

Police Association of NSW



Submission to the
NSW Sentencing Council

Review: Assaults on emergency services
workers

September 2020

The Police Association of NSW appreciates the opportunity to submit to this Review and thanks the NSW Sentencing Council for its consideration of this submission.

The PANSW represents the professional and work health and safety interests of all police officers in NSW.

Assaults on police officers is an issue of serious concern to our members; every assault affects the victim officer, their colleagues, and the entire policing family.

Our members suffer significant harm as a result of the aggression, abuse and violence frequently directed towards them. They closely follow the sentencing outcomes for offenders who have assaulted themselves or their colleagues, and are strongly invested in sentencing outcomes as a measure of the support given to them by the courts and the community.

It is from this perspective that the Police Association of NSW makes this submission, and the outcomes of this review will be of great interest to our members.

The harm caused by assaults on police officers

Over the past ten years there has been an average of 2436 assaults of police each year.¹

The NSW Bureau of Crime Statistics and Research has consistently measured this trend as 'stable'.² We acknowledge that a stable trend of assaults on police means that, in the context of a growing population and increase in police numbers, a stable number of assaults reflects a decreasing rate (eg per 100,000 population or per 1000 police officers).

However, this does not mean the current trend is acceptable, as it still means there are thousands of police officers who suffer assaults each year.

¹ New South Wales Bureau of Crime Statistics and Research 2020, Recorded crime reports, viewed 14 August 2020, <https://www.bocsar.nsw.gov.au/Pages/bocsar_crime_stats/bocsar_latest_quarterly_and_annual_reports.aspx>

² Ibid.

Violence towards police officers causes considerable harm to individual officers, the NSW Police Force, and society as a whole.

The NSW Police Force recently reported that between 2015 to 2019, an average of 1,157 police officers are injured as a result of physical assaults each year.³

Also during the period 2015-2019, assaults on police officers:

- were the leading cause of police Workplace Health and Safety incidents, making up 15% of all incident notification reports from police officers (around 1400 per year);
- made up 13% of all police officer workers compensation claims, costing the NSW Police Force \$36 million in workers compensation claims; and
- resulted in 510,000 hours in time lost for officers having to be off work (3% of all time lost).⁴

Police officers also experience considerable psychological distress as a result of violence and abuse they suffer in their work. A study by beyondblue found that police suffered the highest rates of assault and verbal harassment amongst emergency services personnel, and this is associated with higher levels of psychological distress.⁵ Psychological injuries are incredibly damaging injuries in the NSW Police Force, resulting in the long period of disability and time off work, and difficulty in recovery and rehabilitation.

Assaults on police are also an affront to society, as assaults on police represent a challenge to the safety and authority of police in performing duties the community relies on for protection of life and property.⁶

³ NSW Police Force (2020) Submission to Legislative Assembly Committee on Law and Safety, Inquiry into Assaults on members of the NSW police force, 4 September 2020, page 5 -

<https://www.parliament.nsw.gov.au/ladocs/submissions/69019/Submission%2017.pdf>

⁴ Ibid, page 26 - <https://www.parliament.nsw.gov.au/ladocs/submissions/69019/Submission%2017.pdf>

⁵ Beyond Blue Ltd. (2018). Answering the call national survey, National Mental Health and Wellbeing Study of Police and Emergency Services – Final report., page 86.

⁶ For example, see Attorney submission in Attorney General's Application under s37 of the Crimes (Sentencing Procedure) Act 1999 No 2 of 2002 137 A Crim R 196.

The purposes of sentencing

The *Crimes (Sentencing Procedure) Act 1999* provides the following purposes for sentencing:

3A Purposes of sentencing

The purposes for which a court may impose a sentence on an offender are as follows—

- (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,
- (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.

The Police Association submits current sentencing trends for offences relating to assaults against police are too frequently failing to meet these purposes.

Firstly, a large proportion of sentencing outcomes for these offences are too lenient to adequately achieve purposes (a), (e), (f) and (g).

Secondly, given a large proportion of persons convicted of offences relating to assault police have prior proven court appearances and subsequent proven court appearances (discussed below) it is clear that interactions with the criminal justice system could be better used as an opportunity to ensure respectful and safe behaviour towards emergency service workers, potentially preventing those individuals subsequently assaulting them.

Sentences for assault police offences are frequently too lenient

Assaults on police cause considerable harm to the assaulted officers, their colleagues, the NSW Police Force, and the authority of the police to protect the community.

Therefore, all assaults on police are incredibly serious, and should be treated as such by the court.

Accordingly, sentences for these offences should show a high level of support for police, and strongly denounce the conduct of the offender, recognising the harm to the officer and the community, ensure adequate punishment for the offence and make the offender accountable for their actions.

For these purposes, it will frequently be the case that a custodial sentence is appropriate, and when the assault occasions actual bodily harm to the police officer, wounds or causes GBH to the officer, a custodial sentence is necessary.

Current NSW Sentencing Outcomes

Current sentencing outcomes are not meeting these expectations.

Table 1 below displays the number of proven court appearances where the principal offence was an assault police offence by penalty.

Penalty	Jul 2014 - Jun 2015	Jul 2015 - Jun 2016	Jul 2016 - Jun 2017	Jul 2017 - Jun 2018	Jul 2018 - Jun 2019	Jul 2019 - Jun 2020
Custody - Number sentenced to prison	295	274	310	284	276	258
Custody - Average sentence length (NPP, in months)	5.2	5.6	5.3	5.7	5.3	5.6
Custody - Proportion sentenced to custody	17.8%	17.8%	19.4%	18.3%	18.2%	18.7%
Supervised Community Sentence	509	459	476	470	572	515
Unsupervised Community Sentence	590	556	555	594	483	411
Fine	196	203	200	154	135	135
Other	68	44	56	54	54	62
Total persons found guilty	1658	1536	1597	1556	1520	1381

Source: NSW Bureau of Crime Statistics and Research: customised data set provided September 2020. Assault police is defined as the following offences:

- Lawparts 235 and 64772 under section 58 of the Crimes Act 1900
- sections 60(1), 60(1A), 60(2), 60(2A), 60(3), 60(3)(a), 60(3)(b), 60(3A) of the Crimes Act 1900

Table 2 further breaks down sentencing outcomes according to the level of harm caused by the assault, as well as for other related offences (for charges in the 18 month period January 2018 to June 2019).

Offence	Number of finalised charges	Guilty	Sentences in which Assault police was principal offence	Custodial sentences	Average non-parole period	Non-parole period range Lowest/Highest
Assault police officer	1285	945	467	70 (15%)	6 months	0-1 month/ 1-2 years
Assault police causing actual bodily harm	396	281	204	69 (34%)	7 months	1-2 months/ 2-3 years
Wound with intent to resist arrest	6	4	3	3 (100%)	32 months	All in 2-3 year range
Cause GBH to police officer	7	3	3	0 (0%)	N/A	N/A
Resist/hinder police officer	2652	2163	806	42 (5%)	3 months	0-1 month/ 8-9 months
Harass police officer	63	48	28	5 (18%)	4 months	0-1 month/ 7-8 months
Intimidate police officer	1147	928	303	71 (23%)	5 months	0-1 month/ 1-2 years

Source: NSW Bureau of Crime Statistics and Research: customised data set provided December 2019

Officers suffer from the injustice of assault police outcomes

When police officers are assaulted, it causes them a great deal of harm, fear and frustration. They often feel very strongly about the fact they have been assaulted whilst performing their duties to protect the people of NSW.

This is particularly the case if they have suffered injury, or have ongoing problems with time off work, recovery or psychological harm such as trauma and fear.

This hardship is exacerbated when the incident that has caused them so much harm leads to insignificant consequences for the perpetrator who assaulted them. The assaulted officer, their colleagues and their friends and family, suffer from these injustices.

The community relies on the courage and sacrifice of police to protect them from crime, dangerous incidents, and a variety of other threats like natural disasters and pandemics. Police in turn rely on the courts to support them in the execution of their duties. That support must be demonstrated by the court when violent offenders threaten police officers' safety and authority.

The sentencing outcomes shown above do not meet that standard. When the vast majority of offenders who assault police receive non-custodial sentences, including for those assaults causing harm to the officer assaulted, police feel completely unsupported by the courts.

This is of serious concern to the policing family – assaults on police are not adequately denounced by the court, and police fear this enables offenders to assault them with a sense of impunity.

Repeat offenders

Many of the individuals who are convicted and sentenced for assault police offences have offending history prior to assaulting that officer, and also subsequently commit further offences.

Table 3 shows the proportion of offenders who assault police with previous (past 5 years) or subsequent (12 months) offences.

Offence	Prior proven court appearance	5 or more prior proven court appearances	Subsequent proven court appearance
60(1)	67%	21%	33%
60(2)	64%	19%	30%

Source: NSW Bureau of Crime Statistics and Research: customised data set provided December 2019.

Given there is a large proportion of offenders who assault police who have previously had interactions with the criminal justice system, there may be scope to use that interaction to better prevent assaults on police and other emergency service workers.

We also understand there is a small group of offenders who commit multiple assaults on police officers, however the majority of people who assault police officers do so only once in a five-year period.

When so many offenders who assault police officers have multiple interactions with the criminal justice system, the lenient sentencing outcomes outlined above are all the more frustrating.

Other jurisdictions

Other jurisdictions in Australia have taken steps to ensure sentences for assaults on police better support police officers, in particular when those assaults cause harm to the officer.

Victoria⁷, Queensland⁸ and South Australia⁹ have all introduced far higher maximum available sentences for assault causing harm, with the maximum sentences available ranging from 10 to 15 years, compared to 7 years in NSW.

Victoria¹⁰, Northern Territory¹¹ and Western Australia¹² have also set mandatory minimum terms of imprisonment for assaults on police causing harm.

⁷ Crimes Act 1958 (Vic), s18.

⁸ Criminal Code 1899 (Qld), s340(b).

⁹ Criminal Law Consolidation Act 1935 (SA), s20AA.

¹⁰ Sentencing Act 1991 (Vic), section 10AA (4).

¹¹ Sentencing Act 1995 (NT), Division 6A.

¹² Criminal Code Compilation Act 1913 (WA), s318(4).

Regarding assaults causing serious injury/harm to police officers, Victoria¹³, Tasmania¹⁴ and Western Australia¹⁵ have also set mandatory minimum terms of imprisonment, ranging from 6 months to 5 years depending on the circumstances.

Replicating arrangements in these jurisdictions would address the inadequate sentencing outcomes occurring in NSW.

Recommendations

Recommendation 1

Introduce mandatory sentences of imprisonment, with minimum non-parole periods for persons convicted of an assault on a police officer causing harm to the officer:

- for assault occasioning actual bodily harm: 6 months
- for wounding or causing grievous bodily harm: 12 months.

Recommendation 2

Increase the maximum available sentence for assaults on police under section 60 of the Crimes Act 1900 by the following:

- subsection 60(1) by an additional 2 years,
- subsection 60(1A) by an additional 2 years,
- subsection 60(2) by an additional 3 years,
- subsection 60(2A) by an additional 3 years,
- subsection 60(3) by an additional 3 years, and
- subsection 60(3A) by an additional 3 years.

¹³ Sentencing Act 1991 (Vic), section 10AA (1).

¹⁴ Sentencing Act 1997 (Tas), s16A.

¹⁵ Criminal Code Compilation Act 1913 (WA), s297(5)(b).

Opportunities to teach safe and respectful interactions with emergency service workers

As outlined above, there is a large majority of offenders who assault police who have had a previous proven court appearance, and many have had more than one.

The Police Association submits this provides an opportunity to better use these prior interactions with the criminal justice system to educate individuals about behaviour towards key pillars of the community, including emergency services personnel.

The objective of such a program should be to communicate the role and value of emergency services in society, the consequences emergency service personnel suffer from aggressive, abusive and violent behaviour, and ways to interact with those personnel respectfully and without assaulting them as they go about their duties.

If the Council can, through its analysis of the characteristics of offenders who assault police officer, identify indicators of individuals most at risk of committing assaults against emergency service workers, it may be able to select suitable intervention points at which an interaction with the criminal justice system should result in a requirement those individuals participate in such education.

Recommendation 3

The Sentencing Council analyse the characteristics of offenders who assault police officers and other emergency services personnel, to identify an ideal intervention point at which a compulsory education program could prevent assaults on emergency services personnel.