

TASMANIA

CRIMES (MISCELLANEOUS AMENDMENTS) BILL 2013

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CRIMES (MISCELLANEOUS AMENDMENTS) BILL 2013

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
17 April 2013

*(Brought in by the Minister for Justice, the Honourable Brian
Neal Wightman)*

A BILL FOR

**An Act to amend the *Criminal Code Act 1924* and the
*Justices Act 1959***

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Crimes
(Miscellaneous Amendments) Act 2013*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

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PART 2 – CRIMINAL CODE ACT 1924 AMENDED

3. Principal Act

In this Part, the *Criminal Code Act 1924** is referred to as the Principal Act.

4. Principal Act amended

Schedule 1 to the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *judicial officer* in section 1:

motor vehicle has the same meaning as it has in the *Vehicle and Traffic Act 1999*;

- (b) by omitting section 92;
- (c) by inserting in section 150 “, whether living or inanimate,” after “maintains anything”;
- (d) by inserting the following section after section 240:

240A. Carjacking

- (1) A person (*the perpetrator*) –

- (a) who –

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- (i) assaults a person with intent to take a motor vehicle; and
 - (ii) without having the consent of the owner of the vehicle, or the person in lawful possession of the vehicle, takes and drives it or takes it for the purpose of driving it; or
- (b) who, without having the consent of the owner, or the person in lawful possession, of a motor vehicle –
 - (i) takes and drives it; or
 - (ii) takes it for the purpose of driving it –

when a person, other than a person with whom the perpetrator is in company, is in or on the vehicle –

is guilty of a crime which is called carjacking.

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Charge: Carjacking.

- (2) A person who commits carjacking and who –
- (a) is in company with any other person or persons at the time of committing that carjacking; or
 - (b) is armed with a firearm or other dangerous or offensive weapon or instrument at the time of committing that carjacking; or
 - (c) causes bodily harm to any person immediately before, at, or immediately after, the time of committing that carjacking –
- is guilty of a crime which is called aggravated carjacking.

Charge: Aggravated carjacking.

- (3) In this section –

drive includes operate.

- (e) by inserting the following section after section 253:

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253A. Fraud

Any person who, with intent to defraud, or by deceit or any fraudulent means –

- (a) obtains property from a person; or
- (b) induces a person to –
 - (i) deliver, transfer, or assign, property to another person; or
 - (ii) cause property to be delivered, transferred, or assigned, to another person; or
- (c) gains a benefit, pecuniary or otherwise, for any person; or
- (d) causes a detriment, pecuniary or otherwise, to any person; or
- (e) induces any person to do an act that the person is lawfully entitled to abstain from doing; or
- (f) induces any person to abstain from doing any

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act that the person is
lawfully entitled to do –

is guilty of a crime.

Charge: Fraud.

- (f) by omitting paragraph (d) from section 297(1);
- (g) by omitting from section 331B(2)(c) “in section 368A.” and substituting “in section 368A; and”;
- (h) by inserting the following paragraph after paragraph (c) in section 331B(2):
 - (d) the Court is to warn the defendant of the requirements of section 368B(1).
- (i) by inserting the following subsection after subsection (2) in section 331B:
 - (2A) An application under subsection (2)(a) may only be made, at any appearance of the defendant other than his or her first appearance, with the leave of the Supreme Court.
- (j) by inserting the following section after section 334B:

334C. Causing death by dangerous driving

On an indictment for causing
death by dangerous driving, the

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accused person may be convicted
of an offence under section 32(1)
of the *Traffic Act 1925*.

(k) by inserting the following paragraph after
paragraph (d) in section 337B(1):

(e) indecent act with or directed at a
young person under the age of 17
years;

(l) by inserting the following paragraph after
paragraph (b) in section 338(1):

(ba) fraud;

(m) by inserting in section 350(1) “or a
person appearing for the Crown” after
“Officer”;

(n) by inserting the following section after
section 368A:

368B. Admissible opinion evidence

(1) A defendant who intends to
adduce, in relevant proceedings,
admissible opinion evidence of a
witness must give to the Director
of Public Prosecutions a notice of
evidence in relation to the witness
before the end of the prescribed
period, if any, in relation to the
relevant proceedings.

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- (2) A notice of evidence in relation to a witness is a notice in writing that –
- (a) contains the name and business address of the witness; and
 - (b) describes the qualifications of the witness to give admissible opinion evidence; and
 - (c) sets out the substance of the admissible opinion evidence it is proposed to adduce from the witness and the acts, facts, matters and circumstances on which the opinion is formed.
- (3) For the purposes of this section, the prescribed period in relation to admissible opinion evidence that is to be adduced –
- (a) in a trial on indictment (other than in circumstances to which paragraph (b), (c) or (d) applies) where the defendant has been warned in accordance with section 331B(2)(d)

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of the requirements of
subsection (1), is –

- (i) the period of 7
days from the day
on which the
defendant is
warned of the
requirements; or
- (ii) if the admissible
opinion evidence
does not become
available to the
defendant until
after the date on
which the
defendant is
warned of the
requirements, as
soon as
practicable after
the admissible
opinion evidence
becomes available
to the defendant;
or
- (b) in an investigation as to
the defendant's fitness to
stand trial, is as soon as
practicable after the
admissible opinion
evidence becomes
available to the defendant;
or

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- (c) in a special hearing, is as soon as practicable after the admissible opinion evidence becomes available to the defendant; or
 - (d) in submissions as to sentencing at a trial on indictment for an offence, is as soon as practicable after the admissible opinion evidence becomes available to the defendant.
- (4) If the defendant does not comply with subsection (1) in relation to admissible opinion evidence that he or she intends to adduce in relevant proceedings, the admissible opinion evidence may not be adduced in the proceedings except in accordance with an order or direction of a court or a judge under subsection (5).
- (5) A court or judge may do any or all of the following if a defendant does not comply with subsection (1) in relation to admissible opinion evidence:
 - (a) order or direct that the admissible opinion evidence may be adduced in relevant proceedings;

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- (b) order or direct that a notice of evidence in relation to the admissible opinion evidence is required to be given to the Director of Public Prosecutions within a period specified in the order or direction;
 - (c) make any other order or direction that the court or judge thinks appropriate in relation to the admissible opinion evidence.
 - (6) If the defendant intends to adduce, in relevant proceedings, admissible opinion evidence relevant to the defendant's mental state, or medical condition, at the time of an alleged offence to which the proceedings relate, the court or a judge may, on the application of the prosecutor, require the defendant to submit, at the prosecutor's expense, to an examination by a person qualified to give admissible opinion evidence on the defendant's mental state or medical condition.
 - (7) Subsection (8) applies in relation to admissible opinion evidence

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adduced, or to be adduced, in relevant proceedings, if –

- (a) the defendant adduces the admissible opinion evidence, or intends to adduce the admissible opinion evidence, in the proceedings in accordance with an order or direction of a court or a judge under subsection (5); or
 - (b) a notice of evidence in relation to the admissible opinion evidence is given to the Director of Public Prosecutions less than 14 days before the proceedings begin.
- (8) If this subsection applies in relation to admissible opinion evidence adduced, or intended to be adduced, in relevant proceedings, a court or a judge may –
- (a) on the application of the prosecutor, adjourn the proceedings to allow the prosecution a reasonable opportunity to do any or all of the following:

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- (i) to consider a notice of evidence, if any, in relation to the admissible opinion evidence;
 - (ii) to consider the admissible opinion evidence, if any;
 - (iii) to obtain evidence on the matter to which the admissible opinion evidence adduced, or intended to be adduced, relates; or
 - (b) if a jury has been empanelled and the adjournment would, in the opinion of the court, adversely affect the course of the relevant proceedings, discharge the jury and order that the relevant proceedings be re-commenced.
- (9) The court is to grant an application for an adjournment under subsection (8)(a), unless there are good reasons, in the opinion of the court, not to do so.

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- (10) The prosecutor or the court (or both) may comment to the jury on the failure of a defendant to comply with a requirement of subsection (1) in relation to admissible opinion evidence adduced in relevant proceedings.
- (11) A notice required by this section to be given to the Director of Public Prosecutions may be given –
 - (a) by delivering it to him or her; or
 - (b) by leaving it at his or her office; or
 - (c) by sending it in a registered letter, or by certified mail, addressed to him or her at his or her office.
- (12) In computing a prescribed period for the purposes of this section, any day that is an excluded day for the purposes of section 29 of the *Acts Interpretation Act 1931* must be disregarded.
- (13) This section applies despite section 11(1) of the *Criminal Justice (Mental Impairment) Act 1999*.

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(14) In this section –

admissible opinion evidence

means evidence of an opinion to which section 79 of the *Evidence Act 2001* applies;

investigation as to the defendant's fitness to stand trial

means an investigation under the *Criminal Justice (Mental Impairment) Act 1999* into a defendant's fitness to stand trial for an indictable offence;

relevant proceedings, in relation to a defendant, means –

- (a) a trial of the defendant on indictment; or
- (b) an investigation as to the defendant's fitness to stand trial; or
- (c) a special hearing in relation to the defendant; or
- (d) proceedings in relation to the

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sentencing of the
defendant in
relation to an
offence for which
the defendant has
been tried on
indictment;

special hearing means a
special hearing held in
accordance with section
15 of the *Criminal Justice*
(Mental Impairment) Act
1999.

(o) by omitting subsection (4A) from section
402 and substituting the following
subsections:

(4A) The Court, on hearing an appeal
against a sentence passed on a
person for an offence (whether
the appeal was brought, made or
lodged by the person or by the
prosecutor), may take into
account any matter relevant to the
sentence that has occurred
between when the court of trial
dealt with the person and when
the appeal is heard.

(4B) Despite subsection (4A), the
Court, in passing another
sentence under subsection (4),
must not take into account the
element of double jeopardy

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involved in the person being sentenced again, in order to pass a less severe sentence than the Court would otherwise consider appropriate.

(4C) Despite subsection (4), on an appeal against a sentence the Court may, if it thinks that it is appropriate and in the interests of justice to do so, quash the sentence passed at the trial and remit the matter to the court of trial.

(4D) If the Court quashes a sentence passed at a trial and remits the matter to the court of trial under subsection (4C) –

(a) it may give any directions that it thinks fit concerning the manner and scope of the further hearing of the matter by the court of trial, including a direction as to whether that hearing is to be conducted by the same judge as, or a different judge to, the judge that passed the sentence; and

(b) the court of trial must hear and determine the matter in accordance with

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the law and any such directions; and

- (c) the court of trial may take into account any matter relevant to sentencing that has occurred between when the court of trial passed the quashed sentence and when the court of trial decides the remitted matter; and
 - (d) despite paragraph (c), the court of trial must not take into account the element of double jeopardy involved in the person being sentenced again, so as to pass a less severe sentence than the court of trial would otherwise consider appropriate.
- (p) by inserting the following paragraph after paragraph (a) in section 409(1):
- (ab) order a person convicted, or a person who is a respondent to a prosecution appeal, to attend before the Court on the hearing of an appeal in relation to the person or to receive judgment in relation to the appeal;

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- (q) by inserting in section 411(2) “or if ordered to attend before the Court under section 409(1)(ab)” after “Court”;
 - (r) by inserting in Appendix A after

Rape.

the following item:

Indecent assault.

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Part 3 – Justices Act 1959 Amended

PART 3 – JUSTICES ACT 1959 AMENDED

5. Principal Act

In this Part, the *Justices Act 1959** is referred to as the Principal Act.

6. Section 71 amended (Petty crimes triable summarily)

Section 71(1) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

- (ab) section 253A of the *Criminal Code*, if the value of property obtained or delivered, or the benefit gained or detriment caused, does not exceed \$5 000; or

7. Section 72 amended (Other crimes triable summarily)

Section 72(1) of the Principal Act is amended by inserting after paragraph (c) the following paragraph:

- (ca) under section 253A of the *Criminal Code*, if the value of property obtained or delivered, or the benefit gained or detriment caused, exceeds \$5 000 but does not exceed \$20 000; or

*No. 77 of 1959

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8. Section 110 amended (Powers of Supreme Court)

Section 110 of the Principal Act is amended by inserting after subsection (2) the following subsections:

- (2AA) The court, on hearing a motion to review in relation to an order imposing a sentence on a person in relation to a matter, may, whether the person who filed the notice of review in respect of the order was the person or the prosecutor, take into account any matter, relevant to sentencing, that has occurred between when the justices who made the order dealt with the person in relation to the matter and when the court hears the motion to review.
- (2AB) Despite subsection (2AA), the court, in exercising in relation to an order a power under subsection (2), the effect of the exercise of which is that the person to whom the order relates is being sentenced again for an offence, must not take into account any element of double jeopardy involved in the person being sentenced again so as to impose a less severe sentence than the court would otherwise consider appropriate.
- (2AC) If the court quashes an order, made by justices, in relation to a matter and remits the matter under subsection (2) to the justices, either with or without any direction in law –

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- (a) the justices must hear and determine the matter in accordance with the law and any such direction in law; and
- (b) the justices, in sentencing the person in relation to the matter, may take into account any matter relevant to sentencing that has occurred between when the court made the quashed order and when the justices determine the remitted matter; and
- (c) despite paragraph (b), the justices must not take into account the element of double jeopardy involved in the person being sentenced again, so as to impose a less severe sentence than the justices would otherwise consider appropriate.

9. Section 113A amended (Alternative appeals in certain cases)

Section 113A of the Principal Act is amended by inserting after subsection (10) the following subsections:

- (11) On hearing an appeal under this section against an order the magistrate may, in exercising under subsection (10) a power in relation to sentencing (whether the person who appeals under subsection (1) is the person to whom the order relates or

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the prosecutor), take into account any matter relevant to sentencing that has occurred between when the order appealed against was made and when the magistrate hears and determines the appeal.

- (12) Despite subsection (11), the magistrate, in exercising in relation to an order in respect of a person a power under subsection (10), the effect of the exercise of which is that the person is being sentenced again for an offence, must not take into account any element of double jeopardy so as to impose a less severe sentence than the magistrate would otherwise consider appropriate.

10. Section 113B amended (Review by magistrate)

Section 113B of the Principal Act is amended by inserting after subsection (3) the following subsections:

- (3A) A magistrate, on the hearing of an application under this section in relation to an order imposing a sentence on a person in relation to a matter may, (whether the person or the prosecutor applied under subsection (1) for the review), take into account any matter relevant to sentencing that has occurred between when the order to which the reviews relates was made and when the magistrate reviews the order.

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- (3B) Despite subsection (3A), a magistrate, in exercising in relation to an order in respect of a person a power under subsection (3), the effect of the exercise of which is that the person is being sentenced again for an offence, must not take into account any element of double jeopardy so as to impose a less severe sentence than the magistrate would otherwise consider appropriate.

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PART 4 – CONCLUDING PROVISIONS

11. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which it commences.