

**2011**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**CRIMES (CERTAIN PENALTY INCREASES) AMENDMENT BILL 2011**

**EXPLANATORY STATEMENT**

Presented by  
Simon Corbell MLA  
Attorney General

## Crimes (Certain Penalty Increases) Amendment Bill 2011

### Outline

The Crimes (Certain Penalty Increases) Amendment Bill 2011 amends the *Crimes Act 1900*.

The Bill increases maximum penalties for the following offences in the Crimes Act:

- culpable driving causing death (from 7 years to 14 years imprisonment);
- culpable driving causing grievous bodily harm (from 4 years to 10 years imprisonment);
- intentionally inflicting grievous bodily harm (from 15 years to 20 years imprisonment);
- recklessly inflicting grievous bodily harm (from 10 years to 13 years imprisonment); and
- negligently inflicting grievous bodily harm (from 2 years to 5 years imprisonment).

While it is difficult to directly compare penalties for such offences between Australian jurisdictions as they capture different physical and mental elements, it is clear the penalties in the ACT are low when compared to other jurisdictions. The maximum penalty increases provided by this Bill will more closely align the ACT with other jurisdictions and more appropriately reflect community attitudes as to the seriousness of these offences.

Accurately reflecting the seriousness of offences through maximum penalties is essential to ensure that sentencing courts are able to impose appropriate sentences. When maximum penalties are raised this is a sign to the courts that higher penalties should be imposed to reflect the seriousness of the offence: *Gilson v The Queen* (1991) 172 CLR 353.

A maximum penalty serves as a yardstick or as a basis of comparison between the case before the court and the worst possible case: *Markarian v The Queen* (2005) 228 CLR 357. The maximum penalty for an offence is allocated to the worst possible case and as such it should be sufficient to provide for the worst examples of the offence including the case of a repeat offence.

The existing maximum penalties for the five offences to be increased through this Bill do not accord with the conduct and consequences of the offences and do not allow for sentencing courts to impose appropriate sentences of imprisonment for the worst examples of these offences.

Maximum penalties are the courts' starting point in determining an appropriate sentence: *Markarian v The Queen* (2005) 228 CLR 357. If the court's starting point in determining a sentence is to be appropriate, the maximum penalty as set by Parliament must adequately reflect the seriousness of the offence.

The ACT Court of Appeal has affirmed that a sentencing court is to be mindful of an increase in maximum penalty by the legislature in considering the range of appropriate sentences: *Lawrence v R* [2007] ACTCA 10.

The Bill will increase maximum penalties for the above offences to address these issues and ensure that:

- the seriousness of each offence is reflected in its maximum penalty;
- the maximum penalties enable sentencing courts to provide sufficient penalties for the worst examples of the offences; and
- an appropriate starting point is provided for the courts to use in determining sentences.

### ***Overall scheme of maximum penalties***

There are inherent risks in reviewing maximum penalties for offences in isolation or divorced from a broader consideration of the elements of the offence. The Bill ensures that while raising the maximum penalties for certain offences, the overall scheme of maximum penalties for offences against the person remains balanced and progresses according to the relative seriousness of each offence.

### ***Aggravated offences***

In the ACT there is generally no separate aggravated form of an offence that carries a higher maximum penalty. Instead, a court will have regard to the aggravating and mitigating circumstances of the offence together with other sentencing considerations provided at section 33 of the *Crimes (Sentencing) Act 2005*.

The only aggravating factor for which separate aggravated offences have been created is where the offender knew the victim was pregnant. Section 48A creates an aggravated form of some offences when the offence is committed against a pregnant woman, causing loss of or serious harm to the pregnancy or death of or serious harm to the unborn child.

The Bill retains the application of section 48A to the offences of ‘culpable driving causing death’, ‘culpable driving causing grievous bodily harm’, ‘intentionally inflicting grievous bodily harm’ and ‘recklessly inflicting grievous bodily harm’. However, the increases proposed in this Bill subsume the higher penalties currently specified for these aggravated offences. The result is that an aggravated offence may be charged and proven in accordance with section 48A but sentencing of this offence will take place within the range set by the maximum penalty for the standard offence. This is appropriate given the increases to the penalties for the standard offences provided for in this Bill.

By retaining a specific, clearly delineated aggravated offence, the law will continue to require that the aggravating factor is raised at the commencement of criminal proceedings. This will ensure the defendant is afforded natural justice in relation to the allegation. Furthermore it will bring the nature of the charge to the forefront of the court’s mind allowing it to be taken into account.

The circumstances of aggravation as outlined at section 48A of the Crimes Act are specific. Section 48A specifies the physical elements for the aggravated offence and provides for the defendant to bring evidence to prove that they did not know or could not reasonably be expected to know that the victim was pregnant. In contrast the circumstance of the victim being pregnant and harm being caused to the pregnancy as outlined in section 33(g) of the *Crimes (Sentencing) Act 2005* is less specific. The continued existence of the aggravated offences will remain a signal to sentencing courts that a circumstance of malicious harming of a pregnant woman is to be attentively considered in determining the seriousness of the penalty imposed.

Retaining the application of section 48A does not mean that the maximum penalty for the offence can only be imposed where the particular circumstance of aggravation provided for in section 48A are present. It is clearly possible to foresee a case where the circumstances call for imposition of the maximum penalty, despite the victim not being pregnant.

### ***Human Rights Considerations***

An increase to a maximum penalty for criminal offences will not engage rights located in the ACT's *Human Rights Act 2004*. As this Bill only impacts on penalty levels, a human rights analysis is not provided.

## Clause Notes

### **Clause 1      Name of Act**

This is a technical clause that names the Act. The Act, once made, is the *Crimes (Certain Penalty Increases) Amendment Act 2011*.

### **Clause 2      Commencement**

This clause states that the Act commences on the day after the Act is notified.

### **Clause 3      Legislation amended**

This is a technical clause which states that the Act being amended is the *Crimes Act 1900*.

### **Clause 4      Intentionally inflicting grievous bodily harm Section 19 (1)**

This clause increases the maximum penalty for the offence in section 19(1) from 15 years to 20 years. The penalty increase is proportionate with the maximum penalties for other offences in the ACT, given the elements of this offence.

### **Clause 5      Section 19 (2) and note**

This clause removes the specific penalty for the aggravated offence created by the application of section 48A but retains the note making reference to an aggravated offence under section 48A.

### **Clause 6      Recklessly inflicting grievous bodily harm Section 20 (1)**

This clause increases the maximum penalty for the offence in section 20(1) from 10 years to 13 years. The penalty increase is proportionate with the maximum penalties for other offences in the ACT, given the elements of this offence.

Another result of increasing the maximum penalty for this offence to 13 years is that such a charge would in future always be dealt with by the ACT Supreme Court. At present, a charge can be dealt with summarily in the Magistrates Court or on indictment in the ACT Supreme Court.

### **Clause 7      Section 20 (2) and note**

This clause removes the specific penalty for the aggravated offence created by the application of section 48A but retains the note making reference to an aggravated offence under section 48A.

### **Clause 8      Causing grievous bodily harm Section 25**

This clause increases the maximum penalty for the offence in section 25 from 2 years to 5 years. The penalty increase is proportionate with the maximum penalties for other offences in the ACT, given the elements of this offence.

#### **Clause 9      Culpable driving causing death Section 29 (2)**

This clause increases the maximum penalty for the offence in section 29(2) from 7 years to 14 years. The penalty increase is proportionate with the maximum penalties for other offences in the ACT, given the elements of this offence.

Another result of increasing the maximum penalty for this offence to 14 years is that such a charge would in future always be dealt with by the ACT Supreme Court. At present, a charge can be dealt with summarily in the Magistrates Court or on indictment in the ACT Supreme Court.

#### **Clause 10      Section 29 (3) and note**

This clause removes the specific penalty for the aggravated offence created by the application of section 48A but retains the note making reference to an aggravated offence under section 48A.

#### **Clause 11      Section 29 (4)**

This clause increases the maximum penalty for the offence in section 29(4) from 4 years to 7 years. The penalty increase is proportionate with the maximum penalties for other offences in the ACT, given the elements of this offence.

#### **Clause 12      Section 29 (5)**

This clause removes the specific penalty for the aggravated offence created by the application of section 48A but retains the note making reference to an aggravated offence under section 48A.

### **Schedule 1      Consequential amendments**

#### **Part 1.1      Evidence (Miscellaneous Provisions) Act 1991**

This is a technical clause which consequentially amends the *Evidence (Miscellaneous Provisions) Act 1991*.

#### **Part 1.2      Road Transport (Alcohol and Drugs) Act 1977**

This is a technical clause which consequentially amends a dictionary definition in the *Road Transport (Alcohol and Drugs) Act 1977*.

**Part 1.3      Road Transport (General) Act 1999**

This is a technical clause which consequentially amends a dictionary definition in the *Road Transport (General) Act 1999*.

**Part 1.4      Spent Convictions Act 2000**

This is a technical clause which consequentially amends the *Spent Convictions Act 2000*