

EXPLANATORY MEMORANDUM

CRIMINAL CODE AMENDMENT BILL 2004 (E 283)

(Introduced by Mr Grylls, MLA)

Clause 1 Short Title

Provides for the Act to be cited as the *Criminal Code Amendment Act 2004*.

Clause 2 Commencement

This clause provides for this Act to come into operation on the day on which it receives Royal Assent.

Clause 3 Principal Act

This clause provides that the amendments in this Act are to *The Criminal Code*.

Clause 4 Section 400 amended

Section 400 is amended by deleting in subsection (3)(a) the words “committed in respect of a place ordinarily used for human habitation”, and in subsection (3)(b) the words “committed in respect of such a place”.

The purpose of this amendment is to capture within the definition of “repeat offender” those offenders who repeatedly target commercial and other premises, such as sporting clubhouses and premises used for charitable purposes. The substantive mandatory sentencing provision, section 401(4), relies for its operation upon the definition of “repeat offender”. Currently that definition is narrow, with the relevant offences being only those committed with respect to places of human habitation. In order for section 401(4) to have application to offenders who repeatedly burglarise business and other premises, it is necessary to widen the definition of “repeat offender” in section 400(3) to encompass the commission of both home and business/other burglaries.

Clause 5 Section 401 amended

Section 401(4) is amended by deleting the words “committed in respect of a place ordinarily used for human habitation”.

The purpose of this amendment is to provide for the mandatory sentencing of those who repeatedly commit offences against non-residential premises. Currently, section 401(4) only imposes a mandatory 12 month prison sentence upon an offender’s third conviction for home burglary, reflecting the enacting legislature’s dim view of those who violate the privacy and sanctity of the home. While this view has not changed since the section was originally inserted, the confinement of mandatory sentencing in section 401(4) to offences committed in respect of places of human habitation cannot be sustained in the light of recent crime statistics.

Recent Institute of Criminology figures show that while home burglaries have decreased since mandatory sentencing was introduced, the overall rate of burglary has risen due to an increase in commercial and other burglaries. This, coupled with statistics showing a higher frequency of police apprehension among a smaller number of individual offenders, suggests that the mandatory sentencing of repeat non-residential property offenders may curb the incidence of business and other burglaries.

By deleting the reference to “human habitation” in section 401(4), the amendment removes distinctions as to the categories of premises against which offences will incur a mandatory prison sentence. That is, it enables the court to impose a mandatory 12 month prison sentence upon an offender’s third conviction for an offence committed in respect of any “place” – residential, commercial or otherwise.