

2008

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

CRIMES (MURDER) AMENDMENT BILL 2008

EXPLANATORY STATEMENT

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Crimes (Murder) Amendment Bill 2008

Outline

In all other Australian jurisdictions, the fault element for murder includes an intention to inflict a form of serious bodily harm. The Bill introduces the same concept to the *Crimes Act 1900*, section 12(1) so that murder in the Australian Capital Territory can be established when a person who causes the death of another does so with the intention to inflict serious harm on that person.

The definition of serious harm is taken from the *Criminal Code 2002*, in accordance with the government's commitment to continue the codification of the criminal laws of the ACT.

The definition of serious harm includes that the harm endangers, or is likely to endanger, human life, or is harm that is, or is likely to be, significant and longstanding. The definition provides certainty about the harm which must be intended in order for the offence to be made out, rather than relying on the common law to define what is 'grievous bodily harm'. The use of the common law definition of grievous bodily harm as "really serious bodily injury" could leave a level of uncertainty about the level of harm intended.

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Detail

Part 1 — Preliminary

Clause 1 — Name of Act

This is a technical clause that names the short title of the Act. The name of the Act would be the *Crimes (Murder) Amendment Act 2008*.

Clause 2— Commencement

This clause enables the Act to commence on a day fixed by the Minister by written notice.

Clause 3— Legislation amended – sch 1

This is a technical clause that notes that this Act amends the *Crimes Act 1900*.

Clause 4 – Murder New section 12(1)(c)

This clause introduces a third fault element to the offence of murder so that it includes an intention to inflict serious harm.

Clause 5 – New section 12(3)

This clause incorporates the definition of 'serious harm' from the Criminal Code 2002 dictionary into the section. It is intended that this definition provide certainty about the type of harm that is intended to be inflicted. Although the definition of serious harm includes that the harm endangers life, or is likely to endanger life, it is not to be read that the intent in section 12(1)(c) is an intent to endanger life. The requisite intent is the intent to inflict serious harm.