



CDPP

Australia's Federal Prosecution Service



Submission by the Commonwealth Director of Public Prosecutions

Senate Legal and Constitutional Affairs Legislation
Committee Inquiry into the Criminal Code Amendment
(Protecting Commonwealth Frontline Workers) Bill 2024

June 2024

Introduction

1. The Office of the Director of Public Prosecutions (Cth) (**CDPP**) welcomes the invitation to provide a submission to assist the inquiry into the Criminal Code Amendment (Protecting Commonwealth Frontline Workers) Bill 2024 (**Bill**).
2. This submission draws on the CDPP's experience in prosecuting offences under Part 7.8 of the *Criminal Code* (Cth) (**Criminal Code**). Part 7.8 contains offences relating to causing harm to Commonwealth public officials.
3. This submission is focussed on the Bill's insertion into the Criminal Code of *Commonwealth frontline worker* as a category of *Commonwealth public official*. Offences committed against these individuals will attract the same aggravated penalty attached to offences committed against *Commonwealth judicial officers* and *Commonwealth law enforcement officers*, thus increasing protection for *Commonwealth frontline workers* through the deterrent of increased penalties.

Legislative Background

4. Part 7.8 of the Criminal Code has extant offences of causing harm or threatening to cause harm to a *Commonwealth public official*. The insertion of the term *Commonwealth frontline worker* in that Part will introduce it as a distinct category of *Commonwealth public official*.
5. A *Commonwealth frontline worker* is determined by the nature of an individual's duties. If a *Commonwealth public official's* primary role requires them to deal directly with the public (whether in person or not) they will be included in this new category.
6. The Explanatory Memorandum identifies the following non-exhaustive list of examples of a *Commonwealth frontline worker*:
 - 6.1. service centre staff and team leaders (including face-to-face and virtual service centres);
 - 6.2. security guards;
 - 6.3. call centre operators;
 - 6.4. inspectors and compliance officers, such as officers exercising monitoring or investigation powers under the *Regulatory Powers (Standard Provisions) Act 2015*;
 - 6.5. interpreters;
 - 6.6. public-facing staff in electorate offices; and
 - 6.7. service staff at relief and emergency centres, such as during a natural disaster.

Division 146 of the Criminal Code

7. The Bill expands s 146.1 of the Criminal Code to create three new subsections. The existing provision is to be enumerated as s 146.1(1) in the updated Criminal Code. Under s 146.1(1), ***Commonwealth frontline worker*** is added as a definition relevant to Part 7.8 of the Criminal Code.

8. Under the new s 146.1(2) the term is expressly defined:
 - (2) A **Commonwealth frontline worker** is a person:
 - (a) who is a Commonwealth public official; and
 - (b) who performs work requiring the person to deal directly (whether or not in person) with the public, or a class of the public, as a primary function of their role; and
 - (c) who is not a Commonwealth judicial officer or a Commonwealth law enforcement officer.
9. Under the new s 146.1(3) regulations may prescribe one or more categories of persons who fall within the second limb of the definition of *Commonwealth frontline worker* in s 146.1(2)(b).
10. Under the first limb of the definition in s 146.1(2)(a), a *Commonwealth frontline worker* is a class of *Commonwealth public official*.
11. The foundational definition of **Commonwealth public official**¹ contains a list of individuals who fall within the definition. A number of those individuals might also fall within the examples of *Commonwealth frontline worker* anticipated by the Explanatory Memorandum, including:
 - 11.1. an APS employee (paragraph (j));
 - 11.2. an individual employed by the Commonwealth otherwise than under the *Public Service Act 1999* (paragraph (k));
 - 11.3. an officer or employee of a Commonwealth authority (paragraph (o));
 - 11.4. an individual who is a contracted service provider for a Commonwealth contract (paragraph (p)); and
 - 11.5. an individual who is an officer or employee of a contracted service provider for a Commonwealth contract and who provides services for the purposes (whether direct or indirect) of the Commonwealth contract (paragraph (q)).
12. The second limb of the definition, s 146.1(2)(b), refines the qualification under s 146.1(2)(a) by requiring that a *Commonwealth frontline worker* be an individual who “performs work requiring the person to deal directly (whether or not in person) with the public, or a class of the public, as a primary function of their role”.
13. Although the scope of the *Commonwealth frontline worker* is potentially wider than the categories listed in Explanatory Memorandum, the qualification in the second limb of the definition limits the category to those who primarily deal directly with the public and are proximate enough to the public to potentially suffer personal / direct harm.
14. It is clear from the Explanatory Memorandum that the measure is intended to apply to harm to a *Commonwealth frontline worker* even in situations where they are physically removed from the public, such as call centres or virtual service centres. This is currently recognised within the Criminal Code in Division 474 Telecommunications offences. Accordingly, the inclusion of the words “*whether or not in person*” in s 146.1(2)(b) is appropriate and consistent.

¹ See *Criminal Code (Cth) Dictionary* (definition of “*Commonwealth public official*”).

15. The third limb of the definition in s 146.1(2)(c) expressly excludes *Commonwealth judicial officers*² or *Commonwealth law enforcement officers*.³ Those categories, which include Australian Border Force officers and Australian Federal Police officers, are already afforded the protection of the higher maximum penalties under existing ss 147.1(f) and 147.2(e).

Division 147 of the Criminal Code

16. The Bill does not amend s 147.2(3), entitled Threatening to cause serious harm to a former Governor-General, former Minister or former Parliamentary Secretary. The maximum penalty remains 7 years' imprisonment.
17. The mode of trial available for an offence involving a *Commonwealth frontline worker* under the amendments to the Criminal Code refers to s 147.1 (1B). That provision allows for a court of summary jurisdiction to deal with such an offence summarily with the consent of the defendant and prosecution, if the court is satisfied it is appropriate to do so. The applicable jurisdictional maximum penalty is 2 years' imprisonment and / or a fine not exceeding 120 penalty units.⁴

Conclusions

18. From the prosecution's perspective, the CDPP does not foresee any unintended circumstances arising from the measure to insert the definition of *Commonwealth frontline worker* into Division 146 and to amend the penalty provisions in Division 147 of the Criminal Code.

² See *Criminal Code* (Cth) Dictionary (definition of "*Commonwealth judicial officer*").

³ See *Criminal Code* (Cth) s 146.1 (definition of "*Commonwealth law enforcement officer*").

⁴ *Criminal Code* (Cth) s 147.1 (1C).