

LEGISLATIVE ASSEMBLY

Read 1° 27 March 1984

(Brought from the Legislative Council)

A BILL

for

An Act to amend and codify the law relating to conspiracy and incitement, to amend the *Crimes Act* 1958, and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. (1) This Act may be cited as the *Crimes (Conspiracy and Incitement) Act* 1984. Short title.

2. This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*. Commencement.

3. In this Act—

“The Principal Act” means the *Crimes Act* 1958.

Interpretation.
Principal Act No.
6231.

4. The abolition of the offence of conspiracy at common law effected by section 321F of the Principal Act as amended by this Act shall not affect— Transitional provisions with respect to conspiracy.

(a) any proceedings commenced before the commencement of this Act; or

- (b) any proceedings commenced after the commencement of this Act in respect of an agreement which is alleged to have been made at a time prior to the commencement of this Act.

Transitional provisions with respect to incitement.

5. The abolition of the offence of incitement at common law effected by section 321L of the Principal Act as amended by this Act shall not affect—

- (a) any proceedings commenced before the commencement of this Act; or
- (b) any proceedings commenced after the commencement of this Act in respect of an offence of incitement alleged to have been committed at a time prior to the commencement of this Act.

Operation of amendments.

6. Subject to sections 4 and 5, the Principal Act as amended by this Act shall apply to acts done before as well as to acts done after the commencement of this Act.

Amendment of No. 6231, s. 1.

7. (1) In the Table in section 1 of the Principal Act—

- (a) under Part I., Division 9, for the expression “ss. 318–321.” there shall be substituted the expression “ss. 318–320.”; and
- (b) under Part I., after the matter relating to Division 9 there shall be inserted the following expressions:

“Division 10.—Conspiracy ss. 321–321F.
 Division 11.—Incitement ss. 321G–321L.”

Amendment of No. 6231. Insertion of Divisions 10 and 11 of Part I.

(2) After section 320 of the Principal Act there shall be inserted the following Divisions: 25

‘DIVISION 10—CONSPIRACY

Conspiracy to commit an offence.

321. (1) Subject to this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which will involve the commission of an offence by one or more of the parties to the agreement, he is guilty of the indictable offence of conspiracy to commit that offence. 30

(2) For a person to be guilty under sub-section (1) of conspiracy to commit a particular offence both he and at least one other party to the agreement—

- (a) must intend that the offence the subject of the agreement be committed; and 35
- (b) must intend or believe that any fact or circumstance the existence of which is an element of the offence will exist at the time when the conduct constituting the offence is to take place. 40

(3) A person may be guilty under sub-section (1) of conspiracy to commit an offence notwithstanding the existence of facts of which he is unaware which make commission of the offence by the agreed course of conduct impossible.

5 321A. (1) The expression "the commission of an offence" in section 321 (1) extends to the commission of an offence against a law in force only in a place outside Victoria if, but only if—

Agreements to commit offences outside Victoria.

- 10 (a) the necessary elements of that offence include elements which, if present or occurring in Victoria, would constitute an offence against a law in Victoria; and
- 15 (b) one or more of the persons referred to in section 321 (1) is or are in Victoria when the agreement referred to in that sub-section is made.

15 (2) Where all parties to an agreement are outside Victoria when it is made, section 321 shall apply in relation to it if, but only if, that agreement is to pursue a course of conduct which, if the agreement is carried out in accordance with their intentions, will necessarily amount to or involve the commission of an offence against a law in force in Victoria.

20 321B. It is hereby declared that the conviction of a conspirator whether tried together with or separately from another alleged conspirator or other alleged conspirators may stand notwithstanding that the other alleged conspirator or conspirators is are or may be acquitted unless in all the circumstances of the case the conviction is

25 inconsistent with the acquittal of the other alleged conspirator or conspirators.

As to consequences of acquittal of co-conspirators. (See *R. v. Darby* (1982) 40 ALR 594.)

321C. (1) Where a person is convicted under section 321 of conspiracy to commit an offence or offences against a law or laws in force in Victoria—

Penalties for conspiracy.

- 30 (a) if the penalty for the relevant offence is fixed by law, the person shall be liable to a penalty not exceeding the penalty for the relevant offence;
- 35 (b) if the relevant offence, or any of the relevant offences, is an offence for which the penalty is imprisonment for a term the maximum length of which is not prescribed by law, the person shall be liable to imprisonment for a term of not more than fifteen years;
- 40 (c) subject to paragraphs (a), (b) and (d), if the relevant offence, or any of the relevant offences, is an offence for which a maximum penalty is prescribed by law, the person shall be liable to a penalty not exceeding that maximum penalty or the accumulated maximum penalties, as the case may be; or
- 45 (d) if the relevant offence, or each of the relevant offences, is triable only in a Magistrates' Court, the person shall be liable to imprisonment for—

- (i) a term of not more than three years; or
 - (ii) a term not exceeding the maximum term of imprisonment (if any) prescribed in respect of the relevant offence or the greatest of the maximum terms prescribed in respect of any of the relevant offences, as the case requires—
- whichever is the greater.

(2) Where a person is convicted under section 321 of conspiracy to commit an offence or offences against a law or laws in force only in a place outside Victoria—

- (a) the person shall, if the relevant offence, or any of the relevant offences, is punishable by a term of imprisonment, be liable to imprisonment for a term not exceeding ten years; and
- (b) the person shall, in any other case, be liable to a fine of not more than 100 penalty units.

Application of certain provisions.

321D. Sections 321 (2) and (3) and 321B shall apply, so far as they are capable of doing so and with such changes as are necessary, for the purpose of determining whether a person is guilty of conspiracy under any enactment other than section 321 or of conspiracy to cheat and defraud or of conspiracy to defraud.

Limitations on prosecution.

321E. (1) Where any enactment prohibits the institution or continuance of proceedings for an offence otherwise than by or with the consent of any person, the prohibition shall apply in relation to proceedings under section 321 for conspiracy to commit that offence.

(2) Where—

- (a) an indictable offence has been committed in pursuance of an agreement; and
- (b) proceedings may not be instituted for that offence because a time limit applicable to the institution of such proceedings has expired—

proceedings under section 321 for conspiracy to commit that offence shall not be instituted against any person on the basis of that agreement.

(3) A person shall not be liable to be convicted in respect of the same agreement of both—

- (a) conspiracy under section 321; and
- (b) conspiracy under any enactment other than section 321 or of conspiracy to cheat and defraud or of conspiracy to defraud.

Abolition of certain offences of and relating to conspiracy at common law.

321F. (1) The offence of conspiracy at common law is hereby abolished.

(2) Nothing in sub-section (1) shall affect the offence of conspiracy at common law so far as it relates to conspiracy to cheat and defraud and conspiracy to defraud.

(3) Any offence at common law of incitement to commit the offence of conspiracy or attempt to commit the offence of conspiracy (whether the offence of conspiracy incited or attempted would be an offence at common law or under section 321 or any other enactment) is hereby abolished.

DIVISION 11—INCITEMENT

321G. (1) Subject to this Act, where a person in Victoria or elsewhere incites any other person to pursue a course of conduct which will involve the commission of an offence by—

- 10 (a) the person incited;
 (b) the inciter; or
 (c) both the inciter and the person incited—

if the inciting is acted on in accordance with the inciter's intention, the inciter is guilty of the indictable offence of incitement.

15 (2) For a person to be guilty under sub-section (1) of incitement the person—

- (a) must intend that the offence the subject of the incitement be committed; and
 20 (b) must intend or believe that any fact or circumstance the existence of which is an element of the offence in question will exist at the time when the conduct constituting the offence is to take place.

25 (3) A person may be guilty under sub-section (1) of incitement notwithstanding the existence of facts of which the person is unaware which make commission of the offence in question by the course of conduct incited impossible.

321H. (1) The expression "the commission of an offence" in section 321G (1) extends to the commission of an offence against a law in force only in a place outside Victoria if, but only if—

- 30 (a) the necessary elements of the offence consist of or include elements which, if present or occurring in Victoria, would constitute an offence against a law in force in Victoria; and
 (b) the person inciting is in Victoria at the time of the inciting.

35 321I. (1) Where a person is convicted under section 321G of incitement to commit an offence or offences against a law or laws in force in Victoria—

- (a) if the penalty for the relevant offence is fixed by law, the person shall be liable to a penalty not exceeding the penalty for the relevant offence;
 40 (b) if the relevant offence, or any of the relevant offences, is an offence for which the penalty is imprisonment for a term the maximum length of which is not prescribed by law, the

Incitement.

Incitement to commit offences outside Victoria.

Penalties for incitement.

person shall be liable to imprisonment for a term of not more than fifteen years;

- (c) subject to paragraphs (a), (b) and (d), if the relevant offence, or any of the relevant offences is an offence for which a maximum penalty is prescribed by law, the person shall be liable to a penalty not exceeding that maximum penalty or the accumulated maximum penalties, as the case may be; or
- (d) if the relevant offence, or each of the relevant offences, is triable only in a Magistrates' Court, the person shall be liable to imprisonment for—
- (i) a term of not more than three years; or
 - (ii) a term not exceeding the maximum term of imprisonment (if any) prescribed in respect of the relevant offence or the greatest of the maximum terms prescribed in respect of any of the relevant offences as the case requires—

whichever is the greater.

(2) Where a person is convicted under section 321G of incitement to commit an offence or offences against a law in force only in a place outside Victoria—

- (a) the person shall, if the relevant offence, or any of the relevant offences, is punishable by a term of imprisonment, be liable to imprisonment for a term not exceeding ten years; and
- (b) the person shall, in any other case, be liable to a fine of not more than 100 penalty units.

Application of certain provisions.

321J. Sub-sections (2) and (3) of section 321G shall apply, so far as they are capable of doing so and with such changes as are necessary, for the purpose of determining whether a person is guilty of incitement under any enactment other than section 321G.

Limitations on prosecution.

321K. (1) Where any enactment prohibits the institution or continuance of proceedings for an offence otherwise than by or with the consent of any person, the prohibition shall apply in relation to proceedings under section 321G for incitement to commit that offence.

- (2) Where—
- (a) an indictable offence has been committed; and
 - (b) proceedings may not be instituted for that offence because a time limit applicable to the institution of such proceedings has expired—

proceedings under section 321G for incitement to commit that offence shall not be instituted against any person.

(3) A person shall not be liable to be convicted in respect of the same inciting of both—

- (a) incitement under section 321G; and

(b) incitement under any enactment other than section 321G.

321L. The offence of incitement at common law is hereby abolished.’.

Incitement at
common law
abolished.

8. The Principal Act shall be amended as follows:

Consequential
amendments of
No. 6231.

5 (a) In section 2A, after the interpretation of “Drug of addiction” there shall be inserted the following definition:

“Incite” includes command, request, propose, advise, encourage or authorize.’;

(b) Section 4 shall be repealed;

10 (c) In section 6B (2) (a), the words “or counsels” shall be repealed;

(d) In section 50 (1) (b), the expression “, incites” shall be repealed; and

15 (e) In section 372, after sub-section (3) there shall be inserted the following sub-section:

20 “(3A) Where a presentment contains a count of conspiracy to commit an offence and another count alleging the commission of that offence, the court shall, unless it is of the opinion that to try those counts together would be in the interests of justice, order that the count of conspiracy shall be tried separately from the other count, and the prosecution may elect which count shall be tried first.”.

Joinder of
conspiracy and
substantive
counts.