

**Submission  
No 16**

## **ASSAULTS ON MEMBERS OF THE NSW POLICE FORCE**

**Organisation:** Redfern Legal Centre

**Date Received:** 4 September 2020

# Redfern Legal Centre

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4 September 2020

Legislative Assembly Committee on Law and Safety  
Parliament House  
Macquarie St  
Sydney NSW 2000

Dear Sir/Madam

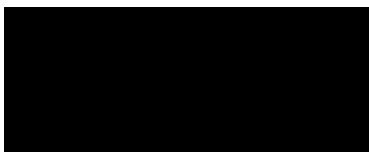
## **Inquiry into and report on assaults on members of the NSW Police Force**

Redfern Legal Centre welcomes the opportunity to provide a submission to the Committee on Law and Safety for the inquiry into and report on assaults on members of the NSW Police Force.

Redfern Legal Centre is a Community Legal Centre that has provided affordable legal services for disadvantaged and marginalized people since 1977.

Please find attached our submission in response to the inquiry. We would welcome the opportunity to meet with you to discuss our submission.

Yours faithfully,



Chief Executive Officer  
**REDFERN LEGAL CENTRE**

# Redfern Legal Centre

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**SUBMISSION: Inquiry into and report on assaults on members of the NSW Police Force**

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**DATE:** 4 September 2020



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## Terms of Reference

That the Legislative Assembly Committee on Law and Safety inquire into and report on assaults on members of the NSW Police Force, with particular reference to:

- a) the current incidence of assaults against police officers and recent trends in such assaults;
  - b) current strategies that the NSW Police Force has in place to engage with the community, including current or past community and school-based programs; and
  - c) any other related matters.
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### **a) The current incidence of assaults against police officers and recent trends in such assaults**

Although there have been numerous media reports about increased incidents of assaults against the NSW Police Force, it is critical the Committee form a response to this serious issue by collating statistics from reliable sources such as, the NSW Bureau of Crime Statistics and Research (BOCSAR), the Australian Bureau of Statistics (ABS) and the Australian Institute of Criminology (AIC).

According to BOCSAR, the trend in recorded non-domestic violence related assaults over the 60 months to March 2020 is stable.<sup>1</sup>

It is important that expertise within BOCSAR be drawn upon to provide analysis about any recent trends in assaults against police officers, including:

- the number of convictions for assault against police;
- the number of charges for assault against police;
- the impact of over charging;
- the seriousness of related charges where a charge is laid under s.60 of the *Crimes Act 1900* (NSW);
- the number of assault charges that are withdrawn or a finding of not guilty;
- the number of charges where self-defence was raised; and
- a break-down of Police Area Commands where assaults are occurring.

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<sup>1</sup> NSW Bureau of Crime Statistics and Research, NSW Recorded Crime Statistics, Quarterly Update, March 2020.

In 2011, the then Director of BOCSAR, Mr. Don Weatherburn, wrote an informative piece in the 'Crime and Justice' Bulletin about the 'Uses and abuses of crime statistics'.<sup>2</sup> In this Bulletin, Mr. Weatherburn warns about the dangers associated with the community obtaining information about crime from the media, rather than well informed statistics analysis.

Redfern Legal Centre has extensive experience advising and representing clients in relation to their interactions with police. Some of our clients have been charged with and/or convicted of assaulting police officers, but also a number of our clients have been the recipient of excessive use of force by NSW Police.

In 2018 the Sydney Morning Herald published figure obtained figure on the use of force by NSW Police. These figures were obtained via access to information laws from the NSW Police.<sup>3</sup> The article reveals that between the years 2014-2018 police recorded 57,000 times the use of force. Mental health was reported as the second most common reasons for the use of force, proceeded by assault and resist. Although we don't know the details behind this figure, the figure suggests police are using force regularly. It is therefore requested the Committee consider recommending further research be undertaken to assist in identifying the reasons why police are resorting to force, whether the use of force is contributing to police assaults, and what alternative strategies could be implemented.

### **Mental health and drug related incidences**

Redfern Legal Centre often provides legal advice to clients who come in contact with police due to their mental illness, often because they are having a psychotic episode, and sometimes in a public place. The presence of police officers can make these clients scared and agitated. In fear, some clients have become aggressive and lash out at a police officer because of their failure to understand what is going on. Due to the lack of alternative resources in the mental health area, Police are usually the first responders to such incidents and unfortunately this creates panic for our clients because they are of the view they are going to be taken away and locked up. Please see examples below as to the way incidents can escalate due to the scenarios police are presented with and the need for further alternatives to police being the first responders.

#### Case study

*Dane's mother called the police to report her concerns that Dane was at risk of suicide. Police attended the unit and spoke to Dane through a closed door for short period of time, during which time Dane told police he was fine. Dane came out of his unit and as he opened the door, he was grabbed by police officers and told that he was being detained under the Mental Health Act. The police officers attempted to handcuff Dane at which point, Dane said "Let me go. Am I under arrest?". Police told him he was detained under the Mental Health Act and took him to the ground. Multiple police officers were restraining Dane, one pushing down on his head. Dane struggled to get out of the hold and kicked out his leg which came into contact with a police officer. At this point, Dane spat at a police officer who responded "right, well now you're under arrest".*

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<sup>2</sup> Weatherburn, Don, November 2011, 'Uses and abuses of crime statistics', Crime and Justice Bulletin, NSW Bureau of Crime Statistics and Research.

<sup>3</sup> Gladstone, Nigel, September 24, 2019 'NSW Police database unlocked: the where, when and why officers used force'

### Case study 2

*Police were called to a residence by flat mate of a woman who was feeling concerned about the woman's behavior. The woman was described as being under enormous stress due to a relationship breakdown. Three police attended the scene and entered the premises with the flat mate's permission, but once inside the woman started to panic and told police to leave her house. The three officers informed the woman that they will be taking her to the hospital. The woman then sat down on the lounge and said she did not want to go. Two police then grabbed her arms and the woman resisted by pulling her arms away. One officer fell backwards onto a coffee table which the officer sustained no immediate injury. The woman was then handcuffed and transported to a mental health facility where she was released a couple of hours later. The next day she received a CAN with a charge of assault against an officer.*

Redfern Legal Centre welcomed the recent announcement by the NSW Government that mental health nurses will be based at some Sydney police stations and accompany officers to psychiatric emergencies as part of a new government program to help people in mental health crisis. Redfern Legal Centre encourages more programs like this one to be implemented in NSW.

A major way to reduce assault against police is to reduce police as the first responders and instead include a team of responders from various emergency and health professions (i.e. mental health, family crisis and youth workers).

Another positive example of projects that work towards reducing the need for police as first responders is the Marungnuka Justice Reinvestment project in the NSW town of Bourke. This project is a collaboration between the local Aboriginal community and police and has been seen as a great example of alternatives to policing. Such projects should be implemented throughout New South Wales and increased government funded allocated to such programs.

### **b) Current strategies that the NSW Police Force has in place to engage with the community, including current or past community and school-based programs**

Some of the key ways that the number of assaults against police could be reduced include:

- removing police as the first or only responders for mental health incidents, drug or alcohol related incidents and incidents involving First Nations people;
- identifying gaps in the training and professional development of police, especially regarding working with people with mental illness and drug related incidents;
- designing and implementing more effective and better resourced training programs for police, focused on how to de-escalate situations of conflict;
- commissioning research from a university into the factors that may be contributing to assaults and recommendations to reduce such assaults;
- implementing laws, policies and training to ensure that arrest is a measure of last resort, to reduce unnecessary interactions between police and offenders, especially for communities that have a poor relationship with police;
- designing and implementing programs that build improved relationships between police and the community;
- cultural awareness training, especially regarding contact with First Nations people; and
- disciplinary action against police officers that inflict violence to ensure a culture of aggression does not manifest within the force.

### c) Any other related matters

#### Maximum penalties and current offences

If this Committee is to consider the existing sentencing regime for offences regarding assaults against police, then Redfern Legal Centre is of the view that prevention before cure is the more appropriate strategy to embrace. The existing evidence does not support increasing maximum penalties for such offences that are not pre-meditated. As mentioned above, a number of assaults that police are subjected to may be due to circumstances of mental illness and those who are affected by drugs and/ or alcohol.

We refer the Committee to the Judicial Commission of NSW, Sentencing Bench Book and the reference to the effectiveness of deterrence beginning at [2-240] and the limited utility of general deterrence where the offender suffers from a mental condition.<sup>4</sup>

Redfern Legal Centre submits the Committee consider that the broad range of offences contained with the *Crimes Act 1900* ("Crimes Act") that appropriately captures conduct of violence against assaults against police.

In NSW, there are two charges that cover assaulting a police officer. They are, section 58 of the *Crimes Act 1900* which covers assaults on "officers", and section 60 which is specific to assaulting a "police officer". Both offences carry a maximum penalty of 5 years' imprisonment.

There are also other more serious penalties if the offence is aggravated: by being committed during a public disorder – 7 years' imprisonment; if actual bodily harm is caused as a result of the assault – 7 years' imprisonment (3 years' standard non-parole period); by being committed during a public disorder and resulting in actual bodily harm – 9 years' imprisonment.

In addition, there are separate offences for those who recklessly inflict grievous bodily harm or wound a police officer; see sections 60(3) and 60(3A) of the *Crimes Act 1900*, which provide for maximum penalties of 12- and 14-years' imprisonment.

Furthermore, s.21A(2)(a) of the *Crimes (Sentencing Procedure) Act 1999* ("the CSP Act") provides for aggravating factors to be considered by the Court in determining the appropriate sentence for an offence, which includes where the victim was a police officer. There are also standard non-parole periods for some of the above offences, which are starting points for mid-range offences. For example, for an assault on a police officer causing grievous bodily harm the maximum is 12 years or 14 years if in a public disorder and a standard period of five-years.

Redfern Legal Centre submits that the judiciary should retain the fullest discretion as to the most appropriate sentence, taking into consideration aggravating and mitigating factors and standard non-parole periods.

Assault charges against police officers are taken very seriously in the judicial system. It will be important for the Committee to obtain recent sentencing tables from the Judicial Commission of NSW about the sentencing trends for such offences and also the types of cases coming the courts.

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<sup>4</sup> Judicial Commission of New South Wales, Sentencing Bench Book, Purposes of sentencing [2-240].

## First Nations people and policing

Redfern Legal Centre is of the view that whenever there is a discussion about aspects of policing, there needs to be a discussion about policing of First Nations people.

The ongoing over-policing and incarceration of First Nations people, along with the the ongoing deaths in custody, continue to have a severe impact on families and the relationship these communities and individuals have with police.

The recent feet sweeping incident of a young First Nations man in Surry Hills, Sydney, was a disturbing example how some police officers are using force as a first port of call, rather than meeting the legal threshold for the use of force as outlined in the LEPRA. In some situations, the use of unwarranted force can lead to persons resisting that force and then resisting arrest and a charge is then laid for assaulting an officer. Yet in some circumstances this arrest may have been unwarranted and potentially unlawful, which means the person has a legal right to resist.<sup>5</sup>

As discussed above, ongoing and comprehensive training in de-escalation strategies is critical to reducing the risk of assaults against police. But what would be even more critical, is strategies to reduce the number of potentially avoidable interactions between police and First Nations people. For example, proactive policing strategies like the STMP disproportionately target First Nations people, resulting in ongoing stop and searches. In some circumstances, these stop and searches target First Nations young people and children, who have never had contact with the criminal justice system until a police officer stops them because of an STMP.

The statistics about policing and First Nations people are deeply concerning and cannot be ignored by this inquiry. These statistics include:

- In 1991, the Royal Commission into Aboriginal Deaths in Custody documented 99 deaths in custody. Since then, 432 Indigenous Australians have died in custody.<sup>6</sup>
- Indigenous people are the most incarcerated in the world, surpassing the rates of African American people in the United States. In 2019, for every 100,000 Indigenous adults, 2,481 are in prisons, compared with 164 non-Indigenous people.<sup>7</sup>
- Despite comprising 2% of the general adult population, Indigenous Australians are 28% of the prison population. For Indigenous women, the rate is 33% and they are 21 times more likely to be imprisoned than non-Indigenous women.<sup>8</sup>
- Indigenous children make up 7% of the general youth population but 54% of those in youth detention across Australia.<sup>9</sup>
- Between 2013 and 2017, 82.55% of all Indigenous people found with a non-indictable quantity of cannabis were pursued through the courts, compared with only 52.29% for the non-Indigenous population, the data compiled by the NSW Bureau of Crime Statistics and Research shows.<sup>10</sup>

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<sup>5</sup> ABC, McKinnell, Jamie, 3 June 2020, 'NSW Commissioners says officer who threw Indigenous teen to ground during Surry Hills arrest 'had a bad day'.

<sup>6</sup> Anthony, Thalia, June, 2, 2020, 'I Can't breathe!' Australia must look in the mirror to see our own deaths in custody.', The Conversation.

<sup>7</sup> Ibid at 5

<sup>8</sup> Ibid at 5

<sup>9</sup> Cunneen, Chris & Russell, Sophie, December 11, 2018, 'As Indigenous incarceration rates keep rising, justice reinvestment offers a solution', The Conversation.

<sup>10</sup> McGowan, Michael and Knaus, Christopher, 10 June 2020, 'NSW Police pursue 80% of Indigenous



- Just 5.6 per cent of kids in NSW are Indigenous but this police data shows that 51.5 per cent of the 400 young people targeted by the STMP are [Indigenous].<sup>11</sup>

Redfern Legal Centre would like to see resources and expertise be directed towards Justice Reinvest programs, and programs that assist in minimizing the interactions that First Nations people have with police. For example, programs that have been designed and implemented by First Nations people, and where first responders may involve teams of emergency workers that are not police.

In addition to these programs, Redfern Legal Centre would also like to see the crime of offensive language abolished. This would assist in reducing the number of First Nations people coming in contact with the criminal justice system, and help to reduce the risk of such incidents escalating and potentially resulting in the assault of an officer.

### **Body Worn Video footage**

Redfern Legal Centre is of the view that Body Worn Videos could assist police identify systemic problems that may be impacting on the number of assaults against police. Unfortunately, there is still too wide a discretion left to individual officers to decide when BWVs will be turned on.

Redfern Legal Centre is of the view it should be mandatory for police to turn on BWV whenever they stop someone under s.21 of *Law Enforcement Powers and Responsibilities Act 2002*. Police may not always know when situations may escalate and for this reason the BWV should be operating before police have to act to possibly restrain and arrest someone.

The whole purpose behind the introduction of BWV was to: assist police to identify systemic areas of practice that may require further training, to reduce police complaints, to encourage early guilty pleas, and to act as a powerful evidentiary material when a matter comes before the courts. However, these objectives are compromised if police are not given rigorous guidance as to when such cameras should be turned on and leaving discretion too wide that the cameras are rarely operating.

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people caught with cannabis through courts', The Guardian.

<sup>11</sup> Blanc, Claudianna, 19 April 2018, 'NSW Police accused of 'racist policing', as Indigenous youth comprise more than half of those targeted by obscure Suspect Target Management Program (STMP)', National Indigenous TV, SBS.