

2008

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

**CRIMES LEGISLATION AMENDMENT BILL 2008
GOVERNMENT AMENDMENTS**

SUPPLEMENTARY EXPLANATORY STATEMENT

Presented by
Simon Corbell MLA
Attorney General

GOVERNMENT AMENDMENTS — EXPLANATORY STATEMENT

Overview

This explanatory statement supplements the explanatory statement to the Crimes Legislation Amendment Bill 2008 (the Bill) as presented to the Legislative Assembly on 7 August 2008. It contains a number of technical amendments to the Bill.

It is intended that the Bill commence after the Sexual and Violent Offences Legislation Bill 2008. A number of these amendments relate to ensuring consistency between the two Bills. The other main area of amendment affects the provisions of the Bill amending the committal hearing procedures contained in the *Magistrates Court Act 1936*. Comments received from the legal profession after the introduction of the Bill have highlighted some further areas that require clarification and modernisation so that the Bill accurately reflects current practices.

The first set of changes remove references to a notice being served when the prosecution intends to rely on statements as evidence at a committal. Instead these amendments state that the committal process is commenced when the prosecution serves the defendant with the evidence upon which it intends to rely. The timing of the service of the evidence and the method of service will be governed by the Court Rules developed by the Rules Committee, so that the procedures in this area remain current.

The statutory requirement to serve a brief of evidence on the accused supports the human right to fair trial by ensuring that the current practices whereby the prosecution provide a brief of evidence in advance of a hearing are preserved so that the accused is fully apprised of the charges and evidence against him or her before the case begins.

The provisions are also amended to ensure that the clearest language possible is used to set out the intention that a committal hearing is intended to be a hand up committal.

A further amendment makes provision for the prosecution to apply to call a witness to give evidence in chief at a committal hearing in person. This is not introduced to undermine the principle that committal hearings are to be run as hand up committals, but is introduced to allow for the exceptional cases where a witness is required to give oral evidence to compensate for a technical or administrative defect that cannot be cured by the preparation of an additional written statement, and without which justice could not be done. It is only open to the prosecution to apply for this evidence to be given in person, and may only occur if the Magistrate considers that it is in the interests of justice for the permission to be granted. This is the same test that a Magistrate is applying to applications for cross examination of witnesses.

Correction to the Explanatory Statement

Thresholds for summary and indictable jurisdiction

The Bill increases the threshold for matters that must be dealt with summarily in the Magistrates Court, to cover offences with a maximum penalty of up to 2 years' imprisonment (the current threshold is 12 months' imprisonment). This will mean that offences such as common assault, failing to answer bail, neglect of children, and threatening to cause property damage that carry a maximum penalty of 2 years' imprisonment can only be determined in the Magistrates Court. This change will more properly allocate matters to the Magistrates Court that can fall within the range of sentencing expertise of that Court, recognising the professional ability of the Magistrates to deal with an expanded jurisdiction.

The threshold of indictable property offences that can be dealt with summarily by election is also increased from property valued at \$10,000 to property valued at \$30,000.

Detail

1

Schedule 1

Amendment 1.57

Page 20, line 14

This amendment deletes the note for section 38(4) of the *Evidence (Miscellaneous Provisions) Act 1991* which is inserted by the Sexual and Violent Offences Legislation Bill 2008, to ensure consistency with the amendments to the *Magistrates Court Act 1936* contained in the Bill.

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Schedule 1

Amendment 1.60

Page 21, line 11

This amendment deletes the note for section 41(4) of the *Evidence (Miscellaneous Provisions) Act 1991* which is inserted by the Sexual and Violent Offences Legislation Bill 2008, to ensure consistency with the amendments to the *Magistrates Court Act 1936* contained in the Bill.

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Schedule 1

Proposed new amendment 1.63A

Page 22, line 9

This amendment ensures continuity with the amendments in Schedule 1 amendments 1.81 and 1.82 of the Bill.

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Schedule 1

Amendment 1.64

Page 22, line 10

This amendment removes the provision of the Bill referring to notices of committal proceedings and replaces them with provisions that require the

service of all committal evidence on the accused, and for the committal evidence to be provided to the courts, in accordance with the Court Rules. The intention is to provide a statutory basis for the provision of the prosecution brief to the accused in advance of the committal.

5**Schedule 1****Amendments 1.65 to 1.71****Page 22, line 14**

This amendment omits provisions that are superseded by amendment 4.

6**Schedule 1****Proposed new amendment 1.71A****Page 24, line 5**

The intention of this amendment is that committal proceedings are to proceed by the prosecution tendering the written statements and exhibits, rather than calling witnesses to give oral evidence. It clarifies that the court must admit the statements and exhibits, but does not seek to overwrite the laws of evidence that apply to admissibility of evidence generally.

7**Schedule 1****Amendment 1.73****Page 24, line 8**

This amendment makes provision for the prosecution to apply to the court to call a witness to give oral evidence-in-chief. It is not intended that this provision be used for all committal hearings, as the clear intention of the policies informing this Bill is that committal proceedings will proceed as hand up committals. Instead this provision makes allowances for the prosecution to apply to call a witness to give oral evidence when an unusual or exceptional circumstance arises which can't be overcome by the preparation of an additional written statement.

8**Schedule 1****Proposed new amendments 1.73A****Page 24, line 9**

This is a technical amendment to correct a typographic error.

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Schedule 1

Amendment 1.75

Page 24, line 13—

This is a technical amendment to correct a typographic error.

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Schedule 1

Amendment 1.76

Page 24, line 15

This is a technical amendment to correct a typographic error.

11

Schedule 1

Amendment 1.77

Proposed new section 90AB (1)

Page 24, line 22

This provision is amended to provide clearer language about the fact that a witness is not to be cross-examined at committal unless a successful application is made to the court.

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Schedule 1

Amendment 1.77

Proposed new section 90AB (2)

Page 25, line 4

This provision is amended to provide clearer language about the fact that a witness is not to be cross-examined at committal unless a successful application is made to the court.