

2011

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

CRIMES (SENTENCING) AMENDMENT BILL 2011

EXPLANATORY STATEMENT

**Circulated by
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Introduction

This explanatory statement relates to the *Crimes (Sentencing) Amendment Bill 2011* as presented to the Legislative Assembly on the 21st September 2011. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Purposes of the bill

The primary purpose of the bill is to require the Government to collect and publish information about how well sentences being imposed in the ACT are meeting the purposes of sentencing, as listed in section 7 the *Crimes (Sentencing) Act 2005*.

A summary of the purposes for sentencing under section 7 are to:

1. ensure adequate punishment that is just and appropriate;
2. prevent crime by deterring the offender and the community more generally
3. protect the community
4. promote rehabilitation of the offender
5. make the offender accountable for their actions
6. denounce the conduct of the offender
7. recognise the harm done to the victim and the community.

To achieve this primary purpose, the bill requires the Government to do two things.

Firstly, the bill will require the annual publication of data on recidivism rates of people who have been sentenced in the ACT. Recidivism rates are one measure of how well the purposes of deterrence and rehabilitation are being achieved.

Secondly, the bill will require the Government to undertake a review of the Act and particularly how well the purposes of sentencing are being achieved by sentences that are currently being imposed. The review will need to commence before the end of the sixth year of operation of the *Crimes (Sentencing) Act 2005* which occurs on 2 June 2012.

Costs

The total cost of implementing the bill will be determined by the method adopted by the Government to fulfil its requirements.

The annual reporting on recidivism data is a project currently nearing completion by the Justice and Community Safety Directorate. From information publicly available, this project appears to have been completed in house by the Directorate making use of existing resources.

The six year review could similarly be conducted in house by the Directorate within existing resources. Alternatively, the Government could partner with an external academic body to conduct the review. The bill allows either option to be adopted by Government. As a result, the final total cost of the review is a matter to be determined by the Government.

Benefits

The benefits of the bill are that it will provide information and data on the first six years of operation of the *Crimes (Sentencing) Act 2005*. This data will lead to better informed decisions about potential future sentencing reforms and more effective and targeted use of public resources.

Human rights analysis

The provisions of the bill do not engage any human rights protected by the *Human Rights Act 2004*.

The reason for this statement is that, other than departmental officers undertaking work as required by the bill, no member of the community will be impacted by the bill. That is, the bill does not create any additional rights or impose further obligations on the community.

As the purpose of the bill is to gather and publish data on sentencing, it may be that the right to privacy could be engaged by actions undertaken by the department during the conduct of the six year review.

However, as the department is responsible for dealing with personal information on a daily basis and publishing summaries of that information annually, it has been assumed for this Explanatory Statement that the standard privacy guidelines would be followed by departmental staff. As a result, the human rights compatibility of the actions of directorate staff are more of a matter for the directorate than for the provisions of the legislation.

Summary of clauses

Clause 1 Name of the Act

This clause is a formal provision setting out the name of the proposed Act.

Clause 2 Commencement

The Act commences on the day after it is notified on the legislation register.

Clause 3 Legislation Amended

This clause is a formal provision to identify that the Bill amends the *Crimes (Sentencing) Act 2005*.

Clause 4 New sections 138A and 138B

This is the key clause in the bill. It creates two new operational sections in the Act: sections 138A and 138B.

New section 138A

The purpose of this section is to require the Government to report annually on recidivism rates for people who have been sentenced in the ACT. The data will be included in the annual report from the Justice and Community Safety directorate.

Recidivism is a term that refers to people who re-offend after serving a sentence for committing a crime.

Having access to this data will allow an ongoing assessment of how well the ACT is deterring people from re-offending and how well offenders are rehabilitated while they are sentenced. Deterrence and rehabilitation are two of the purposes of sentencing.

A high rate of recidivism would indicate that the ACT is not deterring or rehabilitating offenders whereas a low rate would indicate that those two purposes are being achieved.

New section 138B

The purpose of this section is to set up a review of the *Crimes (Sentencing) Act 2005* six years after it commenced. In undertaking the review the Minister will be required to look at four key things:

1. How well sentences imposed in the ACT are achieving the purposes of sentencing as described in section 7 of the Act [section 138B(3)(a)];
2. What sentencing options the ACT currently does not have access to and how well those options are working interstate [138B(3)(b)];
3. What the attitudes of the community are to sentencing currently [138B(3)(c)];
and
4. Any options that exist to improve the general level of knowledge and understanding that exists in the community about sentencing.

The Minister is not limited by these four areas of investigation and can look at any other matter he or she thinks relevant [138B(5)].

In conducting the review the Minister must consult with a broad range of stakeholder groups that are listed in section 138B(4) and make recommendations on how the ACT could improve the effectiveness of the sentencing regime [138B(6)].

Finally, the Minister must table a copy of the report of the review in the Legislative Assembly not more than 12 months after the review starts [138B(2)].