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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

CRIMES LEGISLATION AMENDMENT BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Honourable Lionel Bowen M.P
Deputy Prime Minister and Attorney-General)

**CRIMES LEGISLATION AMENDMENT BILL 1987
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CRIMES LEGISLATION AMENDMENT BILL 1987**GENERAL OUTLINE**

The purpose of the Bill is to amend various Acts concerned with crime, law enforcement and criminal justice.

The Christmas Island Act 1958 is amended to restore criminal trial by jury and because of the problems of summoning a jury in such a small community, the Bill empowers the Supreme Court of Christmas Island to change the venue of a jury trial to a State or another Territory.

The Crimes Act 1914 is amended to relocate various interpretative provisions from the Acts Interpretation Act 1901 and amend certain of them. It is also amended so as to terminate the application of the provisions creating inchoate offences against laws of the ACT and External Territories. This will enable the Government's syringe exchange anti-AIDS program to operate. The Bill also amends the search warrant provision and provides comprehensive 'escape' provisions for offences against Commonwealth and Territory laws. The Removal of Prisoners (Territories) Act 1923 and the Removal of Prisoners (Australian Capital Territory) Act 1968 are also consequentially amended.

The Crimes (Foreign Incursions and Recruitment) Act 1978 is amended to better define the scope of the legislation, amend penalties for certain offences and create new offences in respect of conduct associated with a foreign incursion.

The Crimes (Internationally Protected Persons) Act 1976 is amended to overcome various prosecution problems existing under the Act presently. The amendments are specifically designed to better protect the property of an Internationally Protected Person and to deal more harshly with property destruction by fire and explosives.

The Proceeds of Crime Act 1987 is amended to increase the effectiveness of the Act as a weapon against organised crime and to correct minor drafting errors appearing in the Act.

The Transfer of Prisoners Act 1983 is amended to achieve greater uniformity with the uniform prisoner transfer scheme.

The above Acts are amended in different parts of the Bill and separate outlines in respect of each part are also provided below.

FINANCIAL IMPACT

It is not anticipated that the proposals in the Bill as a whole will occasion any increased costs to the Commonwealth. It is not possible to provide quantitative estimates of savings. However, it is anticipated that these will eventuate as a result of the proposed amendments to the Proceeds of Crimes Act 1987, which are designed to ensure the effective operation of that Act, and by the proposed amendments to the Crimes Act 1914, which enable certain indictable offences to be dealt with summarily, thus producing cost and time savings in Commonwealth prosecutions.

ABBREVIATIONS

The following abbreviations are used in this explanatory memorandum:-

- . ACT: Australian Capital Territory
- . AFP: Australian Federal Police
- . Christmas Island Act: Christmas Island Act 1958.
- . Crimes Act: Crimes Act 1914
- . DPP: Director of Public Prosecutions
- . Foreign Incursions Act: Crimes (Foreign Incursions and Recruitment) Act 1978
- . Interpretation Act: Acts Interpretation Act 1901
- . IPP Act: Crimes (Internationally Protected Persons) Act 1976
- . Proceeds Act: Proceeds of Crime Act 1987
- . Removal (ACT) Act: Removal of Prisoners (Australian Capital Territory) Act 1968
- . Removal (Territories) Act: Removal of Prisoners (Territories) Act 1923
- . Transfer Act: Transfer of Prisoners Act 1983

NOTES ON CLAUSES

PART 1 - PRELIMINARY

OUTLINE:

This is the preliminary part of the Bill containing the short title and commencement provisions.

Clause 1 - Short Title:

Contains the short title to the Bill.

Clause 2 - Commencement:

This provides for various commencement times for different parts and sections of the Bill.

Sub-clause 2(2) provides that the amendments of the Proceeds Act are deemed to operate immediately after the commencement of that Act.

PART II - AMENDMENTS OF THE CHRISTMAS ISLAND ACT 1958

OUTLINE:

This Bill amends the Christmas Island Act to restore criminal trial by jury in the Supreme Court of Christmas Island, which was abolished in 1958.

As it is possible that a trial by a locally-summoned jury would be unworkable, owing to the smallness of the Island community, the Bill empowers the Court to change the venue of a criminal trial from the Island to a place in a State or another Territory where the Supreme Court of that State or Territory may sit.

The jury for the trial will be summoned from that State or Territory according to the laws of the State or Territory applying to trial by jury. The accused, if convicted and sentenced to imprisonment, is to be deemed to have been removed to the new venue under the Removal of Prisoners (Territories) Act 1923. If not sentenced, or after the sentence expires, he or she is entitled to repatriation to Christmas Island.

Clauses 3 and 4 - Principal Act and Interpretation:

These are definitional provisions.

Clause 5 - Insertion of new sections:

This clause inserts new sections 11AAA and 11AA into the Christmas Island Act.

Proposed section 11AAA: This enables the Minister to make co-operative arrangements with the Government or an authority of a State or another Territory to apply provisions of the Christmas Island Act relating to the Court's sittings in that State or other Territory in its criminal jurisdiction.

Proposed section 11AA: This provides for the Supreme Court to sit in a State or another Territory.

Sub-section (1) empowers the Supreme Court of the Territory to sit in a State or another Territory in the exercise of its criminal jurisdiction, unless doing so would be contrary to justice.

Sub-section (2) provides that before or during a criminal trial in the Territory, the Court, if satisfied that the interests of justice require it, may order that the trial should be held, or continued, at a place in a State or other Territory where the Supreme Court of that State or other Territory may sit.

Sub-section (3) empowers a Court making an order under sub-section (2) to also order that the accused should be removed to the new venue, and that persons required to give evidence be summoned to attend at that venue.

Sub-sections (4) and (5) provide that the Court has all the powers at the new venue which it would have were it sitting on the trial in the Territory, and the powers so exercised are deemed to have been exercised by the Court at a sitting in the Territory.

Sub-section (6) empowers the Court at any time if the interests of justice require it, to return to the Island to continue hearings in the trial there, and to require the attendance of the jury (empanelled in the State or other Territory), the accused and the witnesses there.

Sub-section (7) provides that witnesses' fees and allowances under the law applying to local trials at the new venue are payable by the Commonwealth, in respect of trials held at that venue pursuant to the Christmas Island Act.

Sub-section (8) deems disobedience to the orders, warrants, summonses or judgments of the Court at the new venue to be offences against the laws of the Christmas Island punishable under those laws as if the disobedience occurred on the Island.

Clause 6 - Jurisdiction etc. of the Supreme Court:

This amends section 12 of the Christmas Island Act to provide that the trial on indictment of an offence against a law in force in the Territory shall be a jury trial.

Clause 7 - Insertion of new sections:

This clause inserts new sections 12A and 12B into the Christmas Island Act.

Sub-section 12A(1) applies the laws of the new venue concerning jurors (other than the matters dealt with by section 12B) to the Christmas Island trials held at that venue.

Sub-sections 12A(2), (3), (4) and (5) provide that the jury is summoned and empanelled by officers of the Christmas Island Court using the jury list obtained, upon payment of any reasonable fee, from the appropriate State or other Territory officer.

Sub-section 12A(6) states that jurors' fees applicable in the new venue are payable by the Commonwealth.

Sub-section 12A(7) empowers the Court, for the purposes of effective operation of any law applied by the Christmas Island Act to order a court officer to do any act or thing required to be done under that applied law by some other specified person.

Sub-section 12A(8) enables regulations to be made excluding or modifying the operation of any laws referred to in sub-section 12A(1).

Sub-section 12A(9) is definitional.

Section 12B creates offences in relation to jurors - including all persons on the jury panel for a trial - in the Christmas Island Court when sitting in a State or other Territory. It is an offence:

- to fail to attend or abscond from attendance in accordance with a summons or appointment for jury service: penalty - fine of \$200 or one months imprisonment;
- to personate a juror in order to sit as that juror on a jury: penalty - fine of \$1,000 or 6 months imprisonment;
- to corrupt or attempt to corrupt, or pay money or confer other benefit on a juror in relation to jury service, apart from the juror's ordinary remuneration in employment; or, as a juror, to accept such a benefit: penalty - 5 years imprisonment.

Clause 8 - Insertion of new sections:

This clause inserts new sections 18A to 18G into the Christmas Island Act, governing the removal of accused persons from the Island to a State or other Territory for the purposes of trial in the Supreme Court of the Christmas Island and their later disposition.

Sub-sections 18A(1), (2) and (3) provide for a person whose removal for trial is ordered under sub-section 11AA(3)(a) to be removed by any constable to a prison in the State or other Territory, and there detained in accordance with the Court's order.

Sub-section 18A(4) provides that a person to whom this section applies is subject to the same laws as would apply to persons in custody pending their trial in the State or other Territory for offences against laws of such State or other Territory.

Sub-section 18A(5) provides that the Commonwealth is to pay the relevant State or other Territory the reasonable expenses of maintaining the accused pursuant to this section.

Section 18B empowers the Court to order that an accused person removed from Christmas Island should be produced to the Court for the trial or proceedings relating to the trial.

Section 18C provides, similarly to section 18A, for the removal back to the Territory of persons whose return for the holding of part of a trial has been ordered under sub-section 11AA(6)(b).

Section 18D deems a person who has been removed and tried at a venue off Christmas Island and convicted and sentenced to imprisonment, to have been removed to that State or other Territory under the Removal of Prisoners (Territories) Act 1923. This person is also deemed to be a prisoner within the meaning of that Act and the provisions of that Act, so far as possible, apply to that person.

Section 18E applies the Removal of Prisoners (Territories) Act 1923 to a person removed to a State or other Territory for trial who is:

- found to have been insane at the time of the commission of the offence;
- found unfit to be tried, on the ground of insanity; or
- convicted but later found to be insane.

The person is deemed to have been removed to the State or other Territory as a 'criminal lunatic' under the Removal of Prisoners (Territories) Act 1923, and sections 9 and 10A of that Act, so far as is possible, apply to that person.

Section 18F provides that a person removed to a State or other Territory for trial who is acquitted (except on the grounds of insanity) and not liable to imprisonment at the conclusion of the trial, is entitled, on application to the Secretary of the Department administering the Act, to be provided with the means to return to Christmas Island.

Clause 9 - Regulations:

This amends section 23 of the Christmas Island Act consequentially on the amendment to section 4 of that Act by clause 4 of this Bill.

PART III - AMENDMENTS OF THE CRIMES ACT 1914

OUTLINE:

The main purposes of this part are to:-

- . Relocate various interpretative provisions now contained in the Interpretation Act in the Crimes Act and amend certain of them.
- . Terminate the application of the provisions of the Crimes Act creating inchoate offences in their application to offences against laws of the ACT and the external Territories. (Similar provisions are to be placed into Territorial legislation.)

- . Provide comprehensive "escape" provisions to cover persons in custody for offences against Commonwealth and Territory laws.
- . Clarify and extend the application of the search warrant provision of the Crimes Act.

Clause 10 - Principal Act:

This is a definitional provision.

Clause 11 - Insertion of new sections:

This sets out the provisions relocated from the Interpretation Act.

Proposed section 4A: This provides definitions of "committed for trial" and "indictment" when used in Commonwealth law. It re-enacts, without substantive change, section 27(a) and (d) of the Interpretation Act.

Proposed section 4B: Re-enacts and amalgamates section 24 of the Interpretation Act and section 16 of the Crimes Act, which deal with liability and punishment of corporations.

Sub-section (1) provides that, in the absence of a contrary intention, an offence provision in a Commonwealth law applies to both natural persons and bodies corporate. The same result was previously achieved by section 24 of the Interpretation Act.

Sub-section (2) provides that, in the absence of a contrary intention, a natural person can be subject to a pecuniary penalty instead of a imprisonment term if the court considers that this is appropriate. The sub-section also provides a scale of relativities between imprisonment terms and pecuniary penalties. These relativities are consistent with recently

enacted legislation containing specific penalties for offences. It reproduces paragraph 16(2)(a) of the Crimes Act, however, it applies not only to Crimes Act offences but to all Commonwealth offences.

Sub-section (3) provides for a similar scheme in respect of offences committed by bodies corporate. It provides that bodies corporate are subject to pecuniary penalties equal to five times the amount applicable to natural persons convicted of the same offence, irrespective of whether the pecuniary penalty for the natural persons is found in the law creating the indictable offence or whether the pecuniary penalty is derived pursuant to proposed sub-section 4B(2). This provision is consistent with recently enacted legislation and reproduces the effect of paragraph 16(2)(b) of the Crimes Act, but applies to all offences against laws of the Commonwealth.

Sub-section (4) provides that where a law of the Commonwealth provides for any forfeiture, penalty or reparation to be paid to a natural person, it likewise applies to a body corporate. This reproduces the last sentence in section 24 of the Interpretation Act and clarifies it by specifying that "reparation" is included.

Proposed section 4C: This is a relocation and an amalgamation of sections 30 of the Interpretation Act and 11 of the Crimes Act.

Sub-section (1) provides that, where an act or omission constitutes an offence under two or more laws of the Commonwealth (whether they be provisions in the same enactment or different enactments) or under the law of the Commonwealth and at common law, an offender can be prosecuted and punished under any of those laws. However, such a person is not liable to be punished twice for the same offence. The intention of this provision is twofold. First, that a person is able to be

prosecuted under different offence provisions in laws of the Commonwealth or the common law, and secondly, to preclude the possibility of a person being subjected in these circumstances to "double jeopardy".

Sub-section (2) provides that where an act or omission is an offence under the law of the Commonwealth and a law of a State or under a law of the Commonwealth and a law of a Territory, and the offender has already been punished for the offence under such State or Territory law, such an offender is not liable to be punished also under the law of the Commonwealth. The purpose of this provision is to ensure, as far as Commonwealth proceedings are concerned, that a person is not subject to double jeopardy.

Sub-section (3) is designed to preserve the operation of offence provisions in Territory laws where Commonwealth laws provide for offences in respect of the same acts or omissions. It reproduces, without substantive amendment, sub-section 11(1A) of the Crimes Act. The intention is to preclude the argument that a Commonwealth law creating an offence is intended to invalidate a (purported) Territory offence provision if the only basis for the argument is that the relevant act or omission is within the terms of both the Commonwealth law and the Territory provision. In other words, the intention is to ensure that the "covering-the-field" argument is not available in the absence of an expressed provision to that effect in the Commonwealth law, or a necessary implication based on some indication other than the mere fact that the act or omission comes within the terms of both the Commonwealth law and the Territory provision.

Proposed section 4D: This is a relocation and an amalgamation of sections 41 of the Interpretation Act and 16(1) of the Crimes Act.

Sub-section (1) provides an interpretative aid for penalty provisions. A penalty set out at the foot of a section or of a sub-section of an Act indicates that a contravention of such section or sub-section shall be an offence punishable by the penalty so set out. This reproduces, without substantive amendment, the law as it currently stands.

Sub-section (2) ensures that this interpretative provision applies to instruments made under an Act (excluding laws of a Territory).

Proposed section 4E: This reproduces, without substantive amendment, section 44 of the Interpretation Act. It provides that, in the absence of contrary intention, a pecuniary penalty for an offence against a Commonwealth law may be recovered in any court of summary jurisdiction.

Proposed section 4F: This reproduces, without substantive amendment, the present section 45A of the Interpretation Act.

Sub-section (1) provides that where a Commonwealth law increases a penalty for an offence, such an increase applies only to offences committed after the commencement of the provision increasing such a penalty.

Sub-section (2) provides that where a law of the Commonwealth reduces a penalty for an offence such a reduction extends to offences committed before the commencement of the provision reducing such a penalty without in any way affecting a penalty already imposed before such a commencement.

The intention of these sub-sections is to ensure that a change in a penalty will not be to the detriment of a person convicted of an offence committed before, but for which he or she was sentenced subsequent to, that change.

Proposed section 4G: This relocates and amends section 42 of the Interpretation Act. It provides that, in the absence of contrary intention, an offence against a Commonwealth law punishable by imprisonment exceeding 12 months (whether or not this is the only penalty) is an indictable offence. Section 42 of the Interpretation Act had the relevant period as "exceeding 6 months". The increase is consistent with recent legislation of the Commonwealth and the ACT. This reclassification applies only to offences committed after the commencement of this provision (see also clause 54).

Proposed section 4H: This is a relocation and an amendment of section 43 of the Interpretation Act. It provides that, in the absence of a contrary intention, an offence against a Commonwealth law which is punishable by imprisonment (whether or not that is the only penalty) for a period equal to or less than 12 months or which is not punishable by imprisonment is a summary offence. The amendment to this provision from a period of "6 months" to a period of "12 months" is consistent with proposed section 4G. This reclassification applies only to offences committed after the commencement of this provision (see also clause 54).

Proposed section 4J: This relocates and amends sections 12 and 12A of the Crimes Act.

Sub-sections (1) and (2) provide that a Commonwealth indictable offence (other than one dealt with by sub-section 4 of this section or which may be prosecuted summarily under another law of the Commonwealth) which is punishable by imprisonment for a period equal to or less than 10 years (whether this is the only penalty or not) may, in the absence of a contrary intention and with the consent of both the prosecutor and the defendant, be heard and determined by a court of summary jurisdiction. It is to be noted that this provision permits indictable offences to be dealt with

summarily only with the defendant's consent, thus preserving, the defendant's opportunity for a jury trial in respect for indictable offences. Further on this point, it should also be noted that sub-section 4J(1) only empowers a court of summary jurisdiction to deal with an indictable offence summarily, it does not direct it to do so. It is thus intended that a magistrate have the discretion under sub-section 4J(1) to refuse to deal with a matter summarily notwithstanding the consent of the prosecutor and the defendant. It is not anticipated that this would be a common occurrence but it is nevertheless seen as a real option where the interests of justice so require it.

Sub-section (3) provides (subject to sub-section (6)) for appropriate penalties in circumstances where the "step-down" provision in sub-section 4J(1) is used. In such circumstances, an indictable offence which would have been punishable by an imprisonment term of 5 years or less (whether or not that is the only penalty) is punishable by a sentence not exceeding 12 months or a fine not exceeding \$2,000, or both, when dealt with by a court of summary jurisdiction. Where an indictable offence is punishable by imprisonment for a period greater than 5 years but equal to or less than 10 years (whether or not that is the only penalty), a court of summary jurisdiction can impose a penalty not exceeding 2 years or a fine not exceeding \$5,000, or both.

Sub-sections (4) and (5) reproduce section 12A(2) and (3) of the Crimes Act without substantive amendment apart from extending the application of those provisions to all laws of the Commonwealth. These provisions are designed to ensure that proceedings in respect of indictable offences relating to property of less value than \$500, can be dealt with by a court of summary jurisdiction without the defendant's consent provided that the court considers that this is appropriate in

all the circumstances. The intention is to ensure that indictable offences of this class do not occupy valuable superior court time. The question of whether such a summary procedure should be utilised is left for the courts to determine and in doing so, they could, of course, take into account relevant representations made by the defendant.

Sub-section (6) ensures that where a penalty is imposed under sub-sections (3) or (5), neither the total penalty which a court of summary jurisdiction could impose utilising these provisions nor any component thereof is greater than that which could have been imposed if the offence had been dealt with on indictment.

Sub-section (7): This provision reproduces without substantive amendment sub-section 12A(4) of the Crimes Act which provides that certain serious offences against the Crimes Act can only be dealt with on indictment.

Proposed section 4K: This reproduces and amends section 45B of the Interpretation Act.

Sub-section (1) reproduces, without substantive amendment, sub-section 45B(1) of the Interpretation Act. It provides that, in the absence of a contrary intention, where an act or thing is required to be done within a particular period, the obligation to do so continues until the act or thing is done, even though the period during which the act or thing was required to be done has expired.

Section (2) is a new provision designed to ensure that where a refusal or failure to comply with the requirement of sub-section (1) is an offence against a Commonwealth law, a person commits such an offence on each day of such a refusal or failure including the day of a conviction for any such an offence and any subsequent day during which such a refusal or

failure continues - i.e. a conviction cannot operate as a bar to a further prosecution for a continued failure to comply with the statutory requirements.

Section (3) reproduces, without substantive amendment, sub-section 45B(2) of the Interpretation Act. It provides that charges against the same person for a number of offences against the same provision of an Act may be included in the same information, complaint or summons, if those charges are founded on the same facts or form, or are a part of, a series of offences of the same or a similar character.

Sub-section (4) reproduces, with a clarifying amendment sub-section 45B(3) of the Interpretation Act. It provides that if a person is convicted of two or more similar offences the court may impose one penalty for those offences. However, that penalty cannot exceed the aggregate of the maximum penalties that could have been imposed if separate penalties were imposed. The deletion of the words 'being offences related to doing or failing to do the same act or thing' ensures that sub-section (4) applies to all offences referred to in sub-section (3). The present purpose of these words and their effect on the relationship between sub-sections 45B(2) and (3) is not clear.

Clause 12 - Arrest without warrant for suspected offences:

This provision amends section 8A of the Crimes Act dealing with arrest without warrant to ensure that it is only applicable to Commonwealth offences. Following the case of Webster v McIntosh (1980) 32 ALR 603, which held that a provision of an ACT Ordinance, concerned with powers of arrest without warrant, was in conflict with the Crimes Act and repugnant to it. Section 8A was amended by the Statute Law (Miscellaneous Provisions) Act (No.1) 1986 to remove its application to offences against laws of the Australian Capital

Territory. As a similar problems exists in the External Territories, this amendment restricts the operation of section 8A of the Crimes Act so that it will only permit arrest without warrant for offences against Commonwealth laws. As a consequence, police must exercise powers of arrest without warrant under Territory laws for Territory offences.

Clause 13 - Search warrant:

This clause is designed to amend the search warrant provision of the Crimes Act (section 10) so that it:

- (i) applies to vehicles and aircraft;
- (ii) gives police the right, where necessary and reasonable, to break internal doors and receptacles in executing a warrant; and
- (iii) enables warrants to be issued for a future time when the object of the search is expected to be at the premises.

Paragraph (a) amends sub-section 10(1) of the Crimes Act to clarify that search warrants can be issued in respect of aircraft and vehicles. It is now not clear whether the word "vessel" would include such modes of transport.

Paragraph (b) amends sub-section 10(1) of the Crimes Act so that a warrant may be issued 72 hours before the sought after items are likely to be at the particular premises to be searched. At present, section 10 does not enable a warrant to be issued to search premises unless the object of the search is already located at the premises. The amendment is intended to assist the police in their operations, by providing greater flexibility as to the time warrants are executed. For

example, where information has been received that drugs will be delivered to certain premises police can obtain the warrant in advance and execute it at the operationally most advantageous time. However, police will still need to satisfy the Justice of the Peace that there are reasonable grounds for suspecting that the thing sought will be brought onto the premises within the next 72 hours. This amendment does not alter the onus on the police when applying for a warrant, but merely alters the time at which a warrant may be sought.

Paragraph (c) inserts a new sub-section 10(1A) of the Crimes Act which places beyond doubt the authority of a police officer (with such assistance as is reasonable and necessary) when on premises pursuant to a warrant, to break open internal doors and receptacles in executing that warrant, where this is reasonable and necessary.

Clause 14 - Repeal of sections 11, 12, 12A and 16:

This repeals sections 11, 12, 12A and 16 of the Crimes Act consequential upon the amendments made by clauses 11-13 of the Bill.

Clause 15 - Destroying or damaging Commonwealth property:

This increases the penalty for section 29 of the Crimes Act (destruction or damage to Commonwealth property), from 2 years imprisonment to 10 years imprisonment, to remove the existing anomaly with the penalty applicable to the similar ACT provision (see sub-section 128(1) of the Crimes Act 1900 (NSW) in its application to the ACT).

Clause 16 - Aiding prisoner to escape:

Section 46 of the Act provides for the offence of aiding a person to escape who is in custody for an offence against the law of the Commonwealth. The amendments to section 46 to be made by this clause will extend the offence to:

- . persons in custody for an offence against law of the Territory
- . a person arrested for an offence against the law of the Commonwealth or a Territory
- . a person who is detained during the pleasure of the Governor-General in respect of any offence against the law of the Commonwealth, or a Territory
- . This clause also amends paragraph 46(b) to include a reference to, lock up, or other place of lawful detention and increases the penalty for an offence against section 46 to \$10,000 or imprisonment for 5 years or both. (The present penalty is 2 years imprisonment).

Clause 17 - Repeal of sections 47 and 48 and substitution of new sections:

Clause 17 repeals sections 47 (escape from custody) and 48 (permitting escape) and substitutes 5 new sections, sections 47, 47A, 47B, 47C and 48.

Proposed section 47: The effect of the new section 47 will be to make it an offence for a person who has been arrested, is in lawful custody or is detained during the Governor-General's pleasure for an offence against the law of a Commonwealth or Territory to escape from that arrest, custody or detention. The existing section 47 only covers an escape from custody where a person is in custody under sentence for an offence against the law of the Commonwealth. The penalty has been increased from 2 years to \$10,000 or 5 years imprisonment or both.

Whether a prosecution should be brought where the escapee is detained during the Governor-General's pleasure will be a matter for the Director of Public Prosecution, in the exercise of his prosecutorial discretion.

Proposed section 47A: This provision creates a new statutory offence for a person to rescue by force a person who has been arrested, is in lawful custody or is detained during the Governor-General's pleasure for an offence against a law of the Commonwealth or a Territory.

The penalty for this offence is imprisonment for 14 years.

Proposed section 47B: This provision creates a new statutory offence of being unlawfully at large where the person is a Commonwealth, or Territory offender or Governor-General pleasure detainee. This offence occurs where a person who is given permission under a law of a State or Territory to leave a prison, lock up or place of lawful detention and refuses or fails without reasonable excuse to return to that prison, lock up or place of lawful detention.

The penalty for this offence is \$10,000 or imprisonment for 5 years or both.

Proposed section 47C: This provision makes it an offence for an officer of a prison, lock up for other place of lawful detention, a constable or a Commonwealth officer who is charged with the custody or the detention of a person who is in custody for an offence against the law of the Commonwealth or Territory (including a person detained during the Governor-General's pleasure) to wilfully or negligently permit that person's escape from custody.

The provision also make it an offence for a constable or Commonwealth officer, who wilfully or negligently permits a person who has been arrested, to escape from the arrest.

The penalty for these offences is \$10,000 or 5 years imprisonment or both.

The offence of permitting escape was formerly section 48 but this provision did not cover Territory offenders or Governor-General detainees nor did it include such a person negligently permitting escape. The provision did not extend to persons who were arrested. The penalty was imprisonment for 2 years.

Proposed section 48: This provision creates a new statutory offence where a person harbours, maintains or employs a person knowing that he has escaped from lawful custody or detention in respect of any offence against the law of the Commonwealth or a Territory.

The penalty for this offence is \$10,000 or imprisonment for 5 years or both.

Clause 18 - Other amendments:

Refers to Schedule 1 of the Bill, which contains amendments to sub-section 5(1), sections 6, 7, 7A and sub-section 86(3) of the Crimes Act. The removal of the operation, in the ACT and the External Territories, of these inchoate offences also removes an impediment to the introduction of the Government's programme for the distribution of syringes by pharmacists and others to check the spread of AIDS. At present no ACT Ordinance can give pharmacists protection from criminal liability arising from the supply of syringes because such activity would constitute inchoate offences under the Crimes Act. It is intended that the inchoate offences for the ACT be re-enacted in an ACT Ordinance, where they can be modified as the circumstances require by other Ordinances such as the proposed new Drugs of Dependence Ordinance for the ACT. The amendments extend to External Territories in order to provide the possibility of taking similar action in such territories. The inchoate offences of the laws of the various External Territories will be relied on instead of the Crimes Act provisions.

PART IV - AMENDMENTS OF THE CRIMES (FOREIGN INCURSIONS AND RECRUITMENT) ACT 1978

OUTLINE:

The main purposes of the amendments to the Foreign Incursions Act contained in this Part are:

- . to omit the definition of "foreign country" and to substitute a definition of "foreign State" to remove doubts about the scope of the previous definition and to ensure that the Act proscribes hostile activity engaged in in places outside Australia irrespective of whether the place is within a particular political area or not;
- . to redefine "government" as the authority exercising effective governmental control in a foreign State or in a part of a foreign State;
- . to fill the present gap in the Act by reason of which it is not an offence for an Australian to become involved in mercenary activities per se in a foreign State by extending the definition of "hostile activity" to cover acts done for the purpose of engaging in "armed hostilities" in the foreign State;
- . to create a new offence of permitting a vessel or an aircraft to be used for the purpose of preparing for an incursion into a foreign State;
- . to increase the maximum penalty for recruiting persons in Australia to serve with an armed force outside Australia;

- . to redefine the offences covering the preparation for an incursion into a foreign State so that a prosecution does not depend on proof of an actual incursion by a person who has a connection with Australia;
- . to clarify the position of persons who give money, goods or services for the purpose of providing humanitarian aid. They will not be taken to have committed an offence under the Act;
- . to allow the Minister to impose conditions on the grant of an exemption from the effect of subsection 9(1) of the Act which prevents the recruitment in Australia of persons to serve with an armed force outside Australia;

Clause 19 - Principal Act:

Formal.

Clause 20 - Long title:

Clause 20 makes consequential changes flowing from the insertion in section 3 of the definition of "foreign State" by clause 21.

Clause 21 - Interpretation:

Clause 21 amends section 3 of the Foreign Incursions Act by omitting the definition of "foreign country" and substituting "foreign State" which is defined as a place outside Australia that is an independent sovereign state or an area of land (whether or not it is self-governing) that is not part of an independent sovereign state.

"Government", in relation to a foreign State or a part of a foreign State, is redefined as the authority that is exercising effective governmental control in that foreign State or that part of that foreign State.

The new subsection 3(2) added by clause 21 states that the phrase "a part of a foreign State" refers to a political subdivision of a foreign State.

Clause 22 - Incursions into foreign States for purpose of engaging in hostile activities:

Clause 22 makes a number of amendments to section 6 of the Foreign Incursions Act. It inserts a new subsection (1) to reflect the replacement of the expression "foreign country" with "foreign State".

Paragraph 6(2)(b) of the Act is replaced by a new paragraph that provides that, in addition to the matters referred to in paragraph 6(2)(a), an act done by a person shall not be taken to be an offence against section 6 unless the person was in Australia at a time during the year prior to the doing of the act and that presence was at some time during that time for the purpose of doing that act or for purposes including that purpose. This amendment is to put beyond doubt that it is not necessary for the prosecution to show that the person charged had that purpose at the time he or she came to Australia.

Clause 22 also makes a change to subsection 6(3) consequential on the new subsection 6(1).

The addition of a new paragraph (3)(aa) has the effect of extending the meaning of the concept of engaging in "hostile activity" for the purposes of the offence in subsection (1) to include acts done for the purpose of engaging in armed hostilities in a foreign State.

Clause 23 - Preparations for incursions into foreign States for purpose of engaging in hostile activities:

Clause 23 makes a number of amendments to section 7 of the Foreign Incursions Act. It adds at the end of subsection (1) a new paragraph (h) which makes it an offence for a person who is the owner, charterer, lessee, operator, agent or master of a vessel or the owner, charterer, lessee, operator or pilot in charge of an aircraft, to knowingly permit the vessel or aircraft to be used for the purpose of committing, or supporting or promoting the commission of, an offence against section 7 (other than the offences referred to in paragraphs (1)(g) and (1)(h)).

The new subsection 7(1A) inserted by clause 23 provides that a reference in subsection (1) to the commission of an offence against section 6 is a reference to the doing of an act that would, or would but for subsection 6(2), constitute an offence against section 6. The amendment has a dual purpose. The first is to remove the possible requirement that proof that a particular act is an actual offence under section 6 is necessary before an offence can be established under section 7 in relation to that act. The second is to remove the requirement that, in establishing an offence under section 7 by a person who has a connection with Australia by reason of an act done in preparation for, ancillary to, or for the purpose of, an act that is an offence under section 6, it is necessary to show that that act was done by a person who also has a connection with Australia. This will mean that an Australian can be prosecuted for soliciting money or goods for the purpose of supporting the acts of other persons that are done with the object of overthrowing a government outside Australia even if those persons are not Australian and have no connection with Australia.

Subsection 7(1B) inserted by clause 23 provides that a person shall not be taken to have committed an offence against section 7 by reason only of the doing by that person of an act by way of, or for the purposes of, the provision of aid of a humanitarian nature. The effect of this subsection is to make it clear that where a person gives money or goods to a body or group of persons, no offence will have been committed so long as the money or goods were given for the purpose of humanitarian aid such as providing food or money to those affected by a war.

Paragraph 7(2)(b) is replaced by a new paragraph in similar terms to the new paragraph 6(2)(b).

Clause 24 - Recruiting persons to serve in or with an armed force in a foreign State:

Clause 24 increases the maximum penalties for a breach of section 9 of the Foreign Incursions Act by providing a penalty of \$20,000 or imprisonment for 7 years or both for a natural person and a fine of \$100,000 in the case of a body corporate.

The amendment to subsection 9(2) made by clause 24 will allow the Minister to impose conditions on the grant of an exemption to the prohibition in subsection 9(1) on recruiting persons in Australia to serve with an armed force outside Australia. These conditions may relate, for example, to the kind of advertisements that may be permitted or the status of the persons sought for recruitment.

Clause 25 - Insertion of new section:

Clause 25 adds a new section 11 to the Foreign Incursions Act and provides in subsection 11(1) that a certificate by a Minister, stating that a place or an area is an independent sovereign state is, in a proceeding against the person for an

offence, conclusive evidence. The conclusive nature of this certificate is consistent with section 40 of the Foreign States Immunities Act 1985.

Proposed subsection 11(2) provides that a certificate by a Minister stating that, if a specified person had done the act alleged to constitute the offence the person would not have been acting in the course of the person's duty to the Commonwealth in relation to the defence of Australia, is, in a proceeding against the person for an offence, prima facie evidence. Section 5 of the Act provides that the Act does not apply to any act done by a person acting in the course of that duty.

Proposed subsection 11(3) provides that a certificate by a Minister stating that an authority described in the certificate is or was exercising effective governmental control in a specified foreign State or part of a foreign State is, in a proceeding against the person for an offence, prima facie evidence.

Proposed subsection 11(4) provides that a reference in section 11 to an offence against the Act includes a reference to an offence against section 6, 7 or 7A of the Crimes Act 1914 or the offence referred to in paragraph 86(1)(a) of that Act. The reference to these provisions has the effect of allowing a certificate to be used in a prosecution under the Crimes Act 1914 for the offences of being an accessory after the fact, attempt, incitement and conspiracy where those offences were committed in relation to an offence against the Foreign Incursions Act.

Clause 26 - Other amendments:

Clause 26 provides that the Foreign Incursions Act is further amended as set out in Schedule 2. Those amendments remove

sexist language from the Act and make consequential changes flowing from the definitions inserted in section 3 of the Act by clause 21.

Paragraph 6(3)(a) of the Act is amended by the Schedule so that it refers to the government of part of a foreign State as that phrase is defined in subsection 3(2). This has the effect of making it an offence to enter a foreign State or engage in acts in a foreign State for the purpose of overthrowing the government of a political subdivision of the foreign State such as a state within a federation.

The amendments to paragraphs 6(3)(c) and (d) have the effect of including references to public office holders of a government of such a political subdivision and the property of such a government, respectively.

PART V - AMENDMENTS OF THE CRIMES (INTERNATIONALLY PROTECTED PERSONS) ACT 1976

OUTLINE:

The Bill amends the IPP Act for the following purposes:

- . to extend the number and type of offences for which a person may be prosecuted arising out of the destruction of, or damage to, the property of an Internationally Protected Person;
- . to distinguish between offences against the property of an Internationally Protected Person which involve the use of fire or explosives and those which do not. The former will have a higher penalty;

- . to widen and clarify the notion of intention in relation to those offences;
- . to repeal section 9 which provides a defence to prosecution, to ensure that the question whether a person is an Internationally Protected Person is determined objectively (as a question of fact) rather than by reference to the state of mind of the defendant. This is in line with notions of criminal responsibility in other areas of criminal law;
- . to increase the penalty for an attack on an Internationally Protected Person in line with the higher penalties for attacks on the property of an Internationally Protected Person.

Clause 27 - Principal Act:

Formal.

Clause 28 - Offences:

Clause 28 amends section 8 of the IPP Act by omitting subsection 8(3) and substituting proposed subsections (3), (3A), (3B) and (3C) which create four new offences.

Proposed subsections 8(3) and (3B) make it an offence for a person intentionally to destroy or damage the official premises, private accommodation or means of transport of an Internationally Protected Person or to destroy or damage any other premises or property in or upon which an Internationally Protected Person is present or is likely to be present. Where the destruction or damage is done by means of fire or explosives, the maximum penalty is 15 years imprisonment (subsection 8(3B)). Otherwise it is 10 years (subsection 8(3)).

Proposed subsections 8(3A) and (3C) make it an offence for a person intentionally to destroy or damage any official premises, private accommodation or means of transport of an Internationally Protected Person or any other premises or property in or upon which the Internationally Protected Person is present or is likely to be present with intent to endanger the life of the Internationally Protected Person. Where it is done by means of fire or explosives, the maximum penalty is 25 years imprisonment (subsection (3C)). Otherwise it is 20 years (subsection (3A)).

Clause 28 makes consequential changes to subsections (4), (5) and (7) picking up references to the new offences.

Proposed paragraphs 8(7)(d) and (e) to be added at the end of subsection (7) define the intention that is relevant to the new offences. Paragraph 8(7)(d) provides that a person shall be taken to have destroyed or damaged property or premises intentionally if the person acted either with the intent to destroy or damage those premises or that property or in the knowledge or belief that the person's actions were likely to result in the destruction or damage to those premises or that property.

Proposed paragraph 8(7)(e) provides that a person shall be taken to have intended to endanger the life of an Internationally Protected Person by destroying or damaging particular premises or property if the person acted either with intent to endanger the life of the Internationally Protected Person or in the knowledge or belief that the person's actions were likely to endanger the life of the Internationally Protected Person.

Clause 29 - Other amendments:

Clause 29 provides that the IPP Act is further amended as set out in Schedule 3. Schedule 3 amends subsection 8(2), repeals section 9 and removes sexist language from the Act.

The amendments to subsection 8(2) increase the maximum penalties for causing grievous bodily harm to an Internationally Protected Person to 20 years, and for an attack of lesser seriousness on an Internationally Protected Person, to 10 years.

Section 9 provides that it is a defence to a prosecution for an offence under the Act where the defendant proves that he or she did not know or have reason to suspect that the person in relation to whom the offence was committed was an Internationally Protected Person. The repeal of this provision will mean that the question whether a person is an Internationally Protected Person for the purposes of a prosecution is determined objectively.

PART VI - AMENDMENTS OF PROCEEDS OF CRIME ACT 1987

OUTLINE:

The main purposes of this part are to:-

- . to increase the effectiveness of the Proceeds Act as a weapon against organised crime; and
- . to correct minor errors appearing in the Proceeds Act.

Clause 30 - Principal Act:

This clause is definitional.

Clause 31 - Interpretation:

This clause amends the definition of benefit in subsection 4(3) to ensure that it includes any benefit derived either directly or indirectly from the commission of an offence.

Clause 32 - Forfeiture of all restrained property if person convicted of serious offence:

This clause amends paragraph 30(1)C to permit statutory forfeiture of property which is under the effective control of a convicted person although not legally owned by that person. The clause also inserts a new subsection 30(8A) which permits a person to seek a declaration that specified property has been forfeited under subsection 30(1) and empowers the court to make such a declaration. It is proposed to amend the Mutual Assistance in Criminal Matters Act 1987 so that such a declaration will be able to be enforced in a foreign country.

Clause 33 - Recovery of property to which section 30 applies:

The amendments effected by this clause relate to the circumstances in which property which has been forfeited under section 30 can be recovered by the previous owner. The amendments prevent the recovery of property which is effectively controlled by the convicted person and prevent that person from recovering property which has been used in or in any way derived from the commission of any offence at all.

The clause also amends section 31 to provide that appropriate notice of applications under the section for restoration of property forfeited by force of law is given to the DPP and the Minister. Similar notice requirements already exist in subsections 21(9) and 21(10) in relation to property which is affected by a forfeiture order.

Clause 34 - Search warrants in relation to tainted property:

This clause amends section 36 to permit warrants to be issued where there are reasonable grounds to suspect that tainted property is expected to be located at the place or on the person the subject of the warrant within the following 72

hours. This enables warrants to be sought on the basis of reliable intelligence and gives police greater flexibility in executing that warrant at the most advantageous time from an operational viewpoint.

Clause 35 - Searches in emergencies:

This clause amends section 38 by repealing subsections 38(1) and 38(2) and inserting new subsections 38(1), 38(2), 38(2A) and 38(2B) to enable the seizure during an emergency search of property which is reasonably suspected of being tainted; to permit the seizure of property which is tainted by reason of offences other than the offence charged, or to permit the seizure property which is believed on reasonable grounds to be evidence of the commission of another offence, in the same way as is permitted where search and seizure is authorised by warrant. This amendment ensures that all money believed to be the proceeds of an offence eg. imposition, may be seized although at the time of that seizure charges had not been laid for all of the offences from which the proceeds derive.

Clause 36 - Return of seized property:

This clause amends section 40 so as to provide that where property is seized and an information has not been laid at the time of the seizure, but an information is laid within 48 hours of the seizure in compliance with subsection 40(3), the DPP is nevertheless required to obtain a restraining order pursuant to section 43 within 14 days of that seizure or the property must be returned to the person from whose possession it was seized.

Clause 37 - Restraining orders:

This clause amends section 43 to empower the Official Trustee, for the purposes of preserving the property or the value of the assets, to deal with securities and investments and to

carry on a business, including employing and terminating the employment of persons, where the Official Trustee has been directed to take custody and control of restrained property.

Clause 38 - Grounds for making restraining order:

This clause amends section 44 so as to provide different tests in relation to applications for a restraining order against property of a person other than the defendant. The relevant test is dependent on whether the offence is a "serious offence" or an "ordinary indictable offence".

Clause 39 - Notice of application for restraining order:

This clause amends section 45 to remove the limitations on granting interim restraining orders so that the DPP may make an application for an interim restraining order, without giving notice to the owner of the property, in all cases without having to establish urgency or public interest. In any case, whether the property is money or real estate, it may be possible for property to be concealed prior to an application being determined although the Crown has no evidence of efforts to conceal which could establish urgency. A restraining order made without notice shall have effect for not more than 14 days, but may be for such lesser period as is fixed by the Court.

Clause 40 - Court may make further orders:

This clause amends section 48. Paragraph 48(1)(c) is amended to make it clear that any person who has an interest in property affected by a restraining order is an 'owner' for the purposes of that section and the court may examine any such person's affairs. Paragraph 48(1)(e) is amended to clarify the types of order which the Court is empowered to make in relation to restrained property in the custody and control of

the Official Trustee and to ensure that directors of corporations can be required to give a sworn statement of the affairs of the corporation. The clause also amends subsection 48(3) to make the grounds for excluding property from a restraining order made under subsection 44(7A) for a serious offence: that the applicant was not in any way involved in the commission of the offence; the property was not effectively controlled by the defendant; and, the property is not tainted property in relation to the offence.

Clause 41 - Repeal of section 67 and substitution of new section:

This clause repeals the existing section 67 and inserts a new section 67 which permits an order varying a production order to be made by a Supreme Court Judge, rather than by the Supreme Court as was previously the case. This amendment brings section 67 in to line with section 66.

Clause 42 - Search warrant for location etc. of property:

This clause amends section 71 so as to permit warrants to be issued in respect of land or premises where a person has been convicted of an indictable offence and a police officer has reasonable grounds for suspecting that there will be a property tracking document in relation to the offence, on any land or premises within 72 hours of the issue of the warrant. This amendment is in line with that proposed to section 36.

Clause 43 - Repeal of sections 79 and 80:

This clause repeals sections 79 and 80 of the Proceeds Act, but does not take effect until proclaimed. Proclamation of this section will depend on the passage and proclamation of the Cash Transaction Reports Bill 1987 which will contain a superseding provision.

Clause 44 - Duration of registration:

This clause amends section 88 to provide that one of the circumstances in which a registered restraining order ceases to be in force is when the registering court receives notice that the order has ceased to be in force in the State in which it was made.

Clause 45 - Insertion of new section:

This clause inserts a new section 102A into the Proceeds Act which requires the Commonwealth to indemnify the Official Trustee. This provision is similar to the indemnity provided by sections 18A and 19A of the Bankruptcy Act 1966.

Clause 46 - Other amendments:

This clause provides that the Proceeds Act is further amended as set out in Schedule 4. The amendments in the schedule either correct typescript errors, make minor amendments consequential upon the amendments in the clauses of the Bill or make minor amendments for the purpose of clarifying particular provisions.

PART VII - AMENDMENTS OF THE TRANSFER OF PRISONERS ACT 1983**OUTLINE:**

The main purpose of the amendments to the Transfer Act is to give effect to the recommendations of the Report of the Parliamentary Counsel's Committee on the Transfer Act. The amendments will achieve greater uniformity with the State uniform prisoner transfer legislation.

The definition of "Commonwealth Prisoner" is being amended to include Northern Territory prisoners removed to South Australia under the Removal (Territories) Act. There prisoners are not covered by the uniform transfer scheme.

Clause 47 - Principal Act:

This is definitional.

Clause 48 - Interpretation:

This clause extends the definition of 'Commonwealth prisoner' in the Transfer Act to include prisoners sentenced in the Northern Territory for an offence against a law of that Territory who were transferred to South Australia pursuant to the Removal (Territories) Act before the transfer of prisoners scheme came into operation.

Such prisoners are unable to avail themselves of the scheme because they are not covered by the Commonwealth legislation and are not covered by either the Northern Territory transfer of prisoners legislation or the South Australian transfer of prisoners legislation. The clause will make them Commonwealth prisoners and thus subject to the Transfer Act.

Clause 49 - Application for transfer to stand trial on a charge in respect of an offence against a law of the Commonwealth or a Territory:

This clause amends the Transfer Act and prescribes the State Attorney-General as the certifying Minister and will bring the Commonwealth legislation into line with the State legislation.

The uniform prisoners interstate transfer legislation passed by the States and Northern Territory provides that before a prisoner may be transferred interstate for trial purposes, the Attorney-General of the receiving State must consent to the transfer.

In the Transfer Act the authority to consent to the transfer of a Commonwealth prisoner for trial purposes, except for Queensland, is vested not in the State Attorney-General in the receiving State, but in the State Minister administering the transfer of prisoners legislation of the receiving State. Sub-section 8(4) will become superfluous after the clause comes into force because it provides that the Queensland Attorney-General is the consenting authority for the purposes of the section. Clause 49(b) therefore provides for the repeal of sub-section 8(4) of the Transfer Act.

Clause 50 - Application for transfer to stand trial on a charge in respect of offence against a law of a State:

This clause amends the Transfer Act and prescribes the State Attorney-General as the certifying Minister and will bring the Commonwealth legislation into line with the State legislation.

The State uniform prisoner transfer legislation provides that where a prisoner is to be transferred from one State to another to stand trial on a State charge, the Attorney-General of the State wishing to bring the charge has to certify that the transfer of the prisoner is desirable in the interests of the administration of justice. Section 9 of the Transfer Act provides that where a Commonwealth prisoner is to be transferred from one State prison to another State for trial on a State charge, the certification shall be by the State Minister administering the transfer of prisoners legislation.

Subsection 9(4) will become superfluous after the clause comes into effect because it provides that the Queensland Attorney-General is the consenting authority for the purposes of the section. Clause 50(e) therefore provides for the repeal of sub-section 9(4) of the Transfer Act.

Clause 51 - Revocation of return transfer orders:

The purpose of this clause is to make it clear that the return transfer order being revoked under section 15 of the Transfer Act relates to a transfer for the purpose of attending a trial, not appeal proceedings.

Clause 52 - Insertion of new section:

The clause inserts a new section 16A. The new section provides that unless the prisoner is declared to be an exempt prisoner by the Attorney-General, where the sentence imposed on appeal is less than than the earlier imposed sentence the Attorney-General makes an order for his retransfer. The Attorney-General may make an order declaring a prisoner to be an exempt prisoner having regard to the circumstances of the prisoner, including the administration of justice and the welfare of the prisoner. The Attorney-General may not make such an order unless the Minister of the State where the prisoner is actually located has consented in writing to the making of the order.

PART VIII - MISCELLANEOUS

OUTLINE:

This part provides for amendments consequential upon the amendments to the Crimes Act in Part III of the Bill, and for an application provision.

Clause 53 - Consequential amendments of other acts:

Sub-clause (1) refers to Schedule 5, which repeals Part X, sections 24 and 30, and paragraphs 27(a) and 27(d) of the Interpretation Act. The substance of these provisions has been reproduced in the Crimes Act by clause 11 of the Bill and greater detail is provided above in discussing that clause.

Sub-clause (2) contains consequential amendments in Schedule 6 to the Removal (ACT) Act and the Removal (Territories) Act. The amendments in Schedule 6 will omit section 7, the escape offence, from the Removal (ACT) Act and repeal s.7 from the Removal (Territories) Act, as the escape from custody or detention of a Territory offender will be covered by clause 17.

Clause 54 - Application:

Sub-clause (1) provides that sections 12 and 12A of the Crimes Act continue to apply, in spite of their repeal by clause 14 of this Bill, to offences where proceedings were started before the commencing day.

Sub-clause (2) provides that sections 42 and 43 of the Interpretation Act continue to apply, in spite of their repeal by clause 53 of this Bill, to offences committed before the commencing day.

Sub-clause (3) applies sub-sections 4J (1), (2), (3), (6) and (7) of the Crimes Act (as inserted by this Bill) to offences against Commonwealth laws (except those dealt with by sub-clause (4)) which were committed before the commencing day, provided that proceedings in relation to those offences are started on or after that day.

Sub-clause (4) applies sub-sections 4J (1), (2) and (7) of the Crimes Act (as inserted by this Bill) to offences against the Crimes Act committed before the commencing day provided that the proceedings are started on or after that day.

Sub-clause (5) provides that, where an offence is dealt with under sub-section 4J (1) pursuant to sub-clause (4), in the absence of contrary intention the maximum penalty the court may impose is either 12 months imprisonment or a fine of \$2,000.

Sub-clause (6) applies sub-sections 4J (4), (5), (6) and (7) of the Crimes Act (as inserted by this Bill) to offences against the Crimes Act committed before the commencing day, provided that the proceedings are started on or after that day.

Sub-clause (7) defines 'commencing day' for the purposes of this clause.



