

CMS: 2009/5015

31 March 2009

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ACT Policing submission for Inquiry into Crimes (Murder) Amendment Bill 2008

I refer to your letter of 23 February 2009 where you have invited ACT Policing to make a submission in relation to the above Bill. The Bill would add the following sub-section (c) to section 12(1) of the *Crimes Act 1900* (ACT):

S 12(1)(c) intending to cause serious harm to any person.

This would be in addition to the fault elements that are already there, namely,

S 12(1) A person commits murder if he or she causes the death of another person-

- (a) intending to cause the death of any person; or
- (b) with reckless indifference to the probability of causing the death of any Person.

Other Australian Jurisdictions

A look at the fault elements for the offence of Murder in the other Australian jurisdictions shows the following:

New South Wales

- Intent to kill
- Reckless as to death
- Intent to inflict grievous bodily harm¹

Victoria

- Intent to kill

¹ *Crimes Act 1900* (NSW) s 18(1).

- Reckless about whether death would result
- Intent to inflict grievous bodily harm
- Reckless about whether grievous bodily harm would result²

Queensland

- Intend to cause death
- Intend to cause grievous bodily harm
- Nil specific intent required if a person does something in the course of an unlawful purpose which is likely to endanger human life and which causes someone's death³

Western Australia

- Intend to kill
- Intends to cause bodily injury to endanger life⁴

South Australia

- Intend to kill
- Reckless about whether death would result
- Intent to inflict grievous bodily harm
- Reckless about whether grievous bodily harm would result⁵

Tasmania

- Intend to cause death
- Intend to cause bodily harm which the offender knew to be likely to cause death
- An unlawful act or omission that the offender knew or ought to have known to be likely to cause death in the circumstances, though he had no wish to cause death or bodily harm to any person
- Intent to inflict grievous bodily harm⁶

Northern Territory

- Intends to cause death
- Intends to cause serious harm⁷

Commonwealth

- Intends to cause death
- Reckless as to causing death⁸

² See the Common Law. The Common Law fault elements are acknowledged by the ACT Legislative Assembly Standing Committee On Justice and Community Safety in their *Scrutiny Report*, dated 3 February 2009, p 7, para 2.2.

³ *Criminal Code 1899* (Qld) s 302(1)(a).

⁴ *Criminal Code Act Compilation Act 1913* (WA) s 279(1).

⁵ See the Common Law.

⁶ *Criminal Code Act 1924* (Tas) s 157(1).

⁷ *Criminal Code Act* (NT) s 156(1).

⁸ See *Criminal Code Act 1995* (Cth) s 71.2 *Murder of a UN or associated person*.

As can be seen, without the section 12(1)(c) amendment, the ACT position is different to New South Wales (NSW), Victoria, Queensland (Qld), Western Australia (WA), South Australia (SA), Tasmania, and the Northern Territory. The reasons for this difference are not clear. It is ACT Policing's view that there is no clear reason why the position in the ACT should be any different.

In addition, ACT Policing believes the amendment should go one step further than 'intending to cause serious harm to any person'. To bring us in line with the common law jurisdictions, part 1(d) should be added, namely, 'reckless about whether serious harm would result'.

This position appears to have support from the Chief Justice of the ACT Supreme Court, namely, His Honour Justice Higgins – particularly in relation to the matter of *Porritt*⁹.

Case study: R v Glen Porritt

Operation Ambrite was the ACT Policing investigation into the death of Nanette Mary Porritt on 21 December 2005 at her Chapman home. Ms Porritt suffered 57 incised wounds. Some of these incised wounds included a major neck wound that partially severed the carotid artery and the jugular vein. There were also stab wounds to the chest which caused both of the lungs to collapse.¹⁰

The deceased is survived by her husband, Keith Porritt, her daughters Jenna and Amy, and her son Glen Malcolm Porritt. Investigations identified Glen Porritt as the suspect in the death of Nanette Porritt. Glen Malcolm Porritt was arrested and charged with Murder on 26 October 2006.

On 23 February 2007, Glen Porritt was committed to the ACT Supreme Court to stand trial. Bail was refused and he was held at the Belconnen Remand Centre (BRC).

Prosecution

A strong prosecution case included DNA evidence and computer chat logs in which Glen Porritt stated that his parents deserved death, that he wanted to end their lives and if *"it were not illegal I would stab them."*

Additionally, on 4 March 2007, Glen Porritt was heard by staff at the BRC to say "I killed my mother" on a number of occasions. He also indicated he wanted to kill his father and his sister. He also claimed to be the "Prince of Darkness" and stated (more than once) "I'm bad."

On 24 March 2007, Glen Porritt requested police attend the Belconnen Remand Centre. Police subsequently attended and Glen Porritt participated in a taped record of interview. During the interview he stated that he had murdered his mother. He stated that he was sorry for what he had done and that he wanted to make things right. He also stated that he had no excuse for what he had done. During the interview Glen Porritt indicated an area where he buried a number of items belonging to the deceased as well as the murder weapon.

⁹ *R v Porritt* [2008] ACTSC 33 (22 April 2008) Higgins CJ.

¹⁰ *Ibid*, paras 67-70.

Approval was granted for Glen Porritt to be escorted by BRC to the location he had buried items belonging to his mother. Whilst under caution and following identification of the area in question by Glen Porritt, a number of items belonging to the victim were located. This included a watch, a ring and two sets of keys.

On 27 March 2007, police commenced searching the area surrounding where the previous items had been found and located a knife in Lake Burley Griffin. The knife was consistent with one reported missing from the victim's home by Keith Porritt. Police believe this knife to be the murder weapon. The location of the knife was not far from where the other items had previously been found.

Trial

On 4 February 2008, a trial commenced in the ACT Supreme Court before Chief Justice Higgins.

On 22 April 2008, Chief Justice Higgins found Glen Porritt not guilty of murder and guilty of unlawful homicide (manslaughter).

When handing down his verdict, Chief Justice Higgins stated the following:

- "It is not, in this Territory, murder if a person without either of the intents prescribed by s 12 of the *Crimes Act* kills another as a result of intentionally or recklessly inflicting grievous bodily on that person"¹¹
- **"I observe that, for this Territory, intent to cause, or reckless infliction of, grievous bodily harm is insufficient for murder..."**¹²
- "Mr Harris' primary submission was that the accused neither intended nor foresaw that his acts would cause the severe injuries that resulted. Thus, at worst, manslaughter could be found but not murder..."¹³
- "Essentially, I agree with those submissions. I am not satisfied beyond reasonable doubt that the accused inflicted any of the injuries suffered by his mother intending to kill her or with reckless indifference to the probability of death being caused."¹⁴
- "There must be a verdict of not guilty of murder."¹⁵
- "In disarming his mother, he, objectively, used excessive and dangerous force, resulting in the severe injury to her neck..."¹⁶

On 7 August 2008 Glen Porritt was formally sentenced to the following:

- Five years imprisonment, to be released upon serving 22 months of that sentence, commensurate from 7 October 2006.
- Adhere to a good behaviour order for a period of four years from his date of release.

¹¹ *R v Porritt* [2008] ACTSC 33 (22 April 2008) Higgins CJ, para 8.

¹² *Ibid*, para 15.

¹³ *Ibid*, para 151.

¹⁴ *R v Porritt* [2008] ACTSC33 (22 April 2008) Higgins CJ, para 152.

¹⁵ *Ibid*, para 153.

¹⁶ *Ibid*, para 156.

- Accept supervision and direction of Chief Executive Corrective Services and obey all reasonable directions including participation in courses and counselling as appropriate.
- Comply with terms of any mental health order including the current order imposed by the ACT Mental Health Tribunal.

After entering into a formal agreement regarding the above conditions, Porritt was released from custody as the expiry of his 'non-parole' period coincided with the date of his sentence being handed down.

The handing down of sentence on Glen Porritt attracted criticism from the ACT Government Opposition who labelled the sentencing 'inadequate and unacceptable'. Local print media were critical of the decision, suggesting that it further enhanced the difficulty of substantiating the offence of murder in the ACT, and highlights the inability of the ACT Judiciary to deter the commission of serious offences through sentencing.

In analysing the comments of the Chief Justice it appears that a charge of Murder could have been sustained if section 12 of the *Crimes Act 1900* (ACT) contained the following fault elements:

- **Intending to cause serious harm to any person;** and
- **Reckless about whether serious harm would result**

I note the concern expressed by the Committee, namely, "...The serious harm category of murder diminishes this intent-based approach by allowing something less than an intention to kill to constitute murder...the Committee's view is that murder should in some way be linked to death as the contemplated harm rather than merely serious harm."¹⁷ This point of view, however, is at odds with the Common Law and all of the other Australian jurisdictions (apart from the Commonwealth).

There are also other relevant ACT Policing case studies which support the enactment of the provision.

Case study 2: R v Darren Cassidy

On Saturday 26 November 2005, police were contacted by staff from The Canberra Hospital who stated that a 24-year-old female, Alicia Wilson, had presented with her four-year-old daughter, Trinaty Monique Howarth. Trinity was unconscious and had bruising to her face and body. Hospital staff advised that the child had gone into cardiac arrest and attempts were being made to resuscitate her.

At the hospital, Ms Wilson told police that Trinaty and herself, and her 40-year-old boyfriend, Darren Lee Cassidy, had been travelling around NSW, Queensland and the ACT for the past three months. On the evening of Saturday 26 November 2005, they had been in the car park at Bunnings Warehouse in Tuggeranong when Cassidy accused Trinaty of lying and grabbed a saucepan from inside the vehicle. Cassidy then hit Trinaty on the head a number of times with the saucepan before hitting her on her stomach and legs with a wooden walking stick. That evening, Trinaty's condition deteriorated, she lost consciousness, and was driven to The Canberra

¹⁷ ACT Legislative Assembly Standing Committee on Justice and Community Safety, *Scrutiny Report*, 3 February 2009, p 9, para 2.10.

Hospital by Cassidy and Ms Wilson. Trinaty Howarth did not regain consciousness and died on Monday 28 November 2005.

A Post Mortem was conducted on Trinaty by Victorian Pathologist Dr Malcolm Dodd, who stated her death was caused by multiple head and abdomen injuries which were consistent with blunt force trauma. Dr Dodd further stated that the injuries were among the worst he had seen on a child and likened them to injuries one would receive from being hit by a car.

Darren Cassidy was arrested on Sunday 27 November 2005. He participated in an interview and made admissions in relation to his involvement in the death of Trinaty Howarth. He was charged with her murder and common assault upon Ms Wilson. Bail was not applied for and Cassidy was held at the Belconnen Remand Centre.

The case was committed to the Supreme Court for trial on 25 August 2006. On 17 June 2007, the DPP accepted Cassidy's plea of guilty to charges of manslaughter and common assault.

On Monday 25 February 2008, Cassidy appeared before the ACT Supreme Court for sentencing. Chief Justice Higgins sentenced Cassidy to 15 years with a non-parole period of 10 years and two months for the manslaughter of Trinaty Howarth. Cassidy received a further three month sentence for the assault upon Ms Wilson. Sentences are to be served cumulatively.

In sentencing, Chief Justice Higgins stated that, "it is particularly apt to bear that in mind where, in this Territory, manslaughter may include an intent to do grievous bodily harm or the reckless infliction of grievous bodily harm which in New South Wales would suffice for murder".¹⁸

He further stated, "some cases of manslaughter in this Territory might well be murder in New South Wales".¹⁹

Case study 3: R v Leon Beyer

About 10am on Friday 26 September 2003, Leon Beyer entered Braggs School and Sports Wear shop in Latham, ACT. He approached the shop assistant, Carolyn Smith, walking around her to the end of the shop counter, at the time armed with a knife with a 20 centimetre blade.

Ms Smith stepped back against the wall, activating the duress alarm. Beyer then placed his hand into the till at which point Ms Smith pushed the till shut, jamming Beyer's fingers.

In a struggle between the shop owner, Mr Howard Smith, and Beyer, the shop owner sustained knife cut and stab wounds.

While attempting to help Mr Smith, a customer in the shop – Mr Ludwigg Bitterman - sustained a knife puncture wound. The three men continued to struggle and moved around the shop, knocking over shelves and other items. Security footage of the

¹⁸ *R v Cassidy* [2008] ACTSC 13 (25 February 2008) Higgins CJ, para 19.

¹⁹ *Ibid*, para 23.

struggle appeared to show Beyer stabbing at Mr Smith's abdomen with his left hand. Mr Smith and Beyer fell to the floor and continued to struggle.

Ms Smith moved to the area where Beyer and Martin Smith were and picked up a length of wire. She hit Beyer's hand several times, causing him to drop the knife. Mr Bitterman was handed an aluminium softball bat and struck Beyer several times to the head and body. Beyer broke free from Mr Smith and ran from the shop.

Police located Beyer nearby lying under bushes near the edge of the road. A blood-stained white bandana and latex gloves were located a few metres away. He was placed under arrest.

Mr Bittermann was rushed to The Canberra Hospital where he underwent emergency surgery, however died later that day following cardiac arrest due to massive blood loss. He had suffered one stab wound to the mid-right side chest wall. He also had lacerations to his right hand.

The shop owner, Mr Smith, was also rushed to The Canberra Hospital where he was found to be suffering from a slash to the top right side of his head as well as several other lacerations.

Prosecution

A comprehensive brief of evidence containing 130 witness statements and strong forensic evidence was compiled by police. The matter proceeded through Committal Hearing on 17 December 2003, where Beyer was committed to stand trial for the murder of Mr Bitterman. Magistrate Soames publicly commended the *Operation Barbet* team for their comprehensive brief of evidence.

The DPP revised the charges to manslaughter of Ludwig Bittermann and Intentionally Inflict Grievous Bodily Harm of Martin Smith prior to trial.

Leon Beyer entered a plea of guilty to both charges in the ACT Supreme Court in June 2004.

He was sentenced by Justice Higgins to 12 years imprisonment for Manslaughter, and 7 years imprisonment for Intentionally Inflict GBH, to be served concurrently. He will be eligible for parole in 2010.

Justice Higgins commented during sentencing that if the incident occurred in any other jurisdiction, it would constitute murder.²⁰

Case Study 4: R v Collins

Operation Coromandel was the investigation into the alleged murder of Julia Margaret Collins, who died on 30 January 2003 as a result of a single knife wound to the abdomen. There were no signs of a struggle and her son, Thomas Collins, was charged with her murder.

Police alleged that Mr Collins, who lived with his mother at the time, had stabbed her in the abdomen for no apparent reason.

²⁰ Email correspondence from Detective Sergeant Matthew Innes, dated 19 March 2009.

Mr Collins was acquitted of her murder, but found guilty of manslaughter. On 30 August 2004, he was sentenced to three years and six months imprisonment for the manslaughter of his mother. He was granted parole less than nine months later.

In sentencing him for manslaughter, Justice Weinberg made the observation that Collins had "inflicted that wound using severe force, so much so that the knife penetrated the lumbar vertebrae".

Justice Weinberg further observed that Collins appeared to have had a normal, loving relationship with his mother and there was no apparent motive for the crime.

Justice Weinberg was satisfied that, while Collins did not intend to cause his mother's death, he brought about her death by a conscious and voluntary act and at a minimum, intended to cause significant injury. Repeatedly during sentencing, Justice Weinberg comments on the seriousness of the offence. "Your conduct in deliberately stabbing your mother, with severe force, in circumstances where you must have realised that you would probably inflict serious injury, makes this too serious an offence for a non-custodial disposition".

It is ACT Policing's view that in any other State or Territory, Mr Collins' actions in stabbing his mother would have constituted murder.

Justice Weinberg highlighted the sentencing principles outlined in the Crimes Act: punishment, deterrence, rehabilitation, denunciation, and protection of the community. These same principles surely must also apply to principles behind legislation, in that the legislation should reflect the value the community places on human life. The legislation needs to be strong enough to enable the courts to punish (through adequate sentencing), deter (by ensuring the message is sent that those who intentionally inflict harm which leads to death will be adequately held accountable for their actions), rehabilitate (through accountability for actions), denunciate (by sending a clear message that the justice system does not tolerate murder in our community) and protection of the community (by ensuring the community knows that a person whose deliberate actions cause death will not be treated lightly by the courts).²¹

Human Rights Act 2004 (ACT)

I also note the concerns of the Committee in relation to a possible breach of section 18(1) of the *Human Rights Act 2004* (ACT). This section states:

- "Everyone has the right to liberty and security of person. In particular, no-one may be arbitrarily arrested or detained."

It is clear (as pointed out by the Committee) that all criminal offences curtail the freedoms of individuals and many of those offences seek to deprive individuals of their liberty.

In order to contradict section 18(1) of the *Human Rights Act 2004*, the provision would have to be so uncertain or so disproportionate or random in its effect as to be unjust. The mere fact that the legislature chooses to redefine a provision to encompass a greater range of conduct is not sufficient to invoke a human rights issue

²¹ *R v Collins* [2004] ACTSC 73 (30 August 2004) Weinberg J.

based around section 18(1) of the *Human Rights Act 2004*. If the situation was otherwise, then the criminal law would be rendered unworkable.

On the face of it, there does not appear to be anything extraordinary about the proposed amendment. The amendment reflects the terms of other long-standing provisions in Australia, and that it is quite within the realm of a just and reasonable criminal law. Further, it could also be said that the amendment cannot be interpreted to contravene section 18 of the *Human Rights Act 2004*. The *Human Rights Act 2004* does not operate to exclude the possibility of making the amendment.

A similar question to this one was asked in Canada in the case of *R v Martineau*, namely, whether a felony murder or constructive murder rule was compatible with section 7 of the *Canadian Charter of Rights and Freedoms*.²² Section 7 of the Charter prohibits the imprisonment of people other than in accordance with the 'fundamental principles of justice'.

One of the points to come from *Martineau* was the issue of the available penalty for murder. In Canada, murder is punishable by a mandatory sentence of life imprisonment. By contrast, ACT sentencing law is not as 'extreme', and provides that life imprisonment is the maximum sentence for murder, but it is not mandatory.²³

There is nothing in the judgment of *Martineau* (and a judgment made in another case known as *Vaillancourt*) "which suggests that the prejudice flowing from the stigmatisation of a conviction is, taken by itself, a sufficient basis to find that a *mens rea* of intention to cause grievous bodily harm for murder violates the fundamental principles of justice."²⁴

Would the amendment be fair?

The question asked by the Standing Committee is whether the proposed amendment departs significantly from the principle that there should be a close correlation between moral culpability and legal responsibility. That is to say, the Standing Committee asks: is it fair that a person who does an act intending (only) serious harm to another person, and the person dies, that the person be culpable for the offence of murder?

The short answer is that it is fair. I accept that the Committee might think that the current provision does not adequately reflect the moral culpability (and therefore the legal responsibility) of a person who causes a death while deliberately doing serious harm to another person. However, there is an argument that it is an appropriate law enforcement response to hold an offender accountable for the result of harm deliberately done.

In this respect, it must be remembered that the situation under discussion is where a person, in the course of deliberately trying to hurt another person to the extent of putting their life in danger or maiming them for life, the person has caused a death. It does not deal with accidental harm or intentional actions to cause a minor injury. It is often the case that where a person intends to cause serious harm, the extent of the

²² *R v Martineau* [1990] 2 S.C.R. 633, quoted by the ACT Department of Justice & Community Safety, *Memorandum of Compatibility Crimes (Murder) Amendment Bill 2008*, p 4, para 18.

²³ ACT Department of Justice & Community Safety, *Memorandum of Compatibility Crimes (Murder) Amendment Bill 2008*, p 5, para 22.

²⁴ *Ibid*, p 5, para 23.

harm caused may, by chance, be lesser or greater than that intended. A person should remain responsible for causing the death of another even if that was not intended, as the distinction between intending to cause death and serious injury is too fine.

When determining moral culpability, the position of the victim of crime and the community must be considered, along with the position of the alleged offender. Our community condemns actions which are deliberately designed to cause serious harm to others, and this is reflected in the criminal law. It may well be insufficient for a person who causes the death of another whilst they are seeking to cause serious harm to that person to say 'I am not responsible for the death because I was only trying to maim the person (or bring the person near to death).' It can be argued that the community is entitled to take the view that the person is responsible for the death of the person.

There is an argument that this approach is old fashioned because the intervention of modern medicine is such that many people do not die as the result of serious injuries (see for example the Discussion Paper of the Model Criminal Code at page 51).²⁵ While there is a sense in which this consideration is relevant, there is also a sense in which the capacity of modern medicine to save a life is not relevant to the question about the person's actions in causing the damage in the first place. In the event that the person dies, regardless of the attempts to intervene to stop that from happening, then the actions of the person who caused the harm must be examined.

In this examination, the mental element of the alleged offender must be at the heart of the issue. The Discussion Paper of the Model Criminal Code (at page 51 and 53) argues that a 'principled' approach to the question of murder means that there ought to be a distinction between an offence where the mental element is intentional killing and a mental element where there is intentional serious harm.

However, this is not the only principled approach. It might be equally as principled to hold a person to account for their conduct in circumstances where they intended to do serious harm and as a result of which the death of another person was caused.

What about the offence of manslaughter?

The Standing Committee discussed comments made by the High Court of Australia in *Wilson v R* [1992] HCA 31. The facts in that case were that the offender punched another man in the head. The man fell to the ground and the offender bashed his head twice against the kerb. Medical evidence was that the man probably died from the fall caused by the first punch to the head.

The offender was found not guilty of murder by a jury. The definition of murder relevant in the matter included a provision such that if the offender had intended to cause serious harm to the deceased, then the offence of murder would be made out.

It is important to note that the proposed amendments in the ACT would not result in this conduct amounting to murder.

²⁵ Standing Committee of Attorneys-General, *Discussion Paper Model Criminal Code Chapter 5 Fatal Offences Against The Person*, June 1998.

The law being considered by the High Court in *Wilson* closely correlates to the proposed amendment in the ACT; that is, the law included a murder provision for the situation where a person intended to do grievous bodily harm to the deceased. Like the law in *Wilson*, the amendment in the ACT would only make a person culpable of murder where the person *intended* to cause serious harm to the person.

One of the concerns of the High Court in *Wilson* was that the distinction between murder and manslaughter be sufficiently clear in order to ensure fairness. *Wilson* was determined in the context of the common law.

The ACT has enacted a *Criminal Code*, which (amongst other things) is specifically designed to remove uncertainty in the law. The *Code* goes a long way to ensuring that the distinction between murder and manslaughter is clear. Therefore, it is unlikely that a Court would have reference to the common law in order to determine the elements of either manslaughter or murder (see the majority judgments in *Charlie v R* [1999] HCA 23).

Moreover, adding a provision to the *Criminal Code* which expands the definition of murder does not make the provision less clear. It does not 'muddy the waters' between murder and manslaughter. That is, nothing said by the High Court in *Wilson* can be interpreted to be critical of a *Code* jurisdiction which has enacted such a provision.

In fact, the High Court has considered a similar provision to that being proposed in the ACT in *Charlie v R* [1999] HCA 23, which looked at the Northern Territory provision. In that case, the Court made it clear that in order to prove the offence of murder based on the intention to cause grievous bodily harm, the prosecution did not have to prove that the death was foreseeable. Whether or not the death was foreseeable was not an element of the offence, as drafted.

Having said that, the Standing Committee drew from the judgment in *Wilson* the proposition that moral culpability should be closely correlated with legal responsibility. As discussed above, the enactment of this amendment would serve that proposition, not undermine it. This is because it is right that a person be held to account for the death of a person when they intended to seriously harm the person.

The Terms of the Definition of Serious Harm

There is also some discussion about whether it is appropriate for both limbs of the definition of 'serious harm' to be covered by the offence.

The definition (as outlined above) covers two situations:

- (a) endangers, or is likely to endanger, human life; or
- (b) is, or is likely to be, significant and longstanding.

Broadly speaking, other Australian jurisdictions have murder provisions which cover both limbs of the definition. In some jurisdictions, this is called 'grievous bodily harm' and in some jurisdictions, it is called 'serious harm'.

The question is whether it is fair to include the second limb in the definition of murder. The concern is that where a person (only) intends to cause a person a significant and

longstanding harm, but death results, that the person should be guilty of some lesser offence.

For example, Queensland and New South Wales each have a murder provision which includes the situation where a person does an act with the intention to cause grievous bodily harm. Section 156 of the *Criminal Code Act* (NT) includes a murder provision where the person intends to cause serious harm and Western Australia's provision includes an act where the intention "to cause a bodily injury of such a nature as to endanger, or be likely to endanger, the life of the person killed or another person".

According to the Standing Committee, the Law Reform Commission of Western Australia recommended a reform to the law of Western Australia. That reform would peel back the Western Australian provision to cover only the first half of the definition of 'serious harm' in the ACT definition (i.e., only where the person intends to do an act which endangers life and not where the injury is permanent or longstanding).

Unfortunately, a copy of the Report of the Law Reform Commission of Western Australia still remains unsighted. However, according to the Standing Committee, the Law Reform Commission was concerned that there be the requisite moral culpability to attach to the offence. The example was given that where a person intended only to cut a finger off, but the person died, then the person could be guilty of murder. This was not considered appropriate by the Law Reform Commission. However, it is not known whether the Parliament of Western Australia will take a similar approach, particularly given that most other Australian jurisdictions are in line with the amendments suggested to the ACT provision.

It should also be noted that some other Australian jurisdictions have provisions which make the murder provision a great deal broader than is being contemplated by the ACT. For example, in Queensland, a person will be guilty of murder if they do something in the course of an unlawful purpose which is likely to endanger human life and which causes someone's death. In that case, it is not even necessary that the person intends to harm anyone by doing the act in order to be guilty of murder.

ACT Policing supports the enactment of both limbs of the definition.

In this context, it must be remembered that enactment will cover only the situation where the person intends to cause serious harm. For example, the amendment will cover this situation: where a person intends to cause blindness to a person and throws acid at their face and the person dies. This is an appropriate law enforcement response as it holds the offender accountable for the result of the harm deliberately done. It will not cover the situation where a person accidentally spills acid on another person's face and the person dies. This is also appropriate, as nothing was deliberately done to cause harm to another person.

Conclusion

To conclude, the enactment of the provision 'intending to cause serious harm to any person' to the offence of Murder is justified and warranted. Also, a further fault element should be added, namely, 'reckless about whether serious harm would result'.

This belief, particularly in relation to the fault element of 'intending to cause harm to any person' is supported by the position in the other Australian jurisdictions (apart from the Commonwealth). The common law jurisdictions of Victoria and South Australia also have the additional fault element of 'reckless about whether grievous bodily harm (serious harm) would result.

There are also four relatively recent case studies, namely, the matters of *Porritt*, *Cassidy*, *Beyer*, and *Collins*, where the ACT Supreme Court has made specific comment that the current fault elements of Murder do not allow other serious matters to fall under the ambit of Murder. An example of one of these comments is that "...some cases of manslaughter in this Territory might well be murder in New South Wales...".

In relation to the human rights aspect of the proposal, there is no contravention of the section 18 *Human Rights Act 2004* right to liberty and security of person. Of particular note is the assertion that the proposed enactment of the provision does not deal with accidental harm or intentional actions to cause a minor injury. Should you have any further questions about this matter, the contact officer is Sergeant Garry Noble who can be contacted on 6256 7649.

Yours sincerely

Leanne Close
Performing the duties of the
Chief Police Officer for the ACT