

# EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

## Crimes (Offences Against Police) Amendment Bill 2011

### Contents

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|   | Page |
|---|------|
| 1 Name of Act   | 2    |
| 2 Commencement  | 2    |
| 3 Legislation amended   | 2    |
| 4 New section 9A  | 2    |
| 5 Manslaughter<br>Section 15, note                                  | 3    |
| 6 Intentionally inflicting grievous bodily harm<br>Section 19, note | 3    |
| 7 Recklessly inflicting grievous bodily harm<br>Section 20, note    | 3    |

## Contents

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|    | Page  |    |
|----|---|----|
| 8  | Wounding<br>Section 21, note  | 3  |
| 9  | Assault with intent to commit other offence<br>New section 22 (2) and note  | 4  |
| 10 | Inflicting actual bodily harm<br>Section 23, note   | 4  |
| 11 | Assault occasioning actual bodily harm<br>Section 24, note  | 4  |
| 12 | Causing grievous bodily harm<br>New section 25 (2) and note   | 4  |
| 13 | Common assault<br>New section 26 (2) and note   | 5  |
| 14 | Threat to kill<br>New section 30 (2) and note   | 5  |
| 15 | Threat to inflict grievous bodily harm<br>New section 31 (2) and note   | 5  |
| 16 | Possession of object with intent to kill etc<br>New section 33 (2) and note   | 6  |
| 17 | Forcible confinement<br>New section 34 (2) and note   | 6  |
| 18 | Stalking<br>Section 35 (1), penalty   | 6  |
| 19 | Affray<br>Section 35A, penalty  | 7  |
| 20 | Aggravated offences—offences against pregnant women<br>Section 48A (2) and (3)  | 7  |
| 21 | Section 48A (4) and (5)   | 8  |
| 22 | Alternative verdicts for aggravated offences—offences against<br>pregnant women<br>Section 48B (2), definition of <i>aggravated offence</i> | 8  |
| 23 | New sections 48C and 48D  | 8  |
| 24 | Table 49, item 6, column 2  | 13 |
| 25 | Dictionary, definition of <i>aggravated offence</i>   | 13 |
| 26 | Dictionary, new definitions   | 14 |

## EXPOSURE DRAFT

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## **Crimes (Offences Against Police) Amendment Bill 2011**

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### **A Bill for**

An Act to amend the *Crimes Act 1900*

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

**1 Name of Act**

This Act is the *Crimes (Offences Against Police) Amendment Act 2011*.

**2 Commencement**

This Act commences on the day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

**3 Legislation amended**

This Act amends the *Crimes Act 1900*.

**4 New section 9A**

*in part 2, insert*

**9A Definitions—pt 2**

In this part:

***aggravated offence*** means an aggravated offence against a pregnant woman or an aggravated offence against a police officer.

***aggravated offence against a police officer***—see section 48C.

***aggravated offence against a pregnant woman***—see section 48A.

***fault element***—see the Criminal Code, section 17.

**EXPOSURE DRAFT**

**5 Manslaughter  
Section 15, note**

*substitute*

*Note* Section 48A (Aggravated offences—offences against pregnant women) and s 48C (Aggravated offences—offences against police officers) make provision in relation to aggravated offences against this section.

**6 Intentionally inflicting grievous bodily harm  
Section 19, note**

*substitute*

*Note* Section 48A (Aggravated offences—offences against pregnant women) and s 48C (Aggravated offences—offences against police officers) make provision in relation to aggravated offences against this section.

**7 Recklessly inflicting grievous bodily harm  
Section 20, note**

*substitute*

*Note* Section 48A (Aggravated offences—offences against pregnant women) and s 48C (Aggravated offences—offences against police officers) make provision in relation to aggravated offences against this section.

**8 Wounding  
Section 21, note**

*substitute*

*Note* Section 48A (Aggravated offences—offences against pregnant women) and s 48C (Aggravated offences—offences against police officers) make provision in relation to aggravated offences against this section.

**EXPOSURE DRAFT**

**9 Assault with intent to commit other offence  
New section 22 (2) and note**

*insert*

- (2) However, for an aggravated offence against a police officer, the maximum penalty is imprisonment for 7 years.

*Note* Section 48C (Aggravated offences—offences against police officers) makes provision in relation to aggravated offences against this section.

**10 Inflicting actual bodily harm  
Section 23, note**

*substitute*

*Note* Section 48A (Aggravated offences—offences against pregnant women) and s 48C (Aggravated offences—offences against police officers) make provision in relation to aggravated offences against this section.

**11 Assault occasioning actual bodily harm  
Section 24, note**

*substitute*

*Note* Section 48A (Aggravated offences—offences against pregnant women) and s 48C (Aggravated offences—offences against police officers) make provision in relation to aggravated offences against this section.

**12 Causing grievous bodily harm  
New section 25 (2) and note**

*insert*

- (2) However, for an aggravated offence against a police officer, the maximum penalty is imprisonment for 3 years.

*Note* Section 48C (Aggravated offences—offences against police officers) makes provision in relation to aggravated offences against this section.

**13 Common assault  
New section 26 (2) and note**

*insert*

- (2) However, for an aggravated offence against a police officer, the maximum penalty is imprisonment for 3 years.

*Note* Section 48C (Aggravated offences—offences against police officers) makes provision in relation to aggravated offences against this section.

**14 Threat to kill  
New section 30 (2) and note**

*insert*

- (2) However, for an aggravated offence against a police officer, the maximum penalty is imprisonment for 13 years.

*Note* Section 48C (Aggravated offences—offences against police officers) makes provision in relation to aggravated offences against this section.

**15 Threat to inflict grievous bodily harm  
New section 31 (2) and note**

*insert*

- (2) However, for an aggravated offence against a police officer, the maximum penalty is imprisonment for 7 years.

*Note* Section 48C (Aggravated offences—offences against police officers) makes provision in relation to aggravated offences against this section.

**16 Possession of object with intent to kill etc  
New section 33 (2) and note**

*insert*

- (2) However, for an aggravated offence against a police officer, the maximum penalty is imprisonment for 7 years.

*Note* Section 48C (Aggravated offences—offences against police officers) makes provision in relation to aggravated offences against this section.

**17 Forcible confinement  
New section 34 (2) and note**

*insert*

- (2) However, for an aggravated offence against a police officer, the maximum penalty is imprisonment for 13 years.

*Note* Section 48C (Aggravated offences—offences against police officers) makes provision in relation to aggravated offences against this section.

**18 Stalking  
Section 35 (1), penalty**

*substitute*

Maximum penalty:

- (a) for an aggravated offence against a police officer—
- (i) imprisonment for 7 years if—
    - (A) the offence involved a contravention of an injunction or other order made by a court; or
    - (B) the offender was in possession of an offensive weapon; or
  - (ii) imprisonment for 3 years in any other case; or

- (b) in any other case—
  - (i) imprisonment for 5 years if—
    - (A) the offence involved a contravention of an injunction or other order made by a court; or
    - (B) the offender was in possession of an offensive weapon; or
  - (ii) imprisonment for 2 years in any other case.

*Note* Section 48C (Aggravated offences—offences against police officers) makes provision in relation to aggravated offences against this section.

**19** **Affray**  
**Section 35A, penalty**

*substitute*

Maximum penalty:

- (a) for an aggravated offence against a police officer—  
imprisonment for 13 years; or
- (b) in any other case—imprisonment for 10 years.

*Note* Section 48C (Aggravated offences—offences against police officers) makes provision in relation to aggravated offences against this section.

**20** **Aggravated offences—offences against pregnant women**  
**Section 48A (2) and (3)**

*omit*

*aggravated offence*

*substitute*

*aggravated offence against a pregnant woman*

**21 Section 48A (4) and (5)**

*omit*

aggravated offence

*substitute*

aggravated offence against a pregnant woman

**22 Alternative verdicts for aggravated offences—offences against pregnant women  
Section 48B (2), definition of *aggravated offence***

*substitute*

*aggravated offence* means an aggravated offence against a pregnant woman.

**23 New sections 48C and 48D**

*insert*

**48C Aggravated offences—offences against police officers**

- (1) This section applies to an offence against any of the following provisions:
- (a) section 15 (Manslaughter);
  - (b) section 19 (Intentionally inflicting grievous bodily harm);
  - (c) section 20 (Recklessly inflicting grievous bodily harm);
  - (d) section 21 (Wounding);
  - (e) section 22 (Assault with intent to commit other offence);
  - (f) section 23 (Inflicting actual bodily harm);
  - (g) section 24 (Assault occasioning actual bodily harm);

**EXPOSURE DRAFT**

- (h) section 25 (Causing grievous bodily harm);
  - (i) section 26 (Common assault);
  - (j) section 30 (Threat to kill);
  - (k) section 31 (Threat to inflict grievous bodily harm);
  - (l) section 33 (Possession of object with intent to kill etc);
  - (m) section 34 (Forcible confinement);
  - (n) section 35 (Stalking);
  - (o) section 35A (Affray).
- (2) The offence is an ***aggravated offence against a police officer*** if the offence was committed against a police officer—
- (a) while the police officer was exercising the officer’s functions as a police officer; or
  - (b) because of, or in retaliation for, anything done by the police officer or any other police officer in the exercise of the officer’s functions as a police officer.
- (3) However, the offence is not an ***aggravated offence against a police officer*** if the defendant proves, on the balance of probabilities, that the defendant did not know, and could not reasonably have known, that the person was a police officer.
- (4) If the prosecution intends to prove that the offence is an aggravated offence against a police officer, the relevant factors of aggravation must be stated in the charge.
- (5) To remove any doubt—
- (a) it is not necessary for the prosecution to prove that the defendant had a fault element in relation to any factor of aggravation; and

## EXPOSURE DRAFT

(b) the Criminal Code, chapter 2 (other than the applied provisions) does not apply to an offence mentioned in subsection (1) (a) to (n), whether or not it is an aggravated offence against a police officer.

(6) In this section:

*applied provisions*—see the Criminal Code, section 10 (1).

*factor of aggravation* means a matter mentioned in subsection (2) (a) or (b).

#### **48D Alternative verdicts for aggravated offences—offences against police officers**

(1) If, in a prosecution for an aggravated offence mentioned in column 2 of an item in table 48D, the trier of fact is not satisfied that the defendant committed the aggravated offence, but is satisfied beyond reasonable doubt that the defendant committed an offence mentioned in column 3 of the item (the *alternative offence*), the trier of fact may find the defendant guilty of the alternative offence but only if the defendant has been given procedural fairness in relation to that finding of guilt.

**Table 48D**

| <b>column 1<br/>item</b> | <b>column 2<br/>aggravated offence</b>              | <b>column 3<br/>alternative offences</b>   |
|--------------------------|---|--|
| 1                        | section 15<br>(Manslaughter),<br>aggravated offence | <ul style="list-style-type: none"> <li>• section 15, simple offence</li> <li>• section 20 (Recklessly inflicting grievous bodily harm), aggravated offence</li> <li>• section 20, simple offence</li> <li>• section 25 (Causing grievous bodily harm), aggravated offence</li> <li>• section 25, simple offence</li> </ul> |

## **EXPOSURE DRAFT**

| <b>column 1<br/>item</b> | <b>column 2<br/>aggravated offence</b>   | <b>column 3<br/>alternative offences</b>   |
|--------------------------|--|--|
|                          |  | <ul style="list-style-type: none"> <li>• section 29 (2) (Culpable driving of motor vehicle—causing death)</li> </ul>   |
| 2                        | section 19 (Intentionally inflicting grievous bodily harm), aggravated offence | <ul style="list-style-type: none"> <li>• section 19, simple offence</li> <li>• section 20 (Recklessly inflicting grievous bodily harm), aggravated offence</li> <li>• section 20, simple offence</li> <li>• section 21 (Wounding), aggravated offence</li> <li>• section 21, simple offence</li> <li>• section 23 (Inflicting actual bodily harm), aggravated offence</li> <li>• section 23, simple offence</li> </ul>   |
| 3                        | section 20 (Recklessly inflicting grievous bodily harm), aggravated offence    | <ul style="list-style-type: none"> <li>• section 20, simple offence</li> <li>• section 23 (Inflicting actual bodily harm), aggravated offence</li> <li>• section 23, simple offence</li> <li>• section 25 (Causing grievous bodily harm), aggravated offence</li> <li>• section 25, simple offence</li> <li>• section 29 (4) (Culpable driving of motor vehicle—causing grievous bodily harm)</li> </ul>                 |
| 4                        | section 21 (Wounding), aggravated offence                                      | <ul style="list-style-type: none"> <li>• section 21, simple offence</li> <li>• section 23 (Inflicting actual bodily harm), aggravated offence</li> <li>• section 23, simple offence</li> <li>• section 24 (Assault occasioning actual bodily harm), aggravated offence</li> <li>• section 24, simple offence</li> <li>• section 26 (Common assault), aggravated offence</li> <li>• section 26, simple offence</li> </ul> |

## EXPOSURE DRAFT

| <b>column 1<br/>item</b> | <b>column 2<br/>aggravated offence</b>  | <b>column 3<br/>alternative offences</b>   |
|--------------------------|---|--|
| 5                        | section 22<br>(Assault with intent to<br>commit other offence),<br>aggravated offence | <ul style="list-style-type: none"> <li>• section 22, simple offence</li> <li>• section 26 (Common assault), aggravated offence</li> <li>• section 26, simple offence</li> </ul>  |
| 6                        | section 23 (Inflicting<br>actual bodily harm),<br>aggravated offence                  | <ul style="list-style-type: none"> <li>• section 23, simple offence</li> <li>• section 24 (Assault occasioning actual bodily<br/>harm), aggravated offence</li> <li>• section 24, simple offence</li> <li>• section 26 (Common assault), aggravated offence</li> <li>• section 26, simple offence</li> </ul> |
| 7                        | section 24 (Assault<br>occasioning actual bodily<br>harm), aggravated<br>offence      | <ul style="list-style-type: none"> <li>• section 24, simple offence</li> <li>• section 26 (Common assault), aggravated offence</li> <li>• section 26, simple offence</li> </ul>  |
| 8                        | section 25 (Causing<br>grievous bodily harm),<br>aggravated offence                   | <ul style="list-style-type: none"> <li>• section 25, simple offence</li> </ul>   |
| 9                        | section 26 (Common<br>assault), aggravated<br>offence                                 | <ul style="list-style-type: none"> <li>• section 26, simple offence</li> </ul>   |
| 10                       | section 30 (Threat to<br>kill), aggravated offence                                    | <ul style="list-style-type: none"> <li>• section 30, simple offence</li> </ul>   |
| 11                       | section 31 (Threat to<br>inflict grievous bodily<br>harm), aggravated<br>offence      | <ul style="list-style-type: none"> <li>• section 31, simple offence</li> </ul>   |

## EXPOSURE DRAFT

| column 1<br>item | column 2<br>aggravated offence  | column 3<br>alternative offences  |
|------------------|---|---|
| 12               | section 33 (Possession of object with intent to kill etc), aggravated offence | <ul style="list-style-type: none"> <li>section 33, simple offence</li> </ul>  |
| 13               | section 34 (Forcible confinement), aggravated offence                         | <ul style="list-style-type: none"> <li>section 34, simple offence</li> </ul>  |
| 14               | section 35 (Stalking), aggravated offence                                     | <ul style="list-style-type: none"> <li>section 35, simple offence</li> </ul>  |
| 15               | section 35A (Affray), aggravated offence                                      | <ul style="list-style-type: none"> <li>section 35A, simple offence</li> </ul> |

(2) In this section:

*aggravated offence* means an aggravated offence against a police officer.

*simple offence*, in relation to a provision, means an offence against the provision that is not an aggravated offence against the provision.

## 24 Table 49, item 6, column 2

*omit*

(2)

## 25 Dictionary, definition of *aggravated offence*

*substitute*

*aggravated offence*—

- (a) for part 2 (Offences against the person)—see section 9A; and
- (b) for part 5 (Sexual servitude)—see section 81.

# EXPOSURE DRAFT

## **26 Dictionary, new definitions**

*insert*

*aggravated offence against a police officer*, for part 2 (Offences against the person)—see section 9A.

*aggravated offence against a pregnant woman*, for part 2 (Offences against the person)—see section 9A.

*fault element*, for part 2 (Offences against the person)—see section 9A.

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### **Endnotes**

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2011.

**2 Notification**

Notified under the Legislation Act on 2011.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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## **EXPOSURE DRAFT**