

1997

**THE LEGISLATIVE ASSEMBLY OF
THE AUSTRALIAN CAPITAL TERRITORY**

CRIMES (AMENDMENT) BILL (NO.6) 1997

EXPLANATORY MEMORANDUM

Circulated by the authority of the Attorney General

Gary Humphries MLA

Crimes (Amendment) Bill (No.6) 1997

Explanatory Memorandum

Outline

The Crimes (Amendment) Bill (No.6) 1997 (the Bill) amends the *Crimes Act 1900* (the Act) to prevent a person from relying upon evidence of intoxication, where the intoxication is self-induced, to establish that the person did not have the intent to commit an act or omission which constitutes an element of a criminal offence or that the person's act was not voluntary.

The legislation is intended to implement provisions of the Model Criminal Code (the Code), being developed for the Standing Committee of Attorneys General. The first chapter of the Code has been enacted by the Commonwealth in the *Criminal Code Act 1995* (Cth) (the Commonwealth Act). The provisions of that Act are expressed not to commence until 5 years after the Act receives Royal Assent (ie., in the year 2000).

The Bill implements the provisions of subsection 4.2(6) of the Commonwealth Act in relation to self-induced intoxication and voluntariness and the provisions of subsections 8.2(1) and (2) in relation to self-induced intoxication and intent.

Subsection 4.2(6) provides:

- (6) *Evidence of self-induced intoxication cannot be considered in determining whether conduct is voluntary.*

Subsections 8 2(1) and (2) provide:

- (1) *Evidence of self-induced intoxication cannot be considered in determining whether a fault element of basic intent existed*
- (2) *A fault element of basic intent is a fault element of intention for a physical element that consists only of conduct.*

*Note A fault element of intention with respect to a circumstance
or with respect to a result is not a fault element of basic intent*

Although the Bill avoids the use of a number of defined terms and concepts used in the Code and the Commonwealth Act, such as “fault element of an offence”, “physical element of an offence” and “offences involving basic intent”, it implements the effect of the relevant Commonwealth Act provisions.

Financial Implications

There are no revenue or expenditure implications arising from the Bill.

Detail of clauses

Clauses 1, 2 and 3 are formal provisions dealing with the short title of the Bill, once enacted, the commencement of its provisions and references in the Bill to the term “Principal Act”.

Clause 4 inserts a ***new Part XIB - Intoxication*** into the Act. The new part consists of two new provisions.

New section 428XA is an interpretation provision supporting ***new section 428XB***. It should be noted that proposed ***subsection 428XA(2)*** differs from

the provisions of the Commonwealth Act explaining what is meant by “self-induced” intoxication (cf. 4.2(7) *Criminal Code Act* (Cth)). It includes proposed **paragraphs 428XA(2)(c) and (d)** which are to the effect that where intoxication occurs resulting from the proper administration of a prescription or non-prescription drug, even though the person took the drug voluntarily, the intoxication is not to be taken to be self-induced. These provisions are intended to deal with circumstances in which a person, in spite of taking a drug in accordance with a medical practitioner’s directions or the manufacturer’s instructions, has an adverse or abnormal reaction, resulting in intoxication.

The provisions are not intended to apply where a person ingests drugs other than in accordance with medical directions or for legitimate therapeutic purposes.

New section 428XB provides that evidence of intoxication cannot be considered in determining whether an act or omission which is an element of an offence is intentional or voluntary, where the intoxication was self-induced.

This provision does not prevent consideration in relation to crimes of “specific intent”, that is crimes where the intention to cause a specific result is an element, of evidence of self-induced intoxication to show that the defendant lacked the intent to cause the specific result.

Nor does it prevent a defendant using evidence of self-induced intoxication to deny that he or she had intent or knowledge with respect to a circumstance constituting an element of an offence.

The provision does not change the law with respect to consideration of intoxication, where intoxication is not self-induced.