

CRIMINAL CODE AMENDMENT (UNLAWFUL POSSESSION) BILL 2013

EXPLANATORY MEMORANDUM

Overview of the Bill

The Criminal Code (Unlawful Possession) Bill 2013 will make the offence of possessing stolen or unlawfully obtained property an 'either way' offence. It will also increase the penalty for this offence when heard on indictment to make it consistent with the penalties for stealing set out in section 378 of the *Criminal Code*.

The Bill proposes to amend the *Criminal Code* and to make consequential amendments to the *Sentencing Act 1995* and the *Wildlife Conservation Act 1950*.

Part 1

Part 1 of the Bill provides that Part 1 of the Act will come into effect on assent, that Part 3 Division 1 will come into effect on a day fixed by proclamation, and that the remainder of the Act will come into effect on a day fixed by proclamation. This Part also provides that Part 3 Division 1 is not to commence operation before section 181(4) of the *Criminal Organisations Control Act 2012* comes into operation.

Part 2

Part 2 of the Bill creates two new sections in the *Criminal Code*. Subsection 417(1) mirrors the existing 428 except that it provides that possessing stolen or unlawfully obtained property may be heard on indictment, replaces 'offence' with 'crime' in line with the current wording used in the *Criminal Code*, and provides that the penalty is seven years' imprisonment unless a specific punishment is provided in section 417A. It also retains the current summary conviction penalty. Subsection 417(2) mirrors the language currently used in section 428(2) regarding a defence to a charge of possessing stolen or unlawfully obtained property.

Section 417A sets out additional penalties for 'special cases' that mirror, where relevant, those set out with respect to stealing in section 378.

Part 2 also deletes section 428 and references to that section from the *Criminal Code*.

Part 3

Part 3 of the Bill makes consequential amendments to other legislation.

Division 1

Division 1 of Part 3 of the Bill amends sections of the *Sentencing Act 1995* which will themselves be amended by the *Criminal Organisations Control Act 2012* when it comes into effect.

The *Criminal Organisations Control Act 2012* will insert lists of 'relevant indictable offences' and 'relevant simple offences' in the *Sentencing Act 1995* for the purposes of section 9D, which prescribes mandatory minimum sentences for certain offences in certain circumstances.

Currently, section 428 is listed as a 'relevant summary offence' and the Bill proposes therefore to delete 'section 428' in the list (to be included in the *Sentencing Act*) and replace it with the new proposed section 417.

The offence of 'stealing' per se in section 378 of the *Criminal Code* is not currently included as a 'relevant indictable offence'. However, stealing in the following 'special cases' is included:

- s378(2) where the thing stolen is a motor vehicle and the offender drives it in a manner constituting an offence under the *Road Traffic Act 1974* s60 or s61
- s378(4a) where the thing stolen is an aircraft
- s378(5) if the thing is stolen in a variety of circumstances, such as from a distressed vessel or from the person of another.

The 'special cases' in sections 378(2) and 378(4a) are mirrored in the proposed sections 417A(3) and (4)) respectively. In the interests of consistency these new proposed sections are also proposed to be included as 'relevant indictable offences' for the purposes of the *Criminal Organisations Control Act 2012*.

Division 2

Division 2 of Part 3 of the Bill will replace a reference to section 428 to a reference to section 417 in the *Wildlife Conservation Act 1950*.

