



Legislative Assembly

Crimes Amendment (Police And Other Law Enforcement Officers) Bill

27/06/2002

Hansard Extract

Second Reading

Mr DEBUS (Blue Mountains—Attorney General, Minister for the Environment, Minister for Emergency Services, and Minister Assisting the Premier on the Arts) [12.23 p.m.]: I move:

That this bill be now read a second time.

The purpose of the bill is quite clear: to provide greater protection for police and other law enforcement officers and their families against assault, intimidation, harassment and stalking by criminals. I should say that this is not a debate about mandatory sentencing. We will have many such debates in the days and weeks ahead, including debate on the motion of the Leader of the Opposition about mandatory sentencing for people convicted of police murders. I believe that such an approach is fundamentally mistaken, but will advance the reasons at a later date. I will leave the matter for today by reminding the House of what the honourable member for Wakehurst said in connection with mandatory sentencing for police murder, "I am concerned that a mandatory aspect removes all capacity for a judge to tailor the penalty to the actual circumstances." That is a compelling view. The Government has not hesitated to act in support of our police. Our 1997 changes to the Crimes Act provided for greater sanctions in the area of police assault. It is also significant that an application for a sentencing guidelines standard was lodged a month ago following meetings with members of the executive of the NSW Police Association and the police prosecutors during March and April. To turn to the bill, the Minister for Police said in the other place:

It is a sad fact that many law enforcement officers and their families are subject to threats and harassment as a result of their duties.

The threats are designed to influence police investigations or the progress of court matters, and that is an abominable situation. I am also advised that the New South Wales Crime Commissioner has reported that he is concerned that threats against police and New South Wales Crime Commission officers are increasingly being made by organised gangs. That kind of intimidation cannot be tolerated. Where the target of the threats is an officer's family we should not stand back in providing concrete assistance. For these reasons it is proposed to introduce a range of new offence provisions in the Crimes Act 1900. This bill recognises that it should not matter whether police officers are on or off duty if they are threatened or attacked because of their job. That is why the bill will amend section 60 of the Crimes Act to extend protection to police officers who are stalked, harassed or intimidated whilst off duty.

The bill will mean that a person who assaults, stalks, harasses or intimidates a police officer while in the execution of his or her duty, whether on or off duty, will be liable to imprisonment for five years. If actual bodily harm is caused to the officer, the maximum penalty is seven years imprisonment, and if the officer is wounded or suffers grievous bodily harm the maximum penalty is 12 years imprisonment. The bill also extends coverage to police who are targeted simply because they are police, rather than because of or in retaliation for actions taken in the execution of their duty. In addition to police officers, the bill creates new offences in the Crimes Act for other law enforcement officers. As my colleague the Minister for Police stated in the other place:

It is the view of the Government that those law enforcement officers who investigate serious crime or corruption, or who perform detention related duties, require additional protection against threats and harassment.

This bill will create in the Crimes Act a series of offences relating to other law enforcement officers, other front-line officers. Section 60A of the bill mirrors the protections provided to police officers in section 60 of the Crimes Act for those officers who perform investigative, confiscation or detention functions from the New South Wales Crime Commission, the Police Integrity Commission, the Independent Commission Against Corruption, the Department of Corrective Services and the Department of Juvenile Justice. This will mean that a person who assaults, stalks, harasses or intimidates one of these law enforcement officers while in the execution of his or her duty, whether on or off duty, will be liable to imprisonment for five years. If actual bodily harm is caused to the officer the maximum penalty is seven years imprisonment; if the officer is wounded or suffers grievous bodily harm the maximum penalty is 12 years imprisonment.

New subsection 60B (1) creates a new offence of assault, stalk, harass or intimidate the family or loved ones of police or other law enforcement officers. The offence will apply where a person who is in a domestic relationship with a police officer or a relevant law enforcement officer is targeted because of his or her relationship to the officer. The maximum penalty for this offence will be the same as that for targeting the officer: five years imprisonment. New section 60C will make it an offence to collect personal information on police or other law

enforcement officers with the intention of using or permitting the use of the information to assault, stalk, harass, intimidate or otherwise harm the officer. This new offence will attract a maximum of two years imprisonment. It is appropriate at this point to make it clear that that provision is in no way intended to inhibit or influence the legitimate collection of information, whether by investigative journalists, government agencies or other obvious avenues of inquiry. These measures build on the Government's very strong record in support of our law enforcement officers, including the amendments in March to the Crimes (Sentencing Procedure) Act. As I said when that bill was being debated:

The [reforms] recognise that victims of criminal activities must be afforded protection in all circumstances—be they aged, young, weak, infirm, alone or at any other risk—and the Government firmly believes that it is through the broad application of strong sentencing principles that are clearly defined that this outcome is best achieved.

In achieving that purpose the bill takes into account a far-reaching set of factors to be taken into consideration by the courts on sentence. These include the age of the victim, and particularly whether the victim is very old or very young, any physical or mental disability and any vulnerability arising out of the nature of the victim's occupation. The bill therefore operates for the protection of numerous groups in our community. As I also said at the time, the general sentencing principles set out in the bill codify longstanding sentencing principles at common law, such as those outlined by the Court of Criminal Appeal in *Regina v Bradley*, 26 October 1993, unreported, where the court held that specific and general deterrence must be provided by sentences for offences against elderly persons and other such victims. That case involved an elderly victim of a bag snatcher. These new provisions will operate in respect of all crimes, not just assaults and other crimes against the person. It is a law that says that no-one should be an easy mark. However, I did make particular mention of the application of the new provisions to police officers. I said:

All members would be aware of the increased risks faced by frontline service providers. Like their counterparts in the nursing profession, the New South Wales Police Association is properly concerned to ensure that its members receive protections that are commensurate with the risks involved in the course of performing their duties.

I met with senior officials of the Police Association ... and discussed the need to ensure that the sanctions available act as a strong disincentive to infringement of the rights of police officers. It is perhaps stating the obvious to say that police officers face special risks simply by virtue of the nature of their work.

They are often called in to deal with violent or potentially violent situations that members of this place or ordinary members of the public would simply not have to contend with. It is, therefore, entirely appropriate that this bill affords them the greater level of protection they require.

Before I conclude, I wish to address one of the distortions that is routinely propagated by the Coalition: that the judiciary does not much care about what happens to our law enforcement officials. That is entirely untrue. The truth is that our higher courts have made a clear statement to the effect that an assault on police is to be regarded as a particularly serious offence. In October 2001 Justice Wood, the Chief Judge at Common Law, referring to an offence involving a senior constable who had been assaulted, in the matter of *R v Sloane*, said:

The courts have consistently stressed that there is a need to impose deterrent sentences upon those who assault police officers whilst discharging the duties of their office. There is no reason to distinguish between police who have been formally rostered on duty and those who, although off duty, seek to exercise their policing powers in order to arrest an offender or to maintain public order.

We should have none of the nonsense suggesting that our judges are unconcerned with assaults on police, for that is plainly untrue. This bill makes it abundantly clear that our law enforcement officers and their immediate families should not be targeted by anyone with ill intent. It is therefore appropriate that specific recognition and additional protections should be afforded to front-line law enforcement officers at large. I commend the bill to the House.

Mr TINK (Epping) [12.35 p.m.]: The Coalition supports the bill to provide further protection for police officers, other law enforcement officers and their families. I am pleased that the Government has taken up a form of words first introduced in private members legislation by the Coalition—that is, the concept of stalking, harassment and intimidation. Regrettably, those concepts describe what can happen to police from time to time, and there have been some disturbing examples of it. The extension to other law enforcement officers is highly appropriate. This is the mirror image, or flip side, of witness protection. In the course of their duties police officers act on behalf of the public to protect the public in various ways.

They are all key parts of the judicial system, whether it be police walking the beat or people identifying and investigating corruption, or involved in custodial matters, or dealing with, regrettably, violent and very difficult to handle juveniles. Whatever their place in the system, this protection is entirely appropriate and is supported. The Attorney General mentioned compulsory minimum sentencing, which I will also address. One of my fundamental concerns about the system as it now stands can be best encapsulated in the Mulder matter. I have written to the Attorney General about this matter on more than one occasion, but it still remains in a highly unsatisfactory state. Mr Mulder lived in the Maitland area. He was involved in harassing one of his neighbours in the most disgraceful circumstances. Police were called and male and female police officers arrived at the scene in a paddy wagon. They attempted to deal with Mr Mulder and regain the peace.

As a result, Mulder attacked both of them in a most vicious and disgraceful way. The honourable member for Maitland would be aware of this dreadful matter. Referring to the statement of facts tendered to the court, the male

police officer still has significant injuries to his face, particularly to his nose, and the female police officer—whose head was rammed into the back step of the paddy wagon—is still on light duties. When Mulder went to court the District Court judge, whose name escapes me momentarily, let him off on a bond. That is a joke! This man should have received a custodial sentence, a very significant and stiff one, and gone to gaol. It was alleged that half his brain had been excavated as a result of the long-term smoking of cannabis. Apparently that matter was taken into account on sentencing and he received a bond.

My view on this issue, and that of the Coalition, is that offenders who are fit to plead should face the full consequences of the criminal law. Another case of which the Attorney General is aware—and I am not critical of him on this matter because I understand that he is trying to address it—relates to a murder that occurred in my electorate. In that case the sentence handed down included a substantial discount, based on alleged mental problems. Nevertheless, the offender had been found fit and competent to stand trial for murder. Either offenders are fit to plead or they are not. I accept that if they fall within the McNaughton rules they are dealt with on a different basis. However, if they are fit to plead they should face the consequences. Returning to the leave of the bill, people who assault police officers ought to go to gaol. That is not happening. We can introduce and pass laws until the cows come home, but if the courts continue to give bonds to people who commit serious offences, we are wasting our time.

I previously raised the Mulder matter with the Attorney General. I wrote to him and asked that an appeal be made against the sentence. No appeal was forthcoming. The Director of Public Prosecutions [DPP] refused to appeal the matter. I asked the Attorney General to use this matter as a basis for introducing a guideline judgment, but nothing happened. In more recent times there has been a case where, thankfully, the physical injuries were not as bad as in the Mulder case, but there was an equally disgraceful decision from the bench. In the course of a melee, a female police dog handler and her dog were assaulted. The policewoman was hit with a hand to the face, causing her head and neck to snap back, and the dog was kicked. The court fined the offender \$200 for assaulting the policewoman, and, I believe, \$200 each for a couple of other police officers who were also assaulted, and \$400 for the assault on the dog. The offender appealed the sentence. The appeal court reduced the fine for the offence of kicking the dog to that imposed for assaulting the policewoman. This is a farce! This is a joke! The public is furious and fed up.

The New South Wales Police Association believes that unless its members are properly protected by laws and by decisions from the judiciary that reflect the intentions of the Parliament we are all wasting our time. I did not intend to go down this path, but the Attorney General raised it when he spoke about the bill of the Leader of the Opposition to impose a mandatory life sentence on police murderers. It is timely to remind the Attorney and the Parliament that the current judicial system in respect of assaults on and, dare I say, murders of police officers is not working. The killer of Constable Forsyth had his sentence substantially reduced on appeal. The judicial system has been brought into disrepute. This issue is raised at every public meeting I attend. Despite other commentaries on this matter, the public is 100 per cent behind us. The Government had better wake up. The terms of the bill are welcome and we fully support it. But it will be ineffective if the judiciary continues to impose ridiculous penalties for crimes of the magnitude and the gravity that I have referred to. That is the problem, as the Attorney knows very well from the sentence handed down for the appalling assault in Maitland. I congratulate the honourable member for Maitland for taking up that matter. Unfortunately, there are many other cases like it.

In the case of Mulder, where the DPP did not take any action to fully test the sentence handed down, we should be able to go to a guideline judgment in default. In the light of the most recent example of the police handler and her dog, in default of the judiciary doing its duty—which I and, I believe, an overwhelming number of members of the public expect it to do—we will have to step in. If the judiciary will not do its duty the Parliament has no alternative. If the judiciary imposed appropriate penalties we would not have to propose this type of legislation. The Leader of the Opposition and the Coalition will go to the election proposing mandatory life sentences for people who kill police officers. The person who killed Constable Forsyth had his sentence reduced on appeal to a ridiculously low custodial sentence and the officers assaulted by Mulder had to stand by and watch him walk out of the court. He walked away; they have long-term injuries.

If the judiciary did what the community expected we would not have to take these measures. In far too many cases the judiciary is not doing its duty. The judges are not handing down the type of sentences that the community expects. As a result, we will step in where the Government fears to tread. The Government needs to be very careful because we have community support. The community is behind us and they want something done about it. If the judiciary will not do it and the Government will not do it, the Coalition will do it.

Mr FRASER (Coffs Harbour) [12.47 p.m.]: I shall speak briefly to the Crimes Amendment (Police and Other Law Enforcement Officers) Bill. I commend the legislation. I also commend the honourable member for Epping for raising these matters in this debate. I shall inform the House of the attitude of people in my electorate. Day in and day out police officers perform their duties—they put their lives at risk to defend the laws laid down by Parliament. They undertake their duties whether they are on duty or not. Constable Forsyth was not on duty when he was attacked and killed. I believe that the judiciary does not reflect the sentences that are laid down within the law. As the honourable member for Epping said, the judiciary reduces sentences on whatever criteria it sees fit. That is why this type of legislation is before Parliament. It goes to an attitude of zero tolerance. As I have said in the House before, and as I will say again, in 1986-87 the then Attorney General, Frank Walker, diluted the Summary Offences Act. By now a second generation of offenders considers the law to be a joke.

On the North Coast a couple of years ago, near South West Rocks or Crescent Head, two police officers were

shot and killed in the execution of their duty. I believe that those young police officers were shot because the courts have not been doing their job properly. As a Parliament we are not sending the appropriate message to the judiciary, we are not adequately expressing the view that all crime is unacceptable. Laws should be for all people. However, the Government has softened the laws and people now believe that they will receive reduced sentences if they plead diminished responsibility because of the effects of drugs or alcohol in the short term or long term. Often the judiciary listens to them and imposes lenient sentences. The community is now saying that enough is enough. Honourable members should speak to Ken Marslew from Enough Is Enough and ask him how victims feel when such sentences are handed down. The families of people who are murdered or seriously injured become the victims again.

I have the highest praise for officers who, day in day out, go out and defend our freedom and our livelihoods. They try to implement the laws as laid down by Parliament. However, they have told me on numerous occasions that they tend to turn a blind eye to minor offences because they know that the courts do not impose the penalties already prescribed in legislation. This legislation expands the definition of "law enforcement officers" to ensure that the courts deal with these matters in a way that we expect. I, too, challenge the Government to accept the bill of the Leader of the Opposition, which imposes minimum sentences. People can scream all they like about mandatory sentencing and what happened in the Northern Territory, but our policy does not mirror that of the Northern Territory.

People who are fit to plead and are found guilty should serve minimum sentences. They should not receive a lesser sentence because they were affected by drugs or for some other reason—perhaps they were not toilet trained properly! The court should reflect the sentences laid down by legislation. They should not receive discounted sentences because they have been good boys or girls in prison; they should receive the full force of the law. The Minister for Corrective Services said that the Government is building more prisons and more people are being locked up. Once the message is sent to the people of New South Wales that this type of behaviour is unacceptable and that the courts will implement sentences as prescribed by the legislation, the incidence of crime will reduce substantially, even if it takes a couple of years before it kicks in. I believe that the Government has gone soft on crime and on the causes of crime—that is, drug use and abuse. It should send a strong message to the community by adopting the legislation introduced by the Leader of the Opposition. That, together with this legislation, might result in returning some law and order to our communities, which our constituents not only expect but demand.

Mr DEBUS (Blue Mountains—Attorney General, Minister for the Environment, Minister for Emergency Services, and Minister Assisting the Premier on the Arts) [12.53 p.m.], in reply: When I introduced this bill I said that I did not intend to canvass questions on mandatory sentencing. No doubt that will be done on numerous occasions in the coming weeks and months. It is appropriate to mention that, apart from anything else, a guideline judgment on police assault is presently before the Court of Criminal Appeal. The point should be made that, with or without guideline judgments on police assault as such, those who commit serious and violent crimes against police are bound to be charged with the same crimes that anyone else would be charged with—that is, malicious wounding, murder, et cetera. Therefore, the fact remains that police who have been injured will gain the benefit of the effects of the law in the same way as anyone else who has been seriously injured.

However, as I have taken some care to point out, legislation now exists—it was introduced earlier this year—that embraces the common law principle that those who are in vulnerable professions, such as police, are entitled to the benefit of sentences that reflect the seriousness of those particular circumstances. In other words, there is some premium on the sentence that will be given by the courts for those who have committed offences against somebody in a vulnerable occupation, such as a policeman or any other front-line crime enforcement officer. The fact remains that this bill is supported by both sides of the House. It is appropriate that we should continue to find ways to protect our police and other law enforcement officers from the unwanted attention of those who seek to impede them in the course of their duties and, indeed, to harass and threaten them in the course of their duties. Therefore, I have pleasure in commending the bill to the House.