

EXPLANATORY MEMORANDUM

Criminal Code Amendment (Infringement Notices) Bill 2010

Clause 1. Short title

Cites the short title of the Act as the *Criminal Code Amendment (Infringement Notices) Act 2010*.

Clause 2. Commencement

This section provides for the Act to be enacted in two parts. Sections 1 and 2 are to come into operation on the day the Act receives Royal Assent. The rest of the Act will be enacted by proclamation. WA Police will need a lead-in time to upgrade the existing software; provide training to members and create the necessary policies and standard operating procedures in relation to the issuing of Criminal Penalty Infringement Notices.

Clause 3. *The Criminal Code* amended

The provisions of this Bill provide for amendments to *The Criminal Code*.

Clause 4. Chapter LXXIII inserted

At the beginning of Part VIII a new Chapter is to be inserted, titled 'Chapter LXXIII – Infringement Notices'. The following proposed sections are to be inserted into that Chapter:

720. Terms used

The term 'CP Act' which is used in this Chapter is defined to be the '*Criminal Procedure Act 2004*'.

721. Regulations to allow infringement notices to be issued for Code offences

721(1) Section 4 of the CP Act provides that a 'prescribed Act' means an Act that is prescribed by regulations made under the CP Act, however *The Criminal Code* will not need to be prescribed by regulation under the CP Act due to s.721(1).

721(2) This subsection provides that the Governor may make regulations under *The Criminal Code* for matters that may or must be prescribed under Part 2 of the CP Act.

Under the CP Act regulations may be made to prescribe the offences to which an infringement notice may be given [s.5(1)].

It is proposed CPINs be issued for the following *Criminal Code* offences:

- 'Disorderly behaviour in public' under section 74A;
- 'Stealing' under section 378, only be in cases where the value of goods is less than \$500; and
- Trespasser refuses name and address or gives false name and address, under section 70B.

For each of these offences, a modified penalty must be prescribed [s.5(3) of the CP Act]. The modified penalty must be an amount of money and must not exceed 20% of the statutory penalty for the offence [s. 5(4) of the CP Act].

The current penalties for the proposed offences are as follows:

- 'Disorderly behaviour in public' – \$6000
- 'Stealing' – 7 years imprisonment, however under s. 426(4) of *The Criminal Code* the summary conviction penalty for an offence under s.378 where the value of the property in question does not exceed \$1000, is \$6000. Under this provision there is no term of imprisonment.
- 'Trespassers may be asked for name and address' - \$500.

Other regulations are to be made to provide for the appointment of authorised officers, approved officers, the prescribed form of the infringement notice and any other forms as necessary [s.6 of the CP Act].

721(3)(a) Section 5(2) of the CP Act provides that '*An offence must not be prescribed under subsection (1) if the penalty for the offence is or includes imprisonment*'. The offence of stealing does have a term of imprisonment in the penalty. This subsection enables the offence of stealing to be included in the scheme despite section 5(2) of the CP Act.

721(3)(b) Regulations will be able to be made to prescribe classes of persons to whom an infringement notice cannot be issued, for example a person under 17 years of age.

721(3)(c) Regulations will be able to be made to prescribe certain circumstances when an infringement cannot be issued. These circumstances may include, but are not limited to, domestic violence situations.

722. Alleged offenders taken to be charged suspects for the purposes of *Criminal Investigation (Identifying People) Act 2002*

As part of the identification requirements to ensure an infringement is being issued to the correct person, the offender may be treated as if they were a “charged suspect” under the *Criminal Investigation (Identifying People) Act 2002*. This enables their fingerprints and photograph to be taken, and in certain cases, for their DNA profile to be taken.

This identifying information must be destroyed once the alleged offender pays the modified penalty and the destruction is requested in accordance with s.69 of the *Criminal Investigation (Identifying People) Act 2002*.