

1996

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

CRIMES (AMENDMENT) BILL (NO. 2) 1996

EXPLANATORY MEMORANDUM

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Attorney-General

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Outline

The purpose of the Bill is to repeal and substitute section 349ZX of the *Crimes Act 1900* so that it specifies the requirements for the institution and conduct of an examination conducted by a medical practitioner. It provides that an examination by a medical practitioner may include the taking of samples of blood, saliva or hair, if necessary, without the consent of the person charged.

Notes on clauses

Clauses 1, 2 and 3 are formal requirements. They refer to the short title of the Bill, commencement and definition of the Principal Act.

Clause 4 - Substitution

This clause repeals s349ZX and substitutes it with another section.

Proposed section 349ZX - Examination

This proposed section stipulates the statutory requirements for the institution and conduct of an 'examination'.

Subsection 349ZX(1) provides the definition of 'examination'.

Subsection 349ZX(2) specifies the circumstances in which an examination may take place.

Subsection 349ZX(3) provides the power for a Magistrate to issue an order for an examination to take place.

Subsection 349ZX(4) stipulates that a copy of the Magistrate's order under the previous section must be given to the person charged.

Subsection 349ZX(5) empowers a police officer to request a medical practitioner to conduct the examination.

Subsection 349ZX(6) allows a medical practitioner to be assisted by other persons.

Subsections 349ZX(7) and (8) stipulate the requirements for conducting the examination.

Subsection 349ZX(9) allows for the use of reasonable force in the course of the examination.

Subsection 349ZX(10) provides for the destruction of samples taken during the course of the examination.

Subsection 349ZX(11) has been retained from the repealed section. It protects a medical practitioner, an assistant of the medical practitioner, and a police officer from civil or criminal liability when carrying out an order of the Magistrate.

Subsection 349ZX(12) preserves the former subsection 349ZX (4) which stipulated that material may only be taken from the body of a person under 18 in accordance with section 36 of the *Children's Services Act 1986*.

Clause 5 - Application

This clause provides that the amendments in the Act will apply to a person who is in lawful custody on a charge of having committed an offence before the commencement of this amending Act.