

1992

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**CRIMES (AMENDMENT) BILL (NO 4) 1992**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of**

**Terry Connolly MLA  
ATTORNEY GENERAL**

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## CRIMES (AMENDMENT) BILL (NO 4) 1992

### OUTLINE

The *Crimes Act 1900* (the Principal Act) provides for criminal law in the Territory. The Crimes (Amendment) Bill (No 4) 1992 amends the Principal Act to provide for a requirement for the use of an interpreter in the investigation of summary offences in the Territory.

### DETAILS

Clause 2 provides that commencement is to be on the notification of the Act in the *Gazette*.

Clause 4 repeals section 354 of the Principal Act and substitutes a new section 354. New section 354 will apply certain of the provisions of Part IC of the *Crimes Act 1914* (Commonwealth) (the Commonwealth Act), inserted into the Commonwealth Act by the *Crimes (Investigation of Commonwealth Offences) Amendment Act 1991* (Commonwealth), which relate to the requirement of the provision of an interpreter in the course of the questioning of persons in the course of the investigation of offences.

Part IC of the Commonwealth Act applies to the investigation of offences in the Territory punishable by imprisonment for a period exceeding 12 months (indictable offences) and thus provides for a requirement to provide an interpreter in the investigation of indictable offences in the Territory. However, Part IC does not apply to offences in the Territory punishable on summary conviction. The intention of the Bill is to apply the provisions of Part IC of the Commonwealth Act which relate to the provision of the assistance of an interpreter to the investigation of summary offences in the Territory.

Section 23N of the Commonwealth Act requires an investigating official, including a member of the Australian Federal Police, who believes on reasonable grounds that a person under arrest in respect of an offence is unable to communicate orally in English with reasonable fluency, whether by reason of an inadequate knowledge of English or a physical disability, to defer questioning or investigation until he or she has arranged for, and awaited the arrival of, an appropriate interpreter.

The reference to "a person under arrest" includes a person who has been lawfully arrested, and, by virtue of the application of subsection 23B(1) of the Commonwealth Act, includes a reference to a person who is in the company of an investigating official for the purposes of being questioned if the official believes that there is

sufficient evidence to establish that the person has committed an offence; to a person whom the official would not allow to leave if the person wished to do so; or a person to whom the official has given reason to believe, on reasonable grounds that the person would not be allowed to leave if he or she wished to do so.

New subsection 354(2) provides for the application of sections 23U and 23V (other than subsection 23V(3)) of the Commonwealth Act to the investigation of summary offences where an interpreter is present during the questioning. One of the consequences of the application of section 23V will be that, where a person who is being interviewed as a suspect with the assistance of an interpreter makes a confession or admission to an investigating official, the confession or admission is inadmissible as evidence against the person unless the confession or admission was tape recorded or, where it was impracticable to tape record the questioning, a written record was made and read to the person.

New subsection 354(4) provides that the applied provisions do not apply to an offence under the *Motor Traffic (Alcohol and Drugs) Act 1977*, as such offences are of strict liability based on the evidence of a scientific instrument, or to an offence under the *Motor Traffic Act 1936* for which a Traffic Infringement Notice (TIN) is to be issued unless the police officer decides to proceed otherwise than by way of the issue of a TIN.

New subsection 354(5) provides for definitions of terms.