

2019

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**CRIMES (OFFENCES AGAINST FRONTLINE COMMUNITY SERVICE
PROVIDERS) AMENDMENT BILL 2019**

EXPLANATORY STATEMENT

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Crimes (Offences Against Frontline Community Service Providers) Amendment Bill 2019

This explanatory statement relates to the *Crimes (Offences Against Frontline Community Service Providers) Amendment Bill 2019* (the Bill). It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

Background

Police officers, prison guards, health practitioners and emergency services personnel work in highly stressful and at times dangerous jobs. They operate in volatile situations and are regularly required to attend to emergency or violent situations to provide aid and security. They do this for and on behalf of the community.

Across Australia and in the ACT, these frontline community service providers are at increasing risk of being assaulted, attacked and harmed in the line of duty.

Several hundred assaults have been recorded against police officers over the past decade, and assaults against paramedics are on the rise. In a 2019 survey of police officers, the Australian Federal Police Association found that 66% of the 212 respondents had been assaulted on the job.

Data from the Productivity Commission's *Report on Government Services* continue to show that the Alexander Maconochie Centre is one of Australia's most dangerous prisons to work at with one of the highest prisoner-on-officer assault rates.

In the ACT health system, doctors, nurses and other health practitioners are at increasing risk of harm, with approximately two assaults on frontline health staff every day.

Beyond the physical injuries, frontline community services providers who are attacked in the line of duty often experience ongoing stress and trauma. That trauma can be exacerbated when their attackers receive insufficient punishment. Attacks on frontline community service providers should never be tolerated. It is an injustice to those who serve our community.

The Bill recognises the unique occupational vulnerability of frontline community service providers and offers greater levels of protection. In doing so, the Bill helps to establish a more secure work environment and makes clear to the broader community that attacks on those who serve our community will not be tolerated.

Overview

The Bill amends the *Crimes Act 1900* to make a number of offences aggravated offences if an offence is committed against a frontline community service provider in

certain circumstances. This Bill follows, and builds on, the model used in the *Crimes (Offences Against Pregnant Women) Amendment Bill 2005* introduced by then Chief Minister Mr Jon Stanhope MLA. The Bill also seeks to make incidental amendments to provisions relating to aggravated offences against pregnant women for the purposes of consistency in aggravated offence provisions generally.

The Bill recognises that some acts of violence are worse than others and that violence towards frontline community service providers deserves separate and more severe treatment. The Bill also reflects a community desire for appropriate sanctions for malicious acts against frontline community service providers.

The effect of an aggravated offence is to increase the maximum penalty for a simple offence when a factor of aggravation applies. Clauses 6-9, 11, 12 and 18 are consequential amendments which substitute new notes pointing to the sections relating to aggravated offences for the simple offence. Clauses 10, 13, 15-17, and 20 should be read with clause 21 which amends section 48A – Aggravated offences – offences against pregnant women and clause 26 which inserts new section 48C – Aggravated offences – offences against frontline community service providers (as well as inserting new section 48D). Amended section 48A and new section 48C make provision in relation to aggravated offences and sets out the factors of aggravation for those offences. New section 48 (5) also provides that the *Criminal Code 2002*, Chapter 2 – General principles of criminal responsibility – does not apply to the listed sections.

Clauses 14 and 19 of the Bill create three new standalone offences:

- New section 26A – Assaulting frontline community service provider;
- New Section 29A – Use motor vehicle to endanger frontline community service provider; and
- New Section 29B – Use motor vehicle to damage frontline community service provider vehicle.

The Bill also makes a consequential amendment to the *Crimes (Sentencing) Act 2005* to ensure the court takes into account whether the offender knew, or ought reasonably to have known, that the victim was a frontline community service provider, and whether the offender intended to cause, or was reckless about causing, harm to the frontline community service provider in the exercise of, or because of, the provider's functions, when determining the sentence to impose for an offence.

Human Rights Considerations

This human rights consideration will provide an overview of the human rights that may be engaged in this Bill.

Broadly, the Bill engages, and places limitations on, the following *Human Rights Act 2004* (HR Act) rights:

- Section 8 – Recognition and equality before the law; and
- Section 22 – Rights in criminal proceedings.

The Bill also engages, and supports, the following HR Act rights:

- Section 9 – Right to life;
- Section 18 – Right to liberty and security of person; and
- Section 21 – Right to a fair trial

Rights engaged and supported

The Bill engages and supports the rights to life (section 9 HR Act), liberty and security of person (section 18 HR Act), and fair trial (section 21 HR Act). The primary purpose of the Bill is to recognise the increased risk of occupational hazards and vulnerability of frontline community service providers in ACT criminal laws. This purpose supports the right to life under section 9 of the HR Act for frontline community service providers. Creating specific offences and a list of aggravated offences for violence against these providers makes clear the criminality of such conduct, may deter people from engaging in this type of unacceptable conduct, and support the protections of these providers.

Section 18 (1) of the HR Act states that everyone has the right to liberty and security of person. Frontline community service providers work in more stressful and dangerous occupations than the average citizen and do so to protect the community from criminal offending and harm; therefore, the offences and corresponding penalties in this Bill apply to this clearly defined cohort of victims. In these circumstances, an offender's right to liberty is limited in so far as it is necessary to preserve the right to security of frontline community service providers.

The Bill engages and supports the right to a fair trial under section 21 (1) of the HR Act. Section 21 states that "everyone has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing." The offences in the Bill do not change or limit a person's rights to have their case handled in accordance with procedural fairness.

Rights engaged and limited

Section 8 – Recognition and equality before the law

Section 8 of the HR Act states that:

- (1) Everyone has the right to recognition as a person before the law.*
- (2) Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind.*
- (3) Everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.*

The nature of the right affected (s 28 (2) (a))

The Bill engages section 8 of the HR Act by creating three new offences, and inserting the additional aggravated offences, specific to people with certain occupations, which the Bill defines as frontline community service providers. These occupations are:

- police officers;
- corrections officers;
- health practitioners who provide health services at a hospital, including a day hospital, or a correctional centre; and
- emergency service members.

The Bill also engages section 8 by making incidental amendments to provisions relating to aggravated offences against pregnant women for the purposes of closer alignment in aggravated offence provisions generally.

The importance of the purpose of the limitation (s 28 (2) (b))

The purpose of this limitation is to recognise the important role that frontline community service providers have in the community and the increased occupational hazards and vulnerability that these providers are subject to in their service to the community. Similar provisions which elevate certain groups of people currently exist in ACT legislation and are in relation to aggravated offences to pregnant women. The Bill makes incidental amendments to these provisions to ensure the alignment of aggravated offences within the ACT criminal law. Like aggravated offences against pregnant women, these new offences and aggravated offences against frontline community service providers recognise that some acts of violence are worse than others.

The nature and extent of the limitation (s 28 (2) (c))

The nature of the limitation is that by elevating the protection of frontline community service providers as a distinct group from the rest of the community, the right to equality before the law is limited. This is consistent with how pregnant women are currently treated under ACT criminal law. The extent of this limitation is that it applies only to the new offences and aggravated offences established in the Bill.

The relationship between the limitation and its purpose (s 28 (2) (d))

The limitation is necessary to achieve the purpose of the Bill. The Bill recognises that frontline community service providers are at increased risk of occupational hazards and vulnerability, far more than the average citizen. These providers do this for the protection of, and in service to, the broader community. Certain offences against these frontline community service providers should therefore be dealt with in a separate way such as through the specific provisions proposed in the Bill. The existing provisions relating to aggravated offences against pregnant women have been extended to align with the aggravated offence provisions established under the Bill.

Any less restrictive means reasonably available to achieve the purpose (s 28 (2) (e))

The limitation on section 8 of the HR Act is justified, and the provisions in the Bill that limit this right are the least restrictive means available to achieve the purpose of the Bill. This limitation is consistent with current legislation.

Section 22 – Rights in criminal proceedings

Section 22 of the HR Act states (relevantly) that:

- (1) Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.*

The nature of the right affected (s 28 (2) (a))

The presumption of innocence imposes on the prosecution the burden of proving the charge and guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt. The presumption of innocence generally requires the prosecution to prove each element of a criminal offence beyond reasonable doubt.

The Bill limits this right by placing the burden upon a defendant to prove, on the balance of probabilities, that the defendant did not know, and could not reasonably have known, that the victim was a frontline community service provider. This legal burden of proof on the defendant is established both in new section 26A (3) and new section 48C (3).

The importance of the purpose of the limitation (s 28 (2) (b))

The purpose of this limitation is to assist the effective and efficient prosecution of offences in the Bill and the administration of justice. Given the nature of their work, frontline community service providers face unique occupational hazards and vulnerability, particularly when attending emergency situations. Frontline community service providers, in their line of work, go to lengths to identify themselves to the public. For example, identifiable uniforms are worn, signed vehicles are driven, and/or flashing lights are displayed. It is reasonable that, once the prosecution establishes the elements of the offence, including the relevant aggravating factors, the burden should pass to the defendant to establish that the defendant did not know, or could not reasonably have known, that the victim was a frontline community service provider.

The nature and extent of the limitation (s 28 (2) (c))

The nature of the limitation relates to the knowledge element. It places the legal burden of proof on the defendant to prove that they did not know, or could not reasonably have known, that the victim was a frontline community service provider. This limitation extends only to the circumstances in which a defendant is charged under new section 26A or the offences listed under new section 48C. The presumption of innocence will still apply to the other elements of each offence, therefore the limitations on this right are minimal.

The relationship between the limitation and its purpose (s 28 (2) (d))

The Bill only limits this right in the situations where there is a reasonable and rational connection between establishing the elements of the offence and inferring that the person knew, or ought to have reasonably known, the other person was a frontline community service provider. This recognises the lengths to which frontline community service providers go to identify themselves to the public. For example, under new section 26A, there is a rational connection between a person knowing that the other person is a frontline community service provider if they assaulted the other person because of anything done by the other person in their functions as a frontline community service provider.

Any less restrictive means reasonably available to achieve the purpose (s 28 (2) (e))

The Bill places the least restrictive limitation on this right and is balanced by the availability of the defendant to prove that they did not know, or could not reasonably have known, that the victim was a frontline community service provider. This limitation is consistent with current legislation.

Clause Notes

Clause 1 Name of Act

This clause sets out the name of the proposed Act as the *Crimes (Offences Against Frontline Community Service Providers) Amendment Act 2019*.

Clause 2 Commencement

This clause provides that the Act will commence the day after its notification on the Legislation Register.

Clause 3 Legislation Amended

This clause states that the Act amends the *Crimes Act 1900* and notes that the Act also amends the *Crimes (Sentencing) Act 2005*.

Clause 4 Offences against Act—application of Criminal Code etc Section 7A, note 1

This clause is a technical amendment noting the application of the *Criminal Code 2002* to new offences created by the Act.

Clause 5 New Section 9A

This clause creates a new section 9A. Subsection (1) inserts definitions of an *aggravated offence*, *fault element*, and *frontline community service provider* in part 2 of the *Crimes Act 1900*.

Subsection (2) inserts definitions of a *day hospital*, *health service* and *member* of an emergency service.

Clause 6 Manslaughter Section 15 (3), note

This clause is a consequential amendment. It substitutes a new note that points to the sections relating to aggravated offences for manslaughter.

Clause 7 Intentionally inflicting grievous bodily harm Section 19 (2), note

This clause is a consequential amendment. It substitutes a new note that points to the sections relating to aggravated offences for inflicting grievous bodily harm.

Clause 8 Recklessly inflicting grievous bodily harm Section 20 (2), note

This clause is a consequential amendment. It substitutes a new note that points to the sections relating to aggravated offences for recklessly inflicting grievous bodily harm.

Clause 9 Wounding
Section 21 (2), note

This clause is a consequential amendment. It substitutes a new note that points to the sections relating to aggravated offences for wounding.

Clause 10 Assault with intent to commit other offence
New section 22 (2) and note

This clause inserts a new subsection (2) into section 22 – Assault with intent to commit other offence. Subsection (2) provides for an aggravated offence of assault with intent to commit other offence with a maximum penalty of imprisonment for 7 years.

Clause 11 Inflicting actual bodily harm
Section 23 (2), note

This clause is a consequential amendment. It substitutes a new note that points to the sections relating to aggravated offences for inflicting actual bodily harm.

Clause 12 Assault occasioning actual bodily harm
Section 24 (2), note

This clause is a consequential amendment. It substitutes a new note that points to the sections relating to aggravated offences for assault occasioning actual bodily harm.

Clause 13 Causing grievous bodily harm
New section 25 (2) and note

This clause inserts a new subsection (2) into section 25 – Causing grievous bodily harm. Subsection (2) provides for an aggravated offence of inflicting actual bodily harm with a maximum penalty of imprisonment for 7 years.

Clause 14 Assaulting frontline community service provider
New section 26A

This clause creates a new standalone offence of assaulting a frontline community service provider. A person commits the offence if they assault the frontline community service provider when they are exercising their functions as a frontline community service provider or if the assault is because of anything done by the frontline community service provider in the exercise of the provider's duties. It is not necessary for the prosecution to prove that the provider was on duty at the time of the offence.

Reasonable lack of knowledge about the identity of a frontline community service provider victim is a defence under new subsection 26A (3). The defendant can prove, on the balance of probabilities, that the defendant did not know, and could not

reasonably have known, that the person was a frontline community service provider. This defence is consistent with new section 48C (3).

The new standalone offence attracts a maximum penalty of five years imprisonment.

**Clause 15 Acts endangering life etc
New section 27 (5) and note**

This clause inserts a new subsection (5) into section 27 – Acts endangering life etc. Subsection (5) provides for an aggravated offence of acts endangering life etc with a maximum penalty of imprisonment for 12 years.

**Clause 16 Acts endangering health etc
New section 28 (3) and note**

This clause inserts a new subsection (3) into section 28 – Acts endangering health etc. Subsection (3) provides for an aggravated offence of acts endangering health etc with a maximum penalty of imprisonment for 7 years.

**Clause 17 Throwing etc objects at vehicles
New section 28A (1A) and note**

This clause inserts a new subsection (1A) into section 28A – Throwing etc objects at vehicles. Subsection (1A) provides for an aggravated offence of throwing etc objects at vehicles with a maximum penalty of imprisonment for 3 years.

**Clause 18 Culpable driving of motor vehicle
Section 29 (3), note**

This clause is a consequential amendment. It substitutes a new note that points to the sections relating to aggravated offences for culpable driving of a motor vehicle.

Clause 19 New sections 29A and 29B

This clause creates two new standalone offences of using a motor vehicle to endanger a frontline community service provider (29A) and using a motor vehicle to damage a frontline community service provider vehicle (29B).

A person commits an offence against new section 29A if they drive a motor vehicle at or near a frontline community service provider in a way that risks injuring the provider, and they were reckless as to whether the other person was a frontline community service provider and reckless as to whether their driving would risk injuring the provider.

The prosecution does not have to prove that the provider was on duty at the time of the offence or that the provider feared injury as a result of the conduct. The new standalone offence attracts a maximum penalty of 15 years imprisonment.

A person commits an offence against new section 29B if their driving of a motor vehicle causes damage to a frontline community service provider vehicle and they

were reckless as to whether it was a frontline community service provider vehicle and that their driving would cause damage to the vehicle.

The new standalone offence attracts a maximum penalty of 5 years imprisonment.

Clause 20 Kidnapping
New section 38 (2) and note

This clause inserts a new subsection (2) into section 38 – Kidnapping. Subsection (2) provides for an aggravated offence of kidnapping with a maximum penalty of imprisonment for 25 years.

Clause 21 Aggravated offences – offences against pregnant women
Section 48A (1)

This clause amends the list of provisions to which aggravated offences against pregnant women applies. These are incidental amendments included for the purposes of closer alignment in aggravated offence provisions generally.

Clause 22 Section 48A (2) and (3)

This clause is a technical amendment which clarifies that the term *aggravated offence* in section 48A (2) and (3) is in relation to a pregnant woman.

Clause 23 Section 48A (4) and (5)

This clause is a technical amendment which clarifies that the term *aggravated offence* in section 48A (4) and (5) is in relation to a pregnant woman.

Clause 24 Alternative verdicts for aggravated offences
Table 48B

This clause amends table 48B to achieve greater consistency between alternative verdicts available in aggravated offence prosecutions as it relates to aggravated offences against pregnant women.

Clause 25 Section 48B (2), definition of *aggravated offence*

This is a technical amendment to the definition of *aggravated offence* as used in section 48B.

Clause 26 New sections 48C and 48D

This clause introduces aggravated offences against frontline community service providers. It contains the elements required for the offence to be made out. It also contains the provision for the defendant to prove, on the balance of probabilities, that the defendant did not know, and could not reasonably have known, that the person was a frontline community service provider.

New section 48C provides for aggravated offences for certain offences against frontline community service providers. The provision has been included to recognise that some acts of violence are worse than others and that violence towards frontline community service providers deserves separate and more severe treatment. The provision also reflects a community desire for appropriate sanctions for malicious acts against frontline community service providers.

Subsection (1) lists the provisions to which the section applies. Subsection (2) sets out the factors of aggravation for an offence listed in subsection (1). To establish the aggravated offence it is necessary to prove one of the offences was committed against a frontline community service provider while they were exercising their functions as a frontline community service provider, or if the offence was committed because of anything done by the frontline community service provider in the exercise of the provider's duties.

The knowledge element has been cast a defence in subsection (3). The defendant can prove, on the balance of probabilities, that the defendant did not know, and could not reasonably have known, that the person was a frontline community service provider. This defence is consistent with the defence established under new subsection 26A (3).

Subsection (4) is procedural in nature and provides that if the prosecution intends to prove an aggravated offence, the relevant factors of aggravation must be stated in the charge.

The effect of subsection (5) is twofold. First, a person may be found guilty of an aggravated offence although the person does not know the victim was a frontline community service provider. Second, the *Criminal Code 2002*, Chapter 2 – General principles of criminal responsibility – does not apply to an offence to which the section applies, namely:

- section 15 (Manslaughter)
- section 19 (Intentionally inflicting grievous bodily harm)
- section 20 (Recklessly inflicting grievous bodily harm)
- section 21 (Wounding)
- section 22 (Assault with intent to commit other offence)
- section 23 (Inflicting actual bodily harm)
- section 24 (Assault occasioning actual bodily harm)
- section 25 (Causing grievous bodily harm)
- section 27 (Acts endangering life etc)
- section 28 (Acts endangering health etc)
- section 28A (Throwing etc objects at vehicles)
- section 29 (2) or (4) (Culpable driving of motor vehicle)
- section 38 (1) (a) (Kidnapping).

Subsection (6) contains the definitions for the section of *applied provisions* and *factor of aggravation*.

New section 48D provides for alternative verdicts available in aggravated offence prosecutions as it relates to aggravated offences against frontline community service providers. This section includes alternative verdicts to the aggravated offences if the trier of fact is not satisfied that the defendant committed the aggravated offence but is satisfied beyond a reasonable doubt that the defendant committed an alternative offence.

Clause 27 Table 49, item 6, column 2

This clause is a technical amendment which omits a redundant section of the existing Act.

Clause 28 Dictionary, note 2

This clause adds to the dictionary the definition of a *corrections officer*.

Clause 29 Dictionary, definition of *aggravated offence*

This clause is a consequential amendment and should be read with clause 5.

Clause 30 Dictionary, new definitions

This clause amends the existing term *aggravated offence* in the dictionary and inserts 2 new definitions *fault element* and *frontline community service provider*.

Clause 31 Crimes (Sentencing) Act 2005

This clause amends section 33 of the *Crimes (Sentencing) Act 2005* to require a sentencing court, when deciding how to sentence an offender for an offence in which the victim was a frontline community service provider, to consider particular matters.