



ACT DEPARTMENT OF JUSTICE
& COMMUNITY SAFETY

Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Bill 2003 – Consultation arrangements

The Government proposes to introduce the *Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Bill 2003* in the Legislative Assembly in November this year. In order to meet the proposed timetable it is most important that we obtain your comments by no later than close of business on **Monday 27 October 2003**.

The Bill will insert new chapter 3 in the *Criminal Code 2002* (the *Criminal Code*) and replace existing offences in the *Crimes Act 1900* and the *Crimes (Offences against the Government) Act 1989* with a modern scheme of offences on theft, fraud, blackmail, forgery, bribery and other related offences. The proposed legislation will also simplify and reduce the size of the ACT statute book by repealing a large number of offences in other ACT Acts and Regulations that will be made redundant by the proposed new offences in chapter 3.

The Bill is the third stage in a process that began in September 2001 to progressively reform the criminal law of the ACT. The reforms are primarily based on the *Model Criminal Code* (the MCC), developed by the national Model Criminal Code Officers Committee (MCCOC) and established by the Standing Committee of Attorneys-General. All governments committed themselves to the development of a uniform criminal code in 1991 and through the Standing Committee of Attorneys-General, established MCCOC for that purpose.

In December 2002 the Legislative Assembly passed the Criminal Code, which but for a few provisions, commenced on 1 January 2003. The Criminal Code currently consists of chapters 1, 2 and 4. Chapter 1 is yet to commence and will eventually contain the mechanical provisions of the Criminal Code. Chapter 2 sets out the general principles of criminal responsibility that apply to all ACT offences created on or after 1 January 2003 and eventually will apply to all ACT criminal law. Chapter 4 contains modern property damage, computer and sabotage offences based on chapter 4 of the MCCOC reports.

The offences in this Bill are primarily based on the MCCOC chapter 3 report, issued in December 1995 and titled "*Theft, Fraud, Bribery and Related Offences*". MCCOC also issued a supplementary chapter 3 report in May 1997, titled "*Conspiracy to Defraud*", which is the basis for the conspiracy to defraud offence in clause 334 of the Bill. Both reports can be downloaded from the Commonwealth Attorney-General's home page at http://www.ag.gov.au/publications/Model_Criminal_Code/index.htm. The draft Bill and Explanatory Statement will also be posted on the Department's home page at <http://www.jcs.act.gov.au/>.

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In addition to the MCCOC reports the Bill takes into account improvements on chapter 3 of the MCC that have been developed by the Commonwealth in the Commonwealth Criminal Code (the CCC) and also some improvements that are currently in operation in the ACT *Crimes Act 1900*. The Bill also includes some additional offences based on offences in the CCC that MCCOC has not reported on.

I have enclosed two documents to assist you in your consideration of the draft Bill and Explanatory Statement. The first (Attachment A) is a table that lists the clauses of the Bill and the corresponding provisions in the MCC, CCC, Crimes Act and the *Crimes (Offences against the Government) Act 1989*. The second document (Attachment B) explains the position the Department has taken in relation to four specific issues. The Department would appreciate any comments that respondents could make on the issues raised.

If there are any matters you wish to discuss in relation to the Bill or the Criminal Code Project generally, please do not hesitate to contact the action officer, Claude Monzo, on Ph 620-70515.

ATTACHMENT "A"

Table of clauses in the *Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Bill 2003* and corresponding provisions in the Model Criminal Code ("MCC"), the Commonwealth Criminal Code ("CCC"), the *Crimes Act 1900* and the *Crimes (Offences against the Government) Act 1989* ("GO").

Bill	The provision	Model Crim. Code	Cth Crim. Code	Crimes Act/Govt Offences Act
300	Definitions for Chapter 3 "Dishonest" "Gain", "Loss" "Offensive weapon" "Property" "Services and supply" Public official/Territory Public official	14.2 & 14.3 14.2 14.3 14.4 20.1	130.1 130.3 130.1 132.3 130.1	Dict. 83
301	Person to whom property belongs	14.5	130.2	85(1)
302	Dishonesty a matter for trier of fact	14.2(2)	130.4	
303	Dishonesty for part 3.2	15.2	131.2	86(3), (4), (5)
304	Appropriation of property for part 3.2	15.3	131.3	86(1), (2)
305	Person to whom property belongs for part 3.2	15.5	131.5 to 131.9	85
306	Intention to permanently deprive for part 3.2	15.6	131.10	87(1), (2), (3)
307	General deficiency	15.7	131.11	112
308	Part 3.2 – Theft	15.1	131.1	89
309	Robbery	16.1	132.2	91(1), 90
310	Aggravated Robbery	16.2	132.3	92
311	Burglary	16.3	132.4	93
312	Aggravated burglary	16.4	132.5	94
313	Receiving	16.8	132.1	105
314	Receiving – meaning of stolen property	16.8(2)	132.1	88
315	Going equipped for theft	16.7	132.7	107
316	Going equipped with offensive weapon for theft etc	16.7		150
317	Making off without payment	16.6	132.6	98(1)
318	Taking motor vehicle without consent	16.5		111
319	Dishonestly taking Territory property		132.8	9 (GO)
320	Dishonestly retaining Territory property		132.8	9 (GO)
321	Minor theft - summary offence			90
322	Removal of articles on public exhibition – summary offence			149
323	Making off without payment – summary offence			98(2)
324	Unlawful possession of stolen property	Pages		386

		125-127 of the MCC report		
325	Part 3.3 - Definitions for part 3.3 – Fraudulent conduct “Account” “Deception”	17.1	133.1	
326	Obtaining property by deception	17.2	134.1	84 & 86
327	Meaning of dishonesty	17.2	134.1	86(3)
328	Meaning of obtains	17.2	134.1	
329	Intention of permanently depriving	15.6	134.1	87
330	Money transfers		134.1	
331	General deficiency	15.7	134.1 (13) & (14)	112
332	Obtaining financial advantage by deception	17.3	134.2	95, 96, 97
333	General dishonesty Offence		135.1	8 (OG)
334	Conspiracy to defraud	17.4	135.4	
335	Obtaining financial advantage from the Territory		135.2	
336	Passing valueless cheques – summary offence			99
337	Part 3.4 - Making false and misleading statements		136.1	6, 7 and 21 (OG)
338	Giving false or misleading information		137.1	6, 7, and 21 (OG)
339	Producing false or misleading documents		137.2	6, 7 and 21 (OG)
340	Part 3.5 Blackmail Meaning of menace for part 3.5	18.3	138.2	104
341	Meaning of unwarranted demand with a menace for part 3.5	18.2	138.1	104
342	Blackmail	18.1	139.1 and 139.2	104
343	Part 3.6 Forgery and related offences Definitions for part 3.6 “Document”		143.1	83, 100-102
344	Meaning of false document	19.2	143.2	124
345	Inducing acceptance that document genuine	19.1(2)		125(2)
346	Forgery	19.3	144.1	126(1), (3)
347	Using false document	19.4	145.1	126(2),(4)
348	Possessing false document	19.5	145.2	127
349	Making or possession of devices etc for making false documents	19.6	145.3	128
350	False accounting	19.7		100
351	False statement by officer of body	19.8		102
352	Part 3.7 Bribery and related offences Definitions for part 3.7 “Benefit”	20.1	140.1	14,15 and 20 (OG)
353	Meaning of agent and principal for part 3.8	20.1		

354	Dishonesty for part 3.6			
355	Meaning of obtain for part 3.6		140.2	
356	Bribery	20.2	141.1	
357	Other corrupting benefits	20.3	142.1	
358	Payola	20.4		
359	Abuse of public office	20.5	142.2	
360	Part 3.8 Impersonation or obstruction of Territory public officials Impersonating Territory public official		148.1, 148.2	17 (OG)
361	Obstructing Territory public officials		149.1	18 (OG)
362	Impersonating police officers			17A(1) (OG)
363	Impersonating a detective			17A(2) (OG)
364	Part 3.9 Procedural matters of ch. 3 Stolen property held by dealer			109
365	Stolen property held by police - disposal			110
366	Procedure and evidence – theft, receiving etc			113, 114(2)
367	Certain proceedings not to be held together			123
368	Indictment for offences relating to deeds, money etc			155, 156
369	Theft of motor vehicle – cancellation of licence			349
	Alternative verdicts -			111(3)
370	Theft and taking motor vehicle without consent			111(3)
371	Alternative Verdicts - Theft or obtaining property by deception and receiving	16.8(4)	132.1 (9) & (10)	
372	Theft and obtaining property by deception	17.2(4)	134.1 (15) & (16)	
373	Verdict of 'theft and receiving' etc			114(1)
374	Making false or misleading statements		136.1	
375	Forfeiture Going equipped offences – forfeiture			107(3), 150(2)
376	Unlawful possession offence - forfeiture			386A
377	Unlawful possession offence – disposal of forfeited property by public trustee			386B
378	Unlawful possession offence – return of or compensation for forfeited property			386C
379	Forgery offences – forfeiture			129

ATTACHMENT B

This document explains the position the Department has taken in relation to four specific issues. The Department would appreciate any comments that respondents could make on the issues raised.

Section 14.6 of the MCC - Special provisions concerning criminal proceedings by spouses

It is proposed, at this stage, not to include an equivalent of section 14.6 of the MCC and to repeal section 153 of the *Crimes Act 1900* (the Crimes Act), which is similar.

Subsection 16A of the *Married Persons (Property and Torts) Act 1901* (NSW), formerly the *Married Women's Property Act 1901* ("the NSW Act") provided that the parties to a marriage could not bring proceedings against the other for an offence relating to the property they owned (eg for theft) if the parties were living together at the time of the alleged offence.

Section 153 of the Crimes Act (and its equivalent in the *Theft Act*) changed this by providing that spouses can bring proceedings against the other for a property related offence, whether they were living together at the time of the alleged offence or not. However, the written consent of the Attorney-General or the DPP is required to institute the proceedings (subsection 153(3)).

As MCCOC explains at page 129 of its report, section 14.6 of the MCC (and 153 of the Crimes Act) is not required if subsection 16A of the NSW Act no longer operates. This is because, in the absence of anything to the contrary, the offences in chapter 3 of the Bill (and chapter 4 of the Criminal Code) will apply to spouses in the same way as they apply to any co-owner who commits a property offence against another co-owner.

Section 17 of the *Married Persons' Property Ordinance 1986* (No. 18 of 1986), ceased the operation of the NSW Act in the ACT. Accordingly, it is considered unnecessary to include section 14.6 of the MCC or to retain section 153 of the Crimes Act.

Subsection 15.4(1) of the MCC – A person cannot commit theft of land

The Bill does not include an equivalent of section 15.4 of the MCC. That section provides that a person cannot commit theft of land or anything that forms part of land and is severed from it. However, there are 3 exceptions. These are where (i) a trustee appropriates land by dealing with it in breach of trust; (ii) a person who is not in possession of the land severs something forming part of it; and (iii) a tenant steals a fixture. Section 131.4 of the CCC is similar.

MCCOC's reasons for excluding land (and things that form part of land) from the theft offence appear at pages 47 to 49 of its report. Essentially it argues that fraud is "generally" the more appropriate offence for dealing with the dishonest appropriation of land and that to include land "may" trespass on areas better dealt with by the civil land laws. MCCOC said that there are no demonstrated problems that justify "extending" the theft offence to cover the theft of land. It concluded that, although it may appeal to logic to include land, there are uncertainties and the benefits are hard to justify.

The Crimes Act does not exclude land (and things that form part of land) from the theft offence but it would seem that this is primarily because theft and property fraud are covered by the same offence (see sections 84, 89 and paragraph 86(1)(a)). Nevertheless, MCCOC's reasons for excluding land are not persuasive, particularly since section 15.4 of the MCC includes exceptions. The proposed provision seems to add an unnecessary level of complexity to the provisions on theft. It is also worth noting that MCCOC mentions in its report that numerous submissions were in favour of the theft offence applying to the theft of land.

Section 108 of the Crimes Act makes it an offence for a person to suggest in an advertisement for the return of stolen property that the person returning the property will not be prosecuted. MCCOC recommended against the inclusion of such an offence in the MCC and doubted that it should even be a summary offence (see page 105 of its report). It said that “to punish someone who has been the victim of a theft for attempting to get their property back – when the reality is that even with the advertisement there is little likelihood of that happening – is too harsh”. Comments are specifically requested on this issue.

The inclusion of summary offences and procedural/evidentiary provisions the Criminal Code.

The MCC is essentially a model for serious offences and does not “generally” include summary offences or procedural/evidentiary provisions (but see the chapter 5 report on sexual offences). On the other hand, the various parts of the Crimes Act include indictable and summary offences as well as procedural/evidentiary provisions. The Crimes Act approach appears to be more convenient for practitioners. Accordingly chapter 3 follows a format whereby any related summary offences for a part are included in a separate division at the end of the part. See, for example, divisions 3.2.3, 3.3.4 and 3.8.2. Similarly, any procedural and evidentiary provisions relevant to the chapter are located together in a separate part at the end of chapter 3 (see part 3.9).

The Department specifically requests the views of respondents on this approach. Subject to the comments we receive, it is proposed to follow this approach for all the chapters of the Criminal Code.