



AUSTRALIAN CAPITAL TERRITORY

1st Floor
Reserve Bank Building
20 - 22 London Circuit
Canberra City ACT 2601

DPP

Telephone: (02) 6247 3800
Facsimile: (02) 6257 2874
GPO Box 595, Canberra ACT 2601
DX: 5725

**OFFICE OF THE
DIRECTOR OF PUBLIC PROSECUTIONS**

Our Reference:
Your Reference:

31 March 2009

The Secretary
Standing Committee on Justice and Community Safety
Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Sir,

CRIMES (MURDER) AMENDMENT BILL

I refer to the letter of 23 February 2009 from the Chair of your Committee inviting me to make a submission in respect of the inquiry into the above.

I thank the Committee for the opportunity to make a submission.

I am independent of government, and accordingly I must leave matters of criminal law policy to the government and ultimately to the Assembly. However, it will generally be appropriate for me to highlight the practical implications of proposed legislation, particularly in relation to matters which are of obvious importance to my Office.

Consistency with other jurisdictions

At common law, intention to inflict grievous bodily harm resulting in death was murder. This no doubt reflected the particular regard the criminal law had for the sanctity of human life. That position did obtain in the Territory until relatively recently.

The proposed amendment would bring the ACT back in line with the common law position. That position as I apprehend it obtains in all other Australian jurisdictions.

While consistency for consistency's sake may not be a worthy aim, consistency of the criminal law throughout Australia on such an important and fundamental offence as murder might be thought to be in itself important. The fact that an action that in Queensland would amount to murder, in the ACT would amount only to manslaughter, is not necessarily conducive to public confidence in the system generally.

Effect on numbers of prosecutions

I would not expect that the legislation if passed would lead to a significant increase in murder convictions. It will however apply in some cases of extreme violence leading to death of the victim, which are presently charged as manslaughter.

What sorts of cases would be affected?

It is difficult to categorise such cases by reference to sorts of facts situations, as fact situations are infinitely various. However, there is a category of cases - cases of strangulation where an accused was trying to stifle a victim's screams - can sometimes fall within the extended definition – see for example *Rhodes* (1984) 14 A Crim R 124 and *Perks* (1986) 20 A Crim R 201.

In the recent Territory case of *Cassidy* [2008] ACTSC 13 the accused hit his partner's four year old daughter repeatedly over the head with a heavy metal saucepan, having become angry with her because she wet her pants. I will spare you from further details of the assault. He was charged with and pleaded guilty to manslaughter, on the basis that he had no intent to kill. He was sentenced to a maximum term of 15 years imprisonment on that charge. The sentencing judge on reviewing the authorities noted "in this Territory, manslaughter may include an intent to do grievous bodily harm ... which in New South Wales would suffice for murder."

It is of course purely speculative as to whether Cassidy would be convicted of murder under the new provisions, but it is certainly the sort of case where the Crown would consider a charge of murder.

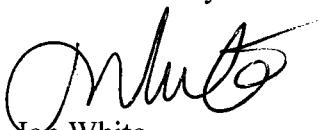
Another sort of case which might fall within the extended definition might be where a fight or assault gets out of hand – say a victim falls to the ground and is repeatedly hit in the head by a metal bar. It may be difficult under the law presently obtaining in the Territory to charge the offender with murder based on an intention to cause death or reckless indifference to the probability of causing death. However, in other jurisdictions a charge of murder may be available.

Verdict of manslaughter always available

It should be noted that if the amendment were passed, it will still be open to a jury to return a verdict of manslaughter on any charge of murder should they consider it appropriate to do so.

I should be happy to assist further, including if required by attending upon the Committee.

Yours faithfully



Jon White
Director of Public Prosecutions