

SUBMISSION



Prison Officers Vocational Branch Submission to the Sentencing Council Review into Assaults on Emergency Services Workers



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Foreword from PSA General Secretary

Every day, Correctional Officers go to work without knowing what new dangers they may be exposed to. On any given day, the routine of the Correctional Centre may be disrupted and an officer could be exposed to a violent and often life-threatening assault.

Officers are routinely assaulted with punches, kicks, gaol made weapons, spit, faeces, boiling water and anything else that an inmate can improvise. Recovery from a serious assault can be a long and arduous process, not just because of the physical effects but also the effects on the officer's mental health.

In recent times, we have seen a number of serious incidents, including an officer being taken hostage where he was told he would be killed and an officer who was literally stabbed in the back.

There is a perception amongst Correctional Officers that the public and the judiciary do not understand what they go through or worse, that Correctional Officers should accept these assaults as part of the career they have chosen. Unfortunately, the relatively light sentences imposed upon inmates who have assaulted a Correctional Officer appear to support this perception.

In the few cases that result in a sentence being imposed, those sentences are often served concurrently with the sentence the inmate is already serving. This results in the inmate facing no additional time and therefore, no perceived penalty.

The Public Service Association of NSW maintains that specific and general deterrence as well as rehabilitation must be considered when imposing a sentence upon a Correctional Officer or any Emergency Services worker. The only way this can be achieved is by imposing sentences that reflect the seriousness of the assault and are to be served at a time that has a real impact upon the offender.

The Public Service Association of New South Wales is a state-registered employee organisation. This submission is on behalf of the Prison Officers Vocational Branch of the Public Services Association of NSW, which represents over 5,000 correctional officer in NSW state run prisons, transport and court locations. The PSA also covers correctional officers in the privatised Parklea (MTC Broad Spectrum) and Clarence (Serco) centres through our federally registered counterpart the Community and Public Sector Union (SPSF Group). For the purposes of this submission, the PSA will be referred to as 'the Association'.

The Association represents all workers within Corrective Services NSW. These roles include:

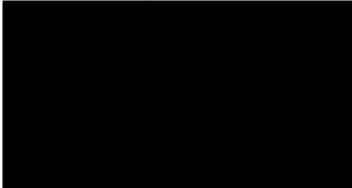
- Correctional Officers
- Overseers
- Commissioned Officers
- Executive Officers
- Service and Programs Officers
- Community Corrections Officers
- Case Management workers
- Private Correctional Officers and
- Any other workers employed by Corrective Services NSW

The Association also covers other emergency services workers in the criminal justice system

such as Sheriff Officers, and Youth Justice Officers, as well as workers in State Emergency Service, Rural Fire Service, civilian NSW Police and selected Fire and Rescue officers.

The Association agrees that there are few more disgraceful acts than deliberate violence committed against our NSW Police Force officers, Correctional and Youth Justice Officers, emergency services workers and health workers. We welcome this review into Assaults on Emergency Services Workers and wish to thank the Attorney General Mark Speakman.

Yours sincerely,



Stewart Little
General Secretary

Overview

It has been observed by the Prison Officers Vocational Branch of the Public Service Association of NSW that there has been an alarming increase in assaults and use of force in NSW prisons in recent years.

There are a number of contributing factors to these increases, including changes to policies, and legislation (particularly around bail), as well as a period of overpopulation of centres, causing a beds crisis and consequently leave to a rapid build of new facilities.

The below table demonstrates the increases to assaults and at-risk interactions recorded by Corrective Services from 2014 to now. These figures were provided to the Association by CSNSW via the Government Information (Public Access) process.

Figure 1. Assaults of staff, inmates and use of force in CSNSW prisons 2014-2020

Year	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020*
Assaults on Staff	53	214	187	193	239	250
Assaults on inmates	1725	2968	3584	3356	3674	3307
Use of Force	1253	1843	1995	2123	2220	2243

*This is up to 30 April 2020

Current Scenario with COVID

Due to the COVID-19 pandemic, limitations have been placed on physical visitation of inmates to ensure this high risk population and environment does not suffer from mass infections and death, as has occurred in overseas jurisdictions. This removal of visits has been mitigated via the use of tablet AVL technology.

A positive consequence of limiting physical visitations has been the reduction of contraband entering the prison system.

A negative consequence of the change to routine and reduced contraband availability has, however, lead to an increase in behavioural issues in some inmates, including an increase in their propensity to violence.

During the COVID pandemic correctional officers have had to deal with and respond to the following serious incidents:

- Mid North Coast CC on 11 May 2020: riot and a hostage of a custodial officer by an inmate.
- South Coast CC on 6 May 2020: riot, use of force and gas deployed.
- Wellington CC on 11 April 2020: riot
- Shortland CC on April 30 2020: riot
- Long Bay Hospital CC on 8 June 2020: riot
- Silverwater Womens on 31 August 2020: stabbing

Current Sentencing Options Available to Correctional Officers

At present in NSW, there is a perception that a form of double jeopardy rule applies when inmates assault correctional officers. This perception has been highlighted in a recent high profile case¹ which lead to state wide industrial action from Correctional Officers.

When a NSW Correctional Officer has been assaulted by an inmate whilst on duty, the officer has to choose to either:

- have NSW Police lay charges against the inmate, which will be pursued through the judicial system; or
- charge the inmate through the internal Corrective Service NSW (CSNSW) misconduct system.

At present, the officer cannot choose to do both.

Judicial or Internal Charges

Historically, correctional officers who have been assaulted have tended to prefer to charge an inmate through the internal system in all but the most serious of cases. The reasons for this are numerous, including:

- NSW Police often do not want to pursue what they consider minor assault matters and/or a work issue;
- CSNSW management fails to adequately support the officer throughout the judicial process;
- the court system is not sympathetic to the assaulted officer; and
- there is a perception amongst officers that the effort and stress of prosecuting a matter is often not worth the outcome the officer receives through the judicial system.

Traditionally, inmates have been given a greater punishment for assaults on staff through the internal CSNSW misconduct system than they would ever receive through the judicial system.

The relative time frames can also be an issue. It can be very difficult for an officer to wait a year or more to see an outcome in the judicial system, whereas the officer could see an immediate outcome in the CSNSW misconduct system. This is highly relevant to officers who have to deal with that inmate in the intervening period.

Once an outcome is reached in the judicial system, the penalty is often a pitifully small sentence that runs concurrent to the inmate's original sentence; meaning the inmate has effectively received no further consequence for the assault on the Correctional Officer. Other times, the charges are dismissed or good behaviour bonds are given that run concurrent with the inmate's original sentence.

To provide a practical example, an inmate who has committed assault occasioning actual bodily harm on an officer may be given:

- a one month sentence to be served concurrently from the local court; or
- 5 months off buy-ups through the CSNSW misconduct system.

The first option sees the inmate have no change to his current situation, the second option results in real world consequences for the inmate, even though those consequences are relatively trivial.

¹ Director of Public Prosecution (NSW) v Hamzy [2019] NSWCA 314

In the event that the inmate's charges are either:

- dismissed in court;
- no conviction is recorded;
- a small sentence is issued which runs concurrently; or
- a good behaviour bond is implemented,

The officer cannot then change their decision and opt for the internal charges.

Correctional Officers' Experiences with the Judicial System

There is a feeling amongst officers that going through the judicial system to address their assault will nearly always result in the inmate receiving a relatively light sentence, avoiding any serious penalty for their actions. Essentially, many CSNSW staff feel that inmates have essentially been given carte blanche to assault prison staff with little to no consequences.

This is why correctional officers in the past have not relied on the courts to deal with staff assaults and instead choose to go through the internal CSNSW misconduct system.

Correctional officers are of the view that their welfare is not given the recognition it deserves from the legal system, Furthermore, given that so few officers choose to go through the judicial system, the courts remain rather ignorant of how prevalent the issue of assaults on staff is, thus perpetuating the current situation.

To place this issue in context, below are some brief examples of sentences given to inmates by courts for assaults on correctional officers over the last 10 years. Names have been altered to ensure officer safety and ensure compliance with internal records requirements:

- Correctional Officer NF was assaulted by inmate JT on 19 August 2010. Inmate JT punched Officer NF multiple times in an unprovoked attack, causing black eyes, concussion and multiple bruises to his face and chest. JT was given a NPP of 12 months, which ran concurrently to his fulltime sentence. JT went on to assault another correctional officer in 2014, for which he also served a concurrent sentence.
- Senior Correctional Officer GH was assaulted by inmate AE on 18 August 2013. Inmate AE was a talented boxer and punched Officer GH multiple times in the head during a cell search. Officer GH received multiple injuries including 6 stitches in his lip and fractures to his nose and jaw. Officer GH was unable to return to work for some time. Inmate AE received only 8 days' additional incarceration for the assault.
- Correctional Officer CH was assaulted by inmate JA on 30 September 2017. Inmate JA punched Officer CH to the head causing injury. JA had also threatened to stab Officer CH. Inmate JA received a 3 month NPP custodial sentence. JA later went on to assault Senior Correctional Officer AC on 5 December 2017 in an unprovoked attack, punching and scratching the officer resulting in injuries to her face. Inmate JA was sentenced to 10 months NPP to run cumulative with his current sentence. At the time of these two assaults, inmate JA already had a history of assaulting prison staff in 2011 and 2012.
- Senior Correctional Officer RH was assaulted by inmate MM on 11 September 2017. Inmate MM punched Officer RH in the chest after being caught swallowing contraband on a contact visit. MM was sentenced to 1 month which ran concurrently with his sentence. No extra time served.
- Correctional Officer RP was assaulted by inmate SS on two separate occasions.

The first assault occurred on 11 October 2018 when inmate SS crushed the Officer's arm against a concrete wall and kicked other staff. SS received a 6-month Community Corrections Order for this assault. The second assault occurred on 22 December 2018. Inmate SS bit Officer RP on the leg. Inmate SS received another Community Corrections order for 12 months. Inmate SS's file shows a history of assaults on police and correctional officers. No extra time was served for any of the staff assaults.

- Correctional Officer JS was assaulted by inmate TP on 15 August 2019. Inmate TP threw a cup of boiling water over Officer JS's face and hand, resulting in minor burns. TP received a 6-month custodial sentence to be served concurrently with his original sentence. No extra time served.
- Correctional Officer TK was assaulted by inmate MB on 28 August 2019. Inmate MB spat directly in Officer TK eyes, requiring months of blood tests for the Officer. Inmate MB received a 9-month Community Corrections Order to be served concurrently with another CCO for an unrelated AOABH (dv). No additional time served.
- Correctional Officer RC was assaulted by inmate ST on 24 April 2020. Inmate ST threw faeces at Officer RC. Inmate ST received a 4 month NPP custodial sentence that ran concurrent with his other sentences. Inmate ST has an extensive history of assaulting police.

Changing Attitudes Towards Charging Inmates Externally

Although Correctional Officers have traditionally favoured pursuing internal misconduct charges, the Prison Officers Vocational Branch (POVB) of the Public Service Association has been pushing for more inmates to be criminally charged through the judicial system for assaults on correctional staff.

The POVB believe that internal charges prevent the general public and the judiciary from becoming aware of the increasing risks that Correctional Officers are facing. Furthermore, the penalties available through the internal misconduct system – while currently greater than those being handed down by the judicial system – remain themselves inadequate in addressing the majority of assaults of correctional officers by inmates.

Increase in Assaults on Staff

As can be seen in Figure 1, the rate of assaults on staff is increasing rapidly each year. There has been a 372 per cent increase of such assaults in the last six years.

It must be noted that the figures in Figure 1 (provided to the Association via GIPA) may also be modest calculations of the overall situation. The Association understands that based upon the audit of the Offender Integrated Management System's records, in the 2019 to 2020 financial year there were 427 (rather than 250) assaults on Correctional Officers and in the last six months there has been a 20% overall increase in staff assaults².

The NSW Audit Office tells us that in six years, the ratio of inmate on staff assaults has tripled. Going from 0.58 assaults per 100 inmates in 2012 to 1.53 per 100 inmates in 2018.

² Based upon an audit of the Offender Integrated Management System records of assaults on staff. This information conflicts with the information provided by GIPA application noted above in table which refers to incidents.

Unfortunately, further data beyond 2018 has not been made available at this time but it is generally accepted the upwards trend is continuing.

This year, there has been a noticeable upsurge in the number of assaults where inmates spit blood and saliva on Correctional Officers. Assaults involving spitting have the potential to spread disease and have always been considered serious, but spit has now become even more deadly with the potential to spread COVID-19.

Apart from spitting, correctional officers are routinely assaulted with punches, kicks, stabbings, slashings and even having faecal matter smeared on them and in their faces, and a recent incident of a stabbing at Silverwater Womens CC.

Effect on Correctional Officers

Due to the unusual and dangerous conditions of their jobs, Correctional Officers suffer greater mental health issues and PTSD than the average citizens. They deal with violent and antisocial behaviours every day. They respond to fire, death, medical episodes, violence, suicide, self-harm, riots, mentally unwell inmates, transportation of ill and injured inmates and a myriad of other difficult situations on a daily basis. Correctional officers are assaulted in greater numbers than the average worker.

The general public and even the generally well informed members of the judiciary may not appreciate what occurs behind the walls of a Correctional Centre. Unfortunately, this means that the difficult and often dangerous work of Correctional Officers is not adequately acknowledged when offenders are being sentenced by a court of law.

The constant stressors, assaults on staff and general feeling of isolation without the support of the broader community are contributing factors to officers spending periods on worker's Compensation. The effects of assaults on correctional officers can have lasting physical and psychological effects often for many years after the assault. Unfortunately, these assaults are ending with medical retirements for many officers. Many of these issues have been explored by Four Corners in an expose into workers compensation matters whereby those who are injured are injured through the workers compensation system failing to support the worker.³

Considerations for Sentencing

The reasons for sentencing an offender have been established in common law for a long time and are now enshrined in NSW statute⁴ as seven purposes:

- 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 to the community.

The sentencing of an inmate, who at the time of the offence was already serving a sentence or on remand, creates a unique scenario.

³ <https://www.abc.net.au/news/2020-07-27/four-corners-workers-compensation-investigation/12477902>

⁴ Section 3A Crimes (Sentencing Procedures) Act 1999

Prior to the commission of the assault, a judicial officer had already made a determination to deprive the inmate of their liberty. Either as a result of proven offences (convicted) or because of the risk the inmate poses whilst awaiting trial (remand).

It is difficult to see how any of the seven purposes, with the possible exception of (d) can be addressed if the inmate is given a concurrent sentence. A concurrent sentence would not in any way punish, deter, protect, make the offender accountable, denounce the conduct, or recognise the harm done to the victim and the community. It is even unlikely to assist in the inmate's rehabilitation, beyond what is already in place from the original sentence.

Despite these purposes, we have provided above examples of situations where concurrent or even non-custodial sentences have been imposed on inmates who have assaulted staff.

Currently, correctional officers do not feel supported by the judicial system or the general public. The POVB welcomed the introduction of the *Crimes (Administration of Sentences) Amendment (Inmate Behaviour) Bill 2019* to deal with the problem caused by the Bassam Hamzy decision.

However, whilst this legislation allows for ongoing behaviour management to ensure the safety and security of the centre, there needs to be clear direction that the implementation of such measures is not taken into account for discounting the sentence for assaulting an officer.

Recommendations

The Association recommends that sentences for inmates who assault Correctional Officers should reflect the dangerous and difficult job they undertake for NSW and be reflective of the nature of the work, as well as an expectation that any penalty would meet the community expectations of at least the same offence in the community. Furthermore:

- A sentence should be imposed that aims to punish and hold the inmate accountable for their actions, whilst also serving as a deterrent to other inmates who would contemplate assaulting Correctional Officers. The sentence should also recognise the harm done to the Correctional Officer and be sufficient to denounce assaults of this kind.
- The judicial system needs to make it very clear to inmates that assaults on Correctional Officers will not be tolerated and they will receive a penalty that is in addition to their previous sentence.
- Sentencing provisions should make it clear that behavioural management measures to maintain the security and good order of a gaol are not relevant factors for reducing sentences.
- All violent offences against Correctional Officers must carry an additional custodial sentence that is to be served on a cumulative rather than concurrent basis. This is the only way that the majority of the purposes for sentencing can be satisfied and that Correctional Officers can be shown that offences committed against them have been recognised and are viewed by the general community as unacceptable.
- Repeat offences against Correctional Officers should result in increased penalties. Correctional Officers do not attend work to be assaulted and judicial sentences should reflect this and take into account prior/repeat offences.

Whilst the Association has written this submission on behalf of our membership, we believe that the NSW Government has a duty to educate and inform the general public of the assaults perpetrated on emergency services workers from all areas and to make clear that such actions are unacceptable and that the punishment will be decisive and appropriate to enforce this message and protect the community.

The dangerous and difficult work that Correctional Officers and our fellow emergency services workers should be recognised by the community and the judiciary should know to impose the appropriate penalties when any such worker is assaulted.