

Sentencing and Other Acts (Amendment) Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

- Clause 1 sets out the purposes of the Act
- Clause 2 provides for the commencement of the various provisions of the Act

PART 2—AMENDMENT OF SENTENCING ACT 1991

- Clause 3 provides that in this Part the **Sentencing Act 1991** is called the Principal Act.
- Clause 4 contains definitions of terms used in the Act.
- Clause 5 inserts two new guidelines into section 5 of the Principal Act.

Section 5(2AA)(a) is declaratory of the common law position that the court must not have regard in sentencing an offender to any possibility or likelihood that the length of time actually spent in custody by the offender will be affected by executive action of any kind. Such executive action would include any action which the Adult Parole Board might take in respect of a sentence.

Section (2AA)(b) directs the court, when considering sentencing an offender, not to have regard to any sentencing practices which arose out of the application of section 10 of the Principal Act.

Section 10 (1) was in the following terms:

"When sentencing an offender to a term of imprisonment a court must consider whether the sentence it proposes would result in the offender spending more time in custody, only because of the abolition of remission entitlements by section 3 (1) of the **Corrections (Remissions) Act 1991**, than he or she would have spent had he or she been sentenced before the commencement of that section for a similar offence in similar circumstances."

If section 10(1) applied, section 10 (2) required the court to reduce the sentence it would otherwise have passed by one third. Section 10 of the

Principal Act sunsetted on 22 April 1997. The sunset clause was in the following terms:

"It is intended that the expiry of this section will not of itself have any effect on sentencing practices and that after the expiry a court will, as required by section 5 (2)(b), have regard to sentencing practices current immediately before then as if this section had not expired."

In *R v Boucher* [1995] 1 VR 110, section 10 was interpreted to apply only to offences where the maximum penalty had remained unaltered by the Principal Act. The court took the view that Parliament had already taken into account the abolition of remissions when formulating the new penalties. This led to inconsistent and anomalous sentencing practices, which had the effect of distorting the scale of effective maximum penalties.

Section 5(2AA)(b) requires the court to disregard any sentencing practices which developed from the application of section 10 of the Sentencing Act 1991. This is intended to include the principles expressed in *Boucher's* case.

Clause 6 introduces a new Part 2A to the Act concerning "serious offenders".

The new Part 2A consolidates the serious offender provisions which previously appeared at sections 3, 5A and 16 of the Principal Act and utilises a series of Schedules to define relevant offences which trigger the provisions. In addition, two new categories of "serious offenders" have been introduced; the "serious drug offender" and "serious arson offender" categories.

Section 6A sets out the application of the Part.

Section 6B sets out definitions for the purposes of the Part. To be a "serious arson offender", an offender must have been convicted of an "arson offence" for which the offender was sentenced to a term of imprisonment or detention in a youth training centre. An offence may only be an "arson offence" if it is referred to in the offences listed in clause 5 of Schedule 1 which has been introduced into the Principal Act.

To be a "serious drug offender", an offender must have been convicted of a "drug offence" for which the offender was sentenced to a term of imprisonment or detention in a youth training centre. An offence may only be a "drug offence" if it is referred to in the offences listed in clause 4 of Schedule 1 which has been introduced into the Principal Act.

To be a "serious sexual offender", an offender must have been convicted of at least two "sexual offences" or at least one "sexual offence" and one "violent offence" arising out of the one course of conduct, and for each offence the offender must have been sentenced to a term of imprisonment or detention in a youth training centre. An offence may only be a "sexual offence" if it is referred to in the offences listed in clause 1 of Schedule 1 which has been introduced into the Principal Act. An offence may only be a "violent offence" if it is referred to in the offences listed in clause 2 of Schedule 1 which has been introduced into the Principal Act.

To be a "serious violent offender", an offender must have been convicted of a "serious violent offence" for which the offender was sentenced to a term of imprisonment or detention in a youth training centre. An offence may only be a "serious violent offence" if it is referred to in the offences listed in clause 3 of Schedule 1 which has been introduced into the Principal Act. The definition of "violent offence" includes all of the offences which are capable of being described as a "serious violent offence" but also includes other offences.

Section 6C deals with the factors which are relevant to the consideration of whether an offender is a "serious offender". The court must have regard to a relevant conviction irrespective of whether it is recorded:

- (a) in the current trial or hearing; or
- (b) in another trial or hearing; or
- (c) in different trials or hearings held at different times; or
- (d) in separate trials of different counts in the one presentment.

Section 6C(2) requires a court to be satisfied beyond reasonable doubt that the offender was convicted of a relevant offence before it acts upon a conviction in determining whether an offender is a "serious offender".

Section 6C(3) deals with the power of the court to have regard to convictions for offences against a law of the Commonwealth or of a place outside Victoria. If a court is satisfied beyond reasonable doubt that the offence is substantially similar to an offence provided in clauses 1, 2, 3, 4 and 5 of Schedule 1 of this Act, and the offender was sentenced to be imprisoned or detained in relation to that offence, then conviction for that offence must be treated as a conviction for a relevant offence.

Section 6C(4) provides that proof of a conviction for the purposes of sub-clause 6C must be in accordance with section 395 of the **Crimes Act 1958**.

Section 6D describes factors relevant to the length of a prison sentence which may be imposed on a serious offender.

This section provides that where a court is sentencing a serious offender for a relevant offence and considers that a sentence of imprisonment is justified, the court, in determining the length of that sentence:

- (a) must regard the protection of the community as the principal purpose of the sentence; and
- (b) may, in order to achieve that purpose, impose a sentence which is longer than the sentence which would be proportionate to the offence in view of the objective circumstances of the offence.

Section 6E provides that every term of imprisonment imposed on a serious offender for a relevant offence must be served cumulatively unless the court orders otherwise.

Section 6F requires the court to note in the records of the court the fact that the offender was sentenced as a serious offender. A statement of that fact may also be included in a certificate under section 87(1) of the **Evidence Act 1958** or in a certified statement of conviction issued under section 395 of the **Crimes Act 1958**.

Clause 7 makes amendments consequential on the insertion of the new Part 2A.

Parts of section 3(1) and all of sections 3(2), 5A and 16(3A) of the **Sentencing Act 1991** are **repealed**.

Sub-clause (4) substitutes a new paragraph (c) for section 16(1A)(c) of the Principal Act. Section 16 of the Principal Act deals with whether sentences are concurrent or cumulative. Section 16(1A) lists certain circumstances in which the presumption that sentences are concurrent does not apply. The new paragraph (c) states that the presumption does not apply in relation to sentences imposed on a serious offender for a relevant offence. The new paragraph (c) reflects the new types of serious offenders and is consistent with the presumption that sentences be served cumulatively as provided by Section 6E in clause 6.

Clause 8 amends sections 5 and 7 of the Principal Act to insert a new sentencing order, known as a Combined Custody and Treatment Order (CCTO), into the hierarchy of sentencing orders. This clause also makes amendments to reflect

the existence of the new definition of "young offender" and the ability of the court to sentence a young offender to be detained in a youth residential centre in certain circumstances.

Clause 9 inserts a new section 9 into the Principal Act to provide the Magistrates' Court with the power to impose an aggregate sentence of imprisonment in certain circumstances.

Section 9(1) states that if an offender is convicted by the Magistrates' Court of two or more offences which are connected with each other, it may impose an aggregate sentence of imprisonment in place of a separate sentence of imprisonment in respect of each offence. The power to impose an aggregate sentence is founded on a proper joinder of the charges before the court. (See for example the **Crimes Act 1958**, Rule 2, Sixth Schedule). A similar power is contained in section 51 of the Principal Act in respect of fines.

The power is not limited to sentencing for summary offences, but applies to any proceedings in the Magistrates' Court, including indictable offences being tried summarily.

Section 9(2) clarifies that the term of the aggregate sentence cannot exceed the total effective period of imprisonment which could have been imposed had separate sentences been imposed.

Section 9(3) requires the Magistrates' Court to provide reasons for deciding to impose the aggregate sentence and to explain the effect of the proposed sentence.

Clause 10 amends section 16 of the Principal Act to deal with the sentencing of offenders who commit offences while on parole or bail.

Sub-clause (1) substitutes new paragraphs (d) and (e) into section 16(1A) of the Principal Act. The new paragraphs (d) and (e) add to the existing exceptions to the presumption of concurrency of sentences of imprisonment. The presumption does not apply in relation to sentences imposed on an offender convicted of an offence committed when the offender was released under a parole order or when the offender was on bail for another offence.

Sub-clause (2) substitutes new sections 16(3B) and (3C) into the Principal Act. Section 16(3B) requires a sentence of imprisonment imposed on an offender for an offence committed while on parole to be served cumulatively on any period of imprisonment which that offender may be required to serve in custody on cancellation of the parole order, unless otherwise directed by the court because of the existence of exceptional circumstances.

In *R v Kuru* (1995) 78 A Crim R 447 the Victorian Court of Appeal held that an offender is not to be regarded as actually serving a sentence when released on parole. Accordingly, there was no sentence in existence upon which another sentence could be ordered to be served cumulatively. Under the new sub-section, the court will be required to order cumulation of the sentence unless there are exceptional circumstances.

Section 16(3C) reverses the presumption of concurrency in relation to an offender being sentenced for an offence committed while on bail for another offence.

Clause 11 amends section 18 of the Principal Act by extending the circumstances in which a declaration pursuant to section 18(1) may be made. Section 18 of the Principal Act provides a mechanism for recognising the period of time an offender has been held in custody prior to sentence, as well as for treating such terms as a period of imprisonment already served under the sentence. The aim of the amendments is to enable section 18 declarations to be made in as many cases as possible. It is no longer necessary for the time held in custody to be exclusively referable to the offence for which the offender is being sentenced before a declaration pursuant to section 18(1) of the Act is made. See, for example, the case of *R v Renzella*, unreported, Court of Appeal (Vic.) 6/9/1996.

Clause 11(2)(a) clarifies that such declarations cannot be made in respect of intensive correction orders.

Clause 11(2)(b) inserts a new sub-section (d) into section 18 to clarify that the offender should not receive a benefit for pre-sentence detention more than once for any specific period of pre-sentence custody.

Clause 11(3) amends section 18(4) of the Act to remove the inconsistent requirement referred to in *R v McGrath*, unreported, Court of Criminal Appeal (Vic.) 15/9/1992. When a court imposes a sentence of imprisonment, in circumstances in which section 18(1) of the Act applies, it must make a declaration concerning whether any period of time is to be reckoned as a period of imprisonment served as part of the sentence imposed. When a sentence of imprisonment is imposed it is not normally reduced by the amount of pre-sentence imprisonment. Therefore any period of pre-sentence imprisonment which should be reckoned as part of that sentence which has been served, should be declared as served.

Corresponding amendments have been made to the provisions governing sentences of detention imposed on young offenders in section 35 of the Principal Act.

Clause 12 inserts a new sub-division (1B) into Division 2 of Part 3 of the Principal Act to create a new sentencing order known as the Combined Custody and Treatment Order (CCTO).

Under section 18(Q), a CCTO may only be made in certain circumstances. It may only be made where the court is satisfied that drunkenness or drug addiction contributed to commission of the offence and where the court is considering sentencing the offender to a term of not more than 12 months imprisonment. Before imposing such a sentence, the court must order and receive a pre-sentence report. If the above criteria apply the court may sentence an offender to a CCTO if it considers that it is desirable to do so and the offender consents to it.

Section 18(Q)(2) grants the court the discretion to order a drug and alcohol assessment report in addition to the mandatory pre-sentence report and to adjourn the proceeding to enable this to be prepared.

Where an offender is being sentenced in relation to a number of offences, a CCTO may only be made where the total effective sentence or aggregate sentence that the court proposes to impose, does not exceed 12 months imprisonment. A CCTO is regarded as a sentence of imprisonment for the duration of the order, which includes the period when the offender is released into the community.

Section 18R sets out the core conditions of a CCTO. A CCTO must have all the core conditions attached to it. Section 18R(1)(a) provides that the offender must not, for the duration of the order, commit another offence punishable by imprisonment. Section 18R(1)(b) sets out the core conditions which apply to the community portion of the CCTO. Section 18R(3) requires the court to order a drug and alcohol pre-release report to be prepared prior to the release of the offender from the custody portion of the CCTO.

Section 18S sets out the program conditions which the court may attach to the CCTO. The court is not required to attach any program conditions to the CCTO.

Section 18T states that the court may impose a fine in combination with a CCTO.

Section 18U provides that the Secretary to the Department of Justice may permit an offender to change the place or person to whom the offender is required to report in accordance with the CCTO.

Section 18V provides that in certain circumstances during the period when the offender is released from custody, such as where the offender is ill, the operation of the CCTO may be suspended.

Section 18W sets out the effect of breaching the CCTO and the procedures which apply to a breach of the order. Under sub-section (1), a failure without reasonable excuse to comply with any condition of the CCTO constitutes an offence for which the offender may be proceeded against on a charge filed by a prescribed person or member of a prescribed class of persons. Such a proceeding may be commenced at any time within 3 years after the date on which the offence is alleged to have been committed.

Section 18W(3) sets out the procedures for dealing with a breach of a CCTO. On the filing of a charge under sub-section (1), an application under section 28(1) of the **Magistrates' Court Act 1989** may be made for the issue of a summons or a warrant. These must direct the defendant to attend at the court which imposed the CCTO to answer the charge. Section 18W(4) enables the County or Supreme Court to hear and determine without a jury an offence against sub-section (1) if the CCTO was made by it.

Section 18W(5) sets out the options of the court if it finds the offender guilty of a charge under sub-section (1). It may impose up to a maximum of a level 12 fine (see section 109(2) of the Principal Act) and in addition is required to either:

- (a) confirm the original order; or
- (b) order the offender to serve in custody the whole part of the sentence that was to be served in the community.

Section 18W(6) provides that where the CCTO has been breached, the court must imprison the offender pursuant to section 18W(5)(b) unless there are exceptional circumstances. If the court does not so imprison the offender, it must give its reasons in writing. Section 18W(8) clarifies that an imprisonment term ordered under sub-section (5) must be served immediately (and not, for example, be suspended) and cumulatively unless the court otherwise orders.

Clause 13 amends sections 19 and 26 of the Principal Act which concern breaches of Intensive Correction Orders (ICO's).

The aim of these amendments is to make the procedures for dealing with breaches of non-custodial orders under the Principal Act uniform. Under the amended section 26, breach proceedings are commenced and determined in a similar fashion as for the CCTO, described above.

Clause 13(3) inserts new sub-sections (2),(3), (3A) and (3B) into section 26 of the Principal Act. Section 26(3A) sets out the options of the court if it finds the offender guilty of a charge under sub-section (1). It may impose up to a maximum of a level 12 fine (see section 109(2) of the Principal Act) and in addition is required to:

- (a) vary the ICO; or
- (b) confirm the ICO; or
- (c) cancel the ICO and imprison the offender for the unexpired portion of the ICO.

Section 26(3B) provides that where the ICO was breached by the offender committing an offence punishable by imprisonment during the period of the ICO, the court must imprison the offender pursuant to section 26(3A)(c) unless there are exceptional circumstances. Section 26(4) has been amended to provide that an imprisonment term ordered under sub-section (3A)(c) must be served immediately (and not, for example, be suspended) and cumulatively unless the court otherwise orders.

Clause 14 amends parts of sections 3 and 27 of the Principal Act dealing with the suspended sentences of imprisonment. The clause also repeals section 28 of the Principal Act, which provides for conditional suspensions in cases of drunkenness or drug addiction. The clause also makes amendments consequential on the repeal of section 28.

Sub-clause (2) extends the power of the County Court and the Supreme Court to suspend a sentence of imprisonment where up to 3 years imprisonment is imposed. The present limitations on the suspended sentence order in the Magistrates' Court of 2 years maximum is preserved. Sub-clause (2A) confirms that the period for which the gaol term may be suspended is either the length of the gaol term or another period specified by the court not exceeding 2 years in the Magistrates' Court and 3 years in the Supreme and County Courts. If the offender commits an offence punishable by imprisonment during this period, he or she will be in breach of the suspended sentence order.

Clause 15 amends section 31 of the Principal Act which deals with breaches of an order suspending a sentence.

The aim of these amendments is to make the procedures for dealing with breaches of non-custodial orders under the Principal Act uniform. Under the amended section 31, breach proceedings are commenced and determined in a similar fashion as for the CCTO, described above.

Clause 15(1) substitutes new sub-sections (1) to (5B) into the Principal Act. Sub-section (5) sets out the options of the court if it finds the offender guilty of an charge under sub-section (1). It may impose up to a maximum of a level 12 fine (see section 109(2) of the Principal Act) and in addition is required to:

- (a) restore the sentence or part sentence held in suspense and order the offender to serve it; or
- (b) restore part of the sentence or part sentence held in suspense and order the offender to serve it; or
- (c) extend the period of a wholly suspended sentence; or
- (d) make no order with respect to the suspended sentence.

A suspended sentence can only be breached by the offender committing an offence punishable by imprisonment during the period of the order. Section 31(5A) provides that upon a breach of a suspended sentence, the court must imprison the offender pursuant to section 31(5)(a) unless there are exceptional circumstances. Section 31(6) has been amended to provide that an imprisonment term ordered under sub-section (5)(a) must be served immediately (and not, for example, be suspended) and cumulatively unless the court otherwise orders.

Clauses 16 & 17 concern Youth Training Centre orders and Youth Residential Centre orders. These clauses amend various sections of the Principal Act to insert consistent terminology, for example, the use of "young offender" throughout the Principal Act. The amendments also clarify that, in sentencing a young offender, the Supreme and County courts may impose up to a maximum of 3 years detention. Section 32 has also been amended to enable the court to order detention in a Youth Residential Centre in respect of young offenders who at the time of being sentenced are under 15 years of age.

The amendments clarify that the provisions of the Principal Act are paramount when courts other than the Children's Court are sentencing a young offender, who is defined in section 3 as being an offender who at the time of being

sentenced is under the age of 21 years. For an example of the difficulties which the courts have had in interpreting the interrelationship of the provisions of the **Children and Young Persons Act 1989** and the Principal Act when sentencing children, see the case of *R v Hill* [1996] 2 VR 496.

Clause 18 amends section 36(2) of the Principal Act to clarify that a Community Based Order (CBO) must not be imposed in conjunction with either an Intensive Correction Order or a sentence of imprisonment which is wholly or in part suspended. That is, the term of imprisonment of not more than 3 months referred to in sub-section (2) must involve immediate incarceration.

Clause 19 amends sections 36 and 47 of the Principal Act which deal with breaching community based orders.

The aim of these amendments is to make the procedures for dealing with breaches of non-custodial orders under the Principal Act uniform. Under the amended section 47, breach proceedings are commenced and determined in a similar fashion as for the CCTO, described above.

Clause 20 amends section 70 of the Principal Act to clarify that for the purposes of breach proceedings, an order under the Division made on appeal by the Court of Appeal must be taken to have been made by the court from whose decision the appeal was brought. (Note that identical amendments have been made in respect of the other non-custodial orders available under the Principal Act. See, for example, clause 14(5) which substitutes a new sub-section (9) into section 27 of the Principal Act dealing with suspended sentences.)

Clause 21 amends section 79 of the Principal Act which deals with breaching orders for release on adjournment.

The aim of these amendments is to make the procedures for dealing with breaches of non-custodial orders under the Principal Act uniform. Under the amended section 79, breach proceedings are commenced and determined in a similar fashion as for the CCTO, described above.

Clause 22 amends section 93(5) of the Principal Act to clarify that where a person is subject to a Hospital Security Order and the chief psychiatrist discharged the person as a security patient, that discharge must be performed in accordance with Division 4 of Part 4 of the **Mental Health Act 1986**. See the comments of the Court of Appeal in *R v Tognolini* unreported, Court of Appeal, 21/10/1996.

Clause 23 amends section 96(2) of the Principal Act to make provision for pre-sentence reports and the CCTO.

Clause 24 inserts a new Division 2A into Part 6 of the Principal Act concerning drug and alcohol reports under the CCTO. The new Division 2A comprises sections 99A to 99E.

Section 99A(1) provides that where a drug and alcohol report has been ordered under the new section 18Q(2), it must be prepared by an approved drug and alcohol assessment agency.

Section 99A(2) states that the purpose of the report is to assess whether the offender is an alcoholic or drug-dependent person and to make recommendations about the offender's suitability for a CCTO.

Section 99B requires a drug and alcohol assessment report to be filed with the court no later than the time directed by the court. Sub-section (2) requires the author of the report to distribute it to certain persons a reasonable time before sentencing is to take place.

Section 99C sets out procedures to apply where a drug and alcohol assessment report is disputed.

Section 99D deals with drug and alcohol pre-release reports. These are to be prepared by an approved drug and alcohol assessment agency. It must specify any treatment for alcohol or drug addiction that the offender is to undergo during the period of the CCTO. Under section 99D(4), it must be distributed in the manner described in the sub-section within a reasonable time before the offender's release from custody.

Section 99E sets out the manner in which the drug and alcohol assessment agency may be approved by the Secretary to the Department of Human Services.

Clause 25 makes certain consequential amendments.

Clause 26 inserts a new section 104A into the Principal Act to grant a court the power to correct clerical mistakes or errors arising from an accidental slip or omission in passing sentence or giving judgment.

This power is not intended to take away from any similar power possessed by the court at common law. Proceedings to rectify an error may be commenced by the court on its own motion or upon an application by either the prosecution or the defence. Normally this power would be exercised by the particular

Magistrate or Judge who made the judgment, sentence or order which requires rectification. Where this rectification cannot occur within a reasonable time, another Magistrate or Judge may exercise this rectification power.

Section 104A(4) clarifies that a proceeding under the section need not be conducted in open court nor need it involve written submissions, unless the judge or magistrate considers it desirable or necessary in the interests of justice in the particular case.

Clause 27 inserts a new Table 1 into section 109(1) of the Principal Act comprising 9 maximum penalty levels. Maximum terms of imprisonment are now described in terms of years rather than months.

Clause 28 makes amendments consequential on the new penalty scale.

Clause 29 inserts a new section 109A into the Principal Act. The new provision clarifies that the statement of the penalty level is paramount. If there is any inconsistency between the penalty level and any other statement which may accompany it of an amount of imprisonment or fine, the penalty level will prevail.

Clause 30 amends section 111 of the Principal Act which deals with the location and effect of penalty provisions.

Clause 31 inserts new sections 113A to 113C into the Principal Act. These provisions all concern jurisdictional matters.

Section 113A provides that despite anything to the contrary in any Act, the maximum term of imprisonment to which an offender may be sentenced for a summary offence is 2 years imprisonment.

Section 113B used to appear at section 16(5) of the Principal Act. Apart from having been moved, the provision is otherwise unchanged.

Section 113C used to appear at section 9 of the Principal Act. Apart from having been moved, the provision is otherwise unchanged.

Clause 32 repeals section 16(5) of the Act, consequentially upon the introduction of clause 31.

Clause 33 inserts a new section 118 into the Principal Act in substitution for the existing sections 118 and 119. These are the transitional provisions for the 1997 amendments.

Clause 34 inserts new Schedules into the Principal Act in substitution for the present Schedules. The new Schedules are:

Schedule 1—Serious Offender Offences.

Schedule 2—Forms for use where other offences are taken into account in sentencing. (That is, the previous Schedule 1 of the Act is now contained in Schedule 2 of the Act.)

PART 3—AMENDMENT OF DRUGS, POISONS AND CONTROLLED SUBSTANCES ACT 1981

Clause 35 provides that in this Part the **Drugs, Poisons and Controlled Substances Act 1981** is called the Principal Act.

Clause 36 sub-clause 1(a) substitutes the definition of drug of dependence in the Act. The sub-clause amends the definition to reflect the restructure of Schedule 11 which includes a new Part that refers to the 6 most commonly used illicit drugs. The definition has been expanded to include drugs set out in the new Part.

Sub-clause 1(b) inserts "extract" in the definition of substance in the Act.

Sub-clause (2) repeals section 4(3) of the Act which refers to Tetrahydrocannabinol. This drug is now listed in proposed Part 3, Schedule 11 and falls within the definition of a drug of dependence.

Clause 37 sub-clause (a) substitutes a definition of "cannabis" which deletes the reference to Tetrahydrocannabinol. This is now dealt with in proposed Part 3 of Schedule 11.

Sub-clause (b) substitutes a definition of "commercial quantity". Proposed subsection (b) of the definition refers to a number of cannabis plants which will raise the presumption of trafficking or cultivating in a commercial quantity as well as possession of a particular weight of cannabis.

Proposed sub-section (c) of the definition refers to the amended Part 3 Schedule 11 which specifies a pure quantity (that is, the amount of drug contained in the substance seized) in Column 2, and a dilute quantity (that is, the total weight of the substance seized) in Column 2A of drugs. Trafficking in a commercial quantity attracts a higher penalty.

Sub-clause (c) deletes the reference to Tetrahydrocannabinol in the definition of a "small quantity". This will be covered by the inclusion of that drug in

proposed Part 3 Schedule 11. The proposed definition refers to the specification of small quantities for other commonly used illicit drugs, in addition to cannabis, in the proposed Part 3 Schedule 11. The definition includes the total weight of the substance seized.

Sub-clause (d) substitutes a new definition for "traffickable quantity".

Subsection (b) of the proposed definition refers to the number of cannabis plants which will raise the presumption of trafficking in that drug as well as possession of a particular weight of cannabis. Proposed subsection (c) of the definition provides for the creation of the proposed Part 3, Schedule 11 and makes it clear that the definition refers to the total weight of the substance seized including the drug and any other substance.

Clause 38 inserts a new provision into section 71 of the Act. This provision enables a court in sentencing an offender who trafficks to a child to impose a higher penalty than if trafficking to an adult had occurred. The penalty for trafficking to a child has been set at a maximum of 20 years imprisonment or 2400 penalty units.

Clause 39 inserts two new offences into the Act. Proposed section 71A provides for a new offence of being in possession of substance, material, certain documents (including recipes) or equipment with intent to manufacture, cultivate or prepare a drug of dependence for the purpose of trafficking. The penalty for this offence is set at level 5 imprisonment.

Proposed section 71B provides for a new offence of supplying a drug of dependence to a child for the purposes of the child supplying that drug to another child or supply for the use of the child. This is distinct from the trafficking provisions which refer to the sale of drugs to the child. The offence carries a maximum penalty of 15 years imprisonment or 1000 penalty units. The section does not apply to a person if that person is also a child and it is a defence to the offence if the person is able to prove that he or she believed on reasonable grounds that the person to whom the drug was supplied was over 18 years.

Clause 40 inserts proposed section 72(1)(ab) which provides for higher penalties for offenders convicted of cultivating a narcotic plant where the court is satisfied beyond reasonable doubt that the cultivation was in a commercial quantity. This was to address the problem raised in the recent Court of Appeal case of *Coviello* unreported, Court of Appeal (Vic.) 11/7/1995. In that case the court held that the calculation of a quantity of drug said to be in an offender's possession for "sale", (that is, trafficked), involves a deduction of the weight of plant which is not considered generally saleable, that is, roots, stalks and

stems. As the definition of traffick is strictly defined and does not currently include cultivation, it is necessary for the prosecution to prove what parts of the plant are in possession "for sale". The proposed section 72(1)(ab) is intended to alleviate this problem.

- Clause 41 expresses penalties in Part 5 of the Act in terms of levels rather than expressions of time.
- Clause 42 amends sections 73 and 75 of the Act to enable an offender found in possession of a small quantity of Tetrahydrocannabinol to be eligible for similar penalties as those offenders found in possession of a small quantity of cannabis. Often users of cannabis who are unable to obtain a supply of cannabis use products containing Tetrahydrocannabinol. For consistency they should be subject to the same penalty regime.
- Clause 43 provides for a new sentencing order for offenders who are convicted of offences under sections 73, 75, 79 or 80, where the offence involves a small quantity of a drug of dependence as set out in the proposed Column 4 Part 3 of Schedule 11. In those situations the court shall place the offender on a twelve month good behavior bond with a condition that the person completes an approved drug education and information program.
- Clause 44(1) provides for the issue of warrants where it is anticipated that an offence may occur on premises in the next 72 hours or that items relevant to an offence will be on the premises in the next 72 hours. These amendments are consistent with amendments made by the **Miscellaneous Acts (Omnibus Amendments) Act 1996**.

Sub-clause (2) inserts a new subsection into section 81. Proposed section 81(3)(e) enables a police officer who has obtained a warrant in accordance with section 81 to destroy or dispose of a drug of dependence and other things set out in proposed section 81(3)(e) if an analyst or botanist has certified that destruction or disposal of the thing is required in the interests of health or safety. In appropriate cases the destruction or disposal may only take place if a sample has been taken.

Sub-clause (5) provides that where a sample has been taken and there is sufficient sample for analysis for the purposes of the investigation and on behalf of the defendant a part of the sample sufficient for analysis must be delivered to a botanist or analyst nominated by the defendant.

Sub-clause (6) enables the destruction or disposal of things ordered to be destroyed after a finding of fact has been made under section 83(1) before the

end of the relevant appeal period if a sample of the thing to be destroyed is taken and kept until the end of the appeal period.

Sub-clause (7) removes the discrepancies between the wording of the warrant contained in Schedule 10 of the Act and the enabling sections of the Act.

Clause 45 Sub-clause (1) repeals the entries relating to AMPHETAMINE, COCAINE, DIACETYLMORPHINE (HEROIN), LYSERGIC ACID DIETHYLAMIDE, METHYLAMPHETAMINE, METHYLENEDIOXYAMPHETAMINE, 3,4-METHYLENEDIOXYAMPHETAMINE, 3,4-METHYLENEDIOXY-*N*-METHYLAMPHETAMINE in Part 1 of Schedule 11 of the Act.

Sub-clause (2) substitutes new columns 2,3 and 4 in Part 2 of Schedule 11. The substituted columns decrease the commercial quantity of cannabis L. and prescribes a number of cannabis plants as constituting commercial or traffickable quantities as well as weight of cannabis.

Clause 46 substitutes a new Part 3 in Schedule 11. The proposed Part 3 refers to the six most prevalent illicit drugs and specifies revised quantities of the drug listed in Column 1. The quantities applicable to those drugs have been revised from the current Act resulting in reduced levels for commercial and trafficking quantities. Two quantities have been provided for commercial quantities. Column 2 refers to the amount of drug contained in the substance seized, column 2A refers to the total weight of the substance seized. Column 3 sets out the quantities applicable to traffickable quantities and column 4 specifies small quantities in relation to the 6 drugs of dependence.

PART 4—AMENDMENT OF BAIL ACT 1977

Clause 48 amends section 4(2)(aa) of the **Bail Act 1977** to provide that a court shall refuse bail to persons charged with trafficking or cultivation in a commercial quantity of a drug referred to in Schedule 11 to the **Drugs, Poisons and Controlled Substances Act 1981** unless exceptional circumstances exist.

PART 5—AMENDMENT OF CHILDREN AND YOUNG PERSONS ACT 1989

Clause 50 amends sections 16 and 134 of the **Children and Young Persons Act 1989** to set out the limitation on the jurisdiction of the Children's Court to hear and determine certain indictable charges summarily. The Children's Court does not have jurisdiction to hear and determine charges of murder, attempted murder, manslaughter, arson causing death and culpable driving causing death.

- Clause 51 amends sections 187, 189 and 249(b) of the **Children and Young Persons Act 1989** and repeals section 254 of that Act. These amendments clarify the interrelationship of the provisions of the **Children and Young Persons Act 1989** and the Principal Act.
- Clause 52 amends section 276 of the **Children and Young Persons Act 1989** to clarify that the Supreme and County Courts have the full range of sentencing options when sentencing children. It confirms that they may make any sentencing order which the Children's Court may make under the **Children and Young Persons Act 1989**, except that an order that a child be detained in a Youth Residential or Youth Training Centre must be made in accordance with Subdivision (4) of Division 2 of Part 3 of the Principal Act.
- Clause 53 inserts transitional provisions into the **Children and Young Persons Act 1989**.

PART 6—AMENDMENT OF CRIMES ACT 1958

- Clause 54 amends section 54 of the **Crimes Act 1958** by substituting a new sub-section (1). The effect of the amendment is to provide an additional circumstance in which the offence of burglary may be regarded as aggravated burglary. A person is also guilty of aggravated burglary if at the time of committing the burglary, a person was present in the premises and the offender either knew that a person was present or was reckless about the presence of a person.
- Clause 55 creates a new offence of arson causing death. If an offender commits the offence of arson as defined in section 197 of the **Crimes Act 1958** and thereby causes the death of another person, the offender is guilty of arson causing death. The offence carries a maximum penalty of level 2 imprisonment (25 years maximum).
- Clause 56 inserts a new Division 9A into Part 1 of the **Crimes Act 1958** prescribing maximum terms of imprisonment for certain common law offences. Previously, there was no statutory maximum term of imprisonment prescribed for these offences.
- Clause 57 amends section 395(3) of the **Crimes Act 1958**.
- Clause 58 amends section 427 of the **Crimes Act 1958** to allow for a statutory alternative verdict to a charge of arson causing death. The amendment provides that where a person is charged with the offence of arson causing death and is acquitted by a jury of that offence, a jury may still find the accused guilty of an offence contrary to section 197 of the **Crimes Act 1958**.

Clause 59 repeals section 568 of the **Crimes Act 1958** and inserts new sub-sections (5) to (7). These amendments provide the Court of Appeal with the power to quash a sentence and remit a matter to the trial court for sentencing if it thinks it appropriate and in the interests of justice to so. It is expected that the exercise of this power will be exceptional. See, for example, the comments of the Victorian Court of Appeal in the case of *Webber* (1996) 86 A Crim R 361.

Clause 60 sub-clause (1) amends the **Crimes Act 1958** as set out in Schedule 1. Schedule 1 sets out the new maximum penalties, which will apply to any offence committed after the commencement of the provision. (See clause 27 which provides a new scale of maximum penalties of imprisonment).

Sub-clause (2) amends section 202 of the **Firearms Act 1996**.

Clause 61 repeals section 465(5) of the **Crimes Act 1958**. (Clause 44(1) inserts the repealed provisions into the **Drugs, Poisons and Controlled Substances Act 1981**).

Clause 62 concerns statute law revision.

Clause 63 provides transitional provisions.

PART 7—AMENDMENT OF MAGISTRATES' COURT ACT 1989

Clause 64 inserts a reference to an aggregate sentence of imprisonment and an aggregate fine into the definition of "sentencing order" at section 3 of the **Magistrates' Court Act 1989**.

Clause 65 amends section 53(1A) and Schedule 4 to the **Magistrates' Court Act 1989** concerning indictable offences triable summarily. The amendments reflect the new scale of imprisonment terms and are not intended to alter the types of offences which may be heard summarily. The amendments also remove some anomalies from the operation of the provisions.

Sub-clause (2) inserts a new sub-section (1C) into section 53. The new provision states that section 53(1) does not apply to an indictable offence by virtue of sub-section (1A) if that offence is referred to in Schedule 4 but the reference to that offence in that Schedule is qualified by reference to a specified amount or value or a specified kind of property.

Some offences which were formerly referred to in Schedule 4 of the **Magistrates' Court Act 1989** have been removed from that Schedule but the offences remain triable summarily by virtue of the operation of section 53(1A) of the **Magistrates' Court Act 1989**.

Changes to the maximum penalties for offences contrary to section 17 and 27 of the **Crimes Act 1958** means that these offences are no longer triable summarily by operation of section 53(1A) of the **Magistrates' Court Act 1989**. These two offences have been added to Schedule 4 of the **Magistrates' Court Act 1989** and therefore these offences continue to be triable summarily.

Clause 66 makes amendments relating to appeals from the Magistrates' Court to the County court.

These provide for consistency between the operation of the Principal Act and the **Magistrates' Court Act 1989** and make special provision for appeals against aggregate sentences. Where an aggregate sentence of imprisonment or fine is the subject of an appeal to the County Court, the Magistrates' Court Registrar must ensure that the original charge sheet or charge sheets are transmitted to the registrar of the County Court. The aim of this amendment is to ensure that the County Court has all the relevant charges before it.

PART 8—AMENDMENT OF OTHER ACTS

Clause 67 amends the **Alcoholics and Drug-dependent Persons Act 1968** consequentially upon the repeal of section 28.

Clause 68 inserts a new maximum penalty into section 33(1) of the **Prisoners (Interstate Transfer) Act 1983**.

Clause 69 inserts a new maximum penalty into section 41Q(1) of the **Crimes (Confiscation of Profits) Act 1986**.

Clause 70 inserts new maximum penalties into the **Prostitution Control Act 1994**.

Clause 71 inserts new maximum penalties into the **Legal Practice Act 1996**.

TABLE INDICATING THE PREVIOUSLY PRESCRIBED MAXIMUM PENALTY FOR AN OFFENCE AND THE NEW PRESCRIBED MAXIMUM PENALTY FOR AN OFFENCE

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Section 3 Murder (common law)	Level 1 imprisonment (Life)	Level 1 imprisonment (Life)
Section 3A Murder (Crimes Act)	Level 1 imprisonment (Life)	Level 1 imprisonment (Life)
Section 5 Manslaughter	Level 3 imprisonment (15 years)	Level 3 imprisonment (20 years)

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Section 6 Infanticide	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 6B(1A) Suicide pact manslaughter	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Section 6B(2) Inciting, aids or abets suicide	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 6B(2) Being party to a suicide pact	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Section 9A(1) Treason	Level 1 imprisonment (Life)	Level 1 imprisonment (Life)
Section 9A(2) Knowingly receiving or assisting a person guilty of treason	Level 3 imprisonment (15 years)	Level 3 imprisonment (20 years)
Section 10 Child destruction	Level 5 imprisonment (10 years)	Level 4 imprisonment (15 years)
Section 16 Causing serious injury intentionally	Level 4 imprisonment (12½ years)	Level 3 imprisonment (20 years)
Section 17 Causing serious injury recklessly	Level 5 imprisonment (10 years)	Level 4 imprisonment (15 years)
Section 18 Causing injury intentionally	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Section 18 Causing injury recklessly	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 19(1) Administering a substance to another	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 19A Intentionally causing a very serious disease	25 years imprisonment	Level 2 imprisonment (25 years)
Section 20 Threats to kill	Level 7 imprisonment (5 years)	Level 5 imprisonment (10 years)
Section 21 Threats to inflict serious injury	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Section 21A Stalking	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 22 Conduct endangering life	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Section 23 Conduct endangering persons	Level 6 imprisonment (7½ years)	Level 6 imprisonment (5 years)
Section 24 Negligently causing serious injury	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 25 Setting traps to kill	Level 4 imprisonment (12½ years)	Level 4 imprisonment (15 years)
Section 26 Setting traps to cause serious injury	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 27 Extortion with threat to kill	Level 6 imprisonment (7½ years)	Level 4 imprisonment (15 years)
Section 28 Extortion with threat to destroy property	Level 7 imprisonment (5 years)	Level 5 imprisonment (10 years)
Section 29 Using firearm to resist arrest	Level 5 imprisonment or Level 5 fine (10 years or 1200 Penalty Units)	Level 5 imprisonment (10 years) or Level 5 fine (1200 penalty units)
Section 30 Threatening injury to prevent arrest	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 31 Assaults	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Section 32 Performing female genital mutilation	Level 4 imprisonment (12½ years)	Level 4 imprisonment (15 years)
Section 33 Taking a person from the State to perform female genital mutilation	Level 4 imprisonment (12½ years)	Level 4 imprisonment (15 years)
Section 38 Rape	25 years imprisonment	Level 2 imprisonment (25 years)
Section 39 Indecent assault	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 40 Assault with intent to rape	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 44 Incest		
Sub-section (1) with a child etc.	Level 2 imprisonment (20 years)	Level 2 imprisonment (25 years)
Sub-section (2) with an under 18 child etc. of de facto spouse	Level 2 imprisonment (20 years)	Level 2 imprisonment (25 years)
Sub-section (3) with father or mother etc. where offender is 18 or older	Level 6 imprisonment (7½ years)	Level 6 imprisonment (5 years)

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Sub-section (4) with sister or brother etc.	Level 6 imprisonment (7½ years)	Level 6 imprisonment (5 years)
Section 45 Sexual penetration of child under 10	Level 2 imprisonment (20 years)	Level 2 imprisonment (25 years)
Section 46 Sexual penetration of child 10–16 Sub-section (1)(a) under care, supervision or authority	Level 3 imprisonment (15 years)	Level 4 imprisonment (15 years)
Sub-section (1)(b) any other case	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 47 Indecent act with child under 16	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 47A Sexual relationship with child under 16	Maximum penalty for the relevant offence	Level 2 imprisonment (25 years)
Section 48 Sexual penetration of a 16 or 17 year old child (under care, supervision or authority)	Level 8 imprisonment (3 years)	Level 5 imprisonment (10 years)
Section 49 Indecent act with 16 year old child	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Section 49A Facilitating sexual offences against children	Level 2 imprisonment (20 years)	Level 3 imprisonment (20 years)
Section 51 Sub-section (1) Sexual penetration of person with impaired mental functioning by medical or therapeutic service provider	Level 7 imprisonment (5 years)	Level 5 imprisonment (10 years)
Sub-section (2) Indecent act with person with impaired mental functioning by medical or therapeutic service provider	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Section 52 Sub-section (1) Sexual penetration by worker of resident in residential facilities	Level 7 imprisonment (5 years)	Level 5 imprisonment (10 years)
Sub-section (2) Indecent act by worker of resident in residential facilities	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Section 53 Administering drug for sexual penetration	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 54 Occupier, etc. inducing or knowingly allowing unlawful sexual penetration (a) where child is aged under 13	Level 5 imprisonment (10 years)	Level 4 imprisonment (15 years)
(b) where child is aged between 13–17	Level 7 imprisonment (5 years)	Level 5 imprisonment (10 years)
Section 55 Abduction or detention for sexual penetration	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 56 Abduction of child under 16 for sexual penetration	Level 6 imprisonment (7½ years)	Level 6 imprisonment (5 years)
Section 57 Sub-section (1) Procuring sexual penetration by threats or intimidation	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Sub-section (2) Procuring sexual penetration by fraud	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 58 Procuring sexual penetration of child under 16	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 59 Bestiality	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 60 Soliciting acts of sexual penetration or indecent acts	Level 10 imprisonment or Level 10 fine (1 year or 120 Penalty Units)	Level 8 imprisonment (1 year) or Level 11 fine (60 Penalty Units)

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Section 60A Sexual offence while armed with an offensive weapon	Level 8 imprisonment (3 years)	Level 7 imprisonment (2 years)
60B Loitering near schools etc.	Level 10 imprisonment or Level 11 fine (1 year or 60 Penalty Units)	Level 8 imprisonment (1 year)
Section 63 Sub-section(1) Child stealing	Level 6 imprisonment (7½ years)	Level 6 imprisonment (5 years)
Sub-section (2) Takes, decoys or entices away a child	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 63A Kidnapping	Level 2 imprisonment (20 years)	Level 2 imprisonment (25 years)
Section 64 Bigamy	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 65 Abortion (attempt to procure)	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Section 66 Supplying or procuring anything to be employed in abortion	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Section 67 Concealing birth of a child	Level 11 imprisonment (6 months)	6 months
Section 68 Production of child pornography	Level 9 imprisonment (2 years)	Level 5 imprisonment (10 years)
Section 69 Procuring of minor for child pornography	Level 7 imprisonment (5 years)	Level 5 imprisonment (10 years)
Section 70 Possession of child pornography	Level 10 imprisonment (1 year)	Level 7 imprisonment (2 years)
Section 70A Piracy with violence	Level 3 imprisonment (15 years)	Level 3 imprisonment (20 years)
Section 70B Piratical acts	Level 1 imprisonment (Life)	Level 3 imprisonment (20 years)
Section 70C Trading etc. with pirates	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 70D Being found on board piratical vessel and unable to prove non-complicity	Level 11 imprisonment (6 months)	Level 6 imprisonment (5 years)

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Section 74 Theft	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 75 Robbery	Level 4 imprisonment (12½ years)	Level 4 imprisonment (15 years)
Section 75A Armed robbery	Level 2 imprisonment (20 years)	Level 2 imprisonment (25 years)
Section 76 Burglary	Level 4 imprisonment (12½ years)	Level 5 imprisonment (10 years)
Section 77 Aggravated burglary	Level 3 imprisonment (15 years)	Level 2 imprisonment (25 years)
Section 78 Removal of articles from places open to the public	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 80(1) Unlawfully taking control of an aircraft	Level 4 imprisonment (12½ years)	Level 4 imprisonment (15 years)
Sub-section (2) where force or violence etc. is used	Level 3 imprisonment (15 years)	Level 3 imprisonment (20 years)
Section 81 Obtaining property by deception	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 82 Obtaining financial advantage by deception	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 83 False accounting	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Section 83A Falsification of documents Sub-section (1)–(5B) Sub-section (5C)	Level 6 imprisonment (7½ years) Level 9 imprisonment (2 years)	Level 5 imprisonment (10 years) Level 6 imprisonment (5 years)
Section 85 False statements by company directors etc.	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Section 86 Suppression etc. of documents	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Section 87 Blackmail	Level 4 imprisonment (12½ years)	Level 4 imprisonment (15 years)
Section 88 Handling stolen goods	Level 5 imprisonment (10 years)	Level 4 imprisonment (15 years)

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Section 89 Advertising rewards for return of goods stolen or lost	Level 13 fine (5 Penalty Units)	Level 13 fine (5 Penalty Units)
Section 91 Going equipped for stealing etc.	Level 8 imprisonment (3 years)	Level 7 imprisonment (2 years)
Section 176 Receipt or solicitation of secret commission by an agent corporation • person	Level 5 fine (1200 Penalty Units) Level 5 imprisonment and/or Level 5 fine (10 years and/or 1200 Penalty Units)	Level 5 fine (1200 Penalty Units) Level 5 imprisonment (10 years) and/or Level 5 fine (1200 Penalty Units)
Section 178 Giving or receiving false or misleading receipt or account corporation person	Level 5 fine (1200 Penalty Units) Level 5 imprisonment and/or Level 5 fine (10 years and/or 1200 Penalty Units)	Level 5 fine (1200 Penalty Units) Level 5 imprisonment (10 years) and/or Level 5 fine (1200 Penalty Units)
Section 179 Gift or receipt of secret commission in return for advice given corporation person	Level 5 fine (1200 Penalty Units) Level 5 imprisonment and/or Level 5 fine (10 years and/or 1200 Penalty Units)	Level 5 fine (1200 Penalty Units) Level 5 imprisonment (10 years) and/or Level 5 fine (1200 Penalty Units)
Section 180 Secret commission to trustee in return for substituted appointment corporation	Level 5 fine (1200 Penalty Units)	corporation ; level 5 fine (1200 Penalty Units)

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
<ul style="list-style-type: none"> other person 	Level 5 imprisonment and/or Level 5 fine (10 years and/or 1200 Penalty Units)	person; Level 5 imprisonment (10 years) and/or level 5 fine (1200 Penalty Units)
Section 181 Aiding and abetting offences within or outside Victoria <ul style="list-style-type: none"> corporation 	Level 5 fine (1200 Penalty Units)	Level 5 fine (1200 Penalty Units)
<ul style="list-style-type: none"> other person 	Level 5 imprisonment and/or Level 5 fine (10 years and/or 1200 Penalty Units)	Level 5 imprisonment (10 years) and/or Level 5 fine (1200 Penalty Units)
Section 182 Liability of directors etc. acting without authority <ul style="list-style-type: none"> corporation other person 	Level 5 fine (1200 Penalty Units) Level 5 imprisonment and/or Level 5 fine (10 years and/or 1200 Penalty Units)	Level 5 fine (1200 Penalty Units) Level 5 imprisonment (10 years) and/or level 5 fine (1200 Penalty Units)
Section 191(1) Fraudulently inducing persons to invest money	Level 5 imprisonment (10 years)	Level 4 imprisonment (15 years)
Section 197 Destroying or damaging property	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Sub-section (1) damaging property	(Level 4 imprisonment (12½ years))	Level 4 imprisonment (15 years)
Sub-section (2) damaging property intending to endanger another's life		
Sub-section (3) damaging property for gain	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Sub-section (7) Arson	Level 4 imprisonment (12½ years)	Level 4 imprisonment (15 years)

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Section 197A Arson causing death	not applicable	Level 2 imprisonment (25 years)
Section 198 Threats to destroy or damage property	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 199 Possessing anything with intent to destroy or damage property	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Section 206 Rioters demolishing buildings Sub-section (1)	Level 6 imprisonment (7½ years)	Level 4 imprisonment (15 years)
Sub-section (2)	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 207 Forcible entry	Level 10 imprisonment and/or Level 10 fine (1 year and/or 120 Penalty Units)	Level 8 imprisonment (1 year)
Section 225 Conveying water into a mine	Level 6 imprisonment (7½ years)	Level 6 imprisonment (5 years)
Section 228 Removing etc. piles of sea banks	Level 6 imprisonment (7½ years)	Level 6 imprisonment (5 years)
Section 232 Placing things on railways to obstruct or overturn engine etc.	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Section 233 Obstructing engine, carriage etc. on railway	Level 9 imprisonment (2 years)	Level 7 imprisonment 2 years
Section 244 Altering signals or exhibiting false ones	Level 6 imprisonment (7½ years)	Level 5 imprisonment (10 years)
Section 245 Removing buoy etc	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Section 246A Endangering safe operation of an aircraft	Level 5 imprisonment (10 years)	Level 4 imprisonment (15 years)
Section 246B Setting fire etc. to aircraft	Level 6 imprisonment (7½ years)	Level 4 imprisonment (15 years)

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Section 246C Endangering safety of aircraft	Level 7 imprisonment (5 years)	Level 5 imprisonment (10 years)
Section 246D (1) Dangerous goods on aircraft	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 246E Threats to safety of aircraft	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 247 False statements	Level 9 imprisonment (2 years)	Level 6 imprisonment (5 years)
Section 248 sub-sections (1)–(3) Contamination of goods	Level 5 imprisonment and/or Level 5 fine (10 years and/or 1200 Penalty Units)	Level 5 imprisonment (10 years)
Section 314 Perjury	Level 4 imprisonment (12½ years)	Level 4 imprisonment (15 years)
Section 316(1) Unlawful oaths to commit treason, murder etc.	Level 7 imprisonment (5 years)	Level 5 imprisonment (10 years)
316(2) Unlawful oaths for other offences	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Section 317 Offences connected with explosive substances		
Sub-section (2)	Level 4 imprisonment (12½ years)	Level 4 imprisonment (15 years)
Sub-section (3)	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Sub-section (4)	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 317A Bomb hoaxes	Level 7 imprisonment and/or Level 7 fine (5 years and/or 600 Penalty Units)	Level 6 imprisonment (5 years)
Section 318 Culpable driving causing death	Level 3 imprisonment and/or Level 3 fine (15 years and/or 1800 Penalty Units)	Level 3 imprisonment (20 years)
321C Penalties for conspiracy; Sub-section (1)(a) to commit an offence with a prescribed maximum	Liable to the maximum prescribed for the substantive offence	Liable to the maximum prescribed for the substantive offence

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Sub-section (1)(b) to commit an offence where the penalty is imprisonment for a term the maximum length of which is not prescribed	Level 5 imprisonment (10 years)	Level 4 imprisonment (15 years) (for common law offences)
Sub-section (1)(ba) to commit murder or treason or piratical acts	Level 1 imprisonment (Life)	Level 1 imprisonment (Life)
Sub-section (1)(d) to commit a summary offence	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)
Sub-section (2) to commit an offence against a law in force only in a place outside Victoria— (a) punishable by a term of imprisonment	Level 7 imprisonment (5 years)	Liable to the maximum prescribed as if the conspiracy was to commit an offence against the laws of Victoria
(b) in any other case	Level 7 fine (600 Penalty Units)	Level 7 fine (600 Penalty Units)
Section 321I Penalties for incitement		
Sub-section (1)(a) to commit an offence with a prescribed maximum	Liable to the maximum prescribed for the offence	Liable to the maximum prescribed for the substantive offence
Sub-section (1)(b) to commit an offence where the penalty is imprisonment for a term the maximum length of which is not prescribed	Level 7 imprisonment (5 years)	Level 4 imprisonment (15 years)
Sub-section (1)(ba) to commit murder or treason or piratical acts	Level 1 imprisonment (Life)	Life
Sub-section (1)(d) to commit a summary offence	Level 8 imprisonment (3 years)	Level 6 imprisonment (5 years)

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Sub-section (2) to commit an offence against a law in force only in a place outside Victoria— (a) punishable by a term of imprisonment (b) in any other case	Level 7 imprisonment (5 years) Level 7 fine (600 Penalty Units)	Liable to the maximum prescribed as if the incitement was to commit an offence against the laws of Victoria Level 7 fine (600 Penalty Units)
Section 321P Penalties for attempt		See item 94 of Schedule 1
Section 325 Sub-section (4)(a) where the principal offence is punishable by Level 1 imprisonment Sub-section (4)(b) in any other case	Level 2 imprisonment (20 years) imprisonment for a term not more than 60 months nor more than ½ the length of the longest term which may be imposed on first conviction for the principal offence	Level 3 imprisonment (20 years) imprisonment for a term not more than 60 months nor more than ½ the length of the longest term which may be imposed on first conviction for the principal offence
Section 326 Concealing offences for benefit	Level 10 imprisonment (1 year)	Level 8 imprisonment (1 year)
Section 343 Obstruction	Level 11 fine	Level 11 fine
Section 357(3) Failing or refusing to comply with a warrant to discharge a person from imprisonment	5 Penalty Units	5 Penalty Units
Section 415(1A) Issue of warrant when witness does not appear	Level 13 fine (5 Penalty Units)	Level 13 fine (5 Penalty Units)
443A Failing to comply with an undertaking to the Director of Public Prosecutions	Level 12 fine (10 penalty units)	Level 12 fine (10 penalty units)

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
456AA Requirement to give name and address	Level 13 fine (5 penalty units)	Level 13 fine (5 penalty units)
456E Offence by an employee or member of a law enforcement agency	Level 10 fine (1200 penalty units)	Level 10 fine (1200 penalty units)
464O Destruction of records	Level 12 fine (10 penalty units)	Level 12 fine (10 penalty units)
464ZG Destruction of identifying information	Level 10 imprisonment or Level 10 fine	Level 10 imprisonment or Level 10 fine
Section 479A Rescuing of a prisoner from lawful custody	Level 5 imprisonment (10 years)	Level 5 imprisonment (10 years)
Section 479B Aiding a prisoner in escaping	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)
Section 479C Escape and related offences	Level 7 imprisonment (5 years)	Level 6 imprisonment (5 years)

Maximum penalties introduced for common law offences for which no statutory maximum penalty had previously been fixed

OFFENCE	PRESCRIBED MAXIMUM PENALTY
Affray	Level 6 imprisonment (5 years)
Attempting to pervert the course of justice	Level 2 imprisonment (25 years)
Breach of Prison	Level 6 imprisonment (5 years)
Bribery of Public official	Level 5 imprisonment (10 years)
Common assault	Level 6 imprisonment (5 years)
Conspiracy to cheat and defraud	Level 4 imprisonment (15 years)
Conspiracy to defraud	Level 4 imprisonment (15 years)
Criminal defamation	Level 5 imprisonment (10 years)
Embracery	Level 4 imprisonment (15 years)
False imprisonment	Level 5 imprisonment (10 years)
Kidnapping	Level 2 imprisonment (25 years)
Misconduct in public office	Level 5 imprisonment (10 years)
Perverting the course of justice	Level 2 imprisonment (25 years)
Public Nuisance	Level 6 imprisonment (5 years)
Riot	Level 5 imprisonment (10 years)
Rout	Level 6 imprisonment (5 years)
Unlawful assembly	Level 6 imprisonment (5 years)

Amendments to the maximum penalties of other Acts

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Crimes (Confiscation of Profits) Act 1986 Section 41Q Money laundering	10 years imprisonment	Level 3 imprisonment (20 years)
Drugs, Poisons and Controlled Substances Act 1981 Section 71 Trafficking in a drug of dependence— (a) commercial quantity (b) any other case	25 years imprisonment and not more than 2500 penalty units 15 years imprisonment and/or 1000 penalty units	Level 2 imprisonment (25 years) and not more than 2500 penalty units Level 4 imprisonment (15 years) and/or 1000 penalty units
Section 72 Cultivation of a narcotic plant (a) not for any purpose related to trafficking) (b) any other case	1 year imprisonment and/or 20 penalty units 15 years imprisonment and/or 1000 penalty units	Level 8 imprisonment (1 year) and/or 20 penalty units Level 4 imprisonment (15 years) and/or 1000 penalty units
Section 73 Possession of a drug of dependence (a) small quantity (b) not for a purpose related to trafficking (c) any other case	5 penalty units 1 year imprisonment and/or 30 penalty units 5 years imprisonment and/or 400 penalty units	5 penalty units Level 8 imprisonment (1 year) and/or 30 penalty units Level 6 imprisonment (5 years) and/or 400 penalty units
Section 78 Conspiring	same penalty and punishment as if the offender committed the offence	same penalty and punishment as if the offender committed the offence

OFFENCE	PREVIOUSLY PRESCRIBED MAXIMUM PENALTY	NEW PRESCRIBED MAXIMUM PENALTY
Legal Practice Act 1996		
Section 188 Solicitor defalcation	10 years imprisonment	Level 4 imprisonment (15 years)
Section 263 Improperly destroying property	3 years imprisonment	Level 6 imprisonment (5 years)
Prisoners (Interstate Transfer) Act 1983		
Section 33 (1) Escape from custody	7 years imprisonment	Level 6 imprisonment (5 years)
Prostitution Control Act 1994		
Section 5 Causing or inducing child to take part in prostitution	7 years imprisonment	Level 5 imprisonment (10 years)
Section 6 Obtaining payment for sexual services provided by a child	7 years imprisonment	Level 4 imprisonment (15 years)
Section 7 Agreement for provision of sexual services by a child	7 years imprisonment	Level 4 imprisonment (15 years)
Section 8 Forcing person into or to remain in prostitution	7 years imprisonment	Level 5 imprisonment (10 years)
Section 9 Forcing person to provide financial support out of prostitution	7 years imprisonment	Level 5 imprisonment (10 years)
Section 10 Living on earnings of prostitute	4 years imprisonment	Level 6 imprisonment (5 years)
Section 11 Allowing child to take part in prostitution	4 years imprisonment	Level 5 imprisonment (10 years)
Section 22(1) and (3) Prostitution service providers to be licensed	3 years imprisonment and/or 360 penalty units	Level 6 imprisonment (5 years) and/or 360 penalty units

