



Briefing Note

Proposed mandatory minimum sentences for drug and alcohol-related violence

On 21 January 2014 the Premier released a statement indicating that he intended to recall Parliament to pass legislation implementing, amongst other things, eight year mandatory minimum sentences for drug and alcohol affected one-punch assaults, in addition to 'mandatory minimum sentences for violent assaults where the offender is intoxicated by drug and/or alcohol'.

The Association is supportive of a number of the Premier's proposals to address drug and alcohol-related violence on Sydney streets.

However, the Association is strongly opposed to the proposed mandatory minimum sentences.

They will produce unjust sentences, substantially increase the prison population, create anomalous distinctions between intoxicated and sober offenders and reduce the number of guilty pleas (resulting in extra costs and delay in the criminal justice system).

At the same time, they will not lead to a reduction in alcohol fuelled violence, since no intoxicated offender contemplating violence is likely to take into account this change in the law.

Mandatory minimum sentences produce unjust sentences

The Association has always opposed the use of mandatory minimum sentences. The Association's primary objection to such laws is that they remove judicial sentencing discretion, with the consequence that the actual circumstances of the offence and the offender will not be taken into account, and unjust sentences will result.

In the context of the proposed mandatory minimum sentences for offences involving drug and alcohol-related violence the following examples may be given:

(a) O and some friends, members of a sports team, celebrate a victory at a pub and become intoxicated. The police are called and they arrest one of O's friends. O believes (mistakenly) that the police are using excessive force and grabs a police officer, pulling him away from his friend. For that assault on a police officer a minimum sentence of 2 years imprisonment must be imposed on O.

(b) O and V, good friends, are in a pub, both intoxicated. They argue and push each other. V falls off a stool as a result of being pushed by O and suffers some bruises and a broken finger (actual bodily harm). V does not want to press charges but the incident was



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observed by police and O is charged with assault occasioning actual bodily harm. O has never been in trouble with the police before but a minimum sentence of 2 years imprisonment must be imposed on O.

(c) O and her friend go to a party and become drunk. They get in an argument with some other women and O grabs a fork and swings it around, intending to scare but not intending to hurt anyone. However, because she is intoxicated she accidentally causes a wound to V (reckless infliction of a wound). The wound is minor and quickly heals. A minimum sentence of 4 years imprisonment must be imposed on O.

(d) O is 18 years old and has never drunk alcohol before or engaged in violence. He drinks alcohol to celebrate his birthday and when another man, V, insults his girlfriend in a highly provocative manner, O punches him once. V has a rare condition which makes him very susceptible to brain damage from such a punch and he dies. A minimum sentence of 8 years imprisonment must be imposed on O.

(e) O suffers from a psychiatric condition and he self-medicates with various drugs. As result of the drugs he has taken he mistakenly, but without any justification, believes that V is intending to hurt him. He punches V once and V dies. A minimum sentence of 8 years imprisonment must be imposed on O.

(f) O is of very low intelligence (in the bottom 5% of the population) and some friends persuade him to drink alcohol. They commence to tease him and play tricks on him. He lashes out, pushes one of the friends over, who knocks his head on the corner of a table and dies. A minimum sentence of 8 years imprisonment must be imposed on O.

(g) O gets drunk, punches V, who dies. Friends of V attack O and, as a result, he is left a paraplegic with some brain damage. A minimum sentence of 8 years imprisonment must be imposed on O.

(h) O suffers an extremely disadvantaged childhood at the hands of his violent and abusive father, V, but when he is 20 he gets drunk and confronts his father, punching him once and thereby killing him. He is extremely remorseful, gives up alcohol and wants to become a social worker for abused children. A minimum sentence of 8 years imprisonment must be imposed on O.

The mandatory minimum sentences that must be imposed in these cases would not reflect community views as to the seriousness of the offence nor would they properly take into account the circumstances of the particular offender.



Substantially increased prison population

The first two examples clearly demonstrate that the proposed mandatory minimum sentences will result in a very significant increase in the prison population. Many offenders are dealt with every year for offences of assault occasioning actual bodily harm and assault of police officers. Many were intoxicated when the offences were committed. For first offenders who entered pleas of guilty under current sentencing laws, imprisonment would be regarded as a last resort, with other sentences such as community service orders, intensive corrections orders, and bonds to be of good behaviour regarded as appropriate. The proposed sentencing laws will require the courts to impose a minimum sentence of 2 years imprisonment for both offences. A substantial increase in the prison population may be anticipated, with the prospect of overcrowding and/or the building of new prisons.

Inconsistency with existing laws

The introduction of such mandatory minimums means that individuals who are not affected by drugs and/or alcohol, and commit violent offences, may be given a lighter sentence than those affected by drugs and/or alcohol. The result is that the person who pre-meditates their assault, and intends to cause injury, may receive a shorter prison sentence than the individual whose judgement is severely impaired by intoxication, and who may not have the capacity to understand the consequences of their actions. Neither assault is excusable, but the resulting anomalous inconsistency in sentencing presents a real problem for the legal community, victims, offenders and the community at large.

Increased costs to the administration of justice

In NSW in 2012, approximately 85% of persons appearing in the Local Court and District Court pleaded guilty to all charges against them (NSW Bureau of Crime Statistics and Research, New South Wales Criminal Court Statistics 2012). Because a contested trial is generally time-consuming and costly, one practice whose effect, if not intention, is to facilitate the processing of cases through the courts, is to encourage pleas of guilty. However, the introduction of mandatory minimum sentences will inevitably substantially increase the number of accused who plead not guilty, since there can be no lower sentence than the mandatory minimum regardless of whether there is a plea of guilty. The result will be a large increase in the number of trials, greater cost to the community, delays for other cases, and a greater deal of stress for the victim and/or his or her family.

As noted above, these proposed mandatory minimum sentences will result in a very significant increase in the prison population. The Department of Corrective Services is not adequately



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funded to deal with the number of offenders already in NSW prisons, which continues to rise. The cost for each imprisoned offender is greater than \$60,000 per year. A substantial increase in the prison population will constitute a large drain on the budget, taking money from hospitals and schools and other public needs. Yet it is a waste of resources to incarcerate individuals for a period of time that does not reflect the circumstances surrounding the offence, or other mitigating factors. In fact, it is worse than a waste of resources - offenders are denied an opportunity to meaningfully participate in society even after they have been rehabilitated and exposure to more serious criminal elements in prison threatens that rehabilitation.



Tougher penalties do not deter offenders

Quite apart from the fact that these proposed mandatory minimum sentences will have a number of serious negative consequences, they will not have any positive consequences. Research has clearly established that tougher penalties do not deter offenders. For example, a 2012 NSW Bureau of Crime Statistics and Research study found that “increasing the length of stay in prison beyond current levels does not appear to impact on the crime rate after accounting for increases in arrest and imprisonment likelihood” and concluded that policy makers should focus more attention on strategies that increase the risk of arrest and less on strategies that increase the severity of punishment (Wan W-Y et al, “The effect of arrest and imprisonment on crime” Crime and Justice Bulletin 158, 2012).

The very nature of drug and/or alcohol-related assaults is that they are impulsive. It is entirely unrealistic to assume that such offenders consider the likelihood of incarceration before they commit such crimes. No intoxicated offender is likely (before throwing a punch) to take into account this change in the law. That would require consideration of the risks associated with the use of force, the risk of apprehension by the police, the risk of successful prosecution and the risk that the mandatory minimum sentence would be higher than the sentence that would otherwise have been imposed. Is it at all plausible that, in the second or two before a punch is thrown by an intoxicated offender, he or she might take into account, let alone be deterred by, such considerations?

Safeguards under the current system

It may be accepted that magistrates and judges exercising sentencing discretion do not always impose an appropriate sentence. Judicial officers have extremely difficult jobs, and they take those jobs very seriously. In passing sentence, they are required to consider the interests of the community, the victim and the offender. It will never be a perfect science but the availability of an appeal mechanism means that there is the scope for review. An appeal against an inadequate sentence may be brought by the DPP or the Attorney-General.

In addition, the Parliament may provide guideposts to appropriate sentences in a number of ways. One method that has been adopted in recent years is the standard non-parole period. While this does not unduly fetter sentencing discretion in the same way as mandatory minimum sentences, it has resulted in increases in the sentences imposed for the offences to which such periods apply.