

# **Sentencing (Aggravating Factors) Amendment Bill**

**Submission of the  
New Zealand Police Association**

**Submitted to the  
Law and Order Committee**

26 May 2011

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### About the New Zealand Police Association

The New Zealand Police Association (the Association) is a voluntary service organisation representing nearly 8,700 constabulary police members across all ranks. The Association also represents more than 2,500 Police employees, who carry out invaluable support roles across the full spectrum of policing. Members are generally very active in engaging in debate and discussion within the Association on matters relevant to policing. The high engagement level of the membership is critical to the Association's ability to speak and act credibly on behalf of members.

### Introduction and general comment

1. The Police Association welcomes the opportunity to submit on the Sentencing (Aggravating Factors) Amendment Bill. The increasing number of serious assaults suffered by police officers is an issue of major concern for members. The figures disclosed in the Regulatory Impact Statement accompanying this Bill provide sound evidence that concern is well founded.

#### *Assault on police is assault on rule of law*

2. The Association believes an assault on a police officer is immediately made more serious because it is also an assault on the rule of law. When members of the public see or hear of police officers being assaulted, they are likely themselves to become more fearful of crime, because they will perceive that police are unable to protect themselves and/or deal effectively with violent criminals: and if police cannot protect themselves, then how can they be expected to protect the public.
3. Consequently, it is appropriate that the fact an assault was committed against a police officer ought to be an aggravating factor at sentencing.

#### *Comprehensive response needed*

4. Making the fact an assault was committed against a police officer an aggravating factor should assist in ensuring sentences for such offending better reflect the inherent seriousness of such attacks. We would expect there to be a lift in average sentencing for assaults on police over time.
5. However, it is self-evident that sentencing takes place after the event. The main impact of longer sentencing is on the specific offender and ensuring their personal conduct is appropriately denounced. To the best of our knowledge there is little evidence of a strong deterrent effect for other potential offenders from adjustments to sentence length alone. We believe that to be especially true for violent offending such as assault, which is generally relatively spontaneous

and not considered by an offender within a rational framework of weighing up of consequences.

6. The Association believes that in order to make a significant impact on the rate of assaults on police, a comprehensive range of responses is needed which alters attitudes across the populace (including amongst potential offenders). An expectation of severe punishment is certainly a key part of that, and this Bill ought to assist in that regard. However, equally important is creating the belief in potential offenders – instilled at an instinctive level – that police can and will respond effectively to an assault: that assaulting or failing to cooperate with a police officer can only make matters worse for you (the offender). In other words, creating an absolute certainty that you will be caught and punished.

#### *Training and equipment*

7. In the immediate context of assaults on police, adequately resourcing, equipping and training police officers to respond when confronted is key to creating that belief. That includes ensuring tactical equipment including Tasers and firearms is available when it is needed, and that people know all police are likely to be so equipped.

#### *Addressing precursor behaviour*

8. It is also important in responding to the issue of assaults that police are empowered to take action against the precursor offending which creates the environment and attitudes in which such assaults occur.
9. There is currently little focus on tackling the culture of contempt for police and the rule of law which leads a growing minority to think police are 'fair game.' That culture begins with the abuse, insults, hiding in a crowd and pelting police with bottles, spitting and physical assaults routinely inflicted on police on a daily basis. Conduct such as leaning into a police officer's face on a Friday night and snarling "F\*\*\* you pig" is currently (in effect) tolerated – by the public, by the media, and by judges who write it off as essentially being 'just something police have to put up with' and not serious enough to warrant legal sanction.
10. Judicial rulings recently (*Brooker, Morse*) have raised the bar for public order offences (disorderly and/or offensive behaviour) such that the threshold now is effectively where violence or public disorder is being intentionally incited or already on the cusp of breaking out. If conduct has reached that level, especially in a group situation where crowd dynamics come into play, that places any officer attempting to regain control of a situation at significant risk.
11. This makes it increasingly difficult for Police to intervene to ensure violence and disorder do not break out, because on the one hand they lack the legal authority to intervene early, while on the other hand lacking ready access to the significant numbers of well-equipped staff, trained in crowd-control tactics, to safely intervene in a simmering crowd situation.
12. When potential offenders see police taking no action, and perceive no consequence from their behaviour, the behaviour feeds on itself. It becomes a game of escalating taunting and abuse of police, and the seriousness spirals up.

Potential offenders come to believe they are untouchable, and this is the mindset that leads them eventually to assault police.

13. The message that police can and will respond immediately and effectively to offending must be reinforced across society. Police need to be backed when they take immediate action. Where offenders do not cooperate with the lawful and reasonable requirements of police officers (whether on the street on a Friday night, or when signalled to stop by a patrol car), that conduct needs to be denounced by society through its media and political commentary. In the unfortunate case that a tragedy ensues because of failure to comply with police directions, of course appropriate inquiries into police actions should follow – but denunciation of the offender must remain the main focus.
14. At present the focus is frequently shifted very quickly to police actions, and usually results in more and more restrictive police policies and practices. These actually encourage would-be offenders to ‘have a go’. For example, there are now numerous instances reported in IPCA reports where fleeing drivers who have later been arrested after crashing have made statements in their interviews along the lines of ‘you guys [police] broke the rules, you were supposed to pull out when I got to 150 km/h / went through a red light / etc’. In making restrictive policies we have actually created targets for offenders which encourage them to behave even more recklessly, in a belief that they will ‘get away with it’ if they can meet that target. That is the direct opposite to the belief we should be trying to create: that they will not get away with it, and efforts to do so will only make matters worse.

#### *Availability of statistics*

15. While the figures provided in the RIS make it straightforward to identify the problem this Bill aims to address, the Association is concerned that lack of availability of comparable statistics going forward will make it increasingly difficult to track the effectiveness of responses to the problem.
16. Police’s decision to stop publishing a table of assaults on police officers in its Annual Report makes comparison of trends much more difficult than it was previously. A table was last published in the 2008/09 Annual Report. Categorisation of offences on the Statistics New Zealand website is different to that previously used in the Annual Reports, and it is not obvious how to aggregate the Statistics categories so that they map to the Police categories. We have no explanation for Police’s decision to stop publishing this table.

#### *Request to appear*

17. The Association would welcome the opportunity to appear before the Committee in support of this submission.

Greg O’Connor  
**PRESIDENT**