

ACTS AMENDMENT (CRIMINAL INVESTIGATION) BILL 2001

EXPLANATORY MEMORANDUM

Clause 1 – Short Title

This clause provides for the Act to be cited as the Acts Amendment (Criminal Investigation) Bill 2001.

Clause 2 – Commencement

This clause provides for the Act to come into effect on the seventh day after it receives Royal Assent.

Clause 3 – *Coroners Act 1996* amended

This clause repeals the existing offence and penalty in sub-section 46(3) of the *Coroners Act 1996* and inserts a new section 46A into the Coroners Act.

Under section 46 of the Coroners Act 1996, the coroner has the power to:

- Summon a person to attend an inquest to give evidence or to produce document;
- Order a witness to answer questions;
- To order a witness to take an oath or affirmation; and
- Give any other directions the Coroner believes necessary.

Sub-section 46(3) of the Coroners Act 1996 provides that it is an offence if a person does not obey a summons, order or direction made by the coroner pursuant to section 46.

The new provision 46A creates an offence where a person does not obey a summons, order or direction of a coroner made under section 46 of the Coroners Act. The maximum penalty for this offence is imprisonment for 5 years and a fine of \$100,000. The new clause also creates a summary conviction penalty of imprisonment for 2 years and a fine of \$40,000.

The clauses set out the process by which a person may be tried summarily. Before a charge may proceed before a court of summary jurisdiction, the accused must elect to be dealt with summarily and the prosecution must consent.

Notwithstanding an election by the accused and the prosecutor's consent, if the court is of the opinion that the charge should be prosecuted on indictment, the court may commit the defendant to a Superior Court for trial on indictment.

Where a court of summary jurisdiction has convicted a defendant and is of the opinion that the penalty available to it is inadequate, the court may commit the person to a Superior Court for sentence rather than pass sentence.

There is no limitation period for proceedings for an offence under this clause.

Clause 4 – *Surveillance Devices Act 1998* amended

Under the existing cooperative Commonwealth/State legislative, scheme which establishes the National Crime Authority, a member of the Western Australian Police Service may also be a member of the staff of the National Crime Authority. Due to recent High Court decision of *R v Hughes* (2000) 171ALR 155, it is arguable that when a member of the Western Australian Police Service is acting as a staff member of the National Crime Authority they may not, in some circumstances, be able to exercise powers and functions under State legislation.

Therefore, the Bill seeks to ensure that any power that such a person has as a member of the police force of the State may be exercised for the purposes of carrying out a function that the person has as a member of the staff of the National Crime Authority. In particular, this amendment will enable police officers to make application for warrants under the *Surveillance Devices Act 1998*.