

1998

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**GOVERNMENT AMENDMENTS TO
CRIMES (AMENDMENT) BILL (NO. 3) 1998**

EXPLANATORY MEMORANDUM

CIRCULATED BY AUTHORITY OF

**GARY HUMPHRIES MLA
ATTORNEY-GENERAL**

**AUSTRALIAN CAPITAL TERRITORY
LEGISLATIVE ASSEMBLY**

CRIMES (AMENDMENT) BILL (NO. 3) 1998

Amendments to be moved by the Attorney-General

Amendment 1 omits Clause 6 of the Crimes (Amendment) Bill (No. 3) 1998 (the Bill) and substitutes a new Clause 6 setting out the procedure for the return of any knife seized. This amendment overcomes concerns that the effect of Clause 6 of the Bill would be to require the immediate return of a knife once seized. Clause 6 amends section 349ZZD of the *Crimes Act 1900* (the Act), dealing with the return of things seized pursuant to the Act.

The amendment inserts proposed subsection (1A) which deals specifically with the return of a knife seized pursuant to the new provisions of the Bill. It provides that where a knife is seized under proposed section 349DB, the person from whom it was seized or, if the person is under 16 years of age, that person's parent or guardian, is entitled to have the knife returned if:

- a prosecution for an offence under the proposed section 495 has not been commenced within a 60 day period after the seizure; or
- a prosecution for an offence under proposed section 495 has been commenced within 60 days after the seizure and the prosecution (including any appeal arising from that prosecution) is finalised or concluded without the knife having been forfeited under proposed section new 349ZZH.

The effect of this provision is to provide particular persons with an entitlement to have a knife seized returned to them. This provision only provides an entitlement for the return of a knife and does not serve to resolve issues of ownership. The proposed provision has the benefit that it will enable the police, where the knife has been seized from a person under the age of 16, to return the knife to a parent or guardian.

Amendment 2 amends Clause 7 of the Bill which inserts proposed new section 349ZZH in the Act to deal with forfeiture of a knife. Proposed subsection 349ZZH(1) is omitted and a new subsection (1) is substituted.

Proposed new subsection (1) provides that a knife that has been seized under proposed subsection 349DB shall be forfeited to the Territory if:

- the person from whom a knife was seized was convicted of an offence under the proposed section 495 in respect of that knife; or
- the person from whom a knife was seized was charged with an offence under proposed section 495 and the matter was dealt with under section 556A of the Act. If a matter is dealt with under section 556A, the court will have been satisfied that the charge against the person from whom the knife was seized is proved but the circumstances are such to warrant the conditional release of the person without proceeding to conviction.

The proposed new subsection (1) is intended to ensure forfeiture is linked to a conviction for an offence not simply seizure of a knife.