

Criminal Code Amendment Bill 2003

— Explanatory Memorandum —

Part 1 – Preliminary

Clause 1. Short title

Provides for the Act to be cited as the *Criminal Code Amendment Act 2003*.

Clause 2. Commencement

Subject to this clause, the Act comes into operation on the 28th day after the Act receives Royal Assent.

Clause 2(2) has effect if this Act commences after the day on which section 117 of the *Acts Amendment (Equality of Status) Act 2003* (which amends section 32 *Criminal Code*) comes into operation.

Clause 2(3) has effect if this Act commences before the *Sentence Administration Act 2003* comes into operation.

Clause 2(4) has effect if this Act does not commence before the *Sentence Administration Act 2003* comes into operation.

Clause 3. The *Criminal Code* amended

The clause is self explanatory.

Part 2 – Amendments about child sex tourism

Part 2 introduces into the *Criminal Code* provisions that complement the *Crimes (Child Sex Tourism) Amendment Act 1994* (Cth). The new provisions focus on the prevention of the sexual abuse of children by penalising those who profit from such abuse and those who do, or omit to do, any act that aids, facilitates or contributes to sexual offences against children under the *Criminal Code* or the *Crimes Act 1914* (Cth). Consequential amendments to the *Travel Agents Act 1985* are also made.

Clause 4. Section 187 inserted

Inserts a new section 187 in the *Code* that creates the offence of ***Facilitating sexual offences against children outside Western Australia***. The offence is a crime punishable by imprisonment for 20 years. It penalises those who: (a) do an act for the purpose of enabling or aiding another person to engage in “prohibited conduct”; (b) aid another person to engage in “prohibited conduct”; or (c) counsel or procure another person to engage in “prohibited conduct”.

Prohibited conduct is defined to mean (a) the doing of an act in a place outside of Western Australia in respect of a child under the age of 16 years

which if done in Western Australia would constitute an offence under Chapter XXXI; or (b) the commission of an offence under Part IIIA Division 2 of the *Crimes Act 1914* of the Commonwealth.

Clause 5. *Travel Agents Act 1985* consequentially amended

Consequentially amends the *Travel Agents Act 1985* (WA) to specifically disqualify from gaining or holding a licence those travel agents convicted of the offences referred to above. This is achieved by: (a) amending the grounds for granting a licence to a travel agent so as to specifically exclude an individual or body corporate who has been convicted of an offence under the new section 187 *Criminal Code* or the relevant sections in the *Crimes Act 1914* (Cth); and (b) including conviction of a travel agent of an offence under the new section 187 *Criminal Code* or the relevant Commonwealth offences as a ground for inquiry by the Commercial Tribunal of WA. After such an inquiry, if the Tribunal is satisfied that a licensee has been convicted of any of those offences, the Bill provides that the licensee shall be permanently disqualified.

Part 3 — Amendments about public order

Michael Murray QC, as His Honour then was, in his 1982 report of an extensive review of the *Criminal Code* (WA) recommended amendment to chapters IX (Unlawful assemblies: Breaches of the peace) and XX (Miscellaneous offences against public authority) of the *Code*. Part 3 of the Bill implements recommendations contained in the report by modernising the language used in the various sections, providing for summary disposition of offences where this is appropriate, and abolishing others. The Bill also makes consequential amendments to the *Police Act 1892* and the *Justices Act 1902*. These amendments are not intended to have any unusual impact on the right of citizens to gather peacefully and protest or engage in lawful industrial action and will not do so.

Clause 6. Section 62 amended

Amends the **definition of “unlawful assembly”** in section 62 *Criminal Code* by: (a) removing the need for a common purpose as a prerequisite of an unlawful assembly; and (b) deleting “tumultuously” from the definition of “unlawful assembly.”

Clause 7. Sections 63 to 67 replaced and Police Act 1892 consequentially amended

Changes the offence of unlawful assembly in section 63 *Criminal Code* from a misdemeanour to a simple offence and renames the offence ***Taking part in an unlawful assembly***. The penalty is unchanged – imprisonment for one year.

The current section 64 *Criminal Code* is renumbered as section 65 and a new section 64 is inserted: ***Unlawful assembly may be ordered to disperse***. The new section 64 provides that if 3 or more persons form an unlawful assembly, a justice of the peace or a police officer may orally order them to disperse, and if they do not do so they are guilty of a crime and liable to imprisonment for 3 years. The penalty on summary conviction is imprisonment for 2 years or a fine of \$8,000. The new section 64 is intended to prevent erosion of police powers with respect to dispersing unlawful assemblies that might otherwise result from the repeal of section 54A of the *Police Act 1892*.

The new section 65 (current s. 64) *Criminal Code* changes the offence of ***Taking part in a riot*** from a misdemeanour to a crime and the penalty on indictment is increased from imprisonment for 3 years to imprisonment for 5 years. The Bill also provides for a summary conviction penalty of imprisonment for 2 years or a fine of \$8,000.

The new section 66 (current s.65) *Criminal Code* is renamed ***Rioters may be ordered to disperse***. The language is modernised and the maximum penalty reduced from imprisonment for 14 years to imprisonment for 10 years.

The current sections 66 and 67 *Criminal Code* are consolidated into a single new section 67: ***Rioters causing damage***. The new provision renders any person who is riotously assembled liable for unlawful damage or destruction to property caused by the riotous assembly. The maximum penalty for the offence is 10 years' imprisonment, except where property is destroyed or damaged by fire, in which case the maximum penalty is imprisonment for 14 years.

Section 54A of the *Police Act 1892 (Disorderly assembly)* is repealed in view of the insertion of the new section 64 *Criminal Code: Unlawful assembly may be ordered to disperse*.

Clause 8. Section 68 replaced

Repeals section 68 *Criminal Code* and inserts a new section 68 that creates the offence of ***Being armed in a way that may cause fear***. The new section: (a) changes the offence from a misdemeanour to a crime; (b) no longer requires the person to be in public; (c) uses the broader expression of being armed or pretending to be armed "with any dangerous or offensive weapon or instrument" found in various other *Criminal Code* sections (sections 319, 338D, 400, 390B, 393, 407); (d) inserts a defence where the accused has lawful authority to be so armed; (e) increases the penalty on indictment from 2 years' imprisonment to 7 years' imprisonment; and (f) introduces a summary conviction penalty of imprisonment for 3 years or a fine of \$12,000.

Clause 9. Section 69 amended

Amends section 69 *Criminal Code* to: (a) change the offence of ***Forcibly entering land*** from a misdemeanour to a crime; (b) increase the penalty on indictment from imprisonment for 1 year to imprisonment for 2 years; and (c) insert a summary conviction penalty of a fine of \$6,000.

Clause 10. Section 70 amended

Amends section 70 *Criminal Code* to: (a) change the offence of ***Forcibly keeping possession of land*** from a misdemeanour to a crime; (b) increase the penalty on indictment from imprisonment for 1 year to imprisonment for 2 years; and (c) insert a summary conviction penalty of a fine of \$6,000.

Clause 11. Section 71 replaced

Repeals section 71 *Criminal Code* and inserts new section 71. The new section 71 renames the current offence of *Fighting in public so as to cause alarm* as ***Fighting in public causing fear***. The offence is a crime (currently, a misdemeanour) that has a broad application to public places and applies

wherever there is a general fight of some seriousness, whether or not any particular member of the public is alarmed in fact by what occurred. The penalty on indictment is imprisonment for 2 years (currently, 1 year), and, on summary conviction, a fine of \$6,000.

Clause 12. Section 72 amended

Amends section 72 *Criminal Code* to: (a) change the offence of ***Challenge to fight a duel*** from a misdemeanour to a crime; (b) change the penalty on indictment from 3 years' imprisonment to 2 years' imprisonment to maintain consistency with other offences in the Chapter; and (c) insert a summary conviction penalty of \$6,000.

Clause 13. Section 73 amended

Amends section 73 *Criminal Code* to: (a) change the offence of ***Prize fight*** from a misdemeanour to a crime; (b) increase the penalty on indictment from imprisonment for one year to imprisonment for 2 years to maintain consistency with other offences in the Chapter; and (c) insert a summary conviction penalty of \$6,000.

Clause 14. Section 74 amended

Amends section 74 *Criminal Code* to: (a) change the offence of ***Threatening violence*** from a misdemeanour to a crime; (b) increase the penalty on indictment from imprisonment for one year to imprisonment for 3 years to maintain consistency with other offences in the Chapter; (c) repeal the provision distinguishing between offences committed at night or otherwise; and (d) insert a summary conviction penalty of imprisonment for one year or a fine of \$4,000.

Clause 15. Sections 174 and 175 repealed

Repeals section 174 *Criminal Code* – *Neglect of officers* (sheriff, under-sheriff, justice, mayor or police officer) *to suppress riot*, and section 175 – *Neglect* (of one of the above-mentioned officers) *to aid in suppressing riot*. These amendments are consistent with the 1982 report (“the Murray Report”) of the review of the *Criminal Code* undertaken by Michael Murray QC, as His Honour then was, who argued that it is wrong in principle to impose duties in this area and have criminal sanctions for the non-performance of those duties.

Part 4 — Amendments about homicide

Reforms to the sentencing process for wilful murder are contained in Part 4. Essentially, the proposed changes remove artificiality and complexity from the sentencing process by including wilful murder and murder in a single new offence of murder.

Division 1 — Amendments about wilful murder and murder

Clause 16. Section 278 repealed

Repeals section 278 *Criminal Code* – the offence of *wilful murder*. At present, Western Australia is the only jurisdiction in Australia that maintains a distinction between wilful murder (which requires an intention to kill) and murder (which requires an intention to do grievous bodily harm). The section is repealed because the distinction between wilful murder and murder is unnecessary, unduly complicates the law, and creates difficulties for juries, and the current sentencing framework for murder and wilful murder is unwieldy.

Clause 17. Section 279 amended

The amendment to section 279 *Criminal Code* establishes a comprehensive, logical and principled statement of the law of homicide. The new scheme provides for an offence of murder, encompassing both intent to kill and intent to do grievous bodily harm.

Paragraph (1) of the definition of *murder* is deleted. A new paragraph (1) is inserted which includes in the definition circumstances where there was intention to cause the death of, or do grievous bodily harm to, the person killed or some other person.

Paragraphs (3), (4) and (5) are repealed consistent with the recommendations of the Murray Report. These subsections are unnecessary because most of the cases covered by them are within the ambit of paragraph (2): “*If death is caused by means of an act done in the prosecution of any unlawful purpose, which act is of such a nature as to be likely to endanger human life*”. In addition, paragraphs (4) and (5) are undesirable to the extent that they extend the meaning of *murder* beyond that contained in paragraph (2).

Clause 18. Section 282 replaced

Repeals the current section 282, *Penalty for wilful murder and murder*, and inserts a new section 282, *Penalty for murder*. The new penalty regime is uncomplicated.

Clause 19. Consequential amendments to the Code

Consequential on the amendments in this Part, amends the following sections of the *Criminal Code*:

- section 31(4) – *Justification and excuse: Compulsion*;
- section 32 – *Compulsion of husband*;
- section 47(1) – *Unlawful oaths to commit crimes punishable with strict security life imprisonment*;

- section 48(1)(b) – *Other unlawful oaths to commit offences*;
- section 125 – *Penalty for perjury*;
- section 134 – *Conspiracy to bring false accusation*;
- section 144 – *Forcibly rescuing offenders sentenced or liable to strict security life imprisonment*;
- section 277 – *Unlawful homicide*;
- section 280 – *‘Manslaughter’, definition of*;
- section 281 – *Killing on provocation*;
- section 281A – *‘Infanticide’, definition of*;
- section 595 – *Wilful murder, murder etc.; alternative verdicts*; and
- section 720 – *Information by leave of the Supreme Court by private prosecutors*.

Clause 20. Sentencing Act 1995 consequentially amended

Amends definitions of *fixed term*, *term*, and deletes definition of *life term* in section 85(1) *Sentencing Act 1995 (Interpretation and calculations)* consistent with the new penalty regime for *murder* (clause 18 above).

Amends section 88(5) *Sentencing Act 1995* to read: “An offender sentenced to life imprisonment is to serve that sentence concurrently with any other term that he or she is serving or has yet to serve”.

Repeals current section 90 *Sentencing Act 1995* and replaces it with a new section 90, *Imposing life imprisonment for murder*: a court sentencing an offender to life imprisonment for murder must either set a minimum non-parole period of at least 10 and not more than 30 years or order that the offender must never be released.

Repeals section 91 *Sentencing Act 1995 (Imposing strict security life imprisonment)* because it no longer applies.

Repeals section 96 *Sentencing Act 1995* and inserts a new section 96, *Release from life term*. The new section sets out when persons serving sentences of life imprisonment imposed under the new penalty regime for murder may be released. The new provisions are self-explanatory.

Clause 21. Other Acts consequentially amended

Amendments to other Acts that have effect consequential on this Part are contained in Schedule 1 of the Bill.

Clause 22. Transitional and savings

Transitional and savings provisions consequential on this Part are contained in Schedule 2 of the Bill.

Division 2 — Other amendments

Clause 23. Section 283 amended

Section 283 *Criminal Code* (the offence of *Attempt to murder*) is amended to ensure that attempted infanticide can be dealt with under the section.

Part 5 — Amendments about endangering life or health

Part 5 repeals several sections of the *Criminal Code* which deal with a mischief of a similar nature. In the place of these sections, clause 30 inserts a new section 304, *Acts or omissions causing bodily harm or danger*. Part 5 also repeals the current section 305, *Setting mantraps* and substitutes in its place a new section 305, *Setting dangerous things for people*. Finally, Part 5 inserts a new section 306 relating to female genital mutilation.

Clause 24. Section 208 repealed

Repeals *Criminal Code* provision relating to the offence of *Poisoning water-holes*.

Clause 25. Sections 296 and 296A repealed

Repeals *Criminal Code* provisions relating to the offences of *Intentionally endangering safety of persons travelling by railway* (s. 296) and *Intentionally endangering safety of persons travelling by aircraft* (s. 296A).

Clause 26. Sections 298, 299 and 300 repealed

Repeals *Criminal Code* provisions relating to the offences of *Causing explosion likely to endanger life* (s. 298), *Attempting to cause explosion likely to endanger life* (s. 299), and *Maliciously administering poison with intent to harm* (s. 300).

Clause 27. Section 302 repealed

Repeals *Criminal Code* provision relating to the offence of *Failure to supply necessities [of life]*.

Clause 28. Sections 304 to 312 replaced by sections 304 and 305

Repeals *Criminal Code* provisions relating to the offences of *Endangering life of children by exposure* (s.304), *Setting mantraps* (s.305), *Unlawful acts causing bodily harm* (s.306), *Endangering safety of persons travelling by railway* (s.307), *Sending or taking unseaworthy ships to sea* (s.308), *Endangering steamships by tampering with machinery* (s.309), *The like by engineers* (s.310), *Evading laws as to equipment of ships and shipping dangerous goods* (s.311), and *Landing explosives* (s.312).

Inserts a new section 304 in the *Criminal Code*: ***Acts or omissions causing bodily harm or danger*** which contains two separate offence provisions:

- s.304(1) – acts and omissions which cause bodily harm, or which endanger or are likely to endanger the life, health or safety of any person. The offence is a crime and carries a maximum penalty of imprisonment for 5 years, with a summary conviction penalty of 2 years' imprisonment or a fine of \$8,000.
- s.304(2) – the same acts or omissions where there is an intention to cause harm. This more serious offence is also a crime and carries a maximum penalty of 20 years' imprisonment.

The requisite intent to harm is defined in s.304(3), and includes intent to gain a benefit, pecuniary or otherwise, for any person (s.304(3)(d)), and intent to

cause a detriment, pecuniary or otherwise, for any person (s.304(3)(e)). Accordingly, the provision is framed widely enough so as to cover the contamination of goods, whether or not that is done in a bid to extort money.

[It is relevant to note that, rather than include a specific provision concerning the payment of compensation by an offender in this provision, victims will be able to utilise Part 16 of the *Sentencing Act* 1995 which provides for the Courts to issue reparation orders in respect of compensation and restitution.]

Inserts into the *Code* a new section 305: ***Setting dangerous things for people***. Current s. 305 prohibits setting of spring-guns, mantraps or other engines calculated to destroy human life or inflict grievous bodily harm. However, due to the rule of statutory interpretation known as the *ejusdem generis* rule, the phrase “or other engine” in paragraphs 1 and 2 of the section restricts the meaning of “mantraps” and “spring-guns” to devices that are “engines.” Therefore, people who set dangerous traps that cannot be defined as “engines” can escape the s.305 prohibition.

This defect is overcome in the new s. 305 by defining a “dangerous thing” in broad terms. A person convicted on indictment of wilfully setting a dangerous thing is guilty of a crime and is liable to imprisonment for 3 years, or on summary conviction to imprisonment for one year or a fine of \$4,000. A person who, knowing that a dangerous thing has been wilfully set by another person, does not take reasonable measures to make the thing harmless is also guilty of a crime and the same penalties apply.

Clause 29. Section 306 inserted

Inserts a new section 306 into the *Code* prohibiting the performance of ***female genital mutilation*** on another person and the taking of a child or arranging for the taking of a child from Western Australia with the intention of subjecting them to female genital mutilation. The section is modelled on the female genital mutilation legislation of the Australian Capital Territory, Queensland and the Northern Territory and relevant Model Criminal Code provisions.

“Female genital mutilation” is defined (s.306(1)). The definition specifically excludes a reassignment procedure within the meaning of the *Gender Reassignment Act 2000* carried out by a medical practitioner within the meaning of the *Health Act 1911*, and a medical procedure carried out for proper medical purposes.

Female genital mutilation is a crime punishable by imprisonment for 10 years’ and it is not a defence that consent was given by the person on whom the mutilation was performed or by the parent or guardian of that person.

Taking or arranging for a person to be taken from Western Australia with the intention of having female genital mutilation performed on the child is guilty of a crime and is liable to imprisonment for 10 years.

Clause 30. Section 595B inserted.

Inserts a new section 595B into the *Code* to make specific provision for alternative verdicts in respect of the different offences created by new subsections 305(3) and (4).

Clause 31. Other Acts consequentially amended

Amendments to other Acts that have effect consequential on this Part are contained in Schedule 3 of the Bill.

Part 6 — Amendments about sexual servitude

Part 6 inserts new provisions into the *Criminal Code* in order to outlaw sexual servitude. These provisions are modelled on the relevant Commonwealth and Australian Capital Territory legislation. They aim to prohibit sexual servitude by three means: (1) creating an offence of “sexual servitude”; (2) creating an offence of “conducting a business involving sexual servitude”; and (3) creating an offence of “Deceptive recruiting for commercial sexual services”.

Clause 32. Sections 331A, 331B, 331C and 331D inserted

The new section 331A inserts into the *Criminal Code* definitions of the terms “child”, “commercial sexual servitude”, “incapable person” and “threat” for the purposes of sections 331B to 331D.

Section 331B creates the crime of *Sexual servitude*. The penalty on conviction is imprisonment for 20 years if the other person is a child or an incapable person, and imprisonment for 14 years in any other case .

Section 331C creates the crime of *Conducting business involving sexual servitude*. “Conducting a business” is defined broadly to include taking part in the management of the business, exercising control or direction over the business and providing finance for the business. The penalties on conviction are the same as for *Sexual servitude*.

Section 331D creates the crime of *Deceptive recruiting for commercial sexual services*. The penalties on conviction are the same as for *Sexual servitude*.

Clause 33. Other Acts consequentially amended

Amendments to other Acts that have effect consequential on this Part are contained in Schedule 4 of the Bill.

Part 7 — Amendments about the summary trial of indictable offences

Part 7 introduces a single mechanism whereby all “either-way offences” must be tried summarily unless the Court of Petty Sessions decides otherwise or another written law expressly so provides. The Part also creates several new “either-way offences”. The intention is to push less serious indictable matters into the summary courts. The summary courts are given scope to deal with them in a serious way. Penalty changes are aimed at consistency with other *Criminal Code* offences and their scale of seriousness. Some fines are increased to more realistic levels.

Division 1 — *The Criminal Code* amended

Clause 34. Section 1 amended

Amends section 1(1) *Criminal Code* (“Definitions”) by deleting the definition of the term “indictable offence”.

Clause 35. Section 3 replaced

Repeals section 3 *Criminal Code* (“Offences, types of”) and inserts a new section – *Indictable offences, general provisions as to*:

- s. 3(1) applies to offences in the *Code* and in any other written law;
- s. 3(2) provides that indictable offences are only triable on indictment unless otherwise provided by law;
- s. 3(3) allows a prosecution for an indictable offence to be commenced at any time unless otherwise provided by law;
- s. 3(4) provides that section 51 of the *Justices Act 1902* (limits on the time period within which a complaint may be made) does not apply to a complaint of an indictable offence unless another written law expressly provides otherwise; and
- s. 3(5) a conviction of an indictable offence in a court of petty sessions is to be regarded as a conviction of a simple offence only.

Clause 36. Section 5 replaced

Repeals section 5 *Criminal Code* and inserts a new section 5 titled ‘*Summary conviction penalty*’, *meaning and effect of*.

The new section provides a single mechanism whereby all “either-way offences” (that is, indictable offences in respect of which provision has been made in the *Code*, or another written law, for a summary conviction penalty) are to be tried summarily unless the Court of Petty Sessions decides otherwise.

The Court may try an “either-way offence” on indictment if –

- (a) the prosecutor or the defendant makes an application before (but not after) the defendant pleads to the charge; or
- (b) the *Code* or another written law expressly provides for trial on indictment.

The Court may only decide that an either-way offence is to be dealt with on indictment if the Court considers –

- (a) that the circumstances in which the offence was allegedly committed are so serious that, if the defendant were convicted of the offence, the Court would not be able to adequately punish the defendant;

- (b) that the charge forms part of a course of conduct during which other offences were allegedly committed by the defendant and the defendant is to be tried on indictment for one or more of those other offences;
- (c) that a co-accused of the defendant is to be tried on indictment;
- (d) that the charge forms part of a course of conduct during which other offences were allegedly committed by the defendant and others and the defendant or one or more of the others is to be tried on indictment for one or more of those other offences; or
- (e) that the interests of justice require that the charge be dealt with on indictment.

This final ground is included since grounds (a) to (d) do not adequately cover all situations in which trial by indictment may be appropriate. For instance, trial by jury may be necessary to establish contemporary community standards. As it is impossible to foresee all the circumstances in which trial by indictment may be appropriate, a general “catch-all” ground is necessary.

Where the court decides that a charge relating to an “either-way offence” is to be tried on indictment, it must state its reasons. Such a decision is final and cannot be appealed.

If the Court convicts the defendant, the defendant is liable to the summary conviction penalty, except where the Court commits the defendant to the District Court for sentence in which case the defendant is liable to the penalty with which the offence is punishable on indictment.

Clause 37. Section 360 amended

Amends section 360 *Criminal Code, Unlawful publication of defamatory matter*, by:

- (a) increasing the penalty on conviction on indictment from imprisonment for 12 months and a fine of \$600 to imprisonment for 12 months and a fine of \$4,000; and
- (b) inserts a summary conviction penalty of \$1,000.

In the case of the offence of *Unlawful publication of defamatory matter known by the offender to be false*, clause 39 amends s. 360 by:

- (a) increasing the penalty on conviction on indictment from imprisonment for 2 years and a fine of \$1,000 to imprisonment for 2 years and a fine of \$8,000; and
- (b) inserting a summary conviction penalty of \$2,000.

Clause 38. Section 361 amended

Amends section 360 *Criminal Code, Defamation of members of Parliament by strangers*, by:

- (a) increasing the penalty on conviction on indictment from imprisonment for 12 months and a fine of \$600 to imprisonment for 2 years and a fine of \$8,000; and
- (b) inserting a summary conviction penalty of \$2,000.

Clause 39. Section 369 amended

Amends section 369 *Criminal Code, Summary trial in trivial cases of defamation*, to remove reference to a charge of defamation being dealt with summarily at the election of the person charged – the provisions of the new s. 5 (clause 36) and the amended sections 360 and 361 (see clauses 37 and 38) apply.

Clause 40. Section 426 amended

Amends section 426 *Criminal Code, Summary trial of stealing and like offences* by inserting summary conviction penalties of:

- (a) imprisonment for 2 years or a fine of \$8,000 for the following offences identified in subsection (1) where the value of the property in question does not exceed \$10,000, unless subsection (4) applies: s.378, *Penalty for stealing*; s. 382, *Concealing deeds*; s.383, *Severing with intent to steal*; and s.338, *Bringing stolen goods into Western Australia*.
- (b) imprisonment for 2 years or a fine of \$8,000 for offences under s.378 or s.414, *Receiving stolen property etc*) where the property in question is a motor vehicle unless subsection (4) applies;
- (c) a fine of \$2,000 for offences under sections 378, 382, 383, 388, or 414, or attempting to commit, or inciting another person to commit and offence under these sections, where the value of the property does not exceed \$1,000.

Clause 41. Section 426A repealed

Repeals *Criminal Code* section 426A – *Summary conviction penalty for certain offences of a fraudulent nature*. See clause 42 below.

Clause 42. Section 427 replaced

Repeals *Criminal Code* section 427 (currently titled *Summary procedure*) and inserts a new section 427 titled *Summary conviction penalty for certain offences of a fraudulent nature*. The new section inserts summary conviction penalties for offences under s.381 (*Concealing deeds*), s.384 (*Using registered brands with criminal intention*), s.385 (*Fraudulently dealing with minerals in mines*), s.386 *Concealing royalty*; s.387 (*Removing guano without licence*); s.389 (*Fraudulent disposition of mortgaged goods*) or s.390 (*Unauthorised use of aircraft*). The severity of the summary conviction penalty varies in proportion to the severity of the conviction for the relevant offence on indictment.

Clause 43. Section 433 repealed

Repeals *Criminal Code* section 433, *Accused may be committed for trial on indictment*. See clause 45 below.

Clause 44. Section 444 replaced

Repeals *Criminal Code* section 444 (*Criminal damage*) and inserts a new section 444 of the same name. As now, the penalty on conviction on indictment if the property is destroyed or damaged by fire is 14 years' imprisonment or in any other case 10 years'. Inserts a summary conviction penalty in the section of imprisonment for 3 years or a fine of \$12,000 applies where the property is not destroyed or damaged by fire and the amount of the injury done does not exceed \$25,000

Clause 45. Chapter XLVII repealed

Repeals Chapter XLVII *Criminal Code* titled *Summary conviction for certain offences*. The provisions of Chapter XLVII no longer apply in view of the insertions of the new sections 5 (clause 36) and 444 (clause 44).

Clause 46. Section 552 replaced

Repeals *Criminal Code* section 552 (*Attempts to commit indictable offences*) and inserts a new section 552 of the same name. The new section prescribes the penalties that apply to persons convicted on indictment or summary trial of the offence of attempting to commit an indictable offence.

If the attempt is to commit an indictable offence that is a crime, the attempt is a crime. If the attempt is to commit an indictable offence that is a misdemeanour, the attempt is a misdemeanour.

The penalties for attempts to commit indictable offences when convicted on indictment or on summary trial are prescribed in sub-section (2).

However, the summary conviction penalty in subsection (2) does not apply to an attempt to commit an offence under section 426 (stealing and like offences) since the amended section 426 (clause 40) applies to an offence under that section.

Clause 47. Section 553 replaced

Repeals *Criminal Code* section 553 (*Incitement to commit indictable offences*) and inserts a new section 553 of the same name. The new section sets out the penalties that apply to persons convicted on indictment or summary trial of the offence of incitement to commit an indictable offence.

If the incitement is to commit an indictable offence that is a crime, the incitement is a crime. If the incitement is to commit an indictable offence that is a misdemeanour, the incitement is a misdemeanour.

The penalties for incitement to commit indictable offences when convicted on indictment or on summary trial are set out in sub-section (2). However, sub-section (3) provides that the summary conviction penalties in subsection (2) do not apply in the case of incitement to steal or incitement to commit like offences since section 426 applies to these offences.

Clause 48. Sections 554 and 555 repealed

Repeals *Criminal Code* section 554 (*Penalty for attempts and incitement*) and section 555 (*Summary trial of attempt or incitement charges*) since these are now dealt with under sections 552 and 552 (see clauses 48 and 49).

Clause 49. Section 558 replaced

Repeals *Criminal Code* section 558 (*Conspiracies to commit indictable offences*) and inserts a new section 558 similarly titled *Conspiracy to commit indictable offences*. The new section sets out the penalties that apply to persons convicted on indictment or summary trial of the offence of conspiracy to commit an indictable offence.

If the conspiracy is to commit an indictable offence that is a crime, conspiring to commit the offence is a crime. If the conspiracy is to commit an indictable offence that is a misdemeanour, conspiring to commit the offence is a misdemeanour.

The penalties for incitement to commit indictable offences when convicted on indictment or on summary trial are set out in sub-section (2).

Clause 50. Section 559 repealed

Repeals s.559 *Criminal Code, Summary trial of charges of conspiracy to commit indictable offences*. The section is repealed because it no longer applies in view of the insertions of the new sections 5 (clause 36) and 558 (clause 49).

Clause 51. Section 562 replaced

Repeals section 562 *Criminal Code, Accessories after the fact to indictable offences*, and inserts a new section 558 of the same name. The new section sets out the penalties that apply to persons convicted on indictment or summary trial of being an accessory after the fact to an indictable offence.

If the person is an accessory after the fact to an indictable offence that is a crime, the person commits a crime. If the person is an accessory after the fact to an indictable offence that is a misdemeanour, the person commits a misdemeanour.

The penalties for being an accessory after the fact to an indictable offence when convicted on indictment or on summary trial are set out in sub-section (2).

Clause 52. Section 563 repealed

Repeals section 563 *Criminal Code, Summary trial of charge of becoming an accessory after the fact*. The section is repealed because it no longer applies in view of the insertions of the new sections 5 (clause 36) and 562 (clause 51).

Clause 53. Heading to Chapter LXI amended

The heading to Chapter LXI is amended by deleting “Preliminary proceedings” so that the heading reads: “Chapter LXI — Jurisdiction: Bail”.

Clause 54. Section 572 repealed

Repeals section 572 *Criminal Code, Preliminary proceedings on charges of indictable offences*. The section is repealed because it no longer applies in view of the insertion of the new section 5 (clause 36).

Clause 55. Section 574 repealed

Repeals section 574 *Criminal Code, Summary convictions: Time*. The section is repealed because it no longer applies in view of the insertions of the new section 3 (clause 35) and the new section 5 (clause 36).

Clause 56. Section 618 amended

Amends section 618 *Criminal Code, Unconvicted persons committed for sentence*. The section is amended to reflect amendments to the *Justices Act 1902* contained in this Bill (see amendment to section 100 of the *Justices Act 1902* in clause 59).

Clause 57. Section 673 repealed

Repeals section 673 *Criminal Code, Effect of summary conviction for indictable offence*. The section is repealed because it no longer applies in view of the insertion of the new section 3(5) (clause 35)

Division 2 — *Justices Act 1902* consequentially amended

Clause 58. The Act amended by this Division

The amendments in this Division are to the *Justices Act 1902*.

Clause 59. Section 97B amended

Inserts a definition of “either way charge” in section 97B (*Interpretation*) of the *Justices Act 1902*.

Clause 60. Sections 98, 99 and 100 replaced

Replaces existing sections 98, 99 and 100 of the *Justices Act 1902* with new sections.

New section 98 ~ *Procedures on first appearance*: establishes new procedures to be followed on the occasion of the first appearance of the defendant before the Court of Petty Sessions consistent with the amendments contained in Part 7, Division 1 of this Bill.

New section 99 ~ *Either way charges*: establishes new procedures to be followed by a Court of Petty Sessions when dealing with either way charges consistent with the amendments contained in Part 7, Division 1 of this Bill.

New section 100 ~ *Charges that are to be tried on indictment*: establishes new procedures to be followed by a Court of Petty Sessions when dealing with charges that are to be tried on indictment consistent with the amendments contained in Part 7, Division 1 of this Bill.

Clause 61. Section 101 amended

Amends section 101 of the *Justices Act 1902*. As a consequence of the insertion of the new section 100 in the *Justices Act 1902* (clause 61 above), the words “section 100(1)” in section 101(1) are deleted, and the words “section 100(3)” are inserted in their place.

Clause 62. Section 101A amended

Amends the existing section 101A of the *Justices Act 1902*. As a consequence of the insertion of the new section 100 in the *Justices Act 1902* (clause 61 above), the words “section 100(2)” in section 101(1) are deleted, and the words “section 100(4)” are inserted in their place.

Clause 63. Section 107 inserted

Inserts section 107, *Committal for sentence, matters to be recorded*, in the *Justices Act 1902*. The section is a new provision which sets out the matters to be recorded by the Court of Petty Sessions upon committing a defendant to a court of competent jurisdiction for sentence.

Clause 64. Section 137 amended

Repeals section 137(3), *Appearance of both parties*, of the *Justices Act 1902*. As a consequence of the insertion by this Bill of the new section 5 into the *Criminal Code* (clause 36), section 137(3) of the *Justices Act 1902* no longer applies.

Division 3 — Consequential amendments

Clause 65. Other Acts consequentially amended

Amendments to other Acts that have effect consequential on this Part are contained in Schedule 5 of the Bill.

Part 8 — Other amendments

Part 8 includes amendments to a range of sections of the *Criminal Code*. Among others, these include amendments which —

- ensure that government contractors are prohibited from disclosing official secrets;
- criminalise concealment of the death of a person;
- repeal or amend anachronistic references to masters, servants and apprentices;
- remove ambiguity from the offence of procuring, inciting or encouraging a child to commit an indecent act;
- protect the release of reports from Royal Commissions and other statutory bodies;
- make clear that any animal being reared by aquaculture is capable of being stolen;
- allow restriction publication of proceedings likely to lead the public to identify the victim of an offence;
- permit burglary in company to be dealt with summarily in certain circumstances;

- broaden the scope of the mental element of the offence of being armed with intent to commit a crime;
- authorise the playing of a video tape of suspects by the Coroner's Court and legal practitioner acting for or representing the State; and
- allow the court to order that a trial may proceed in the absence of the accused.

Clause 66. Section 81 replaced

Repeals section 81 of the *Code, Disclosure of official secrets*, and inserts a new section 81 titled *Disclosing official secrets* in its place.

Section 81 of the *Criminal Code* currently provides that it is unlawful for persons employed in the public service to publish or communicate any official secret. The section, as it currently stands, does not apply to persons who are contracted to, but not employed by, the State Government. With the increasing use of contracted labour to supply Government services to the community, contracted people are, of necessity, becoming aware of confidential or private information. The new section 81 inserted by this Bill extends the operation of the non-disclosure provisions of the current section so that they apply to those people who have been either a public servant or government contractor and those who are still public servants or government contractors.

The term "government contractor" is defined to include persons who are not employed in the Public Service but who provide or are employed to provide goods or services for the purposes of —

- (a) the State of Western Australia;
- (b) the Public Service;
- (c) the Police Force of Western Australia.

Clause 67. Section 215 inserted

Inserts section 215 in the *Code, Interfering with corpse to hinder inquiry*.

At present, there is no specific indictable offence prescribed in Western Australia relating to the concealment of the death of a person who is not a child. The penalties prescribed for the applicable simple offences are relatively low.

At common law, it is a misdemeanour to dispose or destroy a dead body with intent to prevent an inquest being held (Archbold para 20-99). In *R v Davies* (1942) SR (NSW) 263, the New South Wales Court of Appeal held that it is a misdemeanour at common law for anyone (1) knowingly to bury or otherwise conceal, or to destroy or mutilate, a corpse if (2) he has knowledge of circumstances suggesting that death has resulted from some abnormal cause, and (3) the way in which he so deals with the corpse in fact operates, or is likely, to prevent or prejudice inquiry by the proper inquiries.

The inserted section 215 provides for the offence of interfering with a corpse to hinder an inquiry which reflects the content of the offence at common law. The new section 215 prescribes a penalty of imprisonment for 10 years for the offence.

The insertion of a new section is considered more appropriate than amending section 214 of the *Code (Misconduct with regard to corpses)* as section 214 has room for operation quite apart from the duty to report a death.

Clause 68. Amendments about masters etc. and consequential amendments to the Evidence Act 1906

Amends sections 245 and 257 *Criminal Code* and repeals sections 264, 303 and 372(3).

The *Criminal Code* currently contains provisions that include various anachronistic references to “masters, servants and apprentices”. Several of these provisions are an historical carry-over from the days when servants and apprentices became part of the master’s household and had no protection other than that offered by the criminal law. However, apprentices and trainees now have disciplinary matters dealt with by the State, and employment conditions that are governed by industrial legislation.

This clause removes references to masters, servants and apprentices from sections 245 (*‘Provocation’, meaning of*) and 257 (*Discipline of children*), and repeals sections 264 (*Duty of masters*), 303 (*Endangering life or health of apprentices or servants*), and 372(3) (*Chapter XXVI, Stealing, Special cases*).

The *Evidence Act 1906* Second Schedule Part 1 is amended by deleting reference to section 303 of *The Criminal Code* (which is repealed by this clause) from the list of “Offences Under *The Criminal Code*”.

Clause 69. Section 321 amended

Amends section 321 *Criminal Code, Child of or over 13 and under 16: Sexual offences against*.

It has been found that the wording of the current section 321(5) of the *Code* is unclear and open to ambiguous interpretation. The phrase “other than an indecent act that is committed in the presence of or viewed by the spouse of that child” in the current section 321(5), read literally, suggests that a third party may procure, incite or encourage a child to commit an indecent act as long as the spouse of the child is present or views the act. This contradicts the aim of the *Criminal Code* that a child under 16 may only have sexual contact with his or her spouse.

Thus, as it currently stands, section 321(5) provides a loophole for offenders who procure, incite or encourage a child to do an indecent act where the spouse is watching or present, whether by choice or under duress. The amendments contained in clause 68 are intended to close this loophole in the law. The amendments: make it an offence to procure, incite or encourage a child to do an indecent act (new section 321(5)); provide that it is a defence to a charge under section 321(5) to prove that the indecent act was or was intended to be a private conjugal act (inserted section 321(11)); and provide that is a defence to a charge under section 321(6) to prove that the accused person was lawfully married to the child, and that the indecent recording was made for the exclusive and private use of the child and the accused (inserted section 321(13)).

The inserted section 321(12) provides that an indecent act is a “private conjugal act” if: (a) it is not committed in the presence of, or viewed by, any person other than a person lawfully married to the child; and (b) no photograph, film, videotape or other recording is made of it other than for the

exclusive and private use of the child and a person lawfully married to the child.

Clause 70. Section 354 amended

Inserts a new subsection (4a) into section 354 *Criminal Code, Protection: Reports of matters of public interest*.

It is a defence to an action in defamation that the publication occurred in circumstances attracting either absolute or qualified privilege. A form of qualified privilege is created by section 354(4). However, in *Wishart v Doyle* St R Qd 269, the Queensland Court, in interpreting a similar provision to section 354(4), held that the provision was confined to inquiries directly authorised by statute of a more or less judicial nature. The decision in *Wishart v Doyle* suggests that section 354(4) does not apply to administrative inquiries, including Royal Commissions. Although this conclusion is open to debate, especially in light of the decision of the High Court in *Bailey v Truth and Sportsman Ltd* (1938) 60 CLR 700 which held that a comparable New South Wales decision did protect publication of the report of a Royal Commission, prudence demands that the section be amended.

Subsection 354(4a) inserted by this clause makes clear that it is lawful to publish in good faith a fair report of the public proceedings of any Royal Commission. This avoids the need to publish such reports under the order or authority of Parliament and saves the need to recall Parliament for such purposes.

Clause 71. Section 370 amended

Amends section 370 *Criminal Code, Things capable of being stolen*.

At present, the law provides that wild animals are generally not capable of being stolen. Section 370 *Criminal Code* creates three exceptions to this rule, but it is unclear whether mussels are capable of being stolen. If mussels are not capable of being stolen under section 370 *Criminal Code* a person who takes mussels without having any right to do so cannot be convicted of stealing under section 378 *Criminal Code* (*Penalty for stealing*).

This clause inserts a new paragraph into section 370 of the *Criminal Code* to make clear that an animal being reared by aquaculture is capable of being stolen while it is in a bed, fishery or other place which is the property of any person and which is designated as being the property of or under the control or management of a person.

The new provision applies regardless of the species being reared by aquaculture.

Clause 72. Section 399A repealed

Repeals section 399A *Criminal Code, Court may restrict publication of certain proceedings*.

Clause 82 of the Bill (see below) amends section 635A and, as a consequence of that amendment, section 399A serves no useful purpose and is repealed.

Clause 73. Section 401 amended

Amends section 401 *Criminal Code, Burglary*, to create summary conviction penalties for the offences of:

- (a) burglary committed in circumstances of aggravation (section 401(1)(a)) where the only circumstance of aggravation is that the offender was in company with another person or other persons; and
- (b) burglary of a place ordinarily used for human habitation (section 401(1)(b)).

In each case the inserted summary conviction penalty is imprisonment for 3 years or a fine of \$12,000 .

Section 401 of the *Criminal Code* creates the offence of burglary. At present, crimes of burglary and burglary of a place ordinarily used for human habitation are triable summarily or on indictment at the election of the accused. Burglaries committed in circumstances of aggravation, however, are not triable summarily and the maximum penalty on conviction is imprisonment for 20 years

Section 400(1) of the Code defines “circumstances of aggravation” for the purposes of section 401 as circumstances in which –

- (a) *immediately before or during or immediately after the commission of the offence the offender –*
 - (i) *is or pretends to be armed with a dangerous or offensive weapon or instrument;*
 - (ii) *is or pretends to be in possession of an explosive substance;*
 - (iii) *is in company with another person or other persons;*
 - (iv) *does bodily harm to any person;*
 - (v) *threatens to kill or injure any person;*
 - (vi) *detains any person (within the meaning of section 332(1)); or*
- (b) *immediately before the commission of the offence the offender knew or ought to have known that there was another person (other than a co-offender) in the place;*

The inclusion of being *in company* as a circumstance of aggravation has resulted in many instances of less serious offending being treated as aggravated. Although the majority of such offences may properly be dealt with at the Court of Petty Sessions level, under the current legislative provisions they are not triable summarily and must be dealt with in the District Court.

The primary purpose of defining being in company as a circumstance of aggravation in relation to burglary offences is to address the impact on victims of being confronted by more than one person breaking into their homes. Providing for a summary conviction penalty for the offence of aggravated burglary, where the only circumstance of aggravation is that the offender is in company with another person or other persons will not undermine this purpose, as many cases where victims are confronted in their homes will involve other circumstances of aggravation, particularly those under section 400(1)(b).

Clause 74. Section 407 amended

Amends section 407 of the *Code, Persons found armed, etc., with intent to commit crime*, by deleting the words “a crime” in paragraphs (a), (d) and (e) of the section and in each place substituting the words “an offence”.

At present, it is a crime under section 407 of the *Criminal Code* for a person to: be armed with any dangerous or offensive weapon or instrument with an intent to enter a place and to commit a crime therein (s 407(a)); be in possession at night, without lawful excuse, of any instrument of housebreaking (s 407(c)); be in possession by day of any instrument of housebreaking with intent to commit a crime (s 407(d)); or have his or her face masked or blackened or otherwise disguised with intent to commit a crime (s 407(e)).

The expression “intent to commit a crime,” as used in subsections (a), (d) and (e) has been interpreted to exclude the intent to commit a misdemeanour. This has made it difficult for the prosecution to prove the requisite mental element for an offence under the section in circumstances where the accused has refused to testify. In recent such cases, the Court of Petty Sessions has held that there is no case to answer under section 407.

To address this problem, this clause amends section 407 to broaden the mental element of the offence created under the section to include the intent to commit a misdemeanour.

Clause 75. Section 414 amended

Amends section 414 *Criminal Code, Receiving stolen property etc*, so as to clarify the meaning of the penalty provision relating to the receipt of stolen goods.

At present, section 414 provides a penalty regime whereby an offender may be liable to the greatest punishment provided for “the kind of offence” by means of which the property was obtained, or imprisonment for 14 years, whichever is the lesser. Two issues that have arisen are:

- (1) whether the phrase “the kind of offence” denotes: (a) the actual offence committed by the stealing party (i.e. burglary, stealing, aggravated burglary); or (b) a class of offences such as offences against the person or offences against property; and
- (2) how can the penalty provision contained in section 414 be applied in circumstances where it is not clear how the property was obtained initially (i.e. through a burglary, stealing, or aggravated burglary).

In respect of the first issue, although the second paragraph of section 414 *Criminal Code* does not appear to have been judicially considered, the meaning is nonetheless clear from extrinsic evidence. The second reading speeches of the *Criminal Law Amendment Bill (No 2) 1992* (WA) indicate that the legislature intended the courts to consider the maximum penalty applicable to *the offence by which the property* (received by the defendant) *was first obtained*. If the relevant maximum penalty exceeds 14 years, then the applicable penalty is 14 years. However, if the relevant maximum penalty is less than 14 years then the lesser penalty applies.

The rationale behind the 1992 amendment to the penalty provision was that the person receiving the stolen property should not be liable to a greater penalty than the person who actually stole the property. Therefore, it appears that the phrase “the kind of offence” contained in section 414 *Criminal Code* was intended to be synonymous with the phrase “the offence”. Section 414 is amended by this Bill in order to remove any doubt that this interpretation applies.

In respect of the second issue, assuming that it is not known how the property was obtained, but that it is clear that the taking of the property was unlawful, it would appear that the penalty provision cannot be applied accurately, if it can be applied at all. The most conservative approach would be to apply the maximum penalty associated with the property offence (which could fall within the scope of the provision), that carries the lowest maximum penalty. Such a solution, although practical, would involve reading words (albeit words in default) into the provision. However, several cases support the general proposition that additional words should not be read into a statute where such words do not already appear in the provisions in question: *Thompson v Gould & Co* [1910] AC 409, 420; *Magor and St Mellons RDC v Newport Corp* [1952] AC 189, 191, approved in Australia in *Parramatta City Council v Brickworks Ltd* (1972) 128 CLR 1, 12. This principle has, however, been refined in subsequent cases. It has been recognised that there are some gaps that will be filled by the courts. The type of gaps the courts are now prepared to fill are those where the error is apparent and Parliament's intention is manifest, requiring the correction of the error (see *Tokyo Mart Pty Ltd v Campbell* (1988) 15 NSWLR 275, 283).

The present problem falls clearly into the category where the court will not read further words into a statutory provision. In order to address this problem this clause amends section 414 to the effect that in circumstances other than where the court is satisfied as to the act by means of which the property was obtained, the maximum penalty is imprisonment for 14 years.

Clause 76. Sections 436 and 437 replaced

Sections 436 and 437 *Criminal Code* are repealed and new sections inserted in their place.

The new section 436 titled *Unlawful fishing* creates a new simple offence of unlawfully using any article for the purpose of taking any aquatic organism that is being reared by aquaculture in a place that is the property of, or under the control of, any person. The current section only applies to the taking of oysters or their brood whereas the replacement section applies to the taking of any aquatic organism that is being reared by aquaculture. The penalty on conviction is imprisonment for 2 years or a fine of \$8,000 (compared with the current penalty of a fine of \$1,000) which is consistent with the penalty in section 427.

The new section 427 titled *Unlawfully taking fish etc.* creates a new simple offence of unlawfully taking or destroying, or attempting to take or destroy, any aquatic organism that is being reared by aquaculture in a place that is the property of, or under the control of, any person, or in any water that is private property or in which there is a private right of fishery. The new section is

broader in its application than the one which it replaces. As at present, the penalty on conviction is imprisonment for 2 years or a fine of \$8,000

Clause 77. Section 570B amended

Amends the definition of “authorised person” in section 570B of the *Criminal Code, Interpretation* (contained in Chapter LXA — Videotaped interviews).

Section 570B *Criminal Code* provides that videotapes of interviews should only be viewed and possessed by a limited range of authorised persons for a limited number of approved purposes. As the section presently reads, a videotape of a suspect cannot be played for the purposes of coronial investigations or inquiries or by a legal practitioner acting for or representing the State.

The Coroner's Court conducts investigations and holds inquests into certain deaths occurring within Western Australia. Often these matters are referred by the Police Service. Much of the information held by the Police Service is stored on videotapes of interviews, but section 570A of the *Code* prohibits the making of transcripts of these interviews. Although the Police can give videotapes of interviews to the Coroner (when he requests them by virtue of *Code* subsection 570B(1)(e)), Coroner's Court staff are unable to play them (*Code* subsection 570B(3)).

Periodically, legal practitioners acting for or representing the State prosecute people alleged to have breached various statutes (such as fisheries and conservation legislation). Where the person has been interviewed by the Police, much of the important information required for a proper preparation for prosecution is contained on a videotape of interview. However, as the law stands at present, legal practitioners acting for or representing the State are not included among those authorised to possess videotapes of such interviews. As a result, they are seriously inhibited in their preparations. If they were allowed to possess the videotapes, *Code* subsection 570B(3)(a) would allow them to play them.

The amendments contained in this clause overcome these difficulties by permitting:

- (a) a coroner or a person acting at the direction of a coroner to possess and view videotapes of interviews with people of direct relevance to an investigation or inquest into a death; and
- (b) legal practitioners acting for or representing the State to possess and view videotapes when undertaking a prosecution.

Clause 78. Heading to Chapter LXI amended

Amends the heading of Chapter LXI to read: *Jurisdiction: Preliminary proceedings*.

Clause 79. Section 584 amended

Amends section 584 *Criminal Code, Particular indictments*. The amendment is self-explanatory.

Clause 80. Section 596 amended

Amends section 596 *Criminal Code, Charges of sexual offences; alternative verdicts* by deleting from the section reference to an offence under section 322(4) (“*A person who indecently deals with a child who is under his or her care, supervision or authority is guilty of a crime and is liable to imprisonment for 5 years*”) as an alternative conviction to a charge under section 321(4).

Clause 81. Section 599 amended

Amends section 599 *Criminal Code, Stealing, fraud or receiving, alternative verdicts*. The offences to which section 599 applies are stealing (s.378), fraud (s.409) and receiving stolen property (s.414).

At present, section 599 does not provide a clear answer to the question of whether a superior court judge has the capacity to determine a simple offence of unlawful possession as an alternative to the indictable charge of receiving.

The general rule is stated in section 594 of the *Code*:

Except as hereinafter stated, upon an indictment charging a person with an offence he may be convicted of any indictable or simple offence under this Code, or any other indictable offence, which is established by the evidence, and which is an element or would be involved in the commission of the offence charged in the indictment.

However, section 599 of the *Code* currently provides that:

- (1) *Upon an indictment charging a person with an offence under section 378, 409 or 414 the person may be convicted of an offence under another of those sections if that offence is established by the evidence.*
- (2) *Where a charge of an offence under section 378, 409 or 414 is dealt with summarily the person may be convicted summarily of an offence under another of those sections if that other offence is established by the evidence.*

There is explicit support for the view that section 599 applies the rule in section 594, but section 599 also appears to delimit which offences can be considered to be alternative offences for, *inter alia*, the specific offence of receiving stolen property. Hence, on this view, the only alternative verdicts in relation to the offence of receiving stolen property are stealing and fraud.

This clause amends section 599 so that a Judge is able to determine guilt and deliver sentence on the simple offence of *Possession of property reasonably suspected to be unlawfully obtained* (section 69 of the *Police Act 1892*) rather than the indictable offence of receiving stolen property.

Clause 82. Section 635 replaced

Replaces section 635 of the *Criminal Code, Presence of the accused*. Section 635 currently requires an accused to be present for trial, subject to two exceptions, namely:

- The court may order the accused to be removed and may direct the trial to proceed in the accused's absence where the accused's conduct would render the continuance of the proceedings impracticable; and

- The court may, in any case, if it thinks fit, permit a person charged with a misdemeanour to be absent during the whole or part of the trial on such conditions as it thinks fit.

A difficulty is that section 635 as it is presently worded does not allow the court to proceed with a trial in the absence of an accused who is ill or infirm. This can result in unnecessary adjournment. For example, a joint trial in the Supreme Court involving eight accused persons had to be adjourned when one of the accused became ill and was taken to hospital.

Section 617(3) of the *Queensland Code* avoids this difficulty. It states:

Where 2 or more accused persons are charged in the one indictment, if it is made to appear to the court that any of them is unable to be present by reason of the persons' illness or infirmity, the court may permit the person to be absent during the whole or any part of the trial if it is satisfied:

- (a) *that the interests of the accused person will not be prejudiced by the trial proceeding in the person's absence; and*
- (b) *that the interests of justice require that the trial should proceed in the person's absence.*

This clause repeals section 635 of the *Code* and substitutes a new section 635 similar in effect to section 617(3) of the *Queensland Code*. Subsection (4) of the new provision allows a court to order the trial to proceed in the absence of an accused if the court is satisfied that the accused's interests will not be prejudiced, and that it is necessary for the proper administration of justice that the trial proceed in the absence of the accused.

Clause 83. Section 635A amended

Amends section 635A of the *Criminal Code*, *Court to be open: Publicity*, to allow the Court to prohibit or restrict the publication of any matter likely to lead the public to identify the victim of an offence.

The amendment initially was proposed to protect victims of stalking offences from further invasions of their privacy resulting from media reporting of court proceedings. However, it subsequently became apparent that a specific provision which applied only to stalking offences might not protect the privacy of all victims of stalking-type behaviour. Accordingly, the amendment is cast more widely to cover "an offence".

Clause 82 amends section 635A of the *Code* by inserting:

- (a) a new paragraph (d) into subsection (2) so as to allow the Court to prohibit or restrict the publication of any matter likely to lead the public to identify the victim of an offence.
- (b) a new subsection (2a) so that an order under the new paragraph (d) of subsection (2) does not prohibit the publication of matter identifying a victim if the victim consents to the publication of the matter before it is published and the victim is legally capable of giving his or her consent.

Schedule 1 — Amendments consequential on Part 4

Clause 1. **Adoption Act 1994 amended**

Amends section 40(2)(e)(ii) of the *Adoption Act 1994* by deleting reference to “strict security life imprisonment” as information that is to be provided about an applicant for purposes of an assessment for adoptive parenthood. The amendment is consequential upon abolition of the penalty of “strict security life imprisonment”.

Clause 2. **Bail Act 1982 amended**

Amends —

- section 15(1) of the *Bail Act 1982* by deleting reference to “wilful murder of”. The section relates to the exclusive jurisdiction of the Supreme Court, and in the case of a defendant who is a child a Judge of the Children's Court, to grant bail in murder cases.
- Schedule 2, item 1 of the *Bail Act 1982* by deleting reference to s.278 of the *Criminal Code* (“wilful murder”) from the list of “serious offences”.

These amendments are consequential upon abolition of the crime of “wilful murder”.

Clause 3. **Criminal Code Act 1913 amended**

Repeals section 3(2) of Appendix B to the *Criminal Code Compilation Act 1913*. The section currently provides that the use of the term “murder” in statutes etc is to be taken to include the crimes of “wilful murder” and “murder”. The section is consequential upon abolition of the crime of “wilful murder”.

Clause 4. **Criminal Investigation (Identifying People) Act 2002 amended**

Amends section 3(1) of the *Criminal Investigation (Identifying People) Act 2002* by deleting reference to “strict security life imprisonment” in the definition of “serious offence”. The amendment is consequential upon abolition of the crime of “wilful murder”.

Clause 5. **Criminal Law (Mentally Impaired Defendants) Act 1996 amended**

Amends section Schedule 1 item 1 of the *Criminal Law (Mentally Impaired Defendants) Act 1996* by deleting reference to an offence under section 278 of the *Criminal Code* (“wilful murder”) as an offence for which a custody order must be made. The amendment is consequential upon abolition of the crime of “wilful murder”.

Clause 6. **District Court of Western Australia Act 1969 amended**

Amends section 42(2) of the *District Court of Western Australia Act 1969* by deleting reference to an offence in respect of which the maximum penalty is “strict security life imprisonment” as an offence over which the Court has no

jurisdiction to try an accused person. The amendment is consequential upon abolition of the crime of “wilful murder”.

Clause 7. *Evidence Act 1906* amended

Amends the Second Schedule Part 1 (“Offences under *The Criminal Code*”) of the *Evidence Act 1906*. The words “Forcibly freeing” in section 144 of the *Code* are substituted for the words “Using force to rescue” since the word “rescue” is not appropriate when referring to assisting a person to escape from custody. Reference to “strict security life imprisonment” is deleted because that penalty is abolished by this Bill. Reference to section 278 of the *Criminal Code* (“Wilful murder”) is deleted because the offence of “wilful murder” is abolished by this Bill.

Clause 8. *Juries Act 1957* amended

Amends section 41 of the *Juries Act 1957* (Number of jurors required to agree on verdict in criminal trials) by deleting reference to an offence punishable with strict security life imprisonment. The penalty of “strict security life imprisonment” is abolished by Part 4 of this Bill.

Clause 9. *Prisons Act 1981* amended

Amends the *Prisons Act 1981* consistent with the amendments in Part 4 of this Bill by —

- Repealing section 16(6) and inserting a new subsection prohibiting certain prisoners from being allowed to serve all or part of their sentences in a police lock-up.
- Repealing section 27(6) and inserting a new subsection relating to action to be taken by the superintendent of a prison if prisoners serving certain types of sentence are removed from a prison for medical treatment or returned to a prison after such treatment. The amendments reflect abolition of the offence of “wilful murder” by this Bill, and the insertion of a new penalty for “murder”.
- Inserting a new subparagraph (iiia) in section 86(a) so that the approval of the Governor is necessary before a prisoner subject to an order under section 282 of the *Code* and whose release is to be determined by the Governor may be given a grant of permit for authorised absence from a prison under section 83 of the *Prisons Act 1981*.
- Inserting a new paragraph (c) in section 94(7) so that the approval of the Governor is necessary before a prisoner subject to an order under section 282 of the *Code* and whose release is to be determined by the Governor may participate in any “approved absences from prison under activity programmes”.

Clause 10. *Sentence Administration Act 1995* amended

Amends the *Sentence Administration Act 1995* consistent with the amendments to the *Criminal Code* made by Part 4 of this Bill by —

- Amending the definition of “person in custody” in section 14(1). The effect is that the Minister, in writing, may request the Parole Board to report about a person in custody serving a sentence of life imprisonment

or in custody by virtue of an order made under section 282 of the *Criminal Code* whose release is to be determined by the Governor.

- Repealing section 16(1) and inserting a new subsection (1) which provides for the release by means of a parole order made by the Governor of a person who is in custody by virtue of an order made under section 282 of the *Criminal Code* whose release is to be determined by the Governor.
- Deleting the Table to section 20 (*Periodic reports to the Minister*) and substituting a new Table which sets out when the Parole Board must report to the Minister about prisoners serving life imprisonment for murder or an offence other than murder, and indefinite imprisonment.
- Repealing section 23(1) and inserting a new subsection (1) which prescribes when and the circumstances under which the Governor may make a parole order in respect of a prisoner serving a sentence of life imprisonment.
- Repealing section 24 (*Strict security life imprisonment: Governor may parole prisoner*).
- Amending section 46(b) by deleting “a life term” and inserting in its place “life imprisonment”.
- Repealing section 69(2) and inserting in its place a new subsection (2) which sets out the effect of suspension of a parole order in respect of a prisoner serving life imprisonment.
- Repealing section 71(3) and inserting in its place a new subsection (3) which sets out the effect of cancellation of a parole order in respect of a prisoner serving life imprisonment.

Clause 11. *Sentence Administration Act 2003* amended

Amends the *Sentence Administration Act 2003* consistent with the amendments to the *Criminal Code* made by Part 4 of this Bill by —

- Amending the definition of “person in custody” in section 12(1). The effect is that the Minister, in writing, may request the Parole Board to report about a person in custody serving a sentence of life imprisonment or in custody by virtue of an order made under section 282 of the *Criminal Code* whose release is to be determined by the Governor.
- Repealing section 14(1) and inserting a new subsection (1) which provides for the release by means of a parole order made by the Governor of a person who is in custody by virtue of an order made under section 282 of the *Criminal Code* whose release is to be determined by the Governor.
- Deleting the Table to section 18 (*Periodic reports to the Minister*) and substituting a new Table which sets out when the Parole Board must report to the Minister about prisoner serving life imprisonment for murder or an offence other than murder, and indefinite imprisonment.
- Repealing section 25(1) and inserting a new subsection (1) in its place which prescribes when and the circumstances under which the Governor may make a parole order in respect of a prisoner serving a sentence of life imprisonment.

- Repealing section 26 (*Strict security life imprisonment: Governor may parole prisoner*).
- Amending section 49(b) by deleting “a life term” and inserting in its place “life imprisonment”.
- Repealing section 66(2) and inserting in its place a new subsection (2) which sets out the effect of suspension of a parole order in respect of a prisoner serving life imprisonment.
- Repealing section 67(2) and inserting in its place a new subsection (2) which sets out the effect of cancellation of a parole order in respect of a prisoner serving life imprisonment.

Clause 12. Sentencing Act 1995 amended

Amends section 96(4) of the *Sentencing Act 1995* by deleting reference to the *Sentence Administration Act 1995* and inserting *Sentence Administration Act 2003*.

Clause 13. Young Offenders Act 1994 amended

Amends the *Young Offenders Act 1994* consistent with the amendments to the *Criminal Code* made by Part 4 of this Bill by —

- Inserting a new paragraph (ba) in section 179(6) (*Absences from detention centre for treatment*) which requires that the superintendent of the detention centre is to inform the chief executive officer if a detainee who is subject to an order under the new section 282 of the *Code* is removed from or returned to a detention centre for the purposes of medical treatment.
- Deleting references to “strict security life imprisonment” from Schedule 1 item 1 because that penalty is abolished by this Bill, and amending the reference to section 144 of the *Code* consistent with the amendments to that section in this Bill.

Schedule 2 — Transitional and savings provisions consequential on Part 4

Clause 1. Interpretation

The clause is self-explanatory.

Clause 2. Wilful murder trials in progress at commencement

Prescribes how *wilful murder* trials in progress at the commencement of this Act are to proceed.

Clause 3. Wilful murders committed before commencement

Prescribes how a person who has committed *wilful murder* and who has not been charged before the commencement of this Act is to be dealt with.

Clause 4. Offenders serving life term at commencement

Applies to persons serving life terms immediately before commencement of this Act —

- Sub-clauses (1) to (3) prescribe when such persons who are serving sentences of life imprisonment for an offence other than murder or wilful murder become eligible to be released on parole.
- Sub-clause (4) provides that if such a person is serving a term of life imprisonment in respect of which an order has been made under section 91(3) of the *Sentencing Act 1995* that the person be imprisoned for the whole of the offender's life, the person is not to be released to parole.
- Subclause (5) is self explanatory.
- The effect of subclause (6) is that if the person is serving a sentence of strict security life imprisonment, and an order is made after commencement in the exercise of the Royal Prerogative of Mercy to make a parole order in relation to that person, the Minister must cause a copy of the order and a written explanation of the circumstances giving rise to it to be tabled in each House of Parliament within 15 sitting days of that House after it is made.
- Subclauses (7) and (8) are self explanatory.

Schedule 3 — Amendments consequential on Part 5

Clause 1. *Bail Act 1982* amended

Schedule 2 of the *Bail Act 1982* (list of serious offences) is amended by —

- deleting references to offences under sections 296, 296A, 298 and 299 of the *Criminal Code*, which are repealed by Part 6 of this Bill; and
- inserting a new entry in respect of s.304(2) of the *Code* which is inserted into the *Code* by Part 5 this Bill.

Clause 2. *Criminal Law (Mentally Impaired Defendants) Act 1996* amended

Amends Schedule 1 item 1 of the *Criminal Law (Mentally Impaired Defendants) Act 1996* (Offences for which a custody order must be made) by —

- deleting references to offences under sections 296, 296A, 298 and 299 of the *Criminal Code*, which are repealed by Part 6 of this Bill; and
- inserting a new entry in respect of s.304(2) of the *Code* which is inserted in the *Code* by Part 5 of this Bill.

Clause 3. *Evidence Act 1906* amended

Amends the *Evidence Act 1906* by —

- deleting entries in the Second Schedule Part 1 (Offences under *The Criminal Code*) that refer to offences under sections 296, 296A, 298, 299, 300, 302, 303, 304, 305, 306, 307, 308, 309 and 310 of the *Code* which are repealed or replaced by Part 5 of this Bill;

- inserting entries in the Second Schedule Part 1 relating to offences under the new sections 304 and 305 which are inserted into the *Code* by Part 5 of this Bill;
- deleting entries in the Seventh Schedule Part C (Matters to which Chapter or section of the *Code* relates) that refer to sections 298, 299, 300, 302, 304 and 306 of the *Code* which are repealed or replaced by Part 5 of this Bill;
- inserting an entry in the Seventh Schedule Part 1 relating to the new section 304 which is inserted into the *Code* by Part 5 of this Bill

Clause 4. *Young Offenders Act 1994* amended

Amends the *Young Offenders Act 1994* by

- in Schedule 1 item 1 (*Criminal Code* offences for which a caution cannot be given, and which cannot be referred to a juvenile justice team, and for which a conviction will normally be recorded) —
 - deleting entries relating to offences under sections 300, 305 and 306 of the *Code* which are repealed by Part 6 of this Bill; and
 - inserting entries relating to offences under the new sections 304(2) and 305 which are inserted into the *Code* by Part 5 of this Bill;
- in Schedule 2 item 1 (*Criminal Code* offences for which a caution cannot be given, and which cannot be referred to a juvenile justice team, and for which a conviction will normally be recorded and which may lead to the application of the provisions relating to offenders who repeatedly commit offences resulting in detention) —
 - deleting entries in relating to offences under sections 296, 296A, 298 and 299 of the *Code* which are repealed by Part 6 of this Bill; and
 - inserting an entry relating to the new section 304(2) which is inserted into the *Code* by Part 5 of this Bill.

Schedule 4 — Amendments consequential on Part 6

Clause 1. *Bail Act 1982* amended

Amends Schedule 2 item of the *Bail Act 1982* (list of serious offences) by inserting entries in respect of the new offences under sections 331B, 331C, and 331D of the *Code* which are inserted into the *Criminal Code* by Part 6 of this Bill.

Clause 2. *Criminal Law (Mentally Impaired Defendants) Act 1996* amended

Amends Schedule 1 item 1 of the *Criminal Law (Mentally Impaired Defendants) Act 1996* (list of offences for which a custody order must be made) by inserting entries in respect of the new offences under sections 331B, 331C, and 331D of the *Code* which are inserted into the *Criminal Code* by Part 6 of this Bill.

Clause 3. *Evidence Act 1906* amended

Amends the *Evidence Act 1906* by inserting entries in the Second Schedule Part 1 (Offences under *The Criminal Code*) relating to offences under

sections 331B, 331C, and 331D of the *Code* which are inserted into the *Criminal Code* by Part 6 of this Bill.

Clause 4. *Young Offenders Act 1994* amended

Amends the *Young Offenders Act 1994* by inserting entries in -

- Schedule 1 item 1 (*Criminal Code* offences for which a caution cannot be given, and which cannot be referred to a juvenile justice team, and for which a conviction will normally be recorded) in respect of sections 331B, 331C, and 331D of the *Code* inserted by Part 6 of this Bill;
- Schedule 2 item 1 (*Criminal Code* offences for which a caution cannot be given, and which cannot be referred to a juvenile justice team, and for which a conviction will normally be recorded and which may lead to the application of the provisions relating to offenders who repeatedly commit offences resulting in detention) in respect of sections 331B, 331C, and 331D of the *Code* inserted by Part 6 of this Bill.

Schedule 5 — Amendments consequential on Part 7

Clause 1. *Bail Act 1982* amended

Section 20(3)(a) of the *Bail Act 1982* is deleted and the new paragraph inserted instead. The effect of the insertion is that, when an order is made by the Court, publication of proceedings in circumstances set out in the inserted paragraph is prohibited.

Clause 2. *Biological Control Act 1986* amended

The *Biological Control Act 1986* is amended by —

- in section 45(2) (offence of giving false or misleading evidence at an inquiry) deleting “an indictable offence” and inserting “a crime”;
- repealing subsections 45(3) and (4) (summary trial of and a summary conviction penalty for offence under section 45(1)).

This clause also amends the Act to include a new summary conviction penalty of imprisonment for one year (current penalty: a fine not exceeding \$2 000 or imprisonment for a period not exceeding 1 year, or both).

Clause 3. *Bush Fires Act 1954* amended

Amends section 32 of the *Bush Fires Act 1954* to reclassify the offences of lighting or attempting to light a fire likely to injure as crimes. The applicable penalty (\$250 000 or 14 years' imprisonment or both) is unchanged.

Clause 4. *Companies (Co-operative) Act 1943* amended

Amends the *Companies (Co-operative) Act 1943* by —

- in section 280(1): classifying as a misdemeanour the offence of failing to keep proper accounts in the period prior to the winding-up of a company; increasing the penalty on indictment from imprisonment for 6 months to

imprisonment for one year; and inserting a summary conviction penalty of a fine of \$6,000;

- in section 281(3): classifying as a misdemeanour the offence of, in the course of the winding-up of a company, carrying on the business of the company with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose; retaining the penalty on indictment of imprisonment for one year; and inserting a summary conviction penalty of a fine of \$6,000; and
- in section 425: in respect of the offence of wilfully making a false statement in any prospectus, return, declaration, report, certificate, notice, balance sheet, or other document, deleting the summary conviction penalty of imprisonment for 6 months and a fine of \$200 and inserting a summary conviction penalty of \$6,000; but retaining the penalty on indictment of imprisonment for 2 years.

Clause 5. *Coroners Act 1996* amended

Repeals section 46A of the *Coroners Act 1996* and inserts a new section in its place. Reference to a person charged under the section being able to elect a jury trial is removed. The penalties on indictment and on summary conviction for the offence of disobeying the coroner are not changed.

Clause 6. *Court Security and Custodial Services Act 1999* amended

Amends section 90 of the *Court Security and Custodial Services Act 1999* (Possession of firearms and other weapons at certain custodial places and in vehicles) by —

- inserting in subsection (1) a summary conviction penalty (which currently is contained in subsection (3));
- repealing subsection (3) thereby removing reference to a person charged under the section being able to elect a jury trial.

Clause 7. *Criminal Code Act 1913* amended

Amends section 4 of the *Criminal Code Act 1913* to the effect that no-one is to be tried or punished for an offence (not limited as at present to an indictable offence) in Western Australia except under the *Criminal Code* or other applicable statute.

Clause 8. *Criminal Law (Mentally Impaired Defendants) Act 1996* amended

Repeals section 17 of the *Criminal Law (Mentally Impaired Defendants) Act 1996* and inserts a new section 17 which sets out the procedure to be followed in respect of charges of indictable offences, consistent with the changes made by this Bill.

Clause 9. *Electoral Act 1907* amended

Amends the *Electoral Act 1907* to the effect that all offences under the Act that are punishable by imprisonment exceeding one year are crimes, and all other offences under the Act are not crimes and are punishable on summary conviction.

Clause 10. *Evidence Act 1906* amended

Amends section 106(F)(4) of the *Evidence Act 1906*. Relates to “communicators” appointed to assist a child to give evidence in a court. The effect of the amendment is that a “communicator” who wilfully makes a false or misleading statement to the child or the Court commits a misdemeanour (at present, an indictable offence). The penalty for the offence is not changed.

Clause 11. *Fair Trading Act 1987* amended

Amends section 69 of the *Fair Trading Act 1987*. The amendments: establish that, in general, offences under the Act are crimes; create a summary conviction penalty of “the lesser of a fine of \$6,000 or the maximum penalty provided by this Act for the offence”; and remove a defendant’s right to elect that an offence be dealt with summarily.

Clause 12. *Firearms Act 1973* amended

Amends sections 6 (Prohibition), 7 (Governor may order delivery of firearms in case of emergency), 19 (Licensing offences), and 23 (General offences) of the *Firearms Act 1973*. In each case, indictable offences under these sections are classified as crimes.

Repeals section 23D (Summary trial of indictable offences) of the *Firearms Act 1973* as a consequence of Part 7 of this Bill.

Clause 13. *Gold Corporation Act 1987* amended

Amends the *Gold Corporation Act 1987* by —

- in section 71: providing that the commission of an offence to deceive or defraud the Gold Corporation or a subsidiary of Gold Corporation or creditors of Gold Corporation or creditors of any other person or for any other fraudulent purpose is a crime; and inserting a summary conviction penalty of imprisonment for 2 years or a fine of \$10,000;
- in section 72(1): providing that a person who was or is an officer or employee of the Gold Bank or Gold Corporation etc who makes improper use of his or her position to gain an advantage for himself or herself or any other person commits a crime; inserting a summary conviction penalty of imprisonment for 2 years or a fine of \$10,000;
- repealing section 73(1) and (2) – summary disposition of offences under sections 71 and 72 of the Act – as a consequence of Part 7 of this Bill.

Clause 14. *Guardianship and Administration Act 1990* amended

Schedule 1 Part B (Provisions as to proceedings of the Board) of the *Guardianship and Administration Act 1990* is amended in clause 12 (Limitations on publications of proceedings) by —

- repealing subclauses (1) and (2) and inserting new subclauses in their place which provide that offences under these clauses are crimes;
- inserting in subclauses (1) and (2) summary conviction penalties for offences under these subclauses (which are the same as those currently in subclause (6));
- repealing subclauses (4), (5) and (6) which no longer apply.

Clause 15. *Interpretation Act 1984* amended

Amends the *Interpretation Act 1984* by inserting —

- in section 5 definitions of the terms “indictable offence”, “simple offence” and “summary conviction penalty”; and
- in section 67 a new subsection (1a) which states that an offence designated as a crime or as a misdemeanour is an indictable offence.

Clause 16. *Misuse of Drugs Act 1981* amended

Amends the *Misuse of Drugs Act 1981* by —

- deleting the definitions of “indictable offence” and “offence” from section 3(1);
- amending sections 6, 7, 10, 32A(3), 33 and 34 to provide that offences under these sections are crimes; and
- if this Act comes into operation before the *Cannabis Control Act 2003* comes into operation, repealing section 9 of the *Misuse of Drugs Act 1981* and inserting the new section 9 setting out the procedure for summary trial of some indictable offences under the *Misuse of Drugs Act 1981*;
- if this Act comes into operation after the *Cannabis Control Act 2003* comes into operation, repealing section 9 of the *Misuse of Drugs Act 1981* and inserting the new section 9 setting out the procedure for summary trial of some indictable offences under the *Misuse of Drugs Act 1981*; and
- amending the definition of “serious drug offence” in section 32A(3) to provide that a serious drug offence is a crime.

Clause 17. *National Crime Authority (State Provisions) Act 1985* amended

Amends the *National Crime Authority (State Provisions) Act 1985* by —

- amending section 23(2) to provide that a person who provides false or misleading evidence before a hearing of the National Crime Authority commits a crime, and inserting a summary conviction penalty;
- repealing section 23(3) – summary hearing of a charge – which is no longer necessary; and
- repealing section 23(4) – which currently provides for a summary conviction penalty which is no longer necessary because of the insertion of a summary conviction penalty in section 23(2).

Clause 18. *Petroleum Act 1967* amended

Repeals section 122 of the *Petroleum Act 1967* and inserts a new section 122 in its place. The new section removes reference to a “prescribed offence” and provides that if an offence under the Act includes imprisonment it is a crime.

Clause 19. *Petroleum Pipelines Act 1969* amended

Repeals section 66B of the *Petroleum Pipelines Act 1969* and inserts a new section 66B in its place. The new section removes reference to a “prescribed offence” and provides that if an offence under the Act includes imprisonment it is a crime.

Clause 20. *Petroleum (Submerged Lands) Act 1982* amended

Repeals section 133 of the *Petroleum (Submerged Lands) Act 1982* and inserts a new section 133 in its place. The new section removes reference to a “prescribed offence” and provides that if an offence under the Act includes imprisonment it is a crime.

Clause 21. *Port Authorities Act 1999* amended

Amends the *Port Authorities Act 1999* by deleting the definition of “summary conviction penalty” which no longer applies in consequence of this Bill.

Clause 22. *Prostitution Act 2000* amended

Repeals section 60 of the *Prostitution Act 2000* – Summary trial of crimes – because the section no longer applies in consequence of this Bill.

Clause 23. *Road Traffic Act 1974* amended

Amends section 59 of the *Road Traffic Act 1974* – Dangerous driving causing death, injury, etc. The amendments delete and repeal provisions relating to the summary trial of offences that no longer apply as a consequence of this Bill. The penalties for offences under this section are not changed.

Clause 24. *Securities Industry Act 1975* amended

Amends section 113 of the *Securities Industry Act 1975* – Penalties – to provide that a person who commits an offence under sections 109, 110, 111 or 112 of the Act is guilty of a crime.

Clause 25. *Statutory Corporations (Liability of Directors) Act 1996* amended

Amends section 7 of the *Statutory Corporations (Liability of Directors) Act 1996* – Interpretation – by deleting the definition of “summary conviction penalty” which no longer applies in consequence of this Bill.

Clause 26. *Western Australian Marine (Sea Dumping) Act 1981* amended

Repeals section 31 of the *Western Australian Marine (Sea Dumping) Act 1981* and inserts a new section in its place. The new section classifies an offence against section 5, 6, 7, 9, 12 (5) or 29 (1) of the Act as a crime. The penalties on indictment and summary conviction are not changed.

Clause 27. *Witness Protection (Western Australia) Act 1996* amended

Amends section 3(1) of the *Gold Corporation Act 1987* – Interpretation and abbreviation – by deleting the definition of “summary conviction penalty” which no longer applies in consequence of this Bill.