

1995

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

*Crimes (Amendment) Bill (No. 3) 1995*

**EXPLANATORY MEMORANDUM**

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## CRIMES (AMENDMENT) BILL (No. 3) 1995

### OUTLINE

#### General outline

The purpose of the Bill is to amend the *Crimes Act 1900* so as make female genital mutilation a specific criminal offence.

Female genital mutilation is in contravention of various international covenants to which Australia is a party. These include the *Convention on the Rights of the Child* and the *Convention on the Elimination of Discrimination Against Women*, as well as the *Declaration on Violence Against Women*. In November 1994 at the meeting of the Standing Committee of Attorneys-General, all States and Territories with the exception of Western Australia supported enactment of State and Territory legislation to make the practice a specific criminal offence.

Female genital mutilation covers a range of ritual practices performed on the genitalia of women and girls. They range in severity from nicking of the clitoris to the removal of some or all of the external female genitalia. The practice is a longstanding cultural one rather than being associated with any particular religion.

Female genital mutilation is extremely hazardous. Most operations take place when a child is very young. Anaesthetics are rarely used and instruments such as unsterilised knives or razors may be employed. Short term risks of these practices include haemorrhaging, infection and more severe mutilation than was intended. Long term complications include chronic recurrent infection, pain, sterility, childbirth complications, painful intercourse and the buildup of menstrual fluid in the abdomen, as well as emotional and psychological distress and pain.

While it is almost without doubt that existing criminal laws concerning assault could be used to prosecute those who perform this procedure, this Bill creates a specific offence of female genital mutilation and clearly establishes that consent, whether by the person involved or the parents or guardians of a child, is no defence. The Bill also aims to deter people from arranging to take children outside the jurisdiction to have the procedure performed.

This Bill draws heavily on model provisions developed by the Model Criminal Code Officers Committee. This Committee is developing model criminal laws and comprises representatives from all Australian jurisdictions.

### **Financial impact**

Education is an essential part of the strategy to abolish this practice. There will be no cost to the Territory as the Commonwealth's National Women's Health Program has allocated funds to each State and Territory to conduct a public education/awareness campaign. \$37,000 in the first year and \$30,000 per year for the following four years has been allocated to the ACT for this purpose.

## NOTES ON CLAUSES

### **Clause 1 - Short title**

This clause is a formal clause to provide for the short title of the Act.

### **Clause 2 - Commencement**

This clause provides for commencement of the substantive provisions of the Act by notification in the Gazette. It is envisaged that the substantive provisions of the Act will not commence operation until after the ACT education/awareness campaign has started.

### **Clause 3 - Principal Act**

This clause cites the *Crimes Act 1900* as the Principal Act.

### **Clause 4 - Interpretation**

This clause inserts the definition of "medical practitioner" which is currently in Part X of the Principal Act in the main definition section of that Act, so that it will also apply to new Part IIIB.

### **Clause 5 - Insertion**

This clause inserts a new Part IIIB into the Principal Act. Proposed section 92V defines female genital mutilation to include the more severe forms of the practice such as removal of the clitoris (clitoridectomy) as well as any other mutilation of the female genital organs. The most severe form of the practice, infibulation, involves the removal of the clitoris, labia minora and parts of the labia majora. The two sides of the vulva are then sewn together with a small opening left for the passage of urine and menstrual blood. This procedure necessitates cutting before childbirth, and women may be re-infibulated after giving birth.

Proposed section 92W creates the offence of intentionally performing female genital mutilation on another person. The maximum penalty for this offence is 15 years imprisonment, which is the same as the maximum penalty for intentionally inflicting grievous bodily harm under section 19 of the Principal Act. This is in line with the recommendations of the Model Criminal Code Officers Committee. Those people who aid, abet, counsel or procure the commission of the offence will be equally liable by virtue of section 345 of the Principal Act.

Proposed section 92X creates an offence of removing a child from the Territory or arranging for a child to be taken from the Territory with the intention of having the child subjected to female genital mutilation. Because this practice is usually performed on young girls, the aim of this provision is to prevent children from being taken interstate or overseas for the purpose of having this procedure performed. The offence reverses the usual onus of proof in that, if it is shown that the defendant took a child, or arranged for a child to be taken, from the Territory and the procedure is performed while the child is outside the Territory, it will be presumed that the defendant intended that the child would be subjected to the procedure. The presumption may be rebutted by proof to the contrary. This provision is the same as that recommended by the Model Criminal Code Officers Committee and is considered necessary to prevent the intention of the legislation from being frustrated by removing the child from the Territory and having female genital mutilation performed upon her elsewhere.

Proposed section 92Y provides that it is not an offence to perform a medical procedure that has a genuine therapeutic purpose or to take a person or arrange for a person to be taken from the Territory with the intention of having such a procedure performed on that person. The types of medical procedures which have a genuine therapeutic purpose are defined in the proposed section. A medical procedure that is performed as or as part of a cultural, religious or other social custom is not of itself to be regarded as being performed for a genuine therapeutic purpose.

Proposed section 92Z provides that it is not an offence to perform a sexual reassignment procedure or to take or arrange for a person to be taken from the Territory with the intention that such a procedure be performed on that person.

#### **Clause 6 - Interpretation**

This clause removes the definition of medical practitioner from section 349AA of the Principal Act for the reasons outlined in clause 4 above.