



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

Protection for First Responders and Prison Officers Bill

11/02/2020

Submission on the Protection for First Responders and Prison Officers Bill

1 Introduction

- 1.1 The Law Society welcomes the opportunity to comment on the Protection for First Responders and Prison Officers Bill (the Bill).
- 1.2 The Bill proposes to introduce more protection in the criminal law for first responders and prison officers, by creating a new offence in the Crimes Act 1961 (Crimes Act) and expanding an existing offence provision in the Summary Offences Act 1981 (Summary Offences Act) and by stipulating a minimum period of imprisonment in the Sentencing Act 2002 (Sentencing Act). Additional proposed amendments to the Bill are also contained in two Supplementary Order Papers (SOPs) that add further complexity to the proposed reforms.¹

2 Summary of submission

- 2.1 The desire to offer greater protection to first responders and prison officers while on duty is understandable. It is however not necessary to amend the criminal statutes to achieve this objective. The Crimes Act and Summary Offences Act already contain specific criminal offences for assaults on police and other responders, and the Sentencing Act 2002 (Sentencing Act) expressly recognises the status of the victim – police and prison officers, and emergency health or fire service personnel at emergency scenes – as an aggravating factor at sentencing.²
- 2.2 The Bill also creates unnecessary and undesirable inconsistencies in sentencing law, by doubling the maximum penalty for one type of assault (injuring with intent to injure) but not for other assault offences. Such inconsistencies arise because the Bill attempts to elevate what is really an aggravating factor – the victim’s status – into an ingredient of the offence.
- 2.3 The Law Society submits that the proposed amendments are not justified or necessary. It would be preferable to use the current legislative mechanisms to treat the victim’s status (first responder or prison officer) as an aggravating factor which can then be applied to the full spectrum of assault charges.
- 2.4 In addition, the terminology used raises a number of questions and will need careful consideration if the Bill is to proceed.
- 2.5 In conclusion, the Law Society considers the Bill is unnecessary and recommends that it not proceed. If it is to proceed, we recommend the select committee seeks advice from officials and drafting assistance to ensure it is fit-for-purpose.
- 2.6 The Law Society wishes to be heard in relation to this submission.

¹ SOP 219 dated 21 May 2019 proposes that the mandatory minimum sentence of imprisonment be imposed cumulatively on an offender’s existing determinate sentence (explanatory note p 3). SOP 426 dated 11 February 2020 proposes replacing “prison officer” with “corrections officer” in the Bill’s title and in the new Crimes Act offence (but “prison officer” would be retained in the Summary Offences Act amendment as that Act uses the term in other places that are not amended by the Bill).

² Sentencing Act 2002, s 9(1)(fa) and (fb).

3 The Bill's objectives

3.1 The explanatory note to the Bill notes that:

There has been an increase in assaults against first responders and prison officers with more and more serious injuries occurring as a result. There must be a firm stance against any assault of first responders or prison officers, as they have a duty to prevent crime, harm, injury, or death to New Zealanders.

The public needs confidence that the safety of these important personnel is being preserved and first responders need confidence in their ability to do their job. When a first responder is injured in the line of duty that will impede their ability to save a life or prevent a crime.

Offenders need to think twice before they attempt to assault or injure first responders, as their actions can affect the lives of others.

3.2 As a member's bill, there has been no regulatory analysis by officials of the nature and extent of the alleged problem of increased assaults on first responders and prison officers and whether a legislative solution is appropriate. If amendment to existing criminal statutes is in fact required, in the Law Society's view it should be advanced as a government bill so that the reforms can be properly informed by policy analysis from officials. If the Bill is to proceed, the Law Society recommends the select committee obtains advice from officials and drafting support from experienced parliamentary drafters to ensure the legislation is fit-for-purpose.

4 Current assault offences

4.1 Under the current law, a range of assault charges is available, with maximum penalties ranging from 6 months' imprisonment³ to 14 years' imprisonment for wounding with intent to cause grievous bodily harm.⁴ Injuring with intent to injure sits approximately in the middle, with a maximum of 5 years' imprisonment. In considering the new offence introduced by the Bill, it helps to compare the following four assault offences:

Section of the Crimes Act	Offence	Maximum
189(2)	Injuring with intent to injure	5 years
188(2)	Wounding with intent to injure	7 years
189(1)	Injuring with intent to cause grievous bodily harm	10 years
188(2)	Wounding with intent to cause grievous bodily harm	14 years

4.2 This hierarchy shows that the maximum penalty reflects the injury caused and the intent to do harm. Causing grievous bodily harm attracts a higher maximum (and therefore starting point)

³ Summary Offences Act 1980, section 10.

⁴ Crimes Act 1961, section 188.

than injuring, and the maximum penalty also depends on whether the defendant intended to injure or to cause grievous bodily harm.

4.3 There are two specific criminal offences applying to assaults on police officers in the course of duty:

- section 10 of the Summary Offences Act 1981 provides that “Every person is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$4,000 who assaults any constable, or any prison officer, or any traffic officer, acting in the execution of his duty”; and
- section 192(2) of the Crimes Act provides that “Everyone is liable to imprisonment for a term not exceeding 3 years who assaults any constable or any person acting in aid of any constable, or any person in the lawful execution of any process, with intent to obstruct the person so assaulted in the execution of his duty” (emphasis added).

4.4 These provisions emphasise the importance of protecting police and other officers and first responders, although one of the generic assault provisions may be deemed more appropriate depending on the seriousness of the offending. This would also include the full range of different penalties available depending on the level of the assault.

5 Current sentencing law

5.1 Sentencing in New Zealand takes the form of a three-step process. The courts:⁵

- a) identify a starting point, having regard to the purposes and principles of sentencing, and any aggravating and mitigating factors relating to the offending, as set out in the Sentencing Act (section 9);
- b) adjust the starting point, having regard to any aggravating or mitigating factors particular to the offender, as set out in section 9; and
- c) make a final adjustment based on whether the offender has pleaded guilty.

5.2 In relation to (a), relevant aggravating features set out in the Sentencing Act⁶ include:

- (fa) that the victim was a constable, or a prison officer, acting in the course of his or her duty
- (fb) that the victim was an emergency health or fire services provider acting in the course of his or her duty at the scene of an emergency (emphasis added).

5.3 These aggravating factors were introduced as part of the criminal justice procedure reforms in 2011, but only made express what was already being applied by the judges.⁷

⁵ Supreme Court in *Hessell v R* [2010] NZSC 135; [2011] 1 NZLR 607. See also *R v Taueki* [2005] 3 NZLR 372 (CA)

⁶ Section 9(1)(fa) and (fb), Sentencing Act 2002.

⁷ See for example *Brackenridge v Police* HC Rotorua, 22 July 2011, CRI-2011-470-17 at [17]-[20], and *R v Grant* [2009] NZCA 266 at [9]-[10], both confirming that the fact that the victim is a police officer has always at common law increased the sentence. *Brackenridge* also makes clear that where the assault itself is more serious, a more serious offence will be charged.

- 5.4 This means that under the current law offenders can be charged with a broad range of assault offences, reflecting the seriousness of the assault, and where the victim is a first responder or prison officer the sentence can be appropriately uplifted.
- 5.5 The courts have discretion to determine the degree or extent to which a relevant aggravating factor should be taken into account. A 'catch-all' provision in section 9(4)(a) also allows judges to take into account any other aggravating or mitigating factor that they think fit, in imposing sentence.

6 The effect of the Bill

- 6.1 The Bill would create a new section 189A Crimes Act offence – injuring with intent to injure a first responder or prison officer – with a maximum penalty of 10 years’ imprisonment and a minimum penalty of 6 months’ imprisonment (unless imprisonment would be “manifestly unjust”).⁸
- 6.2 The effect is to double the maximum penalty for injuring with intent to injure, but no other assault provision, if the victim is a first responder or prison officer. This is illustrated by inserting the new provision in the earlier table:

Section of the Crimes Act	Offence	Maximum
189(2)	Injuring with intent to injure	5 years
New 189A	Injuring with intent to injure first responder or prison officer	10 years
188(2)	Wounding with intent to injure	7 years
189(1)	Injuring with intent to cause grievous bodily harm	10 years
188(2)	Wounding with intent to cause grievous bodily harm	14 years

- 6.3 This raises several questions, including:
- Is injuring a first responder/prison officer with intent to injure *twice as bad* as injuring with intent to injure a person who is not a first responder/prison officer?
 - Is injuring a first responder/prison officer with intent to injure *the same level of seriousness* as injuring with intent to cause grievous bodily harm?
 - Is injuring a first responder/prison officer with intent to injure *worse than* wounding a person with an intent to injure?

⁸ Protection of First Responders and Corrections Officers Bill, clauses 4, 6.

- Why is the maximum penalty doubled only if the first responder is injured (not wounded), and the defendant only intended to injure (not cause grievous bodily harm)?

6.4 The Law Society suggests that such inconsistencies arise because of the attempt to elevate what is properly an aggravating factor (the status of the victim) into an ingredient of the offence. While New Zealand’s criminal law does include offences where what might otherwise be aggravating factors are effectively made ingredients of the offence itself (for example, theft by person in a special relationship), this is the exception rather than the rule. The Bill would be a further exception, elevating what is already recognised in law as an aggravating feature to an ingredient of the offence. The Law Society submits that this is not justified in the circumstances. It would be preferable to treat the status of the victim as an aggravating factor (as per current legislative mechanisms), which can then be applied to the full spectrum of assault charges.

7 Definition of “first responder”

7.1 If the Bill is to proceed, arguably there may be other "first responders" who fall outside the definition in the Bill⁹ who might desirably be protected. For example, health practitioners who respond to emergencies where they have no legal duty to do so, members of Search and Rescue teams, or local body employees who are tasked to provide emergency responses to floods or other natural disasters. The explanatory note to the Bill does not provide any justification for increasing protection only for those under a duty to provide assistance in an emergency. If the Bill proceeds, the committee may wish to consider expanding the definition to include for instance ‘health practitioners responding to an emergency situation and persons acting under the direction of a government agency who are tasked with responding to an emergency’.

8 Definition of “prison officers”

8.1 If the definition of “prison officers” in the Bill is amended as proposed by SOP 426 (replacing the term “prison officer” with “corrections officer” in the Bill’s title and in the new Crimes Act offence), the committee will need to consider whether section 9(1)(fa) of the Sentencing Act and section 10 of the Summary Offences Act, which currently refer to “prison officer”, also need to be amended accordingly. The term “corrections officer” is arguably interchangeable with “prison officer” but it is preferable to have consistent terminology across different Acts.



Andrew Logan
Vice President
 11 February 2020

⁹ Clause 4, new section 189A(2): “first responder means—
 (a) a constable (within the meaning of section 4 of the Policing Act 2008); or
 (b) an emergency services worker (within the meaning of section 92(4) of the Health and Safety at Work Act 2015)”