

**Submission
No 4**

PHYSICAL HEALTH OF POLICE AND EMERGENCY SERVICES WORKERS IN NSW

Organisation: Public Service Association of NSW and Community and Public
Sector Union NSW

Date Received: 3 September 2020



SUBMISSION

PSA/CPSU NSW SUBMISSION TO INQUIRY: Physical health of police and emergency services workers in NSW



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Authorised by Stewart Little, General Secretary, the Public Service Association of NSW and State Branch Secretary, Community and Public Sector Union (SPSF Group) NSW Branch 160 Clarence Street, Sydney

Who we are

The PSA represents employees in all state agencies and emergency services of this state. These include members within Police, Fire & Rescue NSW, Corrective Services, Juvenile Justice, the State Emergency Service (SES), National Parks and Wildlife, Roads and Maritime Services, the Rural Fire Service, and Forestry Corporation. We welcome the opportunity to participate in this inquiry. We do so as part of a broader movement and acknowledge the roles of our fellow Unions and their members. We endorse the submissions of other unions and add our voice to their recommendations.

The Public Service Association of NSW (PSA) is an active, member-driven union. Our members have a long and proud tradition of improving the lives of the people of New South Wales through delivering a diverse range of services in the public sector and related entities, state owned corporations, TAFE NSW and universities. We proudly represent 39,000 members spread over almost 5,000 worksites.

Executive summary

A wide range of roles within the NSW public service perform duties within high risk environments and all workers should be treated equally with respect to their rights to a healthy and safe workplace, but with the required adjustments for differing roles within agencies and individuals. The requirements of a National Parks firefighter will be different than that of someone employed in State Mitigation, different again from a Corrections Officer.

Emergency services workers are often required to perform their work in inherently risky circumstances. Under these circumstances, employers can and should do more to mitigate the risks of these roles. If an employer seeks to impose a physical fitness standard on emergency service workers, it should demonstrate its necessity as a tool for increasing the safety of the work being performed.

Agencies should be properly funded to research, consult on, implement and measure any fitness standards aimed at facilitating the safe performance of emergency services work.

Recommendation 1: If considering any physical fitness standard the employer must negotiate with the respective unions about:

- a. the relatedness of the standard to the work being performed and provide evidence to support the standard;
- b. the physical demands it sees in each of the roles that will be subject to the standard and how the standard will assist in meeting those demands;
- c. the overall appropriateness of the standard when balanced against other considerations, such as cost to develop, implement and monitor it.

Recommendation 2: That if a physical fitness standard is implemented, the mental health of employees be considered and form part of a fitness support program, incorporating both physical and mental health.

Recommendation 3: That any physical fitness standard include a commitment to, and first goal of, reducing injury and illness in the workplace.

Recommendation 4: If a physical fitness standard is imposition of physical fitness standards for workers the principles guiding it must be:

- a) The employer demonstrates a genuine need for that standard to be imposed, and when it is imposed over a career lifetime; and
- b) That any standards imposed are appropriate to each individual¹ in each role, not just set at an agency level as a blanket standard; and
- c) That standard is aimed at ensuring workers can perform their work safely, and not for another purpose (for example a culling tool upon entry, or a mechanism for forcing early retirements); and
- d) The employer assists employees to meet the standard; and
- e) The standard is necessary, when compared to engineering and design solutions that can alleviate the need for the physical standard; and
- f) The employer has the genuine ability and systems in place to redeploy existing employees who are no longer able to meet the physical fitness standard.

Recommendation 5: That where employers impose an entry standard, the employing agency demonstrate the evidentiary link between that standard and the safe performance of duties in that workplace at the commencement of the standard.

Recommendation 6: That where employers impose an entry standard, the employing agency collect data to chart what, if any, evidentiary link between the standard and a reduced injury and illness load exists.

Recommendation 7: That the NSW Government adequately fund the required studies and consultation mechanisms to design appropriate physical fitness standards and monitor them for effectiveness over time.

Recommendation 8: That agencies have the labour expense cap and efficiency dividend lifted and be funded to allow testing and assessment of the adequacy and evidence linking physical fitness standards to the safe performance of work.

Recommendation 9: Where a fitness standard is set and there are workers who for valid reasons cannot meet these standards (injury, pregnancy, etc.), there should be a presumption that they will be able to regain these standards and reasonable adjustment should be made in compliance with Section 56 *Government Sector Employment Act 2013*, the *Workplace Injury Management and Workers Compensation Act 1998*, and the *Anti Discrimination Act 1977*.

Recommendation 10: Where a fitness standard is set that must be maintained, the workers will

be provided with appropriate equipment and time at work to continue to meet these standards.

Terms of reference

That the Legislative Assembly Committee on Law and Safety inquire into and report on the physical health of police and emergency services workers in NSW, with particular reference to:

- a) How the physical health of police and emergency services workers impacts the performance of their duties
- b) What the physical entry requirements for police and emergency services workers are and identifying areas for improvement
- c) Any impacts on workplace management for police and emergency services organisations; and
- d) Any other related matters.

a) How the physical health of police and emergency services workers impacts the performance of their duties

A wide range of roles within the Public Sector perform duties within high risk environments and all workers should be treated equally. The requirements of a National Parks firefighter will be different than that of someone employed in State Mitigation, different again from a Corrections Officer.

In the first instance too, it should be acknowledged that evidence of the relationship between aspects of physical fitness and occupational injury in emergency responders is “extremely limited”. More research is required to expand the knowledge in this area and to draw more definitive conclusionsⁱⁱ, and these requirements cannot be divorced from the employment environment in which they take place. As one study noted, “studies [of the occupational linkage to fitness testing] should be first conducted on the occupational demands and physical standards requiredⁱⁱⁱ.”

Fundamentally, this is a question of:

1. whether or not the physical fitness of a worker is relevant to the performance of their duties, and
2. what (if any) fitness standard is relevant to the safe performance of the duties.

In principle, PSA has no objection to the imposition of physical fitness standards for workers where:

The employer demonstrates a genuine need for that standard to be imposed, and when it is imposed over a career lifetime; and

That any standards imposed are appropriate to each individual in each role, not just set at an agency level as a blanket standard; and

That standard is aimed at ensuring workers can perform their work safely, and not for another purpose (for example a culling tool upon entry, or a mechanism for forcing early retirements); and

The employer assists employees to meet the standard; and

The standard is necessary, when compared to engineering and design solutions that can alleviate the need for the physical standard; and

The employer has the genuine ability and systems in place to redeploy existing employees who are no longer able to meet the physical fitness standard.

Any inquiry of this kind that does not deal with the question of mental health for emergency services workers will miss a number of factors important to the safe performance of emergency services work. So too will it contribute to the stigma surrounding mental health, preventing workers from seeking the help they need. Emergency services workers experience trauma and secondary trauma as a result of their work and this can be controlled by the employer- a key

risk that the person conducting the business or undertaking (PCBU) should be mindful of.

Of note too with the intersection of mental health and physical health is that how workplace physical injuries are handled by the employer and the insurer has a critical impact on the mental health of workers. PSA is aware of poor handling of workers' compensation claims leading to accepted secondary, mental health, claims. This increases the cost to the employer but more importantly further damages the health of workers.

As a matter of principle- but also practicality for any employer in terms of avoidance of cost and liability- any fitness standard must arise from vigorous evidence and be non-discriminatory, and legally defensible.

Recommendation 1: If considering any physical fitness standard the employer must negotiate with the respective unions about:

the relatedness of the standard to the work being performed and provide evidence to support the standard;

the physical demands it sees in each of the roles that will be subject to the standard and how the standard will assist in meeting those demands;

the overall appropriateness of the standard when balanced against other considerations, such as cost to develop, implement and monitor it.

Recommendation 2: That if a physical fitness standard is implemented, the mental health of employees be considered and form part of a

fitness support program, incorporating both physical and mental health.

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- d. The employer assists employees to meet the standard; and
- e. The standard is necessary, when compared to engineering and design solutions that can alleviate the need for the physical standard.

b) What the physical entry requirements for police and emergency services workers are and identifying areas for improvement

The fitness standards required across emergency service workers vary greatly, with for example the requirements for Corrections Officers differing from those of National Parks firefighters. This is as it should be if (and this is a large caveat) these entry requirements reflect genuine occupational needs. As noted above, this should be based on an evidentiary case for why standards should be imposed, and what they are, particular to each role and individual. Most importantly, they should reflect the reality of occupational injury being a major contributing factor to the health and fitness of emergency services workers.

The physical demands of emergency response are a leading cause of injuries that may benefit from interventions^{vi}. One Australian study^{vii} investigated the causes and effects of injuries among Prison Officers and found positive relationships between a number of variables and injury. It recommended the employer continue investigating all incidents in order to develop and implement appropriate long-term preventive and corrective measures.

Within emergency services workplaces, government (as the person conducting the business or undertaking (PCBU) under the *Work Health and Safety Act 2011 (NSW)*) is obliged to

manage the risks to emergency services workers, as it is all other workers. Preventing injury and illness to emergency services workers should be the first priority of all PCBU who engage emergency services workers- and all workers. The workplace is within the control of the employer and risks can be managed or eliminated. An entry test is a point-in-time test, however over a career lifetime far more can be avoided and catered for. Too much emphasis placed on entry and the expense of a whole-of-career injury and illness avoidance approach would mask the employer's responsibilities- and also the employer's ability to manage the fitness of workers by managing fitness in the workplace.

The fitness standards required across emergency service workers vary greatly, as does the financial commitment of government to ensuring the ongoing fitness of workers. Some agencies are subject to the efficiency dividend in whole, while some are subject to it only in part. There is no whole-of-government commitment to ensuring that emergency services workers are able to meet appropriate fitness standards. Some agencies are funded to have quality rehabilitation and fitness treatment programs, but others are not.

Recommendation 5: That where employers impose an entry standard, the employing agency demonstrate the evidentiary link between that standard and the safe performance of duties in

that workplace at the commencement of the standard.

Recommendation 6: That where employers impose an entry standard, the employing agency collect data to chart what, if any, evidentiary link between the standard and a reduced injury and illness load exists.

c) Any impacts on workplace management for police and emergency services organisations; and

Emergency services agencies who have physical fitness standards, or are considering introducing physical fitness standards, are placed in difficulty as a result of government policy that prevents them accessing the funds and staff they need to operate. This takes the form of an 'efficiency dividend' – in effect, a budget cut. Agencies are required to find part of their budget to cut every year, which cuts into, and impacts on, the funding and staffing available for health and fitness programs and data tracking.

There is also a staffing cap, where employee numbers are held to an artificially low figure. The artificial staffing cap means that emergency services workers are performing their work in an environment where they are routinely asked to do more with less. Not only are there fewer emergency services workers than there would be had the services been allowed to grow organically to meet the needs of NSW citizens, but the absence of support staff places burdens on other workers in the workplace. Even where the cap does not (notionally) apply to the emergency services workers, it does to their support functions, impacting on the whole of the emergency services workforce. Inadequate staffing increases the risk of injury and illness in the workplace.

The recent bushfire season saw workers from a number of firefighting agencies, fatigued, over run, under trained and understaffed after nearly

1000 firefighting positions had been removed in previous restructures.

One of the most important reforms the government could embrace to reduce the risk of injury and illness to emergency services workers is lift the artificial staffing cap as it applies in emergency services workplaces. This cap applies to work health and safety staff, exercise program designers, program and policy designers, those that derive and administer physical fitness tests, and those tasked with monitoring the physical fitness of emergency services workers. It is impossible to deliver high-quality, evidence-based programs where the staffing budget to properly design, implement and support them does not exist.

As the Australian study into corrections officers noted, "Comprehensive physical training, fitness maintenance and continual education programs for POs should be implemented in order to improve their capacity to cope with the demands of their role."

The unfair or discriminatory application of physical requirements of a job can often be improperly used to inhibit return to work under the Workplace Injury Management Act 1998 and potentially encourage discriminatory practices under *the Anti Discrimination Act 1977*. The Association regularly encounters the loss of experience and ending of careers when physical requirements of a job are unfairly applied to

medically retire officers when they are injured at work, often with no or little attempts to provide reasonable adjustment or to assist rehabilitation. The Association submits that there should be a presumption that the officer will be able to regain these physical standards, and that job design should include a range of pre- modifications when there are injuries that have occurred to accommodate workers.

Case Study- Corrective Services

A clear example of this type of reasonable adjustment being applied is demonstrated by a number of medical retirements in Corrective Services. In Corrective Services experienced and knowledgeable officers face “inherent requirements” of the role, that are universally applied, but not required in all workplaces. For example, the ability to use firearms is an inherent requirement for a prison officer, despite many officers working in a minimum security setting, there are no firearms, the inability to discharge a fire arm is prohibitive to the ongoing employment of this officer. In this scenario, the physical fitness requirements of discharging a firearm require a regular assessment at a range, clear mental health, and a standard of vision and physical strength to carry and accurately discharge the weapon. Instead what the Association sees is that many officers are not assessed at a range, often for well over a decade, yet this requirement is used when an officer experiences an injury or an incident that makes them unable to meet this requirement. In many cases they have not been assessed or been in a position where a fire arm is required to be used for over a decade.

Recommendation 7: That the NSW Government adequately fund the required studies and consultation mechanisms to design appropriate physical fitness standards and monitor then for effectiveness over time.

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Recommendation 10: Where a fitness standard is set that must be maintained, the workers will be provided with appropriate equipment and time at work to continue to meet these standards.

ⁱ Of course, to comply with the law employers should make reasonable accommodations for disabled workers.

ⁱⁱ Lentz, L, Randall, J, Gross, D, Senthilselvan, A, Voaklander, D, "the relationship between physical fitness and occupational injury in emergency responders: A systematic review", *American Journal of Industrial Medicine*, 62:1, 12 December 2018.

ⁱⁱⁱ Thornton, K, Sayers, M, "Unfit for duty? Evaluation of four years of paramedic pre-employment fitness screening test results", *Prehospital Emergency Care*, 18:2, 2014.

^{iv} Of course, to comply with the law employers should make reasonable accommodations for disabled workers.

^v Of course, to comply with the law employers should make reasonable accommodations for disabled workers.

^{vi} Reichard, A, "Occupational injuries among emergency responders", *American Journal of Industrial Medicine*, 53:1, 5 November 2009.

^{vii} Ngwenya, B, Oosthuizen, J, Mate, J, "Physical injuries among Prison Officers in Western Australia", *Journal of Health, Safety and Environment*, 30:1, 2014.