

CABINET-IN-CONFIDENCE

ACT GOVERNMENT

Submission **Government Response to the Private Member's Bill:
Crimes (Sentencing) Amendment Bill 2011**

Decision No. 11/0545/CAB

17 October 2011

- 1) The Cabinet agreed the Government oppose the Crimes (Sentencing) Amendment Bill 2011.
- 2) The Cabinet agreed to the Government agreeing in-principle to a review of the Crimes (Sentencing) Act 2005.
- 3) The Cabinet noted:
 - a) A review of sentencing may be subject to further consideration by Cabinet through future budget processes.
 - b) Mr Rattenbury's proposal would impose significant costs on Government, and would require the Justice and Community Safety Directorate to make significant changes to its core activities if adopted outside of the budget process.

**CABINET DECISION
NOT TO BE COPIED**



Secretary to Cabinet

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Chief Minister's Cabinet Brief

Cabinet Meeting Date: 17 October 2011
Title of Submission: Private Members Bill – Crimes (Sentencing) Amendment Bill 2011
Minister: Attorney General, Simon Corbell MLA

Context and Consultation

The Government introduced the Crimes (Certain Penalty Increases) Amendment Bill 2011 (Government Bill) into the Assembly on 18 August 2011. The Bill makes amendments to the *Crimes Act 1900* to raise the maximum penalties for: culpable driving causing death; culpable driving causing grievous bodily harm; intentionally inflicting grievous bodily harm; recklessly inflicting grievous bodily harm; and negligently inflicting grievous bodily harm.

On 29 June 2011, Mrs Dunne MLA introduced a competing Bill. The Crimes (Penalties) Amendment Bill 2011 (Liberals Bill) seeks to increase maximum penalties for manslaughter and culpable driving offences.

In the last sittings, Mr Rattenbury MLA introduced the Crimes (Sentencing) Amendment Bill 2011 (Greens Bill). This Bill will require the Government to undertake a six-year review into the *Crimes (Sentencing) Act 2005*, to be reported to the Assembly by June 2013. It will also require the Justice and Community Safety Directorate (JCSD) to report annually on recidivism rates. The rationale for the Greens Bill is that the Government and Liberal Bills "have been taking an ad hoc approach" to sentencing.

The Government Bill is scheduled for debate in the Assembly on 27 October 2011. Mr Rattenbury has advised that he will bring on the Greens Bill for debate on 19 October 2011. If Mrs Dunne also brings the Liberal Bill on for debate the same day, the Attorney General proposes to move that the Government Bill be debated cognately with the Liberal and Greens Bills.

Issues/Comment

The 2008 ACT Labor Justice and Law Reform election policy platform committed the Government to spending \$633,000 over four years to create an ACT Sentencing Council which would, amongst other things, advise the Attorney General on sentencing in the ACT and collect and publish statistical data on sentencing. Due to competing Government priorities this commitment remains unfunded. However, the Law Reform Advisory Council (LRAC) established during the term of this Government has already dealt with a reference on suspended sentences, and further references can be made to the ALRC.

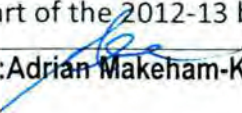
The review promoted by the Greens Bill would be highly resource intensive and would require the establishment of a sentencing database to capture historical sentencing information, which would cost \$2.47 m over four years. Within current budget allocations, this would require JCSD to make significant changes to its core activities. Funding requirements for a sentencing review and database will need to be considered through the normal budget process.

Submission Recommendations

SUPPORT the submission.

Recommended Outcome / Deliverables

The Greens Bill is opposed. A submission seeking funding as detailed above is brought before Cabinet as part of the 2012-13 budget considerations.

Approved by :  Adrian Makeham-Kirchner Cleared / Prepared by: Melanie Saballa / Renate Moore

Tabled in Cabinet 17 Oct 2011

CABINET-IN-CONFIDENCE by Attorney General

Sera Burns
11/545 12/10/11

For Cabinet

Private Members Bill - Crimes (Sentencing) Amendment Bill 2011

Attorney General, Simon Corbell MLA

CABINET SUBMISSION

Received by Cab Sec	[Date/ Time]																		
Purpose	<p>I introduced the Crimes (Certain Penalty Increases) Amendment Bill 2011 (the Government Bill) into the Assembly on 18 August 2011, making amendments to the <i>Crimes Act 1900</i> to raise the maximum penalties for the following offences:</p> <ul style="list-style-type: none"> • culpable driving causing death; • culpable driving causing grievous bodily harm; • intentionally inflicting grievous bodily harm; • recklessly inflicting grievous bodily harm; and • negligently inflicting grievous bodily harm. <p>In the last sittings, Mr Shane Rattenbury MLA introduced the Crimes (Sentencing) Amendment Bill 2011 (the Greens Bill), which will require the Government to undertake a six-year review into the <i>Crimes (Sentencing) Act 2005</i> to be reported to the Legislative Assembly by June 2013 and for the Justice and Community Safety Directorate to report annually on rates of recidivism.</p> <p>This submission seeks Cabinet agreement to the Government's position on the Greens Bill.</p>																		
Timing	<p>This submission is proposed for Cabinet consideration on 17 October 2011. The Government Bill is scheduled for debate in the Legislative Assembly on 27 October 2011 and Mr Rattenbury has advised that he will bring the Greens Bill on for debate on 19 October 2011.</p>																		
Impact:																			
• Social	No																		
• Environment	No																		
• Economic	No																		
• Intergovernmental	No																		
• Regulatory Impact	No																		
Consultation	<p>Limited consultation has occurred with the Chief Minister and Cabinet Directorate and Treasury Directorate as well as limited consultation within my own Directorate. Consultation on the Government bill has occurred with all agencies.</p>																		
Legislation Change	<p>Yes – the Greens Bill proposes to amend the <i>Crimes (Sentencing) Act 2005</i></p>																		
Implementation Reporting	No																		
Documents for Release	No																		
Budget Impact: <i>(A minus sign indicates a cost to the Budget)</i>																			
Treasury Agreement: Yes/No	<table border="1"> <thead> <tr> <th>Net impact (\$000)</th> <th>2010-11</th> <th>2011-12</th> <th>2012-13</th> <th>2013-14</th> <th>2014-15</th> </tr> </thead> <tbody> <tr> <td>Operating</td> <td>Nil</td> <td>Nil</td> <td>Nil</td> <td>Nil</td> <td>Nil</td> </tr> <tr> <td>Capital</td> <td>Nil</td> <td>Nil</td> <td>Nil</td> <td>Nil</td> <td>Nil</td> </tr> </tbody> </table>	Net impact (\$000)	2010-11	2011-12	2012-13	2013-14	2014-15	Operating	Nil	Nil	Nil	Nil	Nil	Capital	Nil	Nil	Nil	Nil	Nil
Net impact (\$000)	2010-11	2011-12	2012-13	2013-14	2014-15														
Operating	Nil	Nil	Nil	Nil	Nil														
Capital	Nil	Nil	Nil	Nil	Nil														

For Cabinet

11/545

Private Members Bill - Crimes (Sentencing) Amendment Bill 2011

Attorney General, Simon Corbell MLA

- 1) I recommend Cabinet agree the Government oppose the Crimes (Sentencing) Amendment Bill 2011.
- 2) I recommend Cabinet agree that the Government agree-in-principle to a review of the Crimes (Sentencing) Act 2005.
- 3) I recommend Cabinet note:
 - a) a review of sentencing may be subject to further consideration by Cabinet through future budget processes.
 - b) Mr Rattenbury's proposal would impose significant costs on Government, and would require my Directorate to make significant changes to its core activities if adopted outside of the budget process.

Final Directorate Comments

This submission was not formally circulated to agencies.

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SUPPORTING ARGUMENT

BACKGROUND

1) I introduced the Crimes (Certain Penalty Increases) Amendment Bill 2011 into the Legislative Assembly on 18 August 2011. The Bill makes amendments to the Crimes Act 1900 to raise the maximum penalties for the following offences:

- a) culpable driving causing death;
- b) culpable driving causing grievous bodily harm;
- c) intentionally inflicting grievous bodily harm;
- d) recklessly inflicting grievous bodily harm; and
- e) negligently inflicting grievous bodily harm.

2) On 29 June 2011, Mrs Vicki Dunne, MLA introduced a related but competing Bill. The Crimes (Penalties) Amendment Bill 2011 (the Liberals bill) seeks to increase the maximum penalties for manslaughter and culpable driving offences.

3) Cabinet agreed to oppose the Liberals bill.

ISSUES & OPTIONS

4) The Government bill is currently scheduled for debate on 27 October 2011. Mr Rattenbury has advised me that he will bring the Crimes (Sentencing) Amendment Bill 2011 (the Greens bill) on for debate on Wednesday 19 October 2011. If Mrs Dunne also brings the Liberals Bill on for debate on the same day I will move that the Crimes (Certain Penalty Increases) Amendment Bill be debated cognately with the Greens and Liberals Bill.

The Greens Bill

5) On 21 September 2011, Mr Shane Rattenbury MLA introduced the Crimes (Sentencing) Amendment Bill 2011 (the Greens bill) as an alternative position to the Government's Bill. The Greens bill seeks to amend the *Crimes (Sentencing) Act 2005* (the Act) by inserting two new sections – 138A and 138B.

6) New section 138A would require the Government to report annually on rates of recidivism in the ACT as part of the annual report process.

7) New Section 138B would require that the government undertake a six-year review of the Act and report back to the Assembly. Under the Greens Bill, a

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review of sentencing must commence before 2 June 2012 and be completed before 2 June 2013.

- 8) The review would cover:
- a) how well sentences imposed in the ACT are achieving the purposes of sentencing as described in the Act;
 - b) what sentencing options the ACT currently does not have access to and how well those options are working interstate;
 - c) what the attitudes of the community are to sentencing currently; and
 - d) any options that exist to improve the general level of knowledge and understanding that exists in the community about sentencing.

9) The Greens Bill also requires the Government to consult with a range of stakeholders that include the DPP, the police, civil liberties groups and entities representing victims, the legal profession and offenders.

10) The rationale for the Greens Bill is that both the Government and the Liberals have "been taking an ad hoc approach" to sentencing, and that the Government and the Liberals Bills represent "a rather over-speedy response to one off situations and to be incident based rather than evidence based."

11) At this stage, the Greens Bill is likely to be brought on for debate in the Assembly on 19 October 2011.

ALP Election Commitment

12) The 2008 ACT Labor Justice and Law Reform election policy platform committed the Government to spending \$633,000 over four years to create an ACT Sentencing Council which would:

- a) conduct research on sentencing practices in the ACT;
- b) collect, analyse and publish statistical data on sentencing;
- c) gauge public opinion on sentencing;
- d) consult on sentencing matters;
- e) explore the viability of new sentencing options; and
- f) advise the Attorney General on sentencing issues.

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13) It was envisaged that the creation of a Sentencing Council would entail the development of a new database to capture sentencing and sentence administration data.

14) Since 2008, the ACT's fiscal position and competing government priorities have meant that this commitment remains unfunded.

15) It is notable that although a Sentencing Council has not been established, the Law Reform Advisory Council (LRAC) that I established during this term of Government has already dealt with a reference on suspended sentences. Further references relating to sentencing can be made to the LRAC as appropriate.

16) In introducing the Greens bill, Mr Rattenbury commented on the as yet unmet election commitment, suggesting that his Bill would meet this ACT Labor election commitment.

17) While I support the concept of a sentencing review in-principle, I recommend that the Government oppose the Greens bill on the grounds that:

- a) such a review is not appropriately conducted by statutory force;
- b) resource implications will prevent such a timeline for a sentencing review being met; and
- c) the current availability of sentencing information would significantly fetter such a review at this time.

18) The review promoted by the Greens bill would be highly resource intensive. This fact was acknowledged by the Greens in the Explanatory Statement that accompanies the bill, which notes:

The total cost of implementing the bill will be determined by the method adopted by the Government to fulfil its requirements.

The annual reporting on recidivism data is a project currently nearing completion by the Justice and Community Safety Directorate. From information publicly available, this project appears to have been completed in house by the Directorate making use of existing resources.

The six year review could similarly be conducted in house by the Directorate within existing resources. Alternatively, the Government could partner with an external academic body to conduct the review. The bill

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allows either option to be adopted by Government. As a result, the final total cost of the review is a matter to be determined by the Government.

19) Such a sentencing review would also be difficult if not impossible without the establishment of a sentencing database to capture historical sentencing information. Officers from my Directorate have prepared a budget bid for a sentencing database hosted by the NSW Judicial Commission. The initial concept bid has been indicatively costed at \$1.87 million over four years.

20) My Directorate has promoted a budget proposal for a sentencing review similar to that described in the Greens bill conditional on the establishment of the sentencing database. The initial concept bid has been indicatively costed at \$598,000 over four years.

21) I note Mr Rattenbury's comments that he was surprised that a review provision was not included in the *Crimes (Sentencing) Act 2005*. This Act represented a significant consolidation of sentencing in the ACT and widened non-custodial sentencing options. The Assembly did not consider that a review clause was necessary as part of the legislation package at the time.

22) Mr Rattenbury's Bill represents a significant cost and obligation to the Government, and would require my Directorate to make significant changes to the core activities of my Directorate. I am of the view that it is inappropriate to reprioritise other important ongoing projects and commitments in order to meet the requirements of the review within existing budget allocations.

23) Furthermore, the review would be undertaken just three months before caretaker and four months before the election next year, and it is not certain whether there would be cross-party agreement to implement any outcomes of the review report in the 8th Legislative Assembly of the ACT.

24) The proposal to require annual reporting on rates of recidivism is a matter that my Directorate has already committed to do. For the 2013 and subsequent Report on Government Services, (the 2013 report will cover the 2011-12 financial year), the ACT is required to report on rates of recidivism. The Government and the Directorate have also publicly committed to reporting rates of recidivism in the 2012 JACS Annual Report. For these reasons it is not appropriate to include such a requirement in legislation. If reporting on recidivism rates is expanded

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further this may impose an additional reporting burden on ACT Policing and ACT Corrective Services.

CONSULTATION

25) As well as relevant parts of my own portfolio including statutory officer holders such as the DPP, the ACT Government Solicitor and ACT Policing; Legal Aid ACT, Treasury Directorate and the Chief Ministers and Cabinet Directorate have been consulted in a limited way on this submission.

26) My Directorate undertook consultation with all agencies as part of the development of the Government Bill.

MEDIA/PUBLIC RELEASE

27) Nil.

FINANCIAL IMPACT

28) Concept bids on a sentencing database and sentencing review have been indicatively costed at \$2.47 million over four years and will be considered through the normal budget process.

29) If Mr Rattenbury's Bill is successful, it will impose significant unfunded costs on my Directorate. It would be inappropriate to commit the government to such expenditure divorced from the budget process.

Minister's signature



Date 17 / 10 / 11

Government position on Crimes (Penalties) Amendment Bill 2011

1) On 29 June 2011, Mrs Vicki Dunne, MLA introduced the Crimes (Penalties) Amendment Bill 2011 (the CPA Bill) which would increase the maximum penalties for manslaughter and culpable driving offences.

2) The CPA Bill would increase the following maximum penalties:

Offence	Current maximum – simple offence	Current maximum – involving harm to a pregnancy (section 48A)	Mrs Dunne’s proposal – simple offence	Mrs Dunne’s proposal – involving harm to a pregnancy (section 48A)
Manslaughter	20 years	26 years	25 years	30 years
Culpable driving causing death	7 years	9 years	15 years	17 years
Culpable driving causing grievous bodily harm	4 years	10 years	5 years	12 years

3) Mrs Dunne justifies the proposed increases to culpable driving offences with reference to the ACT Court of Appeal decision to dismiss in *R v Creighton*. Increases to maximum penalties for manslaughter are premised on the Report of the Standing Committee on Justice and Community Safety on its inquiry into the Crimes (Murder) Amendment Bill 2008.

4) The CPA Bill appears to draw upon a Bill introduced by the Canberra Liberals in 2005. Like the 2005 Bill, the Bill introduced by Mrs Dunne is an ill-considered and unmeasured attempt to deal with very important aspects of the ACT’s criminal law.

5) Mr Bill Stefaniak introduced the Sentencing and Corrections Reform Amendment Bill 2005 that proposed across the board increases to the maximum penalties for offences against the person in the *Crimes Act 1900* (44 offences in total). The Bill was negated by the Legislative Assembly when debated cognately with the Government’s Crimes (Sentencing) Bill 2005.

6) The Canberra Liberal’s 2005 Bill was negated on the basis that it was not a considered and targeted review of maximum penalties and that such a task should be left to the codification of the offences against the person. The same can be said of Mrs Dunne’s 2011 Bill.

7) The CPA Bill proposes to increase the maximum penalty for manslaughter in line with recommendation 3 of the Standing Committee on Justice and Community Safety's Report on the Crimes (Murder) Amendment Bill 2008.

8) In its response to recommendation 3, the Government indicated that the specific penalty increase proposed by the Standing Committee (from 20 to 25 years) was not warranted as the increase was not substantial enough to have any effect on sentencing outcomes. Also, the DPP indicated to the Standing Committee that it had not had any occasion to consider the appropriateness of manslaughter sentences. In contrast, maximum penalties and sentences for culpable driving offences and intentionally inflicting grievous bodily harm has been specifically brought to my attention by the DPP.

9) The Bill that the Government proposes to introduce can be distinguished from Mrs Dunne's Bill in the following ways:

- The Government does not propose to increase the maximum penalty for manslaughter for the reasons outlined above;
- The Government proposes to increase the maximum penalties for a suite of serious harm offences to ensure the Crimes Act retains a nexus between maximum penalties and the model criminal code;
- The Government's proposal ensures that penalties for serious harm offences retain a careful balance with maximum penalties for other ACT offences against the person; and
- The Government does not propose to further increase penalties for offences involving harm to a pregnancy.