

2012

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

CRIMES (OFFENCES AGAINST POLICE)

AMENDMENT BILL 2012

EXPLANATORY STATEMENT

**Presented by the
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Overview

The Crimes (Offences Against Police) Amendment Bill 2012 (the Bill) amends the *Crimes Act 1900* (the Crimes Act) to make a number of offences aggravated offences if an offence is committed against a police officer and incorporates and consolidates previously passed amendments that created aggravated offences against pregnant women.

The Bill recognises that some acts of violence are worse than others and that violence against a police officer in the line of their duty is a special case that merits particular protections. Due to the fact that aggravated offences already exist for assaults against pregnant women, this bill makes subsequential amendments to the offences relating to pregnant women.

The effect of the aggravated offence would be to increase the maximum available penalty for the simple offence, across a range of existing sections of the Crimes Act. The penalties for the aggravated offences have been set approximately 25 per cent higher than the penalties for the simple offences.

The Bill also includes provisions to limit the operation of the offences to instances where the offence was committed against a police officer while the officer was exercising the officer's functions as a police officer, or because of, or in retaliation for, anything done by the police officer in the exercise of the officer's functions as a police officer. Furthermore, the offence is not an aggravated offence for the purposes of the Bill if, on the balance of probabilities, that the defendant did not know, and could not reasonably have known that the person was a police officer.

Discussion on the operational clauses.

1. Ability to create laws covering Commonwealth officers.

Section 28 of the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) provides that if an ACT law is inconsistent with a Commonwealth law, it '*has no effect to the extent that it is inconsistent*', but '*shall be taken to be consistent with such a law to the extent that it is capable of operating concurrently with that law*'.

The *Crimes Act 1914* (Cwlth), section 4C (3) provides that:

'Where an act or omission constitutes an offence against a law of a Territory, the validity of that law is not affected merely because the act or omission also constitutes an offence against a law of the Commonwealth.'

This means that the ACT can also have offences that deal with assaults against police officers.

It should also be recognized that the ACT has developed its own legal identity, created under the *Australian Capital Territory (Self Government) Act 1998* (Cwth), that creates a 'body politic under the Crown.'

The AFP conducts their operations, as ACT Police, under a contractual arrangement with the Commonwealth. There are many cases where AFP officers charge offenders under ACT law. In fact, nearly all AFP officers, when acting as ACT police, are either empowered by or are enforcing ACT laws.

On a more simplistic legal basis, the Territory has the ability to create whatever laws we deem fit for the Territory, subject to Commonwealth laws and the Self Government Act, The Territory has created, and modified many times, a comprehensive set of criminal laws for the *'peace, order and good governance of the Territory.'* This legislation is just another in that suite of solutions.

2. The gap in existing Law.

The current laws have been proven inadequate or at least unworkable when dealing with assaults upon police, and the Bill addresses both the practical concerns and the desire of the community to provide extra protection for police officers when carrying out their duty.

While there is a specific offence under Commonwealth law, it has proven an undesirable option, as it requires three physical elements and three fault elements to be established. This has led to a preference to prosecute under common assault provisions. These have previously been indicated by the Assembly as being 'summary' rather than 'indictable' offences, indicating that the Assembly does not view them as serious offences. This is an anachronistic position that leaves police officers without adequate legal remedy for the seriousness of the assaults.

3. A special class of assault.

It is a previously stated intent of the legislature not to create a class of criminal offence distinguished by the character of the victim, rather than the actions of the offender. However, the Territory has passed aggravated offences in respect to pregnant women. These aggravated offences were created in recognition of the fact that, according to that Bill's explanatory statement that *'some forms of crime are worse than others.'*

The same principle applies in this instance, founded on the unique nature of the responsibility that the Territory places upon those acting in the role of ACT police officers. Those officers are required to 'get in harm's way' when an incident occurs – a unique requirement amongst all professions in the ACT.

4. Human Rights compliance.

As a matter of first principles, the Bill intends to establish a clear intention that an assault on a police officer is a crime viewed seriously by the people of the ACT, more seriously than a common assault. In that way, the Bill does not limit the human rights of offenders, it establishes a higher penalty range once the offence has been established in the normal manner.

It is critical in this light, just as it is for the aggravated offence of assault against a pregnant woman, that the elements of the ‘simple’ offence first be established. Then the aggravated elements are then added in line with the legislation.

It is also important that, while some rights are limited under the removal of the Criminal Code rights in Chapter 2, those general provisions have common law or statutory counterparts that may be relied upon.

Lastly, and importantly, the legislation is balanced by the provision that:

*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.*

However, should human rights be considered an issue, the following observations are made.

The discussion of the human rights implications arising from creating aggravated assaults was considered by the Assembly Scrutiny of Bills Committee when aggravated offences were created in respect to pregnant women. In that examination, the Bill was assessed against the principles enunciated in *R v Oakes 1986 CanLII 46 (S.C.C.)*:

“First, the objective to be served by the measures limiting a Charter right must be sufficiently important ...

“At a minimum, an objective must relate to societal concerns which are pressing and substantial.”

The assaults on police are a matter of pressing concern, and reports and cases arise on a regular basis. There are few more pressing and substantial issues than violent assaults upon officers in their duty of upholding the law.

Again, from Oakes:

“Second, the party must invoking s1. Must show the means to be reasonable and demonstrably justified.”

All other jurisdictions and the Commonwealth have provisions that provide for separate specific offences when they involve police officers. In NSW, there have been moves to make murder of a police officer a mandatory life sentence.

The proposed Bill does not go so far as that, but it does make an assault on a police officer consistent with the other aggravated offence in the Territory.

The new provisions make no modifications to the presumptions of innocence per se, but impose higher penalties once an offence has been established.

However, the legislation does attempt to make its response within ‘reasonable limits.’ (*R v Sharpe [2001] SCR 45.*) The penalties are deliberately consistent with other aggravated offences in the ACT, and is consistent in intent with other jurisdictions around Australia

Lastly, the inclusion of a wide range of alternative judgments gives the courts the ability to judge each case on its individual merits and act accordingly, again reinforcing a balanced, reasonable solution.

Clauses

Clause 1 Name of Act

This clause sets out the name of the proposed Act as the *Crimes (Offences Against Police) Amendment Act 2012*.

Clause 2 Commencement

This clause provides that the Act will commence the day after its notification on the Legislation Register.

Clause 3 Legislation amended

This clause states that the Act amends the *Crimes Act 1900*.

Clause 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

Clauses 5-8 inclusive New Notes

This clause substitutes a new Note pointing to the sections relating to aggravated offences for manslaughter, intentionally inflicting grievous bodily harm, and wounding, indicating that s48A and 48C are relevant.

Clause 9 New section 22(2) and Note

This relates to the offence of assault with intent to commit other offence, where the aggravated offence is included, and that the penalty for an aggravated offence against a police officer has increased.

Clause 10-11 New Note

This modifies the sections for the offences of inflicting actual bodily harm and assault occasioning actual bodily harm to include a note indicating that s48A and 48C relate to aggravated assaults.

Clause 12 New section 25 (2) and note

This relates to the offence of causing grievous bodily harm, where the aggravated offence is included, and that the penalty for an aggravated offence against a police officer has increased.

The clause also inserts a note indicating that s48C relates to aggravated assaults on police officers.

Clause 13 New section 26 (2) and note

This modifies the sections for the offence of common assault and increases the penalty when it is an aggravated offence against a police officer.

The clause also inserts a note indicating that s48C relates to aggravated assaults on police officers.

Clause 14 New section 30 (2) and note

This modifies the sections for the offence of threat to kill and increases the penalty when it is an aggravated offence against a police officer.

The clause also inserts a note indicating that s48C relates to aggravated assaults on police officers.

Clause 15 New section 31 (2) and note

This modifies the sections for the offence of threat to inflict grievous bodily harm and increases the penalty when it is an aggravated offence against a police officer.

The clause also inserts a note indicating that s48C relates to aggravated assaults on police officers.

Clause 16 New section 33 (2) and note

This modifies the sections for the offence of possession of object with intent to kill etc and increases the penalty when it is an aggravated offence against a police officer.

The clause also inserts a note indicating that s48C relates to aggravated assaults on police officers.

Clause 17 New section 34 (2) and note

This modifies the sections for the offence of forcible confinement and increases the penalty when it is an aggravated offence against a police officer.

The clause also inserts include a note indicating that s48C relates to aggravated assaults on police officers.

Clause 18 Section 35 (1), penalty

This modifies the sections for the offence of stalking and increases the penalty when it is an aggravated offence against a police officer if the offence involved a contravention of an injunction or other order made by a court; or the offender was in possession of an offensive weapon; and indicates penalties in any other case.

The clause also inserts a note indicating that s48C relates to aggravated assaults on police officers.

Clause 19 Section 35A, penalty

This modifies the sections for the offence of affray and increases the penalty when it is an aggravated offence against a police officer.

The clause also inserts include a note indicating that s48C relates to aggravated assaults on police officers.

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

This is a consolidating section that omits “aggravated offence” and substitutes “aggravated offence against a pregnant woman.”

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

This is a consolidating section that omits “aggravated offence” and substitutes “aggravated offence against a pregnant woman.”

Clause 22 Section 48B (2), definition of *aggravated offence*

This is a definition section that clarifies that “aggravated offence” means an aggravated offence against a pregnant woman.

Clause 23 New sections 48C and 48D

These are the substantive clauses that introduce the aggravated offences for assaults against police officers.

The clauses also contain the elements required for the offence to be made out and the exclusion for the situation where an aggravated offence is not committed if it can be shown that 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.

Subsection 1 specifies which sections are modified with the inclusion of aggravated offences against police officers. The sections are:

- section 15 (Manslaughter);
- section 19 (Intentionally inflicting grievous bodily harm);
- section 20 (Recklessly inflicting grievous bodily harm);
- section 21 (Wounding);
- section 22 (Assault with intent to commit other offence);
- section 23 (Inflicting actual bodily harm);
- section 24 (Assault occasioning actual bodily harm);
- section 25 (Causing grievous bodily harm);
- section 26 (Common assault);
- section 30 (Threat to kill);
- section 31 (Threat to inflict grievous bodily harm);
- section 33 (Possession of object with intent to kill etc);
- section 34 (Forcible confinement);
- section 35 (Stalking);
- section 35A (Affray).

Subsection 2 indicates the aggravated offence is established only while the police officer was exercising the officer's functions as a police officer; or 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.

Subsection 3 provides that it is not an aggravated offence 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.

Subsection 4 is procedural and provides that 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.

Subsection 5 clarifies that the prosecution does not need to establish a fault element in relation to any factor of the aggravation and that Chapter 2 of the Criminal Code 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.

This is consistent with the intent and rationale behind the same clarification used when the assaults against pregnant women aggravated offences were included in the Crimes Act.

New 48D Alternative verdicts for aggravated offences—offences against police officers

This offers a range of alternative verdicts should the aggravated offences not apply. It is intended to give courts a range of alternatives to suit different circumstances. The new

sections provide for a range of offences that may more accurately reflect the offences and offers alternatives.

Clause 24 Table 49, item 6, column 2

This omits a redundant section of the existing Act.

Clause 25 Dictionary, definition of *aggravated offence*

This provides additions to the dictionary to define aggravated offence.

Clause 26 Dictionary, new definitions

This provides additions to the dictionary.

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.