

CRIMES (AMENDMENT) ORDINANCE 1978

EXPLANATORY STATEMENT

No.45 of 1978

The Ordinance is an urgent and technical measure to clarify an ambiguity in the criminal law applicable in the Australian Capital Territory.

2. The Ordinance amends the provisions of the Crimes Act 1900 (N.S.W.) in its application to the Territory relating to the classification in that Act of offences as felonies or misdemeanours. Problems have arisen as the result of different courts placing varying interpretations on a provision in the Crimes Ordinance 1974 that affects that classification.

3. The Crimes Act defines felony as an offence punishable by imprisonment for life or by penal servitude. By the 1974 amendment, an offence punishable by penal servitude, a punishment no longer available in the prisons, was deemed to be punishable by imprisonment for a like period. This gave rise to the argument that offences formerly punishable by penal servitude for a term are no longer felonies but, being punishable only by imprisonment for a term, are now misdemeanours.

4. Practical consequences of accepting this argument include difficulties in drawing indictments, limitations on police powers of arrest and, most seriously, the virtual abolition in the Territory of burglary and the offences involving breaking and entering of premises.

5. The distinction between felonies and misdemeanours exists for historical rather than practical or legal reasons,

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and should be abolished. However, the number of important results that flow from the classification of an offence as a felony require that, for the present, the distinction be maintained.

6. In view of the urgent and technical nature of the Ordinance and the fact that the Legislative Assembly was not scheduled to meet for some time, the Governor-General has made the Ordinance without the usual reference for the advice of the Assembly. The Attorney-General has written to the Minister for the Capital Territory requesting him to advise the Assembly of the terms of the Ordinance and the reasons for its making.

#### Notes on Clauses

Clause 1 - Formal

Clause 2 - Definition

Clause 3 - In effect, defines what offences are, for the purposes of the Crimes Act, to be felonies and takes account of other laws in force in the Territory that have the effect of limiting penalties for offences against the Crimes Act to imprisonment.

Clause 4 - Removes a reference to whipping overlooked in the 1974 abolition of this punishment.

Clauses 5 and 6 - Restoration of the punishment of penal servitude establishes offences involving breaking and entering as felonies. It removes the existing anomaly that an offence, which has as one element the commission of (or intent to commit) a felony, is only a misdemeanour.