

**1998**

**LEGISLATIVE ASSEMBLY  
FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**CRIMES (AMENDMENT) BILL (NO. 2) 1998**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of**

**Gary Humphries MLA**

**Attorney-General**

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### **OUTLINE**

This Bill amends the sentencing principles at Part XII of the *Crimes Act 1900*.

### **FINANCIAL IMPACT**

The Bill may have a small financial impact. It may, on occasion, result in the imposition of a sentence of imprisonment when none would otherwise have been imposed, or in a longer sentence.

### **NOTES ON CLAUSES**

#### **Clauses 1, 2 and 3**

These clauses are formal provisions that specify the short title of the Bill; provide for commencement; and identify the Act being amended (the Principal Act) as the *Crimes Act 1900*.

#### **Clause 4: Substitution – purposes for which sentence imposed**

This clause repeals existing section 429 of the Principal Act and replaces it with a new section setting out the purposes for which a sentence may be imposed. These purposes are punishment, deterrence, rehabilitation, denunciation, community protection, or a combination of two or more of these factors. The intention is to reinstate the relevant common law as it was prior to the enactment of the *Crimes (Amendment) Act (No. 2) 1993* (Act No. 73 of 1993) which inserted the existing form of section 429.

The repealed provisions are:

- (i) Subsection 429(1), which provides that the sentence imposed by a court shall be just and appropriate. The substance of this is continued in new paragraph 429(a).
- (ii) Subsection 429(2), which provides that, without limiting the generality of subsection (1), the sentence shall, as far as practicable, be such as to facilitate the offender's rehabilitation into society and to encourage the offender to make appropriate reparation to any victim of the offence. Rehabilitation is included as one of the purposes of imposing a sentence in new paragraph 429(c). Reparation is provided for in existing paragraph 429A(1)(f) and in section 437.

**Clause 5: Matters to which court to have regard**

This clause omits from subsection 429A(1) of the Principal Act existing paragraphs (i), (j) and (l). The substance of these provisions is incorporated in new paragraphs (a), (b) and (c) of section 429.

**Clause 6: Matters not to be taken into account**

This clause repeals paragraph 429B(e) of the Principal Act. That paragraph prevents a court, when it determines a sentence to be imposed on a person, from increasing the severity of the sentence that would otherwise be imposed because of the prevalence of the offence.