

CLAUSE NOTES

Crimes (Miscellaneous Amendments) Bill 2016

Part 1 – Preliminary

- Clause 1: Short title of the Bill.
- Clause 2: The Act commences on Royal Assent.

Part 2 – *Criminal Code Act 1924* amended

- Clause 3: Principal Act in relation to Part 2 is the *Criminal Code Act 1924*.
- Clause 4: Amends Schedule 1 of the *Criminal Code Act 1924* by:
- (a) Repealing subsection 185(2) to remove the requirement for a magistrate to conduct committal proceedings in relation to rape cases.
 - (b) Making a consequential amendment to section 248(c) related to paragraph (c) below.
 - (c) Repealing section 248(d).
 - (d) Amending section 371 to allow the Crown to make a closing statement to the jury in proper cases irrespective of whether an accused person is represented by defence counsel.
 - (e) Repealing section 385(1) to remove the requirement for the accused person to be asked by the court whether he or she has anything to say as to why sentence should not be passed on him or her.
 - (f) Making a consequential amendment to section 385(2) related to paragraph (e) above.
 - (g) Amending Appendix A to include the crimes of carjacking and aggravated carjacking to the list of crimes where a police officer may arrest without a warrant.

Part 3 – *Criminal Justice (Mental Impairment) Act 1999* amended

- Clause 5: Principal Act in relation to Part 3 is the *Criminal Justice (Mental Impairment) Act 1999*.
- Clause 6: Amends section 3 by inserting a definition of “controlling authority”.

- Clause 7:** Repeals section 17(b).
- Clause 8:** Amends section 18 to clarify that a treatment order made under the Principal Act is a treatment order under the *Mental Health Act 2013* whether made before or after the commencement of the Act.
- Clause 9:** Amends section 21 to clarify that a treatment order made under the Principal Act is a treatment order under the *Mental Health Act 2013* whether made before or after the commencement of the Act.
- Clause 10:** Repeals section 21A of the Principal Act, which is a consequential amendment to clause 14; and inserts a new Part 3A – Breach of Conditions of Release.

New section 21A(1) provides the procedure if it appears that a person has breached a condition of release made under section 18(2)(e) or Section 21(1)(e) of the Principal Act.

New section 21A(2) provides the list of persons authorised to make an application under new section 21A(1).

New section 21A(3) required notice to be given to the defendant.

New section 21A(4) provides that a warrant may be issued for the arrest of a defendant who fails to appear at the hearing of an application or where there have been reasonable efforts to give notice but without success.

New section 21A(5) provides if the defendant is found guilty of an offence punishable by imprisonment while on an order under section 18(2)(e) or section 21(1)(e), an authorised person may make an oral application under new section 21A(1) and provide written grounds if directed to the defendant.

New section 21A(6) provides that in circumstances where an oral application is made under new section 21A(5), a court that did not impose the original order may either deal with the application or adjourn to the court that imposed the original conditions and grant the defendant bail or remand the defendant in custody.

New section 21A(7) provides that if a court is satisfied that conditions have been breached they may either:

- a) Confirm the original conditions; or
- b) Impose new conditions; or

- c) Cancel the order and deal with the defendant in any manner under section 18(2) or section 21(1).

New section 21A(8) provides that the court must take into account the extent the defendant has complied with the original conditions prior to the breach.

Clause 11: Amends section 31 of the Principal Act to provide that a defendant may be taken to an approved hospital or a secure mental health unit where the transfer is deemed necessary for adequate treatment or protection of the defendant or another person.

Inserts section 31(5A) to provide that custody and escort provisions under the *Mental Health Act 2013* apply to transfers under the section.

Clause 12: Amends section 35 of the Principal Act to allow the court to have regard a report by an expert, who does not have to be a medical practitioner.

Clause 13: Inserts new section 35A to allow the court to make an interim order.

Clause 14: Inserts Part 4, Division 7A – Referral of forensic orders, new section 36A to clarify the circumstances in which a magistrate may refer the making of a forensic order to the Supreme Court for determination.

Part 4 – Sentencing Act 1997 amended

Clause 15: Principal Act for Part 4 is the *Sentencing Act 1997*.

Clause 16: Amends section 81A to allow victims and family members of victims in matters involving family violence, death or serious injury to provide victim impact statements in relation to summary matters.

Part 5 – Repeal of Act

Clause 17: Provides that this Act is repealed a year after it commences.