

CRIMES (MARRIED PERSON'S LIABILITY) BILL

NOTES ON CLAUSES.

Clause 1 provides for the citation of the Act and for the *Crimes Act 1958* to be called the Principal Act. It also provides for the date of commencement of the Act to be proclaimed, and for the Act to apply only to offences committed and acts done or omitted on or after that date.

Clause 2 proposes several amendments of the Principal Act as follows :—

Paragraph (a) inserts a new sub-section (3) in section 88, which deals with the felony of handling stolen goods. The new sub-section provides that the fact that the person from whom a married woman receives stolen goods is her husband shall not of itself be a defence to a charge under the section.

Paragraph (b) inserts a new Division 3 in Part II. of the Principal Act, in order to deal with various aspects of the criminal liability of married persons. The Division contains four sections, 336 to 339.

Proposed Section 336

Sub-section (1) abolishes the presumption that an offence committed by a wife in the presence of her husband is committed under his coercion.

Sub-section (2) provides that a woman charged with an offence (other than treason, murder, conspiracy to murder and other offences relating to murder under section 4, poisoning or wounding with intent to murder, attempts to murder by poisoning, shooting, drowning, suffocating or strangling, and other attempts to murder) shall have a defence if her action or inaction was due to coercion by her then husband.

Sub-section (3) defines "coercion" for the purposes of proposed section 336.

Sub-section (4) provides that the expression "the circumstances in which the woman was placed", in the definition of "coercion" in sub-section (3) includes the degree of dependence, whether economic or otherwise, of the woman on her husband.

Sub-section (5) deals with the burden of proof in respect of coercion. The burden of adducing evidence that the accused conducted herself in the manner charged because of coercion by her husband rests on the accused. Once such evidence has been adduced, the burden of proving that the action or inaction charged was not due to coercion by the husband will rest on the prosecution.

Sub-section (6) substitutes the provisions of the section for the common law as to any presumption or defence of marital coercion.

Sub-section (7) provides that the section shall not affect the law relating to the defence of duress.

Proposed section 337 proposes that a married person shall not be guilty of misprision by concealing or failing to disclose the commission of an indictable offence by his or her spouse, either alone or with one or more other parties, or by concealing or failing to disclose facts which might lead to the apprehension of the spouse, or the spouse and one or more other persons, in respect of the offence.

Proposed section 338 provides that a married person shall not become an accessory after the fact to any indictable offence or become guilty of certain offences by receiving, relieving, comforting or assisting his or her spouse, or the spouse and another person or persons, even though with knowledge of the commission of the offence and the purpose of what is being done is to enable the spouse, or the spouse and the other person or persons, to escape being apprehended, tried or punished.

In addition to the offence of being an accessory after the fact to an indictable offence, the provision extends to the offence under section 40 of the Act of wilfully obstructing a member of the police force or a person aiding him, any offence under section 52 of the *Summary Offences Act 1966* (which deals with assaulting, resisting, obstructing or hindering members of the police force and related offences), and the common law offence of obstructing an officer of justice in the execution of his duty.

Proposed section 339

The effect of sub-sections (1) and (2) is to provide an exemption in favour of married persons in relation to conspiracy with each other and incitement of one by the other, but this is not to extend to conspiracy or incitement to commit treason or murder or the similar offences created by section 4 of the Principal Act. However, sub-section (3) provides that the exemption shall not affect the liability of a married person as a principal offender, or as an accessory before the fact, in any offence other than conspiracy or incitement.

Paragraph (c) proposes an amendment of section 1 of the Principal Act, consequential upon the insertion of the new Division 3 of Part II. (sections 336–339).

Clause 3 amends section 134 of the *Social Welfare Act 1970*, which creates the offence of harboring or employing a person known to be illegally at large. Consistently with proposed section 338 of the Principal Act, proposed sub-section (1A) of section 134 provides that it shall not be an offence for a married person to harbor or employ his or her spouse, whether or not the married person knows the spouse to be illegally at large.