

**2001**

**THE LEGISLATIVE ASSEMBLY OF THE  
AUSTRALIAN CAPITAL TERRITORY**

**CRIMES LEGISLATION AMENDMENT BILL 2001**

**EXPLANATORY MEMORANDUM**

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Attorney-General  
Bill Stefaniak MLA

## **CRIMES LEGISLATION AMENDMENT BILL 2001**

### **Outline**

This Bill amends the following pieces of Territory legislation:

- *Crimes Act 1900*
- *Children and Young People Act 1999*
- *Crime Prevention Powers Act 1998*
- *Intoxicated Persons (Care and Protection) Act 1994*
- *Magistrates Court Act 1930*
- *Interpretation Act 1967*
- *Road Transport (Safety and Traffic Management) Act 1999*
- *Road Transport (Offences) Regulations 2000*
- *Supreme Court Act 1933*

The amendments in the Bill include detailed new provisions to be inserted into the *Crimes Act 1900* to establish a new procedure for an inquiry into a conviction. The Bill also contains amendments to the *Supreme Court Act 1933* to allow the Director of Public Prosecutions (DPP) to obtain orders to review acquittals by the Supreme Court in certain circumstances.

In addition to these new provisions, the Bill contains a package of legislative amendments to existing provisions which are designed to enable ACT law enforcement agencies to more effectively prevent and respond to crime. For example, the Bill amends provisions relating to police powers to arrest without warrant, police search powers and move-on powers. The Bill also allows police to take routine fingerprints and photographs of people aged 16 years and over in lawful custody for an offence, with certain safeguards.

### **Financial Implications**

It is difficult to assess the financial implications of the Bill as a whole. There are many proposals, some of which may impact negatively on resources, others of which may have positive effects. Any costs will be met from within existing budget allocations of relevant agencies.

## **Notes on clauses**

### **PART 1 PRELIMINARY**

#### **Clause 1 Name of Act**

This Bill, once enacted, will be known as the *Crimes Legislation Amendment Act 2001*.

#### **Clause 2 Commencement**

This clause provides that Part 10, which contains amendments to the *Supreme Court Act 1933*, will commence on a day fixed by the Minister by notice in the Gazette. It also provides that section 79 of the *Legislation Act 2001* (the automatic commencement provision) does not apply to the commencement of the Part.

The remaining provisions of the Bill will commence on a day fixed by the Minister by notice in the Gazette.

### **PART 2 CHILDREN AND YOUNG PEOPLE ACT 1999**

#### **Clause 3 Act amended in part 2**

Part 2 contains amendments to the *Children and Young People Act 1999*.

#### **Clause 4 Definitions for division 2 Section 76, definition of authorised officer**

This clause amends the definition of "authorised officer" in section 76 of the *Children and Young People Act 1999*. The new definition replaces the references to the Commissioner and a Deputy Commissioner of the Australian Federal Police (AFP) with a reference to the Chief Police Officer. The Chief Police Officer is the appropriate person to authorise officers under the Act.

The new definition also includes a sergeant, superintendent or anyone acting in that capacity. This will reduce the administrative burden on the AFP by removing the need to individually authorise these officers, while ensuring that only officers of sufficient seniority are able to exercise certain powers under the Act without the written authorisation of the Chief Police Officer.

**Clause 5      Identifying material**  
**New section 84 (3A) and (3B)**

Section 84 governs the taking of identifying material from a suspect under the age of 18 years. Currently, a Magistrate's approval is required before such material is taken.

New section 84 (3A) allows an authorised officer or a police officer (as defined in the section) to take fingerprints and photographs of a young person in lawful custody for an offence without the approval of a magistrate, if the person was aged 16 or 17 years at the time of the alleged offence.

However, new section 84 (3B) ensures that subsection 3A does not apply if the person does not have sufficient mental capacity to understand what is being done to him or her and the person has not been arrested and charged with the offence. This is in line with section 349ZP (5) of the *Crimes Act 1900*, which deals with the taking of identification material from adults who are incapable of managing their affairs.

In summary, a magistrate's approval will still be required before:

- any type of identifying material is taken from suspects under the age of 16 at the time of the alleged offence;
- identifying material other than fingerprints and photographs is taken from a young person in lawful custody aged 16 or 17 at the time of the alleged offence;
- material is taken from a person to whom subsection (3B) applies.

The routine taking of fingerprints and photographs of suspects in lawful custody is important for the integrity of police offender databases, and will serve an essential policing function. However, it is recognised that separate considerations should apply to suspects under a certain age. In this context, it is considered that a suspect aged 16 or over should be treated in the same way as an adult suspect.

The destruction of identifying material taken under the section will be governed by the provisions of new section 84A.

**Clause 6      Section 84 (7)**

This clause provides that identifying material may only be taken in the presence of a person with parental responsibility for the young person or, if that person is unavailable or unacceptable to the young person, someone else who is capable of representing the interests of the young person. This is considered to be an appropriate safeguard.

If a person with parental responsibility is not present when the material is taken, police are required to take reasonable steps to notify that person of the action taken. This will ensure that, as far as practicable, parents or guardians etc are aware of action being taken in relation to their children.

#### **Clause 7     Section 84**

This clause allows for the renumbering of section 84 when the *Children and Young People Act 1999* is next republished.

#### **Clause 8     New section 84A**

The current *Children and Young People Act 1999* does not contain provisions dealing with the destruction of material obtained under section 84.

New section 84A mirrors section 349ZQ of the *Crimes Act 1900*, which deals with the destruction of identification material taken from adults. It provides that material taken from young people is destroyed if it is no longer relevant to a proceeding or an investigation. This will ensure, for example, that fingerprints or photographs taken of a young person in lawful custody will be destroyed if he or she is later acquitted of the offence to which the material relates.

The section also allows a Magistrate to order the retention of the material in certain circumstances.

### **PART 3     CRIME PREVENTION POWERS ACT 1998**

#### **Clause 9     Act amended in pt 3**

Part 3 contains amendments to the *Crimes Prevention Powers Act 1998*.

#### **Clause 10    Section 4**

This clause amends section 4 of the *Crime Prevention Powers Act 1998*. That section empowers a police officer who has reasonable grounds for believing that a person in a public place has engaged in, or is likely to engage in, violent conduct in that place, to direct the person to leave the vicinity. The amendment provides an explicit power to:

- direct a person to leave the vicinity by a particular route; and
- direct a person to leave the vicinity and not return for a stated period, not exceeding 6 hours.

The purpose of enabling police to direct a person to leave a public place by a particular route is to ensure that two or more protagonists can be directed to leave an area in different directions from each other, thereby reducing the risk of simply moving a skirmish from one place to another.

The purpose of enabling police to direct a person not to return to a place for up to 6 hours is to ensure that police are able to move on persons who are engaging in violent conduct for a period sufficient to restore order in the place.

## **PART 4      CRIMES ACT 1900**

### **Clause 11    Act amended in pt 4**

Part 4 contains amendments to the *Crimes Act 1900*.

### **Clause 12    Section 102**

This clause amends section 102 of the *Crimes Act 1900* which deals with the offence of burglary. The offence is committed if a person, who enters premises as a trespasser, intends to steal something or intends to commit an assault or a damage offence, the penalty for which is 5 years or more imprisonment. This means that if a person enters premises as a trespasser merely intending to commit a common assault, he or she is not able to be charged with burglary, because the maximum penalty is only 2 years imprisonment.

The amendment made to section 102 is to the effect that it applies where the person who enters a building as a trespasser intends to commit any assault.

The purpose of this amendment is to ensure that it more adequately deals with 'home invasion' situations where, for example, a person enters another's home intending to terrify the occupant with threats or other forms of assault which fall short of assault occasioning actual bodily harm.

In these situations the alleged offender will be able to be charged with burglary and be liable for a maximum penalty of imprisonment for a period of 14 years.

### **Clause 13    New section 107A**

A new provision is inserted to create an offence of passing a valueless cheque. The physical element of the offence is passing a cheque that is not paid on presentation.

The offence is one of strict liability. Proposed section 107A(2) contains a defence, in relation to which the defendant has a legal burden of proof. A defendant seeking to rely on the defence must prove on the balance of probabilities that he or she believed on reasonable grounds that the cheque would be paid, and that he or she had no intention to defraud. For example, a defendant could show that he or she had checked the account balance just before writing the cheque, or reasonably expected a salary payment to be deposited into the account to cover the cheque. Proposed section 107A(3)

makes it clear that it is not a defence that there were funds in the cheque account when the cheque was issued.

The offence is included as other property offences do not adequately deal with the situation where goods and services are provided in return for purported payment. As the defence involves matters solely within the defendant's knowledge (ie. whether he or she had a belief about funds in the accounts and the absence of a fraudulent intention), the legal burden of proving that state of mind is cast on the defendant.

#### **Clause 14 New section 349AC**

This new provision will ensure that the protections afforded to suspects being interviewed for indictable offences will also apply to persons under arrest for most types of summary offences. The relevant protections are contained in Part 1C of the Commonwealth *Crimes Act 1914* and include such matters as the right to have the interview recorded and, in the case of indigenous Australians, the right to be assisted by an Aboriginal interview friend.

The only summary offences to which Part 1C will continue not to apply are offences against the *Road Transport (Alcohol and Drugs) Act 1977* and other traffic offences for which an infringement notice will be issued, or no action will be taken. These exceptions are necessary to ensure that dealing with routine traffic matters will not take up a disproportionate amount of police time.

#### **Clause 15 Part 10, division 3, heading**

This clause amends the heading to Part 10, Division 3.

#### **Clause 16 New sections 349SA and 349SB**

This clause inserts a new section 349SA which allows police to stop, detain and search a person reasonably suspected of carrying something which is stolen or unlawfully obtained, or which was used, or intended to be used, to commit an indictable offence. The section is based on the NSW provision relating to searches without warrant (s 357E of the NSW *Crimes Act 1900*).

Currently, unless the person has been arrested, police can only search a person without a warrant in very limited circumstances (eg if the person is reasonably suspected of carrying a knife in a public place under section 349DB of the *Crimes Act 1900*). In practical terms, this means that police often cannot search people for stolen or unlawfully obtained property. This hinders police in their duties to a significant extent.

The new section allows police to conduct a frisk or ordinary search of the person and to seize relevant property. In line with the current section 349T (which relates to stopping and searching conveyances), police are also

empowered to seize evidential material found during the search if certain conditions are met.

New section 349SB ensures that police may only detain a person under section 349SA for as long as necessary and reasonable to search the person.

**Clause 17 Searches without warrant in emergency situations  
Section 349T, heading**

This clause amends the heading of section 349T.

**Clause 18 Section 349T (1)**

This clause amends section 349T(1) in a manner consistent with new section 349SA (1). The remaining provisions of current section 349T are not affected.

The amendments broaden the circumstances in which police may stop and search a vehicle. The current section 349T restricts police searches to things relevant to an indictable offence (which excludes, for example, theft of items worth under \$1,000) and only if it is necessary to prevent the thing from being lost or destroyed *and* if the circumstances are both serious and urgent.

The new section expands police powers in an appropriate manner that is consistent with the equivalent NSW provision and with personal searches under new section 349SA.

**Clause 19 Power of arrest without warrant by police officers  
Section 349W (1) and (1A)**

Section 349W deals with the power of police officers to arrest suspects without a warrant. Currently, police must form a reasonable belief that the person has committed, or is committing, an offence. This clause replaces the reasonable belief test with a reasonable suspicion test.

Police may often encounter a suspect shortly after an offence has occurred, without having had the opportunity to conduct thorough investigations. While they may be unable to form a reasonable belief, police may be able to form a reasonable suspicion that a particular person committed the crime – for example in relation to a burglary, the person may fit the description given by a witness and may be known to police as a repeat offender. It is appropriate to allow police to arrest the person on that basis.

The existing time limits on detention of arrested persons for the purposes of investigation will remain. With the suspect in detention, however, there is a reduced likelihood of evidence being destroyed and/or other people connected with the offence going into hiding while the investigations are underway. In relation to domestic violence offences, enabling police to arrest



the alleged offender on a reasonable suspicion will ensure the safety of the alleged victim/s while the matter is investigated.

The “reasonable suspicion” test is used in both NSW and Queensland.

**Clause 20    Section 349W (2) (a)**

This clause contains a technical amendment required by the renumbering of the section.

**Clause 21    Section 349W (2) (b)**

This clause contains a consequential amendment required as a result of amendments to subsections (1) and (1A).

**Clause 22    Section 349W (3)**

This clause amends the threshold in section 349W(3) from “reasonable belief” to “reasonable suspicion” to allow police to arrest, without warrant, a person reasonably suspected of having escaped from lawful custody to which the person is still liable in respect of an offence.

This is consistent with the amendments made to subsections (1) and (1A).

**Clause 23    Section 349W (1) to (3)**

This clause rennumbers section 349W.

**Clause 24    Arrest of prisoner unlawfully at large  
Section 349Y (1)**

This clause amends section 349Y to allow police to arrest, without warrant, a person reasonably suspected to be a prisoner unlawfully at large.

This is consistent with the changes made to section 349W and with the equivalent section of the NSW *Crimes Act 1900* (section 352AA).

**Clause 25    Arrest without warrant for offences committed outside the Territory  
Section 349ZB (2)**

This clause amends section 349ZB to allow police, without warrant, a person reasonably suspected of committing a relevant offence under the section.

This is consistent with the changes made to section 349W and with the equivalent section of the NSW *Crimes Act 1900* (section 352A).

**Clause 26 Power to enter premises to arrest offender  
Section 349ZE (2) (b)**

Section 349ZE (2) currently allows police to enter premises to search for, or arrest, a person, if certain conditions are met. One of these conditions is that the offence for which the person is suspected must be an indictable offence.

This is unduly restrictive. Certain summary offences are serious enough to warrant police powers of entry. Consequently, this clause allows police to enter premises if the offence is an indictable offence or a relevant summary offence. "Relevant summary offence" is defined in subsection (4).

**Clause 27 Section 349ZE (4)**

This clause rewords the definition of "dwelling house" in accordance with current drafting practice. There is no change to the meaning of the term.

The clause also defines "relevant summary offence", which is used in subsection (2). A relevant summary offence is an offence against specified sections of the *Crimes Act 1900*, the *Road Transport (Alcohol and Drugs) Act 1977*, the *Road Transport (Safety and Traffic Management) Act 1999* and the *Road Transport (Safety and Traffic Management) Regulations 2000*.

**Clause 28 Power to conduct frisk search of arrested person  
Section 349ZH**

This clause contains a technical amendment required by the insertion of new subsections (2) and (3).

**Clause 29 New section 349ZH (2) and (3)**

Section 349ZH allows specified police officers to conduct frisk searches of suspects.

This clause gives the specified police officers the option of having the search conducted by another police officer, if this would be more appropriate having regard to section 349ZZ. This will facilitate searches by an officer of the same sex as the person being searched, where practicable.

The officer who does the search is accorded the same powers as the specified officer.

**Clause 30 Power to conduct ordinary search of arrested person  
Section 349ZJ**

As for clause 28.

**Clause 31 New section 349ZJ (2) and (3)**

As for clause 29 (in relation to ordinary searches).

**Clause 32 Taking fingerprints, recordings, samples of handwriting or  
photographs  
Section 349ZP (3)**

Section 349ZP governs the taking of identification material from a person in lawful custody for an offence. At present, such material can only be taken if the person consents or where the material is required for identification purposes.

The purpose of this clause is to allow police to take routine fingerprints and photographs of any person in lawful custody for an offence. The provision will operate alongside section 84 of the *Children and Young People Act 1999* which is being amended to allow the routine fingerprinting of 16 and 17 year olds.

The amendments will allow police to take fingerprints and photographs of adult suspects without the need to obtain the person's consent, and even if the material is not required for identification purposes.

There is no change to the provisions relating to the taking of other types of identification material or to the current safeguards relating to people who are incapable of managing their own affairs.

Destruction of all types of identification material (including routine fingerprints and photographs) will continue to be governed by section 349ZQ.

**Clause 33 Return of knife or thing which is seized  
Section 349ZZD (1) and (2)**

This clause is required by the insertion of new section 349SA. It ensures that, in general, a knife or thing which is seized under section 349T or section 349SA will be returned to the owner if the reason for its seizure no longer exists, it is not to be used in evidence, or 60 days has elapsed since the seizure, whichever comes first.

**Clause 34 Section 349ZZD (1A), (1) and (2)**

This clause renumbers section 349ZZD.

**Clause 35 Magistrates Court may permit a thing to be retained  
Section 349ZZE (1)**

This clause is required by the insertion of new section 349SA. It allows a police officer to apply to the Magistrates Court to retain a thing seized under section 349SA or 349T in certain circumstances.

**Clause 36 Provision of interpreters in the investigation of summary offences  
Section 354**

This clause omits section 354. The section had provided that certain provisions of Part 1C of the Commonwealth *Crimes Act 1914*, relating to interpreters, applied to most summary offences, other than certain traffic offences. Now that new section 349AC will apply all of Part 1C to those summary offences, section 354 is not necessary.

**Clause 37 Executive or judge may direct inquiry  
Section 475**

This clause omits section 475, which dealt with inquiries into convictions. The section is to be replaced by new part 17, which will provide greater detail as to the way in which inquiries into convictions are to be conducted.

**Clause 38 Noise abatement directions  
Section 546C (1)**

This clause replaces "member of the police force" with "police officer" in section 546C (1) in accordance with current drafting practice.

**Clause 39 New section 546C (5) to (8)**

This clause amends section 546C of the *Crimes Act 1900*. That section enables police to give a noise abatement direction where offensive noise is being emitted from any premises. However, police often find that while a direction may be complied with initially, it is subsequently ignored. Typical situations where this occurs are at loud parties on residential premises. Even if a person is charged with an offence for failing to comply with a notice, the noise may remain a source of annoyance to neighbours for hours or even days.

The amendments to section 546C will provide a practical way in which police can put an end to offensive noise, where a notice has been given and not complied with. Police will be able to seize an item that is suspected of having been used in connection with the offence of failing to comply with a notice. For example, police will be able to seize stereo equipment.

Where an officer seizes something pursuant to this provision, the officer will be required to give written notice to the person whom the officer believes to be the occupier of the premises:

- describing the thing seized;
- stating the location of the police station to which the thing will be taken; and
- advising that the thing may be recovered from that location after the expiration of 48 hours from the time of the seizure.

The occupier of the premises or owner of the thing will be able to reclaim the thing from the police station unless a person has been charged in relation to an offence against section 546C and the thing may provide evidence of the offence. In such a case, the thing may only be returned once proceedings have been concluded.

#### **Clause 40    Section 546C (5)**

This clause rennumbers section 546C.

#### **Clause 41    New part 17**

This clause inserts new part 17, which deals with inquiries into convictions and will replace existing section 475. A major deficiency of the inquiries power under former section 475 of the *Crimes Act 1900* is that it was largely silent on the manner in which inquiries were to be conducted. That section was based on an English provision developed before criminal appeal rights were created. With the establishment of criminal appeals, the purpose and operation of section 475 became uncertain. To ensure that the inquiries power does not duplicate other appeal rights, it is appropriate to provide greater detail as to the matters that may be inquired into and the way that inquiries are conducted.

#### **Part 17                      Inquiries into convictions**

#### **Division 17.1          Preliminary**

#### **Section 557A          Definitions for pt 17**

This section defines key terms used in new part 17.

## **Division 17.2      How to start an inquiry**

### **Section 557B      Grounds for an inquiry**

The purpose of this section is to detail the grounds for holding an inquiry into a conviction. All the matters listed as grounds must exist before an inquiry can be ordered.

It is expected that the inquiries power would be used only in exceptional cases thus the grounds reflect the intention that there must be cogent reasons for revisiting cases already determined by the Courts. It is not intended that the inquiries power be used as an alternative to the appeals process or as a means of endlessly challenging a conviction. Briefly, an inquiry can only be ordered where:

- a question or doubt about the person's guilt has arisen;
- the question or doubt could not have been properly addressed previously;
- the conviction may be unsafe because of the doubt or question
- the matter cannot be addressed by an appeal
- no application for an inquiry has previously been made; and
- it is in the interests of justice to hold an inquiry.

Subsection 557A(2) provides that the order for the inquiry will set out the matters to be canvassed. An inquiry can only deal with those matters. This is to prevent inquiries being used as a means of airing vexatious or vindictive claims without real substance. Subsection 557A makes it clear that where the Supreme Court orders an inquiry, the matters which can be canvassed can be narrower than the matters raised in the application to the Supreme Court to hold that inquiry. This is to ensure that it is the Court, not the applicant, that determines the scope of the inquiry. It should be noted that the Executive can order an inquiry of its own motion (under new section 557C) – in such cases, the Executive will determine the scope of the inquiry when it makes the order.

### **Section 557C      Executive order**

This section explains that the Executive may order an inquiry on its own initiative. There is no provision for a person to apply to the Executive for an inquiry; it is only inquiries ordered by a Court that are triggered by an application. The purpose of this provision is to enable the Executive to order an inquiry in cases where, by whatever means, it has received material casting doubts on the safety of a conviction.

### **Section 557D      Supreme Court order**

This section provides for applications to the Supreme Court for an order to hold an inquiry. An application may be made by the convicted person or by someone on his or her behalf. For example, an application might be made on the person's behalf after the convicted person has died, or where the convicted person is under a mental disability which precludes him or her from making the application personally.

A copy of the application is to be sent to the Attorney-General, who may make a submission about it to the Court. The DPP may also make a submission about the application to the Court. The Court's consideration of an application is not a judicial proceeding, which means that the rules applicable to judicial proceedings do not apply.

After considering an application, if the Court decides to order an inquiry the registrar must give the order to the Executive. This is because it is the Executive which appoints the board of inquiry that will carry out the inquiry.

### **Section 557E Rights and duties in relation to orders for inquiries**

The purpose of this section is to make it clear that decisions about ordering an inquiry are purely discretionary and are not subject to appeal or review. This reflects the intention that inquiries be ordered only where all other ways of addressing the matter have been exhausted and where there are compelling reasons for reconsidering the conviction.

### **Division 17.3 Inquiry Procedure**

#### **Section 557F Application of Inquiries Act**

This section explains that, subject to modification, the *Inquiries Act 1991* applies to inquiries into convictions. The purpose of applying the Inquiries Act provisions is to provide a clear and certain process for inquiries into convictions.

#### **Section 557G Appointment of board of inquiry**

This section explains that the Executive must appoint a board of inquiry to inquire into the matters listed in the order for the inquiry. The board is to have one member, who must be either a Supreme Court judge or a magistrate. It should be noted that, in the ACT, the terms "judge" or "magistrate" include persons such as acting judges or Special Magistrates, which will facilitate the appointment of persons with no previous involvement in the matter.

#### **Section 557H Report by board**

When the inquiry is concluded, the board must prepare a report about the inquiry and give it to the registrar of the Court, along with relevant papers and other items.

The provisions in the *Inquiries Act 1991* relating to reports do not apply to inquiries into convictions. This is because reports into convictions are to be considered first by the Court, in order to determine what restrictions, if any, should be placed on publication and what action should be taken about the conviction. It would not be appropriate for a report into a conviction to be circulated or published before the Court has had the opportunity to consider the report – it is important that the Court is able to act without external pressure or public speculation.

## **Division 17.4      Supreme Court orders following inquiry**

### **Section 557I      Publication of report**

The purpose of subsection 557I(1) is to enable the Court to make an order about publication before a copy of the board's report is given to the Attorney-General and the convicted person. It requires the registrar to include a copy of any publication restriction order when he or she gives the Attorney-General and the convicted person their copies of the report.

The Court can order that a report, or parts of it, be kept confidential by persons who obtain copies of it. Such orders can only be made in the interests of justice, where the Court has balanced the public interest and the interests of the convicted person. Publication restriction orders can be enforced in the same way as any other court order.

### **Section 557J      Action on report by Supreme Court**

This section explains what the Supreme Court must do upon receiving a report following an inquiry. It requires the Court to consider the report.

After considering the report, the Court must either make an order to:

- uphold the conviction;
- uphold the conviction and recommend that the Executive exercise the prerogative powers to pardon the person, or remit the penalty; or
- quash the conviction and order a new trial.

The register must give a copy of the Court's order to the Attorney-General and the convicted person. A recommendation for Executive action does not bind the Executive. The convicted person cannot compel the Executive to use the powers to pardon or remit a penalty, and cannot compel the Court to quash the conviction and order a new trial.

### **Section 557K      Nature of Supreme Court proceedings**

This section makes it clear that the Court's actions in making orders under part 17 are not judicial proceedings, and that the Court cannot hear submissions about what action it should take or take into account any extrinsic material.

## **Division 17.5      Application to earlier convictions**

### **Section 557L      Inquiries about earlier convictions**

The purpose of this section is to clarify the application of new part 17. It provides that the new provisions apply to a conviction for an offence even if the conviction occurred before part 17 commences.



**Clause 42 Act**

This clause allows for the renumbering of the *Crimes Act 1900* when it is next republished.

**PART 5 INTERPRETATION ACT 1967****Clause 43 Act amended in pt 5**

Part 5 contains amendments to the *Interpretation Act 1967*.

**Clause 44 Application of certain sections of Commonwealth Crimes Act to Territory Acts  
Section 33G**

This clause amends section 33G of the *Interpretation Act 1967*, a provision which applies certain provisions of the Commonwealth *Crimes Act 1914* in the ACT. The amendment omits the reference to 'section 21' of the Commonwealth *Crimes Act 1914*. That section was renumbered 'section 15B' in 1990 and it is a provision dealing with the time limits for the commencement of a prosecution.

As inconsistencies have developed between the provision in section 15B of the Commonwealth *Crimes Act 1914* and section 31 of the *Magistrates Court Act 1930*, which also deals with time limits for commencing a prosecution, it is necessary to clarify, in a single provision, the time limitations which are to apply in prosecutions commenced in ACT courts. The omission of the reference to 'section 21', together with the insertion of new section 33H, by clause 45, achieves this.

**Clause 45 New section 33H**

New section 33H largely mirrors section 31 of the *Magistrates Court Act 1930*, which is repealed by Part 7. Two changes to the substance of the provision have, however, been made.

The first of these changes is effected by sections 33H(1)(b) and (c). These relate to prosecutions of corporations and aiding and abetting offences by individuals in relation to an offence by a corporation. They are to the effect that a prosecution for such an offence, punishable, on first conviction, by a fine of not more than 150 penalty units, must be commenced within a year of the commission of the offence, unless the provision creating the offence provides otherwise, or subsection 33H(3) applies.

These provisions are intended to, substantially, preserve the effect of subsections 15B(1A) and (1B) of the Commonwealth *Crimes Act 1914*, which

will cease to apply in the ACT, as a result of the amendment made by clause 44.

The second change to the substance of the provision is effected by paragraph 33H(1)(d). This paragraph enables a prosecution for minor theft to be commenced at any time, rather than within a year of the commission of the offence, which was the time limit that applied under section 31 of the *Magistrates Court Act 1930*.

A one year limitation period is appropriate for most regulatory offences. However, its application to the offence of minor theft has been problematic. Minor theft, pursuant to section 99A of the *Crimes Act 1900*, is the theft of goods worth less than \$1000. An offender may have committed a string of minor thefts over a prolonged period of time and the total value of those thefts may far exceed \$1000. However, the thefts may not come to light for a considerable time after they have been committed and some or all may not be able to be prosecuted, as minor theft, as a consequence. For example, where an employee had regularly stolen small amounts from a shop till over a number of years, under the provision in section 31 of the *Magistrates Court Act 1930*, it would have been possible to prosecute only those thefts committed within a year of the commencement of the prosecution.

The new provision in paragraph 33H(1)(d) will ensure that a prosecution for a minor theft offence can be commenced at any time after the commission of the offence.

## **PART 6      INTOXICATED PERSONS (CARE AND PROTECTION) ACT 1994**

### **Clause 46    Act amended in Pt 6**

Part 6 contains amendments to the *Intoxicated Persons (Care and Protection) Act 1994*.

### **Clause 47    Interpretation Section 3 (1), definition of *intoxicated***

This clause ensures that the definition of intoxicated is wide enough to cover the range of consciousness-altering substances, such as glue or solvents, which can cause intoxication. The current definition only covers persons intoxicated by alcohol or drugs.

**Clause 48    Detention of intoxicated person**  
**New section 4 (2)**

The Act currently does not require a police officer to consider alternatives to detention as a means of ensuring the safety of an intoxicated person. This clause inserts new section 4(2) to ensure that detention in a police cell is used only where other appropriate forms of care are unavailable.

**Clauses 49 and 50**

These clauses deal with renumbering and are consequential on the insertion of new section 4(2).

**PART 7        MAGISTRATES COURT ACT 1930**

**Clause 51    Act amended in pt 7**

Part 7 contains an amendment to the *Magistrates Court Act 1930*.

**Clause 52    Limitation of proceedings**  
**Section 31**

The effect of this clause is to repeal section 31 of the *Magistrates Court Act 1930* which deals with the limitation periods for the commencement of prosecutions in the Magistrates Court. This provision is replaced by new section 33H inserted in the *Interpretation Act 1967* by clause 45.

**PART 8        ROAD TRANSPORT (SAFETY AND TRAFFIC**  
**MANAGEMENT) ACT 1999**

**Clause 53    Act amended in part 8**

Part 8 amends the *Road Transport (Safety and Traffic Management) Act 1999*.

**Clause 54    Surrender and forfeiture of traffic offence evasion articles**  
**Section 10 (1)**

Section 10 allows police and authorised officers to require the surrender of traffic offence evasion articles. Currently, officers must believe on reasonable grounds that an article is being sold, bought or used unlawfully.

The purpose of this clause is to allow officers to use the section on reasonable suspicion, which will improve the effectiveness of the section.

**Clause 55 New section 10 (2) and (3)**

Currently, officers do not have the power to stop and search vehicles for articles (eg radar detectors). This omission hinders police in the enforcement of this provision to a significant degree.

New subsection (2) allows a police officer who reasonably suspects that a person is driving or has parked a car carrying a traffic offence evasion article on a road or road related area, to stop and search the vehicle and seize the article if found.

New subsection (3) sets out how officers are to exercise their powers under subsection (2). The provisions are based on section 349U of the *Crimes Act 1900*, which deals with searches of conveyances.

**Clauses 56 and 57**

These clauses make technical amendments required by the insertion of new subsections (2) and (3).

**Clause 58 New section 10 (5)**

This clause makes it clear that subsection (4) (which allows police and authorised officers to require the surrender of articles) does not limit the powers of police to stop, detain and search vehicles, and to seize articles, under subsection (3).

**Clause 59 Section 10 (3)**

As for clauses 56 and 57.

**Clause 60 Section 10 (3)**

This clause renumbers section 10.

**Clause 61 Section 10 (4)**

As for clauses 56 and 57.

**Clause 62 Section 10 (4) to (6)**

As for clause 60.

## **PART 9 ROAD TRANSPORT (OFFENCES) REGULATIONS 2000**

### **Clause 63 Regulation amended in part 9**

Part 9 contains an amendment to the *Road Transport (Offences) Regulations 2000*.

### **Clause 64 Short descriptions, penalties and demerit points Schedule, part 12, item 15, column 2**

This clause makes a technical amendment required by the amendments to section 10 of the *Road Transport (Safety and Traffic Management) Act 1999*.

## **PART 10 SUPREME COURT ACT 1933**

### **Clause 65 Act amended in pt 10**

The amendments in Part 10 affect the *Supreme Court Act 1933*. It should be noted that they will commence only after the new Court of Appeal has been established under the *Supreme Court Amendment Act 2001*. The Bill for that Act will be introduced into the Assembly in the near future.

### **Clause 66 Appellate jurisdiction New section 37E (2) (aa)**

This clause inserts a reference to orders to review in section 37E, which will set out the appellate jurisdiction of the Supreme Court. That section will be inserted by the *Supreme Court Amendment Act 2001*.

### **Clause 67 Section 37E (2)**

This clause allows for the renumbering of section 37E when the *Supreme Court Act 1933* is next republished.

### **Clause 68 New section 37R**

This new section allows the Court of Appeal to make an order to review an acquittal. The consequence of an order to review is that the acquittal is set aside and a new trial is ordered.

The DPP can apply to the Court of Appeal for an order to review an acquittal. The grounds on which the application are made are set out in new section 37R(3). In brief, an order for review can only be made if the Court considers that:

- the jury was misdirected to acquit the defendant; or
- the trial judge made an error of law.

The Government considers it important to uphold the principle of non-interference with findings of fact by juries and, accordingly, it has not provided for orders to review erroneous decisions by juries to acquit.

An acquittal will only be set aside if there is an error of law by the trial judge. The Government considers that it is important that public faith in the criminal justice system is not adversely affected by continuing to allow persons who are acquitted only because of a mistake by the trial judge to remain unaccountable for their criminal behaviour. It is also important for victims to be assured that offenders do not remain at large because a trial judge made a mistake.