

Joint Committee on Law Enforcement
**CRIMINAL CODE AMENDMENT (SHARING OF ABHORRENT VIOLENT
MATERIAL) ACT 2019**

Attorney-General's Department

Hearing date: 17 November 2021

Hansard page: 28-29

Question type: Spoken

Mr Pat Conaghan MP asked the following question:

Mr CONAGHAN: When A-G's developed this piece of legislation, the difference between a murder and a manslaughter was a good lawyer and a defence of intoxication, provocation, excessive self-defence or mental impairment. It's as simple as that. What was the reasoning behind excluding manslaughter from this piece of legislation?

Mr Walter: We gave careful thought to the breadth of offences that should be included in the legislation. The government ultimately decided it wanted to focus in on intentional acts which were at the more extreme end of behaviour. We didn't want to capture too wide a range of behaviour but wanted to focus attention in the legislation on those most egregious acts. That's in recognition that these are very significant penalties and that the further you get away from some of those intentional acts the harder it can be to distinguish between something that was manslaughter or attempted murder or whatever it was. So it was trying to give some clarity for the services around the offences that they would have to be looking at.

Mr CONAGHAN: I note that attempting to murder a person falls under the definition. Thank you for the explanation. I will then move over to Home Affairs. Looking back, in my previous life I was involved in a number of murder cases, some of which turned into manslaughters. So, if a person murders somebody and that is filmed and that person gets a deal on manslaughter for excessive self-defence, that is permissible content to go on a platform. Is Home Affairs looking at changing this piece of legislation to include that? I ask that because, as I said, the difference between a murder and a manslaughter is a good lawyer and a good story.

[...]

Mr Walter: I'm sorry to interrupt. Very quickly, I was asked some questions about manslaughter. I'd forgotten that there was a modified definition in the act. What might be easiest, in the interest of time, is that I take those on notice and provide you with a written response on how the act applies to manslaughter.

CHAIR: That'd be great, because I think there's a lot of interest in it amongst the committee members. Everyone has foreshadowed the eSafety Commissioner's evidence, so we'd better bring them on. Thank you very much to our representatives from the AFP, the A-G's department and Home Affairs for your evidence today. We'll put further questions in writing.

The response to the Member's question is as follows:

Subsection 474.32 of the *Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019* (the AVM Act) provides that a person engages in abhorrent violent conduct if the person does any of the following (emphasis added):

- engages in a terrorist act (involving serious physical harm or death, and otherwise within the meaning of section 100.1 of the Criminal Code);
- *murders another person;*
- *attempts to murder another person;*
- tortures another person;
- rapes another person; or
- kidnaps another person.

The AVM Act provides a specific definition of murder for the purposes of abhorrent violent material. Subsection 474.32(2) states that, for the purposes of section 474.32, a person murders another person if their conduct causes the death of the other person and that conduct constitutes an offence. This could include manslaughter.

The definition of abhorrent violent material is limited to very specific categories of the most egregious, violent audio, visual or audio-visual material produced by a perpetrator or their accomplice. Government wanted to focus on the most egregious unlawful conduct. The intention was to provide clarity for services that must make timely decisions around whether conduct falls within or outside of the AVM Act.