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

CRIMES (AMENDMENT) BILL (NO.4) 1998

EXPLANATORY MEMORANDUM

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Explanatory Memorandum

Outline

The Crimes (Amendment) Bill (No 4) 1998 (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 second chapter of the Code, dealing with general principles of criminal responsibility has been enacted by the Commonwealth in the *Criminal Code Act 1995* (Cth) (the Commonwealth Act)

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 of the Code 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 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, such as 'fault element of an offence', 'physical element of an offence' and 'offences involving basic intent', it implements the effect of the relevant Code provisions

The approach taken in the Code is to identify the elements of an offence - the physical elements and the fault element (if any) which attaches to each physical element. The code identifies three physical elements of which an offence may be constituted - conduct, circumstances in which conduct occurs and the result or consequences of conduct. An offence may consist of conduct alone, as in the case of assault. An offence, such as sexual assault, may consist of conduct (sexual intercourse) and the circumstances in which the conduct occurs (in the absence of consent by the victim). An offence such as murder may consist of conduct (the act causing death) and the result of the conduct.

The Bill will prevent consideration of evidence of self-induced intoxication to show a lack of intent or voluntariness as to conduct only. So, taking the murder example, evidence of self-induced intoxication could not be used to show a lack of intent to commit the conduct (eg stab or shoot the victim), but evidence of self-induced intoxication could be used to show that the defendant lacked the

requisite intention as to the results of the conduct (ie lacked the intention to cause death or grievous bodily harm)

Financial Implications

There are no revenue or expenditure implications arising from the Bill

Detail of clauses

Clause 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 three sections

New section 428XA is an application provision to the effect that the provisions of the Bill will only apply to offences committed after the commencement of the provisions of the Bill.

New section 428XB is an interpretation provision supporting *new section 428XC*. It should be noted that proposed *subsection 428XB(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 428XB(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 428XC 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 concerned 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 show that he or she lacked 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 evidence of a defendant's intoxication, in circumstances where the intoxication is not self-induced