



Submission on Sentencing (Reform) Amendment Bill

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This submission is from:

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Thank you for the opportunity for MTA (Motor Trade Association) to provide our views to the Justice Committee on the Sentencing (Reform) Amendment Bill.

Nga mihi,

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Introduction

The Motor Trade Association, as the peak industry body for the automotive sector, represents more than 900 of New Zealand's 1250 service stations, many of which are independently owned and operated.

Many of these service stations have experienced the exponential growth in crime over the past five years. Violent aggravated robberies and ram raids are unfortunately an everyday risk or reality which terrify retail workers and puts their lives at risk. In the first six months of this year, New Zealand Police recorded 62 aggravated robberies at service stations – one every three days.

We are supportive of the Sentencing (Reform) Amendment Bill, which appears to reflect the growing trend of video recording or livestreaming offending and aims to offer more protections for vulnerable retail workers. However, we do have a few recommendations related to clause 6 of the Bill, which we believe are principally aligned with the amendments this Bill already makes.

Livestreaming or posting offending online

Clause 6 of the Bill amends Section 9 to insert section 9(1)(cc), which makes the livestreaming, recording and posting online, or recording and distributing via digital communication of an offence an aggravating factor.

The proposed amendment accurately reflects that the posting of offending on social media plays a significant part in offending, particularly by young offenders. Gaining or building notoriety is a motivating factor for many young offenders; the posting or streaming of video showing criminal activity glorifies their actions and encourages copycat behaviour. Effective sentencing should have a deterrent factor, and the changes we recommend would provide an effective deterrent for this reprehensible behaviour.

However, we believe that a more appropriate response from Courts would be that social media disqualifies an offender for using remorse as a mitigating factor under section 9(2)(f) of the Sentencing Act. The relevance of bragging about criminal actions on social media when determining whether offenders show genuine remorse has been considered in other jurisdictions, notably in both Australia and the United States.¹ Shane Budden, Special Counsel, Ethics with the Queensland Law Society has expressed the view that there is a clear link between bragging about offending and the level of remorse a defendant can reasonably have for an offence.² To this end, his view is that a solicitor cannot, while discharging their overriding duty to the Court, argue their client is remorseful if that client has bragged about their offending, as to do so would be “reckless and may well be seen as deliberately misleading the court”.

Simply put, a bid for remorse cannot be reconciled with the offender's decision to brag about their crime on social media. To allow a discount for remorse after such unremorseful behaviour allows

¹ [Thomas-Evans, Nicola --- "Assessing Indicators of Remorse in Sentencing: Can Courts Now Turn to Facebook and Twitter?" \[2017\] WASTuLawRw 3; \(2017\) 1 Western Australian Student Law Review 38](#)

² [Don't boast about the post – Proctor](#)

offenders to “game” and abuse the system. Genuine remorse is difficult to gauge, but the action of posting to social media speaks more loudly than the crocodile tears of remorse at sentencing.

It must surely run contrary to the Government’s intention that an offender could still be granted the not inconsiderable benefit of a discount at sentence for professed remorse, while video glorifying the offending has reached a widespread, easily influenced audience online – and indeed may still be in circulation at the time of sentencing and beyond.

By changing the amendments as we recommend, it will assist Government’s intention for Courts to cap all discounts at 40% by removing one discount that many offenders could otherwise easily claim.

Additional aggravating factors

The Bill, at clause 6(2), identifies that offending against workers in vulnerable positions ought to be an aggravating factor at sentencing. This includes public transport passenger service workers, sole charge workers, and people whose home and business are connected, but does not include other retail workers acting in the course of their duty. We are supportive of the purpose of this amendment, but we are concerned that some vulnerable workers have not been included when the statistics and evidence suggest that this group is a significant target for offenders.

There has been increasing amounts of violent crime against retail workers, which has resulted in terror, and in many cases, serious injury for these vulnerable workers.³ There has been an 86% increase in retail crime of all types in the last five years.⁴ A survey of MTA service stations revealed that, alarmingly, more than 20% of respondents have been victims of an aggravated robbery in the last 12 months. These incidents pose a significant risk to the safety of employees and create an environment of fear for staff and the community. The volume is far too high, and more needs to be done to deter offenders.

Currently, the Bill does not extend to all retail workers, which fails to reflect the unique circumstances and risks faced. For instance, the new aggravating factor will not include service station – and other - workers in “skeleton crews” who are vulnerable, particularly at night.

Other jurisdictions such as the United Kingdom and Western Australia have already recognised the need for specific protections for retail workers and have implemented new criminal offences to reflect this. The United Kingdom has, this year, introduced a new offence for assaulting retail workers after determining that its initial introduction of an aggravating factor in 2022 was not enough. By at least offering protection for all retail workers through the introduction of an aggravating factor, the Government can demonstrate its commitment to safeguarding the rights and safety of all workers.

While we maintain the view that the best way to provide a deterrent and send a message that offending against retail workers is unacceptable and will be met with consequences is through a specific criminal offence, we recognise this is not within the scope of this Bill. We recommend that

³Some recent examples: [Brutally-attacked petrol station worker says police didn't respond to calls for assistance | Newshub](#); [Aggravated robberies at petrol stations triple over three years](#)

⁴[Government creates MAG for retail crime victims | Beehive.govt.nz](#)

this clause should be amended to ensure that offences against a retail worker, acting in the course of their duty, is treated as an aggravating factor.

Conclusion

We are supportive of the Sentencing (Reform) Amendment Bill, recognising its potential to deter offending against vulnerable retail workers amidst a stark increase in violent crimes. However, we urge the Government to consider the recommendations raised in this submission. These changes will ensure that the Bill provides an effective deterrent to criminal behaviour and provide comprehensive protection for hard working Kiwis that are more at risk.



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