

ASSAULTS AGAINST POLICE OFFICERS

Grievance

MR M.J. COWPER (Murray) [9.40 am]: I apologise to the house for my late arrival this morning, but there was a car accident on the Mt Henry Bridge this morning and the chap with the afro did not look very happy.

I wish to grieve to the minister about the apparent change in the government's position on assaults against police officers. Recently members have heard in this place about some terrible assaults against police officers, some of whom have sustained considerable injuries while executing their duties. The people of Western Australia expect that the good people in the Western Australian police force can be confident that when they do their job, they will be protected and will not be subjected to violence against them. Last year some 1 400 assaults were committed against public officers, the vast majority of whom were police officers. It appears that when a charge of assaulting a public officer is dealt with summarily in a lesser court, the penalty does not reflect what I believe the community wants to see. Over time, the way in which these matters have been dealt with has diminished to such a degree that police officers have become punching bags for would-be criminals. In essence, we are saying to would-be criminals that it is okay to hit a police officer because they will not suffer consequences. That is not the message that we should send to the community. I am very protective of my former colleagues, as is the member for Yokine.

I understand that it has been proposed that we should create an offence that will require a charge of assaulting a police officer to be dealt with by the District Court. Why will the matter be sent to the District Court? I heard the Commissioner of Police on radio yesterday say that it is primarily because the District Court hands out more severe penalties than the lesser courts. That is almost an admission that the lower courts - the stipendiary magistrates and the Court of Petty Sessions - are not handing out appropriate sentences. The problem with sending a potential 1 400 more cases to the District Court is that it will impact on the community in two ways -

Mr B.S. Wyatt: They don't have jurisdiction.

Mr M.J. COWPER: They do. I will deal with that in a moment. The first impact on the District Court is that it will have to deal with potentially 1 400 more cases, which will place a further burden on it. The second impact is that it will take police officers, witnesses and defendants in regional areas away from their homes to attend court. The situation is not so bad in the city because of the location of the District Court. Potentially, police officers will leave their post to attend court to appear in 1 400 additional cases. Those of us who have had experience with these matters know that defendants often do not appear at court on the specified date and the case must be rescheduled for another time, which increases the problem exponentially. When I worked in Halls Creek, people had to go to Kununurra to attend District Court cases. A case might not have been heard until three or six months after the incident. Often the defendants, who may have been affected by alcohol at the time, did not understand the relevance of the offence to the penalty because sometimes the penalties were not handed down until some time after the incident occurred for which the defendant had been charged.

The creation of the proposed new charge just on the basis that the District Court will hand down stiffer penalties is fundamentally flawed. I believe a review of the lower courts is needed to ensure that the penalties are commensurate with the offence.

Mr R.C. Kucera: The police have discretion in any case. They can lay the appropriate charge.

Mr M.J. COWPER: That is a good point. The police are not bereft of the circumstances that have been mentioned before that. A lady might whack a policeman with a handbag. That happened to me, and I just smiled politely and walked away.

Mr J.B. D'Orazio: The creation of a new offence gives gravity to what you are trying to achieve. Because of that, it will go to the District Court. It is not because we want to get it out of the Magistrates Court, because we are creating a new offence which has exactly the effect of creating -

Mr M.J. COWPER: The day the ability was taken away from justices of the peace in small towns - particularly in Halls Creek, Fitzroy and other places where I have worked - to sentence prisoners based on community expectations was a very sad day. The fly in, fly out magistrates do not understand what is going on in the communities and they do not understand the gravity of the situation. The wrong message has been sent to people, who believe that it is okay to hit a police officer. That is the sum total of the matter. When I was in Halls Creek, I was stabbed on a number of occasions.

Mr J.B. D'Orazio: What is the average length of time people who are sentenced by justices of the peace spend in jail?

Mr M.J. COWPER: Currently or previously?

Mr J.B. D'Orazio: Before.

Mr M.J. COWPER: I am not sure. It would have been a significantly longer time -

Mr J.B. D'Orazio: You made the comment.

Mr M.J. COWPER: At the time, it was a significantly longer time than a sentence imposed by a stipendiary magistrate.

Mr J.B. D'Orazio: Rubbish.

Mr M.J. COWPER: That is one of the reasons I believe the ability to sentence people was taken away from justices of the peace.

Mr R.C. Kucera: It was taken away from them because so many cases were challenged by the superior courts and were overturned. It was seen that the process was not working in terms of justice.

Mr M.J. COWPER: I have 28 seconds left to speak.

Mr R.C. Kucera: That is why it was taken away from them. You are generalising.

Mr M.J. COWPER: I am not generalising. The police will charge a person with a lesser offence so they do not have to go to the District Court. That happened in the past and it will continue to happen in the future. A loud and clear message must be sent to the community that if someone assaults a police officer, he will be sent to jail. The matter should not be sent to a higher court, which involves running backwards and forwards between court appearances. That will only create more work for the police officers and it will not send the correct message to the people who commit these types of crimes against police officers.

MR J.B. D'ORAZIO (Ballajura - Minister for Justice) [9.47 am]: I thank the member for his grievance. This issue has been the subject of a good deal of debate. As I said yesterday in answer to a question, the intention of members on of both sides of the house is to achieve an outcome that sends a clear message to the community that assaulting a police officer - or any other public officer serving in the line of his or her duty - in a manner that causes bodily harm to that officer must be severely dealt with. This debate is about how best to do that.

Mr T.R. Sprigg: You need to pull your commissioner into line. You want mandatory sentencing but the commissioner does not. You have to pull him into line.

Mr J.B. D'ORAZIO: Mandatory sentencing is just one option. I want to make sure that people who assault a public officer are dealt with appropriately. I suggested to the Commissioner of Police that he talk to the Director of Public Prosecutions and develop some proposals that can be considered, and that has occurred with the support of the Attorney General. As I said yesterday, the proposals have not been presented to me, but I have seen some of the proposals suggested by the Commissioner of Police and the police force that have some merit. We must look at those suggestions.

Mr M.J. Cowper interjected.

Mr J.B. D'ORAZIO: Let me finish; I allowed the member to speak.

Mr M.J. Cowper: You interjected. The first time that a person gets convicted in a District Court in a manner that does not reflect the community's expectation, I would expect the commissioner to be on the phone to you straightaway or to appeal that result. Unless this regime, in going to the District Court, sends a message to the people, it will be pointless.

Mr J.B. D'ORAZIO: There will be some circumstances in which a charge that is heard, in whatever court, cannot be substantiated, and the person is found not guilty, or the judge decides that a particular sentence is in order. I understand the position the member is coming from. It is the same position as the one I am coming from. We both agree that we need to provide protection for public officers.

I will give the member some court statistics. Seventy per cent of cases of assault of a public officer go to the Magistrates Court. Five per cent of the people whose cases are heard in the Magistrates Court go to jail, and the average length of imprisonment is seven months. Seventy per cent of the people whose cases are heard in the District Court go to jail, and the average length of imprisonment is 22 months. The average length of imprisonment for people whose cases are heard in the Supreme Court is 44 months. We want to create new offences that are clearly designed to show the community that this Parliament recognises that people who cause aggravated bodily harm to a public officer have committed a major offence that will be heard by the District Court. That will mean that the average length of imprisonment for those offences could be at least 22 months. If we lift the bar even higher, the average length of imprisonment may be even longer than 22 months. The agenda is to ensure that we deal in an appropriate manner with people who assault public officers. I believe people on both sides of the political fence, and the public, would expect us to do nothing less than that.

I will now deal with some of the suggestions that have been made about how we should deal with this issue. I pre-empt my comments by saying that these suggestions have not been put to us formally. These are proposals that the Commissioner of Police has made to the Director of Public Prosecutions, and they will need to go to both the Attorney General and me. We have not committed to any of these proposals as yet. I will put on the record some of the things that have been suggested by the Commissioner of Police so that members will know what they are. The proposals are as follows -

1. Amend section 297 of *The Criminal Code* to provide for a circumstance of aggravation which imposes an increased penalty of 14 years imprisonment where a person does grievous bodily harm to a public officer. Currently the maximum penalty is 10 years unless a motor vehicle is used in the commission of the offence.
2. Amend section 318 of *The Criminal Code* to provide for a circumstance of aggravation whereby the offence of assaulting a police officer would be said to be aggravated if during the commission of the offence, the offender (a) was in company with others; and (b) has used a weapon or other dangerous thing. It is proposed that this would automatically elevate the hearing to the District Court and could not be dealt with summarily.
3. Amend section 318 of *The Criminal Code* to preclude a summary conviction penalty in the circumstances where an assault under that provision has been committed in circumstances as proposed in option 2(a) and (b).

That would take the discretion away from the police. To continue -

4. Broaden the definition of "public officer" to reflect New South Wales legislation which expressly states . . . even though the police officer is not on duty at the time, if the assault is carried out as a consequence of, or in retaliation for, actions undertaken by that police officer in the execution of the officer's duty, or because the officer is a police officer.
5. Amend the *Sentence Administration Act 2003* to provide for a standard non-parole period in respect of the offence of assaulting public officers which represents the non-parole period for an offence in the middle of the range of seriousness for offences in much the same way as the *NSW Crimes (Sentencing Procedure) Act 1999* provides.
6. Amend section 318 of *The Criminal Code* to apply in addition to assaults on "public officers", to assaults on an identifiable category of private sector worker who exercise essentially the same function as their public service counterparts and may be equally deserving of the protections available under section 318.

These proposals will lead to the development of criteria whereby -

Mr M.J. Cowper: Why did the commissioner suggest that? It is because the lower courts are not doing their job!

Mr J.B. D'ORAZIO: If the member understands what the commissioner is saying, he will see that he wishes to elevate the status of the crime -

Mr M.J. Cowper: I understand what he is saying. He is frustrated because the lower courts are not protecting his officers. That is what he is saying.

Mr J.B. D'ORAZIO: That is not what he is saying. He is saying that by creating this new offence, we will elevate the status of that offence in the eyes of the community and the courts, and the offence will be dealt with in the appropriate manner. We are trying to protect people who are doing their duty on behalf of the public of Western Australia. We will do it. Members opposite will just keep talking about it.