

CRIMINAL LAW AMENDMENT BILL 1996

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The legislation repeals the unproclaimed *Criminal Code 1995* and, in its stead, implements a raft of amendments to the *Criminal Code 1899* which are designed to update and streamline that Code.

Reasons for the objectives and how they will be achieved

The *Criminal Code 1995* was the object of significant criticism from the legal profession, among other interested groups. The Coalition had foreshadowed it would repeal the 1995 Code on coming to government and, in its place, develop wide-ranging amendments to enhance the effectiveness of the 1899 Code which has, of course, been the object of constant amendment since its original enactment.

Administrative cost to Government of implementation

Consultancy fees to the Advisory Working Group established by Cabinet in April 1996 came to approximately \$38,000.

When this legislation is enacted, there will be a number of identifiable costs to Government, including:

- The costs of training for such agencies as the Queensland Police Service, Office of the Director of Public Prosecutions and the Legal Aid Office. This cost has not been precisely quantified. However, it should be noted that, as the amendments are structured on the existing Code, those costs will be comparatively

minimal compared to what would have been required to conduct appropriate training in respect of the 1995 Code which dispensed entirely with the structures and approach of the 1899 Code.

- Other administrative costs such as the need to refine the various forms of indictment that are used in connection with the implementation of the Criminal Code. It should be noted that a number of these forms need updating, not because of this package of amendments, rather, amendments which have been previously implemented without the requisite modification of associated forms.

Fundamental legislative principles

Issues relating to fundamental legislative principles arise in connection with a number of the proposed amendments including:

- **New section 408D—Computer Hacking and Misuse**

Subsection (4) will provide that it is a defence to a charge under this section ‘to prove that the use of the restricted computer was authorised, justified or excused by law’.

- **New section 644A—Witnesses Giving Incriminating Answers.**

Under this section a person appearing as a witness in a proceeding for an offence under the list of bribery and bribery related offences mentioned in the section, may not be excused from answering questions on the ground that the answer to the question may incriminate or tend to incriminate the witness.

However, the section also provides that an answer so given cannot later be used against the person giving the answer unless in a charge of perjury against that person in respect of that answer. Often, the only person to witness such an offence, other than the person charged, is the other party to the offence. This section is aimed at that other party.

- **Schedule 2. Vagrants Gaming and Other Offences Act 1931—New section 37C—Possession of a graffiti instrument.**

Under this section it will be a simple offence, punishable by up to 70 penalty units or 2 years imprisonment, if a person is found in

possession, ‘without lawful excuse, the proof of which lies on him or her’, of a graffiti instrument if the circumstances ‘give rise to a reasonable suspicion that the instrument has been used or is intended to be used to commit a graffiti offence’.

Consultation

The proposed amendments represent the outcome of an extensive consultative strategy commencing with Cabinet’s establishment of the Advisory Working Group in April 1996. That Advisory Working Group, which consisted of Mr Peter Connolly QC, a former Justice of the Supreme Court of Queensland, and two barristers in practice at the private bar, both possessing extensive experience in prosecution and defence criminal law work, produced a comprehensive set of proposed amendments for the Attorney-General in July 1996. These proposals were then released for public consultation, which period lasted until mid-September 1996. Since that time and until the introduction of the legislation, the submissions received from individuals and organisations, which totalled approximately 125, were assessed and examined in-depth. The material contained in those submissions was influential in determining the final outcome of the legislation.

In the final stages of the consultative period, further discussions were held with members of the judiciary in order to incorporate refinements to advance drafts which they suggested.

NOTES ON PROVISIONS

Short Title: Criminal Law Amendment Bill 1996

Part 1—Preliminary

Clause 1 sets out the Act’s short title.

Clause 2 provides for the commencement of section 110 (repeal of the Criminal Code 1995) upon assent, and for the remainder of the Act to commence on proclamation.

Part 2—Amendment of Criminal Code Act 1899

Clause 3 provides that the *Criminal Code Act 1899* is amended by this part.

Clause 4 amends section 6 (Civil remedies) by inserting a new subsection to provide that if a person has been found guilty, whether or a not a conviction has been recorded, of an indictable offence and that person suffered loss or injury in or in connection with the commission of the offence, that person shall have no right of action against another person in respect of the loss or injury.

Part 3—Amendment of Criminal Code

Clause 5 provides that the *Criminal Code* is amended by this part.

Clause 6 amends section 1 (Construction of terms) by omitting defunct definitions and by inserting new definitions relevant to the reforms that follow. Importantly, the definition of Grievous bodily harm is expanded to include the loss of a distinct part or organ of the body and serious disfigurement. New definitions are included for “carnal knowledge”, “forge”, “intent to defraud”, “premises”, “property”, “public officer”, “record”, “serious disease”, “vehicle” and “writing”.

Clause 7 replaces section 6 “carnal knowledge” with a new section which provides that when “carnal knowledge” is used in defining an offence the offence, so far as regards that element of it, is complete on penetration to any extent.

Clause 8 omits from section 10 (Accessories after the fact) the archaic excusal from criminal responsibility for a spouse who receives or assists the other spouse to escape punishment.

Clause 9 inserts a new section (s. 10A—Interpretation of chapter) at the end of Chapter 2—Parties to offences. The effect of this provision is to return the law about the interpretation of the party provisions to the way it was in the case of *The Queen v. Jervis* [1993] 1 Qd.R. 643. Since *Jervis*, the Court of Appeal has held that a person charged as a party or accessory to an offence (s. 7) or as a party to a common intention to prosecute an unlawful purpose (s.8) can only be convicted of the same offence as the principle offender or other party to the common intent, or nothing.

Under *Jervis* the party could be convicted of any other offence proved by the evidence against that party. In *Jervis* the jury concluded that it was not reasonably foreseeable that causing death or grievous bodily harm was intended in the plan with Wiggington and others to wound Mr Baldock to obtain his blood to drink. Jervis was convicted of manslaughter for her part in the circumstances which led to the killing while others were convicted of Murder for their part.

Clause 10 amends section 23 (defence of accident) and over-rules the decision of the High Court in *Van den Bemd v. The Queen* (1994) 179 C.L.R. 137 to the extent that where a person causes death or grievous bodily harm to another person then the offender must “take the victim as he finds him” if the victim is later shown to have had some defect, weakness or abnormality such as an egg-shell skull.

Clause 11 amends section 28 (Intoxication) to overcome an anomaly created by the decision of the Court of Appeal in *The Queen v. Bromage* [1991] 1Qd.R. 1. In that case it was accepted that the respondent was entitled to a defence of unsoundness of mind within section 27 of the *Code* by reason of a psychotic state caused by involuntary ingestion of organo-phosphates (pesticides) together with voluntary ingestion of alcohol. The Mental Health Tribunal found exculpating unsoundness of mind.

However, on appeal to the Court of Criminal Appeal, it was held that the Tribunal is required to decide whether the state of mind of the accused answers the description of mental disease or mental infirmity in section 27 but that it was not concerned with the exclusion of voluntary intoxication in section 28. The result will be that an accused dealt with by the Tribunal will, in effect, be tried on psychiatric principles without regard to his criminal responsibility. The finding would be open without regard to the exclusion by section 28 of the *Code* of a defence based on voluntary intoxication. The amendment of section 28 will exclude from consideration a case in which voluntary intoxication is said to be one of a number of

co-operating factors. An amendment of the definition of “unsoundness of mind” in the *Mental Health Act* section 28A is also included in the Bill.

Clause 12 amends section 29 (Immature age) by reducing, from 15 to 14 years, the age at which a minor is taken to be criminally responsible for his or her acts or omissions.

Clause 13 amends section 31 (Justification and excuse: Compulsion) by widening the defence in paragraph (d) so that a person is not criminally responsible when he or she does or omits to do the act in order to save himself or herself or another person from immediate death or grievous bodily harm threatened to be inflicted upon that person or another person by some person in a position to execute the threats, and believing neither himself or herself nor the other person to be able otherwise to escape the carrying of the threats into execution. It also removes the requirement that the person posing the threat be physically present.

Clause 14 omits the reference to treason in section 47 (Unlawful oaths to commit certain offences) as a result of the repeal of section 37 (treason) in Schedule 1.

Clause 15 modernises section 75 (Threatening violence) so that it will provide that a person is guilty of a crime if with intent to intimidate or annoy any person by words or conduct he or she threatens to enter or damage a dwelling or other building, or with intent to alarm any person discharges loaded firearms or does any other act that is likely to cause a person in the vicinity to fear bodily harm to any person or damage to property. The penalty is increased from one to two years imprisonment.

If the offence is committed in the night the penalty is increased from two years imprisonment to five years.

Clause 16 replaces sections 85 and 86 with a new section dealing with disclosure of official secrets which come to a person’s knowledge by virtue of their office. The penalty remains unchanged at 2 years imprisonment.

Clause 17 inserts a new section, s. 123A—‘Perjury—contradictory statements’ to provide that if a jury is satisfied that an accused has made two statements on oath or affirmation, and one is irreconcilably in conflict with the other, and the jury is satisfied that one of the statements was made by the accused knowing it to be false, but the jury is unable to say which statement was so made, the jury may make a special finding to that effect and still find the accused guilty of perjury.

Clause 18 omits subsection (2) in section 148 (Obstructing officers of courts of justice) which provides that a person may be summarily convicted before 2 justices. The jurisdiction to summarily determine indictable offence will be relocated and consolidated into the new Chapter 58A.

Clause 19 replaces section 194 (False declarations and statements) with a new provision which no longer requires that the false declaration be one made by a person permitted or required by law to make a declaration.

Clause 20 inserts a new section, s. 195A—‘Contradictory statements—false statements or declarations’ to provide that if a jury is satisfied that an accused has made two statements or declarations under either section 193 or 194, and one is irreconcilably in conflict with the other, and the jury is satisfied that one of the statements or declarations was made by the accused knowing it to be false, but the jury is unable to say which was so made, the jury may make a special finding to that effect and still find the accused guilty of the relevant offence.

Clause 21 amends section 208 (Unlawful anal intercourse) by changing the heading to “Sodomy”, increasing the penalty to 14 years and by extending the protection which the section gives to children also to intellectually impaired persons. Together with clause 26 this will remove the anomaly between penalties for carnal knowledge of girls and sodomy of boys. Section 208 will also be amended by omitting the requirement for a judicial warning to a jury about the dangers of acting upon the uncorroborated evidence of one witness. A new defence is inserted in the same terms as the defence available in section 216. It is a defence if it is proved that the accused believed on reasonable grounds that the person was not an intellectually impaired person, or that the doing of the act which constitutes the offence did not in the circumstances constitute sexual exploitation of the intellectually impaired person.

Clause 22 amends section 209 (Attempt to have unlawful anal intercourse) by changing the heading to “Attempted sodomy”, increasing the penalty to 7 years and by extending the protection which the section gives to children to intellectually impaired persons. Section 209 will also be amended by omitting the requirement for a judicial warning to a jury about the dangers of acting upon the uncorroborated evidence of one witness. A new defence is inserted in the same terms as in Clause 21 above.

Clause 23 amends section 210 (Indecent treatment of children under 16) by making the offence a crime, increasing the penalty for an offence without

a circumstance of aggravation to 10 years and by increasing the penalty for an offence with a circumstance of aggravation to 14 years. Section 210 will also be amended by omitting the requirement for a judicial warning to a jury about the dangers of acting upon the uncorroborated evidence of one witness.

Clause 24 amends section 211 (Carnal knowledge of animal) by changing the heading to “Bestiality” and by making it an offence to have carnal knowledge with as well as of an animal.

Clause 25 amends section 213 (Householder permitting abuse of children on premises) by making the offence a crime, increasing the penalty for an offence without a circumstance of aggravation to 10 years and by increasing the penalty for an offence with a circumstance of aggravation to 14 years. A further defence is allowed. If the offence on the premises is an offence in section 208 and the child is of or above the age of twelve years, it is a defence to prove that the accused person believed, on reasonable grounds, that the child was of or above the age of eighteen years.

Clause 26 amends section 215 (Carnal knowledge of girls under 16) by increasing the penalty for an offence without a circumstance of aggravation to 10 years and by increasing the penalty for an offence with a circumstance of aggravation to 14 years, and by excluding sodomy from the definition of “carnal knowledge” for the purposes of that section. Together with clause 21 this will remove the anomaly between penalties for carnal knowledge of girls and sodomy of boys. Section 215 will also be amended by omitting the requirement for a judicial warning to a jury about the dangers of acting upon the uncorroborated evidence of one witness.

Clause 27 amends section 216 (Abuse of intellectually impaired persons) by increasing the penalty for indecent treatment of an intellectually impaired person to 10 years to remove an anomaly with the penalty for indecent treatment of a child under section 210 (see clause 23). This clause amends the section further by increasing the penalty for unlawful carnal knowledge of an intellectually impaired person to 14 years to be consistent with the penalties for unlawful carnal knowledge or sodomy of a child. The offences will all be classed as crimes, instead of misdemeanours as is presently the case. Section 216 will also be amended by omitting the requirement for a judicial warning to a jury about the dangers of acting upon the uncorroborated evidence of one witness.

Clause 28 amends section 217 (Procuring young person etc for carnal knowledge) by omitting the requirement for a judicial warning to a jury about the dangers of acting upon the uncorroborated evidence of one witness. It also deletes the definition of carnal knowledge which will now be dealt with in clauses 6 and 7.

Clause 29 amends section 218 (Procuring sexual acts by coercion etc.) by omitting the requirement for a judicial warning to a jury about the dangers of acting upon the uncorroborated evidence of one witness and by increasing the penalty to 14 years.

Clause 30 amends section 219 (Taking child under 16 for immoral purposes) by omitting the reference to a child under 16 years in its general application and substituting prescribed ages of under 16 years if the intended offence is one under section 210 or 215 and under 18 years if it is an offence under section 208. For consistency with other sections the penalties will increase to 10 years where a child is under the age of 16 or 18 years respectively and if the intended offence is under section 210 to 14 years where the child is under 12 years. There is no change to the maximum of life imprisonment if the intended offence is under section 208 or 215 and the child is under 12 years.

Clause 31 omits section 221 (Conspiracy to defile) which applied only if the intended victim was a woman or girl. The Attorney-General's consent was also required to institute a prosecution. This clause inserts a new offence of 'Conspiracy to defile' which makes it an offence if the intended victim is male or female. The maximum penalty is 10 years imprisonment.

Clause 32 has the effect of consolidating section 222 (Incest by man) and section 223 (Incest by adult female) into one section. The penalty will be a maximum of life for incest and 10 years for attempted incest. This removes the anomaly between the present penalties of life imprisonment in section 222 and 3 years in section 223. The types of sexual relationships covered by the offence of incest will be widened to include uncles, aunts, nephews, nieces and a limited category of half, step or adoptive relations.

Clause 33 amends section 229B (Maintaining a sexual relationship with a child). The maximum penalty for the offence of maintaining a sexual relationship with a child without a circumstance of aggravation will be increased to 14 years.

Clause 34 amends section 229G (Procuring prostitution) by omitting the

requirement for a judicial warning to a jury about the dangers of acting upon the uncorroborated evidence of one witness.

Clause 35 amends section 233 (Betting houses) by omitting sub section (1B) which allows for summary conviction for the offence. This is due to the consolidation into new Chapter 58A of all provisions relevant to the summary determination of indictable offences.

Clause 36 replaces section 267 (Defence of dwelling) to clarify and broaden the defence so that it is lawful for any person who is in peaceable possession of a dwelling and for any person lawfully assisting or acting by the authority of that person to use force in order to prevent or repel another person from unlawfully entering or remaining in the dwelling, if the person using the force believes on reasonable grounds that the other person is attempting to enter or to remain in the dwelling with intent to commit an indictable offence in the dwelling, and that it is necessary to use such force.

Clause 37 amends section 274 (Defence of moveable property against trespassers) by extending the defence to a person lawfully assisting the person in peaceable possession of the property acting by his or her authority, and extends the proviso that the force used by either must not do bodily harm to the trespasser to “must not do grievous bodily harm” to the trespasser.

Clause 38 amends section 275 (Defence of moveable property with claim of right) by extending the defence to a person lawfully assisting the person in peaceable possession of the property acting by his or her authority, and extends the proviso that the force used by either must not do bodily harm to the other person to “must not do grievous bodily harm” to that other person.

Clause 39 amends section 276 (Defence of moveable property without claim of right) by providing that the lawful force which may be used by a person to recover property to which the person is entitled to have possession and where the other person claims no right to it, is “such force as is reasonably necessary” in order to obtain possession.

Clause 40 amends section 277 (Defence of premises against trespassers: Removal of disorderly persons) by extending the defence in subsection (1) to a person lawfully assisting the person in peaceable possession of the premises acting by his or her authority, and extends the proviso that the force used by either to remove a person who wrongfully remains in the premises must not do bodily harm to the trespasser to “must not do

grievous bodily harm” to the trespasser. Subsection (2) is amended by providing that the lawful force which may be used by a person to remove a disorderly person is “such force as is reasonably necessary”.

Clause 41 amends section 278 (Defence of possession of real property or vessel with claim of right) by extending the defence to a person lawfully assisting the person in peaceable possession of the property acting by his or her authority, and extends the proviso that the force used by either must not do bodily harm to the person to “must not do grievous bodily harm” to the person.

Clause 42 amends section 279 (Exercise of right of way or easement) by extending the defence to a person lawfully assisting the person entitled to exercise a right of way or easement acting by his or her authority, and extends the proviso that the force used by either must not do bodily harm to the person to “must not do grievous bodily harm” to the person who refuses to desist from the entry.

Clause 43 amends section 280 (Domestic discipline) by inserting after the word ‘correction’ the words ‘discipline, management or control’, and omits the reference to an apprentice.

Clause 44 amends section 281(Discipline of ship or aircraft). Whereas the section now deals the authority of ‘a master or other person in command of a vessel on a voyage or an aircraft on a flight’, the amended section will provide that it is lawful for ‘a person in charge of a vehicle on a journey’ and for any person acting by his or her authority to use, for the purpose of maintaining good order and discipline on board the ‘vehicle’, such force as the person or such person acting by his or her authority believes, on reasonable grounds, to be necessary, and as is reasonable under the circumstances.

Clause 45 replaces section 286 (Duty of head of family) with a new section 286 (Duty of person who has care of child) There will be a duty, not only on a parent to provide the necessaries of life, but on every person who has care of a child under the age of 16 years to provide the necessaries of life for such child, to take such precautions as shall be reasonable in all the circumstances to avoid danger to the child’s life, health or safety and take such action as shall be reasonable in all the circumstances to remove the child from any such danger. Such person will be held to have caused any consequences which result to the life and health of the child by reason of any omission to perform that duty, whether the child is helpless or not.

Clause 46 amends section 308 (Written threats to murder) to cover such threats made in any ‘document’ as defined in section 1.

Clause 47 amends section 313 (Killing an unborn child) by inserting two additional subsections. These will provide that any person who, when a woman is pregnant with a child capable of being born alive, unlawfully assaults such woman and thereby destroys the life of, or does grievous bodily harm to, or transmits a serious disease to such child before its birth, is guilty of a crime and is liable to imprisonment for life. Evidence that demonstrates, on the balance of probabilities, that a woman had at any material time been pregnant for a period of 24 weeks or more, will be prima facie proof that the child was then capable of being born alive.

Clause 48 amends section 317 (Acts intended to cause grievous bodily harm, or prevent apprehension) to insert other malicious acts as offences. These include a person who, with one of the requisite intents, transmits a serious disease to any person, or who does one of the proscribed acts with intent to resist or prevent a public officer from acting in accordance with lawful authority. It will also add to the offence of attempting to strike any person with any kind of projectile with one of the requisite intents, an actual striking with a projectile or anything else capable of achieving the intention.

Clause 49 amends section 317A (Taking or sending dangerous goods on aircraft) by omitting all references to aircraft and inserting ‘vehicle’ instead. The penalty will increase to 14 years imprisonment. The defence that the act constituting the offence was consented to by the owner or operator with knowledge by the person of the nature of the goods concerned is omitted. “Dangerous goods” are defined as firearms, ammunition, weapons and explosive substances, and any explosive or noxious substance or any acid or other thing of a dangerous or destructive nature which by reason of its nature or condition may endanger the safety of a vehicle or of a person in or on a vehicle or of the public in the vicinity of the vehicle.

Clause 50 replaces section 318 (Preventing escape from wreck) with a new section ‘Obstructing rescue or escape from unsafe premises. ‘Obstruct’ is defined to include hinder and attempt to obstruct. The maximum penalty of life imprisonment is unchanged.

Clause 51 inserts a new section 320A ‘Torture’. The maximum penalty is 14 years imprisonment. ‘Torture’ is defined to mean the intentional infliction of severe pain or suffering on a person by an act or series of acts done on one or more than one occasion. ‘Pain or suffering’ is defined to

include physical, mental, psychological or emotional pain or suffering, whether temporary or permanent.

Clause 52 amends section 321 (Attempting to injure by explosive substances) by inserting also noxious substances.

Clause 53 inserts a new section 321A 'Bomb hoaxes'. There will be two different offences. The first will provide that any person who places an article or substance in any place or sends an article or substance by any means, with the intention of inducing in another person a belief that the article or substance is likely to explode or ignite or discharge a dangerous or noxious matter commits a crime and is liable to imprisonment for 7 years. Secondly, any person who, whether in Queensland or elsewhere, makes a statement or conveys information to another person which he or she knows or believes to be false, with the intention of inducing in that person or any other person a belief that an explosive or noxious substance or any acid or other thing of a dangerous or destructive nature is present in any place in Queensland, will also commit a crime and be liable to imprisonment for 5 years. It will be immaterial whether the accused had any particular person in mind as the person in whom he or she intends to induce the relevant belief.

Clause 54 amends section 326 (Endangering life of children by exposure) by increasing the penalty to 7 years imprisonment and by making the offence a crime instead of a misdemeanour.

Clause 55 amends section 328A (Dangerous driving of a motor vehicle) in several ways. The aggravating circumstances of causing death or grievous bodily harm will be classified as crimes instead of misdemeanours. As well as conventional motor vehicles the term 'vehicle' will encompass aircraft, vessel, train and other vehicles (see amendment to s. 1—definitions). The term 'operates' will replace 'drives'. The offence will also encompass a person who interferes with the operation of a vehicle in a dangerous manner. The offence will no longer be restricted to public places. It can be committed in any place unless it is a place being used to race or test vehicles and from which other traffic is excluded at the time. Penalties are unchanged.

Clause 56 amends section 335 (Common assault) by increasing the maximum penalty to 3 years imprisonment.

Clause 57 amends section 336 (Assault with intent to have unlawful anal

intercourse). The offence will be one of assault with intent to commit rape. (see Clause 62).

Clause 58 amends section 336 (Indecent assaults). The various offences will be called ‘Sexual assaults’ The maximum penalty increases from 7 to 10 years to be consistent with other sex offences. New subsections are inserted to rework the circumstances of aggravation. As sodomy will be dealt with in section 208 or as rape in section 347, the reference to anal intercourse in the present section is not repeated. The circumstances of aggravation will be that if immediately before, during or immediately after the offence, the offender is, or pretends to be, armed with a dangerous or offensive weapon, or is in company with another person, the offender is liable to imprisonment for life. Secondly, if an indecent assault or act of gross indecency consists (wholly or in part) in penetrating the vagina, vulva, or anus to any extent with any object or with any part of the body other than the penis—the offender is liable to imprisonment for life, or in bringing into contact any part of the genitalia or any part of the anus with any part of the mouth—the offender is liable to imprisonment for 14 years.

Clause 59 amends section 339 (Assaults occasioning bodily harm) by making the offence a crime instead of a misdemeanour, by increasing the penalty for an offence without a circumstance of aggravation to 7 years and by increasing the penalty for an offence with a circumstance of aggravation (being armed or in company) to 10 years.

Clause 60 amends section 340 (Serious assaults) by making the offence a crime instead of a misdemeanour and by increasing the penalty to 7 years.

Clause 61 amends section 346 ‘Assaults in interference with freedom of trade or work’ by increasing the maximum penalty to 5 years imprisonment.

Clause 62 amends section 347 (Rape). The effect of the omissions and insertions in this section will be to make it an offence for either a male or a female to commit rape upon the other. As the definition of ‘carnal knowledge’ in section 1 includes sodomy, the offence of rape will include non-consensual sodomy.

Clause 63 replaces section 364 (Desertion of children) with a broader section (Cruelty to children under 16) which encompasses not only the desertion of children but also failing to provide the child with adequate food, clothing, medical treatment, accommodation or care when such provision was available to the person from his or her own resources, or failing to take

all lawful steps to obtain adequate food, clothing, medical treatment, accommodation or care when such provision was not available to the person from his or her own resources, or leaving the child without means of support. The offence is a crime and the maximum penalty is 5 years.

Clause 64 replaces section 390 (Things capable of being stolen). Because of the new expanded definition of property in section 1 it is now only necessary to provide in section 390 that anything that is property of any person is capable of being stolen if it is moveable or capable of being made moveable even if it is made moveable in order to steal it.

Clause 65 amends section 398 (Punishment of stealing). The penalties for stealing with and without circumstances of aggravation are made consistent with the penalties for similar offences in the present misappropriation section (section 408C) and the new replacement of section 408C (Fraud). Generally, for the offence of stealing without circumstances of aggravation the maximum penalty will be 5 years imprisonment and for the offence of stealing with circumstances of aggravation the maximum penalty will be 10 years imprisonment. This clause also introduces 3 new circumstances of aggravation. These are ‘stealing by looting’ and ‘stealing firearm or ammunition’ for which the maximum penalty will be 10 years imprisonment and ‘stealing firearm for use in another indictable offence’ for which the maximum penalty will be 14 years imprisonment.

Clause 66 amends section 408C (Misappropriation) by creating a new offence called ‘Fraud’. This section effectively modernises the criminal law in relation to dishonesty offences by replacing (see Schedule 1, ‘Provisions of Criminal Code repealed’) section 427 ‘Obtaining goods or credit by false pretence or wilfully false promise, section 428 ‘Obtaining execution of valuable security by false pretence or wilfully false promise and section 429 (Cheating). In addition to the dishonest application of property in the present section, the offence of ‘Fraud’ will include the person who dishonestly obtains property from any person, or induces any person to deliver property to any person or gains a benefit or advantage, pecuniary or otherwise, for any person, or causes a detriment, pecuniary or otherwise, to any person, or induces any person to do any act which that person is lawfully entitled to abstain from doing, or induces any person to abstain from doing any act which that person is lawfully entitled to do, or makes off, knowing that payment on the spot for any goods lawfully supplied or returned or for any service lawfully provided is required or expected, without having so paid and with intent to avoid payment.

Clause 67 inserts a new section 408D (Computer hacking and misuse). The new section will contain 3 new offences. Firstly, a person who uses a restricted computer without the consent of the computer's controller commits a simple offence and is liable to imprisonment for 2 years. Secondly, if the person causes or intends to detriment or damage, or gains or intends to gain a benefit for any person, the person commits a crime and is liable to imprisonment for 5 years. Finally, if the person causes detriment or damage or obtains a benefit for any person to the value of more than \$5000, or intends to commit an indictable offence, the person commits a crime and is liable to imprisonment for 10 years. It is a defence to any of the charges to prove that the use of the restricted computer was authorised, justified or excused by law.

Clause 68 amends section 412 (Attempted robbery—accompanied by wounding or in company) by replacing the use of loaded arms with the use of personal violence to any person by means of any weapon, instrument or noxious substance.

Clause 69 amends section 415 (Demanding property, benefit or performance of services with threats) by omitting the reference to 'writing' which is now included in the definition of 'document'.

Clause 70 amends section 416 (Attempts at extortion by threats) by omitting the reference to 'writing' which is now included in the definition of 'document' and by other minor amendments consequential upon the changes to 'sodomy' and 'rape'.

Clause 71 amends section 418 (Definitions) by adding a definition of 'premises' for the purposes of the Chapter 39 'Burglary—Housebreaking—and like offences'

Clause 72 replaces section 419 (Housebreaking—Burglary) with a new offence of 'Burglary'. It will be a crime to enter or be in the dwelling of another with intent to commit an indictable offence therein. The maximum penalty will be 14 years imprisonment. Further, any person who enters or is in the dwelling of another and commits an indictable offence therein is guilty of a crime and is liable to imprisonment for life. If the offender enters the dwelling by means of any break, he or she is liable to imprisonment for life, and finally, if the offence is committed in the night, or if the offender uses or threatens to use actual violence, or is or pretends to be armed with a dangerous or offensive weapon or instrument or noxious substance, or is in company with one or more other person or persons, or

damages or threatens or attempts to damage any property, the offender is liable to imprisonment for life.

Clause 73 replaces section 421 (Breaking into places and committing indictable offences) with a new offence ‘Entering or being in premises and committing indictable offences’. Any person who enters or is in any premises with intent to commit an indictable offence therein, is guilty of a crime and is liable to imprisonment for ten years. Any person who enters or is in any premises and commits an indictable offence therein is guilty of a crime and is liable to imprisonment for fourteen years. If the offender gains entry to the premises by means of any break and commits an indictable offence therein, he or she is liable to imprisonment for life.

Clause 74 amends section 425 (Persons found armed etc, with intent to commit an indictable offence) by replacing the heading with ‘Possession of things used in connection with unlawful entry’ and adding ‘noxious substance’ to ‘instrument’ and omitting defunct paragraphs.

Clause 75 replaces the heading in Chapter 40 (Obtaining Property by False Pretences—Cheating) with ‘ Other Fraudulent Practices’. This is necessary because of the repeal of section 427 ‘Obtaining goods or credit by false pretence or wilfully false promise, section 428 ‘Obtaining execution of valuable security by false pretence or wilfully false promise and section 429 (Cheating).

Clause 76 amends section 427A (Obtaining property by passing valueless cheques) by omitting the requirement in subsection (4) that a prosecution for an offence defined in that section shall not be commenced without the consent of a Crown Law Officer.

Clause 77 amends section 433 (Receiving stolen property etc.) by replacing the element of “knowing” that a thing is stolen with “has reason to believe”. Two circumstances of aggravation are added. Firstly, if the thing received is a firearm or ammunition, the offender is liable to imprisonment for 14 years. Secondly, if the offender received the thing whilst acting in the capacity of a pawnbroker or a dealer in second hand goods, whether under licence or otherwise, the offender is liable to imprisonment for 14 years.

Clause 78 replaces section 441 (Fraudulent false accounting) with a new section ‘Fraudulent falsification of records’. The maximum penalty will be 10 years imprisonment.

Clause 79 amends section 442B (Receipt or solicitation of secret commission by an agent), renumbers section 442B(2) (Gift or offer of secret commission to an agent) as section 442BA and makes each offence a crime instead of a simple offence.

Clause 80 amends section 442D (False or misleading receipt or account) and makes the offence a crime instead of a simple offence.

Clause 81 amends section 442E (Secret commission for advise given), renumbers section 442E(2) (Offer or solicitation of secret commission in return for advice given or to be given) as section 442EA and makes each offence a crime instead of a simple offence.

Clause 82 amends section 442F (Secret commission to trustee in return for substituted appointment) and makes the offence a crime instead of a simple offence.

Clause 83 amends section 442G (Liability of director etc. acting without authority) and makes the offence a crime instead of a simple offence.

Clause 84 amends section 442I (Penalty on conviction) by providing that the penalty for any secret commission offence under Chapter 42A is 3400 penalty units for a corporation, and imprisonment for 7 years for any other person.

Clause 85 amends section 458 (Unlawful acts) subsection (2) by inserting after the words “It is immaterial that the person who does the injury is in possession of the property injured, or has a partial interest in it” the words “or an interest in it as joint or part owner or owner in common”.

Clause 86 amends section 460 (Damage) by omitting the reference to ‘writing or inscription’ which is now included in the definition of ‘document’.

Clause 87 amends section 469 (Malicious injuries in general). The distinction between penalties according to whether the offence happens at night or in the day time is removed. The maximum penalty for all offences not warranting punishment in special cases will be 5 years imprisonment. This clause adds circumstances of aggravation to those listed under the heading ‘Punishment in special cases’. Firstly, ‘Graffiti’ for which the maximum penalty will be 5 years imprisonment or, if the damage involves obscene or indecent representations, 7 years imprisonment. Secondly, ‘Educational institutions’ so that if the property damaged is part of an educational institution the maximum penalty will be 7 years imprisonment.

Special provision is made in each case to enable the court, whether or not any other penalty is imposed, to impose community service involving the removal of graffiti or cleaning or repairing damage respectively, and to order the offender to pay compensation to any person.

Clause 88 amends section 478 (Sending letters threatening to burn or destroy) by omitting the reference to ‘writing’ which is now included in the definition of ‘document’ in section 1.

Clause 89 amends section 484 (Definitions) by omitting the reference to ‘writing’ which is now included in the definition of ‘document’ in section 1.

Clause 90 amends section 488 (Punishment of forgery in general) by inserting a new heading, ‘Forgery and uttering’, sets out the offences of forging a document with intent to defraud and uttering a forged document with intent to defraud, and imposes a maximum penalty for each offence of 3 years (as at present). The circumstances of aggravation listed under the heading ‘Punishment in special cases’ are retained.

Clause 91 amends section 494 (Making documents without authority) by omitting the reference to ‘writing’ which is now included in the definition of ‘document’ in section 1.

Clause 92 inserts a new section 501A (Contradictory statements—false statements or declarations). It is in the same terms as the new sections 123A and 195A, but for the purposes of proceedings under section 501 (False statements for the purpose of registers of births, deaths and marriages).

Clause 93 replaces section 510 (Instruments and materials for forgery) which is made necessary by the insertion of the new forgery provision. It consolidates the present law to provide that any person who unlawfully makes, or starts or prepares to make, or uses or has in his possession with the intention of using that thing in the forging of a document or disposes of any thing having used that thing in the forging of a document, is guilty of a crime, and is liable to imprisonment for fourteen years.

Clause 94 amends section 514 (Personation in general) by inserting the words ‘real or fictitious’ so that it is an offence, if with intent to defraud any person, someone falsely represents himself or herself to be some other person, living or dead, real or fictitious.

Clause 95 amends section 535 (Attempts to commit offences) by omitting subsection (2) which provided that ‘when a person who commits

an indictable offence is punishable on summary conviction, a person who attempts to commit such an offence may also be summarily convicted.’. This subsection is made redundant by the inclusion of attempts to commit offences in the next clause.

Clause 96 inserts a new Chapter 58A (Indictable offences dealt with summarily) in Part 8 (Procedure). The new sections will be sections 552A to 552J.

Section 552A sets out the charges of indictable offences that must be dealt with summarily unless the magistrate abstains under section 552D because the defendant would not be able to be adequately punished if convicted summarily.

Section 552B sets out the charges of indictable offences that may be dealt with summarily unless the defendant elects trial by jury or the magistrate abstains under section 552D because the defendant would not be able to be adequately punished if convicted summarily.

Section 552C provides that a summary hearing of an indictable offence may only be dealt with by a magistrate. Justices who are not magistrates retain the jurisdiction to take or make procedural actions or orders such as granting adjournments.

Section 552D details when magistrates must abstain from dealing summarily with a charge under section 552A or section 552B because the defendant would not be able to be adequately punished if convicted summarily, in which case the proceeding continues as a committal hearing.

Section 552E provides that complaints for these indictable offences may be heard and decided where a defendant is arrested or served with a summons.

Section 552F provides that the court has jurisdiction to summarily hear these charges for indictable offences despite the time that has elapsed from the time when the matter of complaint arose.

Section 552G provides that the value of any property or damage to property for the jurisdiction to attach is the value as determined by the Magistrates Court.

Section 552H provides that a person is liable upon summary conviction under section 552A or 552B to imprisonment for 3 years or to a fine of 100 penalty units, or to the maximum penalty for the offence had it been dealt with on indictment, whichever is the lesser.

Section 552I provides for the procedure to be followed upon a hearing under section 552 B.

Section 552J provides for a new ground of appeal if the magistrate errs in deciding to proceed summarily in the determination of these indictable offences.

Clause 97 amends section 560 (Nature of indictments) by replacing the heading with 'Presenting indictments' and empowering the prosecution to choose whether to present an indictment in the Supreme Court even though a person is committed to the District Court if a case is sufficiently serious, complex or for any other relevant reason.

Clause 98 amends section 563 (Nolle prosequi) by removing an anomaly between that section and section 669A so that prosecutors can discontinue prosecutions not only in respect of a whole indictment but, if necessary, any one or more charges in an indictment.

Clause 99 amends section 566 (Particular indictments) by removing redundant references such as to the coin.

Clause 100 amends section 568 (Cases in which several charges may be joined) so that one single charge can be laid against a person instead of many if certain conditions are met. This provision only applies to some offences of dishonesty.

Clause 101 amends section 569 (Accessories) by inserting a reference to a category of aider under section 7 which seems to have been overlooked in the original Code.

Clause 102 amends section 572 (Amendment of indictments) to empower the court to allow a count to be added to an indictment after a trial has commenced if to do so will not cause an injustice.

Clause 103 amends section 577 (Charge of homicide of child) so that on a charge of murder or manslaughter a charge under section 313 or 314 can also be proved in the alternative if established by the evidence.

Clause 104 amends section 578 (Charge of offence of a sexual nature) by updating the possible statutory alternative verdicts open for sexual offences.

Clause 105 amends section 581 (Stealing, false pretences and cheating) by replacing the heading with 'Offences of dishonesty' and updating the possible statutory alternative verdicts open for offences of dishonesty.

Clause 106 replaces section 590 (Right to be tried) with a new section 'Bringing accused to trial' which will impose a six month time limit for the presentment of indictments or the accused will be entitled to a discharge from the consequences of his or her committal.

Clause 107 inserts a new 590B (Advanced notice of expert evidence). As was thought desirable by the Court of Appeal in the recent case of *de Voss*, for the fair and efficient conduct of criminal proceedings, this section will ensure that there will be advance notice of expert evidence by disclosure of reports on either side.

Clause 108 inserts a new 592A (Pre-trial directions and rulings), Under this new section, once an indictment is presented and the Court is seized of jurisdiction, the parties or a judge will be able to arrange for pre-trial directions to be given and rulings made about the admissibility of evidence and conduct of the trial. This will do away with the current practice of empanelling a jury and then sending them away or locking them up while questions of law are determined.

Clause 109 amends section 594 (Accused person to be called upon to plead to indictment). This reform will settle in the affirmative whether a court may allow a consenting accused person to be bulk-arraigned (ie asked to plead upon the whole indictment) instead of to every single count on a lengthy indictment.

Clause 110 amends section 597A (Separate trials where 2 or more charges against same person) This clause will need to be read together with the amendment to the *Evidence Act 1977*, Clause 5, Schedule 2. That clause will provide that in a criminal proceeding, similar fact evidence, the probative value of which outweighs its potentially prejudicial effect, shall not be ruled inadmissible on the ground that it may be the result of collusion or suggestion, and the weight of such evidence shall be a question for the jury, if any. Therefore under this clause such similar fact evidence, by itself, if admissible, will not be a ground for separate trials if there is more than one complaint against a person.

Clause 111 amends section 604 (Trial by jury) to make it clear that a plea that a person has been previously acquitted or convicted of the same matter will, in accordance with the majority of authorities, be tried by a judge alone.

Clause 112 amends section 631A (Plea of guilty during trial) so that it will no longer be necessary to bring back a jury which has been sent away

during legal argument when an accused wishes to change his or her plea to guilty during a trial.

Clause 113 replaces section 632 (Accomplices) with a new section ‘Corroboration’. This new provision and the repeal of parts of many other sections will repeal the present requirement that a trial judge must warn a jury of the dangers of convicting on the uncorroborated evidence of one witness. Judges will no longer be allowed to tell juries that the law regards any particular class of complainant (for example complainants in sexual offences) as unreliable witnesses. The requirement of corroboration will be retained for offences such as sedition, perjury and like offences.

Clause 114 amends section 636 (Evidence of blood relationship) by omitting the reference to section 223 (Incest by a adult female) which is being repealed and replaced by the new section 222.

Clause 115 amends section 639 (Evidence on charges of offences against customs laws) by inserting a new heading ‘Averments about public officers and public service officers or employees’ and omitting references to customs officers where mentioned.

Clause 116 amends section 643 (Intention to defraud) by inserting a new heading ‘Intention to injure, deceive or defraud’ to more accurately reflect the content of the section, as these other intents are commonly found as elements of offences in the Criminal Code.

Clause 117 inserts a new section 644A (Witness giving incriminating answers) A person who is called as a witness in any proceeding under the sections listed (relating to bribery) will not be excused from answering any question on the ground that the answer may incriminate or tend to incriminate himself or herself. An answer shall not then, except in the case of any prosecution for perjury in respect of such answer, be in any proceeding, civil or criminal, admissible in evidence against the person answering.

Clause 118 inserts a new section 651 (Supreme or District Court may decide summary offences). To save court time, costs to defendants and costs to the criminal justice system, this section will enable summary matters to be removed out of the Magistrate’s Court into the superior Courts when an accused intends to plead guilty to those offences when being dealt with for indictable offences in the superior Courts. This clause also inserts a new section 652 (Proceedings to transmit summary charge) to provide the mechanics for section 651.

Clause 119 amends section 669A (Appeal by Attorney -General) to give the Attorney-General the right to refer a point of law that arises while one charge against a person is before the court but the person is, after the point of law is decided, convicted of a different charge or of the same charge but with or without a circumstance of aggravation. The appeal will not affect the outcome of the trial or conviction. One further amendment will allow the Attorney-General to appeal to the Court of Appeal against an order staying proceedings or further proceedings on an indictment.

Clause 120 provides that each provision in schedule 1 is repealed.

Part 4—Other Acts Repealed or Amended

Clause 121 provides for the repeal of the Criminal Code 1995.

Clause 122 provides that Schedule 2 amends the acts mentioned it.

SCHEDULE 1

PROVISIONS OF CRIMINAL CODE REPEALED

Section 32 (Compulsion of husband)

Section 33 (No conspiracy between husband and wife alone)

Section 35 (Liability of husband and wife for offences committed by either with respect to the other's property)

Chapter 6 (Treason and other offences against the Sovereign's person and authority) sections 37 to 43)

Section 50 (Effect of prosecution)

Section 53 (Defamation of foreign princes)

Section 67 (Smuggling or rescuing goods under arms)

Section 68 (Disclosure of secrets relating to defences by public officers)

Section 86 (Disclosure of other official secrets)

Section 145C (Summary proceedings)

Chapter 18 (Offences relating to the coin) sections 149 to 163

Chapter 19 (Offences relating to posts and telegraphs) sections 164 to 191

Chapter 196 (Shooting at customs boats or officers)

Section 197 (Resisting officers engaged in preventing smuggling)

Section 198 (Resisting customs officers)

Section 223 (Incest by adult female)

Section 229A (Indictable offences against morality that may be dealt with summarily)

Section 229P (Summary proceedings)

Section 237 (False information as to health of foreign ships)

Section 244 (Fraudulent destruction or removal of goods liable to duty)

Chapter 31 (Assaults punishable on summary conviction)

Section 359B (Summary proceedings for unlawful stalking)

Section 408B (Indictable offences relating to use or possession of motor vehicles, aircraft or vessels that may be dealt with summarily)

Section 420 (Entering dwelling house with intent to commit an indictable offence)

Section 422 (Breaking into places with intent to commit indictable offences)

Section 425A (Definitions for purposes of Chapter)

Section 426 (Definition)

Section 427 (Obtaining goods or credit by false pretence or wilfully false promise)

Section 428 (Obtaining execution of valuable security by a false pretence or wilfully false promise)

Section 429 (Cheating)

Section 442H (Offences)

Chapter 43 (Summary conviction for stealing and like indictable offences)

Section 449 (Time for prosecution)

Chapter 47 (Summary conviction for certain offences)

Section 485 (Further definitions)

Section 486 (Definition of forgery)

Section 487 (Certain matters immaterial)

Section 489 (Uttering false documents and counterfeit seals)

Section 490 (Uttering cancelled or exhausted documents)

Section 491 (Uttering cancelled stamps)

Section 505 (Sending false telegrams)

Section 511 (Counterfeit stamps)

Section 512 (Paper for postal purposes)

Section 513 (Paper and dies for postage stamps)

Chapter 53 (Fraudulent debtors)

Section 531 (Concealment by officers of companies on reduction of capital)

Section 532 (Falsification of books of companies)

Section 556 (Summary convictions—time)

Section 633 (Evidence on charge of treason)

Section 681 (Seizure of counterfeit coin, tools for coining etc)

Section 696 (Names of jury to be given to person charged with treason or concealment of treason)

Section 698 (Committal of fraudulent debtors)

SCHEDULE 2**OTHER ACTS AMENDED****BAIL ACT 1980**

Clause 1 amends section 20 (3A)(a)(i) by omitting the reference to court ‘sittings’, as a consequence of the amendment to section 590 of the Criminal Code.

CRIMINAL LAW (SEXUAL OFFENCES) ACT 1987

Clause 1 amends section 3 as a consequence of the updating of headings in the Criminal Code.

DISTRICT COURTS ACT 1967

Clause 1 amends section 61 by adding the new section 421 (Breaking into places and committing indictable offences) to the list of offences carrying a maximum of life imprisonment which may be dealt with in the District Court jurisdiction.

EVIDENCE ACT 1977

Clauses 1 to 4 inclusive amend section 93A (Statement made before proceeding by child under 12 years) by adding intellectually impaired persons to those affected as witnesses under that section.

Clause 5 inserts a new section 132A (Admissibility of similar fact evidence) to provide that in a criminal proceeding, similar fact evidence, the probative value of which outweighs its potentially prejudicial effect, shall not be ruled inadmissible on the ground that it may be the result of collusion or suggestion, and the weight of such evidence shall be a question for the jury, if any.

JUSTICES ACT 1886

Clause 1 amends section 108 by omitting the reference to court ‘sittings’, as a consequence of the amendment to section 590 of the Criminal Code.

Clause 2 amends section 114 by omitting the reference to court ‘sittings’, as a consequence of the amendment to section 590 of the Criminal Code.

Clause 3 amends section 126 by omitting the reference to court ‘sittings’, as a consequence of the amendment to section 590 of the Criminal Code.

Clause 4 omits section 147A as a consequence of the amendment to section 188 of the *Penalties and Sentences Act 1992* in this schedule which will give all courts power to reopen sentences to correct errors.

JUVENILE JUSTICE ACT 1992

Clause 1 updates references in section 8 to indictable offences which can be dealt with summarily.

Clause 2 replaces section 98 with a new section (Correction of error by court making order) as a consequence of the amendment to section 188 of the *Penalties and Sentences Act 1992* in this schedule which will give all courts power to reopen sentences to correct errors.

MENTAL HEALTH ACT 1974

Clause 1 amends section 28A in the definition of ‘unsoundness of mind’ in line with the amendment to section 28 of the Criminal Code by providing that the term does not include a state of mind resulting, to any extent, from intentional intoxication or stupefaction alone or in combination with some other agent at or about the time of the alleged offence.

Clause 2 amends section 28D ‘References to Tribunal’ to allow a referral by the Crown law officer if he has knowledge that a defendant may raise a defence of insanity or diminished responsibility at trial.

Clauses 3 and 4 amend section 43A to allow the Attorney-General to appeal to the Court of Appeal regardless of the route by which the person came to be before the Mental Health Tribunal. It will overcome the absence of standing to appeal at the time of Ross Farrah’s case. Also, the appeal period will change from 28 days to calendar month to avoid confusion when reckoning time.

PENALTIES AND SENTENCES ACT 1992

Clause 1 inserts a new section 13A ‘Cooperation with law enforcement authorities to be taken into account’.

Clause 2 replaces section with a rewritten section 188 ‘Court may reopen sentencing proceedings’ and takes into account the new section 13A where an offender fails to live up to a written undertaking to cooperate with law enforcement authorities after that undertaking was taken into account in passing sentence. The courts will also be able to correct sentences imposed which were decided on clear factual errors of substance. This new section will apply to all courts.

VAGRANTS GAMING AND OTHER OFFENCES ACT 1931

Clause 1 inserts definitions of ‘graffiti instrument’, ‘graffiti offence’ and ‘spray-paint can’.

Clause 2 inserts new section 37C ‘possession of a graffiti instrument’ which creates a new summary offence with a penalty of 70 penalty units or 2 years imprisonment. Special provision is made to enable the court, whether or not any other penalty is imposed, to impose community service involving the removal of graffiti and to order the offender to pay compensation to any person.