



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Social Policy Scrutiny Committee

**Inquiry into the Criminal Code
Amendment Bill 2018**

December 2018

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Chair's Preface

This report details the Committee's findings regarding its examination of the Criminal Code Amendment Bill 2018. As highlighted by the Attorney-General and Minister for Justice, the Hon Natasha Fyles MLA, the Bill has two key objectives. Firstly, to expand the operation of section 189A 'assaults on police' to include emergency workers, and secondly to include section 161A 'violent act causing death' as an alternative verdict to manslaughter in section 316(2).

The Committee received three submissions to its inquiry, all of which sought clarification on the intended operation of the proposed amendments. For example, St John Ambulance Australia (NT) Inc. queried whether the term ambulance officer would encompass Patient Transport Officers, whereas the Law Society NT and the Northern Territory Legal Aid Commission questioned the inclusion of section 161A as an alternative verdict to manslaughter but not murder.

Following consideration of the issues raised and the evidence received, the Committee has recommended the Assembly pass the Bill with the proposed amendment as set out in Recommendation 2.

On behalf of the Committee, I would like to thank all those who made submissions or appeared before the Committee. The Committee also thanks the Department of the Attorney-General and Justice for their advice. I also thank my fellow Committee members for their support in the examination of this Bill.



Ms Ngaree Ah Kit MLA

Chair

Committee Members

	Ms Ngaree Ah Kit MLA Member for Karama	
	Party:	Territory Labor
	Parliamentary Position:	Acting Deputy Speaker
	Committee Membership	
	Standing:	Standing Orders and Members' Interests
	Sessional:	Social Policy Scrutiny
	Mrs Robyn Lambley MLA Member for Araluen	
	Party:	Independent
	Parliamentary Position:	Acting Deputy Speaker
	Committee Membership	
	Standing:	Standing Orders and Members' Interests
	Sessional:	Social Policy Scrutiny
	Mrs Lia Finocchiaro MLA Member for Spillett	
	Party:	Country Liberals
	Parliamentary Position:	Deputy Leader of the Opposition, Opposition Whip
	Committee Membership	
	Standing:	Public Accounts, Privileges
	Sessional:	Social Policy Scrutiny
	Ms Sandra Nelson MLA Member for Katherine	
	Party:	Territory Labor
	Committee Membership	
	Standing:	House
	Sessional:	Social Policy Scrutiny
	Select:	Northern Territory Harm Reduction Strategies for Addictive Behaviours
	Mr Chansey Paech MLA Member for Namatjira	
	Party:	Territory Labor
	Parliamentary Position:	Deputy Speaker
	Committee Membership	
	Standing:	House
	Sessional:	Social Policy Scrutiny

Committee Secretariat

Committee Secretary: Julia Knight

Senior Research Officer: Elise Dyer

Administration Assistant: Kim Cowcher

Contact Details: GPO Box 3721 DARWIN NT 0801

Tel: +61 08 8946 1485

Email: SPSC@nt.gov.au

Acknowledgements

The Committee acknowledges the individuals and organisations that provided written submissions or oral evidence at public hearings.

Terms of Reference

Sessional Order 13

Establishment of Scrutiny Committees

- (1) Standing Order 178 is suspended.
- (2) The Assembly appoints the following scrutiny committees:
 - (a) The Social Policy Scrutiny Committee
 - (b) The Economic Policy Scrutiny Committee
- (3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.
- (4) The functions of the scrutiny committees shall be to inquire and report on:
 - (a) any matter within its subject area referred to it:
 - (i) by the Assembly;
 - (ii) by a Minister; or
 - (iii) on its own motion.
 - (b) any bill referred to it by the Assembly;
 - (c) in relation to any bill referred by the Assembly:
 - (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
 - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
 - (B) is consistent with principles of natural justice; and
 - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
 - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
 - (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
 - (F) provides appropriate protection against self-incrimination; and
 - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

- (H) does not confer immunity from proceeding or prosecution without adequate justification; and
 - (I) provides for the compulsory acquisition of property only with fair compensation; and
 - (J) has sufficient regard to Aboriginal tradition; and
 - (K) is unambiguous and drafted in a sufficiently clear and precise way.
- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:
- (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
 - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
 - (C) authorises the amendment of an Act only by another Act.
- (5) The Committee will elect a Government Member as Chair.
- (6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Criminal Code Amendment Bill 2018 with the proposed amendment set out in recommendation 2.

Recommendation 2

The Committee recommends that the Bill be amended to provide that upon an indictment charging a person with murder pursuant to section 316(1), the person may alternatively be found guilty of manslaughter or of an offence against section 161A.

1 Introduction

Introduction of the Bill

- 1.1 The Criminal Code Amendment Bill 2018 (the Bill) was introduced into the Legislative Assembly by the Attorney-General and Minister for Justice the Hon Natasha Fyles MLA, on 31 October 2018. The Assembly subsequently referred the Bill to the Social Policy Scrutiny Committee for inquiry and report by 12 February 2019.¹

Conduct of the Inquiry

- 1.2 On 1 November 2018 the Committee called for submissions by 21 November 2018. The call for submissions was advertised via media release, the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.
- 1.3 The Bill, associated *Explanatory Statement*, and *Statement of Compatibility with Human Rights* was also forwarded to Ms Sally Gearin for review of fundamental legislative principles under Sessional Order 13(4)(c).
- 1.4 As noted in Appendix 2, the Committee received three submissions to its inquiry. The Committee held a public briefing with the Department of the Attorney-General and Justice on 19 November 2018 and a public hearing with four witnesses in Darwin on 6 December 2018.

Outcome of Committee's Consideration

- 1.5 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:
- (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
 - (iv) whether the bill has sufficient regard to the institution of Parliament.
- 1.6 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill with the proposed amendment as set out in recommendation 2.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Criminal Code Amendment Bill 2018 with the proposed amendment set out in recommendation 2.

¹ Hon Natasha Fyles MLA, Attorney-General and Minister for Justice, Parliamentary Record, *Debates Day 5 – 31 October 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/304284>, p.1

Report Structure

- 1.7 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.
- 1.8 Chapter 3 considers the main issues raised in evidence received.

2 Provisions of the Bill

Background to the Bill

- 2.1 In presenting the Bill, the Attorney-General and Minister for Justice noted that there were two key aspects to the proposed amendments to the *Criminal Code Act*. Firstly, the proposed amendments recognise that:

emergency workers are also frontline workers, often responding to the same incidents as police officers. It, therefore, makes sense that the higher penalties for assaulting police should also apply to offenders who assault emergency workers. The awareness of this increased risk has led to this Bill, which will amend section 189A of the *Criminal Code Act*. Emergency workers will be included so that the same penalties will apply to assaults against them as that which currently applies to assaults on police.²

- 2.2 Secondly, the Bill implements the recommendation of the Department's February 2018 review of the operation of section 161A (violent act causing death) by amending section 316(2) of the *Criminal Code* to provide that section 161A may be found as an alternative verdict to manslaughter.³

The lack of an alternative verdict provision creates a situation where the Director of Public Prosecutions must elect whether to proceed with a charge of manslaughter, or accept a plea against section 161A. This is to avoid the risk of acquittal. ... The proposed amendment to section 316(2) of the *Criminal Code* will allow section 161A to be considered as an alternative verdict to manslaughter by a jury, if the jury does not find sufficient evidence to establish manslaughter. This will help assist the Director of Public Prosecutions, reducing some of the risks associated with manslaughter prosecutions and providing an option that better fits with the accused's conduct if the jury is not satisfied that manslaughter has been proved. Without this alternative verdict, the prosecution could fail entirely, even when the accused has committed a criminal act.⁴

Purpose and Overview of the Bill

- 2.3 As indicated above, the Explanatory Statement notes that the Bill amends the *Criminal Code Act* by:

expanding the operation of section 189A providing an offence of assaults on police to include emergency workers such as ambulance officers and firefighters, and to provide that section 161A (violent act causing death) is an alternative verdict to manslaughter in section 316(2).⁵

The Explanatory Statement further notes that the proposed amendments will only apply to acts committed after the commencement of this Act.⁶

² Parliamentary Record, *Debates Day 5 – 31 October 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/304284>, p.1

³ Henrik Hartmann, Committee Transcript, Public Briefing, 19 November 2018, p.2

⁴ Parliamentary Record, *Debates Day 5 – 31 October 2018*, <http://www.territorystories.nt.gov.au/jspui/handle/10070/304284>, p.2

⁵ Explanatory Statement, *Criminal Code Amendment Bill 2018 (Serial 69)*, <https://parliament.nt.gov.au/committees/spsc/69-2018>, p.1

⁶ Explanatory Statement, *Criminal Code Amendment Bill 2018 (Serial 69)*, <https://parliament.nt.gov.au/committees/spsc/69-2018>, pp.4-5

3 Examination of the Bill

Introduction

3.1 As highlighted previously, the Bill has two discrete objectives. Firstly, to expand the operation of section 189A ‘assaults on police’ to include emergency workers, and secondly to include section 161A ‘violent act causing death’ as an alternative to a verdict of manslaughter in section 316(2).

3.2 While the submission received from St John Ambulance Australia (NT) Inc. supported the proposed amendment to section 189A, clarification was sought regarding application of the term ambulance officer in the definition of ‘emergency worker’. However, the Law Society NT and the Northern Territory Legal Aid Commission noted that they did not agree with the Government’s underlying rationale for expanding section 189A to include emergency workers and therefore did not support the proposed amendment:

It is acknowledged that assaults against ambulance officers and paramedics are prevalent, and that emergency workers selflessly place themselves in harm’s way to perform a valuable service. ... However, the proposed amendment will not protect ambulance officers, as there is no evidence that increasing penalties actually deters people from committing offences.⁷

Noting their opposition to mandatory sentencing, the Law Society NT also opposed the amendment on the grounds that it effectively increases the number of people that mandatory imprisonment will apply to.⁸

3.3 With regards to the inclusion of section 161A as an alternative verdict to manslaughter, the submissions from the Law Society NT and the Northern Territory Legal Aid Commission raised concerns as to the potential impact of this amendment on court processes and sought clarification as to why the proposed amendment does not apply to section 316(1) as a second alternative verdict to murder.

3.4 While acknowledging the views of the NT Law Society and the Northern Territory Legal Aid Commission, the following discussion focuses on the concerns raised in submissions regarding the anticipated operation of the provisions within the Bill and the subsequent advice provided by the Department of the Attorney-General and Justice (the Department).

Definition of ‘Emergency Worker’

3.5 The Bill amends section 189A to provide that the offence of assaults against police is inclusive of ‘emergency workers’. Under proposed section 187(2)(c), ‘emergency worker’ means ‘an ambulance officer or paramedic employed or engaged in providing ambulance services.’ St John Ambulance Australia (NT) Inc. suggested that this definition may need to be expanded to include Patient Transport Officers (PTO’s), noting that they are also:

⁷ Law Society NT, Submission No. 2, p.1; Northern Territory Legal Aid Commission, Submission No. 3, p.1

⁸ Law Society NT, Submission No. 2, p.2

front line emergency workers on St John NT ambulances and respond to incidents that expose them to the danger of being assaulted. St John NT do not employ any front line emergency worker under the title ambulance officer.⁹

- 3.6 The Department subsequently advised the Committee that, as a generic term, 'ambulance officer' refers to and encompasses anyone employed and working in the ambulance responding to an incident, including PTO's:

The definition of ambulance officer would also capture persons who provide paramedic type services (but are not a paramedic), also officers who act as ambulance officers on CareFlight or other ambulance services not just St Johns. The title of the respective positions may vary however for the intent of the offence they would be an ambulance officer.¹⁰

Committee's Comments

- 3.7 The Committee is satisfied with the Department's clarification regarding application of the term 'ambulance officer' to mean anyone employed or working in the ambulance responding to an incident, including those employed by St John Ambulance Australia (NT) Inc. as Patient Transport Officers.

Alternative Verdicts to Manslaughter

- 3.8 The Bill amends section 316(2) of the *Criminal Code* regarding indictments of manslaughter to provide that the person may alternatively be found guilty of an offence against section 161A 'violent act causing death'.

- 3.9 Section 316 of the Criminal Code currently provides that:

- 1) Upon indictment charging a person with murder he may be found guilty alternatively of manslaughter, but not of any other offence except as otherwise expressly provided.
- 2) On an indictment charging a person with manslaughter, the person may alternatively be found guilty of an offence against section 174F(1) or 174FC(1).

Pursuant to section 174F(1) it is an offence if a person drives a motor vehicle dangerously and that conduct causes the death of any person. Similarly, section 174FC(1) provides that it is an offence if a person navigates a vessel dangerously and that conduct causes the death of another person.

- 3.10 The submissions from the Law Society NT and the Northern Territory Legal Aid Commission raised two concerns regarding the proposed amendment. Firstly, it was suggested that inclusion of section 161A as an alternative to manslaughter would:

add significantly to the complexity of the already complex directions and instructions that judges in homicide cases are obliged to deliver and juries are obliged to consider. The [Law] Society suggests the proposed amendment would elevate the risk of appellably erroneous directions, additional confusion for jurors, jury error and miscarriages of justice. The directions commonly given to juries in murder trials in relation to the physical elements of the alternative offences of

⁹ St Jon Ambulance Australia (NT) Inc., Submission No. 1, p.2

¹⁰ Hannah Clee, (Senior Policy Lawyer, Legal Policy, Department of the Attorney-General and Minister for Justice), *Email re Clarification on Criminal Code Amendment Bill*, unpublished, 14 November 2018, p.1

murder and manslaughter are the same. Only the fault elements are different. By contrast, both the physical and fault elements of s161A are different from manslaughter necessitating lengthier and more convoluted directions to the jury.¹¹

- 3.11 In response to the Committee's questions regarding this matter, the Department advised that section 161A is similar to the two other offences provided for under sections 174F and 174FC that may be considered as an alternative to an indictment for manslaughter in that strict liability applies where the defendant's conduct causes the death of a person.¹² Moreover, the Department pointed out that:

An offence under section 161A has greater similarity to manslaughter than offences under sections 174F and 174FC in that the latter offences are completely strict liability offences. Both manslaughter and an offence under section 161A require that the defendant intended to engage in the conduct that caused the victim's death. The difference is that, for manslaughter, the prosecution must prove that the defendant was reckless or negligent regarding the result of the conduct (death) and for an offence under section 161A the prosecution does not have to prove a fault element, as strict liability applies.¹³

- 3.12 The Department further advised the Committee that, while the manner in which directions are provided during a trial was not considered during the development of the Bill, it may be noted that:

juries deal with complex directions in relation to a wide range of cases on a regular basis. This is a general feature of our criminal justice system, and it would be anomalous to consider this issue only in relation to making section 161A an alternative verdict to manslaughter, when a similar level of complexity arises in other existing alternative verdict cases, and in a wide range of sexual offence cases.¹⁴

- 3.13 Secondly, the Law Society NT and the Northern Territory Legal Aid Commission expressed the view that:

the proposal to amend s316(2), but not s316(1), which relates to indictments charging a person with murder, is illogical, unsupported by principle and unexplained. If, as is proposed, juries should in appropriate cases be instructed to consider violent act causing death as an alternative to manslaughter, they should also be instructed to consider that charge as a second alternative to murder (the first alternative being manslaughter). An inference might be drawn the Bill seeks to avoid the prospect that a person accused of murder may become the beneficiary of a compromised verdict of violent act causing death. Tactical considerations of this type in framing statutory amendments are unattractive and should be discouraged and discounted. If, notwithstanding the Society's objections, this reform proceeds, then the Society submits the amendment should also be applied to s316(1).¹⁵

- 3.14 As noted previously, the proposed amendment to section 316(1) arose as a consequence of the Department's February 2018 review of the operation of section 161A. However, the Department advised the Committee that its recommendation in

¹¹ Law Society NT, Submission No. 2, p.2; Northern Territory Legal Aid Commission, Submission No. 3, p.2

¹² Department of the Attorney-General and Justice, *Responses to Written Questions*, 6 December 2018, <https://parliament.nt.gov.au/committees/spsc/69-2018>, p.4

¹³ Department of the Attorney-General and Justice, *Responses to Written Questions*, 6 December 2018, <https://parliament.nt.gov.au/committees/spsc/69-2018>, p.4

¹⁴ Department of the Attorney-General and Justice, *Responses to Written Questions*, 6 December 2018, <https://parliament.nt.gov.au/committees/spsc/69-2018>, p.4

¹⁵ Law Society NT, Submission No. 3, p.2; Northern Territory Legal Aid Commission, Submission No. 3, p.2

the review of this section was that it be an alternative verdict to both manslaughter and murder.¹⁶ The Department further advised the Committee that:

Following the initial review, subsequent discussions with the office of the DPP [Director of Public Prosecutions] indicated a preference to apply the alternative verdict to manslaughter only. However, there is no practical reason why the alternative cannot apply to both murder and manslaughter.

It is noted that in New South Wales and Western Australia the equivalent offence is an alternative verdict to murder. In Victoria, the equivalent offence is a type of manslaughter, so it is an alternative verdict to murder. This mirrors the position in England and Wales.

If the Committee is minded to recommend that an offence under section 161A should be an alternative verdict to murder under section 316(1) as well as manslaughter under section 316(2), the Department would be supportive of such an amendment.¹⁷

Committee's Comments

- 3.15 While acknowledging the concerns raised by the Law Society NT and the Northern Territory Legal Aid Commission regarding the potential impact of introducing section 161A as an alternative verdict to manslaughter on court processes, the Committee is satisfied with the Department's response.
- 3.16 As proposed by the Law Society NT and the Northern Territory Legal Aid Commission and supported by the Department, the Committee is of the view that section 161A as an alternative verdict should apply to both section 316(1) and (2).

Recommendation 2

The Committee recommends that the Bill be amended to provide that upon an indictment charging a person with murder pursuant to section 316(1), the person may alternatively be found guilty of manslaughter or of an offence against section 161A.

¹⁶ Department of the Attorney-General and Justice, *Responses to Written Questions*, 6 December 2018, <https://parliament.nt.gov.au/committees/spsc/69-2018>, p.4

¹⁷ Department of the Attorney-General and Justice, *Responses to Written Questions*, 6 December 2018, <https://parliament.nt.gov.au/committees/spsc/69-2018>, p.5

Appendix 1: Submissions Received

Submissions Received

1. St John Ambulance Australia (NT) Inc.
2. Law Society NT
3. Northern Territory Legal Aid Commission

Note

Copies of submissions are available at: <https://parliament.nt.gov.au/committees/spsc/69-2018>

Appendix 2: Public Briefing and Public Hearings

Public Briefing – 19 November 2018

Department of the Attorney-General and Justice

- Hannah Clee: Senior Policy Lawyer, Legal Policy
- Henrik Hartmann: Legal Policy Lawyer

Public Hearing – 6 December 2018

- Judith Barker: Chief Executive Officer, St John Ambulance Australia (NT) Inc.
- Russell Goldflam: Social Justice Committee, Law Society NT
- Fiona Hardy: Senior Policy Law Officer, Legal Policy, Department of the Attorney-General and Justice
- Caroline Heske: Senior Policy Lawyer, Legal Policy, Department of the Attorney-General and Justice

Note

Copies of hearing transcripts and tabled papers are available at:

<https://parliament.nt.gov.au/committees/spsc/69-2018>

Bibliography

Clee, H., (Senior Policy Lawyer, Legal Policy, Department of the Attorney-General and Minister for Justice), *Email re Clarification on Criminal Code Amendment Bill*, unpublished, 14 November 2018

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