

CRIMINAL CODE AMENDMENT BILL 2018

SERIAL NO. 69

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with the Thirteenth Assembly Sessional Orders (part 12.3) as adopted on 24 August 2017.

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Overview of the Bill

The Bill amends the Criminal Code to include emergency workers including paramedics, ambulance officers and fire and emergency service workers (defined as ‘emergency workers’) in section 189A (Assaults on Police), and to provide that, pursuant to section 316(2), section 161A(1) (Violent acts causing death) is an alternative verdict to a charge of manslaughter on indictment.

The proposed amendment to section 189A will bring the penalties for assaulting an emergency worker in line with the penalties for assaulting a police officer. The proposed amendment to section 316(2) will facilitate effective prosecutions by the Director of Public Prosecutions, which will improve public safety and the administration of justice.

The Bill delivers on the government’s commitment to protect emergency workers from violence and harm.

Human Rights Implications

This Bill does engage some of the applicable rights or freedoms.

Section 189A of the Criminal Code

It should be noted that mandatory sentencing already applies to section 189A and the amendments contained in this Bill are not creating new mandatory sentencing provisions. The existing mandatory sentencing provisions in the *Sentencing Act* will continue to apply to the section 189A offence in its amended form however, for completeness, the human rights implications of mandatory sentencing are addressed below.

Mandatory sentencing provisions apply to section 189A of the Criminal Code and provide a minimum period of imprisonment on conviction. Section 189A carries a maximum penalty of five years imprisonment for unlawfully assaulting a police officer in the course of duty; seven years if the police officer suffers harm; and 16 years if the police officer suffers serious harm. These penalties will continue to apply to the amended offence which covers emergency workers.

Mandatory sentencing is likely to engage article 14(5) of the International Covenant on Civil and Political Rights (ICCPR), which protects the right to have a sentence reviewed by a higher tribunal. In addition, article 9 of the ICCPR protects the right to security of the person and freedom from arbitrary detention. An offence provision to which mandatory minimum sentencing applies will engage the right to be free from arbitrary detention. The notion of 'arbitrariness' under international human rights law includes elements of inappropriateness, injustice and lack of predictability. Detention may be considered arbitrary where it is disproportionate to the crime that has been committed.

Although these rights are relevant, the *Sentencing Act* contains safeguards that protect against the imposition of a sentence of

imprisonment that is inappropriate, unjust or disproportionate. The mandatory minimum imprisonment terms may not apply if the court considers that there are exceptional circumstances in the case of a particular offender (section 78DI of the *Sentencing Act*). If the court considers that exceptional circumstances exist, the court must instead sentence the offender only to actual imprisonment. Actual imprisonment means the court has to sentence the offender to imprisonment, but has discretion as to the duration of that imprisonment.

The mandatory minimum imprisonment terms which apply to section 189A, by virtue of Division 6A of the *Sentencing Act* do not ordinarily apply to youths. A court may be required to sentence a youth to actual imprisonment if the youth is being sentenced as an adult under the *Sentencing Act*, but this occurrence is relatively rare.

It is considered that these exceptions will be sufficient to preserve the requisite judicial discretion under international human rights law to take into account the particular circumstances of the offence and the offender.

By working in dangerous environments, police officers and emergency workers play an important role on behalf of the broader community. In these circumstances, mandatory sentencing provisions are deemed appropriate to achieving appropriate outcomes, and to effectively protect, punish and deter violence against emergency workers performing professional duties.

Section 316(2) of the Criminal Code

Article 14(1) of the ICCPR provides that a person charged with a criminal offence has the right to have the charge or proceeding decided by a competent, independent and impartial tribunal after a fair and public hearing.

This right does not appear to be limited by the proposed amendment to include section 161A(1) as an alternative verdict to manslaughter under section 316(2). The amendment to section 316(2) does not impact on a person's ability to respond to the allegations made against them, to advocate for why they should be shown leniency by the sentencing court if found guilty, or to have their matters determined consistent with the rules of procedural fairness, criminal procedure and sentencing laws.

CONCLUSION

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).