

CRIMINAL CODE AMENDMENT BILL 2024

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Matthew Swinbourn (Parliamentary Secretary)**, read a first time.

Second Reading

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [4.20 pm]: I move —

That the bill be now read a second time.

The Criminal Code Amendment Bill 2024 will amend the Criminal Code and make consequential amendments to other acts to introduce a new offence of assaulting a retail worker and to amend the available penalties for certain stealing offences. I turn firstly to the amendments in respect of retail workers. The purpose of this aspect of the bill is to protect retail workers whose duties involve a public-facing role in a shop from assault through providing higher offence penalties. Retail workers are essential to the functioning of our economy and society and, like all Western Australians, should not be subject to violence in the course of their work. The COVID-19 pandemic saw increased instances of assaults on retail workers, and there is growing evidence that violence against retail workers continues at unacceptable levels. Higher penalties for assaults on retail workers would not only provide a stronger deterrent against deliberate acts of violence, but also better meet community standards. A 2023 national survey by the Shop, Distributive and Allied Employees' Association of WA of its members showed that 87 per cent of the 4 600 responses said that they had experienced abuse from customers in the last year. Reports of physical violence increased by 56 per cent when compared with the results of the 2021 survey. This is clearly unacceptable.

Currently, the assault of a retail worker is prosecuted under the common assault provisions in the Criminal Code. The penalty for common assault is 18 months' imprisonment and a fine of \$18 000 or, if it is committed in circumstances of aggravation, the penalty is three years' imprisonment and a fine of \$36 000. The Criminal Code already contains provisions in section 318 that aim to protect persons in certain occupations from assault while performing their duties through higher penalties than for common assault. Serious assault currently includes assaults on public officers, passenger transport service drivers, ambulance officers, firefighters, medical staff, court security staff and prison officers. The offence has a maximum penalty of seven years' imprisonment, or three years' imprisonment and a fine of \$36 000 if dealt with summarily, or 10 years' imprisonment if the person was in the company of another at the time of the assault or armed with a weapon.

The bill will amend the Criminal Code by inserting a new offence so that assaults against retail workers will attract the same penalty as for a serious assault. An amendment made in the other place changed the definition of "worker" and added the definition of "contractor" to ensure that the new offence covers all types of retail workers, including sole traders, business owners, employees, volunteers, contractors and employees of contractors, provided they perform duties for the business and are not a contractor who is not subject to the control and direction of the business. The intent is to ensure that workers who perform essential retail duties for a shop are not treated differently based on the way they were engaged by the business and to ensure that all retail workers are protected by the reform. What constitutes a shop is similarly broad and captures any place or part of a place where goods are sold or offered for sale by retail.

There are two key ways that the offence of assaulting a retail worker may apply. Firstly, a person will commit a crime if they assault a retail worker who is performing their duties as a retail worker in an area of a shop that is open to the public. Secondly, a person will commit a crime if they assault a retail worker in consequence of, or in response to, anything done by the worker while performing the worker's duties in an area of a shop open to the public. This will capture assaults that occur in a location other than a public area of a shop, or when the worker is off duty, provided the assault was incited by something the worker did while performing duties in a public area of the shop.

The Criminal Code sets out what constitutes an assault. In essence, this broad term captures directly or indirectly applying force of any kind to another person. It includes attempting or threatening to apply force in circumstances in which the person making the attempt or threat appears to have the ability to apply that force. Assault, therefore, captures a wide range of acts, including throwing or attempting to throw an object at another person. The proposed maximum penalty mirrors the penalty for a serious assault—that being seven years' imprisonment; or, if convicted summarily, three years' imprisonment and a fine of \$36 000; or, if the offender is armed or in company of another person at the time, 10 years' imprisonment.

Both New South Wales and South Australia have recently introduced tougher penalties for assaults on retail workers in response to community concerns. The approaches taken in each jurisdiction to effect this are different; however, each sends a clear message that violence against retail workers is unacceptable. The approach taken in this bill aims to ensure consistency with the approach that Western Australia has already taken to protect other categories of workers in section 318 of the act.

I will now take members through the provisions regarding changes to the penalty for stealing offences. The purpose of this aspect of the bill is to provide greater deterrence for repeat offenders who engage in shoplifting and petty

theft and to ensure that an adequate range of sentencing options is available to courts when dealing with these offenders. Under section 426(4) of the Criminal Code, when a person is charged with stealing an item valued at \$1 000 or less and it is dealt with summarily, a fine-only penalty of \$6 000 is applied. This means that the only sentencing options available to the court under the Sentencing Act are a fine, suspended fine, conditional release order or community-based order. A term of imprisonment cannot be imposed, regardless of the circumstances of the offence or the person, including their prior offending. This is well known in the community and does not provide a strong enough deterrent for some offenders.

The bill will remove the fine-only penalty limit when a person is convicted of a stealing offence, including an attempt, and has two or more prior convictions for a stealing offence in the past 12 months. Those repeat offenders will instead be subject to the higher maximum penalty of two years' imprisonment and a \$24 000 fine when dealt with summarily, providing a more effective deterrent and opening up the full range of possible sentencing options to the court, including a potential term of imprisonment. When repeat offending is related to an underlying problem such as drug or alcohol addiction, this will ensure that the court can order the offender to engage in treatment programs, with an improved likelihood of compliance. If offenders do not engage, the court will have the ability to re-sentence them with a higher sentencing option such as suspended or immediate imprisonment.

The amended stealing penalty for repeat offenders, combined with the increased penalty for assaults on retail workers, will make retail environments a safer place for employees and, importantly, for our community.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper [3088](#).]

Debate adjourned, pursuant to standing orders.