

EXPLANATORY MEMORANDUM

CRIMINAL CODE AMENDMENT BILL 2024

Overview of the Bill

The Criminal Code Amendment Bill 2024 (Bill) will amend *The Criminal Code* (WA) (Criminal Code) in two main respects.

Firstly, it will introduce a new offence of assault on 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. The Bill amends the Criminal Code by inserting proposed new section 318B so that assaults against retail workers attract a higher penalty than is currently available for common assault under section 313 of the Criminal Code. The new penalties mirror those available for serious assault under section 318 of the Criminal Code and are intended to protect retail workers from acts of violence. They recognise that assaults against retail workers warrant higher penalties than the general assault provisions in the Criminal Code.

Secondly, the Bill will remove the application of the lower summary conviction penalty in subsection 426(4) of the Criminal Code for stealing offences, where a person has two or more prior convictions for a stealing offence in the previous 12 months. It will still be possible to deal with stealing offences summarily where subsection 426(1) applies, however the higher maximum penalty in subsection 426(2) will apply. This will provide greater deterrence for repeat offenders. It will also ensure that the full range of sentencing options is available to courts dealing with repeat offenders.

Part 1 – Preliminary

Clause 1 Short Title

Clause 1 provides that the Bill, once enacted, will be known as the *Criminal Code Amendment Act 2024*.

Clause 2 Commencement

Clause 2 provides for the commencement of the Act.

Part 1 will come into operation on the day the Act receives Royal Assent. The rest of the provisions will come into operation on a day fixed by proclamation. Different days may be fixed for different provisions of the Act. This is to allow time for administrative arrangements to be put in place for implementation of the new offences, and consequential amendments to be made to the *Prohibited Behaviour Orders Regulations 2011* (WA) before the substantive provisions commence.

Part 2 – *The Criminal Code* amended

Clause 3 Act amended

Clause 3 provides that the provisions in this Part amend the Criminal Code.

Clause 4 Section 318B inserted

Clause 4 inserts new section 318B into the Criminal Code.

Definitions

Proposed section 318B(1) contains three definitions.

A **retail worker** means a person who is a worker for a business that operates a shop, or occupies part of a shop (for example, a retail concession in a department store).

A **shop** means the whole or a part of a building, place, stall, structure, tent, vehicle or yard in which goods are sold by retail, including by auction.

The definition of 'shop' is intended to capture any place where goods are sold, regardless of the quantity of goods sold or the predominant purpose of the business. For example, this includes:

- supermarkets, delis, convenience stores, liquor stores, fast-food outlets and petrol stations
- places that only sell food and/or beverages, including restaurants, cafes, bars and nightclubs
- places that sell goods incidentally, such as a hairdresser or mechanic
- a part of a place if that part sells goods, such as a candy bar at a theatre, merchandise shop at a hotel, food outlet at an attraction, cellar door at a winery a florist in a hospital, etc.

A **worker**, for a business means:

- an employee or volunteer, or
- a person working in any other capacity including as a contractor or employee of a contractor, if:
 - the duties performed are part of the day-to-day operations of the business, and
 - the person is subject to the control and direction of the operator of the business when performing the duties.

The definition makes clear that all types of workers, including contractors and employees of contractors are included within the scope of the new offence, provided they perform duties which are part of the day-to-day operations of the business and are under 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 simply because of the way they were engaged by the business (for example, the definition is intended to capture staff under labour-hire

arrangements). This recognises that the engagement arrangements may characterise a worker as a contractor even though the worker is for all practical purposes an employee, and is subject to the same risk of assault as other employees in the shop.

The definition of worker excludes contractors who may perform a task at a shop but are not under the shop's control and direction.

Offence

Proposed section 318B(2) provides two separate offences of assaulting a retail worker.

Firstly, a person commits 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 commits 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 captures assaults that occur in a location other than a public area of a shop, or where 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.

Assault is defined in section 222 of the Criminal Code and captures directly or indirectly applying force of any kind to another person. It also includes or attempting or threatening to apply force in circumstances where 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 a missile at another person.

Penalty

The proposed maximum penalty mirrors the penalty for a serious assault in section 318(1), 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, 10 years' imprisonment.

Clause 5 Section 426 amended

Clause 5 amends section 426, inserting a new subsection 426(5) which makes the application of the summary conviction penalty in subsection 426(4) subject to proposed section 426A.

The summary conviction penalty in subsection 426(4) applies to a range of stealing and other like offences involving property valued at \$1,000 or less.

Proposed section 426A will remove the application of the summary penalty in subsection 426(4) for a stealing offence under section 378 of the Criminal Code, or an offence of attempting to commit or incite another person to commit a stealing offence under section 378, where a person has two prior convictions for stealing or attempted stealing in the past 12 months.

The higher summary conviction penalty under subsection 426(2) may still apply in accordance with subsection 426(1).

Clause 6 Section 426A inserted

Clause 6 inserts a new section 426A which provides that the summary conviction penalty in subsection 426(4) does not apply to a conviction for a stealing offence if a person meets the criteria in subsection 426A(2).

A stealing offence is defined as an offence under section 378 of the Criminal Code or an offence of attempting or inciting another person to commit an offence under section 378 of the Criminal Code.

Subsection 426A(2) provides a formula for the operation of proposed section 426A, requiring a person to have been convicted of a stealing offence, and to have been convicted of two other stealing offences within the previous 12 months.

Subsection 426(4) clarifies the method used to count stealing offences for the purpose of subsection 426A(2)(b). It provides that convictions for multiple offences committed on the same day count as one 'strike' only.

Previous stealing offences are to be counted irrespective of whether the convictions for them:

- were recorded before or after the date on which the relevant offence, or any of the previous offences, was committed; or
- have been counted in sentencing under this section for a different stealing offence.

These provisions regarding counting rules have been drafted for legislative consistency with similar amendments in relation to how 'strikes' are counted in section 61A of the *Restraining Orders Act 1997*.

Part 3 – Other Acts amended

This Part deals with consequential amendments made to other Acts. The consequential amendments bring the effect of a conviction under proposed section 318B in line with that of a conviction under existing section 318 (Serious assault).

Clause 7 *Bail Act 1982* amended

Clause 7 amends Schedule 2, item 1 of the *Bail Act 1982* (Bail Act) to insert proposed section 318B. This has the effect of designating assault of a retail worker as a serious offence for the purposes of the Bail Act.

Clause 8 *Sentencing Act 1995* amended

Clause 8 amends Schedule 1A, Part 1, item 1 of the *Sentencing Act 1995* (Sentencing Act) to insert proposed section 318B. This has the effect of designating assault of a retail worker as a relevant indictable offence for the purposes of Part 2, Division 2A of the Sentencing Act (Sentencing where declared criminal organisations involved).

Clause 9 *Young Offenders Act 1994* amended

Clause 9 amends Schedule 2, item 1 of the *Young Offenders Act 1994* (YOA) to insert proposed section 318B. This has the effect of designating assault of a retail worker as a 'Schedule 2' offence, which restricts some of the diversion options otherwise available to Police and means a conviction would normally be recorded should the Court find the person guilty of the offence.