

# Crimes (Amendment) Bill

## EXPLANATORY MEMORANDUM

*Clauses 1-3* are formal.

*Clause 4* contains the new provisions dealing with the crime of attempt.

The *proposed section 321M* sets out the new statutory offence of attempt.

The *proposed section 321N* defines the new statutory offence. Sub-section (1) defines the circumstances in which a person will be held to have come close enough to the commission of an offence to be held guilty of attempting to commit it. It sets the balance between the need to intervene before the crime is committed and the need to be sure that the crime is going to be committed if there is no intervention. Sub-section (2) defines the mental element of the crime. It provides that an attempt is committed only if the person intends to commit the offence. Purpose is the essence of attempt. Sub-section (3) deals with what is known as impossibility. It provides that a person will escape liability only if it is impossible in law to commit the offence intended.

The *proposed section 321O* deals with the jurisdiction of the courts to deal with attempts. It provides that a person outside Victoria who attempts to commit an offence against Victorian law will be guilty of an offence in Victoria, and that a person in Victoria who tries to commit an offence elsewhere will be guilty of an offence in Victoria if that conduct would also be an offence if committed in Victoria.

The *proposed section 321P* provides that, with certain exceptions, the maximum penalty for attempting to commit an indictable offence is the same as the penalty for committing that offence. The exceptions are murder, and in that case the current penalty of fifteen years has been retained, cases where no maximum is provided, in which case the maximum will be fifteen years' imprisonment, and any case in which a lower penalty may be provided.

The *proposed section 321Q* provides that where any provision which is attached to an indictable offence qualifies or enhances that offence, the provision also applies to attempts to commit that offence. Thus, for example, if an offence may not be prosecuted without the consent of the Director of Public Prosecutions, an attempt to commit that offence is subject to the same qualification.

The *proposed section 321R* does three things. It applies the codified version of attempted crime to all other uses of the concept of attempt in any other enactment. It abolishes the crime of attempt to aid, abet, counsel or procure the commission of another offence as being too remote from the commission of that offence, and it abolishes the crime of attempted conspiracy for similar reasons.

The *proposed section 321S* simply abolishes the crime of attempt at common law.

*Clause 5* repeals section 14 of the Crimes Act. Section 14, which sets the penalty for attempted murder, has been made redundant by the proposed section 321P (b) (ii).

*Clause 6* inserts a new section 70A in the Magistrates' Courts Act. It provides that, where a Magistrates' Court has heard a charge of an indictable offence summarily at the option of the accused and finds that the accused did not commit the crime charged but attempted to commit it, that court may convict the accused of that attempt. Section 69 (1) (1) is excepted as it concerns crimes of attempt.

*Clause 7* is a transitional provision.

*Clause 8* repeals sections 11, 12 and 13 of the Crimes Act, and replaces sub-divisions 4 to 7 of the Crimes Act with a new sub-division 4.

The *proposed section 15* defines the concepts of “injury”, and “serious injury”.

The *proposed section 16* defines the offence of intentionally causing serious injury.

The *proposed section 17* defines the offence of recklessly causing serious injury.

The *proposed section 18* defines the offence of intentionally or recklessly causing injury.

These three offences are intended to comprise a ladder of seriousness and will be the core of offence against the person.

The *proposed section 19* defines the offence of administration of dangerous substances. While it overlaps to a degree with the basic offences, it was thought necessary to retain a specific offence dealing with the administration of substances in order to catch offenders who may fall outside the basic offences.

The *proposed section 20* deals with threats to kill. The current provision covers only threats to kill delivered by post. Threats to kill should be criminal, however delivered.

The *proposed section 21* deals with threats to inflict serious injury. Some of these may have constituted assaults under the current law, and some may fall under the basic offences. Nevertheless, threats to inflict serious injury are serious matters and should be criminal.

The *proposed section 22* creates the offence of recklessly endangering the life of another. This section, together with the proposed section 23, is intended to replace and generalize offences which now exist and which cover specific examples of such behaviour, such as impeding a person saving himself or herself from a shipwreck, exposing children, placing gunpowder near buildings and the like.

The *proposed section 23* defines the offence of recklessly endangering serious injury to another.

The *proposed section 24* re-enacts the offence of negligently causing serious injury to another.

The *proposed section 25* defines the offence of setting traps endangering the life of another. This offence, together with the proposed section 22, will overlap to some degree with the proposed offences of reckless endangerment, but some cases, deserving of punishment, may exist in which the setting of the trap will not in itself be close enough to the infliction of harm to fall under the reckless endangerment offences.

The *proposed section 26* defines the offence of setting traps which may cause serious harm to another.

The *proposed section 27* and the *proposed section 28* re-enact the current offences of extortion.

The *proposed section 29* re-enacts the current provision dealing with the use of firearms.

The *proposed section 30* re-enacts the current provision dealing with threats to injure in the specific context of preventing the police from carrying out their duties. It is considered that such threats should attract a higher penalty than the general offences.

The *proposed section 31* re-enacts the current provision dealing with aggravated assaults with one addition. That addition is that the accused must know that he or she is assaulting a member of the police force in order to be convicted. It is considered that the deterrence of attacks on police will only occur if the offender knows that he or she is attacking a member of the force. The *proposed section 31* also clarifies the meaning of the word “assault”.

*Clause 9* contains six proposals which implement recommendations of the Shorter Trials Committee.

*Clause 9 (a)* and *clause 9 (b)* provide that no conspiracy charge should be brought to trial without the express consent of the Director of Public Prosecutions or his or her nominee.

*Clause 9 (c)* amends section 353 of the Crimes Act to provide for the service of initiating process on the accused person in accordance with Rules of the Supreme or County Court made for that purpose.

*Clause 9 (d)* empowers a trial judge to hear the evidence called on behalf of an accused person before evidence called on behalf of the Crown in a *voir dire* where the accused is asking the trial judge to exercise a discretion in favour of the accused and the burden is on the accused to satisfy the judge that the evidence should be excluded.

*Clause 9 (e)* amends the Sixth Schedule of the Crimes Act to provide for the endorsement of the presentment to show which witnesses whose evidence was received at the committal, and which other witnesses, the Crown proposes to call at the trial.

*Clause 9 (f)* amends the Sixth Schedule of the Crimes Act to provide for endorsement of the initiating criminal process served on an accused person to the effect that he or she should seek legal advice and that the solicitor should notify the Listing Directorate of his or her involvement in the case.

*Clause 10* repeals the current section 62 (2) of the Crimes Act and replaces it with a new section 62 (2) which abolishes the common law presumption of consent arising from the fact of marriage to acts of sexual penetration or indecent assault.

*Clause 11* contains a consequential amendment to the *Magistrates' Courts Act 1971*. It provides in effect that the less serious of the new offences against the person may be tried summarily at the option of the accused.

