



POLICE ASSOCIATION OF NEW SOUTH WALES

A.B.N. 86 047 021 267

P.O. BOX A1097, SYDNEY SOUTH, N.S.W 1232

PHONE: (02) 9265 6777

FAX: (02) 9265 6789

EAGLENET 57070

Thank you for the opportunity to contribute to this review.

The Police Association of New South Wales (PANSW) represents the professional and industrial interests of approximately 16,500 members, covering all ranks of sworn police officers in NSW.

The safety and wellbeing of our members and their families is the primary concern of the PANSW, and the murder of a police officer is one of the most devastating tragedies for our members and their loved ones.

The murder of a police officer ends a life of someone who protects their community. It has a lifelong impact on their family and loved ones. And every member of the broader policing family is devastated.

The sentencing outcomes for a number of the offenders who murdered police officers have been a second trauma for the family left behind, and police officers everywhere.

The Police Association maintains a close relationship with all those affected by the murder of their loved one or fellow officer, and we are acutely aware of the toll this takes on them.

It is from this perspective that the PANSW lead the call for a mandatory sentencing provision. The enactment of that provision was a significant moment for police officers around NSW, and we therefore strongly support the retention of that provision.

Thank you for your consideration of our submission below.

Sincerely



TONY KING
President
Police Association of NSW

Mandatory life imprisonment for the murder of a police officer

Maintenance of section 19B

The Police Association of NSW fully supports the retention of the mandatory sentence provision (section 19B) for those who murder police officers.

In 2011, the then Police Minister, The Hon. Michael Gallacher introduced the Crimes Amendment (Murder of Police Officers) Bill 2011, stating:

An attack on a police officer undertaking their duty is an assault on the very heart of our system of law enforcement and our democracy. Those who seek to harm those responsible for the enforcement of laws passed by our Parliament should be subject to special punishment.¹

Both the Judiciary² and the NSW Parliament³ have recognised that “police who are threatened with or subjected to violence in the course of their duties, are entitled to the full protection of the law, and that offenders who are involved in crimes of this kind must expect condign sentences.”⁴

The sentencing process prior to the 2011 Bill already recognised the status of the victim as a police officer attracted higher sentences than otherwise.

However, the NSW Parliament identified that, despite that recognition, for the narrow set of circumstances where an offender is guilty of murdering a police officer, and the conditions established in section 19B are met, only one sentence is adequate to ensure that the offender is adequately punished for the offence, to act as a deterrent, to protect the community from the offender, to make the offender accountable for his or her actions, to denounce the conduct of the offender, and to recognise the harm done to the victim of the crime and the community.

The only adequate sentence in the narrow circumstances described by 19B is imprisonment for the natural life of the offender.

Opponents of the 2011 Bill criticise the restriction it imposes on judicial discretion, and the inability of Parliament to foresee all the circumstances in which the law will come before the courts.

But the circumstances prescribed in section 19B are sufficiently narrow to justify the mandatory sentence, that is circumstances that amount to:

- The murder of a police officer by offender,
- While the officer was executing their duties, or as a consequence of those duties, where
- The offender knew or ought reasonably to have known that the person killed was a police officer, and

¹ 2nd Reading Speech to Crimes Amendment (Murder of Police Officers) Bill 2011.

² R v Adam (Richard and Gilbert) [1999] NSWSC 144, Wood CJ at [44-45].

³ Crimes Amendment (Murder of Police Officers) Act 2011.

⁴ R v Adam (Richard and Gilbert) [1999] NSWSC 144, Wood CJ at [44-45].

- intended to kill the police officer or was engaged in criminal activity that risked serious harm to police officers.

It is entirely appropriate that a person guilty of murder of a police officer in those circumstances receives a mandatory life sentence.

There are also exceptions relating to age and cognitive impairment.

The provision does limit judicial discretion, but in a narrow set of circumstances which Parliament identified, no matter what variations there are in other circumstances, if these circumstances are met, only a sentence of life imprisonment is acceptable to those affected and to the community.

Indeed, since the introduction of section 19B, only once has the criminal justice process found those circumstances to have arisen.

The mandatory sentence provision will rarely be enlivened and will not result in injustice.

Many opponents to the Bill acknowledged that the murder of police officers should attract severe sentences, and that a life sentence should be imposed by the court, but that outcome should be achieved through the judicial exercise of the sentencing process already in existence.⁵

However, since 1990, when the mandatory life sentence for murder was removed, that judicial exercise has not once resulted in a judge reaching that outcome of a life sentence for the murder of a police officer, other than the one instance in which section 19B applied and required that outcome.

Opponents of section 19B argue that a life sentence is available to the judiciary in cases of murder of a police officer, and indeed should and likely would be utilised under that sentencing process. But this has not occurred, prompting the NSW Parliament to establish a mandatory sentence in line with its expectations.

Mr Richard Amery, who opposed the Bill, conceded:

I personally have no objection to a court sentencing the murderer of a police officer to a life sentence without parole; I welcome it. When Government members read out the details of cases in which the murderer of a police officer receives a sentence of 12 years imprisonment, judges, lawyers and others who are opposed to mandatory sentencing have only themselves to blame.⁶

Indeed, if the previously applicable sentencing process had been consistently arriving at an outcome of life sentences or close to, with rare departures from that outcome where the court viewed the circumstances to be such that the murderer of a police officer should not receive such a sentence, then there would have been no need for the 2011 Bill.

But that was not the case and the 2011 amendments were necessary.

⁵ NSW, Parliamentary Debates, Legislative Council, 1 June 2011, starting page 1585.

⁶ NSW, Parliamentary Debates, Legislative Assembly, 20 June 2011, starting page 2857, Mr RICHARD AMERY.

The mandatory sentence established by section 19B should be maintained. It is the sincere hope of all concerned, and also highly likely, that it will rarely be needed. But when those rare and narrowly defined circumstances do tragically arise, section 19B will ensure a sentencing outcome that adequately meets the expectations of the community as defined by their representatives in Parliament, which previous sentencing indicates would likely not otherwise occur.

Significant cognitive impairment

The PANSW requests that the uncertainty created by subsection 19B(3)(b) be considered by this Review.

The policing community has suffered considerable angst and confusion over the relationship between the term “significant cognitive impairment” and the threshold required for mental illness that would mean an accused person is found not guilty, or for a ‘substantial impairment by abnormality of mind’ to reduce a conviction from murder to manslaughter.

Where an accused person is found to have met the required mental elements to be convicted of murder, and yet be exempt from the mandatory sentence under subsection 19B(3)(b), many affected persons are likely to perceive a significant injustice.

The definition of significant cognitive impairment, and its difference with the other thresholds, should be clarified to alleviate that perception of injustice.

Also, consideration should be given to the sentencing process when 19B(3)(b) does apply. Given that the criminal justice process has still determined the convicted person to be guilty of murder of a police officer, consideration should be given to a mandatory minimum still applying, albeit lower than the life sentence that applies when the definition of (3)(b) is not met.

No body no parole

The Police Association of NSW supports the implementation of a ‘no body, no parole’ proposal. The Consultation Paper identifies that there would be a range of models that would need to be considered for such a proposal.

The PANSW would support the option which most strongly dissuaded the offender from refusing to cooperate with the police investigation and providing the family of the victim with the opportunity to have the body of their loved one returned to them.

Designing that system would require thorough consultation with the relevant personnel from the criminal justice system, including the NSW Police Force.