

**Submission
No 34**

INQUIRY INTO VIOLENCE AGAINST EMERGENCY SERVICES PERSONNEL

Organisation: The Law Society of NSW
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THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: GUeh:1185724

10 August 2016

Mr Geoff Provest MP
Chair, Committee on Law and Safety
Parliament House
Macquarie Street
Sydney NSW 2000

By email: lawsafety@parliament.nsw.gov.au

Dear Mr Provest,

Inquiry into Violence Against Emergency Services Personnel

Thank you for your letter inviting the Law Society of NSW to make a submission to the Inquiry into Violence Against Emergency Services Personnel ("the Inquiry").

The Law Society's comments relate primarily to paragraphs 1b and 1c of the Inquiry's terms of reference namely:

That the Legislative Assembly Committee on Law and Safety inquire into and report on:

- b. whether current sentencing options for people who assault or murder emergency services personnel remain effective;
- c. possible options for reform.

The Law Society supports investigation into appropriate risk mitigation strategies to safeguard the important and valuable work of our emergency services personnel. Every individual has the right to work in a safe environment and sufficient and appropriate protections from violence should be available to those working within a high risk environment.

The Law Society considers the existing sentencing options available in NSW are sufficient to adequately address the varied nature of the offending behaviour.

In NSW, there exists a range of offences applicable to situations where individuals are involved in an altercation with emergency services personnel.

The Law Society considers that the broad range of offences contained within the *Crimes Act 1900* ("Crimes Act") appropriately captures conduct of violence against emergency services personnel and that the maximum sentences available for such offences provide sufficient sentencing scope and appropriate punishment.¹

Additionally, s 21A(2)(a) of the *Crimes (Sentencing Procedure) Act 1999* ("the CSP Act") provides for aggravating factors to be taken into account by the Court in determining the appropriate sentence for an offence, which includes where the victim was an emergency services worker. The Law Society considers that this provides sufficient sentencing scope to the Court to determine the appropriate sentence.

The Law Society also notes that Part 4, Division 1A of the CSP Act sets out standard non-parole periods for certain specified offences. The standard non-parole period of 25 years for murder already applies where the victim was an emergency services worker. The Law Society considers that the existing 25 year standard non-parole period is sufficient to reflect the seriousness of such offences.

The Law Society considers that existing evidence does not support the argument that increasing a maximum penalty has a significant deterrent effect in relation to offences which are not pre-meditated. In particular we refer the Inquiry to the Judicial Commission of NSW discussion regarding the effectiveness deterrence beginning at [2-240], an extract of which is set out below:²

In *Munda v Western Australia* (2013) 87 ALJR 1035 at [54], the High Court acknowledged that general deterrence may have limited utility in some circumstances:

It may be argued that general deterrence has little rational claim upon the sentencing discretion in relation to crimes which are not premeditated. That argument has special force where prolonged and widespread social disadvantage has produced communities so demoralised or alienated that it is unreasonable to expect the conduct of individuals within those communities to be controlled by rational calculation of the consequences of misconduct.³

See also, arguments about the limited utility of general deterrence where offenders suffer from a mental condition:

General deterrence is attributed little weight in cases where the offender suffers from a mental condition or abnormality because such an offender is not an appropriate medium for making an example of.⁴

The Law Society also draws the Inquiry's attention to discussions surrounding rational choice and irrational behaviour by the Victorian Sentencing Advisory Council:⁵

¹ See the *Crimes Act 1900*:

- Division 1 Homicide (for example s18 Murder and Manslaughter, s25A Assault causing death and s25B Assault causing death when intoxicated);
- Division 3 Attempts to Murder (for example s27 Acts done to the person with intent to murder);
- Division 6 Acts causing danger to life or bodily harm (for example s22 Wounding or grievous bodily harm with intent and s35 Reckless grievous bodily harm or wounding);
- Division 8 Assaults (for example s59 Assault occasioning actual bodily harm and s59A Assault during public disorder); and
- Division 8A Assaults and other actions against police and other law enforcement officers.

² Judicial Commission of NSW, Mental condition and deterrence, [2-240]

<https://www.judcom.nsw.gov.au/publications/benchbks/sentencing/purposes_of_sentencing.html#p2-240>.

³ Ibid.

⁴ Ibid.

Deterrence theory is based upon the classical economic theory of rational choice, which assumes that people weigh up the costs and benefits of a particular course of action whenever they make a decision. Deterrence theory relies on the assumption that offenders have knowledge of the threat of a criminal sanction and then make a rational choice whether or not to offend based upon consideration of that knowledge.

Rational choice theory, however, does not adequately account for a large number of offenders who may be considered 'irrational'. Examples of such irrationality can vary in severity – there are those who are not criminally responsible due to mental impairment, those who are drug affected or intoxicated and those who simply act in a way that is contrary to their own best interests.

The Law Society submits that if an aggravated form of the offence was created specifically relating to situations involving emergency services personnel, the fact that the victim is an emergency services officer would become an element of the offence that must be proven. This makes the offence itself more difficult to prove. It would also mean that the s 21(2)(a) aggravating factor determination (contained in the CSP Act) would no longer be available, as the fact that the victim is an emergency services worker already forms a part of the offence itself.

Prior to considering options for legislative reform, the Law Society considers that the Inquiry could be assisted by further exploring and analysing the reasons why matters may not be proceeding to Court, or where manifestly inadequate penalties are being applied. For example, the offender may have been vulnerable and a decision taken that it was not in the public interest to prosecute; victims may find it difficult to give evidence; or matters may be failing because of a lack of evidence.

Where reasons for failed prosecutions under the current regime can be identified, it may be more effective to address deficiencies through the provision of appropriate (and where possible preventative) measures, rather than the introduction of new or aggravated offences.

The Law Society considers that the NSW Sentencing Council may be the most appropriate body to consider an in depth analysis of the legal issues involved in reform in this area. We refer the Committee to the Tasmanian Sentencing Advisory Council's report 'Assaults on Emergency Services Workers' which is of relevance to this Inquiry.⁶

The Law Society would be happy to provide a representative to give evidence at the Inquiry, to expand on the matters raised in our submission.

⁵ Victorian Sentencing Advisory Council, Does Imprisonment Deter? A Review of the Evidence (April 2011) 2
<<https://www.google.com.au/url?url=https://www.sentencingcouncil.vic.gov.au/sites/default/files/publication-documents/Does%20Imprisonment%20Deter%20A%20Review%20of%20the%20Evidence.doc&rct=j&fm=1&q=&esrc=s&sa=U&ved=0ahUKEwiQhs25-ajOAhVIJ5QKHejmB1kQFggUMAA&usq=AFQjCNGzhh3mPtzBGxIz0L2jxd0xpNE-mA>>.

⁶ Tasmanian Sentencing Advisory Council, Assaults on Emergency Services Workers (March 2013) [http://www.sentencingcouncil.tas.gov.au/publications/reports/previous/Assaults on Emergency Service Workers.pdf](http://www.sentencingcouncil.tas.gov.au/publications/reports/previous/Assaults%20on%20Emergency%20Service%20Workers.pdf).

Should you have any questions regarding this letter I would be grateful if you could direct them to Elaine Heaney (Senior Policy Advisor) on [REDACTED] or by email at [REDACTED]

Yours sincerely,

[REDACTED]

Gary Ulman
President