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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

*CRIMINAL CODE AMENDMENT BILL 1997*

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Justice

Senator the Honourable Amanda Vanstone)

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## **CRIMINAL CODE AMENDMENT BILL 1997**

### **General Outline**

This Bill amends the *Criminal Code Act 1995*. The amendments made by the Bill are to bring forward the commencement of provisions in the *Criminal Code* which relate to the proof of an offence where the accused is intoxicated.

The relevant provisions, subsections 4.2(6) and (7) and Division 8 of the *Criminal Code*, provide that self-induced intoxication cannot be considered in determining intent or voluntariness in relation to basic offences such as assault.

The current commencement provision, section 2.2, does not provide for the commencement of the relevant chapter of the *Criminal Code* (Chapter 2) or parts of it in relation to most Commonwealth offences until March 2000.

### **Financial Impact**

The amendments are expected to have a minor and unquantifiable financial impact on Government revenue.

## NOTES ON ITEMS

### Item 1 Short Title

This is a formal item which provides for the citation of the Bill.

### Item 2 Commencement

2. The Bill commences on the day that it receives the Royal Assent.

### Item 3 Schedule

3. This item explains that the items set out in the Schedule to this Bill amend the *Criminal Code Act 1995*.

## SCHEDULE 1 - AMENDMENT OF THE CRIMINAL CODE ACT 1995

### Item 1 The Schedule (subsection 2.2(2) of the Criminal Code)

4. This would amend subsection 2.2(2) of the *Criminal Code* which deals with the commencement of Chapter 2 of the *Criminal Code*. Subsection 2.2(2) provides that Chapter 2 does not apply to Commonwealth offences other than those in the *Criminal Code* until and after the day occurring 5 years after the day it received Royal Assent (15 March 1995). At present there are no offences in the *Criminal Code*. The amendment to subsection 2.2 would make it subject to a new provision - section 2.3.

### Item 2 Application of provisions relating to intoxication

5. This would add new section 2.3 to Division 2 of the *Criminal Code*. The new section provides subsections 4.2(6) and 4.2(7) and Division 8 shall apply to all Commonwealth offences.
6. Subsection 4.2(6) provides that evidence of self-induced intoxication cannot be considered in determining whether conduct is voluntary. Subsection 4.2(7) that intoxication is self-induced unless it came about involuntarily or as a result of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force.
7. Division 8 deals with the relevance of intoxication to fault and defences. Section 8.2 of Division 8 provides that evidence of self-induced intoxication cannot be considered in determining whether a fault element of basic intent existed. It defines the fault element of basic intent as intention where the physical element of the offence consists only of conduct (for example, striking someone). Other sections in Division 8 elaborate on how this central approach should apply in relation to mistaken belief, negligence and defences based on belief.
8. Subsections 4.2(6) and 4.2(7) and Division 8 were enacted in 1995 with support from all political parties and independents at that time.
9. New section 2.3 also provides that for the purposes of interpreting the relevant provisions in connection with an offence, the other provisions of Chapter 2 may be

considered, whether or not those other provisions apply to the offence concerned. This is necessary because there are still many Commonwealth offences which need to be reviewed and adjusted before Chapter 2 commences. However some of the terminology in the provisions which deal with intoxication will be more easily understood if the other provisions in Chapter 2 can be considered for interpretation purposes. Section 2.3 is designed to allow this to occur without actually commencing the rest of Chapter 2.

