

## CLAUSE NOTES

### *Sentencing Amendment (Presumptive Sentencing for Assaults on Frontline Workers) Bill 2024*

- Clause 1      Short title
- The short title will be the *Sentencing Amendment (Presumptive Sentencing for Assaults on Frontline Workers) Act 2024*.
- Clause 2      Commencement
- The Amendment Act will commence on the day on which it receives Royal Assent.
- Clause 3      Principal Act
- Provides that the *Sentencing Act 1997* is the Principal Act referred to in the amendments.
- Clause 4      Section 16B inserted
- Inserts a new section into the Act after section 16A.
- New section 16B 'Presumption of mandatory imprisonment for offence causing serious bodily harm to frontline worker'.
- This new section provides a number of definitions that are relevant to the provision. Definitions are provided for: child safety officer, correctional services officer, emergency service officer, frontline worker, health and safety officer, health worker, hospital, passenger transport service driver, premises, private premises, public officer, public place, retail or hospitality worker, security officer, shop, transport worker. These definitions are relevant to determining the workers that are covered by the new presumption.
- New subsection 16B(2) clarifies that for the purposes of this section, it does not matter whether a health worker, retail and hospitality worker or transport worker is an agent, bailee or employee in respect of that role.
- New subsection 16B(3) provides the presumption that if a court convicts someone of an offence, committed in relation to a frontline worker while the frontline worker was working as a frontline worker and the frontline worker suffered serious bodily harm, the person is to serve a minimum of 6 months imprisonment, unless subsection 5 applies.
- This presumption applies despite the operation of section 7 of the Principal Act, which provides for sentencing orders.

New subsection 16B(4) provides that an offence is to be taken to have been committed in relation to a frontline worker only if the person who committed the offence knew, or ought reasonably be expected to have known, that bodily harm to a frontline worker may be caused by, or arise, from, the offence. This adds an objective knowledge element test to when the presumption applies.

New subsection 16B(5) provides that in the listed circumstances, the court must not impose a term of imprisonment in accordance with the presumption. This applies where the offender is under 18 years of age when the offence was committed, where, in certain circumstances, the offender has impaired mental functioning that is casually linked to the offence or the sentence would be unjust in the circumstances. This provision provides exemptions to when the presumption applies and confirms judicial discretion in sentencing.

New subsection 16B(6) provides that when the presumption applies and the offence does not provide for imprisonment as a punishment, or imposes a maximum penalty of imprisonment for less than 6 months, the mandated term of imprisonment in respect of the offence is to be exactly 6 months. This applies the presumption to both such groups of offences, including those which would only carry a fine as a maximum penalty if the presumption did not apply. This acknowledges that the presumption only applies where the offence caused serious bodily harm, and the penalty ought to reflect the seriousness of the offence.

New subsection 16B(7) clarifies that the section does not impact the application of section 11 of the Primary Act in respect of sentences imposed as required by new subsection (3). Section 11 provides that a court may impose a single, general or mixed sentence.

New subsection 16B(8) clarifies that new subsection (3) does not engage section 10(2)(b)(v) of the Primary Act.

If section 10(2)(b)(v) did apply, it would operate to convert a finding of guilt into a conviction to which the mandatory minimum of 6 months' imprisonment would always apply by virtue of statutory automation.

New subsection 16B(8) also clarifies that new subsection 16B does not prevent a court from making any order in addition to the minimum imprisonment period.

Clause 5            Review provision and Repeal of Act

Inserts a new section 104AD into the Principal Act requiring an independent review of the new provisions after the fifth anniversary of their commencement. It requires a written report within 12 months of commencement of the review and tabling of the report in both Houses of Parliament within 10 sitting days after it is provided to the Minister.

The *Sentencing Amendment (Presumptive Sentencing for Assaults on Frontline Workers) Act 2024* will be automatically repealed after the first anniversary of this Act commencing.