

1998

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Crimes (Amendment) Bill (No.7) 1998

EXPLANATORY MEMORANDUM

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**Michael Moore MLA
Minister for Health and Community Care**

CRIMES (AMENDMENT) BILL (NO 7) 1988

Explanatory Memorandum

Outline

The Crimes (Amendment) Bill (No. #) 1998 (the Bill) amends provisions in Part XIA of the *Crimes Act 1900* (the Act)

Part XIA of the Crimes Act includes provisions relating to:

- accused persons who are not fit to plead;
- acquittal on the grounds of mental illness;
- convicted persons who are mentally dysfunctional; and
- summary proceedings against mentally dysfunctional persons

As a result of some of the amendments to the *Mental Health (Treatment and Care) Act 1994* (the Mental Health Act) to be made by the Mental Health (Treatment and Care) (Amendment) Bill 1998, amendments to provisions in Part XIA of the Act are required

In particular, because the Mental Health Act will be amended to enable orders to be made by the Mental Health Tribunal in respect of persons who are 'mentally ill', as well as those who are 'mentally dysfunctional', the provisions of Part XIA which presently provide for referral to the Tribunal of persons who are mentally dysfunctional are amended to also apply in respect of those who are mentally ill.

Financial implications

None

Detail of amendments

Clauses 1, 2 and 3 - Short title and Commencement

Clauses 1, 2 and 3 are formal provisions setting out the title of the Bill, once enacted, the arrangements for commencement of its provisions, and the name of the Act being amended.

The formal provisions of the Bill will commence on the day the Bill is notified in the *Gazette*. The substantive provisions of the Bill will commence on a day or days notified in the *Gazette*. If no such notification is made before the end of 6 months from the day on which the Bill is notified, the provisions will commence after the expiration of that 6 month period.

Clause 4 - Repeal

Clause 4 repeals section 428A of the Act. Section 428A is a 'sunset clause'. A similar provision is found in the Mental Health Act. Extensions (operative until 4 February 1999) have been made pursuant to subsection 428A(2) and the corresponding provision in the Mental Health Act. Unless section 428A and the corresponding provision in the Mental Health Act are repealed before that date, Part XIA and the Mental Health Act will cease to have any effect.

The repeal of section 428A prior to 4 February 1999 will ensure that Part XIA continues in effect.

Clause 5 - Interpretation

Clause 5 inserts a definition of the term 'mental illness' into section 428B of the Act. The definition is the same as the definition of the term to be included in the Mental Health Act.

Clause 6 - Criteria for detention

Clause 6 amends section 428D of the Act which requires the Supreme Court and Magistrates Court to consider certain factors when making a decision which could include an order for detention, in respect of accused persons who are unfit to plead, persons acquitted on grounds of 'mental illness' (which is to be renamed 'mental impairment' by this Bill) or convicted and mentally dysfunctional.

The existing definition of the term 'mental dysfunction' covers some conditions which are to be picked up in the definition of the new term 'mental illness'. 'Mental illness' covers a narrower range of conditions than 'mental dysfunction'.

This amendment is to ensure that, for the purpose of section 428D, as well as being required to take into account the nature and extent of an accused's mental dysfunction, the courts must take into account the nature and extent of an accused's mental illness.

Clauses 7 - 12 - Amendments to Division 3

Clauses 7 to 12 make amendments to Division 3 of Part XIA, which enables a person to be acquitted on the grounds of 'mental illness' if he or she can establish that due to a mental dysfunction he or she was incapable of knowing what he or she was doing or was incapable of understanding this was wrong. This provision is a codification of the common law test provided in the M'Naughten Rules of 1843 and endorsed by the High Court in *The King v Porter* [1936] 55 CLR 182.

The amendments are to the effect that an accused is entitled to an acquittal whether a 'mental dysfunction' or 'mental illness' results in the accused not understanding what he or she was doing or that it was wrong.

Because it may be confusing, now the defined term 'mental illness' is to be used in this way, to have the acquittal on grounds of 'mental illness' (ie using that term in a second context), the alternative term 'mental impairment' has been substituted for current references in Division 3 to 'mental illness'.

Clauses 13 - 18 - Divisions 4 and 5

Clauses 13 to 18 of the Bill amend provisions of Division 4 of Part XIA enabling referral of mentally dysfunctional convicted persons to the Tribunal and Division 5 which provides a capacity for the Magistrates Court to refer certain accused persons to the Tribunal.

The amendments ensure that these Divisions will also apply in respect of those who are 'mentally ill'.