

2003

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2003

**SUPPLEMENTARY
EXPLANATORY STATEMENT**

GOVERNMENT AMENDMENTS

**Circulated by authority of the
Attorney General
Jon Stanhope MLA
October 2003**

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2003

Explanatory Statement

This supplementary explanatory statement relates to Government amendments to the Justice and Community Safety Legislation Amendment Bill, which was introduced into the ACT Legislative Assembly on 26 June 2003.

Overview of the Amendments

Amendment 1

Clauses 7A to 7D will make minor technical amendments to section 8 of the *Criminal Code 2002* (“the Code”) to overcome an unexpected problem that has arisen concerning the application of the Code to offences that existed before the Code came into force on 1 January 2003.

At present, section 8 of the Code provides, in effect, that the Code only applies to offences “created” on or after 1 January 2003. This is because most existing offences will need to be harmonised before the Code can apply.

A problem has arisen because of the definition of the word “create” in the dictionary of the Code. The definition is generally suitable but in the context of section 8 it means that almost any amendment to an existing offence will amount to the “creation” of a new offence and thereby attract the application of the Code. This is a problem because in time there will be a number of Acts where the Code will apply to some offences in those Acts but not others. In some cases the Code could apply to only one or two offences in an Act of over 50 offences. This is likely to cause practitioners considerable confusion and inconvenience and is likely to disrupt the harmonisation program. The proposed amendments to section 8 will avoid these difficulties by ensuring that the Code will not automatically apply to a pre-existing 2003 offence simply because it is amended.

Amendment 2

Clauses 7E to 7G amend subsection 6 of Division 2.2 of the *Director of Public Prosecutions Act 1990*. The amendment is designed to remove ambiguity with respect to the director’s functions by clarifying two aspects. The first clarification confirms that the director’s functions extend to appearing at any board of inquiry established under Part 20 of the *Crimes Act 1900*. The second clarification confirms that the director may begin, conduct (irrespective of whether or not these proceedings were commenced by the director) or respond to civil proceedings which are connected with, or arise out of the exercise by the director of any of the functions under the *Director of Public Prosecutions Act 1990*, or any proceedings in relation to which the director has a function.

Amendment 3

Clauses 8A to 8D amend Part 3 of the *Fair Trading Act 1992*. Part 3 of the *Fair Trading Act 1992* enables codes of practice to be established. These codes include provisions that impose licensing and registration requirements, the imposition of fees and educational and competency requirements. There is also provision for committees to be established to hear and resolve disputes.

The amendments are designed to remove ambiguity in relation to the subject matter of a code of practice prescribed under Part 3 of the *Fair Trading Act 1992*.

Amendment 4

Clauses 18A and 18B amend schedule 3 of the *Sale of Motor Vehicles Act 1977* (the Act) by adding the offence under section 7 of the Act to the schedule of offences that are punishable by infringement notice.

The proposed amendment will enable better enforcement of the provision, encourage greater compliance with the legislation and allow for immediate action to be taken against people who are breaching the legislation.

Outline of Provisions

Amendment 1

Clause 7A

Clause 7A states that the part amends the *Criminal Code 2002*.

Clause 7B Criminal Code 2002

Proposed new subsection 8(1) provides that the Code does not apply to a pre 2003 offence unless the offence is “omitted and remade” (whether or not there are any changes in the remade provision) or an Act or statutory law expressly provides that the Code applies to the offence.

Clause 7C New section 8 (4A)

New subclause 8(4A) is the central provision in this context because it provides that an offence is not to be taken to have been “omitted and remade” if the offence is simply amended but not also omitted and remade. This will avoid the difficulties referred to in the overview to these amendments.

Clause 7D Section 8

This clause notes that the subsections within section 8 will be renumbered when the *Criminal Code 2002* is next republished under the *Legislation Act 2001*.

Amendment 2

Clause 7E

Clause 7E states that the part amends the *Director of Public Prosecutions Act 1990*.

Clause 7F Functions – New section 6(1A)

This clause amends section 6 of the *Director of Public Prosecutions Act 1990* by inserting a new subsection (1A). The new subsection seeks to remove any doubt about the functions of the director by stating that in addition to, and without limiting the director’s powers in subsection (1), the director also has the powers detailed in subsection (1A).

Paragraph (a) of subsection (1A) clarifies that it is a function of the director to appear before a board of inquiry under Part 20 (inquiries into convictions) of the *Crimes Act 1900*. Paragraph (b) clarifies that the functions of the director include beginning, conducting (irrespective of whether or not these

proceedings were commenced by the director) and responding to civil proceedings connected with, or arising out of the exercise by the director of a function under the *Director of Public Prosecutions Act 1990* or a proceeding in relation to which the director has a function.

Clause 7G Section 6

This clause notes that the subsections within section 6 will be renumbered when the *Director of Public Prosecutions Act 1990* is next republished under the *Legislation Act 2001*.

Amendment 3

Clause 8A Preparation of draft codes of practice – New section 33(1A) and (1B)

This clause inserts new subsections 33(1A) and (1B) into the *Fair Trading Act 1992*. Subsection 33(1A) provides that a draft code of practice may do one or more of the functions listed in paragraphs (a) to (d). The amendments are designed to remove ambiguity in relation to the subject matter of a code of practice prescribed under Part 3 of the Act.

Subsection 33(1B) enables other functions to be prescribed under a code of practice other than those listed in paragraphs (a) – (d).

Clause 8B Section 33

This clause provides that renumbering of subsections will occur when the *Fair Trading Act 1992* is next republished under the *Legislation Act 2001*.

Clause 8C Regulations – Codes of practice – Section 34

This clause makes provision for a consequential amendment to section 34.

Clause 8D New section 34(2) and (3)

This clause inserts new subsections (2) and (3) into clause 34 of the *Fair Trading Act 1992*. New subsection (2) is intended to remove any doubt about the operation of a code of practice or part of such a code prescribed under section 34.

New subsection (3) in section 34 makes provision for the expiry of the new subsections two years after they commence.

Amendment 4

Clause 18A

Clause 18A states that the part amends the *Sale of Motor Vehicles Act 1977*.

Clause 18B Schedule 3

The clause will replace the existing Schedule 3 On-the-spot-fines of the Act with a new schedule, which lists 'section 7' under 'column 2: offence provision', corresponding to a listing of '\$500' in 'column 3: on-the-spot fine'.