

# CRIMINAL LAW AMENDMENT BILL 2001

## Explanatory Memorandum

### ***PART 1 - PRELIMINARY***

#### ***Clause 1***

Title of the Bill is the *Criminal Law Amendment Bill 2001*. The title indicates that the Bill amends the *Criminal Code*, the *Sentencing Act 1995* and other acts.

### ***PART 2 – THE CRIMINAL CODE AMENDED***

#### ***Clause 2***

Indicates that the amendments in Part 2 of the Bill are amendments to the *Criminal Code*.

#### ***Clause 3***

This clause amends section 297 of the *Criminal Code* by adding a further paragraph. That paragraph will provide that if the victim is 60 years of age or older, the offender is liable to a maximum penalty of 14 years of imprisonment.

Section 297 creates the offence of grievous bodily harm with a maximum penalty of 10 years imprisonment.

Section 297 currently provides a maximum penalty of 14 years imprisonment where the offence of grievous bodily harm is committed in the course of conduct that constitutes the stealing of a motor vehicle.

#### ***Clause 4***

This clause amends section 301 of the *Criminal Code*.

Firstly, it deletes both current penalties.

Secondly it changes the offence from a misdemeanour to a crime. This is because the penalty for this offence is 5 years and it is not appropriate for an offence with this penalty to be classified as a misdemeanour. Misdemeanours do not normally have a maximum penalty of more than 2 or 3 years.

Thirdly, it inserts penalties for the offence of “wounding and similar acts” which are the same as the previous penalties except for the addition of an increased penalty to 7 years imprisonment where the offence is committed against a person of or over the age of 60 years. In the case of a summary conviction, the penalty is increased to imprisonment for 3 years or a fine of \$12,000 where the offence is committed against a person of or over the age of 60 years. The previous penalties for this offence were 5 years imprisonment and the summary conviction penalty was 2 years imprisonment or \$8000.

There is no legal significance in the deletion and insertion of the current penalties. The legal significance is in the addition of the new penalty which applies when the victim of the offence is aged 60 years or older. The deletion and reinsertion has been so that the provision clearly and concisely indicates the different penalties which apply in various circumstances.

#### ***Clause 5***

This clause amends section 313 of the *Criminal Code* which makes provision for the offence of common assault.

The clause deletes the current penalty for the offence of 18 months imprisonment or a fine of \$6,000.

It inserts new penalties for the offence, which are the same as the previous penalty except for the addition of the penalty of imprisonment for 3 years or a fine of \$12,000 where the person assaulted is of or over the age of 60 years.

#### ***Clause 6***

This clause amends section 317 of the *Criminal Code* which creates the offence of assault occasioning bodily harm.

This clause deletes the penalties in section 317. The penalty is imprisonment for 5 years and a summary conviction penalty of imprisonment for 2 years or a fine of \$8000.

It inserts new penalties for the offence which are the same as the previous penalty except that it also increases the penalty to 7 years imprisonment where the offence is committed against a person of or over the age of 60 years and increases the summary conviction penalty to imprisonment for 3 years or a fine of \$12,000 where the offence is committed against a person of or over the age of 60 years.

#### ***Clause 7***

This clause amends section 317A of the *Criminal Code* which creates the offence of assault with intent.

It deletes the penalties in this provision. The penalty is 5 years imprisonment or a summary conviction penalty of imprisonment for 2 years or a fine of \$8000.

It inserts new penalties for the offence, which are the same as the previous penalty except that it increases the penalty to 7 years imprisonment where the offence is committed against a person of or over the age of 60 years. It also increases the summary conviction penalty to imprisonment for 3 years or a fine of \$12,000 where the offence is committed against a person of or over the age of 60 years.

### *Clause 8*

This clause deletes the words “Stealing with Violence” from the heading for Chapter XXXVIII of the *Criminal Code*.

It inserts a new word into the heading “Robbery:” so that the heading of Chapter XXXVIII will now read “Robbery: Extortion by Threats”.

This is because the term “robbery” more accurately describes the offences contained in Chapter XXXVIII, which are robbery and assault with intent to commit robbery.

### *Clause 9*

This clause repeals sections 391, 392, 393 & 394 of the *Criminal Code*.

Presently, section 391 provides a definition of robbery; section 392 defines “loaded arms”; section 393 provides the penalty for the offence of robbery and section 394 creates the offence of assault with intent to commit robbery and contains the applicable penalties for that offence. The penalties for the offence of robbery are 14 years, 20 years or life imprisonment. The penalties for the offence of assault with intent to commit robbery are 14 years, 20 years or life imprisonment.

This clause inserts new sections 391, 392 and 393.

#### *Proposed new section 391*

The proposed new section 391 defines the circumstances of aggravation, which apply to the offences of robbery (in new section 392) and assault with intent to commit robbery (in new section 393). The circumstances of aggravation are:

- the offender is in company with another person or persons. This circumstance of aggravation was included in the previous section 393 (penalty for robbery);
- the offender does bodily harm to any person. This circumstance was not included in the previous section 393 (penalty for robbery). However, the previous section had a circumstance of aggravation of wounding or using any other personal violence to any person;
- the offender threatens to kill any person. This circumstance of aggravation was not in the previous section 393. However, it is presently a circumstance of aggravation for burglary (section 400 *Criminal Code*) and for sexual offences (section 319 *Criminal Code*);
- the person to whom the violence is used or threatened is of or over the age of 60 years. This circumstance of aggravation was not in the previous section 393. This is a new circumstance of aggravation.

#### *Proposed new section 392*

The new section 392 creates the offence of robbery and sets out the maximum penalties which apply to that offence. It does this by combining the definition from the current section 391 of the *Criminal Code* and the penalties which are set out in the current section 393 of the *Criminal Code* into one new provision.

There is no legal significance in this restructuring of the provisions. It has been done so that the offence and penalties are set out more clearly and concisely.

The maximum penalties which apply to the offence of robbery are:

- 14 years imprisonment for the offence of robbery without circumstances of aggravation;
- 20 years imprisonment for the offence of robbery committed in circumstances of aggravation (as defined in the proposed new section 391);
- life imprisonment if the offence of robbery is committed in circumstances where the offender is armed or pretends to be armed.

*Proposed new section 393*

This clause 393 creates the offence of assault with intent to rob and sets out the maximum penalties which apply to that offence. It replaces the current provision 394 of the *Criminal Code* and relies upon the definition of the circumstances of aggravation which are set out in the proposed new section 391.

There is no legal significance in the restructuring of the provisions. It has been done so that the offence and penalties are set out more clearly and concisely.

The maximum penalties which apply to the offence of assault with intent to rob are:

- 10 years imprisonment for the offence without circumstances of aggravation;
- 14 years imprisonment for the offence committed in circumstances of aggravation (as defined in the proposed new section 391) or where the offender is armed or pretends to be armed;
- Currently, the third paragraph of section 394 provides that the maximum penalty is life imprisonment where the offender is armed and wounds a person during, immediately before or immediately after the commission of the offence. The new provision 393(c) does not require that combination of factors. Rather, it provides that the penalty of life imprisonment will apply where the offence is committed both in circumstances of aggravation and the offender is armed or pretends to be armed. There is no requirement for wounding in the new provision.

***Clause 10***

This clause makes consequential amendments to the:

- *Bail Act 1982*;
- *Criminal Law (Mentally Impaired Defendants) Act 1996*;
- *Evidence Act 1906*; and
- *Young Offenders Act 1994*.

Clause 9 of this Bill is deleting some sections of Chapter XXXVIII of the *Criminal Code* and inserting new provisions. Hence, the references in other statutes to these provisions need to be changed to reflect the new provisions to be inserted by clause 9 of this Bill. Therefore, clause 10 contains consequential amendments.

***Clause 11***

This clause amends section 409 of the *Criminal Code* that creates the offence of fraud.

It deletes the penalties in this provision. The penalty is 7 years imprisonment or a summary conviction penalty of imprisonment for 2 years or a fine of \$8000.

It inserts new penalties for the offence, which are the same as the previous penalty except that it increases the penalty to 10 years imprisonment where the offence is committed against a person of or over the age of 60 years. It also increases the summary conviction penalty to imprisonment for 3 years or a fine of \$12,000 where the offence is committed against a person of or over the age of 60 years.

### ***PART 3 – SENTENCING ACT 1995 AMENDED***

#### ***Clause 12***

This clause amends section 6(2)(b) of the *Sentencing Act 1995*.

Section 6 sets out the principles of sentencing. Sub-section 6(2) sets out the factors that the Courts must consider in determining the seriousness of an offence.

Section 6(2)(b) currently provides:

“The seriousness of an offence must be determined by taking into account –  
(b) the circumstances of the commission of the offence;”

This clause adds the words “, including the vulnerability of any victim of the offence.” to the end of section 6(2)(b).

Currently, courts are not expressly required by the *Sentencing Act 1995* to consider the vulnerability of the victim. The effect of this clause is to require that circumstance to be taken into account by Courts when determining the seriousness of the offence. The seriousness of the offence is what determines the sentence, which will be imposed by the Courts.