

1995

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

CRIMES (AMENDMENT) BILL 1995

EXPLANATORY MEMORANDUM

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OUTLINE

This Bill amends the *Crimes Act 1900* to remove potential loopholes in various criminal laws

FINANCIAL IMPACT

The Bill will have no financial impact on Australian Capital Territory expenditure

NOTES ON CLAUSES

Clause 1: Short Title

This is a formal clause providing for the citation of the legislation as the *Crimes (Amendment) Act 1995*

Clause 2: Commencement

This clause provides for the Act to commence on the day on which it is notified in the Gazette

Clause 3: Principal Act

This clause identifies the Principal Act as the *Crimes Act 1990*

Clause 4: Territorial application of the criminal law in the Territory

At present section 11 of the Crimes Act provides that Territory courts can convict a person of a murder only if the prosecution can prove that death or the act causing death occurred within the Territory's borders. Even though there is clear evidence that the accused committed the murder it may be very difficult to obtain a conviction, for example, where the body is found on or near the Territory border but there is no evidence as to which jurisdiction

the relevant act or death occurred in Similar issues may arise in relation to offences other than murder. This clause follows a model Bill agreed to by the Standing Committee of Attorneys-General. It makes possible a conviction for an offence in cases where it can be proved on the balance of probabilities that either an element of the offence occurred in the jurisdiction, or that the perpetrator was in the jurisdiction at the time of the act

Clause 5: Interpretation

This clause simply removes the definition of the *Crimes Act 1900*.

Clause 6: No time limit on criminal responsibility for homicide

This clause abolishes the common law 'year and a day rule'. Under the current law a person cannot be convicted of murder in the Territory if the victim dies more than a year and a day after the infliction of the injury which caused the death. This common law rule dates back to medieval times when limited medical knowledge made it difficult to trace the cause of death to an injury inflicted some time before. The subsequent rapid advance of medical science has rendered the rule obsolete. The rule might also prevent the conviction for murder where a person deliberately infects another person with a disease which has long term life threatening consequences.

Clause 7: Sexual intercourse with a young person

This clause removes the lower age limit on the offence of sexual intercourse with a person who is of or above the age of 10 years but under 16 years. The offence will now be with a person under 16 years. It modifies the existing defence under this section where the defendant was not more than 2 years older and the other consented, to limit its availability to cases where that other person was of or above the age of 10 years.

The purpose of this and the following three clauses is to avoid a jury being forced to acquit a defendant where it is satisfied about all other aspects of the offence but is doubtful as to whether the young person against whom the offence was alleged to have been committed was under or over the age of 10 years at the time, although it is clear that he or she was under the age of 16 years.

Clause 8: Acts of indecency with young persons

This clause removes the lower age limit on the offence of committing an act of indecency on or in the presence of a person who is of or above the age of 10 years but under 16 years. The offence will now relate to a person who is under the age of 16 years. The clause also modifies the existing defence under this section where the defendant was not more than 2 years older and the other consented, to limit its availability to cases where that other person was of or above the age of 10 years.

Clause 9: Incest and similar offences

This clause amends the offence of incest with a person who is of or above the age of 10 years but under 16 years to an offence with a person who is under 16 years.

Clause 10: Alternative verdicts

This clause provides that where a person is on trial for one of the sexual assault offences which apply to children under 10 years of age, and the jury is not satisfied that the child was under 10 at the time of the offence but is satisfied that the child was under 16 years of age, and that the defendant is guilty of the relevant offence against a child under 16, it may find the defendant guilty of that offence.

Schedule

Technical amendments are also made in accordance with current drafting practices. Numbers are no longer written in words and the citation of the Crimes Act has changed.