

CLAUSE NOTES

Crimes (Miscellaneous Amendments) Bill 2013

- Clause 1:** Short title
- Clause 2:** Commencement date
- Clause 3:** Principal Act for Part 2 – *Criminal Code Act 1924*
- Clause 4:** Amendments to Principal Act:
- a) Inserts definition of “motor vehicle” in section 1. The definition is required because of the use of the term in the new carjacking offence;
 - b) Omits section 92 (Maintenance), an obsolete crime that is not a criminal offence in any other Australian jurisdiction;
 - c) Amends section 150 to clarify that the duty to take precaution or care to avoid danger includes management of an animal that may endanger human life;
 - d) Inserts a new section creating crimes of carjacking and aggravated carjacking;
 - e) Inserts a new section creating a general crime of fraud;
 - f) Deletes paragraph 297(1)(d) consequential on the creation of the new general fraud crime;
 - g) Consequential amendment related to h) below;

- h) Inserts a new requirement in section 331B(2) that the Court warn the defendant of the requirements of new section 368B;
- i) Inserts a new section 331B(2A) to restrict an application under section 331B(2)(a) as of right to the first appearance of the defendant. At all other times the application can only be made with the leave of the Court;
- j) Inserts a new section 334C to provide for an alternative conviction of an offence under section 32(1) of the *Traffic Act 1925* on a charge of causing death by dangerous driving;
- k) Inserts a new paragraph (d) in section 337B(1) to add another possible alternative conviction of an indecent act with or directed at a young person to a charge of maintaining a sexual relationship with a young person;
- l) Inserts a new paragraph (ba) in section 338(1) to include the new crime of fraud as a possible alternative conviction to other crimes of dishonesty;
- m) Amends section 350(1) to allow a person appearing for the Crown, as well as a Crown Law Officer, to inform the court that the Crown will not proceed further;
- n) Inserts a new section 368B to provide that a defendant who intends to adduce admissible opinion evidence within the meaning of the *Evidence Act 2001* must give a notice of evidence containing certain specified information to the Director of Public Prosecutions within certain specified times.

The section sets out consequences for non-compliance.

The section further provides that if the defendant intends to adduce admissible opinion evidence relevant to his or her mental state or medical condition at the time of the offence, the court or judge may require the defendant to submit to an examination by a suitably qualified person at the prosecutor's expense.

The section will apply to admissible opinion evidence to be adduced in a trial on indictment and proceedings under the *Criminal Justice (Mental Impairment) Act 1999*.

- o) Replaces section 402(4A) and inserts new subsections (4B) – (4D) to clarify the provisions relating to the element of “double jeopardy” in resentencing; to allow the Court of Criminal Appeal to remit the resentencing of the offender to the court of trial after an appeal has been determined and to clarify what the court of trial is to do if a matter is remitted to it;
- p) Inserts a new paragraph (ab) in section 409(1) to allow the Court of Criminal Appeal to order a person convicted, or a person respondent to a prosecution appeal to attend Court on the hearing of the appeal or to receive judgement in relation to the appeal;
- q) Makes an amendment to section 411(2) consequential to the insertion of new paragraph 409(1)(ab);

- r) Inserts “Indecent assault” into the list of crimes for which an offender may be arrested without a warrant in Appendix A.

- Clause 5:** Principal Act for Part 3 – *Justices Act 1959*
- Clause 6:** Amends section 71 of the Principal Act to provide that the new crime of fraud (section 253A) may be tried summarily if the value of the benefit or detriment is no more than \$5000.
- Clause 7:** Amends section 72 of the Principal Act to provide that the defendant may elect to have the new crime of fraud (section 253A) tried summarily if the value of the benefit or detriment exceeds \$5000 but does not exceed \$20,000.
- Clause 8:** Amends section 110 of the Principal Act to insert new subsections to mirror sections 402(4A) and (4B) of the Criminal Code and provide that on hearing a motion to review in relation to an order imposing sentence a Court must not take into account the fact that the Court's decision may mean that the person is sentenced for the crime a second time but may take into account any matter relevant to sentencing that has occurred between when the sentencing order was made and the hearing of the motion to review. The section further provides that if a court quashes an order the matter may be remitted to the justices to be dealt with subject to any directions in law.
- Clause 9:** Amends section 113A to provide that on hearing an appeal under the section, which may result in the exercising of a power in relation to sentencing, a magistrate must not take into account the fact that

his or her decision may mean that the person is sentenced for an offence a second time but may take into account any matter relevant to sentencing that has occurred between when a sentencing order was made and the hearing of the appeal.

Clause 10: Amends section 113B to provide that on hearing an application under the section in relation to an order imposing sentence, a magistrate must not take into account the fact that the his or her decision may mean that the person is sentenced for an offence a second time but may take into account any matter relevant to sentencing that has occurred between when a the order to which the reviews relates was made and the review of the order.

Clause 11: Repeals the amending Act one year after all of the amendments contained have been incorporated into the Principal Acts.