

## SECOND READING SPEECH

### CRIMINAL CODE AMENDMENT (UNLAWFUL POSSESSION) BILL 2013

I move this Bill be read a second time.

The Criminal Code (Unlawful Possession) Bill 2013 will make the offence of possessing stolen or unlawfully obtained property an 'either way' offence. It will also increase the penalty for this offence when heard on indictment to make it consistent with the penalties for stealing set out in the *Criminal Code*.

Currently possessing stolen or unlawfully obtained property, set out in section 428 of the *Criminal Code*, is a simple offence, meaning that it can only be heard summarily and not on indictment.

This can cause problems where, for instance, a person is charged under section 428 of the *Criminal Code* with the unlawful possession of a large sum of cash as well as indictable offences, such as offences under the *Misuse of Drugs Act 1981*. In such situations the practice is for the indictable drug offence or offences to be committed to the District Court for trial while the summary offence under section 428 remains in the Magistrates Court and is adjourned for determination after indictable offences are dealt with. If an accused pleads guilty to the section 428 offence, the offence can be dealt with for sentencing in the District Court together with the indictable offence under section 32 of the *Sentencing Act 1995*. If the accused pleads not guilty to the section 428 offence, however, a second trial must be held in the Magistrates Court at added expense to the community as there is a duplication of a presiding Judge/Magistrate, defence counsel, prosecutor and witnesses.

The Bill will provide that a charge of possessing stolen or unlawfully obtained property, embodied in the proposed new section 417 of the *Criminal Code*, may be heard either summarily or on indictment. This will mean that if a person has been charged with possessing stolen or unlawfully obtained property as well as with one or more indictable offences, these can all be dealt with together.

Currently, the penalty for a contravention of section 428 is only two years' imprisonment or a fine of \$24,000. Given that the offence of possessing stolen or unlawfully obtained property is proposed to be an 'either way' offence, it is appropriate to increase the penalty for the offence when heard on indictment to make it consistent with the penalties for stealing in section 378 of the *Criminal Code*.

The penalty for stealing in section 378 of the *Criminal Code* is seven years' imprisonment, with increased penalties in 'special cases'. As the intent of both offences is the same – to deprive a lawful owner of his/her property – the Bill seeks to increase the penalty for the offence of possessing stolen or unlawfully obtained property to make it, when heard on indictment, seven

years' imprisonment. The penalty for the offence when heard summarily will remain at its current level of two years' imprisonment or a fine of \$24,000.

The penalty for stealing increases in particular 'special cases' set out in section 378, such as where the thing stolen is a testamentary instrument, an aircraft, or a motor vehicle which the offender drives either recklessly or dangerously. These provisions have also been incorporated into the Bill to the extent possible so that where a person is found guilty of possessing stolen or unlawfully obtained property in 'special cases' he or she will face an increased penalty.

The Bill will also amend those provisions of the *Sentencing Act 1995* referred to in the *Criminal Organisations Control Act 2012*.

The *Criminal Organisations Control Act* inserts lists of 'relevant indictable offences' and 'relevant simple offences' in Schedule 1A of the *Sentencing Act 1995* for the purposes of section 9D, which prescribes mandatory minimum sentences for certain offences in certain circumstances.

Currently, section 428 is listed as a 'relevant summary offence' in Part 2 of Schedule 1A of the *Sentencing Act*. The Bill proposes therefore to delete 'section 428' and replace it with the new proposed section 417.

The offence of 'stealing' per se in section 378 of the *Criminal Code* is not currently included as a 'relevant indictable offence' in Part 1 of Schedule 1A of the *Sentencing Act*. However, stealing in the following 'special cases' is included:

- s378(2) where the thing stolen is a motor vehicle and the offender drives it in a manner constituting an offence under the *Road Traffic Act 1974* s60 or s61
- s378(4a) where the thing stolen is an aircraft
- s378(5) if the thing is stolen in a variety of circumstances, such as from a distressed vessel or from the person of another.

The 'special cases' in subsections 378(2) and 378(4a) are mirrored in the proposed sections 417A(3) and (4) respectively. In the interests of consistency these new proposed sections are also proposed to be included as 'relevant indictable offences' for the purposes of the *Criminal Organisations Control Act*.

The Bill also makes a consequential amendment to the *Wildlife Conservation Act 1950*, replacing a reference to section 428 with a reference to section 417.

This Bill is consistent with the Government's approach to law and order. It will remove an anomaly from the *Criminal Code* and make the existing offence of possessing stolen or unlawfully obtained property easier to administer.

Pursuant to Standing Order 126(1), I advise that this Bill is not a uniform legislation Bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the Government of the State is a party. Nor does this Bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the Commonwealth.

I commend this Bill to the House.