

*From the President's Office*  
*Dr. Danielle McMullen*  
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25 September 2020

**NSW Sentencing Council**  
Parramatta Justice Precinct  
160 Marsden St  
Locked Bag 5111  
Parramatta NSW 2124

By email only: [sentencingcouncil@justice.nsw.gov.au](mailto:sentencingcouncil@justice.nsw.gov.au)

**Re: Assaults on emergency services workers**

Dear Sentencing Council,

Thank you for the opportunity to make a submission into the review of sentencing for offences involving assaults on police officers, correctional staff, youth justice officers, emergency services workers and health workers. The AMA (NSW) acknowledges the Terms of Reference, which require the Sentencing Council to consider the points below and make recommendations for any reform it considers appropriate.

- Recent trends in assaults on these workers and in sentencing decisions;
- Characteristics of offenders, including characteristics of reoffending offenders;
- Sentencing options to deter this behaviour;
- Sentencing options to reduce reoffending;
- A comparison of NSW sentencing decisions for assaults on these workers with equivalent sentencing decisions in other Australian jurisdictions;
- A comparison of NSW sentencing decisions for assaults on these workers with equivalent sentencing decisions for assaults generally;
- Sentencing principles applied by NSW courts; and
- Any other matter the Council considers relevant.

### **Submission**

The Australian Medical Association (NSW) is a professional association that represents over 9,000 doctors in New South Wales, including doctors-in-training, career medical officers, staff specialists, visiting medical officers and specialists and general practitioners in private practice.

The AMA (NSW) notes that aggression and violent incidents in the workplace represent a serious health and safety risk to frontline health workers. Up to 95% of healthcare workers have experienced verbal or physical assault in the workplace and this trend continues to rise (1). While

the AMA (NSW) has no role in sentencing, we do want to ensure that doctors and other health workers are safe in their workplace and that acts of violence towards them are taken seriously.

In this submission, we note the increase in aggressive and violent behaviour by patients in emergency departments; however, we suggest community mental health clinicians also experience violence from consumers, particularly while conducting home visits.

### **Reporting gap**

The non-reporting of violent acts in health care settings is well documented, with up to 70-80% of violent episodes not reported (2). Reluctance to report this behaviour stems from the time it takes to complete lengthy forms required to formally report the incident, the perception that there is no real benefit associated with reporting incidents and hesitancy from staff to become involved in the criminal justice process as a witness. This reluctance is reinforced when doctors follow the appropriate internal processes required to report violence, but no action is taken against offenders by the court. Acts of violence may also go under-reported as they are attributed to the offender's physical or mental illness, drugs and/or alcohol, of which emergency presentations relating to these factors are increasing (3). Without accurate reporting of incidents of violence, it is difficult to quantify and understand the extent of the problem within hospitals in New South Wales. The action of providing information on outcomes and sentencing to health care workers who have made reports of violence may assist in obtaining more accurate reporting.

### **Growing pressure on emergency departments**

Increases in aggressive and violent behaviour have also been attributed to record-breaking emergency department (ED) presentations. The latest information from the Bureau of Health Information shows that ED presentations exceeded 3 million in 2019. In particular, the months between October and December saw more than 776,000 attendances, up 3.6% from the same reporting period in 2018 (4). Emergency Department overcrowding adversely impacts upon the rate of violence, and the experience of that violence. Doctors often have little time, or appropriate space, to deescalate agitated patients, leading to an increase in the volatility of these patients, and increased rate and intensity of the violence that follows.

Furthermore, increasing presentations relating to drug (particularly ice) and/or alcohol increase demand on frontline health workers. While the number of patients presenting to emergency departments for methamphetamine related problems is modest in terms of overall numbers (1-3% of attendances), the resulting impact is very significant. Patients with acute amphetamine intoxication (associated with the drug ice) are often agitated and aggressive and may require extensive resources and sedation). These patients pose an even greater problem for regional hospitals with fewer clinical staff and poor access to security personnel (5).

### **Community mental health teams and inpatient facilities**

In order to prevent more violence towards healthcare workers we need to not only better resource emergency departments but also community mental health teams and inpatient (detox and rehab) facilities. Whilst the focus of this review is on acute presentations and sentencing, we suggest improving prevention via services that identify and treat some of the addiction and mental health issues that result in violence would be an effective approach.

## **Sentencing**

The AMA (NSW) strongly condemns acts of violence towards doctors, police officers, correctional staff, youth justice officers, emergency services workers and all other health workers. While the AMA (NSW) supports enhanced penalties for those who are violent towards these workers, we do not support the implementation of mandatory sentencing as a means to deter violence. Mandatory sentencing limits a Judge's discretionary power to take mitigating factors into account and can disproportionately affect those who are already over-represented in the prison system, such as Aboriginal and Torres Strait Islander (ATSI) peoples.

As outlined in the AMA 2015 Report Card on Indigenous Health and Closing the Gap on Indigenous imprisonment rates, the AMA believes it is possible to isolate particular health issues as among the most significant drivers of the imprisonment of ATSI peoples, and target them as health issues as a part of an integrated approach to also reduce imprisonment rates (6). Directing funding towards these health issues and programs aimed at reducing them, may have a positive impact on the rate of violence experienced in emergency care settings.

The AMA (NSW) recommends implementing measures to prevent violence towards health workers, as opposed to enforcing mandatory sentencing. Greater focus on primary and secondary prevention, improving social determinants, and wider implementation of the First 2000 Days framework are excellent ways to build healthier communities. Such programs have the potential to reduce violence experienced by health workers while simultaneously treating health and addiction issues in the wider community.

The AMA (NSW) acknowledges that not all acts of violence can be prevented, and in such instances, there should be appropriate sentencing. However, as far as practicable, efforts should be directed at encouraging reporting of, and reducing violence towards health workers.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Danielle McMullen'. The signature is stylized with a large, sweeping loop at the end.

***Dr. Danielle McMullen***  
***President, AMA (NSW)***

1. <https://www.worksafe.vic.gov.au/itsneverok>
2. Griffiths, D., Morphet, J. & K. Innes, 2015. Occupational Violence in Health Care, Final Report. Monash University; Kennedy MP. Violence in emergency departments: under-reported, unconstrained, and unconscionable. *Med J Aust* 2005; 183(7): 362–5; Gilchrist H, Jones SC, Barrie L. Experiences of emergency department staff: Alcohol-related and other

violence and aggression. *Australas Emerg Nurs J* 2011; 14(1): 9–16.

doi:10.1016/j.aenj.2010.09.001; Lyneham J. Violence in New South Wales emergency departments. *Aust J Adv Nurs* 2000 Dec-2001 Feb; 18(2): 8-17; Merfield E. How secure are Australian emergency departments? *Emerg Med (Fremantle)* 2003; 15(5-6): 468-474.

3. [https://acem.org.au/getmedia/3e940b76-3215-4b6f-a6ae-97b4d30d1d95/2019-Alcohol-and-methamphetamine-snapshot-survey\\_R2](https://acem.org.au/getmedia/3e940b76-3215-4b6f-a6ae-97b4d30d1d95/2019-Alcohol-and-methamphetamine-snapshot-survey_R2)
4. <https://www.bhi.nsw.gov.au/media/2020/Record-number-of-attendances-at-NSW-emergency-departments>
5. <https://ama.com.au/position-statement/methamphetamine-2015#:~:text=There%20is%20clear%20medical%20evidence,be%20referred%20to%20as%20such.>
6. <https://ama.com.au/2015-ama-report-card-indigenous-health-closing-gap-indigenous-imprisonment-rates#:~:text=Search-2015%20AMA%20Report%20Card%20on%20Indigenous%20Health%20%2D%20Closing,Gap%20on%20Indigenous%20Imprisonment%20Rates&text=In%202015%2C%20Aboriginal%20and%20Torres,imprisoned%20than%20non%2DIndigenous%20people.>