

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

Ordinance No. 2, 1990

CRIMES (AMENDMENT) ORDINANCE (NO. 2) 1990

The purpose of the Ordinance is to complete the program of revision of criminal offences in the Australian Capital Territory by the insertion of a new Part III, replacing archaic offences and language, removing anomalies and inconsistencies and standardising language. The changes in some cases involve matters of substance and in others are of a technical nature. The amendments follow consultation with, and have the agreement of, the Attorney-General for the Australian Capital Territory.

Sections 1, 2 and 3 are the Short Title, formal and commencement provisions.

Section 4 repeals section 5 of the Crimes Act to remove the definition of 'maliciously', which has been found ambiguous and confusing, as part of the process of clarifying the mental element of offences throughout the Part.

Section 5 repeals Part III of the Crimes Act and substitutes the new Part III - Offences against the Person. The following sections are inserted by this section:

Section 10 defines when a child is born alive. The language of former section 20 is simplified and the definition is dissociated from trial for murder and made applicable to the Part.

Section 11 provides for jurisdiction where death or cause of death occurs outside the Territory. The language of former section 25 is simplified and standardised.

Section 12 is a new section replacing former sections 18 and 19. It limits murder to the intentional or (advertently) reckless causing of death and does not include former section 18's categories of intent to cause grievous bodily harm or constructive murder. The punishment for murder remains imprisonment for life but the language of former section 19 is simplified and standardised.

Section 13 provides a defence of provocation on trial for murder which reduces murder to manslaughter. It is a new provision following the current NSW provision. It removes certain limitations on the availability of the defence, such as the requirement that there be reasonable proportionality between the acts of the accused and the deceased, that the act be committed in the heat of passion and that there be no

intent to cause death or grievous bodily harm. Where the defence is raised the onus of proving that the relevant act or omission did not occur under provocation lies on the prosecution.

Section 14 provides a defence on trial for murder of diminished responsibility. This is a new provision (following the current NSW provision) which has the effect of reducing murder to manslaughter. The accused has the onus of proving that by virtue of this provision he or she is not liable to be convicted of murder.

Section 15 defines manslaughter as an unlawful homicide which does not fall within the new definition of murder, except where a law expressly provides otherwise. Regarding the punishment for manslaughter, the language of former section 24 is simplified and standardised, and the sentence reduced from life to 20 years imprisonment so as to introduce a meaningful distinction from the penalty for murder.

Section 16 abrogates the common law rule that to commit or attempt to commit suicide is a misdemeanour.

Section 17 is a new provision introduced to create offences in relation to aiding or inciting suicide, with a penalty of 10 years imprisonment.

Section 18 is a new provision rendering it lawful for a person to use reasonable force in the prevention of suicide.

Section 19 provides for an offence of intentionally inflicting grievous bodily harm. The language of former section 33 is simplified and standardised, the intent is clarified and the penalty is reduced from life to 15 years imprisonment.

Section 20 provides for an offence of recklessly inflicting grievous bodily harm. The uncertain intent in the former section 35 is dealt with by creating a separate 'recklessness' offence with a penalty of 10 years imprisonment rather than 5 years.

Section 21 creates an offence of wounding. This is a further offence separated from former section 35 in the interests of clarity, with a penalty of 5 years imprisonment reflecting lesser gravity.

Section 22 deals with that part of former section 58 which is not already covered by the Crimes (Offences against the Government) Act 1989. It provides for an offence of assault with intent to commit an offence. The new section requires the intended offence to be an indictable offence against the Part punishable by a maximum period of imprisonment of 5 years or more. The penalty is increased from 2 to 5 years imprisonment.

Section 23 provides for an offence of inflicting actual bodily harm. This is a new offence covering the intentional or (advertently) reckless infliction of bodily harm in circumstances where an assault is not committed, punishable by imprisonment for 5 years.

Section 24 provides for an offence of assault occasioning actual bodily harm punishable by 5 years imprisonment. The language of former section 59 is simplified and standardised.

Section 25 creates a new offence of causing grievous bodily harm. This covers negligent or unlawful acts or omissions which cause grievous bodily harm, and is punishable by 2 years imprisonment.

Section 26 provides for an offence of common assault punishable by 2 years imprisonment. The language of former section 61 is simplified and standardised.

Section 27 covering acts endangering life or safety is a compendious provision incorporating offences in former sections 33, 33A, 38, 39, 47, 49, 50, 51 and 52, with a penalty of 10 years imprisonment. The section also provides for aggravated offences punishable by 15 years imprisonment where the relevant act was done with intent to commit an indictable offence or impede a police officer in the execution of his duty.

Section 28 incorporates a number of offences involving the commission of inherently dangerous acts such as those covered by former sections 41, 47, 48, 49, 50 and 51. The offences are punishable by 5 years imprisonment.

Section 29 provides for an offence of culpable driving of a motor vehicle. The provisions of former section 52A are amended by omission of 'recklessly' wherever occurring, since 'negligently' as defined in section 52A includes conduct that would be reckless and retention of 'recklessly' in the section could cause confusion. The penalties are increased, where death is caused, from 5 to 7 years imprisonment, and in case of grievous bodily harm, from 3 to 4 years imprisonment.

Section 30 provides for an offence involving a threat to kill. It is a new provision replacing the former section 31 which is narrowly confined to threats in written form. The new provision covers threats in any form and the relevant intent is that the threat be taken seriously or recklessness as to the victim's fear that it would be carried out. The penalty remains 10 years imprisonment.

Section 31 provides for an offence involving a threat to inflict grievous bodily harm. This is a new provision similar, in form to the preceding provision, carrying a penalty of 5 years imprisonment.

Section 32 is a new provision creating offences where demands or attempts to prevent lawful apprehension, detention or investigation by the police are accompanied by threats. Where the threat is to kill or cause grievous bodily harm the penalty is 20 years imprisonment, and where it involves a threat to health, safety or wellbeing the penalty is 10 years imprisonment. This offence could cover some hostage situations.

Section 33 provides for an offence of possession of an object with intent to kill or cause grievous bodily harm. It is a new provision replacing the archaic section 55. It provides an offence in circumstances which would fall short of attempted murder or attempt to cause grievous bodily harm and carries a penalty of 5 years imprisonment.

Section 34 creates a new offence of forcible confinement, to supersede the common law offence of false imprisonment, punishable by 10 years imprisonment.

Section 35 creates a new offence of torture to implement in the ACT the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, which deals with acts of public officials. The section follows the wording of the Convention and offences are punishable by 10 years imprisonment.

Section 36, abduction of a young person, revises former section 90 by substituting the notion of lawful control for the inappropriate concept of possession in relation to the person from whom the young person is abducted. The penalty remains 5 years imprisonment.

Section 37, kidnapping, is a revision of former section 90A with a penalty slightly increased from 14 to 15 years for the basic offence and retaining the penalty of 20 years imprisonment for the aggravated offence where the victim suffers grievous bodily harm.

Section 38 provides for an offence of unlawfully taking a child which is a revision of existing section 91, replacing the concept of fraud with the more general notion of deception, replacing 'possession' with 'lawful control', and leaving the provisions concerning aiding and abetting the main offence to be dealt with as a secondary offence.

Section 39 provides for an offence of exposing or abandoning a child under two. The language of existing section 43 is simplified and standardised.

Section 40 provides for an offence of child destruction. This offence covers the gap between abortion (procuring a miscarriage) and homicide (requiring proof of child being born alive). It overcomes the defects in former section 21 which requires a charge of murder to be laid and is limited to conduct of the mother. The penalty is increased from 10 to 15 years imprisonment.

Section 41 is a new provision covering the infliction of grievous bodily harm on a child at or about the time of birth. The penalty is 10 years imprisonment.

Section 42 provides for an offence by a woman of procuring her own miscarriage. It simply involves the simplification and standardisation of the language of former section 82.

Section 43 provides for the offence of procuring another's miscarriage and involves only the simplification and standardisation of the language of former section 83.

Section 44 provides for an offence of procuring drugs etc to procure a miscarriage, being solely a simplification and standardisation of the language of former section 84.

Section 45, concealment of birth, simplifies and standardises the language of former section 85.

Section 46 creates a new offence of misconduct with regard to corpses to fill a gap in the law of the ACT and follow the current NSW provisions. It carries a penalty of 2 years imprisonment.

Section 47, alternative verdicts, is a new provision encompassing existing alternative verdict provisions and extending them where appropriate. The offences charged and the relevant alternative offences are set out in tabular form.

Section 6 provides for consequential amendments to section 92S of the Crimes Act required by the new alternative verdict provisions.

Section 7 provides for a consequential amendment to section 376 of the Crimes Act required by the abandonment of the concept 'maliciously' effected by the repeal of section 5 of the crimes Act.

Section 8 inserts after section 427 of the Crimes Act the new section 427A providing that where there are multiple alternative verdicts for a particular offence the accused is not liable to be convicted of more than one such offence.

Authorised by the Attorney-General