

Substantial reforms to criminal law

The Criminal Code Act 1995 and Crimes Amendment Act 1995 received assent on March 15, 1995.

In the short term, The Law Society's main concern should be to consider the Crimes Amendment Act 1995 as it will come into effect on September 16, 1995. It contains substantial reforms to the criminal law which are to be implemented during the transitional period leading up to the commencement of the Criminal Code, whose general principles will apply to all Commonwealth offences on March 16, 2000. The reforms to come into effect on September 16, 1995 are:

* As has been the case with the Crimes Act since it was enacted in 1914, the principles of the common law with respect to criminal liability will apply in relation to all Commonwealth offences (eg, no longer will the principles of criminal responsibility, contained in the Queensland Criminal Code, be applied by Section 80 of the Judiciary Act 1903 to Commonwealth offences committed in Queensland);

* There will be a standard age of criminal responsibility in relation to all Commonwealth offences. A child aged under 10 years will not be liable for an offence against a law of the Commonwealth. Special rules will operate in relation to children aged 10 years or above but under 14 years;

* The law of attempt will be brought into conformity with the Criminal Code. The conduct required will need to be more than "preparatory", and "impossibility" will not provide a defence. There are other changes as well, so those who are likely to rely on the proposed provision should examine it carefully;

* The law of conspiracy will be substantially different.

Existing Sections 86 and 86A will be replaced by a new Section 86 which will provide for early implementation of the Criminal Code conspiracy provision. No longer will it be possible to charge a person with conspiring to do something which does not itself amount to an offence. One of the more notable changes is that it will no longer be possible to charge a person with conspiracy to commit an offence with a maximum penalty of 12 months' imprisonment (or less), or a fine of less than \$20,000. Another change is the requirement to prove that the accused or at least one other party to the agreement must have committed an overt act pursuant to the agreement. As with attempt, it is suggested that those likely to make use of the provisions examine them carefully.

In the longer term, the Criminal Code Act 1995 will progressively transform Commonwealth criminal law over the next five years. The Law Society has a copy of the Second Reading Speech. The general principles of criminal responsibility will involve drafting offences differently and this will begin with any new legislative schemes developed. The Office of Parliamentary Counsel is developing a practice direction to assist in implementing the new approach.

Existing legislation will also need to be reviewed and adjusted in line with the Criminal Code. This should be done progressively. The Attorney-General's Department will soon contact portfolios about the review of offence provisions within their responsibility to ensure an orderly transition.

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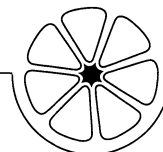
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