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AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

CRIMES (OFFENCES AGAINST THE GOVERNMENT) (AMENDMENT) BILL 1991

EXPLANATORY MEMORANDUM

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## EXPLANATORY MEMORANDUM

### Outline

The *Crimes (Offences Against the Government) (Amendment) Bill 1991* provides for a rebuttable presumption of ownership of property to facilitate proof of ownership of ACT property under this Act. Under the *Crimes (Offences Against the Government) Act 1989*, the ACT may be put to strict proof of ownership of property even when ownership is not an issue (and it is seldom an issue). This may cause additional and significant costs in bringing proceedings under the Act. In particular, this may be the case where property was purchased by the Commonwealth prior to ACT Self-Government and a chain of ownership must be established.

The Bill contains a provision to the effect that property in the 'possession custody or control' of the Territory shall be presumed to belong to the Territory. It also provides for a certificate signed by the Minister stating that the Territory has property in its possession, custody or control shall itself be evidence of such possession, custody or control.

These provisions allow the Government to establish ownership by producing evidence of possession and to produce a certificate to act as evidence of possession where that evidence is not otherwise available.

The Bill has an equivalent certificate provision to apply to occupation of Government premises and makes other related minor amendments.

The new provisions apply to the Act as a whole.

### Financial Considerations

The Bill will save costs in administration and Court proceedings. There are no other financial implications of this Bill.

### Clause Notes

Clause 1 provides that the Act may be cited as the *Crimes (Offences against the Government) (Amendment) Act 1991*.

Clause 2 provides that the Principal Act is the Crimes (Offences against the Government) Act 1989.

Clause 3 provides for the insertion of new sections 3A and 3B after section 3 of the Principal Act.

New sections 3A and 3B allow the Government to establish ownership where required under the Act with evidence of possession, custody or control.

New section 3A establishes a presumption that property that is or was in the possession, custody or control of the Territory (or Territory Authority) belongs or has belonged to the Territory (or Territory Authority). The presumption applies to the Act as a whole and is rebuttable.

Section 3A is similar to a section of the Principal Act to be repealed by Clause 6 of this Act.

New Section 3B enables the Minister to produce a certificate as evidence of possession, custody or control where such evidence would not otherwise be readily available. It provides for a certificate signed by the Minister stating that property is or was in the possession, custody or control of the Territory shall itself be evidence of that assertion.

Section 3B also provides for an equivalent certificate to act as evidence that the Territory occupies or has occupied any land or building.

Clause 4 amends section 4 of the Principal Act by omitting from subsection (1) the obsolete words "whether real or personal", without altering the effect of the provision.

Clause 5 amends section 9 of the Principal Act by omitting the obsolete reference to goods, without altering the effect of the provision.

Clause 6 amends section 11 of the Principal Act by repealing subsection (4).

New section 3A has substantially the same effect as subsection 11(4) of the Principal Act and therefore the subsection is made obsolete by the amendments.

Section 3A, unlike subsection 11(4), applies throughout the Act and is rebuttable.