Submission No 23

INQUIRY INTO VIOLENCE AGAINST EMERGENCY SERVICES PERSONNEL

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Date Received: 22 July 2016

Submission to the Legislative Assembly Standing Committee on Law and Safety

Inquiry into violence against emergency services personnel

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Submission - Fire Brigade Employees' Union of New South Wales
To the Standing Committee on Law and Safety

Inquiry into violence against emergency services personnel

Committee terms of reference:

1. *That the Legislative Assembly Committee on Law and Safety inquire and report on:*

    a. *the adequacy of current measures in place to protect emergency services personnel from violence including internal policies and procedures, training, and public education campaigns;*

    b. *whether current sentencing options for people who assault or murder emergency services personnel remain effective;*

    c. *possible options for reform;*

    d. *any other related matter.*

2. *In examining these issues the Committee should have regard to:*
    a. *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;*

    b. *the incidence of assaults on and homicides of emergency services personnel;*

    c. *current sentencing patterns for assaults and homicides of emergency services personnel;*

    d. *the experience of other jurisdictions.*

Executive summary

- The Fire Brigade Employees' Union (FBEU) represents approximately 40% of the Australian professional firefighting workforce and all professional firefighters in NSW.

- There is little evidence firefighters suffer more assaults as a result of their employment.

- The Committee's terms of reference differ from the relevant sentencing provisions and have the potential to cause confusion and exclusion of workers who are currently covered by these provisions.

- These sentencing provisions already provide for an assault on a firefighter to be considered an aggravating factor in sentencing an offender.

- The provisions around volunteers should be clarified, as it is unclear who is covered by the terms of reference.

- It is the employer's obligation to provide a safe workplace and this includes freedom from assault.

- An emphasis on individual offenders after the fact of an assault elides the employers' responsibility to provide a safe workplace, which includes freedom from assault.

1. The Fire Brigade Employees' Union (FBEU) represents approximately 40% of the Australian professional firefighting workforce. We represent both public and private sector firefighters in full time/permanent and part time/retained employment. The FBEU is Australia's oldest firefighting Union, and represents members in the largest fire and rescue service in Australia in both metropolitan and regional areas. We welcome the invitation to make this submission to the Standing Committee on Law and Safety into violence against emergency services workers.

2. Unlike police or ambulance workers, assaults against firefighters by members of the public are not required by statute to be recorded, as they are under the *Health Act 1997* (ambulance officers) and the *Crimes Act 1900* (police officers). This suggests that firefighters may be less likely to be assaulted by a member of the public, if there has never been a need to legislate specifically to track such offences. The anecdotal evidence of our members suggests this is the case. This may be related to the lower level of public interaction generally required of firefighters, compared to other workers.

3. 'Emergency services personnel' is defined in the Committee's terms of reference 2.a as:

> *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 appears to differ from s 21A(2)(a) of the *Crimes (Sentencing Procedure) Act 1999*, which provides for a workers' occupation to be considered an aggravating factor in sentencing where:

> *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.*

4. It appears that the *Crimes (Sentencing Procedure) Act 1999* definition captures more workers who serve the public, and in our view this definition is to be preferred. It can only create confusion to create distinctions between workers. For example, the *Crimes (Sentencing Procedure) Act 1999* would appear to provide that any nurse assaulted in the course of their duties would have their occupation considered as an aggravating factor in the offender's sentencing, but under the terms of reference a nurse assaulted in the emergency room would be treated differently to a cardiac or orthopedic nurse.

5. It is also unclear the extent to which volunteers are included.

6. Given the current wording of the *Crimes (Sentencing Procedure) Act 1999* already provides for an aggravating factor in sentencing, it is the Union's view no change need be made.

7. The Union notes with concern there is no term of reference that deals directly with the employer's obligation to provide a safe workplace. While it is not possible for every set of circumstances to be anticipated, the responsibility for the safety of emergency services workers rests with their employer. While the first term of reference deals indirectly with this:

> *the adequacy of current measures in place to protect emergency services personnel from violence including internal policies and procedures, training, and public education campaigns;*

it should be noted that the first of these (internal policies and procedures and training) deal with matters that, to do them justice, could only be considered fully within an agency. It is in the Union's view unlikely there is sufficient similarity in the work places and work practices across the various workers within the Inquiry's remit to provide a meaningful picture of changes that could be made. It is the Unions view it would be more fruitful that the Committee instruct agencies to conduct such a review in consultation with the respective unions and report back on the findings.

8. While the national harmonisation process diminished what were arguably the strongest occupational health and safety laws in Australia, the *Work Health and Safety Act 2011* still provides that the duty to provide a safety workplace rests with the employer (the Person Conducting Business or Undertaking, 'PCBU'):

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.

9. As such, assaults against emergency services workers (and indeed any worker) are a failure of the employer to meet this obligation, particularly where a high level of interaction with members of the public who are agitated or in extreme situations is a known feature of the work. This is the case for emergency services workers. While not every behavior can be anticipated, there is a level of predictability to such behaviour that should be factored in. The responsibility for this rests with the employer. Where budgetary, management or structural impediments arise to providing a workplace safe from violence, the employer should be required to manage them. The Committee could require individual agencies to investigate these impediments in detail and provide a report on how they will be addressed.

10. In some ways, an emphasis on sentencing elides this responsibility. An individual offender's sentencing cannot prevent their offending, as it will always postdate their offence. There is limited evidence harsher sentencing prevents offending in any case, but for an individual worker assaulted it makes no practical difference. The assault has already occurred. It is the employer's responsibility to provide a safe workplace, and this responsibility should not be shifted to individual members of the public and manifested only after the fact in sentencing.

Fire Brigade Employees' Union of NSW
22 July 2016