

Legislative Council—No 100

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South Australia

**Criminal Law Consolidation (Assaults on
Prescribed Emergency Workers) Amendment
Bill 2019**

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*, and to make related amendments to the *Criminal Law (Forensic Procedures) Act 2007* and the *Summary Offences Act 1953*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Criminal Law Consolidation (Assaults on Prescribed Emergency Workers) Amendment Act 2019*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

- 10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

4—Amendment of section 5AA—Aggravated offences

- (1) Section 5AA(1)(c)—after "prison officer" insert:

employee in a training centre (within the meaning of the *Youth Justice Administration Act 2016*)

- (2) Section 5AA(1)—after paragraph (c) insert:

(ca) the offender committed the offence against a community corrections officer (within the meaning of the *Correctional Services Act 1982*) or community youth justice officer (within the meaning of the *Youth Justice Administration Act 2016*) knowing the victim to be acting in the course of their official duties;

- (3) Section 5AA(1)(k)(ii)—delete subparagraph (ii)

- (4) Section 5AA(1)—after paragraph (k) insert:

(ka) in the case of an offence against the person—the victim was, at the time of the offence, engaged in a prescribed occupation or employment (whether on a paid or volunteer basis) and the offender committed the offence knowing the victim to be acting in the course of the victim's official duties;

5—Amendment of section 19—Unlawful threats

Section 19(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a basic offence—imprisonment for 5 years;
(b) for an aggravated offence (except one to which paragraph (c) applies)—imprisonment for 7 years;
(c) for an offence aggravated by the circumstances referred to in section 5AA(1)(c) or (ka)—imprisonment for 8 years.

6—Amendment of section 20—Assault

- (1) Section 20(3), penalty provision, (b)—after "paragraph (c)" insert:

or (d)

- (2) Section 20(3), penalty provision—after paragraph (c) insert:

(d) for an offence aggravated by the circumstances referred to in section 5AA(1)(c) or (ka)—imprisonment for 5 years.

- (3) Section 20(4), penalty provision, (b)—after "paragraph (c)" insert:

or (d)

- (4) Section 20(4), penalty provision—after paragraph (c) insert:

(d) for an offence aggravated by the circumstances referred to in section 5AA(1)(c) or (ka)—imprisonment for 7 years.

7—Insertion of sections 20AA and 20AB

After section 20 insert:

20AA—Offences involving use of human biological material against emergency workers

- 5 (1) A person who commits a prohibited act involving human biological material against a prescribed emergency worker acting in the course of their duties is guilty of an offence.

Maximum penalty:

- 10 (a) if harm is caused to the prescribed emergency worker—imprisonment for 7 years;
(b) in any other case—imprisonment for 5 years.

- (2) For the purposes of subsection (1), a person commits a *prohibited act involving human biological material* against another person (the *victim*) if—

- 15 (a) the person intentionally causes human biological material to come into contact with the victim; or
(b) the person threatens (by words or conduct) to cause human biological material to come into contact with the victim.

- 20 (3) In proceedings for an offence against subsection (1), it is a defence for the defendant to prove that the defendant did not know, and could not reasonably have been expected to know, that the victim was a prescribed emergency worker.

- 25 (4) For the purposes of this section, a person causes human biological material to come into contact with a victim if the person performs any act (including, without limiting the generality of this subsection, by spitting or throwing human biological material at the victim, or deliberately applying human biological material to their person knowing that the victim is likely to come into physical contact with the person in the course of their duties) intended or likely to cause human biological material to come into contact with the victim.

- 30 (5) In this section—

35 *accident or emergency department* of a hospital means the part of the hospital dedicated to the hospital's major accident and emergency functions, including those areas of the department used for administrative, waiting, reception, storage, diagnostic, treatment, consultation, triage and resuscitation functions and the access bays for ambulance and police;

harm means physical or mental harm (whether temporary or permanent);

40 *human biological material* means blood, saliva, semen, faeces, urine or vomit;

prescribed emergency worker means—

- (a) a police officer; or
- (b) a prison officer; or
- (c) a community corrections officer or community youth justice officer; or
- (d) an employee in a training centre (within the meaning of the *Youth Justice Administration Act 2016*); or
- (e) a person (whether a medical practitioner, nurse, security officer or otherwise) performing duties in the accident or emergency department of a hospital; or
- (f) a person (whether a medical practitioner, nurse, pilot or otherwise) performing duties in the course of retrieval medicine; or
- (g) a medical practitioner or other health practitioner (both within the meaning of the *Health Practitioner Regulation National Law (South Australia)*) attending an out of hours or unscheduled callout, or assessing, stabilising or treating a person at the scene of an accident or other emergency, in a rural area; or
- (h) a member of the SA Ambulance Service Inc; or
- (i) a member of SAMFS, SACFS or SASES; or
- (j) a law enforcement officer; or
- (k) any other person engaged in an occupation or employment prescribed by the regulations for the purposes of section 5AA(1)(ka); or
- (l) any other person prescribed by the regulations for the purposes of this paragraph,

whether acting in a paid or voluntary capacity, but does not include a person, or person of a class, declared by the regulations to be excluded from the ambit of this definition;

retrieval medicine means the assessment, stabilisation and transportation to hospital of patients with severe injury or critical illness (other than by a member of SA Ambulance Service Inc);

rural area means an area outside of Metropolitan Adelaide (within the meaning of the *Development Act 1993*).

20AB—Further offence involving use of human biological material

- (1) A person who commits a prohibited act involving human biological material against another person is guilty of an offence.

Maximum penalty:

- (a) if harm is caused to the victim—imprisonment for 3 years;

(b) in any other case—imprisonment for 2 years.

(2) For the purposes of subsection (1), a person commits a *prohibited act involving human biological material* against another person (the *victim*) if—

(a) the person intentionally causes human biological material to come into contact with the victim; or

(b) the person threatens (by words or conduct) to cause human biological material to come into contact with the victim.

(3) For the purposes of this section, a person causes human biological material to come into contact with a victim if the person performs any act (including, without limiting the generality of this subsection, by spitting or throwing human biological material at the victim) intended or likely to cause human biological material to come into contact with the victim.

(4) In this section—

harm means physical or mental harm (whether temporary or permanent);

human biological material means blood, saliva, semen, faeces, urine or vomit.

20AC—Alternative verdicts

If—

(a) a jury is not satisfied beyond reasonable doubt that a charge of an offence against section 20AA or 20AB has been established; but

(b) the Judge has instructed the jury that it is open to the jury on the evidence to find the defendant guilty of a specified offence against this Act; and

(c) the jury is satisfied beyond reasonable doubt that the specified offence against this Act has been established,

the jury may return a verdict that the defendant is not guilty of the offence charged but is guilty of the specified offence against this Act.

8—Amendment of section 24—Causing harm

Section 24(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

(a) for a basic offence—imprisonment for 5 years;

(b) for an aggravated offence (except one to which paragraph (c) applies)—imprisonment for 7 years;

(c) for an offence aggravated by the circumstances referred to in section 5AA(1)(c) or (ka)—imprisonment for 8 years.

9—Amendment of section 29—Acts endangering life or creating risk of serious harm

Section 29(3), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- 5
- (a) for a basic offence—imprisonment for 5 years;
 - (b) for an aggravated offence (except one to which paragraph (c) applies)—imprisonment for 7 years;
 - (c) for an offence aggravated by the circumstances referred to in section 5AA(1)(c) or (ka)—imprisonment for 8 years.

10 Schedule 1—Related Amendments

Part 1—Amendment of *Criminal Law (Forensic Procedures) Act 2007*

1—Amendment of section 20A—Interpretation

Section 20A, definition of *prescribed serious offence*—after paragraph (a) insert:

- 15
- (ab) an offence against section 20AA of the *Criminal Law Consolidation Act 1935*;

Part 2—Related amendments of *Sentencing Act 2017*

2—Amendment of section 4—Secondary sentencing purposes

Section 4(1)—after paragraph (d) insert:

- 20
- (da) to deter the defendant and others in the community from harming or assaulting police and other law enforcement officers, emergency services workers, and health workers providing or supporting emergency care, (including prescribed emergency workers within the meaning of section 20AA of the *Criminal Law Consolidation Act 1935*) who are acting in the course of their official duties;
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Part 3—Amendment of *Summary Offences Act 1953*

3—Amendment of section 6—Hindering police

Section 6(1)—delete subsection (1)