The Model Criminal Code Project

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General Matters

On 28 June 1990, the Standing Committee of Attorneys-General (SCAG) placed the question of the development of a national model criminal code for Australian jurisdictions on its agenda. In order to advance the concept, SCAG established a Committee consisting of an officer from each Australian jurisdiction with expertise in criminal law and criminal justice matters. That Committee was originally known as the Criminal Law Officers Committee (CLOC), but, in November 1993, the name was changed to the Model Criminal Code Officers Committee (MCCOC) in order to reflect the principal remit of the Committee directly.

The first formal meeting of the Committee took place in May 1991. In July 1992, the Committee released a Discussion Draft of the general principles of criminal responsibility, and, after a great deal of public consultation, including 52 written submissions and a lengthy seminar at the Fourth International Criminal Law Congress in Auckland in 1992, delivered a Final Report to SCAG which was released in December 1992. With the exception of the general principles relating to intoxicated defendants[2], the recommendations in that Final Report formed the basis for the Commonwealth *Criminal Code Bill 1994,* which was passed by the Commonwealth Parliament in March, 1995. Since 1992, the Committee has done a great deal of work, mostly in the form of the writing and consideration of Discussion Papers and Final Reports. These are summarised in the Table at the end of this paper.

In 1994, both the Commonwealth Government and the State and Territory Premiers' Leaders Forum endorsed the Model Criminal Code project as one of national significance. The latter also unanimously gave a commitment to implement the Model Criminal Code by the year 2001. As will be seen below, this is rather a hollow statement.

As should be obvious, the membership of the Committee has changed over the years. The original idea was that each jurisdiction should have one representative who should be the person who advises the Minister of the jurisdiction concerned about criminal justice matters. The original committee consisted of Dr David Neal, Chair (Director of Policy and Research, Victorian Attorney-General's

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2 The Committee recommended that the law be based on the decision of the High Court in *O'Connor* (1980) 54 ALJR 349 but the Standing Committee decided that it preferred the position taken in *Majewski* [1977] AC 443. That decision is not a principal focus of the discussion which follows. The debate is very well-rehearsed in other places.

Department), Mr Peter Berman (Director, Criminal Law Review Division, New South Wales Attorney-General's Department), Mr Peter Svensson (Legal Consultant, Queensland Attorney-General's Department), Mr Graeme Scott QC (Crown Counsel of Western Australia), Mr Matthew Goode (Senior Legal Officer, South Australian Attorney-General's Department), Mr Herman Woltring (Principal Adviser, Criminal Justice, Commonwealth Attorney-General's Department), Mr Nick Perks (Tasmanian Crown Prosecutor), Mr Len Flanagan QC (DPP, Northern Territory) and Mr John O'Keefe (Director, Justice Section, ACT Attorney-General's Department) That suffices to give an idea of the role and qualifications of the membership from time to time It is worthy of mention that the current chair is Judge Rod Howie of the NSW District Court, now Acting Justice of the Supreme Court of New South Wales It is also worthy of note that Graeme Scott QC is now Mr Justice Scott of the WA Supreme Court and that two successive New South Wales representatives, Peter Berman and Gillian Orchiston, have become Magistrates

There have been two periods of hiatus in the composition of the Committee. After the Coalition parties won the Victorian election in 1994, Victoria ceased membership and participation on the committee for about 18 months, resuming in 1996. After the release of the *Sexual Offences Discussion Paper* in November 1996 and subsequent public controversy about what it is alleged to have recommended, the Attorney-General of Queensland withdrew his Government's participation in the Committee in May 1997, and this position remains at the date of writing. It is worth noting that no member works on the project on anything approaching a full time basis, and that the Committee has no budget and no independent or dedicated source of funds.

Operating Philosophy

In 1992, I outlined the history (in the most general of senses) and the general philosophy of the Code Project, as it was unfolding at its beginning, in the *Criminal Law Journal*[3]. That article provides a background to efforts at codification of the common criminal law, including what was then recent history of review and codification efforts in Australia and overseas. In terms of objectives, in summary the Model Criminal Code has had two aims; consistency of the criminal law throughout Australia, and a simple and accessible, yet comprehensive and complete statement of the major criminal offences and defences which govern the lives of all Australian residents That necessarily implies codification of the criminal law. Those two general themes remain as valid in 1997 as they were in 1992. The article concluded:

"Codification offers a cohesive structure for the systemisation of competent legislation in a particular field. It actively promotes the values of good legislation and puts in place processes which actively encourage the general social justice policies that the criminal law should be easy to find, easy to understand, cheap to buy and democratically made and amended. The current criminal law significantly fails to live up to those ideals "[4].

Minutiae - the Significance and General Principles

This task is harder than it sounds. I propose to illustrate the point by reference to the most vehement objection taken to the approach of the Committee so far.

The basic scheme outlined by MCCOC in the *General Principles of the Criminal Law* has been attacked by a senior judicial officer as having a "potential for disaster" and as "an unworkable academic nightmare"[5] Mr Justice Thomas of the Queensland Supreme Court does not understand the proposed scheme of elements of offences, let alone what follows from it:

"'The problem', the judge said, 'is that the drafters of the Code have been side-tracked into the metaphysics of action. They have attempted to define all kinds of unlawful human conduct and activity by isolating multiple 'physical elements' and 'fault elements'. ... It is necessary that some parts of the code be mentioned before it can be judged whether it is comprehensible and workable. Don't blame me for the headache you get when you try to understand it - the complexity is the code's, not mine '"[6]

There is a lot more that Mr Justice Thomas does not understand, such as the distinction between acts and omissions and the liability consequences that flow from that distinction[7], and the difference between elements of offences which are absolute and those which allow for a defence of reasonable mistake, but the basic non-understanding will suffice for present purposes. He thinks that the CCA analysis of physical elements is an "over-ambitious academic attempt to reduce human conduct and future legislative action to a tortured and unnecessary classification".

This is not so. But one must *understand* the complexity before one can attempt to reduce it to understandable simplicity. *Part* of the problem can be described as follows.

All criminal offences are composed of elements. This is true of all Australian jurisdictions, be they Code or common law. There are two kinds of elements: physical elements and fault elements. There are also what may be colloquially termed "defences" which are usually external to the elements of offences and the offences themselves. Some divide "defences" into excuses and justifications. That is not an issue which is the subject of this discussion[8]

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5 Among other things. See "Model Criminal Code, Judge fears potential for disaster", *Australian Lawyer,* June 1995 at 12-13. The Model Code team replied in *Australian Lawyer,* August, 1995 at 14-15 and there was further correspondence from Queensland in the *Australian Lawyer,* October 1995 at 6-7.

6 "Model Criminal Code, Judge fears potential for disaster", *Australian Lawyer,* June 1995 at 12.

7 This despite the fact that the criminal law has observed such a distinction for over 100 years. The distinction can be traced back to the championship of Macaulay in his work on the Indian Codes *[Notes on the Indian Penal Code,* (1837)] and early common law development; an example is *Smith* (1826) 2 C&P 448, 172 ER 203. Little attention has been paid to the distinction in the Griffith Code, but it is thought that the distinction has some importance generally (see *Evgeniou* (1964) 37 ALJR 508 at 509). That is not to deny that the distinction between act and omission is very slippery indeed. A minor example can be found in *Fagan* [1969] 1 QB 439 and a very serious example can be found in *Bland's* case [1993] 1 All ER 821.

8 See, generally Yeo (ed.), *Partial Excuses to Murder,* 1991.

Fault elements and physical elements tend to intersect and overlap, untidily, at the concept of "voluntariness" (sometimes called "automatism")[9]. The common law eventually took the position that an act or omission committed "involuntarily", that is, without the will, was not an act or omission at all and hence voluntariness is about physical elements and not fault elements[10]. I do not intend to enter this labyrinthine debate here beyond noting that it exists and its resolution at common law. Instead, I want to concentrate on what is meant by the "physical elements" of a crime.

In general terms, physical elements describe or define matters or events external to the accused. In equally general terms, fault elements describe or define either the state of mind of *the accused* in relation to the offence which must be proven for guilt to attach, or a hypothetical state of mind by which the accused must be legally judged in order for guilt to attach.

It is important to clearly separate the different *kinds* of physical elements that make up the offence. The physical elements of a crime are those specified in the definition of the crime - and only those. They may be composed of one or more of three kinds only: conduct, circumstances and results. In general terms, conduct is the description of what is done or not done which the legislature wishes in general terms to forbid. Conduct in turn consists of one or more of three kinds: the crime may lie in action, in omission to act, or in being - a state of affairs.

Action and omission to act are familiar concepts. But the conduct element of some crimes lies in being something. Notable examples are being an illegal immigrant[11] or being in possession of an article (but not obtaining or getting possession - that is an act)[12]. Results are sometimes referred to as consequences. It is common for a crime to be complete only if the conduct of the accused has a result. The most obvious example is homicide, in which the proscribed result is the causing of the death of another. Circumstances are legally required facts[13] which describe and qualify kinds of events. In the case of rape, for example, the required circumstance is the lack of consent of the victim. In the case of the assault police offence, the required circumstance is that the victim of the assault be a police officer.

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9 The untidiness at common law is in part due to the fact that the concept was not legally organised until 1951 and has been in a state of development ever since. The first case of real significance was *Harrison-Owen* [1951] 2 All ER 726; and the High Court has only recently closely split over the doctrine: *Falconer* (1990) 171 CLR 30. These matters are taken up elsewhere.

10 *Ryan* (1967) 121 CLR 205; *Dodd* (1974) 7 SASR 151; *Rabey* (1980) 54 CCC (2d) 1; *Parks* (1992) 75 CCC (3d) 287. For a contrary view, see Lanham, "Involuntary Acts and the Actus Reus" *Criminal Law Journal* 17 1993 p 97.

11 The famous instance of this is Larsonneur (1993) 24 Cr AppR 74.

12 This distinction is inherent in the resolution of the question whether the general law of attempt extends to possession offences: cf *Beckwith* (1976) 12 ALR 333; *Grant* [1975] 2 NZLR 165; *Willoughby* [1980] 1 NZLR 66. At common law, the courts held that being in possession was an insufficient physical element for any crime: cf *Heath* (1810) Russ and Ry 184, 168 ER 750 and *Dugdale* (1853) 1 E&B 435 118 ER 499 - so all possession offences - and there are many - are statutory.

13 Whether or not the definition of conduct includes circumstances surrounding the conduct which are *not* defined as elements of the offence but which give the conduct meaning is a very difficult question dealt with later in this paper.

Hence the physical elements of a given statutory offence may consist of *conduct,* which in turn may be an act, or an omission to act, or a state of affairs (a "bodily position"), *circumstances* and/or *results*. So, for example, the crime of homicide may be committed by any *conduct* (act or omission) in any *circumstances* which has the *result* of the death of another human being. The old offence of breaking and entering a dwelling house consists of defined *conduct* (the act of 'breaking and entering' as defined by judicial decision) plus a *circumstance* (the fact that what was broken and entered was dwelling house and not, for example, a factory. This offence does not proscribe a *result*

There is nothing new or particularly difficult in this One could be forgiven for thinking that any first year law student could follow what is plain and simple logic And the *Criminal Code Act* (which enacts the MCCOC *General Principles*) so provides:

> **"Physical elements**
>
> 4 1(1) A physical element of an offence may be:
>
> (a) conduct; or
>
> (b) a circumstance in which conduct occurs; or
>
> (c) a result of conduct.
>
> (2) In this Code:
>
> **"conduct"** means an act, an omission to perform an act or a state of affairs "

The MCCOC *General Principles* were by no means unique in starting at the beginning. The English Law Commission also started from basic principles about external or physical elements The basic *idea* is identical - albeit that the drafting is submitted to be clumsier and harder to understand. Their technique is to call everything a part of the criminal "act". This is not a particularly helpful way of doing things[14]:

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14 It appears that the NZ codification effort, the Crimes Bill 1989 adopted the English definition It said:

" a reference to an 'act' or an 'omission' as an element of an offence includes. unless the context otherwise requires -

(a) Any result of the act or omission; and

(b) The circumstances in which the act or omission is done or made or the result of the act or omission occurs,

Where that result is, or those circumstances are, an element of the offence "

As Hannan remarks, "Seemingly, stipulating in the relevant statute that the results or circumstances are an element of the offence is all that would ever be needed Either the results or circumstances are elements of the offence or they are not; if they are not, clause 3 adds nothing " Hannan, "The act requirement" *VUWLR Monograph* 20(3) 1990 p 35 at 36. For that reason, the Crimes Consultative Committee recommended the deletion of the clause: *Report of the Crimes Consultative Committee,* (1991) at 9 As will be seen. however, there are other reasons for tackling this problem

"External elements of offences

15. A reference in this Act to an "act" as an element of an offence refers also, where the context permits, to any result of the act, and any circumstance in which the act is done or the result occurs, that is an element of the offence, and references to a person's acting or doing an act shall be construed accordingly.

16. For the purposes of an offence which consists wholly or in part of an omission, state of affairs or occurrence, references in this Act to an "act" shall, where the context permits, be read as including references to the omission, state of affairs or occurrence by reason of which a person may be guilty of the offence, and references to a person's acting or doing an act shall be construed accordingly."[15]

It is noteworthy, in the light of the last part of this discussion, that the Law Commission thought these principles to be self evident, but stated them "for the avoidance of doubt in those inexperienced in the reading of criminal statutes and as a protection against perverse reading or hopeless argument."[16]

All modern efforts at codification have begun with an attempt to analyse the physical elements of offences, with more or less success. That is so, not merely as a matter of conceptual neatness but because (as we shall see), it makes coherence with fault elements possible.

But why does this matter? Is it all about the "metaphysics of action"? In part it is. To that same extent, the criminal law, both common law and Code law, has to address some kind of "metaphysical problems". This is best illustrated by example. As it happens, both are drawn from the Queensland Code so promoted by Mr Justice Thomas.

In Knutsen[17], a version of the facts which might be supposed for the purposes of argument is that the accused and the victim quarrelled at the roadside, the accused hit the woman and left her lying on the roadway. Sometime later, her unconscious body was struck by a passing motorist, who may or may not have been negligent in that respect, as a consequence of which she suffered severe injury. The accused was charged with unlawfully doing grievous bodily harm and with unlawful assault thereby doing grievous bodily harm.

Almost all of the decision is about the requisite fault element of the crimes charged. But what was the "act" of the accused?[18] Philp J answered this question as follows:

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15 The Law Commission, Criminal Law, A *Criminal Code For England And Wales*, Volume 1, Law Comm 177, 1989.

16 The Law Commission, Criminal Law, A *Criminal Code For England And Wales*, Volume 2 at para 7.6, Law Comm 177, 1989.

17 [1963] QdR 157.

18 For those who are interested, the act must be identified for the purposes of s 23 of the Queensland Code.

> "In my view, s 23 implies that a person is criminally responsible for his willed act and for the foreseeable consequences of that act - the non-accidental events of that act. The determination of what was a person's willed act does not depend solely upon consideration of the physical movement made by the person - it depends upon consideration of that physical movement viewed in the context of its surrounding circumstances. Thus to pull the trigger of a rifle is a physical movement, but the act which the person who pulled the trigger does will vary according (for example) to whether the rifle when the trigger was pulled was loaded, or was pointing to the sky, or was pointing towards another person. In the instant case, according to the evidence for the Crown, the willed act of the appellant, so far as his responsibility for any injury which the woman sustained from the collision with the car is concerned, consisted in leaving her lying motionless in the middle of a highway he having several times punched her heavily about the head, knocked her to the ground, and then kicked her body somewhere between the shoulder and the top of the head "[19].

In other words, the "act" consisted not only of the punch and the kick - but also the act of leaving her where she was. In the context of an offence consisting of the legal elements of "doing grievous bodily harm", that must be right. But it is not a conclusion that can be generalised with impunity.

The general reason is that there is a crucial distinction between factual circumstances which are formal ingredients of the offence in question and factual circumstances which merely describe the context in which those legal ingredients may have occurred and which give meaning to the events in question. In Knutsen, the *factual* circumstances described by Philp J which qualify or describe the acts of the accused were not *legally proscribed* circumstances, but the *factual* circumstances of the particular case which gave the *factual* acts of the accused meaning and context.

Consider another two offences by way of contrast. In the offence of murder, the type of act is not legally specified - any act will do - but the "act" (which causes death) for the purposes of s 23 will have its meaning and context varied by the *factual* circumstances that surround it because they are intricately tied to the *legally proscribed result* and give it meaning in that context. To say that *legally proscribed* circumstances are a part of a *legally proscribed act* is an entirely different proposition - and is not the true position. If the offence is not murder, but, for example, "pointing a loaded rifle at a person", then the *legally proscribed act* is "pointing the rifle" and the *legally prescribed circumstance* is that it is loaded - no offence is committed if it is unloaded. The act to which s 23 is directed is the act of pointing the rifle (and the surrounding *factual circumstances* of the particular case and the particular pointing) - but whether it is loaded or not is a different *legal* question and not a part of the "act" to which s 23 refers.

In *Kaporonovski*[20], the accused had been charged with unlawfully doing grievous bodily harm. The victim insulted the accused who forced a glass, held by the victim, into the victim's eye causing grievous bodily harm. The accused asserted

19 [1963] QdR 157 at 165-166

20 (1973) 133 CLR 209

that he thought that the victim was going to strike him with the glass. One of the questions before the High Court was as to the availability of the defence of provocation to such a charge. That matter is not the subject of this discussion. Another matter was the availability of the s 23 defence. The question with which this discussion is concerned was whether the "act" to which s 23 refers was confined to the physical act of pushing the glass (on these facts) or also included the resulting doing of grievous bodily harm (on these facts) The court held that the former was the correct view. The judgment of Gibbs J puts the matter most clearly:

> " . it would in my respectful opinion be a departure from the ordinary meaning of the word to regard 'act' as including all the ingredients of the crime other than the mental element. As has been pointed out, in many cases the bodily acts of the accused by themselves do not entail any criminal responsibility . . there are many offences which are constituted only if the act of the accused was accompanied by some extrinsic circumstance (e.g. absence of consent on a charge of rape or the age of the girl on a charge of unlawful carnal knowledge) or had some particular consequence (e g. the causing the grievous bodily harm, as in the present case) It would be straining language to regard the word 'act' as extending to all such external circumstances. . . The pushing, by the applicant, of the hand holding the glass was an action willed by the applicant."[21]

Again, it is of consequence to note that Gibbs J cannot help but distinguish between considerations relating to physical elements and fault elements, (despite protestations by many in other places that such considerations have no place in the Queensland Code) and that His Honour held, in effect, that the word "act" in s 23 did not extend to the existence or otherwise of *legally proscribed circumstances* (the consent in rape or the age in unlawful sexual intercourse), but did extend to *factual circumstances* giving meaning to the "act" - the fact that there was a glass in the hand manipulated by the accused[22].

This view of the law was adopted without much fuss by the High Court in *Falconer,* a case of homicide, in which the relevant "act" was characterised as the movement of the body considered together with the factual circumstances surrounding it - in general terms, the discharge by the accused of a loaded weapon[23].

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21 (1973) 133 CLR 209 at 230-231 This view is also taken in Elliott, "Mistakes, Accident and the Will: The Australian Criminal Codes - Part II" *Australian Law Journal* 46 1972 p 328 at 336

22 See also *Duffy* (1980) 3 A Crim R 1. Later in his judgement, Gibbs J also said: "A considerations of the sections in which 'element' appears do not indicate that in the Code the word is always used to mean a component part of the offence as expressly defined." That quotation should not be taken out of context. His Honour was referring to a variety of sections in the Queensland Code, in particular ss 12, 557 and 685 In relation to ss 22, 23, and 28 (of which these are "a few"), he said "the context shows that the word 'element' can only mean an element of the offence as defined" (1973) 133 CLR 209 at 238 The CCA is quite clear that the latter is the correct interpretation.

23 (1990) 65 ALJR 20 at 23 (Mason CJ. Brennan and McHugh JJ) and 41 (Gaudron J).

Two observations flow from this. First, in so far as the "metaphysics of action" have become an occupation of Australian jurisprudence, they have primarily sprung from the ill-advised pre-occupation of the Griffith Code to hold onto the s 23 method of determining liability which may well have been a viable world view in 1900, but no longer remains so. The second is that the MCCOC *General Principles* could have entered the arena explicitly by making it clear that "conduct" may include the facts and circumstances surrounding the physical movement (or lack of it) which give the fact context and make sense of it but do not include circumstances and/or results otherwise *legally proscribed as ingredients* of the offence in question. Were it otherwise, the distinction between the types of physical elements proscribed by the legislature would collapse. We decided not to do that. Not only would it complicate matters, but the fact is that s 3.1(1) of the Code makes it pellucidly clear that the "elements" of which the Code is speaking are *elements of the criminal offence itself*[24].

In conclusion, a circumstance surrounding the commission of the offence is either a defined element of an offence or it is not. If it is a defined element of the offence, it cannot be, ex hypothesi, part of the "conduct" proscribed by the offence and falls to be considered separately. If it is not a defined element of the offence, then it may well fall to be considered as a component of the proscribed conduct as a matter of fact. So, in *Kaporonovski,* the act in question is pushing the glass. Pushing the glass is not a defined element of the offence. If, for example, the defendant argues that he did not know that the glass was there, he is in effect arguing that he did not intend the result that the glass had. He is then arguing that he did not intend, foresee, and/or that a reasonable person would not have intended or foreseen that grievous bodily harm would result. The validity of that argument will depend on the evidence and on how that argument falls to be considered according to the proscribed fault element in relation to that result in whatever legal regime the case is tried. And that is how it was decided in *Kaporonovski*.

Conclusion

The account above shows a little of what lies beneath the surface of what may well attempt to be a simple draft of seemingly simple principles which are designed to begin at the beginning. All Codes do this in one way or another.

The Model Code is not finished. It may not be finished by its target date on the end of 1999, for it has no significant resources at its command except the goodwill and the spare time of its participants. That, significantly, includes a great deal of very good and patient advice and drafting work done for the Committee on a voluntary basis by the Parliamentary Counsel of New South Wales. It may not have a good record of implementation by the end of 1999 - or even the target year of 2001. But that is no great cause for concern. In an enterprise of this kind, one must take the longer view.

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24 CCA, s 3.1(1) "An offence consists of physical elements and fault elements."

The experience of the 1990s has not been good for projects of this kind. The Canadian Government abolished the Law Reform Commission of Canada, which had done an enormous amount of work on a new Criminal Code to replace their current one based on the Griffith Code of the 1890s. The UK Law Commission still exists, but its reports notoriously languish unimplemented[25], despite repeated calls for action by the legal profession and the judiciary[26].

Compare this with the American experience. In 1962, the American Law Institute published what it called the *Model Penal Code (Proposed Official Draft)*[27]. It was, like the MCCOC project, an attempt to provide a model for the consistent codification of the criminal law but, of course, across the United States[28]. It had no Government backing. There were no grandiose claims for implementation strategies and no instant gratification for the years of hard work that had gone into the project. When it came time to celebrate the 25th anniversary of the 1962 draft, however, it was estimated that the *Model Penal Code* had had a significant influence in the development of the criminal law in at least 37 of the American States[29]. It is this lesson that Australians who support a model criminal code must learn among the wreckage of the more ambitious attempts at short term goals in the recent past.

25 The latest in a long series is Law Com 218, *Legislating the Criminal Code: Offences Against The Person and General Principles* (1993) Cmnd 2370.

26 See, for example, the strong remarks of Lord Ackner in *Savage* [1992] 1 AC 699 at 752.

27 There were "Tentative Drafts" (which we would call Discussion Papers) at least as early as 1955. An "Official Draft" was released in 1985, but it was the 1962 version which proved to be influential.

28 See, generally, Wechsler, "The Challenge of a Model Penal Code" *Harvard Law Review* 65 1952 p 1097; Schwartz, "The Model Penal Code: An Invitation to Law Reform" *American Bar Association Journal* 49 1963 p 447; Packer, "The Model Penal Code And Beyond" *Columbia Law Review* 63 1963 p 594; Wechsler, "Codification of the Criminal Law in the United States: The Model Penal Code" *Columbia Law Review* 68 1968 p 1425.

29 See Symposium *Rutgers Law Journal* 19 1988 Number 3.

APPENDIX[30]

NAME OF PAPER	CONTENTS	RELEASE
Chapter 2, Discussion Paper, *General Principles of Criminal Responsibility*	Elements of offences, fault, defences, extensions of criminal responsibility, corporate criminal responsibility, burden of proof	July, 1992
Chapter 2, Final Report, *General Principles of Criminal Responsibility*	As above	December, 1992[31]
Report on the Abolition of the Year and a Day Rule In Homicide	Recommending the abolition of the rule that a homicide may not be attributed to an accused if the death occurred more than a year and a day after the act	1992[32]
Chapter 3, Discussion Paper, *Theft, Fraud and Related Offences - Part 1*	Theft, fraud, receiving, robbery, burglary	December, 1993
Chapter 3, Discussion Paper, *Blackmail, Forgery Bribery and Secret Commissions*	Blackmail, forgery, bribery and secret commissions	July, 1994
Chapter 3, Final Report, *Theft Fraud, Bribery and Related Offences*	Theft, fraud, receiving, robbery, burglary, blackmail, forgery, bribery and secret commissions	December, 1995
Model Provisions on Mental Impairment	Detailed draft legislation dealing with all facets of the mentally ill person who commits what would be a crime but for their mental impairment	1995-1996[33]
Model Provisions on Forensic Procedures	Detailed draft legislation dealing with police powers to collect forensic samples and the establishment and maintenance of a national DNA data base	1995-1996[34]

30 The items listed as official MCCOC publications were published in publicly available material and distributed in book form. The items in bold face were "non Code" projects given to the Committee by SCAG and reported to SCAG as draft legislation with a commentary

31 Enacted by the Commonwealth as the *Criminal Code Act, 1995*

32 Now implemented in all Australian jurisdictions

33 Implemented by the South Australian *Criminal Law Consolidation (Mental Impairment) Amendment Act, 1995*

34 Implemented by the Commonwealth *Crimes Amendment (Forensic Procedure) Act, 1997*

NAME OF PAPER	CONTENTS	RELEASE
Chapter 3, Discussion Paper *Conspiracy to Defraud*	Conspiracy to defraud	June, 1996
Chapter 5, Discussion Paper, *Non-Fatal Offences Against the Person*	Causing harm, threats, stalking, endangerment, traps, causing a serious disease, unlawful confinement, kidnapping, child abduction, female genital mutilation, abortion, defences	August, 1996
Chapter 5, Discussion Paper, *Sexual Offences Against the Person*	Sexual acts committed without consent, sexual offences committed against or with children, sexual acts with or against mentally impaired people, provisions relating to evidence and procedure in sexual offences	November, 1996
Chapter 6, Discussion Paper, *Serious Drug Offences*	Serious drug offences including trafficking, manufacturing, cultivation, offences involving children, property derived from serious drug offences	June, 1997
Chapter 3, Final Report, *Conspiracy to Defraud*	Perjury, Protection of witnesses, Perversion of justice and related offences	May, 1997
Chapter 7, Discussion Paper, *Offences Against the Administration of Justice*	Specific offences dealing with product contamination of threats to do so with a view to causing public alarm	July, 1997
Chapter 8, Discussion Paper, *Public Order Offences. Contamination of Goods*	Conspiracy to defraud	July, 1997[35]

35 Proposed for enactment by the NSW *Crimes Amendment (Contamination of Goods) Bill 1997*