

Inquiry into Violence Against Emergency Services Personnel

Legal Aid NSW Submission
to the Legislative Assembly
Committee on Law and Safety

July 2016

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About Legal Aid NSW

The Legal Aid Commission of New South Wales (Legal Aid NSW) is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW) to provide legal assistance, with a particular focus on the needs of people who are socially and economically disadvantaged.

Legal Aid NSW provides information, community legal education, advice, minor assistance and representation, through a large in-house legal practice and private practitioners.

Legal Aid NSW also funds a number of services provided by non-government organisations, including 35 community legal centres and 28 Women's Domestic Violence Court Advocacy Services.

Legal Aid NSW welcomes the opportunity to respond to the Inquiry into Violence Against Emergency Service Personnel. If there are any questions in relation to this submission the contact officer is:

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Term of reference 1b. Whether current sentencing options for people who assault or murder emergency service personnel are effective

Current regime

Part 4 Division 1A *Crimes (Sentencing Procedure) Act 1999* (Sentencing Act) sets out standard non-parole periods for certain specified offences. These include:

Item No.	Offence	Standard non-parole period
1A	Murder—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	25 years
4D	Section 60(2) <i>Crimes Act 1900</i> (assault of police officer occasioning bodily harm)	3 years
6	Section 60(3) <i>Crimes Act 1900</i> (wounding or inflicting grievous bodily harm on police officer)	5 years

Part 3 Divisions 8 and 8A of the *Crimes Act 1900* contain a number of offences of assault upon certain officers (section 58), police officers and law enforcement officers as defined (section 60AA). For these offences, the maximum penalties are greater than those imposed where the conduct is not directed towards a police officer or law enforcement officer.

One common example is the offence of assault occasioning actual bodily harm under section 59 *Crimes Act 1900* which attracts 5 years imprisonment or 7 years if in company, compared with the same offence where the assault is upon a police officer acting in the course of his or her duty under section 60(2) which attracts 7 years imprisonment.

Legal Aid NSW understands the need for assaults on police and law enforcement officers to be reflected in more severe sentencing outcomes. The fact that the victim is a police or law enforcement officer is a significant aggravating factor. This is appropriately identified in section 21A(2)(a) of the Sentencing Act.

Specifically, section 21A(2)(a) of the Sentencing Act details the following occupations or voluntary work of victims who represent an aggravating factor:

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.

Therefore, the existing offence and sentencing regimes already recognise emergency service personnel as victims who represent an aggravating factor, acknowledging the need for greater punishment where they are victims acting in the course of their public or community functions.

Legal Aid NSW submits that the current regime is adequate and it would not be appropriate to over prescribe sentencing thresholds or mandatory minimum terms for these types of offences. Rather, the judiciary should retain the fullest discretion in reflecting the aggravating and mitigating features when sentencing the accused.

The standard non-parole period of 25 years for murder already applies to the wide cohort of persons including the emergency service personnel referred to in term of reference 2a. This is 5 years longer than the standard non-parole period for murder in other cases, except where the victim is a child. Legal Aid NSW submits that a 25 year non-parole where the victim is an emergency services worker is adequate and addresses this feature of aggravation.

[Muldrock v The Queen \(2011\) 244 CLR 120](#)

As the Committee will be aware section 54B of the Sentencing Act gives legislative effect to the principles determined by the High Court in *Muldrock*. Section 54B(2) provides:

The standard non-parole period for an offence is a matter to be taken into account by a court in determining the appropriate sentence for an offender, without limiting the matters that are otherwise required or permitted to be taken into account in determining the appropriate sentence for an offender.

Legal Aid NSW submits that little would be gained by amending the standard non-parole periods for murder of emergency service personnel nor by including additional offences where emergency service personnel are identified as victims. As stated above, the identification of emergency service personnel as victims who represent an aggravating factor under section 21A Sentencing Act is sufficient, leaves courts with appropriate discretion and is proportionate.

In addition, Legal Aid NSW submits that setting minimum sentences where emergency service personnel are victims would be counter-productive. In our experience there are cases where emergency personnel are injured by offenders with mental illnesses and intellectual disabilities, and this can be a legitimate matter for the court to consider in sentencing. Legal Aid NSW would oppose a mandatory sentencing regime that prevents a court from exercising proper discretion in passing sentence on the accused.