



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
13th Assembly
SOCIAL POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

Criminal Code Amendment Bill 2018

10.30 am, Monday, 19 November 2018
Litchfield Room, Level 3, Parliament House, Darwin

Members:

Ms Ngaree Ah Kit MLA, Chair, Member for Karama
Mrs Lia Finocchiaro MLA, Member for Spillett
Mrs Robyn Lambley MLA, Deputy Chair, Member for Araluen
Ms Sandra Nelson MLA, Member for Katherine
Mr Chansey Paech MLA, Member for Namatjira

Witnesses:

Hannah Clee: Senior Policy Lawyer, Legal Policy, Department of the Attorney-General and Justice
Henrik Hartmann: Legal Policy Lawyer, Department of the Attorney-General and Justice

Criminal Code Amendment Bill 2018

Department of the Attorney-General and Justice

Madam DEPUTY CHAIR: Good morning everyone. Thank you for joining us. I am Robyn Lambley, the Member for Araluen and Deputy Chair of the Social Policy Scrutiny Committee. On behalf of the committee, I welcome everyone to this public hearing into the Criminal Code Amendment Bill 2018.

I acknowledge my fellow committee members in attendance today: Sandra Nelson, Member for Katherine; Lia Finocchiaro, Member for Spillett; and via teleconference we have Ngaree Ah Kit, Member for Karama and Chansey Paech, Member for Namatjira.

I welcome to the table to give evidence to the committee today, from the Department of the Attorney-General and Justice, Hannah Clee, Senior Policy Lawyer, and Henrik Hartmann, Legal Policy Lawyer. Thank you for coming this morning. We appreciate you taking the time to speak to the committee this morning and answer our gruelling questions.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee applies. This is a public briefing and is being webcast through the Assembly's website. A transcript will be made available for use by the committee and may be put on the committee's website.

If at any time during the hearing you are concerned that what you will say should not be made public, you may ask the committee to go into a closed session and take your evidence in private. I ask each witness to state their name for the record and the capacity in which they are appear. I will then ask you to make a brief opening statement and proceed to the committee's questions.

If you would like to introduce yourselves and make an opening statement.

Ms CLEE: Hannah Clee, Senior Policy Lawyer with Legal Policy in the Department of the Attorney-General and Justice. I am here today supporting my colleague Henrik Hartmann.

Mr HARTMANN: Henrik Hartmann, Policy Lawyer with the Department of the Attorney-General and Justice. This bill addresses two different matters within the Criminal Code: an offence providing for assaults against emergency workers and the application of the one-punch law.

There has been an increased national focus on ensuring that paramedics are able to undertake duties without interference or threat of assault. In the Northern Territory, St John Ambulance is running a 'hands off our ambos' campaign, similar to campaigns in other states and territories.

There is an existing offence in section 189A of the Criminal Code providing for assaults against police. Given that paramedics and other kinds of emergency workers are frontline workers, who often respond to the same incidents as police officers, it makes sense the same penalties for serious harm imposed for assaulting police, should also apply to offenders who assault those workers in the course of their duties.

The offence of violent act causing death is also known colloquially as the one-punch law. It was introduced in 2012, following concern that the penalties for aggravated assault were insufficient to deal with deaths arising from assaults including matters where death resulted from one punch.

In February 2018, the Department of Attorney-General and Justice undertook a review of section 161A, which is the violent act causing death, to examine its operation and to determine whether the offence is being applied correctly. The review found that the offence is being used correctly but recommended that the law could be improved by amending the Criminal Code to enable section 161A to be an alternative verdict to manslaughter. This bill seeks to implement that recommendation of the review.

Having section 161A as an alternative, will allow the Director of Public Prosecutions to pursue the most appropriate charge where the available evidence might ultimately be insufficient to satisfy a jury to making a finding of guilt for manslaughter, but may satisfy section 161A as an alternative offence.

Consequently the Criminal Code Amendment Bill 2018, amends the Criminal Code in two key respects. First the bill amends the existing offence in section 189A providing for assaults against police so that the offence also applies to assaults against other frontline workers, who for the purposes of this section are referred to as emergency workers.

Second, the bill amends section 316(2) of the Criminal Code which provides for alternative verdicts so that 161A, providing for violent act causing death, may be considered as an alternative verdict to manslaughter.

Mrs FINOCCHIARO: I support the intention—do not get me wrong—but I just want to know if it was covered by any other section? I am sure under the previous term we passed legislation that meant assaults on any workers, there was a much higher threshold—you are nodding so you must know what I am talking about more than I do. Do you mind expanding on why that section does not go far enough perhaps or why we need this one?

Mr HARTMANN: There is an existing section 188A which provides for assaults against workers and the penalties are broadly comparable between 188A and 189A. As a matter of policy, it was felt that the assaults against police should reflect all first responders to emergency situations. There is a slightly more severe penalty for 189A being 16 years maximum penalty rather than 14 years for serious assault.

Ms CLEE: Where serious harm occurs.

Ms FINOCCHIARO: If you are charged against 189A which is assaults against a worker, which includes police.

Mr HARTMANN: 189A is specific to police at this stage.

Ms FINOCCHIARO: Sorry, there are harsher penalties than 188A which is assaults on a worker. Okay. I understand. Was consideration given to just increasing the penalties in 188A, I guess that encompasses all people in the course of their employment.

Mr HARTMANN: All workers in the course of their duties. No that particular consideration—the policy intent behind this particular legislation was to emphasise the importance of first responders and emergency workers, to highlight their importance in this particular piece and to equate them to police who often are doing very similar jobs and attending very similar situations.

Ms CLEE: It acknowledges the risk that attaches to that type of work.

Ms FINOCCHIARO: On the alternative verdict component, what would happen at the moment?

Ms CLEE: At the moment, section 161A would not apply as an alternative verdict so the DPP is required to choose in terms of what offence they charge whether they charge the offence of manslaughter or whether they charge a person for violent act causing death. The evidentiary requirements are quite different for those two offences and if the DPP was to determine that they may not be successful in a prosecution for manslaughter they would take the 161A as a preference, which carries a lesser sentence.

Madam DEPUTY CHAIR: This legislation pertains to paramedics and police, is that correct? There are two components. The first component is amending the offence for assault against police and the second is amending section 316 which provides for alternative verdicts. So it is to provide that section 161A as an alternative verdict in a trial for manslaughter.

Mrs FINOCCHIARO: The wording for the amendments to 189A to emergency workers, does that mean the word 'police' will be removed and emergency workers inserted to cover, obviously to include police?

Mr HARTMANN: No, the section will incorporate police and emergency workers.

Mrs FINOCCHIARO: Is emergency workers defined? Is there a list?

Mr HARTMANN: Emergency workers is defined.

Mrs FINOCCHIARO: The list included in that, are you able to read that out?

Mr HARTMANN: Yes, emergency workers will refer to Northern Territory Fire and Rescue Service members, members of the Northern Territory Emergency Service, ambulance officers or paramedics who are employed in providing ambulance services and also a specialist section for medical practitioner or health practitioner who is accompanying or assisting an ambulance service or is attending in the absence or unavailability of an ambulance service.

Madam DEPUTY CHAIR: How has this come about? What is the history behind this? It is not technically up to you to provide that information but I just wondered. Has there been an increase in incidences of violence?

Mr HARTMANN: The 'hands off our ambos' campaign has been running for some time now and that was a particular emphasis that highlighted the seriousness of assaults on paramedics and emergency workers.

Mrs FINOCCHIARO: Is the penalty increasing as well or it is the current penalty and it is applying much more broadly?

Mr HARTMANN: That is correct, the penalty will remain the same, it is just applying to a new class.

Ms NELSON: I just heard before there is a 14 year sentence and a 16 year sentence.

Mr HARTMANN: There is a maximum penalty of 14 years imprisonment for assaults on workers which is 188A and 16 years applies to 189A which is currently the assault on police.

Mrs FINOCCHIARO: In terms of consultation, you have consulted with...

Mr HARTMANN: We consulted with St John Ambulance, the Police Association and with United Voice union.

Mrs FINOCCHIARO: is there a mandatory sentencing component to 189A?

Ms CLEE: Mandatory sentencing does apply to section 189A.

Mrs FINOCCHIARO: What is that period?

Ms NELSON: If it changes in any way, it does not affect the mandatory...

Ms CLEE: It does not impact. We have not amended the mandatory sentencing component within this provision. We might have to take that on notice.

Mrs FINOCCHIARO: Do not worry about that, it is fine. I can look that up.

Madam DEPUTY CHAIR: Thank you Ms Clee and Mr Hartmann for your time. I appreciate that.