

SECOND READING SPEECH

Sentencing Amendment (Assaults on Police Officers) Bill 2014

Madam Speaker, over recent years there has been a perceived increase in the incidence and severity of assaults on police and dissatisfaction has been expressed at the sentences imposed on those who commit these assaults.

The Police Association of Tasmania has been particularly vocal in its criticism of sentences imposed on persons who assault a police officer and has called for a mandatory minimum sentence for such offences.

This government believes that assaults against our police and emergency service personnel are a serious crime against the community, and that the sentence should reflect the gravity of the crime.

The Government promised prior to the election to legislate for a minimum mandatory sentence of 6 months imprisonment for assaults on police officers and other emergency service personnel.

This policy is to be phased in gradually, beginning with police officers. Police are often called upon to intervene in violent or volatile situations which may lead to them being seriously assaulted, so it is important to do all that we can to protect them.

This Bill introduces a minimum mandatory sentence of 6 months imprisonment for a person convicted of an offence against an on duty police officer that results in the officer suffering serious bodily harm.

The mandatory penalty will apply to a person convicted of any summary or indictable offence committed in relation to an on duty police officer that results in serious bodily harm to him or her.

The penalty is not restricted to persons charged with specific offences or crimes such as “assaulting a police officer” as is found at section 34B

of the *Police Offences Act 1935* or “resisting a public officer” under section 114 of the *Criminal Code Act 1924*.

This means that a person convicted of an offence generally considered more serious than a simple assault, such as wounding or grievous bodily harm, will also be given the mandatory sentence as an absolute minimum.

Madam Speaker, at this stage I would like to flag that I will be moving two amendments to clause 4 in Committee. While I will speak to the amendments in Committee, I think it is important to outline their effect now so that members are aware of it prior to contributing to the second reading debate.

Members will note that new section 16A(1)(a) provides that the offence must be committed “in relation to a police officer.” It was always intended that this section apply to an offence aimed at a police officer and not an offence which just happened to result in injury to a police officer.

For example, it was never the intention to have the mandatory penalty apply to a person convicted of an offence under 269(3) of the Road Rules for causing a hazard when opening a vehicle door simply because the person injured as a result just happened to be a police officer cycling past.

After the Bill was tabled, discussions with the Office of the DPP raised concerns that the wording may not be clear enough. As a result, in Committee I will move an amendment to define “in relation to a police officer” to rule out injuries arising from an act that might have resulted in injury to anyone but just happened to result in injury to a police officer.

The second amendment will make it clear that a court that orders, pursuant to subsection (1), that a person is to serve a term of imprisonment of not less than 6 months, may not make any other order which would have the effect that the person is not imprisoned for a term of at least 6 months. In other words, the Court cannot make a

further order to suspend the term of imprisonment, either wholly or partially.

Madam Speaker, it is important to note that the mandatory penalty will only apply where the offence has resulted in serious bodily harm. This ensures that the penalty will not apply if the assault for which the offender was convicted was relatively minor and resulted in slight injuries.

Assault is defined in the *Code* “as the act of intentionally applying force to the person of another, directly or indirectly, or attempting or threatening by any gesture to apply such force”. An assault could be constituted by a threatening gesture or a light push and six month jail sentence would be excessive in such circumstances.

The mandatory sentencing provision only applies to an adult convicted of such an offence by virtue of section 5 of the *Sentencing Act 1997* and section 46 of the *Youth Justice Act 1997*.

To impose a mandatory term of detention on a minor, particularly if the offender had no prior convictions would be contrary to the provisions of the *Youth Justice Act 1997* with its emphasis on restorative justice and imprisonment as a last resort.

A further safeguard is the fact that the mandatory sentence is to be imposed “unless there are exceptional circumstances”. This will allow the court to take into account genuinely exceptional circumstances that may have resulted in the offender acting as he or she did.

I do not intend to speculate on what hypothetical scenarios may or may not fall within this phrase. It will be a matter for a court to decide on the basis of all the evidence before it and guided by relevant case law.

Madam Speaker, I believe this Bill fulfils the first tranche of our election commitment to protect police officers and other emergency service workers while at the same time safeguarding against the imposition of a mandatory penalty in a clearly inappropriate situation.

The Government intends to extend the mandatory sentence to other emergency service workers after further consultation with relevant groups.

I commend the Bill to the House.

CLAUSE NOTES

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- Clause 1:** Short Title
- Clause 2:** Commencement on Royal Assent
- Clause 3:** Principal Act
- Clause 4:** New section 16A inserted in the Principal Act

The new section provides for the imposition of a mandatory sentence of 6 months imprisonment on a person convicted of an offence committed in relation to an on-duty police officer that results in the officer suffering serious bodily harm unless there are exceptional circumstances.

The section also clarifies the inter-relationship of the new section with other provisions of the Principal Act.

- Subsection (2) states that, even if the provision creating the offence does not permit the imposition of a sentence of 6 months' imprisonment, s 16(1) will apply, except that the sentence may only be one for 6 months' imprisonment exactly.
- Subsection (3) clarifies that a person who does not have a conviction recorded by the court under section 7 is not subject to the mandatory sentence by virtue of the operation of section 10(2)(b)(v). Section 10(2)(b)(v) states that a finding of guilt without recording a conviction has the same effect as if a conviction had been recorded for the purpose of

“enactments providing for any other kind of mandatory penalty on conviction..”. Since the proposed s 16A imposes a “mandatory penalty on conviction”, subsection (3) is necessary to ensure that section 10(2)(b)(v) does not operate to convert a finding of guilt into a conviction to which the mandatory minimum of 6 months’ imprisonment will apply.

- Subsection (4) clarifies that the Court may still impose single, general or mixed sentences when the offender has been convicted of more than one offence.
- Subsection (5) clarifies that, despite subsection (2) and s 11(2), the sentence imposed, in a general or mixed sentence, may be for more than 6 months’ imprisonment where the sentence is imposed in respect of multiple offences. Subsection (2) indicates that the sentence imposed is to be for exactly 6 months’ imprisonment. Section 11(2) states that “in imposing a single sentence on an offender for more than one offence, a court may not impose a penalty exceeding the sum of the maximum penalties that could otherwise have been imposed for those offences”. Subsection (5) is to the effect that neither s 11(2) or s 16A(2) are to be taken to prevent a longer sentence being imposed, when that sentence is for multiple offences, even though the “maximum penalty” to which s 16(2) refers is a term of imprisonment of exactly 6 months

Clause 5:

Provides for the automatic repeal of the amending Act after the amendments are incorporated into the Principal Act.

FACT SHEET

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The mandatory penalty will only apply where the offence has resulted in serious bodily harm. This ensures that the penalty will not apply if the assault for which the offender was convicted was relatively minor and resulted in slight injuries.

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