

# **Criminal Law Amendment (Simple Offences) Bill 2004**

## **EXPLANATORY MEMORANDUM**

The Criminal Law Amendment (Simple Offences) Bill 2003 ("the Bill") implements the majority of the recommendations made by the Law Reform Commission of Western Australia ("the LRC") in its "Report on Police Act Offences" (August 1992) ("the LRC Report").

The Bill also implements many of the recommendations made by Michael Murray QC (as His Honour then was) in "The Criminal Code A General Review" (1983) ("the Murray Report").

The Bill amends many of the penalties set out in *The Criminal Code*. In each case, the fine component of the amended penalty (if there is one) is consistent with section 41(6) of the *Sentencing Act 1995*.

(Section 41(1) of the *Sentencing Act 1995* provides that section 41 applies "if a court is sentencing an offender for an offence the statutory penalty for which is such that imprisonment but not a fine may be imposed". Section 41(6) of that Act provides that if a court of petty sessions decides to fine an offender, the maximum fine it may impose is to be worked out as follows:

"(a) if the offender is a natural person:

$$\text{Maximum fine (\$)} = \frac{\text{Statutory penalty}}{\text{(in months)}} \times 1000$$

(b) if the offender is a body corporate:

$$\text{Maximum fine (\$)} = \frac{\text{Statutory penalty}}{\text{(in months)}} \times 5000."$$

Furthermore, in every case where a section of *The Criminal Code* sets out the dual penalties of imprisonment and a fine, the relevant section has been amended so that section 9(6) of the *Sentencing Act 1995* will allow the penalties to be imposed alternatively or cumulatively. This will give the courts more options when sentencing.

## **PART 1      PRELIMINARY**

### **Clause 1      Short title**

This clause provides that the Act may be cited as the *Criminal Law Amendment (Simple Offences) Act 2004*.

### **Clause 2      Commencement**

This clause provides that the Act comes into operation on a day or days to be fixed by proclamation.

**PART 2            THE CRIMINAL CODE AMENDED**

**Clause 3            Criminal Code amended**

This Part amends *The Criminal Code*.

**Clause 4            Section 1 amended**

This clause amends the definition of "public officer", in order to address the Supreme Court's criticisms of the definition in *R v Tkacz* CCA [2001] WASCA 391. (In that case the Supreme Court indicated that it was not entirely clear whether the two limbs of the definition (ie "means ... and includes") should be read disjunctively.)

The clause also inserts a definition of the term "public place" into section 1 of *The Criminal Code*. That term is used in sections 71 and 76 of *The Criminal Code*. It is also used in proposed sections 74A, 182, 183 and 557K(6)(b) (which are inserted into *The Criminal Code* by the Bill).

The clause also inserts a definition of "summary conviction penalty" which refers the reader to section 5 of *The Criminal Code*.

**Clause 5            Section 63 to 67 replaced**

This clause repeals sections 63 to 67 of *The Criminal Code* and inserts, in their place, proposed sections 63 to 67.

**Proposed section 63            "Taking part in an unlawful assembly"**

Proposed section 63 provides that any person who takes part in an unlawful assembly is guilty of an offence. It replaces section 63 of *The Criminal Code* and section 54A of the *Police Act 1892* (both of which are repealed by the Bill).

The repeal of section 54A of the *Police Act 1892* will implement the recommendation found at paragraph 7.9 of the LRC Report.

**Proposed section 64            "Unlawful assembly may be ordered to disperse"**

Proposed section 64 provides that if 3 or more persons form an unlawful assembly, a justice or a police officer may orally order them to disperse within a time that is reasonable, and if they do not disperse in accordance with the order, they are guilty of a crime. A summary conviction is included. Proposed section 64 replaces section 54A(3) of the *Police Act 1892* (which is repealed by the Bill).

Proposed section 64 is based upon the recommendations found at page 66 of the Murray Report.

The repeal of section 54A of the *Police Act 1892* will implement the recommendation found at paragraph 7.9 of the LRC Report.

**Proposed section 65 "Taking part in a riot"**

Proposed section 65 provides that any person who takes part in a riot is guilty of a crime. A summary conviction is included. Proposed section 65 replaces section 64 of *The Criminal Code* (which is repealed by the Bill).

The inclusion in proposed section 65 of a summary conviction penalty is consistent with the recommendation found at paragraph 7.9 of the LRC Report.

**Proposed section 66 "Rioters may be ordered to disperse"**

Proposed section 66 provides that if 12 or more persons are riotously assembled, a justice or a police officer may orally order them to disperse within a time that is reasonable, and if they do not disperse in accordance with the order, they are guilty of a crime. It replaces section 65 of *The Criminal Code* (which is repealed by the Bill).

Proposed section 66 implements the recommendations found at page 66 of the Murray Report. In particular, the reduction in the maximum penalty (from 14 years' imprisonment to 10 years' imprisonment) accords with the recommendation found at pages 65 and 66 of the Murray Report.

**Proposed section 67 "Rioters causing damage"**

Proposed section 67 renders any person who is riotously assembled liable for damage or destruction to property caused by the riotous assembly. Proposed section 67 replaces sections 66 and 67 of *The Criminal Code* (which are repealed by the Bill).

**Clause 6 Sections 70A and 70B inserted**

This clause inserts proposed sections 70A and 70B into *The Criminal Code*.

**Proposed section 70A "Trespass"**

Proposed section 70A provides that a person who, without lawful excuse, trespasses on a place is guilty of an offence.

**Proposed section 70B "Trespassers may be asked for name and address"**

Proposed section 70B provides that the owner of any enclosed land may ask a trespasser for his or her name and address. It is an offence to fail to comply with such a request.

Proposed sections 70A and 70B are intended to replace sections 66(8), 66(13), 82A and 82B of the *Police Act 1892* (which are repealed by the Bill). The enactment of proposed sections 70A and 70B, together with the repeal of sections 66(8), 66(13),

82A and 82B of the *Police Act 1892*, will implement the recommendation found at paragraph 8.15 of the LRC Report.

**Clause 7            Section 74A inserted**

This clause inserts proposed section 74A into *The Criminal Code*.

**Proposed section 74A    ("Disorderly behaviour in public")**

Proposed section 74A(1) and (2) provide that a person who behaves in a disorderly manner - in a public place or in the sight or hearing of any person who is in a public place; or in a police station or lock-up, is guilty of an offence. It replaces sections 43(1), 44, 54 and 59 of the *Police Act 1892* (which are repealed by the Bill).

The enactment of proposed section 74A(1) and (2), together with the repeal of sections 44, 54 and 59 of the *Police Act 1892* and the repeal of the "disorderly" offence in section 43(1) of that Act, will implement the recommendation found at paragraphs 6.10 - 6.15 of the LRC Report.

Proposed section 74A(3) provides that a person who has the control or management of a place where food or refreshments are sold and who permits a person to behave in a disorderly manner in that place is guilty of an offence. It replaces section 84 of the *Police Act 1892* (which is repealed by the Bill).

The enactment of proposed section 74A(3), together with the repeal of section 84 of the *Police Act 1892*, will implement the recommendation found at paragraph 6.29 of the LRC Report.

Proposed section 74A(4) provides that it is lawful for any person (ie not just police officers) to arrest without warrant any person who is, or whom he suspects, on reasonable grounds, to be, in the course of committing an offence under proposed section 74A. This "citizen's arrest power" is intended to replace, in part, section 47 of the *Police Act 1892* (which is repealed by the Bill). (Note that section 564(2) of *The Criminal Code* also contains a "citizen's arrest power", however it is only exercisable in relation to an "arrestable offence" - which is defined to mean "an offence punishable within imprisonment, with or without any other punishment".)

**Clause 8            Section 85 amended**

This clause amends section 85 of *The Criminal Code*, so as to make it abundantly clear that the section only applies where the public officer corruptly does one of the acts set out in paragraphs (a) to (f) of the section "in the performance or discharge of the functions of his office or employment". The amendment is included as a consequence of amending the definition of "public officer" in section 1(1) of *The Criminal Code*. (Prior to amending that definition, it was arguable that the opening words of the definition qualified the remainder of the definition, so that a person is not a "public officer" if he is, for example, an off duty police officer.)

**Clause 9            Section 87 replaced**

This clause repeals section 87 of *The Criminal Code* and inserts, in its place, proposed section 87.

**Proposed section 87        "Impersonating a public officer"**

Proposed section 87 provides that a person who impersonates a public officer and who- purports to do or exercise; or attends any place for the purpose of doing or exercising, any act or power of such a public officer is guilty of a crime. A summary conviction penalty is included. Proposed section 87 replaces the misdemeanour set out in section 87 of *The Criminal Code* (which is repealed by the Bill) and the impersonation offence set out in section 16 of the *Police Act 1892*, (which is also repealed by the Bill).

**Clause 10            Chapter XIV replaced**

This clause repeals Chapter XIV of *The Criminal Code* and inserts, in its place, proposed Chapter XIV, which contains proposed sections 93 to 107. The offences set out in proposed sections 93 to 107 are all simple offences, in accordance with the recommendation found at paragraph 1 on page 82 of the Murray Report.

The majority of the offences set out in proposed sections 93 to 107 have been based upon similar provisions in the *Local Government Act 1985*.

**Proposed section 93        "Interpretation"**

Proposed section 93 contains a number of definitions for the purpose of proposed Chapter XIV. Proposed section 93 replaces section 93 of *The Criminal Code* (which is repealed by the Bill).

The proposed definition of "election" implements the recommendation found at paragraph 1 on page 83 of the Murray report.

**Proposed section 94        "Application of this Chapter"**

Proposed section 94 provides that proposed Chapter XIV does not apply to or in respect of parliamentary or local government elections. It replaces section 118 of *The Criminal Code* (which is repealed by the Bill). An example of the type of election to which proposed Chapter XIV applies is an election under Part 2 of the *Legal Practice Act 2003*.

**Proposed section 95        "Liability for acts of others"**

Proposed section 95(1) provides that, for the purposes of proposed Chapter XIV, the act of a candidate's authorised agent is to be taken to be the act of the candidate unless the candidate proves that:

1. the act was committed without the candidate's knowledge or consent; and

2. the candidate had neither directly nor indirectly authorised or approved the act.

Proposed section 95(1) is based on existing section 115 of *The Criminal Code* (which is repealed by the Bill).

Proposed section 95(2) provides that, for the purposes of proposed Chapter XIV, a person is liable for an illegal act or omission committed directly or indirectly by the person, or by another person on the person's behalf, except as provided by proposed section 95(1). It is based on existing section 116 of *The Criminal Code* (which is repealed by the Bill).

The retention of sections similar to sections 115 and 116 of *The Criminal Code* is supported by the recommendation found at paragraph 21 on page 86 of the Murray Report.

**Proposed section 96 "Bribery"**

Proposed section 96 sets out offences relating to bribery in the context of an election. It is based on section 4.85(1),(3) and (4) of the *Local Government Act 1995*.

**Proposed section 97 "Undue Influence"**

Proposed section 97 sets out offences relating to undue influence in the context of an election. It is based on section 4.85(2), (3) and (4) of the *Local Government Act 1985*.

**Proposed section 98 "Electoral material. printing and publication of"**

Proposed section 98 sets out offences relating to the printing and publication of electoral material. It is based on section 4.87 of the *Local Government Act 1985*.

**Proposed section 99 "False or defamatory statements or deceptive material, publication of"**

Proposed section 99 sets out offences relating to the making of or the publication of deceptive material or a false or defamatory statement in the context of an election. It is based on section 4.88 of the *Local Government Act 1985*.

**Proposed section 100 "Postal voting, offences in connection with"**

Proposed section 100 sets out offences relating to postal voting. It is based, in part, on section 4.92 of the *Local Government Act 1985*.

**Proposed section 101 "Polling place - offences at or near"**

Proposed section 101 sets out offences relating to behaviour at or near polling places. It is based on sections 4.89, 4.94 and 4.93(a) of the *Local Government Act 1985*.

**Proposed section 102 "Voting offences"**

Proposed section 102 sets out offences relating to voting. It is based, in part, on sections 4.91(1)(d) and 4.91(2)(c) of the *Local Government Act 1985*.

**Proposed section 103 "Ballot-paper and ballot-box offence"**

Proposed section 103 sets out offences relating to a ballot-paper or a ballot-box. It is based on section 4.91 of the *Local Government Act 1985*.

**Proposed section 104 "Secrecy offences"**

Proposed section 104 sets out offences relating to secrecy in the context of elections. It is based on section 4.93(b) and (c) of the *Local Government Act 1985*.

**Proposed section 105 "Electoral officer, offences by"**

Proposed section 105 sets out an offence relating to certain conduct by an electoral officer. It is based on section 4.86 of the *Local Government Act 1985*.

**Proposed section 106 "False statements in connection with an election"**

Proposed section 106 sets out offences relating to the making of false statements in connection with an election. It is based on section 4.90 of the *Local Government Act 1985*.

**Proposed section 107 "Evidentiary provision"**

Proposed section 107 sets out a number of evidentiary provisions. It is based on section 117 of *The Criminal Code* (which is repealed by the Bill).

The retention of a section similar to section 117 of *The Criminal Code* is supported by the recommendation found at paragraph 21 on page 86 of the Murray Report.

**Clause 11 Sections 136 and 137 replaced**

This clause repeals sections 136 and 137 of *The Criminal Code* and inserts, in their place, proposed section 136.

**Proposed section 136 "Compounding or concealing offences"**

Proposed section 136 provides that a person who obtains, or who seeks or agrees to receive, any property or benefit, for any person, upon an agreement or understanding that the person will compound or conceal an offence is guilty of a crime. It replaces sections 136 and 137 of *The Criminal Code* and section 125 of the *Police Act 1892* (all of which are repealed by the Bill). The enactment of proposed section 136, together with the repeal of sections 136 and 137 of *The Criminal Code* and section 125 of the *Police Act 1892*, will implement the recommendations found at paragraph 24 of Appendix II of the LRC Report and page 96 of the Murray Report.

**Clause 12      Section 138 replaced**

This clause repeals section 138 of *The Criminal Code* and inserts, in its place, proposed section 138.

**Proposed section 138      "Advertising reward for stolen property"**

Proposed section 138 sets out redrafted offences relating to advertising a reward for stolen property. The aim of the amendment is to modernise the drafting of the section. The amendment also updates the penalties for the offences set out in proposed section 138.

**Clause 13      Sections 145 and 146 replaced**

This clause repeals sections 145 and 146 of *The Criminal Code* and inserts, in their place, proposed sections 145 and 146.

**Proposed section 145      "Aiding a person to escape from lawful custody"**

Proposed section 145 provides that a person who - conveys anything or causes anything to be conveyed into a prison with intent to facilitate the escape of a prisoner; or aids a person in escaping or attempting to escape from lawful custody, is guilty of a crime. A summary conviction penalty is included in both cases. Proposed section 145 replaces section 145 of *The Criminal Code* and section 67A of the *Police Act 1892* (both of which are repealed by the Bill).

The LRC supports the retention of an offence of the kind set out in section 67A of the *Police Act 1892*: see paragraph 5.10 of the LRC Report.

**Proposed section 146      "Escaping from lawful custody"**

Proposed section 146 provides that a person who escapes from lawful custody is guilty of a crime. A summary conviction is included. Proposed section 146 replaces section 146 of *The Criminal Code* and section 67(1) of the *Police Act 1892* (both of which are repealed by the Bill).

The LRC supports the retention of an offence of the kind set out in section 67(1) of the *Police Act 1892*: see paragraph 5.8 of the LRC Report.

**Clause 14      Section 148 replaced**

This clause repeals section 148 of *The Criminal Code* and inserts, in its place, proposed section 148.

**Proposed section 148      "Aiding an escape"**

Proposed section 148 provides that a person who aids a person who is, to the person's knowledge, a person who has escaped from lawful custody is guilty of a crime. A



summary conviction is included. Proposed section 148 replaces section 148 of *The Criminal Code* and section 67A of the *Police Act 1892* (both of which are repealed by the Bill).

The LRC supports the retention of an offence of the kind set out in section 67A of the *Police Act 1892*: see paragraph 5.9 of the LRC Report.

**Clause 15**      **Section 171 inserted**

This clause inserts proposed section 171 into *The Criminal Code*.

**Proposed section 171**      **"Creating false belief"**

Proposed section 171 provides that a person who does or omits to do any act with the intention of creating a false belief is guilty of a crime. A summary conviction penalty is included. The term "belief" is defined in proposed section 171(1).

Proposed section 171 replaces section 90A of the *Police Act 1892* (which is repealed by the Bill). The LRC supports the retention of an offence of the kind set out in section 90A of the *Police Act 1892*: see paragraphs 5.13 - 5.14 of the LRC Report.

**Clause 16**      **Section 172 replaced**

This clause repeals section 172 of *The Criminal Code* and inserts, in its place, proposed section 172.

**Proposed section 172**      **"Obstructing public officers"**

Proposed section 172 provides that a person who obstructs a public officer, or a person lawfully assisting a public officer, in the performance of the officer's functions is guilty of a crime. A summary conviction penalty is included. The term "obstruct" is defined to include "to prevent, to hinder and to resist".

Proposed section 172 replaces section 172 of *The Criminal Code* and sections 20, 41(1), 41(7), 66(7), 67(3) and 90 of the *Police Act 1892* (all of which are repealed by of the Bill). The enactment of proposed section 172 of *The Criminal Code*, together with the repeal of sections 41(1), 41(7), 66(7), 67(3) and 90 of the *Police Act 1892*, will, in effect, implement the recommendation found at paragraphs 5.3 - 5.5 of the LRC Report.

**Clause 17**      **Section 186 amended**

This clause amends section 186 of *The Criminal Code* by inserting a third subsection. The new subsection is intended to replace existing section 202 of *The Criminal Code* (which is repealed by the Bill).

**Clause 18      Section 190 inserted**

This clause inserts proposed section 190 into *The Criminal Code*.

**Proposed section 190      "Being involved with prostitution"**

Proposed section 190 sets out crimes related to being involved with prostitution. In each case a summary conviction penalty is included.

Proposed section 190 is intended to replace sections 209 and 213 of *The Criminal Code* and sections 76F and 76G(1)(a) of the *Police Act 1892* (all of which are repealed by the Bill). (Section 76G(1)(b) of the *Police Act 1892* is not being replaced, as soliciting, in the context of prostitution, is now covered by the *Prostitution Act 2000*.)

**Clause 19      Section 191 amended and *Evidence Act 1906* consequentially amended**

This clause amends section 191 of *The Criminal Code*, by inserting a second subsection. The new subsection is intended to replace existing section 202 of *The Criminal Code* (which is repealed by the Bill). It also makes some clerical amendments to section 191 of *The Criminal Code*, and a consequential amendment to section 36A(1) of the *Evidence Act 1906*.

**Clause 20      Section 192 amended**

This clause amends section 192 of *The Criminal Code*, by inserting a second subsection. The new subsection is intended to replace existing section 202 of *The Criminal Code* (which is repealed by the Bill). It also makes some clerical amendments to section 192 of *The Criminal Code*.

**Clause 21      Sections 202, 203 and 204 replaced**

This clause repeals sections 202, 203 and 204 of *The Criminal Code* and inserts, in their place, proposed sections 202, 203 and 204.

**Proposed section 202      "Obscene acts in public"**

Proposed section 202(1) provides that a person who does an obscene act - in a public place or in the sight of any person who is in a public place; or in a place station or lock-up, is guilty of a crime. A summary conviction is included. Proposed section 202(1) provides that (proposed) section 203(1) is an alternative offence.

Proposed section 202(2) provides that a person who owns, or has the control or management of, a place to which the public is admitted, and who permits a person to do an obscene act in that place is guilty of a crime. A summary conviction is

included. Proposed section 202(2) provides that (proposed) section 203(2) is an alternative offence.

Proposed section 202(3) sets out a "public benefit" defence. Depending on the circumstances, this defence may apply to theatrical performances etc. The defence is based on the defence set out in existing section 204 of *The Criminal Code* (which, as noted above, is repealed by this clause).

**Proposed section 203 "Indecent acts in public"**

Proposed section 203 mirrors proposed section 202, except that it applies to "indecent acts" rather than "obscene acts". It intended to replace existing sections 203(1) and 204 of *The Criminal Code*, section 66(11) of the *Police Act 1892*, and the "indecent behaviour" offences set out in sections 43(1), 44 and 59 of the *Police Act 1892* (all of which are repealed by the Bill).

**Proposed section 204 "Indecent act with intent to offend"**

Proposed section 204 sets out an offence relating to doing an indecent act with intent to offend. It is intended to replace section 203(2) of *The Criminal Code*, section 66(11) of the *Police Act 1892*, and the "indecent behaviour" offences set out in sections 43(1) and 59 of the *Police Act 1892* (all of which are repealed by the Bill).

**Clause 22 Section 206 inserted**

This clause inserts proposed section 206 into *The Criminal Code*.

**Proposed section 206 "Supplying intoxicants to people likely to abuse them"**

Proposed section 206 sets out an offence relating to the sale or supply of an intoxicant to a person likely to use it to become intoxicated. The term "intoxicant" is defined in proposed section 206(1).

**Clause 23 Sections 209 and 213 repealed and consequential amendment**

This clause repeals sections 209 and 213 of *The Criminal Code*, which are being replaced by proposed section 190. The clause also makes a consequential amendment to the heading to Chapter XXIII which reflects the amendments made to that Chapter by the Bill.

**Clause 24 Sections 339 to 342 repealed and consequential amendment**

This clause repeals sections 339 to 342 of *The Criminal Code* (all of which create offences relating to marriage) and, as a consequence, amends the heading to Chapter XXXIV of *The Criminal Code* in order to remove the words "marriage and". The offences set out in sections 339 to 342 are now covered by the *Marriage Act 1961 (Cth)*.

The repeal of sections 339 to 342 implements the recommendations found at pages 231 and 232 of the Murray Report.

**Clause 25      Section 390A inserted**

This clause inserts proposed section 390A into *The Criminal Code*.

**Proposed section 390A    "Unlawful use of conveyance"**

Proposed section 390A provides that a person who unlawfully uses a conveyance without the consent of the owner or the person in charge of it is guilty of a crime. It replaces section 390B of *The Criminal Code* and section 81 of the *Police Act 1892* (both of which are repealed by the Bill).

Note that proposed section 390A(1) provides that, for the purpose of the proposed section, the term "conveyance" does not include a motor vehicle. The term "motor vehicle" is defined, by reason of section 1(1) of *The Criminal Code* and section 5 of the *Road Traffic Act 1974*, to mean "a self-propelled vehicle that is not operated on rails;" and includes "a trailer, semi-trailer or caravan while attached to a motor vehicle", but does not include "a power assisted pedal cycle".

**Clause 26      Section 390B repealed**

This clause repeals section 390B of *The Criminal Code*, which is replaced by proposed section 390A.

**Clause 27      Heading to Chapter XLIV replaced**

This clause deletes the heading to Chapter XLIV of *The Criminal Code* and inserts, in its place, the heading "Chapter XLIV - Simple offences analogous to stealing". This reflects the amendments made to various sections within Chapter CLIV by the Bill.

**Clause 28      Sections 428 to 435 replaced**

This clause repeals sections 428, 429, 430, 431, 432, 434 and 435 of *The Criminal Code* and inserts, in their place, proposed sections 428 and 429.

**Proposed section 428    "Possessing illegally obtained property"**

Proposed section 428 sets out an offence relating to the possession of anything capable of being stolen that is reasonably suspected to be stolen or otherwise unlawfully obtained. It replaces section 69 of the *Police Act 1892* and sections 429, 434 and 435 of *The Criminal Code* (all of which are repealed by the Bill).

The enactment of proposed section 428, together with the repeal of section 69 of the *Police Act 1892*, will implement the recommendation found at paragraph 13.9 of the

LRC Report. The repeal of sections 429, 434 and 435 of *The Criminal Code* will implement the recommendation found at pages 283 to 284 of the Murray Report.

**Proposed section 429 "Unlawfully using another person's animal"**

Proposed section 428 sets out offences relating to using or taking any animal that is the property of another person. It replaces section 79A of the *Police Act 1892* and section 428 of *The Criminal Code* (all of which are repealed by the Bill).

The enactment of proposed section 429, together with the repeal of section 79A of the *Police Act 1892*, will implement the recommendation found at paragraph 13.26 of the LRC Report. The repeal of section 428 of *The Criminal Code* will implement the recommendation found at page 283 of the Murray Report.

**Clause 29 Sections 439 and 440 repealed**

This clause repeals sections 439 and 440 of *The Criminal Code*.

**Clause 30 Section 440A replaced**

This clause repeals section 440A of *The Criminal Code* and inserts, in its place, proposed section 440A.

**Proposed section 440A "Unauthorised use of computers"**

Proposed section 440A provides that a person who unlawfully uses a restricted-access computer system is guilty of a crime. It is based on section 408D of the *Criminal Code Act 1899 (Qld)*. The enactment of proposed section 440A will implement the recommendation of Commissioner Kennedy found at paragraph 12.8 and page 340 of Volume II of his "Final Report" (January 2004).

**Clause 31 Sections 445 and 446 inserted**

This clause inserts proposed sections 445 and 446 into *The Criminal Code*.

**Proposed section 445 "Damaging property"**

Proposed section 445 sets out an offence relating to the unlawful damage or destruction of property. It replaces section 80 of the *Police Act 1892* (which is repealed by the Bill). The enactment of proposed section 445, together with the repeal of section 80 of the *Police Act 1892*, will implement (in part) the recommendation found at paragraph 13.26 of the LRC Report.

### **Proposed section 446 "Costs of cleaning graffiti"**

Proposed section 446 provides that a court convicting a person of an offence under section 444 or proposed section 445 may order that person to pay for the cost of obliterating graffiti in certain circumstances. It is intended to replace section 80A of the *Police Act 1892*.

### **Clause 32 Section 557 amended**

This clause amends section 557 of *The Criminal Code*, by adding a summary conviction penalty and extending the operation of the section to the possession of "dangerous" substances. The addition of the summary conviction penalty is intended to replace section 66(4) of the *Police Act 1892* (which is repealed by the Bill).

The LRC supports the retention of an offence of the kind set out in section 66(4) of the *Police Act 1892*: see paragraphs 12.24 - 12.27 of the LRC Report.

### **Clause 33 Chapter LVIIA inserted**

This clause inserts proposed Chapter LVIIA into *The Criminal Code*. Proposed Chapter LVIIA is entitled "Offences to do with preparing to commit offences" and it contains proposed sections 557A to 557K.

### **Proposed section 557A "Presumptions"**

Proposed section 557A provides that a person is presumed to have an intention referred to in proposed Chapter LVIIA in relation to a thing in the person's possession if-

- (a) the person is in possession of the thing in circumstances that give rise to a reasonable suspicion that the person has the intention; and
- (b) the contrary is not proved.

Proposed section 557A is based on the presumption provision contained in section 65 of the *Police Act 1892* (which is being repealed by the Bill).

### **Proposed section 557B "Investigative powers for offences in this Chapter"**

Proposed section 557B(1) provides that it is lawful for any person (ie not just police officers) to arrest without warrant any person who is, or whom he suspects, on reasonable grounds, to be, in the course of committing an offence under proposed section 74A.

This "citizen's arrest power" is intended to replace, in part, section 47 of the *Police Act 1892* (which is repealed by the Bill). (Section 564(2) of *The Criminal Code* also contains a "citizen's arrest power", however it is only exercisable in relation to an

"arrestable offence" - which is defined to mean "an offence punishable within imprisonment, with or without any other punishment".)

Proposed section 557B(2) provides that a police officer, without warrant, may:

- (a) stop, detain and search any person who the officer suspects on reasonable grounds to be committing an offence under proposed Chapter LVIIA; and
- (b) seize anything that the officer suspects on reasonable grounds relates to the commission of the offence.

Proposed section 557B(3) provides that, before a police officer searches a person under proposed section 557B(2), he or she must explain to the person that it is an offence to obstruct the search.

Proposed section 557B(2) and (3) are intended to replace section 67B of the *Police Act 1892*, which is repealed by the Bill.

#### **Proposed section 557C "Forfeiture"**

Proposed section 557C provides that a court that convicts a person of an offence under proposed Chapter LVIIA may order that the thing giving rise to the offence be forfeited to the State. It replaces the forfeiture provision in sections 65 and 66 of the *Police Act 1892* (which are being repealed by the Bill).

#### **Proposed section 557D "Possessing stupefying or overpowering drug or thing"**

Proposed section 557D sets out an offence relating to possessing a stupefying or overpowering drug or thing with the intention of using it to facilitate the commission of an offence or the flight of an offender after the commission of attempted commission of an offence. It replaces, in part, section 65(5) of the *Police Act 1892* (which is repealed by the Bill).

The enactment of proposed section 557D, together with the repeal of section 65(5) of the *Police Act 1892*, will implement (in part) the recommendation found at paragraph 12.22 of the LRC Report.

#### **Proposed section 557E "Possessing things to assist unlawful entry to places"**

Proposed section 557E sets out an offence relating to possessing things to assist unlawful entry to places. It replaces section 66(4) of the *Police Act 1892* (which is repealed by the Bill). The enactment of proposed section 557E, together with the repeal of section 66(4) of the *Police Act 1892*, will implement (in part) the recommendation found at paragraph 12.27 of the LRC Report.

#### **Proposed section 557F "Possessing things to assist unlawful use of conveyances"**

Proposed section 557F sets out an offence relating to possessing things to assist unlawful use of conveyances. It replaces section 65(4b) of the *Police Act 1892*

(which is repealed by the Bill). The enactment of proposed section 557F, together with the repeal of section 65(4b) of the *Police Act 1892*, will implement (in part) the recommendation found at paragraph 12.18 of the LRC Report.

**Proposed section 557G "Possessing things for applying graffiti"**

Proposed section 557G sets out an offence relating to possessing things for applying graffiti. It replaces section 65(2) of the *Police Act 1892* (which is repealed by the Bill).

**Proposed section 557H "Possessing a disguise"**

Proposed section 557H sets out an offence relating to possessing a disguise. It replaces section 65(4) of the *Police Act 1892* (which is repealed by the Bill). The enactment of proposed section 557H, together with the repeal of section 65(4) of the *Police Act 1892*, will implement (in part) the recommendation found at paragraphs 12.7 to 12.9 of the LRC Report.

**Proposed section 557I "Possessing bulletproof clothing"**

Proposed section 557I sets out an offence relating to possessing bulletproof clothing. It replaces section 65(4aa) of the *Police Act 1892* (which is repealed by the Bill). The enactment of proposed section 557I, together with the repeal of section 65(4aa) of the *Police Act 1892*, will implement (in part) the recommendation found at paragraph 12.15 of the LRC Report.

**Proposed section 557J "Declared drug traffickers, offences by"**

Proposed section 557J provides that a declared drug trafficker who, having been warned that another person is also a declared drug trafficker and that consorting with the other person may lead to the person being charged with an offence under proposed section 557J, habitually consorts with the other person is guilty of an offence.

The term "consort" is defined to include "communicate in any manner". This would include electronic communication via the internet.

**Proposed section 557K "Child sex offenders, offences by"**

Proposed section 557K sets out two offences relating to child sex offenders.

Proposed section 557K(4) provides that a child sex offender who, having been warned that another person is also a child sex offender and that consorting with the other person may lead to the person being charged with an offence under proposed section 557K, habitually consorts with the other person is guilty of an offence.

The term "consort" is defined to include "communicate in any manner". This would include electronic communication via the internet.



Proposed section 557K(6) provides that a child sex offender who, without reasonable excuse, is in or near a place that is -

- (a) a school, kindergarten or child care centre; or
- (b) a public place where children are regularly present,

and where children are at the time is guilty of an offence.

Proposed section 557K(6) is based on section 11G of the *Summary Offences Act 1988 (NSW)*.

#### **Clause 34 "Misdemeanour" changed to "crime"**

This clause amends a number of sections of *The Criminal Code*, by replacing references to "misdemeanour" with equivalent references to "crime". This removes the obsolete distinction between "crimes" and "misdemeanours" and implements the recommendation found at page 2 of the Murray Report.

#### **Clause 35 Summary conviction penalties, changes to**

This clause amends the summary conviction penalties set out in a number of sections of *The Criminal Code*, so as to:

- (a) make the fine component of the penalty consistent with section 41(6) of the *Sentencing Act 1995*; and
- (b) give the courts more options when sentencing. (See section 9(6) of the *Sentencing Act 1995*, which provides that, where the statutory penalty for an offence specifies more than one penalty, the use of the word "and" between the penalties means that the penalties may be imposed alternatively or cumulatively.)

#### **Clause 36 Amendments about alternative verdicts and *Interpretation Act 1984* consequentially amended**

Mr Michael Murray QC (as His Honour then was) criticised the existing "alternative verdict" provisions of *The Criminal Code* (at pages 378 and 379 of the Murray Report), on the basis that they are incomplete, confusing and give rise to the waste of time and money. This clause amends the "alternative verdict" provisions of *The Criminal Code*, in order to provide an accused person with certainty in relation to the alternative offences of which he may be convicted when he is charged with a particular offence.

**Clause 36(1)** amends section 3(5) of *The Criminal Code* by inserting proposed subsection (6). The proposed subsection replaces section 602A of *The Criminal Code* (which is repealed by the Bill).

**Clause 36(2)** inserts proposed Chapter IIA into *The Criminal Code*. It contains proposed sections 10A to 10I.

**Proposed section 10A "Conviction of alternative offence, when possible"**

Proposed section 10A(1) provides that a person charged with an offence cannot be convicted by the court dealing with the charge of any other offence instead of that offence unless - the accused is charged with the other offence as an alternative to that offence (eg the other offence is set out as an alternative offence in the relevant indictment); or Chapter IIA provides otherwise. Proposed section 10A(1) is based upon the recommendation found at page 593 of the Murray Report.

Proposed section 10A(2) provides that Chapter IIA does not authorise the conviction of a person of an offence if the prosecution for the offence was not commenced within the time (if any) limited by law for commencing a prosecution for the offence. It replaces section 607A of *The Criminal Code* (which is repealed by the Bill).

**Proposed section 10B "'Alternative offence', meaning and effect of"**

Proposed section 10B applies if a provision of *The Criminal Code* (or another written law) that creates an offence ("offence A") provides one or more alternative offences for offence A. In those cases, proposed section 10B(2) provides that if a person is charged with an offence ("offence A"), the person, instead of being convicted as charged, may be convicted of any alternative offence that is provided for offence A.

**Proposed section 10C "Conviction of alternative offence, consequences of"**

Proposed section 10C provides that if a person is charged with an offence and, under *The Criminal Code*, is convicted of some other offence, the person is liable to the penalty to which the person would be liable if the person had been charged with the other offence. It replaces section 603 of *The Criminal Code* (which is repealed by the Bill).

**Proposed section 10D "Charge of offence, alternative convictions of attempt etc."**

Proposed section 10D provides that if a person is charged with committing an offence ("the principal offence"), the person, instead of being convicted as charged, may be convicted of:

1. attempting to commit;
2. inciting another person to commit; or
3. becoming an accessory after the fact to,

the principal offence or any alternative offence of which a person might be convicted instead of the principal offence.

It replaces sections 599A and 599D of *The Criminal Code* (which are repealed by the Bill). (Note that proposed section 10D extends the operation of section 559D.)

**Proposed section 10E "Charge of attempt, alternative convictions on"**

Proposed section 10E provides that if a person is charged with attempting to commit an offence ("the principal offence") other than an offence under section 283 ("attempt to murder"), the person, instead of being convicted as charged, may be convicted of:

1. committing the principal offence; or
2. committing or attempting to commit, any alternative offence of which any person charged with the principal offence might be convicted instead of the principal offence.

It replaces section 599B of *The Criminal Code* (which is repealed by the Bill).

**Proposed section 10F "Charge of conspiracy, alternative convictions on"**

Proposed section 10F provides that if a person is charged with conspiring to commit an offence ("the principal offence"), the person, instead of being convicted as charged, may be convicted of:

1. committing the principal offence;
2. attempting to commit the principal offence; or
3. inciting another person to commit the principal offence.

It replaces section 599C of *The Criminal Code* (which is repealed by the Bill).

**Proposed section 10G "Charge of procuring, alternative convictions on"**

Proposed section 10G(1) provides that if a person is charged with procuring the commission of an offence ("the principal offence"), the person, instead of being convicted as charged, may be convicted of:

1. attempting to procure the commission of the principal offence; or
2. procuring the commission of, or attempting to procure the commission of, any offence of which any person charged with the principal offence might be convicted instead of the principal offence.

It replaces paragraphs 1 of sections 600 and 601 of *The Criminal Code* (which are repealed by the Bill).

Proposed section 10G(2) provides that if a person ("the accused") is charged with procuring another person to do an act or make an omission of such a nature that if the accused had done the act or made the omission he or she would be guilty of an offence ("the principal offence"), the accused, instead of being convicted as charged, may be convicted of procuring the other person to do any other act or make any other omission that is of such a nature that if the accused had done the act or made the omission he or she would be guilty of an offence of which any person charged with the principal offence might be convicted instead of the principal offence. It replaces paragraph 2 of section 600 of *The Criminal Code* (which, as noted above, is repealed by the Bill).

**Proposed section 10H "Charge of attempting to procure, alternative convictions on"**

Proposed section 10H(1) provides that if a person is charged with attempting to procure the commission of offence ("the principal offence"), the person, instead of being convicted as charged, may be convicted of attempting to procure the commission of any other offence of which any person charged with the principal offence might be convicted instead of the principal offence. It replaces paragraph 2 of section 601 of *The Criminal Code* (which is repealed by the Bill).

Proposed section 10H(2) provides that if a person ("the accused") is charged with attempting to procure another person to do an act or make an omission of such a nature that if the act or omission had occurred an offence ("the principal offence") would have been committed, the accused, instead of being convicted as charged, may be convicted of attempting to procure the other person to do any other act or make any other omission that is of such a nature that if the act or omission had occurred an offence would have been committed of such a nature that any person charged with the principal offence might be convicted of it instead of the principal offence. It replaces paragraph 3 of section 601 of *The Criminal Code* (which, as noted above, is repealed by the Bill).

**Proposed section 10I "Joined charges of receiving, verdicts on"**

Proposed section 10I provides that if 2 or more persons are charged jointly with an offence of which the receiving of any property is an element and the evidence establishes that any one or more of them separately received any part or parts of the property under such circumstances as to constitute an offence, one or more of the accused persons may be convicted of the offence or offences so established by the evidence. It replaces section 607 of *The Criminal Code* (which is repealed by the Bill).

**Clauses 36(3) to 36(10)** amend various offence creating provisions of *The Criminal Code* in order to provide one or more alternative offences for the principal offence(s) created by each provision.

**Clause 36(11)** repeals Chapter LXII of *The Criminal Code*.

**Clause 36(12)** amends section 5 of the *Interpretation Act 1984* by inserting a definition of "alternative offence" which refers the reader to proposed section 10B of *The Criminal Code*.

**Clause 37 Chapter XI (if not amended by *Criminal Code Amendment (Racial Vilification) Act 2004*) amended**

Clause 37 amends sections 77, 78, 79 and 80 of *The Criminal Code*. The amendments are:

1. premised on the assumption that the Criminal Code Amendment (Racial Vilification) Bill 2004 has not passed and sections 77, 78, 79 and 80 have not been amended in the manner proposed by that Bill; and

2. of the same nature as the amendments set out in clause 35.

Clause 37 is drafted as an alternative to clause 38.

**Clause 38 Amendments to Code if *Criminal Code Amendment (Racial Vilification) Act 2004* comes into operation**

Clause 38 amends sections 78, 80, 80A and 80C of *The Criminal Code*. The amendments are:

1. premised on the assumption that the *Criminal Code Amendment (Racial Vilification) Act 2004* has come into operation; and
2. of the same nature as the amendments set out in clause 35.

Clause 38 is drafted as an alternative to clause 37.

**Clause 39 Amendments to Code if *Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2004* comes into operation**

Clause 39 amends sections 169(1), 169(2) and 170(1) of *The Criminal Code*. The amendments are:

1. premised on the assumption that the *Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2004* has come into operation; and
2. of the same nature as the amendments set out in clause 35.

**PART 3 POLICE ACT 1892 AMENDED**

**Division 1 Amendments**

**Clause 40 The Act amended in this Division**

This Division amends the *Police Act 1892*.

**Clause 41 Section 16 replaced**

This clause repeals section 16 of the *Police Act 1892* and inserts, in its place, proposed section 16.

Proposed section 16 sets out an offence relating to unauthorised possession of police clothing. It replaces the similar offence set out in the current section 16.

**Clause 42      Section 18 repealed**

This clause repeals section 18 of the *Police Act 1892*.

**Clause 43      Section 20 repealed**

This clause repeals section 20 of the *Police Act 1892*.

**Clause 44      Section 34 amended**

This clause amends section 34 of the *Police Act 1892* by replacing the outdated reference to "felony" with "crime".

**Clause 45      Section 41 amended**

This clause amends section 41 of the *Police Act 1892*, so as to repeal the simple offences of "resisting or wilfully preventing or obstructing any officer", "harbouring, concealing, rescuing or assisting any suspected person", "resisting or wilfully obstructing any police officer or other person lawfully assisting such police officer" and "endeavouring by any unlawful means to prevent such power from being exercised. The repeal of those offences will implement the recommendations of the LRC found at paragraphs 5.4 and 5.12 of the LRC Report.

Please note that this clause is drafted on the assumption that clause 122 of Schedule 1 to the Courts Legislation Amendment and Repeal Bill 2003 will have come into effect.

**Clause 46      Section 42 amended**

This clause amends section 42 of the *Police Act 1892*, so as to repeal the simple offence of "remaining when ordered to leave".

**Clause 47      Section 43 amended**

This clause amends section 43(1) of the *Police Act 1892*, so as to repeal the simple offences of "being disorderly", "using profane, indecent or obscene language", "threatening, abusive or insulting words or behaviour", "negligent, careless or furious driving", "cruelty to animals", "being suspected of having committed an offence", "being suspected of being about to commit any offence", "lying or loitering in any street, yard or other place" and "evil designs". The repeal of those offences will implement the recommendations of the LRC found at paragraphs 4.14, 4.17, 4.20 and 4.23 of the LRC Report.

Section 43(1), when amended by this clause, will continue to provide that "Any officer or constable of the Police Force, without any warrant other than this Act, at

any hour of the day or night, may apprehend any person whom he shall have just cause to suspect of having committed or being about to commit any offence". It is not intended that any of the amendments made by this Bill should detract from that power of arrest.

**Clause 48**      **Section 44 amended**

This clause amends section 44 of the *Police Act 1892*, so as to repeal the simple offences of "behaving in an indecent or disorderly manner", "using profane, indecent, or obscene language", and "using threatening, abusive or insulting words or behaviour" on any ship or in any licensed boarding, eating or lodging house. The repeal of those offences implements the recommendation of the LRC found at paragraphs 6.10 to 6.15 of the LRC Report.

**Clause 49**      **Section 45 amended**

This clause amends section 45 of the *Police Act 1892*, so as to replace the reference to "any felony or misdemeanour, punishable on indictment by the Supreme Court or The District Court of Western Australia, in cases" with a reference to "any indictable offence in any case".

Section 45, when amended by this clause, will provide that, among other things, "Any officer or constable of the Police Force may, without a warrant, take into custody ... any person who shall be charged by any other person with having committed, or whom he shall have reasonable and probable cause for believing has committed any indictable offence in any case when by reason of the recent commission of the offence a warrant could not have been obtained for the arrest of the offender". Other than the minor amendment referred to above, it is not intended that any of the amendments made by this Bill should limit that power of arrest.

Please note that this clause is drafted on the assumption that clause 109 of Schedule 2 to the Criminal Procedure and Appeals (Consequential Provisions) Bill 2004 will have come into effect.

**Clause 50**      **Section 46 repealed**

This clause repeals section 46 of the *Police Act 1892*.

**Clause 51**      **Section 47 repealed**

This clause repeals section 47. It is replaced, in part, by proposed sections 74A(4) and 557B of *The Criminal Code*. The repeal of the offence of "neglect of duty by a police officer" implements the recommendation of the LRC found at paragraph 15.3 of the LRC Report.

**Clause 52      Section 50 inserted**

This clause inserts proposed section 50 into the *Police Act 1892*.

**Proposed section 50**

Proposed section 50 provides that a police officer may order a person who is in a public place, or in a vehicle, vessel or aircraft used for public transport, to leave it, or a part of it specified by the officer. This "move-on" power may only be exercised if the officer reasonably suspects that the person is:

1. doing an act of the kind set out in paragraph (a) of proposed section 50;
2. is just about to do an act of the kind set out in paragraph (b) of proposed section 50
3. is committing any other breach of the peace;
4. is hindering, obstructing or preventing any lawful activity that is being, or is about to be, carried out by another person;
5. intends to commit an offence'
6. has just committed or is committing an offence.

A "move-on" order must be in writing in a form approved by the Commissioner of Police.

A person who, without reasonable excuse, does not comply with a "move-on" order commits an offence.

Proposed section 50 is intended to partially replace the offences of "being suspected of being about to commit an offence", "loitering" and "evil designs" set out in section 43(1) of the *Police Act 1892* and the offence of "hindering a lawful activity" in section 82B(3) of the *Police Act 1892* (all of which are being repealed by the Bill).

The enactment of section 50, together with the repeal of sections 43(1) and 82B(3) of the *Police Act 1892* will implement, in part, the recommendations of the LRC found at paragraphs 4.17, 4.20, 4.23 and 8.23.

**Clause 53      Section 51 amended**

This clause amends section 51 of *The Criminal Code*, so as to repeal the simple offence of "permitting a mad or rabid dog to go at large". The repeal of that offence implements the recommendation of the LRC found at paragraph 15.4 of the LRC Report.

**Clause 54      Section 52 repealed**

This clause repeals section 52 of *The Criminal Code*. It is replaced with proposed section 9A of the *Public Meetings and Processions Act 1984*. The repeal of



section 52 implements, in part, the recommendation of the LRC found at paragraphs 7.5 and 7.6 of the LRC Report.

**Clause 55**      **Heading to Part VI deleted**

This clause deletes the heading to Part VI of *The Criminal Code*.

**Clause 56**      **Heading to Part VI Division 1 deleted**

This clause deletes the heading to Part VI Division 1 of *The Criminal Code*.

**Clause 57**      **Sections 54 to 67A repealed**

This clause repeals sections 54 to 67A of *The Criminal Code*, so as to repeal the simple offences of "disorderly conduct", "disorderly assembly", "negligent or furious driving", "damage to animals, plants etc in gardens", "singing an obscene song", "writing or drawing an indecent or obscene word or figure", "using profane, indecent or obscene language in a public place", "using threatening, abusive or insulting words or behaviour in any public or private place", "wantonly extinguishing any light set up for public convenience", "opening billiard table rooms etc on restricted days", "taking a dog into gazetted public gardens", "challenging to fight for money", "engaging in a prize fight", "passing valueless cheques", "possessing no lawful means of support", "possession of anything for graffiti", "begging", "possessing articles of disguise", "possessing protective jackets and vests", "possessing implements to facilitate unlawful use of motor vehicles", "possessing deleterious drugs", "consorting with thieves, prostitutes, etc", "riotous or indecent behaviour by common prostitutes", "consorting with reputed criminals or know prostitutes etc", "committing a second offence against section 65 of the *Police Act 1892*", "making a false or fraudulent representation to a charity or a private individual", "falsely obtaining a benefit under a scheme for the unemployed, destitute, etc", "continuing to receive work, employment, etc after becoming disentitled", "pretending to tell fortunes", "possessing housebreaking implements", "possessing explosive substances", "exposing obscene pictures to the public", "violently resisting apprehension", "being found in a place for an unlawful purpose", "sleeping rough", "wilful and obscene exposure of his person", "fraudulently manufacturing or selling adulterated metals or substances", "being on premises without a lawful excuse", "escaping legal custody", "committing a second offence against section 66 of the *Police Act 1892*", "obstructing licence holders" and "aiding an escaped prisoner".

The repeal of those offences will implement the recommendations of the LRC found at paragraphs 4.5, 4.7, 4.11, 5.4, 5.8, 5.10, 6.10 to 6.15, 6.18, 6.20 to 6.26, 7.9, 8.15, 8.23, 9.29, 11.10, 12.9, 12.15, 12.18, 12.23, 12.27, 14.8, 14.11, 14.15, 14.21, 14.24, 15.12, 15.18, 15.21, 15.24 and 15.30 of the LRC Report.

**Clause 58      Section 67B amended**

This clause repeals section 67B of the *Police Act 1892*.

**Clause 59      Section 69 repealed**

This clause repeals section 69 of the *Police Act 1892*, so as to repeal the simple offence of "possessing property reasonably suspected to be unlawfully obtained". The repeal of that offence implements the recommendation of the LRC found at paragraph 13.11 of the LRC Report.

**Clause 60      Section 71 repealed**

This clause repeals section 71 of the *Police Act 1892*, so as to repeal the simple offence of "possessing anything reasonably believed to be stolen or unlawfully obtained". The repeal of that offence implements the recommendation of the LRC found at paragraph 13.11 of the LRC Report.

**Clause 61      Heading inserted**

This clause inserts a heading into the *Police Act 1892*.

**Clause 62      Section 74 amended**

This clause amends section 74 of the *Police Act 1892*, by replacing "felony or misdemeanour" with "a crime".

**Clause 63      Sections 76A to 76I repealed**

This clause repeals sections 76A to 76I of the *Police Act 1892*, so as to repeal the simple offences contained in those sections relating to the possession of gold, pearls or uncut diamonds which are reasonably suspected of being stolen or unlawfully obtained, and the simple offences relating to prostitution. The repeal of the offences relating to the possession of gold, pearls or uncut diamonds which are reasonably suspected of being stolen or unlawfully obtained will implement the recommendations of the LRC found at 13.12 to 13.21 of the LRC Report.

**Clause 64      Sections 79A to 84 repealed**

This clause repeals sections 79A to 84 of the *Police Act 1892*, so as to repeal the simple offences of "unlawfully taking or branding animals", "wilful damage to property", "graffiti on public property", "using a boat etc without the owner's consent", "stealing", "destroying property with the intent to steal", "unlawfully retaining or disposing of property", "trespassing on enclosed land", "unlawfully

remaining on premises", "preventing, obstructing or hindering a lawful activity", "selling unfit, adulterated or unwholesome food" and "permitting disorderly behaviour in public premises". The repeal of those offences will implement the recommendations of the LRC found at paragraphs 6.29, 8.15, 8.23, 11.4, 13.26 and 13.30 to 13.34 of the LRC Report.

**Clause 65**      **Heading to Part VI Division 7 deleted**

This clause deletes the heading to Part VI Division 7 of the *Police Act 1892*.

**Clause 66**      **Sections 90 and 90A repealed**

This clause repeals sections 90 and 90A of the *Police Act 1892*, so as to repeal the simple offences of "obstructing police" and "making a false report to police". See paragraphs 5.4 and 5.14 of the LRC Report.

**Clause 67**      **Section 90B amended**

This clause amends section 90B of the *Police Act 1892*, so as to reflect the other amendments that are made to existing Part VI of the *Police Act 1892* by the Bill.

**Clause 68**      **Part VII repealed**

This clause repeals Part VII of the *Police Act 1892*. This will implement the recommendation found at paragraph 16.1 to 16.14 of the LRC Report.

**Clause 69**      **Section 122 repealed**

This clause repeals section 122 of the *Police Act 1892*.

**Clause 70**      **Sections 125 and 126 repealed**

This clause repeals section 125 of the *Police Act 1892*, so as to repeal the simple offence of "compounding informations". This will implement the recommendation of the LRC found at paragraph 25 of Appendix II of the LRC Report.

It also repeals section 126 of the *Police Act 1892* which is redundant.

**Clause 71**      **Sections 133 and 134 repealed**

This clause repeals sections 133 and 134 of the *Police Act 1892*.

**Clause 72**      **Second Schedule repealed**

This clause repeals the Second Schedule to the *Police Act 1892*.

**Division 2**      **Transitional provisions****Clause 73**      **Repealed offences may be investigated etc.**

This clause provides that, despite section 11 of *The Criminal Code* and section 10 of the *Sentencing Act 1995* and the repeal by Division 1 of Part 10 of the Bill of an enactment of the *Police Act 1892* that creates an offence -

- (a) an investigation or legal proceedings in respect of any such offence alleged to have been committed before the commencement of Division 1 may be commenced or continued; and
- (b) a person may be sentenced or otherwise dealt with for the alleged offence as if the enactment had not been repealed.

**PART 4**      **PUBLIC MEETINGS AND PROCESSIONS ACT 1984**  
**AMENDED****Clause 74**      **Act amended by this Part**

This Part amends the *Public Meetings and Processions Act 1984*.

**Clause 75**      **Long title amended**

This clause amends the long title of the *Public Meetings and Processions Act 1984*, in order to reflect the amendments made to that Act and the *Police Act 1892* by this Bill.

**Clause 76**      **Short title amended**

This clause amends the short title of the *Public Meetings and Processions Act 1984*.

**Clause 77**      **Section 4 amended**

This clause amends section 4 of the *Public Meetings and Processions Act 1984* as a consequence of the repeal of section 52 of the *Police Act 1892* and insertion of proposed section 9A into the *Public Meetings and Processions Act 1984* by the Bill.

**Clause 78      Section 9A inserted**

This clause inserts proposed section 9A into the *Public Meetings and Processions Act 1984*.

**Proposed section 9A      "Maintaining order in streets"**

Proposed section 9A provides that, for the purposes of maintaining order in streets, the Commissioner of Police may give instructions to police officers as to regulating traffic (of any kind) in streets, preventing or removing obstructions to traffic in streets, and maintaining order in streets. A police officer acting under such an instruction may give reasonable directions to any person for the purpose of giving effect to the instruction. Proposed section 9A(4) provides that a person commits an offence if he or she, knowing of the existence of such a direction, does not comply with it.

Proposed section 9A is intended to replace section 52 of the *Police Act 1892* (which is repealed by Part 3 of the Bill). The enactment of proposed section 9A will implement the recommendation found at paragraph 7.5 of the LRC Report.

**Clause 79      Section 12 repealed**

This clause repeals section 12 of the *Public Meetings and Processions Act 1984*, which is no longer of any effect.

**PART 5      CONSTITUTION ACTS AMENDMENT ACT 1899**  
**AMENDED**

**Clause 80      Act amended by this Part**

This Part amends the *Constitution Acts Amendment Act 1899*.

**Clause 81      Section 32 amended and saving provision**

This clause replicates clause 41 of the Electoral and Constitution Amendment Bill.

The clause amends section 32 of the *Constitution Acts Amendment Act 1889*, so that, instead of providing that a person is disqualified for membership of the Legislature if he or she has been convicted of a crime, it will provide that a person is disqualified from membership of the Legislature if he or she has been convicted of an offence for which the penalty is, or includes, "imprisonment for life" or "imprisonment for a period that may exceed 5 years".

The amendment is designed to overcome the possibility that the change of classification of numerous "misdemeanours" to "crimes" (by other clauses of the Bill) could result in a person being disqualified from membership of the Legislature when he or she would not have been so disqualified if clause 41 of the Electoral and Constitution Amendment Bill had already come into operation.

## **VARIOUS ACTS AMENDED**

### **Clause 82          *Various Acts amended***

This clause provides that each Act listed in Schedule 1 is amended as set out in that Schedule.

## **SCHEDULE 1 AMENDMENTS TO VARIOUS ACTS**

Many of the clauses set out in Schedule 1 to the Bill replace statutory references to a "misdemeanour" with equivalent references to a "crime" or an "indictable offence". This is consistent with the recommendation found at page 2 of the Murray Report. Other clauses set out in Schedule 1 to the Bill replace outdated statutory references to a "felony" with equivalent references to a "crime" of an "indictable offence".

### **Clause 1          *Aboriginal Affairs Planning Authority Act 1972***

This clause amends section 48 of the *Aboriginal Affairs Planning Authority Act 1972* by deleting the reference to "misdemeanour".

### **Clause 2          *Anatomy Act 1930***

This clause amends section 22(1) and (2) of the *Anatomy Act 1930* by replacing the references to "misdemeanour" with references to "crime".

### **Clause 3          *Boxing Control Act 1987***

This clause amends section 46(2) of the *Boxing Control Act 1987* by replacing the reference to "Section 64 of the *Police Act 1892*" with a reference to "Section 73 of *The Criminal Code*".

### **Clause 4          *Builders' Registration Act 1939***

This clause amends section 13(1)(b) of the *Builders' Registration Act 1939* by replacing the references to "crime or misdemeanour" with references to "indictable offence".

### **Clause 5          *Community Services Act 1972***

This clause amends section 19(1) of the *Community Services Act 1972* by deleting the reference to "misdemeanour".

### **Clause 6          *Companies (Co-operative) Act 1943***

This clause amends various sections of the *Companies (Co-operative) Act 1943* in order to remove all references in that Act to a "misdemeanour" and replacing them with references to a "crime".

### **Clause 7          *Co-operative and Provident Societies Act 1903***

This clause amends section 48(3) of the *Co-operative and Provident Societies Act 1903* by deleting the misdemeanour set out in that section.

**Clause 8**            ***Corruption and Crime Commission Act 2003***

This clause amends clause 2(b) of Schedule 1 to the *Corruption and Crime Commission Act 2003* by replacing "s. 65(4aa) of the *Police Act 1892*" with "s. 557I of *The Criminal Code*".

**Clause 9**            ***Country Towns Sewerage Act 1948***

This clause amends section 111 of the *Country Towns Sewerage Act 1948* by replacing "misdemeanour" with "crime".

**Clause 10**          ***Dental Act 1939***

This clause amends section 48 of the *Dental Act 1939* by replacing "misdemeanour" with "crime".

**Clause 11**          ***Energy Operators (Powers) Act 1979***

This clause amends section 74(1) of the *Energy Operators (Powers) Act 1979* by replacing "misdemeanour" with "crime".

**Clause 12**          ***Evidence Act 1906***

This clause amends sections 100A(5) and 103(2) of the *Evidence Act 1906* by replacing "misdemeanour" with "crime".

The clause also repeals Part 3 of the Second Schedule to the *Evidence Act 1906*, so as to remove the reference to section 57 of the *Police Act 1892* (which is being repealed by Part 3 of the Bill).

**Clause 13**          ***Forrest Place and City Station Development Act 1985***

This clause amends section 18 of the *Forrest Place and City Station Development Act 1985* by replacing "section 82B of the *Police Act 1892*" with "section 70A of *The Criminal Code*".

**Clause 14**          ***Gaming and Wagering Commission Act 1987***

This clause amends section 32(1) of the *Gaming and Wagering Commission Act 1987* by replacing a reference to Part VI of the *Police Act 1892* with a reference to Part V of that Act. It also deletes the unnecessary words "or the *Police Act 1892*" from section 32(2) of the *Gaming and Wagering Commission Act 1987*.

**Clause 15**      *Licensed Surveyors Act 1909*

This clause amends section 21(1)(d) of the *Licensed Surveyors Act 1909* by replacing the reference to "misdemeanour or crime" with a reference to "indictable offence".

**Clause 16**      *Life Assurance Companies Act 1889*

This clause amends sections 13 and 54 of the *Life Assurance Companies Act 1889* by replacing "misdemeanour" with "crime".

**Clause 17**      *Limited Partnerships Act 1909*

This clause amends section 12 of the *Limited Partnerships Act 1909* by replacing "misdemeanour" with "crime".

**Clause 18**      *Liquor Licensing Act 1988*

This clause amends section 155(5) of the *Liquor Licensing Act 1988* by replacing a reference to Part VI of the *Police Act 1892* with a reference to Part V of that Act.

**Clause 19**      *Medical Act 1894*

This clause amends section 17 of the *Medical Act 1894* by replacing "misdemeanour" with "crime".

**Clause 20**      *Mining Act 1978*

This clause amends section 15(1) and (2) of the *Mining Act 1978* by replacing "misdemeanour" with "crime".

**Clause 21**      *Optometrists Act 1940*

This clause amends section 26(1)(c) of the *Optometrists Act 1940* by replacing the reference to "crime or misdemeanour" with a reference to "indictable offence".

**Clause 22**      *Parliamentary Privileges Act 1891*

This clause amends section 14 of the *Parliamentary Privileges Act 1891* by replacing the three references to "misdemeanour" with "crime".

**Clause 23**      *Pharmacy Act 1964*

This clause amends section 18(3) of the *Pharmacy Act 1964* by replacing "misdemeanour" with "crime".

**Clause 24**      *Pig Industry Compensation Act 1942*

This clause amends section 16(5) of the *Pig Industry Compensation Act 1942* by replacing "misdemeanour" with "crime".



**Clause 25**      ***Prostitution Act 2000***

This clause amends section 34 of the *Prostitution Act 2000* by replacing the reference to Part VI of the *Police Act 1892* with a reference to Part V of that Act.

**Clause 26**      ***Public Transport Authority Act 2003***

This clause amends section 58(2) of the *Public Transport Authority Act 2003* by replacing:

1. the reference to section 54 of the *Police Act 1892* with a reference to section 74A of *The Criminal Code*;
2. the reference to section 66(13) of the *Police Act 1892* with a reference to section 70A of *The Criminal Code*; and
3. the reference to section 80(1) of the *Police Act 1892* with a reference to section 445 of *The Criminal Code*.

**Clause 27**      ***Road Traffic Act 1974***

This clause amends sections 81A and 81E(1) of the *Road Traffic Act 1974* so that they reflect the amendments made to the *Public Meetings and Processions Act 1984* by Part 4 of this Bill.

**Clause 28**      ***Street Alignment Act 1844***

This clause repeals section 10 of the *Street Alignment Act 1844*.

**Clause 29**      ***Sunday Entertainments Act 1979***

This clause amends the long title to the *Sunday Entertainments Act 1979* by deleting the words ",to repeal section 76H of the *Police Act 1892*" which are now redundant. It also repeals section 4 of the *Sunday Entertainments Act 1979*, which is no longer of any effect.

**Clause 30**      ***Trustees Act 1962***

This clause amends section 77(2)(c) of the *Trustees Act 1962* by replacing the reference to "felony or misdemeanour" with a reference to "an indictable offence".

**Clause 31**      ***Trustee Ordinance Act 1854***

This clause amends section 19 of the *Trustee Ordinance Act 1854*, by replacing the reference to "felony" with a reference to "an indictable offence".

**Clause 32**      ***Veterinary Preparations and Animal Feeding Stuffs Act 1976***

This clause amends section 9 of the *Veterinary Preparations and Animal Feeding Stuffs Act 1976* in order to remove all references to section 94C of the *Police Act 1892* (which was repealed by a 1982 Act).

**Clause 33**      ***Water Boards Act 1904***

This clause amends sections 75 and 152 of the *Water Boards Act 1904* by replacing "misdemeanour" with "crime".

**Clause 34**      ***Wildlife Conservation Act 1985***

This clause repeals section 20(4) of the *Wildlife Conservation Act 1985* and inserts, in its place, an equivalent provision which refers to section 428 of *The Criminal Code* rather than section 69 of the *Police Act 1892*.