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## Criminal Code Amendment Bill 2008

The Bill, introduced on December 4 2008, provides for mandatory prison terms for all people who assault police officers causing grievous bodily harm or bodily harm.

### Existing legislation

The previous Labor Government enacted the Criminal Law and Evidence Amendment Act in 2008. It amended the criminal code to provide increased penalties and better categorisation of the offences of assaulting public officers:

- s.297 Assault causing Grievous Bodily Harm — 14 years imprisonment
- s.318 Serious Assault (any assault on a public officer):
  - a) If armed or in company — 10 years imprisonment
  - b) All other cases — 7 years imprisonment

Two other sections deal with assault:

1. S.313 provides a penalty of 18 months imprisonment for common assault, increased to 3 years in circumstances of aggravation.
2. S.317 provides a penalty of 5 years imprisonment for an assault occasioning bodily harm, increased to 7 years in circumstances of aggravation.

GRIEVOUS BODILY HARM means any bodily injury of such a nature as to endanger, or be likely to endanger life, or to cause, or be likely to cause, permanent injury to health.

BODILY HARM means any bodily injury with interferes with health or comfort.

### The Bill

The Bill deals only with assaults on police officers, not all public officers.

The Bill provides:

1. 12 months mandatory imprisonment for an assault causing Grievous Bodily Harm to a police officer (s.297) by an adult.
2. 6 months mandatory imprisonment for an assault occasioning bodily harm to a police officer (s.318), increased to 9 months in circumstances of aggravation, such as being armed or in company.
3. 3 months mandatory imprisonment for any assault causing Grievous Bodily Harm or Bodily Harm to a police officer by a juvenile.
4. A conviction under these provisions for juveniles cannot be 'spent'.
5. A mandatory term of imprisonment cannot be 'suspended'.

### The Issues

#### **1. Broken Promise**

On 13 August 2008 a Liberal Party press release entitled *Liberals will protect police and other public officers with legislative back up* promised mandatory prison terms

for people convicted of assaulting police or 'any other public officer' and causing Grievous Bodily Harm. This legislation covers only police.

**2. Unintended effect of legislation**

There is no record of any person who assaulted a police officer causing Grievous Bodily Harm not going to prison. That is appropriate.

The definition of bodily harm includes minor injuries such as a bruise or a scratch. Minor injuries can be caused by relatively insignificant behaviour which does not need to be punished by a prison term.

Mandatory sentencing removes judicial discretion to ensure that non-deserving cases are not treated in the same way as those who deserve prison.

**3. Grievous Bodily Harm penalty too low**

Grievous Bodily Harm involves endangering human life or causing permanent injury to health. These are very serious consequences from a criminal assault on anyone, particularly so on a public officer.

The 'going rate' or 'tariff' for an assault causing Grievous Bodily Harm to a police officer is well above the 1-year mandatory minimum contained in the Bill.

Prescribing such a low minimum could have the effect of lowering the sentences actually handed down by judges, who will take the minimum into account in future cases.

**4. Juveniles**

The legislation, in proposing a different and lower mandatory minimum for juveniles (aged 10-17 years), recognises the need to treat young offenders by a different standard.

While any person causing Grievous Bodily Harm to a public officer should be imprisoned—I can think of no exception to this rule—the application of mandatory imprisonment to minor 'bodily harm' injuries inflicted by juveniles will conceivably operate in a harsh and unintended manner.

**5. Spent Convictions and Suspended Imprisonment**

During the election campaign the Labor Party promised to remove spent convictions and suspended imprisonment as sentencing options for *all* assaults on public officers. This legislation appears to prohibit spent convictions and suspended imprisonment as sentencing option *only* for assaults causing Grievous Bodily Harm or Bodily Harm to Police Officers.

**6. Mandate**

The Liberals can argue that they have a mandate for this legislation even though it only partially implements the election promise. Additionally, the legislation departs from the election promise of 3 months mandatory imprisonment for the assaults occasioning bodily harm. The Legislation provides for 6 months.

**Recommendation**

That the legislation be supported subject to the following amendments:

1. Extend the provisions to all public officers;
2. Add a proviso akin to the Criminal Code provision in respect to sentencing for the offence of murder, which reads:

"279 (4) A person . . . who is guilty of murder must be sentenced to life imprisonment unless —  
a) that sentence would be clearly unjust given the circumstances of the offence and the person; and  
b) that person is unlikely to be a threat to the safety of the community when released from imprisonment.  
(5) . . .  
(6) A court that does not sentence a person guilty of murder to life imprisonment must give written reasons why life imprisonment was not imposed.";

3. Seek to amend the legislation to remove suspended sentences and spent convictions as sentencing options for all assaults on public officers; and
4. Give further consideration to the position of juveniles and assaults occasioning bodily harm.

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