

EXPLANATORY STATEMENT

AUSTRALIAN CAPITAL TERRITORY

CRIMES (AMENDMENT) ORDINANCE (NO.2) OF 1988

No. 75, 1988

Subsection 12(1) of the Seat of Government (Administration) Act 1910 provides that the Governor-General may make Ordinances for the peace, order and good government of the Territory.

The proposed Ordinance will amend the Crimes Act, 1900 of the State of New South Wales in its application to the Australian Capital Territory (Crimes Act 1900) by -

- . inserting inchoate offences dealing with aiding and abetting, accessories, attempts, incitement and conspiracy;
- . inserting a regime of 'escape' provisions, including an offence of failing to answer bail;
- . inserting a new offence of making a false accusation of crime; and
- . making amendments consequential to the above provisions.

In as far as the inchoate offences amendments are concerned, the Ordinance amends the Crimes Act 1900 (NSW) in its application to the ACT consequentially upon the Crimes Legislation Amendment Act 1987 ('1987 Act'), which amended, amongst other legislation, the Crimes Act 1914 to terminate the application of the provisions creating inchoate offences against laws of the ACT in order to enable the Government's syringe exchange anti-AIDS program to operate. At present no ACT Ordinance can give pharmacists protection from criminal liability arising from the supply of syringes because such activity would constitute inchoate offences under the Crimes Act 1914. The insertion of the inchoate offences for the ACT in the Crimes Act 1900 will ensure that they can be modified as the circumstances require by other ACT Ordinances such as the proposed new Drugs of Dependence Ordinance.

Details of the proposed Ordinance are as follows:

Clauses 1-3 - These are formal and commencement provisions. The inchoate offences are to begin on a date to be fixed to enable them to commence on the date on which the relevant provisions of the 1987 Act are proclaimed to commence.

Clause 4 - This repeals sections 26 and 30 of the Crimes Act 1900, these being provisions concerned with conspiracy to murder and attempts to murder. These specific inchoate offences are picked up in the new general ones contained in clause 6 of the Ordinance.

Clause 5 - This creates a new offence of falsely accusing a person of an offence under the law of the Territory so that the person is falsely charged with that offence. Presently, conspiracies to accuse of a crime or to bring a false accusation are dealt with in sections 344 of the Crimes Act 1900 and 41 of the Crimes Act 1914. There is, however, currently no substantive offence to which these offences relate. Accordingly, where only one person is acting so as to bring a false accusation and such a person could not be charged with an attempt to pervert the course of justice (see section 43 of the Crimes Act 1914) then no offence would be committed. This problem is remedied by repealing section 344 of the Crimes Act 1900 (see clause 6 of the Ordinance) and replacing it with a new section 344 which makes it an offence to falsely charge or cause a person to be so charged with an offence against a law of the ACT. The general inchoate offences will, of course, apply to this new substantive offence and section 546E (Public Mischief) of the Crimes Act 1900 might also be relevant in circumstances where the false accusation does not actually lead to a person being charged.

Clause 6 - This repeals Part VIII (Conspiracy to Accuse of Crime) and Part IX (Abettors and Accessories) of the Crimes Act 1900. The repeal of section 344 of the Crimes Act 1900 has been discussed above. The penalty differential in the old section 349 of the Crimes Act 1900 for accessories after the fact to certain offences has been incorporated in the proposed section 346 which provides for greater punishment of persons who are accessories after the fact to murder or to armed robbery and aggravated burglary (see sections 101 and 103 of the Crimes Act 1900). It is noted that proposed section 346, unlike the old section 349, does not extend to 'robbery in company', since the substantive offences in sections 101 and 103 no longer create such an offence - contrast the old section 98 of the Crimes Act 1900 which was repealed by the Crimes (Amendment) Ordinance (No 4) 1985.

Proposed sections 345, 346, 347 & 348: Apart from the above, proposed sections 345, 346, 347, and 348 are based on the relevant provisions of the Crimes Act 1914 (i.e. sections 5, 6, 7 and 7A). The penalty differential in proposed section 348 is based on the penalties in the old section 26 of the Crimes Act 1900 and section 7A of the Crimes Act 1914. Any other differences in the drafting of the proposed sections to the relevant provisions of the Crimes Act 1914 have been made for the purpose of clarity of expression rather than to effect any substantive change.

Proposed section 349: This reproduces section 86 of the Crimes Act 1914 in relation to conspiracies to commit offences against Territorial laws. Proposed section 349 is not, however, restricted geographically to those circumstances where the substantive offence would occur within the ACT. It is intended to include conspiracies within the ACT to commit offences outside the ACT provided that the conduct which would constitute the substantive offence would, in itself, result in

the commission of an offence against ACT law if it occurred within the ACT. However, such conspiracies to commit offences outside the ACT are also subject to a jurisdictional limitation whereby they are only justiciable in ACT courts if one or more of the conspirators was within the ACT when the agreement to commit the offence was reached or any time during the continuation of that agreement (section 349(3)). Proposed section 349 would also apply to a conspiracy where all the conspirators are out of the ACT conspiring to commit an offence under a law of the ACT. This provision is modelled on section 321A of the Crimes Act 1958 (Victoria). However, proposed section 349 has wider application in relation to conspiracies to commit offences outside the ACT by only requiring the presence within the ACT of one or more of the conspirators at any time when their conspiracy is in existence.

Clause 7 - This changes the heading to Part X of the Crimes Act 1900 to indicate that it now also deals with 'escape' issues.

Clause 8 - This repeals section 354 of the Crimes Act 1900. This 'escape and harbouring' provision is replaced by new Division 1A of Part X (to be inserted by clause 9 of the Ordinance).

Clause 9 - This inserts new Division 1A into Part X of the Crimes Act 1900. Proposed sections 358AA to 358AH correspond to sections 46 to 48A of the Crimes Act 1914 (once sections 16 and 17 of the 1987 Act are proclaimed to be in force). The escape regime in the Crimes Act 1914 deals with offences against the law of the Commonwealth and a Territory (including the ACT), whilst the Ordinance escape regime deals with offences against the law of the ACT, a State or another Territory. It is intended that the Crimes Act 1914 apply to escapes outside the ACT of both ACT and Commonwealth offenders and to escapes of Commonwealth offenders within the ACT, and that the Crimes Act 1900, as amended by this Ordinance, apply to other offenders within the ACT.

Proposed section 358AA: This is an interpretation provision defining 'detention during pleasure' to mean detentions by the Governor-General, State Governors or the Administrator of the Northern Territory. An example of such detentions is a person found not guilty of an offence on the grounds of mental illness.

Proposed section 358AB: This provides for the offence of aiding a person to escape who is in custody, or who has been arrested, for an offence against the law of the Territory, a State or another Territory, or a person detained during pleasure. The penalty is \$10,000 or imprisonment for 5 years or both.

Proposed section 358AC: The effect of this section is to make it an offence for a person who has been arrested, is in lawful custody or is detained during pleasure for an offence against

the law of the Territory, a State or another Territory to escape from that arrest, custody or detention. The penalty is \$10,000 or imprisonment for 5 years or both.

Whether a prosecution should be brought where the escapee is detained during pleasure will be a matter for the Director of Public Prosecutions, in the exercise of his prosecutorial discretion.

Proposed section 358AD: This provision creates a new offence for a person to rescue, by force, a person who has been arrested, is in lawful custody or is detained during pleasure for an offence against a law of the Territory, a State or another Territory.

The penalty for this offence is imprisonment for 14 years.

Proposed section 358AE: This provision creates a new offence of being unlawfully at large. This offence occurs where a person who is given permission under a law of the Territory, a State or another Territory to leave a prison, lock-up or place of lawful detention and refuses or fails without reasonable excuse to return to that prison, lock-up or place of lawful detention.

The penalty for this offence is \$10,000 or imprisonment for 5 years or both.

Proposed section 358AF: This provision makes it an offence for an officer of a prison, lock-up or other place of lawful detention, a constable or a Commonwealth officer who is charged with the custody or the detention of a person who is in custody for an offence against the law of the Territory, a State or another Territory (including a person detained during pleasure) to wilfully or negligently permit that person's escape from custody.

The provision also makes it an offence for a constable or Commonwealth officer, who wilfully or negligently permits a person who has been arrested, to escape from the arrest.

The penalty for these offences is \$10,000 or imprisonment for 5 years or both.

Proposed section 358AG: This provision creates a new offence where a person harbours, maintains or employs a person knowing that he has escaped from lawful custody or detention in respect of any offence against the law of the Territory, a State or another Territory.

The penalty for this offence is \$10,000 or imprisonment for 5 years or both.

Proposed section 358AH: This provision ensures that when a person commits an offence under proposed sections 358AC (Escaping) or 358AE (Person unlawfully at large) his or her

current sentence ceases to run until he or she is returned or returns to lawful custody.

Proposed section 358AI: This creates a new offence of failing to answer bail. This has been inserted following representations from the Director of Public Prosecutions (see DPP Annual Report 1986-87, page 72) and in circumstances where NSW, Victoria, Queensland and Tasmania currently have similar offences. The offence is designed to apply only to the accused. Witnesses in criminal matters and persons involved in civil proceedings are excluded (eg persons dealt with in sections 76 and 77 of the Magistrates' Court Ordinance 1930). It is also not intended to apply to bail granted pending appeals. This latter exclusion is based on the fact that in such circumstances a particular date for appearance before the court is not specified when bail is granted (eg see sections 216 and 219H of the Magistrates' Court Ordinance 1930). Finally, it is not intended to apply to persons bailed under the Extradition Act 1988.

Attorney-General