

CRIMINAL CODE AMENDMENT BILL (No. 2) 2009

EXPLANATORY MEMORANDUM

Overview of Bill

The Criminal Code Amendment Bill (No. 2) 2009 (the Bill) amends the *Criminal Code* (the *Code*) to:

- In clause 4 – to put into effect laws that will make it a crime to cause fear or alarm to a driver by:
 - causing an object or substance to be directed at or near, or placed in or near the path of a conveyance; or
 - directing a laser pointer or a narrow beam of light at a conveyance.
- In clause 5 – provide that there is a defence to culpable driving of a conveyance other than a motor vehicle causing death or grievous bodily harm comparable to the defences available under sections 59(B) to the dangerous driving provisions in sections 59 and 59A of the *Road Traffic Act 1974* (WA). The amendment was recommended by the Western Australian Law Reform Commission in its *Review of the Law of Homicide* but accidentally omitted from the *Criminal Law Amendment (Homicide) Act 2008* (WA);
- In clause 6 to increase the penalty for charges under section 304(1) to 7 years on indictment, and 3 years and a fine of \$36,000 when dealt with summarily.
- In clauses 7 and 8 – to clarify that a person who endangers the safe use of an aircraft even though they are not on board the aircraft at the time commits an offence; and
- In clauses 9 – 14 – make miscellaneous short amendments to the *Code* that will modernise the *Code's* remaining old-form cross references.

CLAUSE NOTES

Part 1 – Preliminary matters

Clause 1 – Short title

Clause 1 provides that the title of the proposed Act is the *Criminal Code Amendment Act (No. 2) 2009* (WA).

Clause 2 – Commencement

Clause 2 provides that Part 1 will come into operation on the day that the Act receives Assent. Parts 2 and 3 of the Act (sections 4, to 14, inclusive) will commence on the following day.

Clause 3 – *The Criminal Code* amended

Clause 3 provides that the proposed Act amends *The Criminal Code*.

Part 2 – Amendments about conveyances

Clause 4 – Section 74B inserted

Clause 4 proposes to insert new section 74B in the *Code* to provide that it is a crime to cause a person fear or alarm by:

- throwing an object or substance at or near a conveyance; or
- placing an object or substance in the path of a conveyance; or
- shining a laser or other narrow beam of light at the person

without lawful excuse.

Subclause (1) makes it clear that when the word *drive* is used in the proposed section 74B it also includes the act of piloting an aircraft or navigating a vessel.

Subclause (2)(a) provides that a person who, without lawful excuse, causes an object or substance to be directed at or near or in the path of a conveyance that another person is driving in circumstances that are likely to cause fear or alarm commits a crime with a maximum penalty of 7 years imprisonment.

Subclause (2)(b) makes similar provision where a laser pointer is used typically where it is directed at an aircraft.

The penalty for a breach of proposed section 74B is 7 years imprisonment if the matter is dealt with on indictment or 3 years and a fine of \$36,000 when dealt with summarily.

Clause 5 – Section 284 amended

Clause 5 proposes to insert a new subsection (5) after subsection (4) of section 284 of the *Code*. Section 284 was inserted into the *Code* by the *Criminal Law Amendment (Homicide) Act 2008* (WA) following a recommendation of the Western Australian Law Reform Commission in its *Review of the Law of Homicide*. The Section relates to

conveyances other provides motor vehicles, principally boats and aircraft. Culpable driving of such a conveyance causing death or grievous bodily harm is an offence with a heavy penalty.

There are comparable provisions dealing with motor vehicles in sections 59 and 59A of the *Road Traffic Act 1974* (WA). Section 59B(6) of that Act provides a defence if the incident is not in any way attributable to the manner in which the motor vehicle was driven. However, there is not a comparable defence for a charge under section 284 with the result that there is effectively strict liability.

The Western Australia Law Reform Commission in their *Review of the Law of Homicide* recommended that there be such a defence, however, it was accidentally omitted from the *Criminal Law Amendment (Homicide) Act 2008* (WA).

Clause 5 inserts a defence to culpable driving of a conveyance other than a motor vehicle comparable to the defence available under the *Road Traffic Act 1974* (WA).

Clause 6 – Section 304 amended

In addition, it is considered parity must exist between the penalties provided by proposed section 74B and 304(1) of the *Code*. Accordingly, the Bill provides for an increase in the penalty for charges under section 304(1) to 7 years on indictment or 3 years and a fine of \$36,000 when dealt with summarily.

Clause 7 – Section 318A amended

Section 318A of the *Code* provides that it is a crime for a person on board an aircraft to assault a member of the crew of the aircraft. Proposed section 303(3) relates to what is effectively an assault on a member of the crew of an aircraft caused by a person who is not on an aircraft. So that an assault can be found, if necessary, when a person directs a laser at a member of the crew of an aircraft it is proposed, by sub clause 7, to delete the words “while on board and aircraft” from section 318A. In addition, the word “the” where it appears in from of “aircraft” in the rest of section 318A is substituted with the word “an” to ensure that the section reads correctly.

Clause 8 – Section 451A amended

Section 451A of the *Code* provides that it is a crime to endanger the safe use of an aircraft. Subclause 8(1) inserts additional words in section 451A(1) to include a reference to doing an act that endangers the free and safe use of an aircraft as would occur if a person directs a laser or other light at an aircraft.

Subclause 8(2) amends section 451A(2) so that it is no longer necessary to be on board an aircraft to endanger the safe use of an aircraft. In addition, the word “the” where it appears in from of “aircraft” in section 451A(2) is substituted with the word “an” to ensure that the section reads correctly.

Part 3 – Miscellaneous short amendments

Clause 9 – Section 27 amended

Section 27 of the *Code* has two subsections that are not presently numbered. Clause 9 provides that the subsection numbers (1) and (2) are inserted where appropriate. In addition, the words “the foregoing provisions of this section” where they are used in what will be subsection 27(2) are deleted and a reference to “subsection (1)” is inserted as this is the new number of the section.

Clause 10 – Section 28 amended

Section 28 of the *Code* has three subsections that are not presently numbered. Clause 10 provides that the subsection numbers (1), (2) and (3), are inserted, where appropriate. In addition, the words “the provisions of the last preceding section apply” where they are used in what will be subsection 28(1) are deleted and a reference to “Section 27 applies” is inserted as this is preceding section.

Clause 11 – Section 44 amended

Clause 11 deletes the words “the provisions of the next following section” where they occur at the end of section 44 of the *Code* and inserts the correct cross-reference to “section 45”.

Clause 12 – Section 49 amended

Clause 12 deletes the words “the last 2 preceding sections” where they occur in section 49 of the *Code* and inserts the correct cross-references to “sections 47 and 48”.

Clause 13 – Section 228 amended

Clause 13 deletes the words “the provisions of the last 4 preceding sections” where they occur in section 228 of the *Code* and inserts the correct cross-references to “sections 224, 225, 226 and 227”.

Clause 14 – Section 539 amended

Clause 14 deletes the words “the last preceding section” where they occur in section 539 of the *Code* and inserts the correct cross-reference to “section 538”.