

**1993**

**AUSTRALIAN CAPITAL TERRITORY  
LEGISLATIVE ASSEMBLY**

**CRIMES (AMENDMENT) BILL (NO. 2) 1993**

**SUPPLEMENTARY EXPLANATORY MEMORANDUM  
Amendments to be moved on behalf of the Government**

**Circulated by the authority of  
Mr Terence Connolly MLA  
Attorney General**

## **CRIMES (AMENDMENT) BILL (NO. 2) 1993**

### **AMENDMENTS TO BE MOVED ON BEHALF OF THE GOVERNMENT**

The purpose of the Crimes (Amendment) Bill 1993 (the Bill) is to provide a legislative framework for the sentencing of criminal offenders. The fundamental principle to be applied is that the punishment imposed must be just and appropriate in the circumstances. The Bill also prescribes the preparation, content and use of pre-sentence reports which are prepared at the Court's request by Corrective Services. Another purpose of the Bill is to prevent the imposition of community service as part of a condition of recognizance on the grounds that it is important to preserve Community Service Orders as a separate sanction.

As a result of the extensive consultation which has taken place about the provisions of the Bill, the Government proposes that the following amendments be made to it.

#### **Government amendment number 1**

Subsection 92EA(8) of the *Crimes Act 1900* (the Act), which relates to the sentencing of an adult convicted of the offence of maintaining a sexual relationship with a child, contains a reference to subsection 443(3) of the Act. However, the Bill provides for the repeal and substitution of the whole of section 443 of the Act. The Government proposes that a new clause be inserted into the Bill which will provide that the reference in subsection 92EA(8) of the Act to subsection 443(3) of the Act be changed so that it correctly refers to subsection 443(1) of the Act.

#### **Government amendments numbers 2, 3 and 4**

As noted above, the Bill provides for the repeal and substitution of the whole of section 443 of the Act. Under proposed substituted section 443 there will be a clear presumption of concurrent sentencing, unless the Court otherwise orders or in specified circumstances. Under the existing section 443 there is no such presumption. During the extensive consultation which took place about the provisions of the Bill it was submitted that proposed substituted section 443 is difficult to interpret when sentences are imposed on different days. It was submitted that when sentences are imposed on different days it is not clear under proposed substituted section 443 whether the later 'concurrent' sentence is to commence on the day that it is imposed or on the day that the former 'concurrent' sentence was imposed. In these circumstances the Government proposes that amendments be made to proposed substituted section 443 to clarify that a 'later' concurrent sentence is to be served at the same time as that part of the 'former' concurrent sentence which is uncompleted when the 'later' concurrent sentence is imposed.

#### **Government amendments numbers 5 and 6**

It has been submitted that proposed subsection 455(1), which will list matters which should be addressed in pre-sentence reports if relevant and practicable, should also refer to the offender's cultural background and the opinion of the officer preparing the report about the offender's attitude towards the offence and the offender's propensity to commit further offences. It has also been submitted that this subsection should clearly provide that an officer preparing a pre-sentence report can include in the report information on any other matter which he or she considers to be relevant. The Government proposes that proposed subsection 455(1) be amended so that it specifically refers to each of these matters.

#### **Financial considerations**

Nil.