated, in law, as seriously as assaults against other emergency services workers (like police officers and ambulance officers). This is because:
- there are high rates of assaults against healthcare workers – as discussed in chapter 5,¹⁴ research suggests healthcare workers experience a high rate of workplace violence
 - like other emergency services workers, healthcare workers regularly work in potentially dangerous environments, for the benefit of the wider community
 - healthcare workers may be professionally bound to assist patients in emergencies, even where this may endanger their own safety, and
 - healthcare workers may be particularly vulnerable to assaults as they usually aren’t armed or trained in self-defence.¹⁵
- 7.26 We recognise that a proportion of assaults against health workers is likely to be committed by people experiencing mental illness. The new offences are not intended to impose criminal sanctions for these offenders, where it is inappropriate to do so. Mental health diversions will still be available in these cases.
- 7.27 We recommend that the definition of “frontline health worker” should include all people who are employed or engaged to provide health or medical treatment to patients in a

12. *Health Services Act 1997* (NSW) s 67J(4); Australian Paramedics Association (NSW), *Submission AS05*, 1–2; Australasian College of Paramedicine, *Submission AS13*, 2; Roundtable 2, *Consultation ASC02*.

13. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(a).

14. See [5.22]–[5.24].

15. NSW Young Lawyers Criminal Law Committee, *Submission AS21*, 12; Australian Medical Association, *Submission AS09*, 1–2; Roundtable 2, *Consultation ASC02*; Roundtable 3, *Consultation ASC03*; *Health Practitioner Regulation National Law 2009* (NSW) s 139C(c); Medical Board of Australia, *Good Medical Practice: A Code of Conduct for Doctors in Australia* (2020) [3.5].

hospital. This would not be limited to doctors and nurses, but would also include health professionals like physiotherapists, radiographers, occupational therapists and psychologists. This is supported by some submissions.¹⁶

- 7.28 However, the definition of “frontline health worker” should be limited to people employed or engaged to provide health or medical treatment to patients in a hospital, rather than all health or medical workers. This is because, in consultations for this review, we heard evidence about high rates of violence in hospitals generally.¹⁷ However, we have not received evidence that assaults against healthcare workers in other healthcare settings, such as general practitioner clinics or community health clinics, are a particular problem. While some submissions argue these settings should be included,¹⁸ we do not have the evidence to justify extending the new offences to these locations.
- 7.29 As mentioned above, currently, “general” offences that are committed against health workers may be considered aggravated at sentencing. This is because under the *Crimes (Sentencing Procedure) Act 1999* (NSW) (“*Crimes (Sentencing Procedure) Act*”), an aggravating factor to be taken into account at sentencing is that the victim was a “health worker” and “the offence arose because of the victim’s occupation or voluntary work”.¹⁹
- 7.30 One submission suggests that “health worker” should be further defined in this section by listing specific workers who are included.²⁰ However, this would affect sentencing for all offences against health workers (including, for example, murder, manslaughter and sexual assault), as the aggravating factors in the *Crimes (Sentencing Procedure) Act* are general and apply to all offences. Given this review is limited to assaults against emergency services workers only, we cannot make such a recommendation.

The definition should include security officers in hospitals

- 7.31 Currently, in NSW, there are no separate offences for assaults against security officers who work in hospitals. However, if a hospital security officer is assaulted, this may be considered an aggravating factor at sentencing.²¹
- 7.32 We have heard that security officers in hospitals are at a high risk of being assaulted, particularly in emergency departments. We have heard that, like health workers, they often have to manage patients who are affected by drugs or alcohol, experiencing mental illness or who are otherwise aggressive and uncooperative.²²

16. See, eg, NSW Young Lawyers Criminal Law Committee, *Submission AS21*, 13.

17. Roundtable 2, *Consultation ASC02*.

18. NSW Young Lawyers Criminal Law Committee, *Submission AS21*, 13.

19. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(a).

20. NSW Young Lawyers Criminal Law Committee, *Submission AS21*, 13–14.

21. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(l).

22. Roundtable 2, *Consultation ASC02*.

- 7.33 The reasons for treating offences against health workers as seriously as other offences against emergency services workers also apply to offences against hospital security officers. Security officers are licensed professional staff who play an essential role in ensuring that patients can safely receive necessary health and medical services.²³ We therefore recommend that the definition of “frontline health worker” includes “a person employed or engaged to provide security services in a hospital”.

The structure and penalties of the new offences

Recommendation 7.3: The structure and penalties of the new offences

- (1) The section dealing with assaults and other actions against frontline health workers should include the following offences:
 - (a) obstructing or hindering a frontline health worker (maximum penalty: imprisonment for 12 months and/or a fine of 20 penalty units)
 - (b) assaulting, throwing a missile at, stalking, harassing or intimidating a frontline health worker (maximum penalty: imprisonment for five years)
 - (c) assaulting, throwing a missile at, stalking, harassing or intimidating a frontline health worker during a public disorder (maximum penalty: imprisonment for seven years)
 - (d) assaulting a frontline health worker occasioning actual bodily harm (maximum penalty: imprisonment for seven years)
 - (e) assaulting a frontline health worker occasioning actual bodily harm during a public disorder (maximum penalty: imprisonment for nine years)
 - (f) wounding or causing grievous bodily harm to a frontline health worker, reckless as to causing actual bodily harm to that worker or any other person (maximum penalty: imprisonment for 12 years)
 - (g) wounding or causing grievous bodily harm to a frontline health worker during a public disorder, reckless as to causing actual bodily harm to that worker or any other person (maximum penalty: imprisonment for 14 years).
- (2) Each of the offences in this section should only apply if the conduct is committed “while in the execution of the worker’s duty”.
- (3) This section should include a sub-section equivalent to s 60(4) and s 60A(4), *Crimes Act 1900* (NSW).

- 7.34 Recommendation 7.3 proposes a new section that deals with assault and other actions against frontline health workers. This should largely have the same form and structure of s 60 of the *Crimes Act* and include seven offences.
- 7.35 We have heard general satisfaction with the way that s 60 is structured. Given this, it is not necessary to develop an entirely new format for offences against frontline health

23. See P Anderson, *Improvements to Security in Hospitals*, Interim Report (2019) 15; P Anderson, *Improvements to Security in Hospitals*, Final Report (2020) 13, 37–38.

workers. Using the same structure also maintains consistency in the law. A similar approach was recently recommended in Queensland.²⁴

- 7.36 We outline specific features of the new offences against frontline health workers below.

There should be a summary-only offence of obstructing or hindering a frontline health worker

- 7.37 Recommendation 7.3(1)(a) proposes a summary-only offence of obstructing or hindering a frontline health worker. The maximum penalty for this offence should be imprisonment for 12 months and/or a fine of 20 penalty units.
- 7.38 There is currently a summary-only offence of resisting or hindering a police officer.²⁵ This recommendation is intended to ensure there is an equivalent offence for conduct against frontline health workers. As we discuss below, having a summary-only offence provides police with necessary discretion when charging an offender.

There should be six offences of assaulting a frontline health worker

- 7.39 Recommendation 7.3(1)(b)–(g) sets out the six assault offences in the new section that may be dealt with on indictment: three unaggravated offences, and three aggravated offences for conduct occurring during a public disorder. These are the same as the offences in s 60, including the maximum penalties. They are:
- an offence of assaulting, throwing a missile at, stalking, harassing or intimidating a frontline health worker – with a maximum penalty of five years' imprisonment
 - an offence of assaulting, throwing a missile at, stalking, harassing or intimidating a frontline health worker during a public disorder – with a maximum penalty of seven years' imprisonment
 - an offence of assaulting a frontline health worker and occasioning actual bodily harm – with a maximum penalty of seven years' imprisonment
 - an offence of assaulting a frontline health worker and occasioning actual bodily harm during a public disorder – with a maximum penalty of nine years' imprisonment
 - an offence of wounding or causing grievous bodily harm to frontline health worker, reckless as to causing actual bodily harm to that worker or any other person – with a maximum penalty of 12 years' imprisonment, and

24. Queensland Sentencing Advisory Council, *Penalties for Assaults on Public Officers*, Final Report (2020) rec 8-1, 207–208.

25. *Crimes Act 1900* (NSW) s 546C.

- an offence of wounding or causing grievous bodily harm to a frontline health worker during a public disorder, reckless as to causing actual bodily harm to that worker or any other person – with a maximum penalty of 14 years' imprisonment.

- 7.40 These offences provide an appropriate range of charging options. They largely mirror the structure of assault offences in the general law.
- 7.41 We recommend including aggravated offences for conduct committed during a public disorder. There are, currently, similar aggravated offences against police. Below, we recommend including such offences against other law enforcement officers as well.
- 7.42 Assaulting any type of public officer during a public disorder is a serious offence. If frontline health workers are present in a public disorder, it will generally be because they are needed to provide medical treatment to the public. Assaulting such workers while they are providing such an essential service makes these offences more serious and justifies higher maximum penalties.

Offences must occur while in the execution of the worker's duty

- 7.43 All the new offences should provide that the conduct must occur "while in the execution of the worker's duty". This is consistent with the offences against police officers and other law enforcement officers, in s 60 and s 60A of the *Crimes Act* respectively.
- 7.44 We also recommend that the new section should include a subsection in the same form as s 60(4) and s 60A(4) of the *Crimes Act*. This would provide an extra level of protection for frontline health workers, by ensuring that any conduct committed against them because of their work is captured by the offences.

The impact of new offences on Aboriginal people

Recommendation 7.4: Monitoring the new offences

- (1) If new offences against frontline health workers are introduced, the NSW Government should monitor:
 - (a) the rate at which these offences are charged and proven, and
 - (b) the sentencing outcomes for offenders convicted of these offences.
- (2) The NSW Government should have particular regard to the proportion of people charged with these offences who are Aboriginal and whether and how sentencing outcomes for Aboriginal defendants differ from the overall population.

- 7.45 One of the possible consequences of creating new offences for assaults against frontline health workers is that Aboriginal people may be over-represented among those charged and sentenced for these offences. As we describe in chapter 2, Aboriginal people are over-represented among defendants of assault offences generally, and this is more marked for offences against other emergency services workers, like police

officers and other law enforcement officers.²⁶ However, it is not possible to know whether over-representation is also occurring in the context of assaults against healthcare workers. These assaults are often charged under “general” assault offences, and so cannot be specifically tracked or analysed.²⁷

- 7.46 Weighing these considerations, we consider that there are still sufficient reasons to introduce an offence framework for healthcare workers which is equivalent to the offence framework that operates for other emergency services workers.
- 7.47 However, if new offences against frontline health workers are introduced, we recommend the government carefully monitors the characteristics of offenders and their sentencing outcomes. The risk of Aboriginal people being over-charged should be specifically considered. If evidence demonstrates this is occurring, the government should proactively consider diversionary and other measures to address this.

There should not be new offences for assaults against other types of workers

- 7.48 We have considered whether other categories of workers should be included in the definition of “frontline health worker” (or added to the categories of emergency services workers covered by the *Crimes Act* provisions) based on suggestions from submissions, consultations and comparative law.
- 7.49 Many other states and territories include rural fire service, fire and rescue and/or state emergency service workers in comparative offences against emergency services workers.²⁸ Some submissions suggest assaults against these workers should be treated the same in NSW law as assaults against police and other law enforcement officers, or that penalties for assaults against these workers should be otherwise increased.²⁹
- 7.50 However, we have heard that workers in these organisations experience a very low rate of assaults and are adequately supported by the police in high risk situations.³⁰ For this reason, it is not necessary to create new offences for assaults against workers in these

26. See [2.12]–[2.19].

27. See [5.1], [5.20].

28. *Crimes Act 1900* (ACT) s 26A(1), s 26A(5)(d); *Emergencies Act 2004* (ACT) dictionary definition of “emergency service”; *Criminal Code* (NT) s 187(2)(a)–(b), s 189A; *Criminal Law Consolidation Act 1935* (SA) s 20AA(1)–(4), s 20AA(9) definition of “prescribed emergency worker”; *Police Offences Act 1935* (Tas) s 34B(2), s 34B(4) definition of “emergency service worker”; *Summary Offences Act 1966* (Vic) s 51(1), s 51(2); *Crimes Act 1958* (Vic) s 31(1)(b), s 31(2A); *Sentencing Act 1991* (Vic) s 10AA(8) definition of “emergency worker”.

29. NSW Rural Fire Service Association, *Submission AS10*, 1–2; Australasian College of Paramedicine, *Submission AS13*, 2–3.

30. Roundtable 1, *Consultation ASC01*; Information provided by the NSW State Emergency Service, 19 October 2020; see [5.25]–[5.28].

organisations. One submission also supports this position.³¹ Even without a new offence, assaults against these workers may still be sentenced more severely, due to the aggravating factor contained in s 21A(2)(a) of the *Crimes (Sentencing Procedure) Act*. This demonstrates that such offences are already treated seriously at sentencing.

- 7.51 One submission argues that assaults against workers performing community-facing compliance roles for local government should be treated the same in law as assaults against other emergency services workers (like police officers or health workers).³² The submission observes that these workers:

are required to perform an essential community service which helps to maintain the amenity [and] order of the communities in which they work, and which often brings them into conflict with those members of the public who are intent on flouting local laws and regulations.³³

- 7.52 In Western Australia, members, officers and employees of local governments are included as victims in offences against “public officers”.³⁴

- 7.53 While acknowledging that these workers are at risk of facing abuse and violence in their roles, in consultations, most were of the view that these workers do not fall into the same category as other frontline health workers and law enforcement officers (who are obliged to respond in dangerous situations).³⁵ There is also a concern that if there were new offences for assaults against these workers, it might raise broader questions around whether other types of public officers and public-facing staff (such as public transport workers, teachers or social workers) should also be added.³⁶

- 7.54 Even without separate offences, assaults against local government workers may still be sentenced more severely due to the aggravating factor contained in s 21A(2)(a) of the *Crimes (Sentencing Procedure) Act*, which specifically includes a “council law enforcement officer”. Some argue this provides adequate recognition of these victims.³⁷ There is also an existing offence of wilfully obstructing a council employee, which has a maximum penalty of a fine of \$2200 (20 penalty units).³⁸

31. NSW Young Lawyers Criminal Law Committee, *Submission AS21*, 14.

32. United Services Union, *Submission AS07*, 1–2.

33. United Services Union, *Submission AS07*, 1.

34. *Criminal Code* (WA) s 1 definition of “public officer”, s 172(2), s 297(4)(a)–(b), s 318(1)(a).

35. Roundtable 3, *Consultation ASC03*.

36. NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) [4.59]–[4.61]; Law Society of NSW, *Submission AS18*, 2.

37. Roundtable 3, *Consultation ASC03*.

38. *Local Government Act 1993* (NSW) s 660.

Offences against police officers

Recommendation 7.5: All offences of assaulting police officers should be contained in s 60 of the *Crimes Act*

- (1) A new offence of resisting or hindering a police officer in the execution of the officer's duty should be added to s 60 of the *Crimes Act 1900* (NSW). This offence should be a summary-only offence with a maximum penalty of 12 months' imprisonment and/or a fine of 20 penalty units.
- (2) The offences contained in s 546C of the *Crimes Act 1900* (NSW) and in the second and third paragraphs of s 58 of the *Crimes Act 1900* (NSW) should be repealed.

- 7.55 As we discuss in chapter 3, there are several offences against police officers in the *Crimes Act*.³⁹ While most offences are contained in s 60, there are also offences in s 58 and s 546C.
- 7.56 We recommend that all offences against police officers should be contained in s 60. This is because, currently:
- the law is confusing and unclear
 - it is difficult to compare similar offences, for example, when deciding whether to charge a person with one offence or another
 - there is significant overlap across the offences, and
 - the offences in s 58, in particular, are archaic and should be modernised.
- 7.57 This could be achieved by repealing the offences contained in the second and third paragraphs of s 58, and by creating a new offence in s 60, mirroring s 546C.
- 7.58 The offences contained in s 58 substantially overlap with the existing offences in s 60 and s 546C. In recommending that the offences in s 58 be repealed, we do not intend that the conduct contained in these offences would no longer be criminalised. Rather, we intend that such conduct could instead be charged under the offence contained in s 60(1). This offence has the same maximum penalty of five years' imprisonment as the offences contained in s 58.
- 7.59 We recommend that, in repealing s 546C, a summary-only offence of resisting or hindering police should be retained. This would be achieved by inserting a new, similar offence in s 60. This is important to preserve charging discretion; in some cases, it will

39. See [3.18]–[3.30].

be appropriate for a person to be charged with that offence rather than the more serious offences. A similar approach was recently recommended in Queensland.⁴⁰

- 7.60 The main difference between s 546C and the recommended new summary offence in s 60 is that the maximum penalty is increased from a fine of \$1100 (10 penalty units) to a fine of \$2200 (20 penalty units). Ten penalty units is a low penalty, compared with other offences, and may not act as a significant deterrent or punishment.

Offences against law enforcement officers

- 7.61 We recommend two changes to the offences against law enforcement officers (other than police officers) contained in s 60A of the *Crimes Act*.

Offences against law enforcement officers should be extended to all correctional staff in correctional centres

Recommendation 7.6: Offences against law enforcement officers should be extended to all correctional staff in correctional centres

The definition of “law enforcement officer” in s 60AA of the *Crimes Act 1900* (NSW) should include “a person who is employed at or works from a correctional centre”.

- 7.62 Section 60AA of the *Crimes Act* contains a definition of “law enforcement officer”. This is relevant to sections 60A–60C, which set out offences against law enforcement officers and third parties connected with law enforcement officers.
- 7.63 The definition of “law enforcement officer” includes “the Commissioner of Corrective Services” and “governors of correctional centres, correctional officers and community corrections officers”.⁴¹ We do not propose to amend these categories, as they are generally well supported.
- 7.64 However, we recommend this definition should be extended to include staff who work in correctional centres other than correctional officers, for example, medical staff, counsellors, and education and training staff. These workers may be at an equally high risk of assault as correctional staff and, like correctional staff, they perform an essential public service that puts them in dangerous situations. Some submissions also support this approach.⁴²

40. Queensland Sentencing Advisory Council, *Penalties for Assaults on Public Officers*, Final Report (2020) rec 9-1.

41. *Crimes Act 1900* (NSW) s 60AA(h)–(i).

42. Corrective Services NSW, *Submission AS20*, 4–5, 8; Roundtable 1, *Consultation ASC01*.

There should be aggravated offences against law enforcement officers for conduct occurring during a public disorder

Recommendation 7.7: Aggravated offences for assaults against law enforcement officers during public disorders

- (1) Three new offences should be added to s 60A of the *Crimes Act 1900* (NSW):
 - (a) assaulting, throwing a missile at, stalking, harassing or intimidating a law enforcement officer (other than a police officer) during a public disorder (maximum penalty: imprisonment for seven years)
 - (b) assaulting a law enforcement officer (other than a police officer) occasioning actual bodily harm during a public disorder (maximum penalty: imprisonment for nine years)
 - (c) wounding or causing grievous bodily harm to a law enforcement officer (other than a police officer) during a public disorder, reckless as to causing actual bodily harm to that worker or any other person (maximum penalty: imprisonment for 14 years).
- (2) The definition of “public disorder” in s 4 of the *Crimes Act 1900* (NSW) should be amended to clarify that it includes a riot or civil disturbance occurring in a correctional centre.

- 7.65 Sections 60 and 60A of the *Crimes Act* are mostly identical, both in structure and maximum penalties. However, there are three additional offences in s 60 for conduct occurring during a public disorder. These offences increase the maximum penalties for the unaggravated offences.
- 7.66 We recommend there should also be similar aggravated offences in s 60A. The justification for having aggravated offences in these circumstances – to punish assaults against police officers committed by gangs and mobs more severely⁴³ – also applies to law enforcement officers. It is conceivable that officers who fall within the definition of “law enforcement officer” will be called upon to provide public services during riots and civil disturbances. Assaults occurring in these circumstances merit additional punishment.
- 7.67 We also recommend that these offences should apply in cases of riots and disturbances in prisons. This would ensure people who assault correctional officers in these cases are subject to higher penalties.
- 7.68 Currently, a “public disorder” is defined as “a riot or other civil disturbance that gives rise to a serious risk to public safety, whether at a single location or resulting from a series of incidents in the same or different locations”.⁴⁴ This definition should be amended to clarify that it includes a riot or civil disturbance occurring in a correctional centre (Recommendation 7.7(2)).

43. NSW, *Parliamentary Debates*, Legislative Assembly, Second Reading Speech, 30 August 2006, 1142–1143.

44. *Crimes Act 1900* (NSW) s 4(1) definition of “public disorder”.

The penalties for offences against police and other law enforcement officers are appropriate

- 7.69 We have considered whether the maximum penalties and standard non-parole periods (where relevant) for existing offences against police and other law enforcement officers are appropriate.
- 7.70 We heard a variety of views on this question. Some submissions argue that the current maximum penalties for these offences are too low and should be increased.⁴⁵ Some also argue that the sentences currently being imposed for these offences (which we set out in chapter 6)⁴⁶ are too low, particularly with regard to the number of offenders who are not sentenced to imprisonment.⁴⁷
- 7.71 On the other hand, most submissions argue that current maximum penalties and/or sentences imposed for these offences are appropriate.⁴⁸
- 7.72 The penalties for assaults against emergency services workers are already higher than those for equivalent “general” offences.⁴⁹ Increasing them further may mean the penalties are disproportionate when compared with the “general” offences.⁵⁰
- 7.73 Increasing penalties may also be unlikely to have a deterrent effect, given that these offences are usually not pre-meditated.⁵¹ Where more punitive penalties are appropriate, courts already have a range of available sentencing options, so that penalties can be tailored to the nature of the offence.⁵²
- 7.74 There is also a concern that increasing maximum penalties for offences against police and other law enforcement officers may have a disproportionate effect on Aboriginal and Torres Strait Islander offenders, offenders with mental illness or intellectual

45. Police Association of NSW, *Submission AS15*, 9, rec 2; D Pezzano, *Submission AS04*, 5–6.

46. See Table 3.1, [3.32].

47. Roundtable 1, *Consultation ASC01*; Roundtable 2, *Consultation ASC02*; Police Association of NSW, *Submission AS15*, 4–5, 7; Australasian College of Paramedicine, *Submission AS13*, 1.

48. See, eg, Legal Aid NSW, *Submission AS08*, 2; Children’s Court of NSW, *Submission AS14*, 1; Law Society of NSW, *Submission AS18*, 1; Corrective Services NSW, *Submission AS20*, 4; NSW Young Lawyers Criminal Law Committee, *Submission AS21*, rec 1, rec 2, 9–10; Aboriginal Legal Service (NSW/ACT), *Submission AS22*, 2; Roundtable 1, *Consultation ASC01*; Roundtable 2, *Consultation ASC02*; Roundtable 3, *Consultation ASC03*.

49. Children’s Court of NSW, *Submission AS14*, 1.

50. NSW Office of the Director of Public Prosecutions, *Submission AS11*, 4.

51. Law Society of NSW, *Submission AS18*, 2; Children’s Court of NSW, *Submission AS14*, 2–3; NSW Office of the Director of Public Prosecutions, *Submission AS11*, 12–13; Roundtable 3, *Consultation ASC03*.

52. Legal Aid NSW, *Submission AS08*, 4–5; Law Society of NSW, *Submission AS18*, 1–2; Aboriginal Legal Service (NSW/ACT), *Submission AS22*, 2.

disabilities, and young offenders.⁵³ Increasing penalties also may discourage people from accessing emergency services.⁵⁴

- 7.75 For these reasons, we do not recommend increasing the maximum penalties for the existing assault offences against police and law enforcement officers (with the exception of the offence of resisting or hindering a police officer). This is consistent with the finding of the Committee on Law and Safety in 2017.⁵⁵

53. Legal Aid NSW, *Submission AS08*, 3; Children's Court of NSW, *Submission AS14*, 2, 4; NSW Office of the Director of Public Prosecutions, *Submission AS11*, 4.

54. Legal Aid NSW, *Submission AS08*, 4; Children's Court of NSW, *Submission AS14*, 4.

55. NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) finding 12.

8. Reforming sentencing for assaults against emergency services workers

In Brief

We do not recommend introducing mandatory sentencing for assaults against emergency services workers. However, one option is to impose a presumption in favour of supervised sentences in these cases. We recommend changes to improve the implementation of consecutive sentences for assaults against correctional officers, and to improve awareness of the legislation dealing with this. Emergency services workers who are victims of assaults should be made aware they can nominate someone else to read out a Victim Impact Statement on their behalf.

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- 8.1 In the previous chapter, we make recommendations to improve the structure and content of offences involving assaults against emergency services workers. In this chapter, we move to consider the sentencing regime for these offences.
- 8.2 We have heard a variety of perspectives on whether there should be harsher sentencing for these offences. One option, introduced in other states and territories, is mandatory sentencing. We do not recommend introducing this in NSW. However, the government could consider implementing a presumption in favour of a custodial sentence for these offences.

- 8.3 As we discuss in chapter 4, there are special provisions in NSW for assaults in correctional centres to be sentenced consecutively.¹ Across this review, we have heard that the principles behind these laws are sound, but a number of issues mean they are not fully effective in practice. We make two recommendations to improve this.
- 8.4 Victim Impact Statements are the primary way in which victims of crime are involved in sentencing in NSW. Emergency services workers who are victims of assaults should be supported to make these statements if they wish to. However, we do not recommend introducing organisational or community impact statements in sentencing for these offences.

Harsher sentencing for assaults against emergency services workers

- 8.5 As we discuss in the previous chapter, we have heard a variety of perspectives about whether the current sentencing regime, including the maximum penalties, for offences against emergency services workers is sufficient.
- 8.6 Some argue that the current regime is too lenient and does not effectively deter or punish these offences. Others point to the mental health and other issues associated with some offending in this area as reasons not to increase penalties.
- 8.7 In this section, we consider two proposals for more severe sentencing for these offences. We do not recommend mandatory sentencing. Given a reasonable level of support for a presumption in favour of supervised sentences, we present this as an option for the government to consider.

We do not recommend introducing mandatory sentencing

- 8.8 In Australia, the typical approach to legislating criminal offences is to provide a maximum penalty of imprisonment. A court may impose a sentence anywhere up to the maximum; it may also impose penalties other than imprisonment (for example, fines or Intensive Correction Orders). By contrast, mandatory sentencing laws *require* a court to impose a minimum or fixed penalty upon conviction.
- 8.9 Mandatory sentencing laws, although still rare, have been enacted in Australia in recent years. They are typically introduced to increase the severity of sentences imposed for a particular offence, often because there is dissatisfaction with the current sentencing regime for that offence.²

1. See [4.19]–[4.43].

2. Law Council of Australia, *Mandatory Sentencing*, Policy Discussion Paper (2014) [6]; Australian Law Reform Commission, *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report 133 (2017) [8.7].

Mandatory minimum sentencing in other states and territories

- 8.10 Several states and territories in Australia have mandatory sentencing laws for offences against emergency services workers.
- 8.11 In the Northern Territory, assaults against police officers or emergency workers are subject to mandatory sentences of imprisonment. These are:
- if the assault involved the actual or threatened use of an offensive weapon and the victim suffered physical harm as a result of the offence: three months' imprisonment,³ or 12 months' imprisonment, if the offender had previously been convicted of a violent offence⁴
 - if the assault did not involve the actual or threatened use of an offensive weapon, but the victim still suffered physical harm as a result of the offence: three months' imprisonment,⁵ and
 - in any other circumstances, in relation to offences against police officers only, if the offender has previously been convicted of a violent offence: a term of imprisonment.⁶
- 8.12 These provisions were introduced in 2013 as a part of a broader mandatory sentencing scheme for violent offences in the Northern Territory.⁷ A 2015 review of this scheme found that "offending and reoffending dropped following the introduction of mandatory minimum prison terms for violent offences, but this is thought to be due to another crime reduction initiative".⁸ The review also observed that deterrence (a common reason for mandatory sentencing) assumes that offenders "make a rational response to increased penalties for crime", but violent offences are frequently impulsive and often involve alcohol.⁹
- 8.13 In Tasmania, any offence against a police officer that results in serious bodily harm is subject to a mandatory minimum sentence of six months' imprisonment.¹⁰ "Serious bodily harm" is not defined and the meaning has been disputed in at least one sentencing appeal.¹¹

3. *Criminal Code* (NT) s 189A; *Sentencing Act 1995* (NT) s 78CA(1)(b), s 78D.

4. *Criminal Code* (NT) s 189A; *Sentencing Act 1995* (NT) s 78CA(1)(b), s 78DA.

5. *Criminal Code* (NT) s 189A; *Sentencing Act 1995* (NT) s 78CA(2), s 78DB.

6. *Criminal Code* (NT) s 189A; *Sentencing Act 1995* (NT) s 78CA(5), s 78DF, sch 2.

7. *Sentencing Amendment (Mandatory Minimum Sentences) Act 2013* (NT) s 6.

8. C Whyte and others, *Review of the Northern Territory Sentencing Amendment (Mandatory Minimum Sentences) Act 2013* (Northern Territory, Department of the Attorney-General and Justice, 2015) 65.

9. C Whyte and others, *Review of the Northern Territory Sentencing Amendment (Mandatory Minimum Sentences) Act 2013* (Northern Territory, Department of the Attorney-General and Justice, 2015) 64.

10. *Sentencing Act 1997* (Tas) s 16A(1).

11. *Tasmania v Gladwin* [2016] TASSC 64, 30 Tas R 246 [23]–[35].

- 8.14 In its 2014 report, the Tasmanian Sentencing Advisory Council recommended against imposing mandatory minimum sentences of imprisonment for assaults against emergency services workers, finding it was “not an appropriate solution”.¹² Mandatory minimum sentences for assaulting a police officer were nonetheless introduced the next year.¹³
- 8.15 In Victoria, if certain offences are committed by an adult offender against an emergency worker, custodial officer or youth justice custodial officer, then the offender must be sentenced to imprisonment with a mandatory minimum non-parole period, unless special reasons exist. These offences are:
- causing injury intentionally in circumstances of gross violence (minimum non parole period: five years)¹⁴
 - causing serious injury recklessly in circumstances of gross violence (minimum non parole period: five years)¹⁵
 - causing serious injury intentionally (minimum non parole period: three years)¹⁶
 - causing serious injury recklessly (minimum non parole period: two years),¹⁷ and
 - causing injury intentionally or recklessly (minimum non parole period: six months).¹⁸
- 8.16 In Western Australia, assaults against a range of public officers and emergency workers (including ambulance officers, firefighters and health workers) are subject to minimum sentences of imprisonment.
- 8.17 If the offender was an adult at the time of the offence, the minimum sentence of imprisonment is:
- if the offender was armed with a dangerous or offensive weapon or instrument, or if the offender was in company: nine months,¹⁹ or
 - in other cases: six months.²⁰

12. Tasmania, Sentencing Advisory Council, *Assaults on Emergency Service Workers*, Final Report No 2 (2013) 55.

13. *Sentencing Amendment (Assaults on Police Officers) Act 2014* (Tas) s 4, inserting *Sentencing Act 1997* (Tas) s16A.

14. *Crimes Act 1958* (Vic) s 15A; *Sentencing Act 1991* (Vic) s 10AA(1) table 1.

15. *Crimes Act 1958* (Vic) s 15B; *Sentencing Act 1991* (Vic) s 10AA(1) table 1.

16. *Crimes Act 1958* (Vic) s 16; *Sentencing Act 1991* (Vic) s 10AA(1) table 1.

17. *Crimes Act 1958* (Vic) s 17; *Sentencing Act 1991* (Vic) s 10AA(1) table 1.

18. *Crimes Act 1958* (Vic) s 18; *Sentencing Act 1991* (Vic) s 10AA(4).

19. *Criminal Code* (WA) s 318(1), 318(4)(a).

20. *Criminal Code* (WA) s 318(1), 318(4)(b).

- 8.18 If the offender was 16 or 17 years old at the time of the offence, the minimum sentence of imprisonment is three months.²¹
- 8.19 In 2010, the Western Australian government reported that there was a 28% decrease in assaults against police in the first year of the mandatory sentencing scheme.²² However, some question whether this can be directly attributable to the scheme or whether it was due to other changes to the criminal justice system at the same time.²³

Perspectives on mandatory sentencing

- 8.20 Some submissions to this review support imposing mandatory minimum sentences of imprisonment for assaults against emergency services workers.²⁴ For example, one submission argues there should be mandatory sentences of imprisonment for assaults against police officers that cause harm. It argues there should be a minimum non-parole period of six months for assault occasioning actual bodily harm, and 12 months for wounding or causing grievous bodily harm.²⁵ Another submission argues that all assaults against emergency services workers should be subject to a mandatory minimum sentence of two years.²⁶
- 8.21 Arguments in favour of introducing mandatory minimum sentences for these offences include that they may:
- address perceived leniency in current sentencing patterns
 - promote consistency in sentencing
 - deter individuals from offending
 - better reflect the seriousness of the offences
 - ensure offenders receive appropriate punishment, and

21. *Criminal Code* (WA) s 318(1), 318(2)(a).

22. Government of Western Australia, "Assaults against Police Plummet under Mandatory Sentencing Laws" (22 September 2010) *Media Statements* <<https://www.mediastatements.wa.gov.au/Pages/Barnett/2010/09/Assaults-against-police-plummet-under-mandatory-sentencing-laws.aspx>> (retrieved 30 June 2021).

23. C Whyte and others, *Review of the Northern Territory Sentencing Amendment (Mandatory Minimum Sentences) Act 2013* (Northern Territory, Department of the Attorney-General and Justice, 2015) 8; Law Council of Australia, *Mandatory Sentencing*, Policy Discussion Paper (2014) [36]–[37].

24. Australasian College of Paramedicine, *Submission AS13*, 1–2; C Bradley, *Submission AS03*, 1; Police Association of NSW, *Submission AS15*, 9.

25. Police Association of NSW, *Submission AS15*, 9.

26. C Bradley, *Submission AS03*, 1.

- protect the community by incapacitating the offender.²⁷
- 8.22 On the other hand, most submissions to this review oppose introducing mandatory sentencing for assaults against emergency services workers.²⁸
- 8.23 Arguments against introducing mandatory sentencing for these offences include that they may:
- be ineffective as a deterrent
 - constrain the exercise of judicial discretion, so that individual circumstances cannot be taken into account (which may be a particular concern in cases of offenders with mental illness)
 - heighten the impact of charging decisions made by police and prosecutors, and increase charge bargaining
 - deter carers and family members of people exhibiting aggressive behaviour from seeking assistance from emergency services organisations
 - contradict the principles of proportionality and “imprisonment as a last resort”
 - be contrary to Australia’s international human rights obligations
 - reduce incentives to enter a plea of guilty, resulting in increased court workloads, and
 - have a disproportionate impact on Aboriginal and Torres Strait Islander offenders.²⁹
- 8.24 For these reasons, we do not recommend introducing mandatory minimum sentences for assaults against emergency services workers. We are especially persuaded by the

27. Australasian College of Paramedicine, *Submission AS13*, 1–2; Australian Law Reform Commission, *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report 133 (2017) [8.7]; C E W Bond and others, *Assaults on Public Officers: A Review of Research Evidence* (Griffith Criminology Institute, 2020) 15–16; P Anderson, *Improvements to Security in Hospitals*, Final Report (2020) 37.

28. Australian Lawyers Alliance, *Submission AS06* [2]–[20]; Legal Aid NSW, *Submission AS08*, 4–5; Australian Medical Association (NSW), *Submission AS09*, 3; Aboriginal Legal Service (NSW/ACT), *Submission AS22*, 2–3.

29. Australian Lawyers Alliance *Submission AS06* [4]–[19]; Aboriginal Legal Service (NSW/ACT), *Submission AS22*, 2–3; Legal Aid NSW, *Submission AS08*, 4–5; Australian Medical Association (NSW), *Submission AS09*, 3; NSW Office of the Director of Public Prosecutions, *Submission AS11*, 11–12; Australian Law Reform Commission, *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report 133 (2017) [8.1], [8.9]–[8.16]; C E W Bond and others, *Assaults on Public Officers: A Review of Research Evidence* (Griffith Criminology Institute, 2020) 20–21; Queensland Sentencing Advisory Council, *Penalties for Assaults on Public Officers*, Final Report (2020) 254–259.

evidence showing that harsher sentences, and sentences of imprisonment, do not have a deterrent effect.³⁰

- 8.25 We also note that the Queensland Sentencing Advisory Council recently recommended against mandatory sentences for assaults against public officers, because they are not an effective deterrent, remove judicial discretion, subject more offenders to the potentially criminogenic effects of imprisonment, and may disproportionately impact on First Nations people.³¹

One option is a presumption in favour of supervised sentences

- 8.26 One submission argues that the *Crimes (Sentencing Procedure) Act 1999* (NSW) (“*Crimes (Sentencing Procedure) Act*”) should be amended to include a section that mirrors s 4A of that Act (which deals with sentencing for domestic violence offences) for offences involving acts of violence against police officers and other emergency services workers.³²
- 8.27 Section 4A of the *Crimes (Sentencing Procedure) Act* provides that if a court finds a person guilty of a domestic violence offence, the court must impose either a sentence of full-time detention or an Intensive Correction Order, a Community Correction Order or a Conditional Release Order that is subject to a supervision condition.³³ However, a court is not required to do this if it is satisfied that a different sentencing option is more appropriate in the circumstances. The court must give reasons for reaching such a view.³⁴
- 8.28 Section 4A was introduced in 2017 as part of a broader reform of sentencing options. It applies to domestic violence offences committed after 24 September 2018.³⁵ Its main purpose was for more domestic violence offenders to be under supervision (rather than to deter through harsher sentences).³⁶
- 8.29 These sentencing reforms were evaluated by the NSW Bureau of Crime Statistics and Research (“BOCSAR”) in 2020. BOCSAR found that, following the reforms:

30. Australian Lawyers Alliance *Submission AS06* [12]–[15]; NSW Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) [4.35]–[4.37]; C E W Bond and others, *Assaults on Public Officers: A Review of Research Evidence* (Griffith Criminology Institute, 2020) v, 19–20.

31. Queensland Sentencing Advisory Council, *Penalties for Assaults on Public Officers*, Final Report (2020) 258–259.

32. NSW Police Force, *Submission AS19*, 4.

33. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 4A(1), s 4A(3).

34. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 4A(2).

35. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 4A, inserted by *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017* (NSW) sch 1 [4].

36. NSW, *Parliamentary Debates*, Legislative Assembly, Second Reading Speech, 11 October 2017, 274, 276–277.

- the percentage who were sentenced to a prison sentence by the Local Court declined from 14.0% to 11.8%
 - the percentage of domestic violence offenders who were sentenced to a supervised community order by the Local Court increased from 27.4% to 43.6%, and
 - the percentage who were sentenced to an unsupervised order, a fine or other penalty by the Local Court declined from 58.6% to 44.5%.³⁷
- 8.30 Introducing such a provision for offences against emergency services workers could provide stronger deterrence against this type of violence, while still ensuring judicial discretion is preserved.³⁸ On the other hand, such a provision may be inappropriate for these offences, given its main purpose is rehabilitative. There are currently no rehabilitative programs available specifically for people who assault emergency services workers.
- 8.31 The introduction of s 4A also resulted in *fewer* offenders receiving a sentence of imprisonment. Arguably, this would not be an aim of sentencing reform for offences against emergency services workers.
- 8.32 Given there are reasons in favour and against this proposal, we neither recommend nor reject it. Rather, we present it as an option that the government may wish to consider.

Improving consecutive sentences for offences against correctional staff

- 8.33 In chapter 4, we outline the current regime for concurrent and consecutive sentencing of offences against emergency services workers.³⁹
- 8.34 Where a court sentences an offender for more than one offence, or sentences an offender who is already serving a sentence, the offender will generally serve these sentences concurrently (that is, at the same time).⁴⁰ However, s 56 of the *Crimes (Sentencing Procedure) Act* provides that if a person is sentenced to imprisonment for an assault (or other offence against the person) committed:
- against anyone, while the offender was a convicted inmate of a correctional centre, or

37. N Donnelly, *The Impact of the 2018 NSW Sentencing Reforms on Supervised Community Orders and Short-Term Prison Sentences*, Crime and Justice Statistics Bureau Brief No 148 (NSW Bureau of Crime Statistics and Research, 2020) 8.

38. NSW Police Force, *Submission AS19*, 4.

39. See [4.29]–[4.43].

40. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 55(1).

- against a juvenile justice officer, while the offender was subject to control,

then that sentence is to be served *consecutively* with (that is, after) the other sentence of imprisonment, unless the court directs that the sentence is to be served concurrently.⁴¹

8.35 If the assault or offence against the person was committed against a correctional officer or juvenile justice officer, then the court cannot direct that the sentence is to be served concurrently unless special circumstances exist.⁴²

8.36 There is general support for the principle that sentences for assaults in correctional centres should be served consecutively with other sentences.⁴³ Reasons include:

- assaults in correctional centres are usually unrelated to the offence for which the offender was serving the existing sentence, and should therefore be punished separately
- this deters these offences, and therefore assists to maintain discipline within the prison system, and
- this separately recognises the harm that victims have suffered.⁴⁴

8.37 However, in submissions and consultations, we have heard of particular issues with the current regime which may prevent the provisions from being fully effective in practice. We consider these issues below.

Is s 56 working effectively?

8.38 In consultations and submissions, some argued that s 56 is not being fully utilised. They claim that many sentences for assaults against correctional officers and juvenile justice officers are still sentenced concurrently.⁴⁵

8.39 In its submission, Corrective Services NSW reports that between June 2014 and July 2019, 90 inmates were sentenced to imprisonment for an incidence of violence

41. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 56(1)–(3).

42. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 56(3)–(3A).

43. See, eg, P Spice, *Submission AS02*, 1; Prison Officers Vocational Branch, Public Service Association of NSW, *Submission AS16*, 9.

44. Roundtable 1, *Consultation ASC01*; Roundtable 2, *Consultation ASC02*; Children's Court of NSW, *Consultation ASC04*; Corrective Services NSW, *Submission AS20*, 4; Prison Officers Vocational Branch, Public Service Association of NSW, *Submission AS16*, 1, 4, 8; *R v Maher* [2005] NSWCCA 16 [31].

45. Corrective Services NSW, *Submission AS20*, 3, 14–15; Roundtable 1, *Consultation ASC01*; Roundtable 2, *Consultation ASC02*.

against correctional staff. However, only 17 of these inmates were given a consecutive sentence.⁴⁶

8.40 It is unclear why consecutive sentences were not imposed in the rest of these cases. As most of these cases are dealt with in the Local Court, remarks on sentence are not published. Reasons may include:

- the offender was on remand at the time of the assault, so s 56 did not apply
- the victim did not fall within the meaning of a “correctional officer” or “juvenile justice officer”, so the court was not required to find special circumstances before imposing a concurrent sentence
- the court found that special circumstances existed to impose a concurrent sentence
- a consecutive sentence would have exceeded the total sentence length limit of five and a half years (this applies if both the existing and new sentences were imposed by the Local Court), or
- the court and/or prosecutor were not aware that the offence should be sentenced consecutively.

8.41 Addressing these reasons may ensure that the purpose behind s 56 – ensuring that assaults against correctional officers and juvenile justice officers are sentenced consecutively, where appropriate – is more effectively implemented. We set out two recommendations to achieve this below.

8.42 One submission recommends that there should be a legislated list of “special circumstances”.⁴⁷ Alternatively, it suggests that legislation should explicitly provide that the fact that the offender has been put in segregation or has been subject to a Behaviour Management Plan does *not* constitute special circumstances.⁴⁸

8.43 We do not recommend any changes to the exception that a concurrent sentence may be imposed for these offences if “special circumstances” exist. Legislating such circumstances removes flexibility from the law and can prevent judicial officers from being able to take into account the individual factors of each case.

8.44 Another submission raises a concern that the consecutive sentence limit of five and a half years in certain cases (discussed in chapter 4) impacts the capacity of the Local Court to give effect to the purpose of s 56.⁴⁹ However, a review of transcripts for assaults against correctional staff over the period 1 January 2014 to 30 June 2019 did

46. Corrective Services NSW, *Submission AS20*, 12.

47. Corrective Services NSW, *Submission AS20*, 5, 22.

48. Corrective Services NSW, *Submission AS20*, 22.

49. Chief Magistrate, Local Court of NSW, *Submission AS17*, 1–2. See [4.36]–[4.43].

not identify any matters where the operation of this limit appeared to have impacted the sentencing outcome.⁵⁰ Accordingly, we do not recommend any changes to the sentencing limit on the Local Court.

Section 56 should extend to offences committed by people on remand

Recommendation 8.1: Extend sections 56 and 58(3)(a)(ii) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) to offences committed by inmates on remand

Sections 56 and 58(3)(a)(ii) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) should not be limited to offences committed by offenders while a “convicted inmate” or “while a person subject to control”. These sections should also apply to all relevant offences committed by inmates on remand.

- 8.45 As we discuss in chapter 4, currently, the consecutive sentencing provisions apply only if the offender was a “convicted inmate” at the time of the assault.⁵¹
- 8.46 An offender is a “convicted inmate” if they are serving a sentence of imprisonment. The provisions therefore do not apply to assaults committed by inmates who are on remand.
- 8.47 Section 56 will not always be relevant to assaults committed by offenders who are on remand. The section only applies if the assault in the correctional centre is sentenced *after* the offence for which the offender is on remand. If the assault is sentenced before the other offence, or if the offender is not ultimately sentenced for the other offence (for example, because they are acquitted), then the assault committed in the correctional centre will be sentenced as a stand-alone offence.
- 8.48 However, in some cases, the assault in the correctional centre will be sentenced after, or at the same time as, the other offence. In these cases, s 56 should apply.
- 8.49 The reasons for such assaults to be sentenced consecutively (for example, because they involve a separate act of criminality, and to deter such assaults) applies equally in these cases.⁵² We also note evidence from Corrective Services NSW estimating that around 50% of assaults committed on correctional staff are committed by offenders who are on remand, which may be because remand centres are a more volatile environment.⁵³

50 Information provided by Corrective Services NSW (10 May 2021).

51. See [4.31].

52. Corrective Services NSW, *Submission AS20*, 16–17, 21; Roundtable 1, *Consultation ASC01*.

53. Roundtable 1, *Consultation ASC01*.

There should be further guidance and training on s 56 and s 58

Recommendation 8.2: Further guidance and training on sections 56 and 58 of the *Crimes (Sentencing Procedure) Act 1999* (NSW)

- (1) The NSW Police Force should provide further training to police prosecutors about s 56 and s 58 of the *Crimes (Sentencing Procedure) Act 1999* (NSW).
- (2) The Judicial Commission of NSW should:
 - (a) include further information about s 56 and s 58 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) in the *Sentencing Bench Book*, and
 - (b) adjust the Judicial Information Research System to indicate when consecutive sentences have been imposed.

- 8.50 One submission suggests that the under-application of consecutive sentences for assaults committed in correctional centres may be a result of a lack of awareness, training and guidance materials about the application of s 56 and s 58.⁵⁴
- 8.51 We consider that it would be beneficial to update police prosecutor awareness about the availability of consecutive sentences for assaults committed in correctional centres.
- 8.52 We note that the *Sentencing Bench Book* includes some short commentary concerning s 56 and s 58 of the *Crimes (Sentencing Procedure) Act*.⁵⁵ However, it does not explain the relationship between these two sections, nor their relationship to the offences contained in s 60A of the *Crimes Act 1900* (NSW). Apart from noting that s 58 has a “troubled history”, the *Bench Book* does not refer to any more recent decisions which may help to clarify its operation. These sections could benefit from some review.
- 8.53 In addition, the Judicial Information Research System could benefit from an adjustment so that it is clear whether a sentence is imposed consecutively or concurrently. This would make any future review or monitoring of the provision simpler and avoid the need for manual processes such as transcript review.

Victim impact statements

- 8.54 In NSW, a victim’s involvement in the sentencing process is through making a Victim Impact Statement (“VIS”). “Primary victims” of an offence may submit a VIS detailing the particulars of any personal harm, emotional suffering or distress, harm to relationships, or economic loss or harm they suffered as a direct result of the offence.⁵⁶ A victim is

54 Corrective Services NSW, *Submission AS20*, 14.

55 Judicial Commission of NSW, *Sentencing Bench Book*, “Sentences for Offences Involving Assault by Convicted Inmate” [8-240], “Limitation on Consecutive Sentences Imposed by Local Courts” [8-260] <<https://jirs.judcom.nsw.gov.au/public/assets/benchbooks/sentencing/>> (retrieved 30 June 2021).

56. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 28(1). See also *Crimes (Sentencing Procedure) Act 1999* (NSW) s 26 definition of “primary victim”, “victim impact statement”, “personal harm”.

entitled to read their VIS in court.⁵⁷ The court must consider a VIS that has been tendered.⁵⁸

Improving the experience of reading out a VIS

- 8.55 Emergency services workers who are assaulted are generally eligible to prepare, submit and read a VIS, if they wish.
- 8.56 We heard in consultations that reading a VIS in court can be distressing for an emergency services worker. For example, we heard that a victim may be reluctant to read a VIS in court in the presence of the offender, especially if they are required to see the offender again (for example, if they are a correctional officer and the offender is an inmate at the same correctional centre). We heard some victims may wish for their employer to read the VIS out on their behalf.⁵⁹
- 8.57 Currently, the law permits a “representative of a victim” to read a VIS.⁶⁰ A representative is any person designated by the victim.⁶¹ Anything done by the representative is taken to have been done by the victim.⁶²
- 8.58 The current law therefore permits a victim to nominate someone (including their employer) to read out a VIS on their behalf. It may be beneficial for emergency services workers to be made aware of this option.

Organisational and community impact statements

- 8.59 One issue raised in this review is whether emergency services organisations should be able to submit statements, analogous to Victim Impact Statements, in cases involving assaults against their members. These types of statements are often referred to as “Organisational Impact Statements” or “Community Impact Statements”.⁶³
- 8.60 Some other places have schemes for these types of statements to be introduced in sentencing proceedings.
- 8.61 In **South Australia**, a Community Impact Statement may be provided to a sentencing court in addition to a Victim Impact Statement. There are two types of Community Impact Statements:

57. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 30D(1).

58. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 30E(1).

59. Roundtable 2, *Consultation ASC02*.

60. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 30(2)(b).

61. *Crimes (Sentencing Procedure) Regulation 2017* (NSW) cl 9(3).

62. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 30(3).

63. NSW Office of the Director of Public Prosecutions, *Submission AS11*, 16.

- **neighbourhood impact statements** that deal with the harm done by a specific offence to people living or working in the area where the offence was committed, and
 - **social impact statements** that deal with the effect of an offence or offences of the same kind on the community generally.⁶⁴
- 8.62 The Community Impact Statement is prepared either by the Commissioner for Victim's Rights or the prosecutor. It will usually be read out in court by the prosecutor.⁶⁵
- 8.63 In **England and Wales**, an Impact Statement for Business enables a business to explain how a crime has affected it.⁶⁶ All businesses and enterprises, including charities but excluding public sector bodies, may make an Impact Statement for Business.⁶⁷
- 8.64 England and Wales also have Community Impact Statements. These are short documents illustrating the concerns and priorities of a specific community over a set time period. A community may be defined through geography, identity or interest.⁶⁸
- 8.65 The Community Impact Statement is compiled by the police in consultation with the affected community. Community Impact Statements may be used at various stages in the justice process, such as to inform pre-charge advice and to determine appropriate conditions for conditional cautions. Prosecutors may also draw a court's attention to a Community Impact Statement prior to sentencing.⁶⁹
- 8.66 In **Canada**, a Community Impact Statement may be submitted to a sentencing court. This describes the harm or loss suffered by a community as a result of an offence. The Community Impact Statement is written by an individual on behalf of the affected community.⁷⁰
- 8.67 The Court must take a Community Impact Statement into account when an offender is sentenced.⁷¹ A court must also allow the community representative to read the statement aloud at the sentencing hearing, or present it in any other manner that the court considers appropriate.⁷²

64. *Sentencing Act 2017* (SA) s 15(2).

65. *Sentencing Act 2017* (SA) s 15(2)–(3).

66. UK, Ministry of Justice, *Code of Practice for Victims of Crime in England and Wales* (2020) [7.6].

67. UK, Ministry of Justice, "Guidance: Victim Personal Statement" (13 September 2018) <<https://www.gov.uk/government/publications/victim-personal-statement>> (retrieved 5 July 2021).

68. UK, Crown Prosecution Service, "Community Impact Statements" (29 October 2019) <<https://www.cps.gov.uk/legal-guidance/community-impact-statements>> (retrieved 30 June 2021).

69. UK, Crown Prosecution Service, "Community Impact Statements" (29 October 2019) <<https://www.cps.gov.uk/legal-guidance/community-impact-statements>> (retrieved 30 June 2021).

70. Canada, Department of Justice, *Victims' Rights in Canada: Community Impact Statements* (2015).

71. *Criminal Code* (Canada) s 722.2(1).

72. *Criminal Code* (Canada) s 722.2(3).

We do not recommend introducing any additional impact statements for emergency services organisations

- 8.68 In our 2018 report, *Victims' Involvement in Sentencing*, we recommended against adopting Community Impact Statements in NSW.⁷³ We reviewed a range of potential problems with such statements, including:
- it could be difficult to prove the information in the statement
 - contested statements could lead to delays in the sentencing process
 - it could be difficult and potentially unfair to place responsibility for the general impact of offences on a particular individual's offending
 - the statement could dilute the voice of individual victims
 - it may be difficult to identify leaders of the relevant community, and
 - they may undermine the principle of consistent sentencing.⁷⁴
- 8.69 We also noted reasons why such statements might be unnecessary, including that community harm is already implied in the fact that the activity is a criminal offence, and sentencing courts usually have enough material to discern the impact of a crime on a community.⁷⁵
- 8.70 These reasons apply to the option of introducing Organisational Impact Statements in matters involving assaults against emergency services workers. We therefore re-affirm our previous reasons for not introducing them. We also note if Community Impact Statements were to be introduced in NSW, it would be undesirable for them to be available to some types of organisations (like emergency services organisations) and not others.

73. NSW Sentencing Council, *Victims' Involvement in Sentencing*, Report (2018) [2.66].

74. NSW Sentencing Council, *Victims' Involvement in Sentencing*, Report (2018) [2.64]–[2.65].

75. NSW Sentencing Council, *Victims' Involvement in Sentencing*, Report (2018) [2.64], [2.68].

9. Other ways to manage assaults against emergency services workers

In Brief

This report focusses on sentencing for assaults against emergency services workers. However, sentencing is only one way to address this kind of violence. We recommend there should be more public education about violence against emergency services workers. We also discuss some initiatives to prevent assaults against emergency services workers.

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- 9.1 This report focusses on the sentencing of assaults against emergency services workers. However, sentencing only arises because an assault has been committed. As we have heard across this review, it is equally, if not more important, to consider how such offences can be prevented from occurring in the first place. In this chapter, we review some ways this can be achieved.
- 9.2 We recommend there should be more public education about violence against emergency services workers. This has been proven to be one of the most effective ways of preventing such assaults.
- 9.3 We also outline other initiatives that could be considered. Although many of these measures are outside our expertise, we put them forward for consideration by government given many statements by stakeholders that the most effective means to

address violence against emergency services workers, including through a focus on prevention, may be achieved outside of the sentencing process.

There should be more public education about violence against emergency services workers

Recommendation 9.1: A public education campaign

The NSW Government should develop and carry out a public education campaign about:

- (a) the wrongfulness of violence against emergency services workers, and
- (b) the criminal consequences of such violence.

- 9.4 One of the most effective ways to prevent assaults against emergency services workers is to educate the public about the wrongfulness, and consequences, of such violence. We recommend that the NSW Government carry out a public education campaign about violence against emergency services workers. Such a campaign should have two key elements:
- a message that any violence against emergency services workers is unacceptable, and
 - information about the consequences (including maximum penalties) for engaging in such violence.
- 9.5 The 2017 report of the Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel* (“2017 Committee on Law and Safety Report”) identified the need for public education on this issue. The report recommended “the NSW Government consider ongoing community education campaigns to prevent violence against emergency services personnel”.¹
- 9.6 The report cited evidence from NSW Ambulance that every time there is such a community education campaign, there is a short-lived decrease in violence against ambulance officers.² The Committee emphasised that future education campaigns should target bystanders as well as perpetrators of violence against emergency services workers.³

1. NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) rec 24.

2. NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) [3.21].

3. NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) [3.22], [3.26].

- 9.7 Similarly, the Queensland Sentencing Advisory Council recently recommended “public sector agencies should continue to run general community awareness campaigns that include information about the maximum penalties that apply to assaults on public officers”.⁴ The Council recommended these should be shared among staff channels to encourage emergency services workers to report assaults.⁵
- 9.8 Recent examples of public education campaigns in NSW include:
- NSW Ambulance, “It’s Never OK” (2019),⁶ and
 - NSW Health, “Aggression is Never OK” (2020).⁷

The campaign should say that violence against emergency services workers is unacceptable

- 9.9 A public education campaign should have, as its primary message, that any violence against emergency services workers is unacceptable. The aim of this message would be to deter assaults against these workers. The campaign should emphasise the value and importance of emergency services workers, to support this message.
- 9.10 In submissions and consultations, we have heard anecdotal evidence that there has been a recent, noticeable decline in positive public attitudes towards emergency services workers in NSW.⁸ For example, we have heard that assaults against police have become more violent and aggressive, and ambulance officers have been subject to more “road-rage” incidents.⁹ As far as we are aware, there is no comprehensive research to support this. Nonetheless, it suggests that there is scope for community education to address these attitudes.

The campaign should include information about the consequences of violence against emergency services workers

- 9.11 The second element of a public education campaign should be the inclusion of information about the criminal consequences of violence against emergency services workers.

4. Queensland Sentencing Advisory Council, *Penalties for Assaults on Public Officers*, Final Report (2020) rec 13–3.

5. Queensland Sentencing Advisory Council, *Penalties for Assaults on Public Officers*, Final Report (2020) rec 13–3.

6. NSW Ambulance, “‘It’s Never OK’ Campaign” (6 December 2019) <www.ambulance.nsw.gov.au/news/news-items/itnever-o> (retrieved 29 June 2021).

7. NSW Health, “Support Your Local Hospital and Ambulance Staff: Aggression is Never OK” (22 December 2020) <www.health.nsw.gov.au/patients/Pages/staff-safety.aspx> (retrieved 29 June 2021).

8. Roundtable 1, *Consultation ASC01*; Roundtable 2, *Consultation ASC02*.

9. Roundtable 1, *Consultation ASC01*; Australian Paramedics Association (NSW), *Submission AS05*, 2.

- 9.12 This information is important for criminal sanctions to have a deterrent effect, particularly if new offences or higher penalties are introduced that the community would be otherwise unaware of. As we noted in our recent report, *Repeat Traffic Offenders*:

Community awareness of available maximum penalties needs to be raised for their deterrent message to be received ... the possibility of a sentence of imprisonment ... will not have the strong deterrent effect intended if people are not aware of it.¹⁰

Other initiatives

- 9.13 In this section, we briefly summarise other initiatives that may prevent assaults against emergency services workers or reduce the severity of such assaults.
- 9.14 As this review is about sentencing for these offences, we have not specifically consulted on or called for submissions on these initiatives. We therefore raise these as initiatives which the government could further investigate.

Initiatives targeting certain groups within the community

- 9.15 As we discuss in chapter 2, certain groups of people are over-represented among those who commit offences against emergency services workers.¹¹ Improving the interactions between emergency services organisations and members of these communities may be one way in which to prevent future assaults.
- 9.16 However, this will be more relevant for some emergency services than others, given the diversity of work types and locations across organisations.

NSW Police initiatives

- 9.17 In their submission to this review, NSW Police refer to several ongoing initiatives aimed at improving relationships between the Police Force and certain groups, including:
- Aboriginal communities: such as the Aboriginal Community Liaison Officer program, the Clean Slate Without Prejudice program and the Never Going Back program,¹² and
 - young people: such as the Youth Liaison Officer program, the School Liaison Police Officer program, Police Citizens Youth Clubs (PCYC), and the RISEUP program.¹³

10. NSW Sentencing Council, *Repeat Traffic Offenders*, Report (2020) [1.62].

11. See [2.4]–[2.19].

12. NSW Police Force, *Submission AS19*, 25.

13. NSW Police Force, *Submission AS19*, 23–24.

- 9.18 The 2020 report by the Legislative Assembly Committee on Law and Safety, *Assaults on Members of the NSW Police Force* (“2020 Committee on Law and Safety Report”) recommended that the NSW Government provide additional funding to support building respectful relationships between police, children and young people, particularly targeted at primary school aged children.¹⁴ It also recommended increased funding for the School Liaison Police Officer, Youth Liaison Officer and PCYC programs.¹⁵
- 9.19 Additionally, the report recommended that the NSW Police Force review current Aboriginal and Torres Strait Islander cultural awareness training to ensure best practice training is being provided.¹⁶ A 2017 report by the Australian Law Reform Commission noted that many Aboriginal and Torres Strait Islander people “continue to have negative attitudes towards police, with the view that the law is applied unfairly and that complaints about police practices are not taken seriously”.¹⁷

Initiatives for offenders with mental illness

- 9.20 As we discuss in chapter 2, a disproportionate number of people who assault emergency services workers experience mental illness.¹⁸ Some existing initiatives aim to provide further support to both offenders and victims in these cases. One example is the Police, Ambulance, Clinical Early Response program, which embeds mental health clinicians with first responders.¹⁹ An evaluation of this program found that it reduced the number of emergency department presentations, reduced the need for coercive measures, and reduced demand on agencies including the police.²⁰ One submission specifically supports this program.²¹

14. NSW, Legislative Assembly Committee on Law and Safety, *Assaults on Members of the NSW Police Force*, Report 1/57 (2020) rec 13.

15. NSW, Legislative Assembly Committee on Law and Safety, *Assaults on Members of the NSW Police Force*, Report 1/57 (2020) rec 12, rec 14.

16. NSW, Legislative Assembly Committee on Law and Safety, *Assaults on Members of the NSW Police Force*, Report 1/57 (2020) rec 15.

17. Aboriginal Legal Service (NSW/ACT), *Submission AS22*, 2; Australian Law Reform Commission, *Pathways to Justice: An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report 133 (2017) [14.2].

18. See [2.7]–[2.9].

19. NSW Health, “Groundbreaking First Responder and Mental Health Collaboration Boosted by \$6 million Investment” (10 August 2020) <www.health.nsw.gov.au/news/Pages/20200610_01.aspx> (retrieved 29 June 2021). See also P Anderson, *Improvements to Security in Hospitals*, Final Report (2020) 22.

20. NSW Health, “21st Annual NSW Health Awards 2019: PACER: Police, Ambulance, Clinical, Early, Response” (29 August 2019) <www.health.nsw.gov.au/innovation/2019awards/Pages/pacer.aspx> (retrieved 29 June 2021).

21. Legal Aid NSW, *Submission AS08*, 4.

- 9.21 Some submissions also highlight, generally, the preventative effect of improved mental health and addiction services within the community.²²

Improving the safety of workplaces for emergency services workers

- 9.22 One group of initiatives to prevent, or reduce the seriousness of, assaults against emergency services workers involves improving the safety of the places and situations in which these workers operate.
- 9.23 Most initiatives are specific to individual emergency services organisations. Examples raised in submissions and past reviews include:
- for healthcare workers:
 - the use of purpose-built rooms or areas within hospital emergency departments to assess aggressive and behaviourally disturbed patients²³
 - increased use of CCTV in hospital emergency departments, particularly in regional areas²⁴
 - increasing the number of appropriately trained security staff in hospital emergency departments²⁵
 - the use of portable and fixed duress alarms in hospitals²⁶
 - designing windows, doorways and other barriers in hospitals so as to protect staff from aggressive or violent patients,²⁷ and
 - implementing support systems to assist staff members to report assaults to the police²⁸
 - for ambulance officers:

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22. Australian Medical Association NSW, *Submission AS09*, 2; Aboriginal Legal Service (NSW/ACT), *Submission AS22*, 2; NSW Young Lawyers Criminal Law Committee, *Submission AS21*, rec 6.
23. NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) rec 6; P Anderson, *Improvements to Security in Hospitals*, Final Report (2020) 18–19.
24. NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) [2.25] rec 7; C E W Bond and others, *Assaults on Public Officers: A Review of Research Evidence* (Griffith Criminology Institute, 2020) 22; P Anderson, *Improvements to Security in Hospitals*, Final Report (2020) 17.
25. NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) rec 16, rec 19; P Anderson, *Improvements to Security in Hospitals*, Final Report (2020) 13.
26. P Anderson, *Improvements to Security in Hospitals*, Final Report (2020) 7–8.
27. P Anderson, *Improvements to Security in Hospitals*, Final Report (2020) 14–16.
28. P Anderson, *Improvements to Security in Hospitals*, Final Report (2020) 8–9.

- ensuring up to date, working and regularly tested duress alarm systems are included in all ambulance vehicles,²⁹ and
 - ensuring all ambulance officers have portable radios or, in remote areas, satellite phones³⁰
- generally:
 - the wearing of body worn cameras by first responders³¹
 - the use of databases, either within or across emergency services organisations, to share information about people who present a risk to the health and safety of staff,³² and
 - providing adequate funding to emergency services organisations so that workers are never required to work alone, and so that leave absences resulting from assaults can always be covered.³³

Training for emergency services workers

- 9.24 Another way to reduce the impact of assaults against emergency services workers is to train them to respond to violent or threatening interactions. While this may not prevent assaults from occurring, it may assist workers to de-escalate such assaults, and protect themselves from harm. Many stakeholders support improved training for emergency services personnel.³⁴
- 9.25 In consultations, we have heard that violence prevention training varies considerably across different emergency services organisations. For example, while police officers,

29. NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) rec 27–29, rec 31, rec 33.

30. NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) rec 30, rec 34.

31. NSW Ambulance, “Body Worn Camera Pilot” (C2019) <www.ambulance.nsw.gov.au/about-us/access-to-information/privacy/body-worn-camera-pilot> (retrieved 29 June 2021); NSW Police Force, “BWV: Body Worn Video” (2018) <www.police.nsw.gov.au/__data/assets/pdf_file/0008/586484/Updated_Brochure_BWV.pdf> (retrieved 5 July 2021).

32. NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) rec 8; NSW Legislative Assembly Committee on Law and Safety, *Assaults on Members of the NSW Police Force*, Report 1/57 (2020) rec 6.

33. NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) rec 36; NSW Legislative Assembly Committee on Law and Safety, *Assaults on Members of the NSW Police Force*, Report 1/57 (2020) rec 2.

34. NSW Young Lawyers Criminal Law Committee, *Submission AS21*, 15; Roundtable 2, *Consultation ASC02*; Roundtable 3, *Consultation ASC03*.

ambulance officers and correctional officers receive this type of training, many health workers do not.³⁵

9.26 The 2017 Committee on Law and Safety Report recommended:

That each NSW emergency services agency should review its violence prevention and safety training on a regular basis, in consultation with staff, to ensure it is comprehensive, up to date and responsive to contemporary needs.³⁶

9.27 The report drew attention to the need for staff to have specialised skills in managing offenders with mental illness or who are under the influence of drugs or alcohol.³⁷ The report also recommended:

- NSW Health consider making an existing one-day violence prevention training for emergency department staff, mandatory for new emergency department staff,³⁸ and
- NSW Ambulance consider whether further training for ambulance officers is needed, given they are at a higher risk of violence than most other emergency services workers.³⁹

9.28 A recent report on safety in hospitals similarly found many hospital staff had not completed violence prevention training, and it recommended a full audit and assessment of violence prevention training, including rates of participation, availability of refresher training and locations where training should be undertaken.⁴⁰

9.29 The 2020 Committee on Law and Safety Report also drew attention to the importance of communication skills and de-escalation strategies for police officers. The report recommended the NSW Police Force evaluate current training to assess whether improvements were required to deliver best practice training.⁴¹

35. Roundtable 2, *Consultation ASC02*; NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) [2.12], [3.3], [3.16], finding 7.

36. NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) rec 23.

37. NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) [3.4].

38. NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) rec 5.

39. NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) [3.12].

40. P Anderson, *Improvements to Security in Hospitals*, Final Report (2020) 25–27.

41. NSW, Legislative Assembly Committee on Law and Safety, *Assaults on Members of the NSW Police Force*, Report 1/57 (2020) rec 11.

There should be improved data collection and access

- 9.30 Another initiative which could go alongside sentencing reforms is to improve the data collected and reported about offences against emergency services workers. While not strictly a prevention initiative, better data would assist in monitoring the prevalence and sentencing outcomes for these offences. It would allow government to track the effectiveness of reforms and provide an ongoing evidence base for future reforms.
- 9.31 Over the course of this review, we have heard of a range of limitations in the way data for assault offences against emergency services workers is currently collected. These include:
- that offences against other law enforcement officers are not separated, for recording purposes, by the occupation of the victim
 - that “general” assault offences that are committed against emergency services workers are not recorded separately
 - that offences sentenced on the basis of the aggravating factor that the victim was an emergency services worker⁴² are not specifically recorded, and
 - that, as most of these offences are heard in the Local Court, remarks on sentence are not generally recorded or transcribed.⁴³
- 9.32 Addressing these concerns may assist the capacity to understand, and evaluate, how these offences are dealt with in the criminal justice system. Modifying the assault offences against police officers, law enforcement officers and frontline health workers so that they all have the same structure (Recommendation 7.3, 7.7) would also improve data analysis, by facilitating comparisons across these offences.
- 9.33 We also heard concerns about the lack of transparency and public access to data on these offences.⁴⁴ One submission suggests this “has resulted in a widespread view, potentially fuelled by mainstream and social media, that offenders escape any significant punishment”.⁴⁵ Some suggest that regularly providing information about

42. *Crimes (Sentencing Procedure) Act 1999* (NSW) s 21A(2)(a).

43. NSW Office of the Director of Public Prosecutions, *Submission AS11*, 4–5; NSW, Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) [4.27]–[4.30].

44. Australian Paramedics Association (NSW), *Submission AS05*, 3; NSW Young Lawyers Criminal Law Committee, *Submission AS21*, 15–16.

45. Australian Paramedics Association (NSW), *Submission AS05*, 3.

sentencing outcomes for these offences may address negative attitudes among workers and the broader community, and encourage victims to report.⁴⁶

- 9.34 The Committee on Law and Safety previously recommended the NSW Government consider additional funding so a greater number of judgments of the Local and District Courts of NSW can be transcribed and published on the NSW Caselaw website.⁴⁷ The government noted this requires significant resources.⁴⁸ Publishing both sentencing data and remarks on sentence may address community concerns.

46. Australian Paramedics Association (NSW), *Submission AS05*, 3; NSW Young Lawyers Criminal Law Committee, *Submission AS21*, 15.

47. Legislative Assembly Committee on Law and Safety, *Violence Against Emergency Services Personnel*, Report 1/56 (2017) rec 43.

48. NSW Government, *Response to Recommendations from the Legislative Assembly's Inquiry into Violence Against Emergency Services Personnel* (C2018) 12–13.

Appendix A:

Selected assault offences

General offences

Section	Act	Description
33(1)	<i>Crimes Act 1900</i> (NSW)	Wound or cause grievous bodily harm with intent to cause grievous bodily harm
33(2)	<i>Crimes Act 1900</i> (NSW)	Wound or cause grievous bodily harm with intent to resist or prevent lawful arrest or detention
35(1)	<i>Crimes Act 1900</i> (NSW)	Cause grievous bodily harm in company, reckless as to causing actual bodily harm
35(2)	<i>Crimes Act 1900</i> (NSW)	Cause grievous bodily harm, reckless as to causing actual bodily harm
35(3)	<i>Crimes Act 1900</i> (NSW)	Wound in company, reckless as to causing actual bodily harm
35(4)	<i>Crimes Act 1900</i> (NSW)	Wound, reckless as to causing actual bodily harm
54	<i>Crimes Act 1900</i> (NSW)	Cause grievous bodily harm
58 (first paragraph)	<i>Crimes Act 1900</i> (NSW)	Assault with intent to commit a serious indictable offence
58 (third paragraph)	<i>Crimes Act 1900</i> (NSW)	Assault with intent to resist or prevent lawful apprehension or detainer
59(1)	<i>Crimes Act 1900</i> (NSW)	Assault, occasioning actual bodily harm
59(2)	<i>Crimes Act 1900</i> (NSW)	Assault in company, occasioning actual bodily harm
59A(1)	<i>Crimes Act 1900</i> (NSW)	Assault during a large-scale public disorder
59A(2)	<i>Crimes Act 1900</i> (NSW)	Assault during a large-scale public disorder, occasioning actual bodily harm
61	<i>Crimes Act 1900</i> (NSW)	Common assault

Offences against emergency services workers

Offences against police officers		
Section	Act	Description
58 (second paragraph)	<i>Crimes Act 1900</i> (NSW)	Assault, resist or wilfully obstruct any officer
60(1)	<i>Crimes Act 1900</i> (NSW)	Assault, throw a missile at, stalk, harass or intimidate a police officer
60(1A)	<i>Crimes Act 1900</i> (NSW)	Assault, throw a missile at, stalk, harass or intimidate a police officer during a public disorder
60(2)	<i>Crimes Act 1900</i> (NSW)	Assault a police officer, occasioning actual bodily harm
60(2A)	<i>Crimes Act 1900</i> (NSW)	Assault a police officer during a public disorder, occasioning actual bodily harm
60(3)	<i>Crimes Act 1900</i> (NSW)	Wound or cause grievous bodily harm to a police officer, reckless as to causing actual bodily harm
60(3A)	<i>Crimes Act 1900</i> (NSW)	Wound or cause grievous bodily harm to a police officer during a public disorder, reckless as to causing actual bodily harm
546C	<i>Crimes Act 1900</i> (NSW)	Resist or hinder or incite any person to assault, resist or hinder a police officer
Offences against law enforcement officers		
Section	Act	Description
60A(1)	<i>Crimes Act 1900</i> (NSW)	Assault, throw a missile at, stalk, harass or intimidate a law enforcement officer
60A(2)	<i>Crimes Act 1900</i> (NSW)	Assault a law enforcement officer, occasioning actual bodily harm
60A(3)	<i>Crimes Act 1900</i> (NSW)	Wound or cause grievous bodily harm to a law enforcement officer, reckless as to causing actual bodily harm
60B(1)	<i>Crimes Act 1900</i> (NSW)	Assault, stalk, harass or intimidate any person with whom a law enforcement officer has a domestic relationship

Other offences		
Section	Act	Description
35	<i>Fire and Rescue NSW Act 1989</i> (NSW)	Obstruct or hinder the Commissioner, a staff member of Fire and Rescue NSW, or a member of a fire brigade
67J(1)	<i>Health Services Act 1997</i> (NSW)	Obstruct or hinder an ambulance officer
67J(2)	<i>Health Services Act 1997</i> (NSW)	Obstruct or hinder an ambulance officer by an act of violence
42	<i>Rural Fires Act 1997</i> (NSW)	Obstruct or hinder the Commissioner, a fire control officer or an officer of a rural fire brigade
24	<i>State Emergency Service Act 1989</i> (NSW)	Obstruct or hinder the Commissioner or other emergency officer

Appendix B:

Submissions

- AS01 William Chirgwin (29 July 2020)
- AS02 Peter Spice (29 July 2020)
- AS03 Christa Bradley (30 July 2020)
- AS04 Domenic Pezzano (26 August 2020)
- AS05 Australian Paramedics Association (NSW) (6 September 2020)
- AS06 Australian Lawyers Alliance (14 September 2020)
- AS07 United Services Union (14 September 2020)
- AS08 Legal Aid NSW (24 September 2020)
- AS09 Australian Medical Association (NSW) (25 September 2020)
- AS10 NSW Rural Fire Service Association (25 September 2020)
- AS11 NSW Office of the Director of Public Prosecutions (28 September 2020)
- AS12 Youth Justice NSW (29 September 2020)
- AS13 Australasian College of Paramedicine (30 September 2020)
- AS14 Children's Court of NSW (30 September 2020)
- AS15 Police Association of NSW (30 September 2020)
- AS16 Prison Officers Vocational Branch, Public Service Association of NSW (30 September 2020)
- AS17 Chief Magistrate of the Local Court of NSW (30 September 2019)
- AS18 Law Society of NSW (30 September 2020)
- AS19 NSW Police Force (7 October 2020)
- AS20 Corrective Services NSW (14 October 2020)
- AS21 NSW Young Lawyers Criminal Law Committee (16 October 2020)
- AS22 Aboriginal Legal Service (NSW/ACT) (16 October 2020)

Appendix C:

Consultations

Roundtable 1 (ASC01)

4 November 2020

Mr Kevin Corcoran (Corrective Services NSW)
Ms Renee Craft (Corrective Services NSW)
Mr Tony Gately (NSW Ambulance)
Assistant Commissioner Luke Grant (Corrective Services NSW)
Assistant Commissioner Jason Heffernan (NSW Rural Fire Service)
Ms Gayle Robson (Corrective Services NSW)
Commissioner Peter Severin (Corrective Services NSW)
Ms Kalena Smitham (NSW Ambulance)
Mr Steven Southgate (Youth Justice NSW)
Assistant Commissioner Karen Webb (NSW Police Force)
Chief Superintendent Murray West (Fire and Rescue NSW)

Roundtable 2 (ASC02)

9 November 2020

Mr Shay Deguara (Public Service Association of NSW)
Mr Steve Fraser (Health Services Union (NSW/ACT/QLD))
Mr Pat Gooley (Police Association of NSW)
Mr Stuart Hatter (Health Services Union (NSW/ACT/QLD))
Ms Nicole Jess (Public Service Association of NSW)
Mr Bill O'Kell (United Services Union)
Dr Kate Porges (Australian Medical Association (NSW))
Mr Bruce Rowling (Health Services Union (NSW/ACT/QLD))
Mr Gary Wilson (Australian Paramedics Association (NSW))

Roundtable 3 (ASC03)

11 November 2020

Mr Lloyd Babb SC (Director of Public Prosecutions)
Mr Simon Bruck (NSW Young Lawyers Criminal Law Committee)
Ms Sarah Ienna (NSW Young Lawyers Criminal Law Committee)
Ms Rose Khalilizadeh (NSW Bar Association)
Ms Nadine Miles (Aboriginal Legal Service (NSW/ACT))
Ms Penny Musgrave (Law Society of NSW)
Ms Jane Sanders (Shopfront Youth Legal Centre)

Mr Thomas Spohr (Legal Aid NSW)
Mr John Sutton (Law Society of NSW)

Children's Court of NSW (ASC04)

23 November 2020

His Honour Judge Peter Johnstone

Local Court of NSW (ASC05)

14 December 2020

His Honour Judge Graeme Henson AM
Deputy Chief Magistrate Jane Mottley AM
Deputy Chief Magistrate Michael Allen
Ms Brooke Delbridge

District Court of NSW (ASC06)

1 February 2021

The Hon Justice Derek Price AO

