

**2011**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**CRIMES (PENALTIES) AMENDMENT BILL 2011**

**EXPLANATORY STATEMENT**

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## Crimes (Penalties) Amendment Bill 2011

### Overview

This Bill would increase the maximum penalties for manslaughter and culpable driving offences in the *Crimes Act 1900*.

### Objects

The Bill sets out its objects, which are:

- firstly, to set maximum penalties based on community standards and expectations about the appropriate penalty for offences and to provide guidance to the judiciary on the level of seriousness that the Assembly encompasses; and
- secondly, to promote a policy of consistency with other Australian jurisdictions and their sentencing regimes.

This Bill will rectify the current discontinuity between the level of seriousness the community attaches to the prescribed offences, and the approach applied by the judiciary in the sentencing of these offences.

ACT courts take guidance from maximum penalties set by the legislature when applying sentencing to offenders. The ACT judiciary does not commonly cite sentences applied in other Australian jurisdictions, especially where there are significant differences with sentencing provisions. It has been derived by the ACT judiciary that the significant difference in maximum sentences between the ACT and other jurisdictions reflects an intention by the ACT legislature to impose a lower sentence than other Australia legislatures.

A recent appeal case brought before the ACT Court of Appeal by the Director of Public Prosecutions illustrates this point. The case involved a culpable driving offence in which two passengers were killed. The Court of Appeal remarked on the level of maximum sentences set in the ACT when compared to other jurisdictions, particularly NSW and Victoria. The Court noted the significant differences and indicated that these differences meant the case law developed in these jurisdictions was irrelevant.

This Bill seeks to outline a clear statement that the ACT Legislative Assembly does not view the prescribed offences as less serious in comparison to other Australian jurisdictions. This will allow ACT courts to take further guidance, where they determine appropriate, from the sentencing decisions in other jurisdictions.

This Bill is the first tranche of amendments in a larger body of work to review criminal offence penalties in the ACT. It cannot be inferred that the prescription of offences within this Bill, to the exclusion of other offences, is a reflection of an intention to place a greater importance on these prescribed offences.

### Increased Penalties

In setting the maximum penalties proposed in this Bill, an analysis of the sentencing provisions for comparable offences in other jurisdictions was made. See Appendix A.

Two offence types are dealt with in this Bill:

- Manslaughter, including aggravated manslaughter; and
- Culpable driving causing death or grievous bodily harm, including respective aggravated offences.

The increased penalties for manslaughter and aggravated manslaughter respond directly to recommendations outlined in the Report the Standing Committee on Justice and Community Safety on its inquiry into the Crimes (Murder) Amendment Bill 2008.

The Committee's report recommended that "the maximum sentence for manslaughter be increased to 25 years imprisonment, and to 31 years for aggravated manslaughter offences."<sup>1</sup>

In making that recommendation, the Committee observed that:

One of the persistent themes that came out in both written and oral evidence was a concern that people who had perpetrated violent crimes that resulted in death were not being sentenced appropriately. This was particularly the view of the law enforcement agencies, the police (represented by both the [Australian Federal Police] and the [Australian Federal Police Association]) and the [Director of Public Prosecutions]; and victims groups.<sup>2</sup>

The increased penalties for the range of culpable driving offences are derived from the prescribed maximum sentences in other Australian jurisdictions.

## **Human Rights Compliance**

The *Human Rights Act 2004* is limited on the question of the rights of a person convicted of a crime and the adequacy of their sentence.

Section 18 establishes that "everyone has a right to liberty." Section 18(2) allows that a person may be deprived of this right on the grounds of and in accordance with procedures established by law. The increase in maximum penalties provided in this Bill is compliant with section 18(2). However the increase in maximum penalty may incur a greater incursion on an individual's right to liberty, as the judiciary has a greater scope to impose a higher penalty, than previously existed.

This increased incursion is justified on the grounds that a person convicted of the prescribed offences has committed a serious crime involving death or grievous bodily harm to another person. The community believes that significant maximum penalties are an accurate reflection of this seriousness. The purpose of this detention is deterrence against the prescribed offences which cause serious harm to the community.

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<sup>1</sup>Report Number 2 of the Standing Committee on Justice and Community Safety "Inquiry into the Crimes (Murder) Amendment Bill 2008", August 2009, p35

<sup>2</sup> Ibid, p34

## Crimes (Penalties) Amendment Bill 2011

### Detail

#### Clause 1 – Name of Act

This clause provides that the Act is named the Crimes (Penalties) Amendment Act 2011.

#### Clause 2 – Commencement

This clause provides for commencement of the Act on the day after its notification day.

#### Clause 3 – Legislation amended

This clause provides that the Act makes amendments to the *Crimes Act 1900*.

#### Clause 4 – Objects

This clause sets out that the object of the Act is to increase the maximum penalties applying to offences of manslaughter and culpable driving based on the community expectations and the seriousness with which the offences are viewed by the Legislative Assembly. The increase in maximum penalties will also ensure that the maximum penalties in the ACT are comparable to other Australian jurisdictions.

#### Clause 5 – Manslaughter

This clause omits 20 years from section 15(2) of the *Crimes Act 1900*, and replaces it with 25 years. The purpose of this clause is to increase the maximum penalty that may be imposed on a person convicted of manslaughter to 25 years.

#### Clause 6 – Manslaughter – Aggravated offence

This clause omits 26 years from section 15(3) of the *Crimes Act 1900*, and replaces it with 30 years. The purpose of this clause is to increase the maximum penalty that may be imposed on a person convicted of manslaughter – aggravated offence to 30 years.

#### Clause 7 – Culpable driving of motor vehicle causing death

This clause omits 7 years from section 29(2) of the *Crimes Act 1900*, and replaces it with 15 years. The purpose of this clause is to increase the maximum penalty that may be imposed on a person convicted of culpable driving of motor vehicle causing death to 15 years.

#### Clause 8 – Culpable driving of motor vehicle causing death – Aggravated offence

This clause omits 9 years from section 29(3) of the *Crimes Act 1900*, and replaces it with 17 years. The purpose of this clause is to increase the maximum penalty that may be imposed on a person convicted of culpable driving of motor vehicle causing death – aggravated offence, to 17 years.

**Clause 9 – Culpable driving of a motor vehicle causing grievous bodily harm**

This clause omits *4 years* from section 29(4) of the *Crimes Act 1900*, and replaces it with *10 years*. The purpose of this clause is to increase the maximum penalty that may be imposed on a person convicted of culpable driving of a motor vehicle causing grievous bodily harm, to 10 years.

**Clause 10 – Culpable driving of motor vehicle causing grievous bodily harm – Aggravated offence**

This clause omits *5 years* from section 15(2) of the *Crimes Act 1900*, and replaces it with *12 years*. The purpose of this clause is to increase the maximum penalty that may be imposed on a person convicted of culpable driving of motor vehicle causing grievous bodily harm – aggravated offence, to 12 years.

APPENDIX A

**Comparison of Offence Penalties - Manslaughter and Culpable Driving**

<i>Offence</i>	<i>Crimes Act 1900 (ACT) (Current)</i>	<i>Crimes Act 1900 (ACT) (Proposed changes)</i>	<i>Crimes Act 1900 (NSW)</i>	<i>Criminal Code Act (NT)</i>	<i>Criminal Code Act 1899 (QLD)</i>	<i>Criminal Law Consolidation Act 1935 (SA)</i>	<i>Crimes Act 1958 (Vic)</i>	<i>Criminal Code Act Compilation Act 1913 (WA)</i>
Manslaughter	s 15(2) - 20 Years	<b>s 15(2) - 25 years</b>	s 24 - 25 years	s 160 - Up to life	s 310 - Up to life	s 13 - Up to life	s 5 - 20 years & fine	s 280 - 20 years
Aggravated Manslaughter	s 15(3) - 26 years	<b>s 15(3) - 30 years</b>	s 24 - 25 years	s 160 - Up to life	s 310 - Up to life	s 13 - Up to life	s 5 - 20 years & fine	s 280 - 20 years
Culpable driving causing death	s 29(2) - 7 years	<b>s 29(2) - 15 years</b>	ss 52A, 52B - 7-11 years	s 174F - 7-10 years	s 328A - 10-14 years	s 19A - 5-7 years	ss 318, 319 - 5-20 years	s 59(3)(a) - 14 years
Culpable driving causing death - aggravated offence	s 29(3) - 9 years	<b>s 29(3) - 17 years</b>	ss 52A, 52B - 7-11 years	s 174F - 7-10 years	s 328A - 10-14 years	s 19A - 5-7 years	ss 318, 319 - 5-20 years	s 59(3)(a) - 14 years
Culpable driving causing grievous bodily harm	s 29(4) - 4 years	<b>s 29(4) - 10 years</b>	ss 52A, 52B - 7-11 years	s 174F - 7-10 years	s 328A - 10-14 years	s 19A - 5-7 years	ss 318, 319 - 5-20 years	s 59(3)(a) - 14 years
Culpable driving causing grievous bodily harm - aggravated offence	s 29(5) - 5 years	<b>s 29(5) - 12 years</b>	ss 52A, 52B - 7-11 years	s 174F - 7-10 years	s 328A - 10-14 years	s 19A - 5-7 years	ss 318, 319 -5-20 years	s 59(3)(a) - 14 years

Note: Tasmania has been excluded from this analysis because the legislation does not prescribe minimum or maximum penalties. Penalties are a matter for the court.