

# CRIMINAL CODE AMENDMENT (COVID-19 RESPONSE) BILL 2020 (WA) EXPLANATORY MEMORANDUM

## Overview of the Bill

The Criminal Code Amendment (COVID-19 Response) Bill 2020 (the Bill) seeks to amend *The Criminal Code* (WA) to introduce higher maximum penalties for the offences of serious assault and threats committed in the context of COVID-19.

The purpose of the new provisions is to reflect the seriousness of offending against public officers and certain other officers delivering frontline services, including police officers, doctors and nurses, ambulance workers, bus drivers, and prison officers, where the offender has COVID-19, or makes a statement or does any other act to create a belief, suspicion or fear that they have COVID-19. The Bill does this by:

- introducing a maximum penalty of 10 years' imprisonment for certain serious assaults; and
- introducing a maximum penalty of 7 years' imprisonment for threats to injure, endanger or harm certain categories of persons by exposing them to COVID-19.

## Clause 1 – Short title

Clause 1 provides that the Bill, once enacted, will be known as the *Criminal Code Amendment (COVID-19 Response) Act 2020* (the Act).

## Clause 2 – Commencement

Clause 2 provides for the commencement of the Act.

Clauses 1 and 2 come into effect on the day the Act receives Royal Assent (assent day).

Clauses 4(2) and 5(3) on the day after 12 months from assent day. This delayed commencement is to delete from *The Criminal Code* those provisions introduced into *The Criminal Code* by the Bill which by their terms would have ceased operation at that point in time.

The rest of the Act will come into operation on the day after assent day.

## Clause 3 – Act amended

The purpose of the Act is to amend *The Criminal Code*.

## Clause 4 – Section 318 amended

Clause 4(1) amends section 318(1) by inserting a new **subsection (1A)** which will only have effect for a period of 12 months from when clause 4(1) comes into operation. While new subsection (1A) has effect, section 318(1) will be read as including a new **paragraph (1a)**, which provides for a maximum penalty of 10 years' imprisonment in circumstances where:

- at the commission of the offence the offender knows that they have COVID-19; or
- at or immediately before or immediately after the commission of the offence the offender makes a statement or does any other act that creates a belief, suspicion or fear that the offender has COVID-19.

This means that those offenders who commit a serious assault and know they have COVID-19, or do anything that creates a belief, suspicion or fear at the time of the assault or immediately before or immediately after the assault that they have COVID-19, are liable to a maximum penalty of 10 years' imprisonment.

Clause 4(2) read together with the relevant commencement clause provides that new subsection (1A) will be deleted on the day after 12 months from assent day, as it will no longer be operative.

### **Clause 5 – Section 338B amended**

Clause 5(1) amends section 338B to provide that the existing text becomes a new **subsection (1)**.

Clause 5(2) amends section 338B by inserting a new **subsection (2)** which will only have effect for a period of 12 months from when clause 5(2) comes into operation. While new subsection (2) has effect, section 338B will be read as including new **paragraph (aa)** to subsection (1) which provides for a maximum penalty of 7 years' imprisonment in circumstances where the threat is to injure, endanger or harm a person referred to in section 318(1)(d)–(k) by exposing the person to COVID-19.

Section 318(1)(d)–(k) covers the following people:

- a public officer who is performing a function of their office or employment or on account of them being such an officer or their performance of such a function; or
- any person who is performing a function of a public nature conferred on them by law or on account of their performance of such a function; or
- any person who is acting in aid of a public officer or other person referred to in paragraph 318(1)(d) or (e); or
- the driver or persons operating or in charge of:
  - a vehicle travelling on a railway; or
  - a ferry; or
  - a passenger transport vehicle as defined in section 4(1) of the *Transport (Road Passenger Services) Act 2018*;
 or
- an ambulance officer, or a member of a FES Unit, SES Unit or VMRS Group (within the meaning given to those terms by the *Fire and Emergency Services Act 1998*), or a member or officer of a private fire brigade or volunteer fire brigade (within the meaning given to those terms by the *Fire Brigades Act 1942*), who is performing their duties as such; or

- a person who is working in a hospital or in the course of providing a health service to the public; or
- a contract worker (within the meaning given to that term by the *Court Security and Custodial Services Act 1999*) who is providing court security services or custodial services under that Act; or
- a contract worker (within the meaning given to that term by section 15A of the *Prisons Act 1981*) who is performing functions under Part IIIA of that Act;

Clause 5(2) also amends summary penalty paragraph (a) of section 338B(1) to provide that offences committed under the new paragraph (aa) have a summary penalty of 3 years' imprisonment and a fine of \$36 000.

Clause 5(3) read together with the relevant commencement clause provides that new subsection (2) will be deleted on the day after 12 months from assent day, as it will no longer be operative.