



The ACT Bar Association

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Vicki Dunne MLA
Member for Ginninderra
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Ms Dunne

Re: Proposed amendment to the elements of murder

The Bar wishes to express some concern at the proposal to amend the elements of murder. These concerns flow from a number of different but important considerations.

Firstly, it is the position of the Bar that the offence of murder ought be directed to the most serious cases of the causing of death, being those cases that are inherently serious due to the culpability which attaches to them. The current state of the offence of murder reflects such a position, being directed to either the intentional causing of death or recklessness as to the causing of death. These states of mind reflect the most serious forms of culpability and it is the position of the Bar that the offence of murder ought not be watered down to encompass less culpable acts, particularly noting that such less culpable acts are covered by the broad offence of manslaughter.

The Bar is concerned that the extension suggested will cover matters that the community at large would not regard as murder, being acts that are likely to cause significant and longstanding harm, but which in no way were accompanied by any considerations of the causing of death.

Secondly, the proposed amendment carries with it a high degree of complexity. It is submitted that a serious offence such as murder ought to have clear cut elements, capable of ready expression to a jury. The proposed amendment adds uncertainty and confusion to the elements for murder, particularly as it incorporates the definitions of harm and serious harm from the Code. The amended offence would incorporate intention, recklessness and a third species of intent relating to the concept "likely". Such complexity and confusion is undesirable, not only from the perspective of clarity in explanation to a jury, but also in providing unintended extensions to the offence.

Thirdly, the Territory has for many years now pursued codification of the criminal law based upon the recommendations of MCCOC. The proposals are a marked and serious departure from the recommendations of MCCOC, whereas the current terms of murder in the Territory reasonably reflect the recommendations of MCCOC. Such a severe departure from the development of a coherent body of law is a matter of concern to the Bar.

Fourthly, the Bar is unable to discern either any significant deficit in the offence as it currently stands, nor any pressing need that the amendments would fulfill.

Yours faithfully

Stuart Pilkinton
President