

**Submission
No 22**

INQUIRY INTO VIOLENCE AGAINST EMERGENCY SERVICES PERSONNEL

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Submission to the Legislative Assembly Committee on Law and Safety;
Inquiry into Violence Against Emergency Services Personnel

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The New South Wales Society of Labor Lawyers ("the Society") makes the following brief comments in response to the terms of reference for the Inquiry into Violence Against Emergency Services Personnel ("the Inquiry"):

1. Assaulting an emergency services employee is already an aggravating factor in sentencing, as set out in s21A of the Crimes (Sentencing Procedure) Act 1999 (NSW):

"Aggravating factors

The aggravating factors to be taken into account in determining the appropriate sentence for an offence are as follows:

- (a) 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."

2. The Inquiry's terms of reference refer to 'all emergency services personnel' as follows:

"all emergency services personnel, including police; ambulance officers; firefighters; protective services officers; SES workers; lifesavers; marine rescuers; and nurses, doctors and other hospital staff who provide emergency treatment;"

This definition does not make specific mention of other classes of employee covered by s. 21A (above). The Society cautions against adopting any definition that may have the effect of creating artificial distinctions between classes of employees; all employees should have workplaces free from assault.

3. The terms of reference may also exclude some contractors, outworkers, students and volunteers covered by the definition of 'worker' in s7 of the Work Health and Safety Act 2011 (NSW).

4. The Inquiry's terms of reference do not include any mention of the employer (Person Conducting Business or Undertaking or PCBU) obligation to provide a safe workplace, as set out in s. 19 of the Work Health and Safety Act 2011:

19 Primary duty of care

- (1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of:
 - (a) workers engaged, or caused to be engaged by the person, and
 - (b) workers whose activities in carrying out work are influenced or directed by the person, while the workers are at work in the business or undertaking.
 - (2) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.
 - (3) Without limiting subsections (1) and (2), a person conducting a business or undertaking must ensure, so far as is reasonably practicable:
 - (a) the provision and maintenance of a work environment without risks to health and safety, and
 - (b) the provision and maintenance of safe plant and structures, and
 - (c) the provision and maintenance of safe systems of work, and
 - (d) the safe use, handling, and storage of plant, structures and substances, and
 - (e) the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities, and
 - (f) the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking, and
 - (g) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.
5. As s.19(3) makes clear, the obligation on the employer to provide a safe workplace for emergency services employees (and volunteers) includes a broad obligation regarding work environment. This would include all interactions with members of the public, where such interactions are a requirement for the worker.
6. A focus on sentencing of individual offenders (who may be affected by drugs, mental illness or a range of other circumstances) risks drawing attention away from a focus on employers making changes to their work places (including for example training, physical workplaces, equipment, and support) that enable employees to avoid assaults in the course of their duties.