

# EXPLANATORY MEMORANDUM

## ***CRIMINAL INVESTIGATION (CONSEQUENTIAL PROVISIONS) BILL 2005***

### **Part 1 - Preliminary**

Clauses 1 and 2 provide, respectively, for the short title and commencement of the Act.

### **Part 2 – *Bail Act 1982* amended**

This Part deals with amendments to the *Bail Act 1982* to make it consistent with Part 12 of the *Criminal Investigation Act 2005*.

Clause 3 identifies the Act amended by this Part.

**Clause 4. Section 6 replaced and consequential amendments:-** Subclause 4(1) repeals section 6 of the *Bail Act 1982* and inserts an amended section 6 in its place. The proposed section 6 deals with the duties of a police officer or other person who charges a person under arrest with an offence. The proposed section 6 only applies where the accused has not been released unconditionally. The wording of the previous section 6 has been simplified.

Subclauses 4(2), (3) and (4) substitute references in the *Bail Act 1982* to subsections in the existing section 6 with references to the appropriate subsections of the proposed section 6.

**Clause 5. Section 6A inserted:-** Clause 5 inserts a new section 6A of the *Bail Act 1982*. The proposed section 6A sets out the circumstances in which a person considering an application for bail is empowered or required to release the accused person unconditionally with a summons or court hearing notice. The proposed subsection 6A(4) sets out the circumstances in which custody is justified.

**Clause 6. Section 12 amended:-** Clause 6 amends subsection 12 of the *Bail Act 1982* to reflect the amendments to section 6 and the insertion of section 6A, as well as the repeal of section 236 of *The Criminal Code* and Part V of the *Police Act 1892*.

**Clause 7. Sections 18 and 19 repealed and consequential amendment to section 27:-** Clause 7 repeals sections 18 and 19 of the *Bail Act 1982* and deletes the reference to section 18 in subsection 27(1) of the *Bail Act 1982*.

### **Part 3 – *Corruption and Crime Commission Act 2003* amended**

This Part deals with amendments to the *Corruption and Crime Commission Act 2003* as a consequence of enacting the *Criminal Investigation Act 2005* and the *Criminal and Found Property Disposal Act 2005*.

**Clause 8** identifies the Act amended by this Part.

**Clause 9** repeals section 56 of the *Corruption and Crime Commission Act 2003*.

**Clause 10. Section 101 amended:-** Subclause 10(1) inserts subsection 101(2a) and repeals subsection 101(7) of the *Corruption and Crime Commission Act 2003*, thereby applying section 12 of the *Criminal Investigation Act 2005* to applications for warrants under subsection 101(2) of the *Corruption and Crime Commission Act 2003* in place of the repealed provisions of *The Criminal Code*. The intent of proposed subsection 101(2a) is to apply the provisions of section 12 of the *Criminal Investigation Act 2005* to the means of applying for warrants under the *Corruption and Crime Commission Act 2003* without affecting the powers provided under section 101 of that Act. The phrase "which applies with any necessary changes" in the proposed section is intended to ensure that the requirement that a search warrant under section 101 must be obtained from a Judge of the Supreme Court remains.

**Clause 11. Section 223A inserted:-** Subclause 11(1) inserts section 223A of the *Corruption and Crime Commission Act 2003*, applying the provisions of the *Criminal and Found Property Disposal Act 2005* to things seized under the *Corruption and Crime Commission Act 2003*. Subclause 11(2) provides that the Corruption and Crime Commission is a prescribed agency for the purposes of the *Criminal and Found Property Disposal Act 2005*.

#### **Part 4 – Court Security and Custodial Services Act 1999 amended**

This Part deals with amendments to the *Court Security and Custodial Services Act 1999* to make it consistent with the *Criminal Investigation (Identifying People) Act 2002*.

**Clause 12** identifies the Act amended in this Part.

**Clause 13. Schedule 2 amended:-** Clause 13 repeals Schedule 2 clause 7 of the *Court Security and Custodial Services Act 1999* and inserts a new clause 7 in its place. The proposed clause 7 deals with the taking of identifying particulars from persons in custody for the purposes of, and in accordance with, the *Criminal Investigation (Identifying People) Act 2002*.

#### **Part 5 – The Criminal Code amended**

This Part deals with amendments to *The Criminal Code* as a consequence of enacting the *Criminal Investigation Act 2005* and the *Criminal and Found Property Disposal Act 2005*.

##### **Division 1 – Amendments**

**Clause 14** identifies the Act amended in this Part.

**Clause 15. Section 74A amended:-** Clause 15 repeals subsection 74A(4) of *The Criminal Code*.

**Clause 16. Section 80J inserted:-** Clause 16 inserts a new section 80I of *The Criminal Code*, empowering a court to make orders relating to forfeiture, destruction or disposal of property in respect of which certain offences relating to inciting racial animosity are committed.

**Clause 17. Section 231 amended:-** Clause 17 amends section 231 of *The Criminal Code* to provide for the matters to be taken into account in determining whether a process or warrant might have been executed or an arrest made in a less forcible manner.

**Clauses 18 and 19**, respectively, repeal sections 232 and sections 236 and 237 of *The Criminal Code*.

**Clause 20. Section 243 replaced:-** Clause 20 repeals section 243 of *The Criminal Code* and inserts a new section 243 in its place. The proposed section 243 makes lawful the use of force to prevent a person reasonably believed to be mentally impaired from doing violence to any person or property.

**Clause 21. Section 473 amended:-** Clause 21 inserts a new subsection 473(3) of *The Criminal Code*, empowering a court to make orders relating to forfeiture, destruction or disposal of record in respect of which the offence under section 473 of forging a record or uttering a forged record is committed.

**Clause 22** repeals section 557B of *The Criminal Code*.

**Clause 23 and 24**, respectively, repeal Chapters LX and LXA and Chapter LXXII of *The Criminal Code*.

**Clause 25. Section 731 inserted:-** Clause 25 inserts a new section 731 of *The Criminal Code*, empowering a court to make orders relating to forfeiture, destruction or disposal of things used in or in connection with an offence under *The Criminal Code*. The proposed section will require the court to afford a person who claims to be the owner of the property an opportunity to be heard.

## **Division 2 – Transitional Provisions**

**Clause 26. Search warrants and related matters:-** Clause 26 provides transitional provisions dealing with warrants issued, things seized and proceedings pending in respect of things seized under the repealed provisions of *The Criminal Code*.

## **Part 6 – Criminal Investigation (Extra-territorial Offences) Act 1987 amended**

This Part deals with amendments to the *Criminal Investigation (Extra-territorial Offences) Act 1987* as a consequence of enacting the *Criminal Investigation Act 2005* and to make it consistent with that Act.

**Clause 27** identifies the Act amended in this Part.

**Clause 28** replaces the long title of the *Criminal Investigation (Extra-territorial Offences) Act 1987*.

**Clause 29** inserts headings, dividing the existing Act into Parts.

**Clause 30. Certain references to “this Act” amended:-** Clause 30 replaces certain references in the *Criminal Investigation (Extra-territorial Offences) Act 1987* to “this Act” with references to “this Part”.

**Clause 31. Section 8 replaced by Parts 3 and 4:-** Clause 31 repeals section 8 of the *Criminal Investigation (Extra-territorial Offences) Act 1987* and inserts new Parts 3 and 4 in its place. The proposed Part 3 comprises a proposed section 8 which will provide for powers to search vehicles in Western Australia used to commit offences outside the State, for the application of relevant provisions of the *Criminal Investigation Act 2005* and for dealing with applications to the Magistrates Court in respect of detention of vehicles.

The proposed Part 4 comprises a proposed section 8A which will provide for powers in respect of offences attracting a penalty of imprisonment which has been committed against the law of the Commonwealth or of a place outside the State. The proposed section includes a power to arrest a suspect, for the procedure and powers of the Magistrates Court in respect of persons arrested under Part 4 and for the application of the provisions of the *Bail Act 1982*. The intent of the proposed section is to allow police officers in Western Australia to arrest and detain suspects in relation to extra-territorial offences until police in other jurisdictions can obtain the necessary warrants to arrest the suspects.

## **Part 7 – *Criminal Investigation (Identifying People) Act 2002* amended**

This Part deals with amendments to the *Criminal Investigation (Identifying People) Act 2002* to make it consistent with the *Criminal Investigation Act 2005*.

**Clause 32** identifies the Act amended in this Part.

**Clause 33. Section 4 amended:-** Clause 33 amends the definition of “reasonably suspects” in section 4 of the *Criminal Investigation (Identifying People) Act 2002*.

**Clause 34. Section 15 replaced:-** Clause 34 repeals section 15 of the *Criminal Investigation (Identifying People) Act 2002* and inserts a new section 15 in its place. The proposed section 15 deals with applications for warrants in a manner consistent with the provisions of the *Criminal Investigation Act 2005*.

**Clause 35. Section 47 amended:-** Clause 35 amends the definitions of “charged suspect” and “identifying particular” in section 47 of the *Criminal Investigation (Identifying People) Act 2002*. Police will have the power to obtain a DNA profile of a charged suspect who has been charged with a serious offence but not of a suspect charged with a non-serious offence.

**Clause 36. Section 83 amended:-** Clause 36 deletes paragraph 83(3)(e) of the *Criminal Investigation (Identifying People) Act 2002* and inserts a new paragraph 83(3)(e) in its place. The proposed paragraph 83(3)(e) deals with the admissibility of evidence obtained illegally but out of a mistaken but reasonable belief as to whether a person was a protected person.

**Clause 37** repeals Part 14 and Schedules 1 and 2 of the *Criminal Investigation (Identifying People) Act 2002*. These were temporary provisions which are no longer applicable.

## **Part 8 – *Criminal Procedure Act 2004* amended**

This Part deals with amendments to the *Criminal Procedure Act 2004* to make it consistent with the *Criminal Investigation Act 2005*.

**Clause 38** identifies the Act amended in this Part.

**Clause 39. Section 30 amended:-** Subclause 39(1) repeals subsection 30(4) of the *Criminal Procedure Act 2004* and inserts new subsections (4) and (4a) in its place. The proposed subsections 30(4) and (4a) deal with the circumstances in which a magistrate must not issue an arrest warrant for an accused.

Subclause 39(2) repeals paragraph 30(5)(a) of the *Criminal Procedure Act 2004* and inserts a new paragraph 30(5)(a) in its place. The proposed paragraph 30(5)(a) deals with the circumstances in which the issue of an arrest warrant is justified, having regard to reasonable grounds for suspecting certain conduct of the accused.

**Clause 40. Section 35 amended:-** Subclause 40(1) amends the definition of “confessional material” in subsection 35(1) of the *Criminal Procedure Act 2004*. Subclause 40(2) replaces reference to repealed provisions of *The Criminal Code* with reference to the relevant provisions of the *Criminal Investigation Act 2005*.

**Clauses 41, 42 and 43** replace references to repealed provisions of *The Criminal Code* with references to the relevant provisions of the *Criminal Investigation Act 2005*.

## **Part 9 – *Gaming and Wagering Commission Act 1987* amended**

This Part deals with amendments to *Gaming and Wagering Commission Act 1987* as a consequence of enacting the *Criminal Investigation Act 2005* and the *Criminal and Found Property Disposal Act 2005*.

**Clause 44** identifies the Act amended in this Part.

**Clause 45. Section 31 amended:-** Clause 45 deletes the words “and take before a justice” in section 31 of the *Gaming and Wagering Commission Act 1987*.

**Clause 46. Section 31A inserted:-** Clause 46 inserts a new section 31A of the *Gaming and Wagering Commission Act 1987*, applying the relevant provisions of the *Criminal Investigation Act 2005* to seizures under the *Gaming and Wagering Commission Act 1987* or the *Betting Control Act 1954*.

**Clause 47. Section 32 amended:-** Clause 47 repeals subsection 32(1) and amends subsection 32(2) of the *Gaming and Wagering Commission Act 1987* in relation to forfeiture.

**Clause 48. Section 32A inserted:-** Clause 48 inserts a new section 32A of the *Gaming and Wagering Commission Act 1987*, providing for the application of the *Criminal and Found Property Act 2005* to things seized under the *Gaming and Wagering Commission Act 1987* or the *Betting Control Act 1954* and providing that the Gaming and Wagering Commission of Western Australia is a prescribed agency for the purposes of the *Criminal and Found Property Disposal Act 2005*.

**Clause 49. Section 41 amended:-** Clause 49 deletes references to repealed provisions of the *Police Act 1892* in subsection 41(5) of the *Gaming and Wagering Commission Act 1987* and amends that subsection in relation to forfeiture.

## **Part 10 – *Liquor Licensing Act 1988* amended**

This Part deals with amendments to *Liquor Licensing Act 1988* as a consequence of enacting the *Criminal Investigation Act 2005* and the *Criminal and Found Property Disposal Act 2005*.

**Clause 50** identifies the Act amended in this Part.

**Clause 51. Section 113 amended:-** Clause 51 repeals subsection 113(3) of the *Liquor Licensing Act 1988* which deals with court orders for forfeiture of liquor.

**Clause 52. Section 155 amended:-** Subclause 52(1) amends the powers conferred by subsection 155(4) of the *Liquor Licensing Act 1988*. Subclause 52(2) applies the relevant provisions of the *Criminal Investigation Act 2005* to seizures under the *Liquor Licensing Act 1988*.

**Clause 53. Section 172A inserted:-** Clause 53 inserts section 172A of the *Liquor Licensing Act 1988*, providing for the powers of the court with respect to forfeiture of liquor relating to an offence.

**Clause 54. Section 174A inserted:-** Clause 54 inserts a new section 174A of the *Liquor Licensing Act 1988*, providing for the application of the *Criminal and Found Property Act 2005* to things seized or forfeited under the *Liquor Licensing Act 1988* and providing that the department principally assisting the Minister administering the *Liquor Licensing Act 1988* is a prescribed agency for the purposes of the *Criminal and Found Property Disposal Act 2005*.

## **Part 11 – *Maritime Archaeology Act 1973* amended**

This Part deals with amendments to the *Maritime Archaeology Act 1973* as a consequence of enacting the *Criminal and Found Property Disposal Act 2005*.

**Clause 55** identifies the Act amended in this Part.

**Clause 56. Section 11 amended:-** Subclause 56(1) amends the powers conferred by subsection 11(1) of the *Maritime Archaeology Act 1973*. Subclause 56(2) provides for the application of the *Criminal and Found Property Act 2005* to things seized under the *Maritime Archaeology Act 1973* and that The Western Australian Museum is a prescribed agency for the purposes of the *Criminal and Found Property Disposal Act 2005*.

## **Part 12 – *Police Act 1892* amended**

This Part deals with amendments to *Police Act 1892* as a consequence of enacting the *Criminal Investigation Act 2005* and the *Criminal and Found Property Disposal Act 2005*.

## **Division 1 – Amendments**

**Clause 57** identifies the Act amended in this Part.

**Clauses 58 and 59**, respectively, repeal Parts V and VI of the *Police Act 1892*.

**Clauses 60 and 61**, respectively, repeal sections 123 and 124 of the *Police Act 1892*.

## **Division 2 – Transitional Provisions**

**Clause 62. Search warrants and related matters:-** Clause 62 provides transitional provisions dealing with warrants issued and things seized under the repealed provisions of the *Police Act 1892* and the application of the *Criminal and Found Property Act 2005* to those things.

**Clause 63. Embargo notices:-** Clause 63 provides transitional provisions dealing with embargo notices granted under the repealed provisions of the *Police Act 1892*.

## **Part 13 – *Prostitution Act 2000* amended**

This Part deals with amendments to the *Prostitution Act 2000* as a consequence of enacting the *Criminal Investigation Act 2005*.

**Clause 64** identifies the Act amended in this Part.

**Clause 65. Section 34 replaced:-** Clause 65 repeals section 34 of the *Prostitution Act 2000* and inserts a new section 34 in its place, applying relevant provisions of the *Criminal Investigation Act 2005* to seizures under the *Prostitution Act 2000*.

## **Part 14 – *Terrorism (Extraordinary Powers) Act 2005* amended**

This Part deals with possible amendments to the *Terrorism (Extraordinary Powers) Act 2005* which is yet to be passed. Such amendments have yet to be determined.

**Clause 66** identifies the Act amended in this Part.

## **Part 15 – Various Acts amended**

**Clause 68** gives effect to the provisions of Schedule 1.

## **Schedule 1 – Various Acts amended**

Schedule 1 deals with amendments, as a consequence of enacting the *Criminal Investigation Act 2005* and the *Criminal and Found Property Disposal Act 2005*, to the *Betting Control Act 1954*, *Disposal of Uncollected Goods Act 1970*, *Energy Operators (Powers) Act 1979*, *Firearms Act 1973*, *Poisons Act 1964*, *Public Works Act 1902*, *Unclaimed money Act 1990*, *Western Australian Meat Industry Authority Act 1876* and the *Western Australian Turf Club Act 1892*.