

Criminal Code Amendment (Alternate Offences to Wilful Murder) Bill 2005

(Introduced by Mr Matt Birney)

Explanatory Memorandum (EM 91)

Clause 1—Short Title

This Act may be sited as the *Criminal Code Amendment (Alternative Offences to Wilful Murder) Act 2005*.

Clause 2—Commencement.

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

Clause 3—The Act Amended

The amendments in this Part are to *The Criminal Code**.

[* Reprint as at 1 June 2005 (see the Schedule to Criminal Code Act 1913 appearing as Appendix B to the Criminal Code Compilation Act 1913)]

Clause 4—Section 278

Section 278 is amended by inserting at the end of section 278 – “ Alternatives offence: s.279 (murder), 280 (manslaughter), 281A (infanticide), 283 (Attempt to murder), 290 (killing unborn child), or 291 (concealing the birth of children) or *Road Traffic Act 1974 s.59* (dangerous driving causing death)”.

Wilful murder requires a prosecution to prove that **A** intended to kill **B** under section 278. As the Criminal Code now stands a person charged with the most serious offence in our criminal code has to be acquitted if the jury cannot find that the act of murder was intentional. This amendment provides for the return to the statutes of alternatives to wilful murder, allowing a jury to convict on an alternative offence if the prosecution is unable to prove that the accused intended to kill.

As the Criminal Code now stands if the jury is not satisfied that intent was proved they have to acquit as there is no alternative charge.

The double jeopardy rule would preclude any further charges. Allowing the most serious offenders the opportunity to walk.