



Legal Policy

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Mr Russell Goldflam
President
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c/- NT Legal Aid Commission
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Dear Mr Goldflam

RE: CRIMINAL CODE AMENDMENT (ASSAULTS ON WORKERS) ACT 2013 AND SENTENCING AMENDMENT (MANDATORY MINIMUM SENTENCES) ACT 2013

I advise that the *Criminal Code Amendment (Assaults on Workers) Act 2013* (the Assaults on Workers Act) and the *Sentencing Amendment (Mandatory Minimum Sentences) Act 2013* (the Mandatory Sentences Act) have received the Administrator's assent and will commence operation on 1 May 2013.

The Assaults on Workers Act introduces a new offence of assaulting a worker who is working in the performance of his or her duties. The new offence will take effect from the date of commencement, 1 May 2013.

The Mandatory Sentences Act introduces new mandatory minimum sentences for assaults and otherwise retains the current policy in relation to mandatory imprisonment for assaults. The main changes made by this Act are to introduce:

- new mandatory minimum terms of three or 12 months imprisonment for serious assaults;
- a three month mandatory minimum imprisonment term for the new offence of assaulting a worker or the offence of assaulting a police officer where physical injury interfering with the health of the victim is caused; and
- a three month mandatory minimum imprisonment term for the offence of aggravated assault where the offender has a previous conviction for a violent offence.

The changes made by the Mandatory Sentences Act will apply to offences committed after the commencement of the Act on 1 May 2013.

The two Acts, Second Reading Speeches and Explanatory Statements can be found at www.dcm.nt.gov.au under 'Policy and Legislation', then under 'Register of Legislation Database'. Fact sheets outlining the key features of the offence are also attached (*) for your information.

If you have any questions in relation to the amendments, please do not hesitate to contact Ms Leonique Swart, Senior Policy Officer, on (08) 8935 7666.

Yours sincerely



Jenni Daniel-Yee

A/Director

25 March 2013

Encl(*)

FACT SHEET

Sentencing Amendment (Mandatory Minimum Sentences) Act 2013

What does the Act do?

The Act amends the *Sentencing Act* to replace current section 78BA of the *Sentencing Act* and inserts five new levels of violent offence and their corresponding mandatory sentences. The Act also introduces new mandatory minimum sentences of 3 or 12 months depending on the level of offence.

When will the new provisions apply?

The new provisions will apply when a court is sentencing an offender for violent offences. The mandatory minimum imprisonment terms apply when the court is sentencing an offender for specific violent offences.

A violent offence for these provisions is defined as the offences listed in Schedule 2 to the *Sentencing Act*.

The Act introduces five levels of violent offence where a Level 5 offence is the most serious and a Level 1 is less serious.

Level of offence	What type of offences are included?	What are the Mandatory Sentences?
A Level 5 offence is:	<p>the offence of causing serious harm (section 181 of the Criminal Code); or</p> <p>any type of assault where a weapon is used and physical injury interfering with the victim's health is caused.</p>	<p>where the offender has no previous conviction for a violent offence - 3 months mandatory minimum imprisonment; or</p> <p>where the offender has a previous conviction for a violent offence - 12 months mandatory minimum imprisonment.</p>



A Level 4 offence is:	the new offence of assault on a worker (section 188A) or assault on a police officer (section 189A) and physical injury interfering with the victim's health is caused.	whether or not the offender has a previous conviction for a violent offence - 3 months mandatory minimum imprisonment.
A Level 3 offence is:	the offence of aggravated assault (section 188(2)).	where the offender has no previous conviction for a violent offence but physical injury interfering with victim's health is caused - actual imprisonment; or where the offender has a previous conviction for a violent offence, regardless of level of injury - 3 months mandatory minimum imprisonment.
A Level 2 offence is:	the offence of causing harm (section 186) where the victim suffers physical injury interfering with their health.	whether or not the offender has a previous conviction for a violent offence - actual imprisonment.
A Level 1 offence is:	any other violent offence listed in Schedule 2 that is not a Level 2 to 5 offence.	where the offender has a previous conviction for a violent offence - actual imprisonment.

Actual imprisonment means the court has to sentence the offender to imprisonment but has discretion as to the duration of imprisonment.

Where the court is required to sentence the offender to a mandatory minimum term of imprisonment (either 12 or 3 months) that means that the court must send the offender to prison for the required minimum term and that minimum

term cannot be suspended by a suspended sentence or a home detention order.

What are the exceptions to the application of the mandatory sentences?

The mandatory minimum imprisonment terms do not apply to youths, however, the court must still sentence the youth to actual imprisonment. This would only apply to a youth sentenced as an adult under the *Sentencing Act*. Youths are usually sentenced under the *Youth Justice Act*.

The mandatory minimum imprisonment terms may not apply if the court considers there are exceptional circumstances in the case of the particular offender. If the court considers that exceptional circumstances exist, the court must instead sentence the offender to actual imprisonment.

What else do I need to know?

The Act adds more Criminal Code offences to Schedule 2 of the *Sentencing Act* as violent offences. The offences listed in Schedule 2 can be taken into account to form a Level 1 to 5 offence or as a previous conviction for a violent offence. The newly added offences are:

- assaults on a person providing medical treatment or first aid (section 155A);
- murder (section 156);
- assaults on workers (section 188A);
- unlawful stalking (section 189);
- assaults on police (section 189A);
- assaults on the Administrator or judges or magistrates (section 190);
- assaults on a member of the crew of an aircraft (section 191);
- assaults with intent to commit an offence (section 193);
- kidnapping for ransom (section 194);
- robbery (section 211); and
- assault with intent to steal (section 212).

Commencement

The Act will commence on 1 May 2013 and the new sentencing provisions will apply to offences committed after that date.





FACT SHEET

Criminal Code Amendment (Assaults on Workers) Act 2013

What does the Act do?

The Act introduces the new offence of assault on a worker. The offence will be inserted as section 188A of the Criminal Code in Part VI, Division 5 of the Criminal Code, which includes other assault offences.

When will the new offence provision apply?

This offence provision will apply when a worker is unlawfully assaulted whilst he or she is working in the performance of his or her duties.

How is the offence proved?

The offence requires proof that the worker is working in the performance of his or her duties at the time of the assault. That is, the activity the worker is undertaking at the time of the assault must be connected to the course of their employment.

The term 'assault' has the same meaning as the existing definition in section 187 of the Criminal Code and means an application of force without consent, or a threatened application of force.

The offence is drafted in accordance with the criminal responsibility provisions of Part II of the Criminal Code.

Who is included in the definition of 'worker'?

The term 'worker' is defined broadly as a person who carries out employment related activities in any lawful capacity. This could include the following types of worker:

- an employee;
- a contractor or subcontractor;
- an apprentice or trainee;
- a student gaining work experience;
- a volunteer;
- a self-employed person; and
- a person appointed under a law in force in the Territory to carry out functions or to hold an office.

The definition of 'worker' will expressly exclude a police officer because section 189A of the Criminal Code already operates in situations involving an assault on a police officer in the execution of his or her duties.

What is the penalty for the new offence?

The offence of assault on a worker carries the following penalties:

- a maximum of seven years imprisonment if the victim suffers harm, or upon being found guilty summarily, a maximum of three years imprisonment; and
- a maximum penalty of five years imprisonment if the victim does not suffer harm, or upon being found guilty summarily, two years imprisonment.

What defences will apply to this new offence?

All criminal defences in Part II of the Criminal Code apply to this offence, such as authorisation, accident, sudden and extraordinary emergency, duress, defensive conduct, and mental impairment.

What else do I need to know?

The offence will take effect from 1 May 2013.

The *Sentencing Amendment (Mandatory Minimum Sentences) Act 2013* also affects this offence and prescribes a three month mandatory minimum imprisonment term where the victim of the offence suffers physical injury interfering with his or her health.

Also, if no physical injury is caused, the court may have to impose actual imprisonment (with no minimum term) if the offender has a prior conviction for a violent offence.