

CRIMINAL CODE AMENDMENT BILL (NO. 2) 2009

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Michael Mischin (Parliamentary Secretary)**, read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Parliamentary Secretary) [5.02 pm]: I move —

That the bill be now read a second time.

The Criminal Code Amendment Bill (No. 2) 2009 (WA) amends the Criminal Code as it relates to conveyances and in relation to certain minor matters of drafting. Members will be aware of a number of reported incidents where projectiles have been thrown at vehicles, particularly buses, and other similar incidents where laser pointers have been pointed at persons operating aircraft. In many instances, attacks on vehicles will result in serious injuries to passengers or drivers. However, any attack that results in alarm or fear to motorists will carry with it some prospects that a person's safety will be jeopardised. The government views these incidents as a serious form of criminal conduct. People should not have to fear for their safety due to what frequently amounts to entirely senseless acts of violence and stupidity.

Clause 4 of the bill puts into effect laws that will make it a crime to cause fear or alarm to a driver either by causing an object or substance to be directed at or near, or placed in or near the path of, a conveyance, or directing a laser pointer or a narrow beam of light at a conveyance.

By definition, in proposed section 74B(1) of the code, the word "drive" is defined to include the operation of conveyances, aircraft and vessels. Proposed section 74B(2)(a) provides that a person who without lawful excuse causes an object or substance to be directed at or near, or to be placed in or near the path of, a conveyance in circumstances that are likely to cause fear or alarm, commits a crime. Under proposed section 74B(2)(b) if the person directs a laser or a narrow beam of light at or near a conveyance without lawful excuse, this will also constitute a crime. In both cases the maximum penalty will be seven years' imprisonment.

Proposed section 74B represents the government's attempt to cover a wider range of criminal conduct than is represented by actual or likely endangerment to the life, health or safety of a person. Where actual or likely endangerment does result, logically the penalty for such an offence should at least be commensurate. Accordingly, to ensure that parity exists between the statutory penalties for proposed section 74B and existing section 304(1) of the code, which deals with acts likely to endanger the life, health or safety of any person, the penalty for charges under section 304(1) is increased to seven years on indictment or three years and a fine of \$36 000 when dealt with summarily.

The other relevant amendment is made by clause 5 of the bill, which amends section 284 of the code. Section 284 of the Criminal Code makes provision for the offence of culpable driving causing death or grievous bodily harm in a vehicle other than a motor vehicle. The section was included in the Criminal Code by the Criminal Law Amendment (Homicide) Act 2008. It was intended that this provision would reflect the dangerous driving provisions of sections 59 and 59A of the Road Traffic Act 1974, following the recommendations of the Western Australian Law Reform Commission in its review of the law of homicide. The author of the Law Reform Commission report has brought to the attention of the government the fact that while a defence to dangerous driving is available to an offender under section 59B(6) of the Road Traffic Act, it is not available to a prosecution under section 284 of the Criminal Code. This could result in a miscarriage of justice whereby a person charged with the section 284 offence could be found guilty in circumstances in which the injury caused was in no way attributable to his or her dangerous driving—that is, strict liability applies in cases where a vehicle other than a motor vehicle is used—which was not the intention of the commission.

The opportunity has also been taken to make some miscellaneous short amendments to the code that will modernise the code's remaining old-form cross-references. These amendments do not affect the substance or policy of the law. For example, clause 10 provides that section 28 be amended to delete the reference to "the last preceding section" and insert a reference to "section 27". Some amendments are also made to include section numbers for provisos in the code.

I commend the bill to the house.

Debate adjourned, pursuant to standing orders.