

Review of penalties for attacks on Police and emergency workers

The Australian Paramedics Association (NSW) (APA (NSW)) would like to thank the Department of Communities and Justice Sentencing Council for the opportunity to provide a submission on behalf of our members. APA (NSW) is an apolitical registered industrial organisation that represents the largest single group of Paramedics in NSW. APA (NSW) is run by Paramedics elected from across the state and as such has a depth of practical operational knowledge and experience that allows us to truly understand the challenges that face our members in their current operating environment. Many of our delegates/members have experienced violence while trying to serve our communities and are interested in the outcomes of this review.

APA (NSW) has repeatedly raised its concerns about legislation, charges and sentencing. Despite highlighting concerns with NSW Ambulance (NSWA), the Ministry of Health (MoH) and the Minister for Health, we have seen no significant change. While APA (NSW) supports our emergency services colleagues, we will restrict our comments to matters as they relate to our membership, NSW Paramedics and Ambulance Officers.

In addition to the offences listed in the Council's information package, from the Crimes Act 1900 (NSW), we would also like Section 67J of the Health Services Act 1997 - "Obstruction of and violence against ambulance officers" (see attached) for consideration. Section 67J was introduced in response to the community's concerns about the increasing violence against paramedic and their view that such violence warranted a particular offence with significant penalties.

The Health Services Act 1997 Section 67J has several issues which limit its application and effectiveness. Concerns about Section 67J of the Health Services Act were also raised in the Legislative Assembly Committee on Law and Safety Inquiry into Violence Against Emergency Services Personnel in 2016. The concerns raised were not only about the construction of Section 67J but also its limited use. As stated previously, these concerns had also already been raised with NSW, the MoH and the Minister for Health.

Limitations of the Health Services Act 1997 - Section 67J

- a. Section 67J only allows for a penalty to be applied while NSW Ambulance Officers are 'rendering first aid to, or transporting, sick and injured persons'.
 - i. Section 67J is limited to "members of staff" of NSW. This means that the offence is related to who we work for rather than the work that we do. With professional registration, there is an increasing number of organisations that employ Paramedics, providing services not only to businesses but

- also to the general public; services such as St John's Ambulance and Hatzolah. There are also a significant number of people that work for more than one organisation. Offences against Paramedics should be punishable irrespective of who we are working for at the time.
- ii. While 'first aid' is undefined, it may exclude some of the work that we do, especially given the ever-increasing scope of practice for contemporary Paramedics (e.g. ECP's). First Aid has been defined as "emergency care or treatment given to an ill or injured person before regular medical aid can be obtained" (Merriam-Webster) and is normally considered to be the treatment provided by bystanders before treatment by medical professionals. An argument could be made that the services provided by NSW, which include treatment by registered Paramedics, no longer automatically meet this description.
 - iii. Ambulance Officers are called on to assist with a wide range of scenarios, and this may include providing help to those who are not 'sick and injured' and may include support of other agencies in a variety of roles.
 - iv. While NSW Ambulance Officers spend significant periods treating/transporting sick and injured persons, they are also a potential target at other times. Section 67J does not include any traffic/vehicle-related provisions, nor does it include equivalents to 'Assault, throw a missile at, stalk, harass or intimidate' or recklessness as is contained in Section 60A of the Crimes Act 1900. NSW Ambulance Officers are a potential target while ever they are identifiable. In some instances, NSW Ambulance Officers have even been targeted while off duty as a direct result of their work.
- b. Section 67J also limits penalties to acts committed while an "ambulance officer is providing or attempting to provide ambulance services to another person or persons". This limitation seems to exclude patients as offenders. While patients should be able to access extenuating circumstances (e.g. traumatic brain injury) as a legal defence, they should not be excluded simply because they are a patient under the care of the Ambulance Officer. This limitation is especially concerning given that the 2016 Occupational Violence Prevention report by NSW said: "The majority of the occupational violence (88%) within NSW Ambulance during the research period was perpetrated by patients ..."
 - c. Section 67J also requires that the actions or violence intentionally obstructs or hinders treatment. Any action or violence for any other reason may not meet the requirements of this section. It should also be noted that 'violence' is undefined in the Act.
 - d. No information is readily available on the outcomes or use of Section 67J of the Health Services Act. This information would be critical for further consideration of the appropriateness and use of Section 67J.
 - e. No information is readily available on any non-parole period(s) for an offence against Section 67J.
 - f. Penalties for violence against Ambulance Officers (even if it results in actual bodily harm) under 67J are no different than for any other person (Crimes Act s59(1)) and has a lower penalty than any other victim if the assailant is in the company of others (Crimes Act s59(2)). Additionally, penalties for assaults occasioning actual bodily harm against Police or other law enforcement officers are higher (Crimes Act s60(2) & s60A(2) (7 years)). In fact, the penalties for

assaulting a person preserving a wrecked vessel (Crimes Act s57) are higher than penalties for violence against Ambulance Officers under Section 67J.

- g. Section 60(4) of the Crimes Act provides for a simpler and broader scope than is contained in Section 67J of the Health Services Act. The Crimes Act that relates to Police would be more in line with the expectations of the community with respect to violence against Ambulance Officers.

As a result of these limitations, the use of Section 67J is severely restricted and underutilised. Despite the apparent intention of Section 67J to make violence against Ambulance Officers a special offence, the Police appear to often rely on charges based on the Crimes Act making the implementation of Section 67J of the Health Services Act ineffective and mostly irrelevant.

A solution would be to either incorporate Paramedics and Ambulance Officers into the existing provisions of Division 8A of the Crimes Act relating to Police or to largely replicate this division with an equivalent "Division 8C Assaults and other actions against Emergency Services Workers". Given that Paramedics are now registered medical professionals with regulated obligations and are at increasing risk outside their primary workplace care needs to be taken not to exclude Paramedics from important protections once again.

Lack of Information

There is a lack of readily available information on the prosecution and sentencing of people that assault Paramedics and Ambulance Officers. The lack of information provided by NSW about the outcomes of offences against NSW Ambulance Officers has resulted in a widespread view, potentially fuelled by mainstream and social media, that offenders escape any significant punishment. This only serves to deter Ambulance Officers, who are historically poor reporters of violence, from reporting incidents. No information concerning prosecutions or sentencing is readily available to Ambulance Officers and little feedback, if any, is provided to internal incident reports unless a significant incident occurs.

While there is some information available as part of the information for this consultation, it doesn't include information on the length of sentencing as a percentage of the maximum penalty, or sufficient information to determine this. There is also no information with regard to Section 67J prosecutions. Without this information, it is difficult to comment on the adequacy of maximum sentences. If the full span of sentencing is not used and maximum sentences are rarely imposed, then increasing maximum penalties serves little purpose.

The lack of demonstrable penalties, or penalties that fail to meet community expectations, can also harm the mental health and recovery of Ambulance Officers. The maximum penalty available is largely irrelevant if it is never used. In addition to the physical injuries and related mental trauma, there is a sense of injustice when assailants are not seen to be penalised. This delays recovery and can have serious implications financially and mentally. The provision of regular reports on assaults and sentencing to the workforce, as well as feedback to individuals about their incidents, may improve workforce views and reporting.

APA (NSW) would be happy to answer specific questions that the Council may have either in writing or in a hearing.

Yours Sincerely,

Gary Wilson
APA (NSW) Secretary

HEALTH SERVICES ACT 1997 - SECT 67J

Obstruction of and violence against ambulance officers

67J Obstruction of and violence against ambulance officers

(1) A person must not intentionally obstruct or hinder an ambulance officer when the ambulance officer is providing or attempting to provide ambulance services to another person or persons.

: Maximum penalty--50 penalty units or imprisonment for 2 years, or both.

(2) A person must not, by an act of violence against an ambulance officer, intentionally obstruct or hinder the ambulance officer when the ambulance officer is providing or attempting to provide ambulance services to another person or persons.

: Maximum penalty--Imprisonment for 5 years.

(3) If on the trial of a person charged with an offence against subsection (2) the trier of fact is not satisfied that the offence is proven but is satisfied that the person has committed an offence against subsection (1), the trier of fact may acquit the person of the offence charged and find the person guilty of an offence against subsection (1). The person is liable to punishment accordingly.

(4) In this section--

“ambulance officer” means a member of staff of the Ambulance Service of NSW.

“ambulance services” means the work of rendering first aid to, or transporting, sick and injured persons.