

EXPLANATORY MEMORANDUM

CRIMINAL CODE AMENDMENT BILL (No.3) 2003 (E267)

(Introduced by Mr Ainsworth, MLA)

Clause 1 Short Title

Provides for the Act to be cited as the *Criminal Code Amendment Act (No. 3) 2003*.

Clause 2 Commencement

This clause provides for this Act to come into operation on the day on which it receives Royal Assent.

Clause 3 Principal Act

This clause provides that the amendments in this Act are to *The Criminal Code*.

Clause 4 Section 29 replaced

Section 29 is repealed and a new Section 29 is inserted. Section 29 refers to “immature age” persons and requires that:

“A person under the age of 10 years is not criminally responsible for any act or omission.

A person under the age of 14 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.

The amendment replaces this section by replicating the current Section 29 wording into subclause (1) and subclause (2) and adding new subclauses (3) and (4) dealing with repeat offenders.

In this way the current intent and protection offered to immature persons under Section 29 is retained.

Subclause (1) retains the same protection for a person under the age of 10 years, ensuring they cannot be held criminally responsible for any act or omission.

Subclause (2) retains the same protection for a person under the age of 14 years, ensuring they cannot be held criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission they had capacity to know that they ought not to do the act or make the omission. Subclause (2) however becomes subject to subclause (3) in the case where the person is a repeat offender.

Subclause (3) states that a person under the age of 14 years who was a repeat offender at the time of doing the act or making the omission had the capacity to know that he ought not to do the act or make the omission.

Subclause (3) removes the “capacity to know” protection offered in subclause (2) in the case of a repeat offender. It provides that a repeat offender, who is over 10 years of age and under 14 years of age, does have the capacity to differentiate right from wrong and therefore there is no requirement to provide proof that that person knew what they were doing was wrong.

A new Subclause (4) makes it a requirement for all first offenders to be counselled on what may constitute an unlawful act or omission and the potential consequences of engaging in unlawful acts or omissions.