

**1998**

**THE LEGISLATIVE ASSEMBLY OF  
THE AUSTRALIAN CAPITAL TERRITORY**

**CRIMES (AMENDMENT) BILL (NO.5) 1998**

**EXPLANATORY MEMORANDUM**

**Circulated by the authority of the Attorney General**

**Gary Humphries MLA**

## **CRIMES (AMENDMENT) BILL (NO 5) 1998**

### **Explanatory Memorandum**

#### **Outline**

The Crimes (Amendment) Bill (No 5) 1998 amends the *Crimes Act 1900* (the Act) to provide for the order in which the defence and prosecution address the jury in a Supreme Court trial.

#### **The Act**

Part XI of the Act sets out procedural provisions relating to trials upon indictment. Pursuant to section 33D of the *Interpretation Act 1967*, indictable offences are offences which are punishable by imprisonment for a period exceeding one year, unless the Act creating the offence shows a contrary intention. There is provision for some indictable offences to be dealt with by the Magistrates Court. However, for the most serious crimes, such as murder, and in cases where the accused does not agree to the matter being dealt with by the Magistrates Court, or the Magistrates Court does not consider it appropriate for the offence to be dealt with by that Court, indictable offences are tried in the Supreme Court. Unless the accused agrees to trial by judge alone, the offence is tried before a jury.

Presently, the Act contains no provisions in respect of the order in which the defence and the prosecution may address the jury at the end of a trial. The practice in the ACT has been for the defence to make its address first and the prosecution to address the jury last.

## **The Bill**

The Bill inserts a new provision into the Act to provide that the defence may address the jury last in a Supreme Court trial. The enactment of this amendment will bring the ACT into line with the practice in other Australian jurisdictions.

The new provisions provide that where the closing address for the defence asserts facts which are unsupported by any evidence before the jury the prosecution can, with leave of the Court, address the jury further in respect of such assertions.

## **Financial implications**

There are no financial implications arising from the Bill.

## **Details**

**Clauses 1, 2 and 3** are formal provisions dealing with the short title of the Bill, once enacted, the commencement of its provisions and references in the Bill to the term "Principal Act".

**Clause 4** inserts *proposed new section 423A*. *Proposed new subsection 423A(1)* is intended to enable the closing address for the defence to be given after the closing address for the prosecution, in trials on indictment.

*Proposed new subsection 423A(2)* is intended to ensure that where, in the closing address for the defence, relevant matters are asserted which are not supported by the evidence before the jury, the prosecution is able to address the jury in reply to any such assertions. This will only be able to be done with the leave of the Court.