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**Law and order legislation in the
Australian States and Territories,
1999-2002: a comparative survey**

by

Talina Drabsch

Briefing Paper No 6/03

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David Clune (MA, PhD, Dip Lib), Manager (02) 9230 2484

Gareth Griffith (BSc (Econ) (Hons), LLB (Hons), PhD),
Senior Research Officer, Politics and Government / Law (02) 9230 2356

Talina Drabsch (BA, LLB (Hons)), Research Officer, Law (02) 9230 2768

Rowena Johns (BA (Hons), LLB), Research Officer, Law (02) 9230 2003

Roza Lozusic (BA, LLB), Research Officer, Law (02) 9230 3085

Stewart Smith (BSc (Hons), MELGL), Research Officer, Environment ... (02) 9230 2798

John Wilkinson (BA (Hons), MA), Research Officer, Economics (02) 9230 2006

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EXECUTIVE SUMMARY

This Briefing Paper is an update to an earlier paper *Law and order legislation in the Australian States and Territories, 1995-1998: a comparative survey* released by the Parliamentary Library in 1999. It provides an overview of various statutes enacted in each state and territory on the theme of law and order between 1999 and 2002. It does not review federal legislation other than to note its influence on the passage of a particular Act in a state or territory.

A brief overview of the influence of law and order issues on politics is provided (page 1) and the latest trends to have emerged regarding the rate of crime are highlighted (page 2). The paper then proceeds to review, in alphabetical order and by year, relevant legislation passed between 1999 and 2002 in New South Wales (pages 4-19), Queensland (pages 20-25), South Australia (pages 25-30), Tasmania (pages 30-35), Victoria (pages 35-41), Western Australia (pages 41-45), Australian Capital Territory (pages 45-51) and Northern Territory (pages 51-59). A comprehensive review of each statute is not provided as is beyond the scope of this paper, but the major effects are noted. Reference is made throughout to briefing papers that contain further information on a particular statute where relevant.

Finally, the trends in law and order that have emerged since 1999 are summarised (page 60) and note is made of the areas in which future development of the criminal law is likely (page 63).

1 INTRODUCTION

In 1999, the Research Service released *Law and Order Legislation in the Australian States and Territories, 1995-1998: A Comparative Survey*.¹ This paper provides an update to the original work and it examines the various law and order statutes enacted since 1999 by each State and Territory. It aims to provide a review of the major legislative changes but does not include minor amendments. The definition of law and order used in the original paper is adopted: this paper reviews legislation in regard to street crime and the maintenance of public order; crimes against the person; property offences; drug crime; juvenile crime; firearms and other dangerous weapons; sentencing; victims of crime; and bail, probation and parole. Commonwealth legislation is not examined and reference is made to national schemes only to the extent that an Act was passed to give effect to it in a particular State or Territory.

2 THE LAW AND ORDER DEBATE

Law and order issues are frequently the subject of media attention and political debate, particularly in the period prior to an election. This may be seen in New South Wales in the lead up to the election scheduled for 22 March 2003. The running of a 'Law and Order' series by the *Sydney Morning Herald* in late January 2003 is evidence of the level of interest generated by such issues. Newspapers frequently report the various law and order platforms adopted by each of the major parties. In NSW, the Coalition announced, amongst other things, their intention to create a register of juvenile gang members should they win office.² They also plan to establish a regime of frequent drug testing, use of sniffer dogs and strip searches of visitors as part of their strategy for a drug-free prison.³ The Labor party has similarly announced various law and order policies including allowing victims of serious crime to give verbal statements to sentencing judges and establishing a Sentencing Council to monitor sentencing trends and practices,⁴ abolition of the double jeopardy principle in certain circumstances where significant new evidence emerges,⁵ and pledging \$223 million to drug education and rehabilitation.⁶ The Greens have stated their plan to treat the drugs issue as a health and social issue and not as a criminal problem⁷ and

¹ Briefing Paper No 7/99, by Rachel Simpson and Gareth Griffith.

² 'Coalition plan for wayward teens: put them on a list', *Sydney Morning Herald*, 17/2/03, p 8.

³ 'Libs plan a drug-free model jail', *Sydney Morning Herald*, 22/2/03, p 6.

⁴ 'Coalition plan for wayward teens: put them on a list', *Sydney Morning Herald*, 17/2/03, p 8.

⁵ 'Carr vows to ditch double jeopardy law', *Sydney Morning Herald*, 10/2/03, p 5. The Law Society of New South Wales opposes the abolition of the double jeopardy rule: Law Society of New South Wales, *Criminal Justice Policy Statement: Law and Order Policy Platform: Election 2003*, 20 February 2003, p 8.

⁶ 'Carr targets drugs in war on crime', *Sydney Morning Herald*, 24/2/03, p 6.

⁷ 'Party agendas for the law and lawyers', *Law Society Journal*, 40(10), November 2002, p

the Democrats' law and order policy focuses on crime prevention rather than punishment.⁸ In response to the numerous law and order policy announcements, academics, crime experts, church and welfare groups have launched a pre-election campaign to refocus the attention of politicians from harsh sentencing reform to crime prevention strategies.⁹

3 TRENDS IN THE RATE OF CRIME

Law and order legislation could be said to attract so much attention because of its impact on the lives of many in the community. In 2001-2002, 50.9% of Australians over the age of 18 had some contact with the police.¹⁰ However, upon closer examination, the contact, although initiated by the police in 60.8% of the cases, was of relatively minor consequence. Over 67% of police-initiated contact was for the purpose of conducting a random breath test. Another 9% was in order to follow up traffic violations. Police contacted people in order to request information in a further 8.2% of cases.

The community's concern with law and order policy usually corresponds with fear of crime. There is often a perception that the rate of crime is increasing.¹¹ However, the latest crime statistics reveal that since December 2000 the number of recorded criminal incidents fell by a significant amount in NSW in the following six categories:

- robbery without a weapon (down 18%);
- robbery with a weapon not a firearm (down 36%);
- break and enter (dwelling) (down 13%);
- break and enter (non-dwelling) (down 21%);
- motor vehicle theft (down 22%); and
- stealing from a motor vehicle (down 16%).¹²

The number of recorded criminal incidents remained stable for murder, assault, sexual assault, indecent assault and related offences, robbery with a firearm, stealing from a dwelling, stealing from the person, fraud and malicious damage to property.¹³ The only offence for which there was a substantial upward trend was stealing from a retail store (up

56.

⁸ Australian Democrats, 'NSW State Election 2003' www.nsw.democrats.org.au Accessed 27/2/03.

⁹ 'Take crime talk beyond the bars', *Sydney Morning Herald*, 30/1/03, p 4.

¹⁰ Australia, Productivity Commission, Steering Committee, *Report on Government Services*, 2003, p c.5. All statistics quoted in this paragraph were obtained from this source.

¹¹ Hogg and Brown explore this and other common misconceptions of crime in R Hogg and D Brown, *Rethinking Law and Order*, Pluto Press, Annandale, 1998.

¹² Bureau of Crime Statistics and Research, *NSW Recorded Crime Statistics 2002*, Bureau of Crime Statistics and Research, Sydney, 2003, p 4.

¹³ Ibid.

7.5%).¹⁴

However, whilst the number of recorded criminal incidents has generally decreased since 2000, a comparison of the *rate* of recorded criminal incidents for 1995 and 2002 by type of offence (see table below) reveals a substantial increase in the rate of crime for a number of offences:

| Type of offence | 1995 (rate per 100,000 population) | 2002 (rate per 100,000 population) | Increase/Decrease |
|--|------------------------------------|------------------------------------|-------------------|
| Murder | 1.9 | 1.4 | 26.3% decrease |
| Assault | 640.2 | 1081.7 | 69% increase |
| Sexual Assault | 37.2 | 56.0 | 50.5% increase |
| Indecent Assault/other sexual offences | 71.0 | 82.8 | 16.6% increase |
| Robbery without a weapon | 73.9 | 101.6 | 37.5% increase |
| Robbery with a firearm | 11.1 | 10.9 | 1.8% decrease |
| Robbery with a weapon not a firearm | 24.0 | 42.1 | 75.4% increase |
| Break and enter – dwelling | 1003.5 | 1068.4 | 6.5% increase |
| Break and enter – non-dwelling | 660.9 | 633.3 | 4.2% decrease |
| Motor vehicle theft | 770.5 | 642 | 16.7% decrease |
| Steal from motor vehicle | 914.5 | 1169.7 | 28% increase |
| Steal from retail store | 375.6 | 342.8 | 8.7% decrease |
| Steal from dwelling | 415.4 | 464.6 | 11.8% increase |
| Steal from person | 160.8 | 305.2 | 89.8% increase |
| Fraud | 286.1 | 519.7 | 81.6% increase |
| Malicious damage to property | 1175.0 | 1424.3 | 21.2% increase |

Source: Figures for 1995 were obtained from BOCSAR, *Key Trends in Crime and Justice: NSW 1998*, NSW Bureau of Crime Statistics and Research, Sydney, 1999, p 7. Figures for 2002 were obtained from BOCSAR, *NSW Recorded Crime Statistics 2002*, NSW Bureau of Crime Statistics and Research, Sydney, 2003, pp 5-14.

¹⁴

ibid.

4 LAW AND ORDER LEGISLATION IN THE AUSTRALIAN STATES AND TERRITORIES

4.1 New South Wales

1999

- ***Anzac Memorial (Building) Amendment Act 1999***: This Act increases the penalties for breaches of various by-laws under the *Anzac Memorial (Building) Act 1923* in response to a spate of graffiti attacks on the Anzac Memorial in Hyde Park. The Act also empowers a local court to order an offender to pay compensation for any damage caused.
- ***Correctional Centres Legislation Amendment (Assumed Identities) Act 1999***: The *Correctional Centres Act 1952* and *Crimes (Administration of Sentences) Act 1999* are amended to prevent a corrective services officer from representing himself or herself as a person holding a particular position of trust. Therefore a corrective services officer cannot claim to be a social worker, medical practitioner, psychologist, drug and alcohol counsellor, legal practitioner, member of the clergy or an Official Visitor.
- ***Courts Legislation Amendment Act 1999***: This Act, inter alia, amends the *Justices Act 1902* to provide that a transcript of a recorded interview with a child will satisfy the requirements of a written statement for the purpose of a paper committal so long as it has been certified as an accurate transcript by an investigating official.
- ***Crimes (Administration of Sentences) Act 1999***: This Act is part of a package with the *Crimes (Sentencing Procedure) Act 1999* and *Crimes Legislation Amendment (Sentencing) Act 1999* and is designed to consolidate and amend the law with respect to the administration of certain sentences. It implements a number of sentencing reforms recommended by the New South Wales Law Reform Commission and includes provisions on full-time detention, periodic detention, home detention, community service work and parole.¹⁵
- ***Crimes Amendment (Apprehended Violence) Act 1999***: The *Crimes Act 1900* is amended to create two categories of apprehended violence orders – apprehended domestic violence orders (ADVOs) and apprehended personal violence orders (APVOs). The purpose of the amendments is to recognise the difference in the nature and level of violence between domestic and non-domestic matters. Therefore the Act addresses concerns that the large number of applications for an apprehended violence order in relation to non-domestic matters was trivialising domestic violence.

The Act ensures that an authorised justice may refuse applications where they are

¹⁵ See further Briefing Paper No 2/02, *Sentencing Law: A Review of Developments in 1998-2001*, by Rowena Johns.

found to be frivolous, vexatious, lacking in substance or to have no reasonable prospects of success. The Court is also given greater ability to make an order on its own motion where a person has pleaded guilty or there is a guilt finding for certain offences. Police officers may also seek a telephone interim order when it is believed necessary to ensure the safety of the protected person. The role of the police in enforcing orders is enhanced as they are required make a written record of their reasons in the event that it is decided not to initiate criminal proceedings in respect of the alleged offence.

New section 562AB contains the offence of stalking or intimidation with intent to cause physical or mental harm. It was previously necessary to prove that there was an intent to cause a person to fear personal injury.¹⁶

- ***Crimes Amendment (Offensive Weapons) Act 1999***: The purpose of this Act is to codify the common law definition of offensive weapon or instrument by an amendment to the *Crimes Act 1900* and so ensure that hypodermic syringes or needles may be seen as an offensive weapon.
- ***Crimes and Courts Legislation Amendment Act 1999***: The *Summary Offences Act 1988* is amended to include the offence of intimidatory use of vehicles and vessels. This offence prohibits the use of a motorised vehicle or vessel to harass or intimidate another person or to cause a reasonable person to fear for his or her personal safety. This Act also creates separate offences with regard to soliciting – one for prostitutes and the other for clients.

The *Young Offenders Act 1997* is amended to require an official to determine, prior to issuing a penalty notice, whether an alleged juvenile offender should be referred to a specialist youth officer. The reason behind the amendment was a concern that penalty notices were not suitable for young offenders as they may not have the means to pay a fine or they may not sufficiently understand the legal processes involved.

- ***Crimes Legislation Amendment Act 1999***: This Act amends, inter alia, the *Children (Criminal Proceedings) Act 1987* to enable a summons or warrant to be issued for a child who has failed to comply with an outcome plan devised by a youth justice conference.
- ***Crimes Legislation Amendment (Sentencing) Act 1999***: The Act is part of a package with the *Crimes (Sentencing Procedure) Act 1999* and *Crimes (Administration of Sentences) Act 1999*. It makes a number of amendments to the *Criminal Procedure Act 1986* and *Crimes Act 1900* to abolish the distinction between felonies and misdemeanours. The procedural provisions are removed from the *Crimes Act 1900* and placed in the *Criminal Procedure Act 1986*.

¹⁶ See further Briefing Paper No 4/00, *Incidence and Regulation of Domestic Violence in NSW*, by Rachel Simpson.

A new offence of possessing an offensive implement in a correctional centre, periodic detention centre, court cell or other place of detention, is inserted into the *Summary Offences Act 1988*. The *Children's (Criminal Proceedings) Act 1987* is also amended to give a court the discretion to determine whether there is a public benefit in naming a juvenile who commits a serious crime and is tried in an adult court.

- ***Crimes (Sentencing Procedure) Act 1999***: This Act is also part of the legislative package containing the *Crimes (Administration of Sentences) Act 1999* and the *Crimes Legislation Amendment (Sentencing) Act 1999*. The principal purpose of the Act is to amalgamate a number of the provisions regarding sentencing procedure previously found in other Acts. It distinguishes periodic and home detention from non-custodial alternatives to imprisonment. The Act also requires a court, when sentencing an offender to a term of imprisonment for less than six months, to make a record of its reasons for deciding that a penalty other than imprisonment is inappropriate.
- ***Criminal Procedure Amendment (Sexual Assault Communications Privilege) Act 1999***: This Act preserves the confidentiality of a counselling communication made by, to or in relation to victims and alleged victims of certain sexual assault offences. The definition of 'counselling communication' is expanded to include all communications made in the course of counselling, and not just those of the victim. The sexual assault communications privilege is extended to the production of documents that contain protected confidences. The Act also transfers the privilege from the *Evidence Act* into the *Criminal Procedure Act 1986* and applies the privilege in criminal proceedings.

The Act was in response to the decision of the Court of Criminal Appeal in *R v Young* (1999) NSW CCA 166 where the Court found that the sexual assault communications privilege in the *Evidence Act* did not apply to the production of documents by subpoena.¹⁷

- ***Drug Court Amendment Act 1999***: A number of amendments are made to the *Drug Court Act 1998* including the insertion of section 8A which enables a Drug Court, with the offender's consent, to commit an offender to a correctional centre for up to 7 days, if necessary, to allow for the detoxication of the offender or for assessment of the offender's participation in the treatment program.¹⁸
- ***Drug Summit Legislative Response Act 1999***: This Act formed part of the response to the Drug Summit held in May 1999 and amends the *Drug Misuse and Trafficking Act 1985* to enable the licensing and operation of a medically supervised

¹⁷ See further Briefing Paper No 10/02, *Victims of Crime: Plea Bargains, Compensation, Victim Impact Statements and Support Services*, by Rowena Johns.

¹⁸ See further Briefing Paper No 4/99, *The Illicit Drug Problem: Drug Courts and Other Alternative Approaches*, by Marie Swain.

injecting centre for a trial period of 18 months. The Act establishes certain limited exemptions from criminal prosecution for users, and protects staff from criminal and civil prosecution.

The Act also amends the *Correctional Centres Act 1952* to allow the use of sniffer dogs by correctional officers in juvenile justice centres to assist with the detection of drugs. The *Bail Act 1978* is amended with the insertion of section 36A to enable a court to require a person to undergo drug or alcohol treatment or rehabilitation as a condition of bail.¹⁹

- ***Law Enforcement and National Security (Assumed Identities) Amendment (Corrective Services) Act 1999:*** This Act authorises officers employed by the Department of Corrective Services to obtain documents in false names that are to be used in the course of their duties. It was noted in the Second Reading Speech that the extension of these powers to corrective services officers was necessary to facilitate the investigation of drug trafficking in gaols, alleged corrupt activities by corrective services staff, and inmates in breach of their parole.²⁰
- ***Law Enforcement (Controlled Operations) Amendment Act 1999:*** This Act extends the meaning of 'law enforcement agency' to include the National Crime Authority, the Australian Federal Police and the Australian Customs Service with the effect that they may conduct controlled operations in New South Wales. The Act also enables urgent applications to be made and urgent authorities to be granted with respect to controlled operations.
- ***Road Transport (General) Act 1999:*** This Act provides for penalty notices, the production of licences and identification of drivers and passengers, and licence suspension or disqualification. It provides the police with power to trace stolen motor vehicles and to use tyre deflation devices in police pursuits.
- ***Road Transport (Safety and Traffic Management) Act 1999:*** This is the principal Act in regard to road transport offences, such as driving under the influence of alcohol or drugs and dangerous driving. It contains provisions for random breath testing and speed measurement and facilitates the adoption of national road rules in New South Wales.

2000

- ***Child Protection (Offenders Registration) Act 2000:*** This Act establishes the first full child sex offender registration scheme in Australia. Persons convicted of a class 1 or 2 offence such as sexual assault, indecent assault, murder or kidnap of a child, child pornography and child prostitution, are required to register their details

¹⁹ See further Briefing Paper No 15/02, *Bail Law and Practice: Recent Developments*, by Rowena Johns.

²⁰ NSWPD, 22 September 1999, p 1030.

and keep the Commissioner of Police informed as to where they live, work and what motor vehicle they drive once they are released into the community.

- ***Courts Legislation Amendment Act 2000***: Amongst other things, this Act amends the *Coroners Act 1902* to require a witness at an inquest or inquiry to give evidence that may incriminate him or her. However, the coroner is to provide a certificate preventing that evidence being used against the witness in subsequent court proceedings.
- ***Crimes at Sea Amendment Act 2000***: The *Crimes at Sea Act 1998* is amended to make the established cooperative scheme uniform with schemes being established by the Commonwealth and in other States and Territories. The criminal law of the NSW is to apply in the area adjacent to its coast for a distance of 12 nautical miles from the baseline, by the force of the law of NSW, and beyond 12 nautical miles up to a distance of 200 nautical miles from the baseline or the outer limit of the continental shelf, whichever is the greater, by force of the law of the Commonwealth.
- ***Crimes (Forensic Procedures) Act 2000***: This Act introduces a regime to provide for the power to carry out forensic procedures on certain persons as well as facilitating a national DNA database. Forensic procedures may be carried out on suspects, convicted serious indictable offenders and volunteers with either their informed consent or by court order. Part 9 of the Act contains provisions regarding the admissibility of evidence obtained by these procedures. It should be noted that evidence is generally inadmissible if the required procedures are not followed. However, it may still be allowed if the desirability of admitting the evidence outweighs the undesirability of it not being excluded.²¹
- ***Crimes Legislation Amendment Act 2000***: A number of amendments are made to the *Crimes Act 1900* including the introduction of the new offences of sabotage and threatened sabotage in line with the *UN Convention on the Suppression of Terrorist Bombing*. The Act also extends the criminal law to apply to offences committed outside New South Wales that have an effect inside New South Wales. The *Children (Criminal Proceedings) Act 1987* is amended to include the new sentencing options of deferred and suspended sentences and the application of the *Listening Devices Act 1984* is extended to devices that record pictures as well as sound.
- ***Crimes Legislation Further Amendment Act 2000***: The *Drug Misuse and Trafficking Act 1985* is amended to prohibit the possession of a precursor intended for use in the manufacture or production of a prohibited drug. The Act was a response to concern about the alleged widespread use of legitimate precursor

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See further Briefing Paper No 11/01, *Police Powers in NSW: Background to the Law Enforcement (Powers and Responsibilities) Bill 2001*, by Gareth Griffith and Briefing Paper No 5/00, *DNA Testing and Criminal Justice*, by Gareth Griffith.

chemicals, such as those found in Sudafed, in the manufacture of amphetamines.²²

- ***Evidence (Audio and Audio Visual Links) Amendment Act 2000***: This Act extends the operation of the *Evidence (Audio and Audio Visual Links) Act 1998* as it empowers a Court to direct a person to give evidence by audio visual link from any place within or outside New South Wales provided that the necessary facilities are available, and it is convenient and fair.
- ***Intoxicated Persons Amendment Act 2000***: The application of the *Intoxicated Persons Act 1979* is extended to persons affected by drugs as well as alcohol in response to a recommendation in the NSW Drug Summit Government Plan of Action.²³
- ***Summary Offences Amendment Act 2000***: The *Summary Offences Act 1988* is amended with regard to the damaging or defacing of shrines, monuments, war memorials or statues located in public places to make the penalties for the offences consistent with the *Anzac Memorial (Building) Act 1923*.
- ***Victims Compensation Amendment Act 2000***: This Act changes the focus of the victims' compensation scheme from compensation to rehabilitation. It achieves this by changing the name of the *Victims Compensation Act* to *Victims Support and Rehabilitation Act*, by making further provision for approved counselling services and restricting monetary compensation for psychological injury to applicants who can demonstrate a chronic psychological or psychiatric disorder that is severely disabling. However, victims of armed robbery, abduction and kidnapping may receive compensation provided they can demonstrate that they have a moderately disabling chronic psychological or psychiatric disorder. Counselling is to be available to family members of deceased primary victims regardless of whether they qualified for compensation as a 'family victim'.²⁴

2001

- ***Child Protection (Offenders Registration) Amendment Act 2001***: This Act ensures that the *Child Protection (Offenders Registration) Act 2000* applies to persons convicted of persistent sexual abuse of a child.²⁵

²² NSWPD, 29 November 2000, p 11166.

²³ See further Briefing Paper No 6/01, *Police Powers and Drug Law Enforcement in NSW*, by Gareth Griffith.

²⁴ See further Briefing Paper No 10/02, *Victims of Crime: Plea Bargains, Compensation, Victim Impact Statements and Support Services*, by Rowena Johns.

²⁵ See further Briefing Paper No 16/01, *Child Protection in NSW: A Review of Oversight and Supervisory Agencies*, by Gareth Griffith.

- ***Children (Criminal Proceedings) Amendment (Adult Detainees) Act 2001***: This Act provides that a person convicted of a serious children's indictable offence (such as homicide, aggravated sexual assault, violent robbery, serious drug offences) may not serve a sentence of imprisonment in a detention centre past the age of 18 unless special circumstances exist or the non-parole period ends within six months of their turning 18. The Act includes provisions for the automatic transfer to prison.

A person under the age of 21 sentenced to imprisonment for an indictable offence may serve the whole or part of the term in a detention centre provided that the non-parole period or fixed term expires within six months after the person turns 21.

- ***Crimes (Administration of Sentences) Amendment Act 2001***: A number of amendments are made to the *Crimes (Administration of Sentences) Amendment Act 2001*, including the extension of the use of audio and audio-visual links to proceedings before the Parole Board and Serious Offenders Review Council. The Act also enables a correctional officer to assist in the restraint of any person in lawful custody following a request by a police officer.
- ***Crimes Amendment (Aggravated Sexual Assault in Company) Act 2001***: This Act creates a new offence of aggravated sexual assault in company with a penalty of life imprisonment. There are three aggravating factors: the malicious infliction of actual bodily harm upon the victim or another person present, the making of a threat to inflict actual bodily harm on the victim or another person present, or depriving the victim of his or her liberty for a period before or after the commission of the offence.²⁶
- ***Crimes Amendment (Child Protection – Physical Mistreatment) Act 2001***: The *Crimes Act 1900* is amended to limit the physical force that may be used to punish a child. The Act codifies the common law defence of lawful correction and limits the defence to the parents of a child or a person acting for a parent. The application of physical force must be reasonable in all of the circumstances, any harm should not last for more than a short period, and generally must not be applied to any part of the head or the neck.²⁷
- ***Crimes Amendment (Computer Offences) Act 2001***: This Act inserts a new regime of computer offences into the *Crimes Act 1900* and was developed in accordance with the model provisions formulated by the Model Criminal Code

²⁶ This Act is part of a gang-related package introduced by the Government including the *Justice Legislation Amendment (Non-Association and Place Restriction) Act 2001*, *Police Powers (Vehicles) Amendment Act 2001*, *Crimes Amendment (Gang and Vehicle Related Offences) Act 2001* and *Motor Trade Legislation Amendment Act 2001*. See further Briefing Paper No 16/02, *Gangs in NSW*, by Roza Lozusic and Briefing Paper No 12/01, *Sentencing 'Gang Rapists': The Crimes Amendment (Aggravated Sexual Assault in Company) Bill 2001*, by Rowena Johns, Gareth Griffith and Rachel Simpson.

²⁷ See further Briefing Paper No 9/00, *Crimes Amendment (Child Protection – Excessive Punishment) Bill 2000: Background and Commentary*, by Gareth Griffith.

Officers Committee. A number of offences are created such as unauthorised access to data, modification or impairment of data or electronic communication, and the possession of data with intent to commit a serious computer offence.

- ***Crimes Amendment (Gang and Vehicle Related Offences) Act 2001***: This Act forms part of the Government's approach to gang-related activities together with the *Crimes Amendment (Aggravated Sexual Assault in Company) Act 2001*. It creates aggravated versions of a number of pre-existing offences when the offence is committed in company. The offence of kidnapping is re-drafted to create a three-tiered aggravation structure. The Act inserts the offences of car-jacking, threatening witnesses, and recruiting a child to carry out or assist in carrying out a criminal activity into the *Crimes Act 1900*. The penalties for the offences of stealing, receiving and unlawful possession of motor vehicles and motor vehicle parts are increased.²⁸
- ***Crimes Amendment (Self-Defence) Act 2001***: The purpose of this Act is to clarify and simplify the law as it relates to self-defence and is largely based on the model developed by the Model Criminal Code Officers Committee. Self-defence is generally available if the accused believed the conduct to be necessary in defence of persons or property and the conduct 'is a reasonable response in the circumstances as he or she perceives them'. The defence is not available if death was intentionally or recklessly inflicted in order to protect the property of the accused or to prevent trespass. The onus of proof rests on the prosecution.
- ***Crimes Amendment (Sexual Servitude) Act 2001***: The *Crimes Act 1900* is amended to insert offences relating to sexual servitude as recommended by the Model Criminal Code Officers Committee. Consequently, it is an offence to cause a person to enter into or remain in sexual servitude or to conduct a business involving sexual servitude. Provisions exist for aggravated versions of both offences where the alleged victim is under the age of 18 or has a serious intellectual disability. The Act also amends the *Child Protection (Offenders Registration) Act 2000* and the *Child Protection (Prohibited Employment) Act 1998* to extend their provisions to an offence involving sexual servitude committed against a child.
- ***Crimes Legislation Amendment (Existing Life Sentences) Act 2001***: This Act amends the *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Administration of Sentences) Act 1999*. It removes the ability of the Supreme Court to set a fixed period of sentence for a non-release offender. However, the Court may set a non-parole period or minimum sentence. The Parole Board cannot make a parole order for such an offender unless it is satisfied that the person is in imminent danger of dying, or is incapacitated to the extent that he or she no longer has the physical ability to do harm to another, and has demonstrated that he or she does not pose a threat to the community. A serious offender who is the subject of a non-release recommendation must wait 30 years (the previous requirement was

²⁸See further Briefing Paper No 16/02, *Gangs in NSW*, by Roza Lozusic.

20 years) before he or she may apply for a life sentence re-determination.²⁹

- ***Criminal Legislation Amendment Act 2001***: A new offence concerning bomb and other hoaxes is inserted into the *Crimes Act 1900*. The *Crimes (Sentencing Procedure) Act 1999* is amended to confirm that the Court of Criminal Appeal has the power and jurisdiction to set guideline judgments. The Act also amends the *Children (Criminal Proceedings) Act 1987* to clarify and expand the offence of publishing the name of a child in relation to criminal proceedings. The *Criminal Procedure Act 1986* is amended to ensure that the Local Court has the full range of sentencing options at its disposal when dealing with the offence of knowingly harbouring an escapee. It also provides for back up and related offences to be dealt with in the court of trial unless contrary to the interests of justice.
- ***Criminal Procedure Amendment (Pre-Trial Disclosure) Act 2001***: This Act enables a court to impose pre-trial disclosure requirements on both the prosecution and defence on a case by case basis in order to reduce the delays in complex criminal trials. The sentencing court is provided with the discretion to reduce the sentence imposed on a convicted person according to the degree of pre-trial disclosures made by the defence.³⁰
- ***Evidence (Audio and Audio Visual Links) Amendment Act 2001***: This Act establishes a presumption in favour of using audiovisual links in preliminary criminal proceedings. The presumption does not apply where the defendant is a child and it may be displaced with the consent of the parties or if the court finds that use of the facilities is not in the interests of justice.
- ***Evidence Legislation Amendment Act 2001***: A judge is prevented by this Act from warning or suggesting to a jury that children are an unreliable class of witnesses. However, a warning may be made about a particular child if requested by a party and he or she also shows that there are circumstances particular to that child that affect the reliability of the evidence.
- ***Firearms Amendment (Trafficking) Act 2001***: The Act is designed to target the organisers of firearm trafficking by making it an offence to conspire to commit and aid the commission of an offence outside NSW. It also introduces a range of restrictions on the sale and purchase of firearms.
- ***Justice Legislation Amendment (Non-association and Place Restriction) Act 2001***: This Act is part of the Government's anti-gang package together with the *Crimes Amendment (Aggravated Sexual Assault in Company) Act 2001* and the *Police Powers (Vehicles) Amendment Act 2001*. It amends the *Crimes (Sentencing*

²⁹ See further Briefing Paper No 2/02, *Sentencing Law: A Review of Developments in 1998-2001*, by Rowena Johns.

³⁰ See further Briefing Paper No 12/00, *Pre-Trial Defence Disclosure: Background to the Criminal Procedure Amendment (Pre-trial Disclosure) Bill 2000*, by Gareth Griffith.

Procedure) Act 1999 and the *Children (Criminal Proceedings) Act 1987* to enable ‘non-association’ and ‘place restriction’ orders to be imposed on those convicted of an offence with a maximum penalty of more than six months imprisonment. Non-association orders prevent the offender from associating with specified persons. Place restriction orders prevent him or her from attending a particular area. Such conditions can be attached to grants of bail, unescorted leave from custody, home detention and parole.³¹

- ***Motor Trade Legislation Amendment Act 2001***: Amongst other things, this Act introduces a number of crime prevention initiatives as part of the Government’s anti-gang package. In order to counteract car rebirthing, the Act tightens entry requirements for licensed dealers and repairers. It bars a person convicted of stealing or receiving a stolen motor vehicle or part thereof from holding a licence. It introduces a rebuttable presumption that a person who sells more than four vehicles within a 12 month period is an unlicensed dealer. The maximum penalty for unlicensed dealing and repairing is increased from 500 penalty units or \$55,000 for unlicensed dealing to 1000 penalty units (\$110,000).³²
- ***Police Powers (Drug Detection Dogs) Act 2001***: This Act permits the use of dogs for general drug detection without a warrant in such authorised places as licensed premises, entertainment areas, dance parties, sporting and special events, and public passenger vehicles on prescribed routes.
- ***Police Powers (Drug Premises) Act 2001***: The Act grants the police further powers to search suspected drug premises. The obstruction of police from entering premises, the construction of premises in such a way as to delay the entry by police, persons acting as lookouts, the presence of syringes and unauthorised firearms, unaccountable large sums of money and the presence of persons who appear to be affected by a prohibited drug may be viewed as evidence that the premises are drug premises. The Act is aimed at major and organised criminals, thus cannabis and its derivatives are excluded from the operation of the Act.³³ It creates offences such as entering or being on drug premises, and assisting with the operation of drug premises.³⁴
- ***Police Powers (Internally Concealed Drugs) Act 2001***: The Act establishes a regime for carrying out an internal search on a person over the age of 10 years reasonably suspected of swallowing or internally concealing a prohibited drug for the purpose of supply. The person may be detained for an internal search where

³¹ See further Briefing Paper No 16/02, *Gangs in NSW*, by Roza Lozusic and Briefing Paper No 15/02, *Bail Law and Practice: Recent Developments*, by Rowena Johns.

³² See further Briefing Paper No 16/02, *Gangs in NSW*, by Roza Lozusic.

³³ NSWPD, 30 May 2001, p 13996.

³⁴ See further Briefing Paper No 11/01, *Police Powers in NSW: Background to the Law Enforcement (Powers and Responsibilities) Bill 2001*, by Gareth Griffith.

there are reasonable grounds to believe that a search is likely to produce evidence confirming the commission of an offence and the detention of the person is justified in all the circumstances. A search may be carried out by court order or with the suspect's consent by means of ultrasound, MRI, x-ray or CAT scan. The Act includes safeguards for children, persons with an intellectual disability, and Aboriginal and Torres Strait Islanders.³⁵

- ***Police Powers (Vehicles) Amendment Act 2001***: The police are given additional powers by this Act to stop and search vehicles reasonably suspected of having been used in connection with an indictable offence. The police also have the authority to request the identification of the driver and any passengers. Drivers and passengers who fail to disclose their identity are guilty of an offence. This Act is part of the Government's anti-gang package together with the *Crimes Amendment (Aggravated Sexual Assault in Company) Act 2001* and the *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001*.³⁶
- ***Summary Offences Amendment (Minors in Sex Clubs) and Theatres and Public Halls Repeal Act 2001***: The *Summary Offences Act 1988* is amended to enable a police officer to enter a declared sex club without a warrant if he or she reasonably suspects a minor to be present in the club.

2002

- ***Bail Amendment (Confiscation of Passports) Act 2002***: The *Bail Act 1978* is amended to require, except in special circumstances, that bail granted to a person accused of an offence occasioning death be subject to a condition requiring the surrender of his or her passport.³⁷
- ***Bail Amendment (Repeat Offenders) Act 2002***: This Act removes the presumption in favour of bail for certain repeat offenders, including those who are charged with other crimes whilst on bail, parole, or subject to a bond or community service release sentence. The presumption is also removed in respect of persons who have previously been convicted at any time of the offence of failing to appear, or have been previously convicted of any indictable offence. The Act also recognises that the special needs of Aboriginal and Torres Strait Islanders, children, and people with an intellectual disability or mental illness should be taken into account when considering the needs of the accused when determining bail.³⁸

³⁵ See further Briefing Paper No 11/01, *Police Powers in NSW: Background to the Law Enforcement (Powers and Responsibilities) Bill 2001*, by Gareth Griffith.

³⁶ See further Briefing Paper No 16/02, *Gangs in NSW*, by Roza Lozusic.

³⁷ See further Briefing Paper No 15/02, *Bail Law and Practice: Recent Developments*, by Rowena Johns.

³⁸ See further Briefing Paper No 15/02, *Bail Law and Practice: Recent Developments*, by Rowena Johns.

- ***Children (Detention Centres) Amendment Act 2002:*** The Act extends the detention of a person unlawfully absent from custody for a period equivalent to the length of the unlawful absence.
- ***Courts Legislation Miscellaneous Amendments Act 2002:*** A scheme of electronic case management in courts is provided by this Act, so that documents may be filed and served electronically, and certain hearings may be conducted by way of electronic communication.
- ***Crimes (Administration of Sentences) Amendment Act 2002:*** This Act makes a number of amendments to the *Crimes (Administration of Sentences) Act 1999*. It inserts the requirement that a police officer take an escaped inmate before a court before returning him or her to prison. It grants the victim of a serious offender a statutory right to make an oral submission to the Parole Board when considering a parole order. Victims were previously required to obtain leave of the Parole Board before making a submission. Correctional officers are given the power to stop, detain and search a person reasonably suspected of attempting to smuggle contraband into a correctional centre or who are about to carry out some other unlawful activity.
- ***Crimes Amendment (Bushfires) Act 2002:*** An offence of causing a bushfire, largely based on the offence drafted by the Model Criminal Code Officers Committee, is inserted into the *Crimes Act 1900*. The offence applies to a person who intentionally causes a fire and intends the fire to spread or is reckless as to the spread of the fire. An express defence is provided for firefighters who light a fire in the course of their duties.³⁹
- ***Crimes Amendment (Police and Other Law Enforcement Officers) Act 2002:*** This Act amends the *Crimes Act 1900* with respect to offences committed against police officers, law enforcement officer and persons associated with them. It extends the application of offences related to the stalking, harassment, intimidation, malicious wounding, and the infliction of grievous bodily harm on a police officer to officers who are not on duty but are targeted because of their occupation. Similar offences are created for the same acts inflicted on a person in a domestic relationship with a police officer. It also prohibits the obtaining of personal information about a police officer or other law enforcement officer for the purpose of committing one of the above offences.
- ***Crimes Amendment (School Protection) Act 2002:*** The *Crimes Act 1900* is amended to prohibit the assault, stalking, harassment or intimidation of staff or students on school property.

³⁹See further Briefing Paper No 2/03, *Arson*, by Talina Drabsch.

- ***Crimes (Forensic Procedures) Amendment Act 2002***: The definition of ‘volunteers’ in the *Crimes (Forensic Procedures) Act 2000* is amended to exclude victims of offences against the persons and persons who volunteer to provide a sample of their fingerprints for elimination purposes in relation to property offences. The formal procedural requirements were seen as inappropriate for victims of personal violence offences who may be traumatised at the time they are asked to undergo a forensic procedure.⁴⁰
- ***Crimes Legislation Amendment Act 2002***: Amongst other things, the *Search Warrants Act 1985* is amended to provide that, subject to certain exceptions, the execution of a search warrant is to be recorded by means of an audio and visual recording. The *Bail Act 1978* is amended to remove the presumption in favour of bail should a person allegedly commit an offence whilst in custody. The definition of ‘tainted property’ in the *Confiscation of the Proceeds of Crime Act 1989* is expanded to include proceeds derived from the public promotion of a crime in the form of a publication or film. The *Children (Criminal Proceedings) Act 1987* is amended to include a number of factors that a court must consider when determine whether a young person should be dealt with according to law.
- ***Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002***: The Act amends a number of Acts to provide a legislative framework for the operation of intervention programs. An intervention program is one that promotes the treatment or rehabilitation of an offender, enables offenders to accept responsibility for their behaviour and/or promotes their reintegration into the community. This Act enables a person before the court for a summary offence, or an indictable offence triable summarily, to be referred to an intervention program:
 - as a condition of bail, after being charged with the offence or during an adjournment of the court proceedings;
 - as a condition of being discharged from the offence;
 - as a condition of a good behaviour bond; or
 - as part of the sentence imposed.⁴¹
- ***Crimes Legislation Amendment (Penalty Notice Offences) Act 2002***: This Act amends the *Criminal Procedure Act 1986* to enable police officers to issue a penalty notice for certain minor offences such as common assault, larceny to the value of \$300, offensive conduct or language in or near a public place or school. The person served with the notice can elect to pay the amount specified on the penalty notice or have the matter determined by a court. Police officers are also empowered by an amendment to the *Crimes Act 1900* to take fingerprints and palmprints from offenders when serving them with a penalty notice. According to the Government, the Act is intended to provide a more efficient and cost-effective means of dealing with some minor offences.

⁴⁰ NSWPD, 28 May 2002, p 2109.

⁴¹ See further Briefing Paper No 15/02, *Bail Law and Practice: Recent Developments*, by Rowena Johns.

- ***Crimes Legislation Amendment (Periodic and Home Detention) Act 2002:*** The *Crimes (Sentencing Procedure) Act 1999* is amended to make periodic detention unavailable for offenders who have previously served more than six months in fulltime detention. The Act contains provisions for the assessment of an offender for periodic and home detention.
- ***Crimes (Sentencing Principles) Amendment (Standard Minimum Sentencing) Act 2002:*** A New South Wales Sentencing Council is established by this Act to advise the Minister on sentencing matters. The Act also introduces standard minimum sentencing by setting standard non-parole periods for a number of serious offences. Such offences include murder, certain assault offences involving injury to police officers, certain sexual offences, car-jacking, and certain offences involving commercial quantities of prohibited drugs. The court is to set the specified standard non-parole period unless the court determines that there are reasons for increasing or decreasing that term. In the event that the court alters the standard non-parole period, they must record their reasons and identify each factor that influenced the decision. The Act also specifies the purposes of sentencing to include punishment, deterrence, protection, rehabilitation, accountability, denunciation and recognition of harm. Specific aggravating and mitigating factors to be taken into account when determining the appropriate sentence for offences in general are identified. The Act aims to provide consistency and transparency in sentencing, and to promote public understanding of the sentencing process.
- ***Crimes (Sentencing Procedure) Amendment (General Sentencing Principles) Act 2002:*** This Act makes further provision regarding sentencing by inserting section 21A into the *Crimes (Sentencing Procedure) Act 1999*. The Act codifies established common law sentencing principles by requiring the court to consider the elements of deterrence, contrition and protection of the community when sentencing. The section specifically requires the court to take into account a number of factors concerning the victim, such as their personal circumstances, age, any physical or mental disability, and any vulnerability arising from his or her occupation.
- ***Criminal Procedure Amendment (Sexual Assault Communications Privilege) Act 2002:*** This Act clarifies that the sexual assault communications privilege extends to confidential communications made in the course of counselling that take the form of listening to and giving verbal, or other, support or encouragement to another person. A person may be classified as a counsellor even if they lack formal training, qualifications or experience in the diagnosis of psychiatric or psychological conditions.⁴²
- ***Disorderly Houses Amendment (Commercial Supply of Prohibited Drugs) Act 2002:*** The *Disorderly Houses Act 1943* is amended to provide for the temporary

⁴² See further Briefing Paper No 10/02, *Victims of Crime: Plea Bargains, Compensation, Victim Impact Statements and Support Services*, by Rowena Johns.

closure of commercial premises on grounds relating to the illegal supply of prohibited drugs.

- ***Drug Court Amendment Act 2002***: Amongst other things, section 8A of the *Drug Court Act 1988* is amended to extend the maximum period for which an offender can be committed to a correctional centre for detoxification and assessment from seven to 21 days. The objects of the Act are altered to focus on the reduction of drug dependency, the reintegration of drug dependent persons into the community, and reduction of the need for drug dependent persons to resort to criminal activity.
- ***Drug Summit Legislative Response Amendment (Trial Period Extension) Act 2002***: As a result of this Act, the trial period of the medically supervised injecting centre in Kings Cross is extended by another 12 months.
- ***Firearms Amendment (Public Safety) Act 2002***: This Act amends the *Firearms Act 1996* to authorise the use of dogs by police officers to detect firearms and explosives in public places. The Act also provides that firearms dealers must be licensed and prohibits the unauthorised manufacture of firearms. The unauthorised possession of three or more unregistered firearms is also banned.
- ***Law Enforcement (Powers and Responsibilities) Act 2002***: This Act consolidates and restates the law relating to police and other law enforcement officers' powers and responsibilities. It sets out various provisions regarding the powers of entry; powers regarding disclosure of identity; search and seizure powers with and without a warrant; search, entry and seizure powers relating to domestic violence offences; crime scenes; powers relating to arrest; investigations and questioning; other powers relating to persons in custody; drug detection powers; powers relating to vehicles and traffic; the use of dogs to detect firearms and explosives; powers to give directions; safeguards relating to powers; powers relating to intoxicated persons; property in police custody; and the use of force.⁴³
- ***Road Transport Legislation Amendment (Interlock Devices) Act 2002***: This Act enables a court to provide a person before the court for an alcohol related driving offence with the alternative of entering into the interlock program rather than face licence disqualification. An interlock device that analyses the driver's breath is fitted to the vehicle and prevents it from starting in the event that alcohol is detected.
- ***Summary Offences Amendment (Places of Detention) Act 2002***: The *Summary Offences Act 1988* is amended to enable a correctional officer to stop, detain and search a person or vehicle they suspect has committed or intends to commit an offence in the vicinity of a place of detention.

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See further Briefing Paper No 11/01, *Police Powers in NSW: Background to the Law Enforcement (Powers and Responsibilities) Bill 2001*, by Gareth Griffith.

- ***Summary Offences Amendment (Public Safety) Act 2002:*** The penalty for possessing a knife in a public place or school on two occasions is increased to imprisonment for one year and 10 penalty units. The maximum penalty for a person who has been dealt with on more than one prior occasion is increased to imprisonment for two years and 20 penalty units. The Act also clarifies and simplifies the power of police officers to 'move on' persons in public places.
- ***Summary Offences Amendment (Spray Paint Cans) Act 2002:*** The *Summary Offences Act 1988* is amended to create an offence of selling spray paint cans to persons under the age of 18 years.
- ***Terrorism (Commonwealth Powers) Act 2002:*** This Act refers certain matters relating to terrorism to the Commonwealth in accordance with section 51(xxxvii) of the Constitution. It enables the effective prosecution of suspected terrorists as Commonwealth and NSW legislation is to operate concurrently to prevent the exploitation of any loopholes. The Act is part of the government's response to the terrorist attacks on New York in 2001 and Bali in 2002.
- ***Terrorism (Police Powers) Act 2002:*** This Act grants police officers special powers to deal with acts of terrorism and to protect people in times of emergency. The exercise of these powers does not require judicial authorisation, but may be activated by a Commissioner or Deputy Commissioner of the NSW Police with the consent of the Police Minister. The exercise of such powers is not subject to judicial review. The special powers may be exercised for the purpose of finding a particular person or vehicle and to prevent or respond to a terrorist threat in a particular area. It enables a police officer to enter and search, without a warrant, any premises reasonably suspected of containing a target person or vehicle or that are located in the threatened area. The police have the power to request identification and to seize items. It requires the Commissioner of Police to provide a report to the Attorney-General and Minister of Police as soon as possible after the expiry of an authorisation to exercise special powers. The report is to set out the terms and period of the authorisation, the grounds on which it was relied to give the authorisation, and is to provide a description of the powers exercised and the results. The Act is to be reviewed every 12 months.
- ***Young Offenders Amendment Act 2002:*** The number of times a young offender can be cautioned under the *Young Offenders Act 1997* is limited by this Act to three. After that time a specialist youth officer will determine whether to refer the offender to a youth justice conference or whether the matter should proceed to court. The Act requires specialist youth officers, conference administrators and the Director of Public Prosecutions to consult with the investigating officer to determine whether an offender should be sent to a youth justice conference. If appropriate, a representative of the offender's school may be invited to attend the conference. An outcome plan developed at a conference should consider whether the offender should be required to participate in a relevant program, such as drug and alcohol rehabilitation. Each victim who attends a conference has the right to veto an outcome plan, as does the offender.

4.2 Queensland

1999

- ***Audio Visual and Audio Links Amendment Act 1999***: This Act inserts a new part 3A, Audio Visual Links and Audio Links, into the *Evidence Act 1977*. It enables Queensland to participate in a substantially uniform interstate scheme for the taking or receiving of evidence and submissions by audio visual or audio link. The Act also empowers Queensland courts to arraign and sentence an offender by audio or audio visual link provided it has the consent of each party.
- ***Corrective Services Legislation Amendment Act 1999***: The Queensland Corrective Services Commission and Queensland Corrections are abolished and the Corrective Services Advisory Council is established by this Act. The *Corrective Services Act 1988* is amended to provide a clear and express power for the segregation and management of maximum security prisoners within a maximum security facility.
- ***Criminal Code (Stalking) Amendment Act 1999***: The offence of stalking is reformed by this Act. Prior to the amendments, the *Criminal Code* required it to be shown that the accused intended the victim to be aware that the course of conduct was directed at him or her and to have an actual belief that a violent act was likely to happen, before there could be a determination of guilt. This Act removes these requirements and grants the court the power to restrain unlawful stalking whether or not the defendant is convicted of the offence.
- ***Criminal Law Amendment Act 1999***: This Act enables the Queensland Community Corrections Board to release information to a police officer, corrective services officer, or a person claiming to have a legitimate and sufficient interest in the information, regarding any offence of a sexual nature where a person subject to a reporting order has been convicted.
- ***Domestic Violence (Family Protection) Amendment Act 1999***: The Act aims to improve the enforcement of domestic violence orders, clarify existing provisions, eliminate unnecessary burdens on the police and courts and improve the security of people escaping domestic violence by amending the *Domestic Violence (Family Protection) Act 1989*.
- ***Police Powers and Responsibilities Amendment Act 1999***: As a result of this Act, the power to arrest a child without a warrant is reinstated.
- ***Prostitution Act 1999***: Prostitution is legalised, regulated and controlled following the enactment of this statute. It permits the operation of brothels, however, they are subject to size limitations and may not be in residential areas or close to places of worship, hospitals, schools, kindergartens and other places frequented by children.

2000

- ***Commission for Children and Young People Act 2000:*** A Commission for Children and Young People is established by this Act. Their task is to promote and protect the rights, interests and wellbeing of children in Queensland. Part 4 of the Act provides for community visitors to promote and protect the rights of children who reside at detention centres as well as other facilities. The Commissioner is to arrange regular and frequent visits to the detention centre by a Community Visitor.
- ***Corrective Services Act 2000:*** The purpose of this Act is to provide for the safe and humane containment, supervision and rehabilitation of sentenced offenders and persons detained in custody on remand. It replaces the *Corrective Services (Administration) Act 1988* and the *Corrective Services Act 1988*. The Act ensures that offenders' entitlements that can be reasonably provided are safeguarded. The Act recognises the need to respect an offender's dignity and to provide for the special needs of offenders. Various chapters are included on prisoners, breaches and offences, corrective services facilities, post-prison community based release, and chaplains, elders, respected persons and spiritual healers.
- ***Criminal Law Amendment Act 2000:*** This Act seeks to implement some of the recommendations made by the Taskforce on Women and the Criminal Code. Specific offences outlawing the practice of female genital mutilation and the removal of a child from the State for the purpose of female genital mutilation are inserted into the *Criminal Code*. The *Evidence Act 1977* is also amended to prevent a self-represented defendant from cross-examining, in person, children, persons with an intellectual impairment, and victims of sexual or violent crime. Legal representation will be made available for the purpose of cross-examining a protected witness.
- ***Drugs Misuse Amendment Act 2000:*** The *Drugs Misuse Act 1986* is amended to introduce a new scheme for performance and image enhancing drugs.
- ***Drug Rehabilitation (Court Diversion) Act 2000:*** This Act seeks to reduce the level of drug dependency in the community, the level of criminal activity associated with drug use, associated health risks, and the pressure on the court and prison system by introducing a pilot drug court program. Suitable drug dependent offenders facing imprisonment are to be diverted to intensive drug rehabilitation programs that aim to improve their health, prospects for employment, and ability to function as law-abiding citizens.
- ***Evidence Amendment Act 2000:*** The applicable standard of proof regarding facts at issue at the time of sentencing is the balance of probabilities. However, weight must also be given to the gravity of the fact to be proved and its potential impact on the defendant.
- ***Evidence (Witness Anonymity) Amendment Act 2000:*** This Act provides for the giving of witness anonymity certificates where necessary to protect a covert

operative who may be required to give evidence regarding a controlled operation.

- ***Justice and Other Legislation (Miscellaneous Provisions) Act 2000:*** Amongst other things, this Act removes from the *Criminal Code* the offence of pretending to use witchcraft, sorcery, fortune-telling or another occult science to discover where something lost or stolen may be found.
- ***Penalties and Sentences and Other Acts Amendment Act 2000:*** This Act provides for the input of community justice groups into the sentencing of an adult or juvenile Aboriginal or Torres Strait Islander.
- ***Police Powers and Responsibilities Act 2000:*** The objects of the Act are as follows:
 - (a) to consolidate and rationalise the powers and responsibilities police officers have for investigating offences and enforcing the law;
 - (b) to provide powers necessary for effective modern policing and law enforcement;
 - (c) to provide consistency in the nature and extent of the powers and responsibilities of police officers;
 - (d) to standardise the way the power and responsibilities of police are to be exercised;
 - (e) to ensure fairness to, and protect the rights of, persons against whom police officers exercise powers under this Act; and
 - (f) to enable the public to better understand the nature and extent of the powers and responsibilities of police officers.

The Act is comprehensive and contains chapters on general enforcement powers; search warrants, obtaining documents and crime scenes; covert evidence gathering powers; arrest and custody powers; powers and responsibilities relating to investigations and questioning for indictable offences; powers in relation to persons in custody; and various safeguards to ensure that authority is exercised correctly.

- ***Police Powers and Responsibilities and Other Acts Amendment Act 2000:*** This Act contains policy initiatives on controlled operations and activities; the diversion of persons found drunk in a public place to a place of safety; pre-court diversion of minor drug offenders to a drug diversion assessment program; DNA profiling procedures; blood and urine testing of persons suspected of committing sexual and other serious offences; and dealing with items in the possession of the police force.
- ***Witness Protection Act 2000:*** This Act provides an outline of the conditions in which witness protection is offered and maintained, including the steps that may be taken to establish a new identity such as obtaining a new birth certificate. The Act also creates various offences in regard to the disclosure of information about the program or a witness, and provides a statutory basis for arrangements with witness protection authorities in other jurisdictions.

2001

- ***Corrective Services Amendment Act 2001***: This Act outlines the procedure for obtaining the necessary authorisation for strip searching prisoners.
- ***Corrective Services Amendment Act (No 2) 2001***: Amendments are made to the *Corrective Services Act 2000* to clarify a prisoner's eligibility for post-prison based community release. The prosecution of offenders unlawfully at large is simplified.
- ***Crime and Misconduct Act 2001***: The Criminal Justice Commission and Queensland Crime Commission are merged into the Crime and Misconduct Commission which is designed to prevent corruption and enhance the integrity of the public sector.
- ***Crimes At Sea Act 2001***: This Act is designed to give effect to the national legislative scheme concerning the commission of crimes at sea. The criminal law of Queensland is to apply in its adjacent area for a distance of 12 nautical miles from the baseline, by the force of the law of Queensland, and beyond 12 nautical miles up to a distance of 200 nautical miles from the baseline or the outer limit of the continental shelf, whichever is the greater, by force of the law of the Commonwealth.
- ***Penalties and Sentences (Non-Contact Orders) Amendment Act 2001***: A sentencing court is empowered to make an order that an adult offender convicted of an indictable offence against the person must refrain from contact with the victim or someone who was with the victim at the time of the offence. The offender may also be prevented from attending a particular place for a specified period of time.
- ***Tobacco and Other Smoking Products (Prevention of Supply to Children) Amendment Act 2001***: Amongst other things, this Act prohibits the promotion of tobacco and other smoking products. It also makes it an offence for people to smoke in an enclosed space with the exception of the home, a private vehicle, premium gaming rooms and licensed premises other than a dining area.

2002

- ***Criminal Law Amendment Act 2002***: The purpose of this Act is to improve the responsiveness of the criminal justice system to the needs of such persons as jurors, witnesses and victims of crime. A new offence regarding retaliation against a judicial officer, juror, witness or member of their family is created. Internet inquiries by jurors into the criminal history of a person are prohibited whilst they are sworn in a trial as a result of amendments to the *Jury Act 1995*.
- ***Criminal Proceeds Confiscation Act 2002***: This Act introduces a civil confiscation scheme under which all criminal proceeds accumulated by a serious criminal offender during the last six years may be confiscated. Previously, liability was limited to the profits of a particular offence.

- ***Domestic Violence Legislation Amendment Act 2002:*** Application of the *Domestic Violence (Family Protection) Act 1989* is extended to people who are abused within intimate personal relationships by their relatives and within informal care relationships. This is reflected in the change of the name of the Act to '*Domestic and Family Violence Protection Act 1989*'. The Act also enables children under 18 to bring, and be respondents to, applications for domestic violence orders within the scope of the statute. The duty of police to investigate suspected incidents of domestic violence is increased. Most sections regarding weapons in the *Domestic Violence (Family Protection) Act 1989* are transferred to the *Weapons Act 1990*.
- ***Drug Diversion Amendment Act 2002:*** The provision of drug assessment and education sessions to juveniles and adults is facilitated by this Act. It provides that no further action will be taken and no conviction recorded if an eligible offender attends the drug assessment and education session. However, failure to attend will result in offenders being returned to court and sentenced for the original offence.
- ***Drug Misuse Amendment Act 2002:*** This Act allows, within prescribed limits, the growing, plant breeding and research of cannabis sativa for use as commercial fibre and seed products.
- ***Drug Rehabilitation (North Queensland Court Diversion Initiative) Amendment Act 2002:*** The *Drug Rehabilitation (Court Diversion) Act 2002* is amended so that a person who has previously served a term of imprisonment for more than six months will not be eligible for the Drug Court pilot program.
- ***Juvenile Justice Amendment Act 2002:*** A court is permitted, in certain circumstances, to name a child convicted of a serious and violent offence. The Act also introduces a new sentencing option known as the 'intensive supervision order' into the *Juvenile Justice Act 1992* for high risk children who are too young to do community service work. A child's right to elect to be dealt with by the District Court is removed in order to discourage forum shopping. Finally, a new charter of juvenile justice principles is inserted into the *Juvenile Justice Act 1992*.
- ***Police Powers and Responsibilities (DNA) Amendment Act 2002:*** Each provision relating to DNA procedures is amended to expressly state that DNA samples may be collected from a prisoner serving a term of imprisonment for an indictable offence, irrespective of whether it was dealt with summarily.
- ***Police Powers and Responsibilities and Another Act Amendment Act 2002:*** This Act allows for the seizure and impoundment of vehicles driven in contravention of certain provisions of the *Criminal Code* and the *Transport Operations (Road Use Management) Act 1995*. Examples of offences include racing and speed trials.
- ***Terrorism (Commonwealth Powers) Act 2002:*** This Act enables certain matters relating to terrorist acts to be referred to the Commonwealth to enable the

Commonwealth Parliament to pass appropriate legislation.

4.3 South Australia

1999

- ***Controlled Substances (Forfeiture and Disposal) Amendment Act 1999:*** Property used in connection with drug offences may be forfeited as a result of this Act. It also provides for the immediate disposal of any controlled substances and dangerous material.
- ***Criminal Law Consolidation (Contamination of Goods) Amendment Act 1999:*** Prior to the commencement of this Act, the attention of the criminal law was not specifically directed at the public harm resulting from the contamination of goods. New offences are created by this Act with regard to causing public alarm or anxiety, causing loss or harm to another, or the gaining of a benefit through the contamination, or threatened contamination, of goods. These amendments were in response to the recommendations of the Model Criminal Code Officers Committee.
- ***Criminal Law Consolidation (Intoxication) Amendment Act 1999:*** A new part 8 dealing with the effect of intoxication by drink or drugs is inserted into the *Criminal Law Consolidation Act 1935*. Previously, the common law dealt with the issue of intoxication. The Act makes it clear that intoxication by drink or drugs cannot be used as a mitigating factor if the person became intoxicated to strengthen his or her resolve to carry out the offence.
- ***Criminal Law Consolidation (Juries) Amendment Act 1999:*** This Act creates a number of offences relating to the improper disclosure, solicitation, or obtaining of information relating to jury deliberations and the identity of jurors for the purposes of publication.
- ***Criminal Law Consolidation (Serious Criminal Trespass) Amendment Act 1999:*** This Act was part of a legislative response to a number of reports in the media about home invasions. It restructures the sequence of the offences of criminal trespass by dividing them into three categories – serious criminal trespass of a residence, serious criminal trespass of other places, and other criminal trespass.
- ***Criminal Law (Sentencing) (Sentencing Principles) Amendment Act 1999:*** This Act is designed to complement the *Criminal Law Consolidation (Serious Criminal Trespass) Amendment Act 1999*. It amends section 10 of the *Criminal Law (Sentencing) Act 1988* to require a court to consider the need to protect the security of the lawful occupants of a home when sentencing a person convicted of an offence committed in the home of another.
- ***Evidence (Confidential Communications) Amendment Act 1999:*** A two-stage process for considering an application for access to a ‘protected communication’ is provided by this Act. The applicant must first obtain leave and subsequently

demonstrate a legitimate forensic purpose for the application. The applicant must also be able to show that it is arguable that the evidence will materially assist the presentation of the applicant's case. The court then has the discretion to determine whether the records should be produced to the court or if the holder of the information should be required to answer questions or appear before the court. In exercising its discretion, the court is to balance the need to preserve the confidentiality of the communications against the need to prevent a miscarriage of justice, with explicit consideration to be given to the factors in section 67F.

- ***Evidence (Miscellaneous) Amendment Act 1999:*** The *Evidence Act 1929* is amended to remove the arbitrary distinction between the evidence of children and adults and establish in its place a uniform test of competency to give formal evidence.
- ***Motor Vehicles (Heavy Vehicles Speeding Control Scheme) Amendment Act 1999:*** This Act aims to reduce the incidence of speeding amongst heavy vehicles by making the registered owner responsible for repeated speeding incidents.
- ***Statutes Amendment (Sentencing – Miscellaneous) Act 1999:*** Amongst other things, the Act amends the *Criminal Law (Sentencing) Act 1988* to enable a court to sentence a person to one penalty for all or some of the offences with which they have been charged.
- ***Tobacco Products Regulation (Sale of Products Designed for Smoking) Amendment Act 1999:*** This Act prohibits the sale of non-tobacco products designed for smoking, such as herbal cigarettes, from being sold to children.

2000

- ***Children's Protection (Mandatory Reporting and Reciprocal Arrangements) Amendment Act 2000:*** This Act adds pharmacists to the list of persons who are required to notify the authorities if they suspect that a child has been or is being abused or neglected. It also implements national agreements for the transfer of child protection orders between States, Territories, and New Zealand, should the child cross a border.
- ***Criminal Law Consolidation (Appeals) Amendment Act 2000:*** The Director of Public Prosecutions is given the right to appeal against a decision by a judge to acquit a person charged with a serious offence.
- ***Criminal Law Consolidation (Mental Impairment) Amendment Act 2000:*** This Act is designed to ensure that an accused person who pleads mental impairment may be convicted of an alternative verdict in the event that the elements of the major charge are not proved beyond reasonable doubt.
- ***Criminal Law Consolidation (Sexual Servitude) Amendment Act 2000:*** Following the recommendations of the Model Criminal Code Officers Committee,

the laws on procuring sexual intercourse are repealed and replaced with a wider range of laws in regard to sexual servitude. Consequently, it is an offence to use unfair or improper means to influence someone to enter or remain in the commercial sex industry. The use of children in commercial sexual services is expressly prohibited with penalties graded according to the age of the victim.

- ***Road Traffic (Alcohol Interlock Scheme) Amendment Act 2000***: An alcohol interlock scheme is introduced into the *Road Traffic Act* and *Motor Vehicles Act*. Whilst the courts are still required to impose a disqualification period upon conviction of an alcohol related driving offence, the offender has the option of applying for the issue of an interlock licence when half of the disqualifying period has been served. Should the licence be granted, the offender is required to drive with the interlocking device for double the remaining period of disqualification.
- ***Shop Theft (Alternative Enforcement) Act 2000***: This Act enables persons accused of minor shop theft to be subject to a non-curial enforcement process as an alternative to prosecution, provided the victim, police and the accused consent. The accused must admit the offence, pay for any damaged goods, submit to a formal police caution, and undertake to apologise to the victim in the presence of a police officer. Should the value of the goods be greater than \$150, the offender is liable to community service calculated at one hour for every \$5 of the value of the goods stolen.
- ***Statutes Amendment and Repeal (Security and Order at Court and Other Places) Act 2000***: This Act regulates the conduct of searches upon entry to court premises.
- ***Summary Offences (Searches) Amendment Act 2000***: This Act sets out the general principles for the conduct of search and seizures, and the procedures for intrusive and intimate searches.
- ***Young Offenders (Publication of Information) Amendment Act 2000***: The *Young Offenders Act 1993* is amended to permit, in certain circumstances, the identity of a young offender to be published in a documentary or report for an educational or research project about the juvenile justice system. The Youth Court must consider the welfare of the youth and the possible impact of publication upon him or her, the purpose and necessity of the publication, and the public interest before granting permission.

2001

- ***Criminal Law (Legal Representation) Act 2001***: This Act is designed to overcome the difficulties that followed the decision of the High Court in *Dietrich v R*⁴⁴ who held that serious criminal trials may be stayed indefinitely where the trial might be unfair because the defendant is unable to secure legal representation because of his

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(1992) 177 CLR 292

or her indigence. Consequently, several serious criminal trials had been stayed in South Australia until the government provided funding for representation.⁴⁵ The Act provides legal aid to anyone tried in the District or Supreme Court for an indictable offence. However, they will be required to pay for representation to the full extent of their means. The Act also empowers the Legal Aid Commission to assign a solicitor as opposed to appointing a solicitor of the defendant's choice, where the person would otherwise be ineligible for legal aid.

- ***Criminal Law (Sentencing) (Sentencing Procedures) Amendment Act 2001***: A court is empowered by this Act to assist victims in reading their victim impact statements to the court by doing such things as screening the victim from the defendant. The Act also requires a defendant to be present throughout sentencing proceedings unless the prosecutor consents to their absence or it is necessary for safety reasons.
- ***Graffiti Control Act 2001***: The purpose of this Act is to introduce measures for the minimisation of graffiti, to punish people responsible for graffiti and to provide for its removal. The Act prohibits the sale of spray paint to minors, and requires cans of spray paint to be stored in a securely locked cabinet or in another way that is inaccessible to the general public. As well as imposing a penalty of \$2,500 or imprisonment for six months for a person who marks graffiti, the Act makes it an offence to carry a graffiti implement without lawful excuse in a public place or a place the person has entered without permission.
- ***Listening Devices (Miscellaneous) Amendment Act 2001***: As well as updating the *Listening Devices Act 1972* to take technological advances into account, this Act enables police to obtain judicial authorisation to enter premises for the purpose of installing, maintaining and retrieving a listening device and a surveillance device.
- ***Statutes Amendment (Stalking) Act 2001***: The offence of stalking is amended to include two new types of behaviour. Consequently, the publication or transmission of offensive material by the Internet or other electronic communication device in such a way that the material will be found or brought to the attention of the other person; or the communication by mail, telephone, fax, internet, or other electronic device, with the other person in such a manner as could reasonably be expected to arouse apprehension or fear in the other person, will constitute stalking.
- ***Victims of Crime Act 2001***: The stated objects of this Act are:
 - to give statutory recognition to the victims of crime and the harm they suffer;
 - to establish principles governing the treatment of victims in the criminal justice system;
 - to help victims of crime recover from the effects of crime and to advance their welfare; and

⁴⁵ SAPD (*House of Assembly*), 25 July 2001, p 2117.

- to provide limited monetary compensation to those victims most directly affected by crime.

The Act enunciates the rights of the victim which include the right: for their needs to be taken into account in bail proceedings, to be informed about the progress of the criminal investigation and prosecution and their role as a witness, to have the impact of the offence on them considered by the sentencing court, and to have the ability to make a submission upon parole. Part 4 of the Act contains the provisions relevant to applications for compensation.

2002

- ***Criminal Law Consolidation (Offences of Dishonesty) Amendment Act 2002:*** This Act reforms and updates the law of theft, fraud, receiving, forgery, blackmail, robbery and burglary. A variety of larceny offences are replaced with a general offence of theft. A number of fraud offences are replaced with a more general offence of deception, and forgery offences have been condensed into 'dishonest dealings with documents'. The Act also creates a special division titled 'dishonest manipulation of machines' in regard to computer and electronic theft and fraud. The Act adopts a different approach to that recommended by the Model Criminal Code Officers Committee.
- ***Criminal Law Consolidation (Territorial Application of the Criminal Law) Amendment Act 2002:*** The purpose of this Act is to clarify and extend the jurisdiction of South Australian criminal courts. Instead of defining an offence by where it occurs, the Act refers to the commission of an offence in terms of the act, omission or state of affairs that constitute the offence and accordingly implements the recommendations of the Model Criminal Code Officers Committee.
- ***Criminal Law (Forensic Procedures) (Miscellaneous) Amendment Act 2002:*** This Act substantially revises the *Criminal Law (Forensic Procedures) Act 1998* so South Australian law complements the Commonwealth CrimTrac DNA database. It enables existing powers regarding DNA procedures to be exercised on an offender still in detention, whether or not he or she has been convicted of the offence. The Act significantly widens the scope of prisoners who can be compelled to undergo DNA testing by including any prisoner sentenced to a term of imprisonment.
- ***Statutes Amendment (Attorney-General's Portfolio) Act 2002:*** Amongst other things, this Act amends the *Domestic Violence Act 1994* to expand the definition of 'a member of the defendant's family' to include a child of whom the defendant has custody as a parent or guardian as well as a child who normally or regularly resides with the defendant or a spouse or former spouse of the defendant.
- ***Statutes Amendment (Bushfires) Act 2002:*** Following the recommendations of the Model Criminal Code Officers Committee, this Act creates the specific offence of causing a bushfire or being recklessly indifferent to causing a bushfire with a

maximum penalty of imprisonment for 20 years.

- ***Terrorism (Commonwealth Powers) Act 2002***: Similar to legislation passed by the other States, this Act refers certain matters regarding terrorism to the Commonwealth parliament. A terrorist act is defined to include an action or threat made with the intention of advancing a political, religious or ideological cause, by either coercing or influencing by intimidation the government, or by intimidating the public.

4.4 Tasmania

1999

- ***Child Welfare (Transitional Sentencing Arrangements) Act 1999***: This Act provides that children's courts and courts of summary jurisdiction who deal with young offenders continue to exercise certain sentencing powers pending the commencement of the *Youth Justice Act 1997*. It also provides for the enforcement of certain sentences imposed before the commencement of the *Youth Justice Act 1997*.
- ***Crimes at Sea Act 1999***: Similar to legislation passed in the other States and Territories, this Act gives effect to a cooperative scheme for dealing with crimes at sea. The criminal law of Tasmania is held to have extraterritorial application in the areas adjacent to its coast for a distance of 12 nautical miles from the baseline. It continues to have force beyond 12 nautical miles and up to a distance of 200 nautical miles or the edge of the continental shelf (whichever is the greater) but by the force of the law of the Commonwealth.
- ***Criminal Code Amendment (Contamination of Goods) Act 1999***: Chapter XXXIIB is inserted into the *Criminal Code* to provide for the contamination of goods. A number of new offences are created including the contamination, or threat of contamination, of goods with intent to cause public alarm or economic loss. It is also an offence to make a false statement concerning the contamination of goods. The offence is subject to a broad territorial nexus, so that it applies to any conduct, regardless of where it occurred, so long as the intent was to cause public alarm or economic loss in Tasmania.
- ***Criminal Code Amendment (Discipline) Act 1999***: The *Criminal Code* is amended to specify the entitlement of a parent to use reasonable force, by way of correction, toward a child in his or her care.
- ***Criminal Code Amendment (Right of Reply) Act 1999***: This Act gives the accused, or their representative, the right to address the jury after the prosecution's address, before any evidence is given, for the purpose of identifying those matters of fact not in dispute and to highlight any issues believed to be important to the defence's case.

- ***Criminal Code Amendment (Stalking) Act 1999***: This Act amends the law as it relates to stalking so that an offender has the required intention if he or she knew, or ought to have known, that engaging in the subject conduct would cause the other person physical or mental harm, apprehension or fear.
- ***Criminal Justice (Mental Impairment) Act 1999***: Various procedures are contained in this Act that enable a court to deal with persons unfit to stand trial or not guilty of the offence with which they are charged, by reason of insanity. The Act provides that a person is presumed fit to stand trial, unless shown otherwise. If the defendant is found unfit, the court must subsequently determine whether the defendant is likely to become fit in the next 12 months, in which case the trial will be adjourned. However, if the defendant is unlikely to become fit, the court is required to proceed to a special hearing. A person found not guilty by reason of insanity is liable to a supervision order. The court must subsequently make a community treatment order, a continuing care order, or release the defendant unconditionally or on certain conditions.
- ***Criminal Law (Detention and Interrogation) Amendment Act 1999***: Section 15 of the *Criminal Law (Detention and Interrogation) Amendment Act* is amended to provide that the requirements regarding the recording of information in respect of persons in custody do not apply to those whom it is not proposed to question or investigate.
- ***Evidence (Audio and Audio Visual Links) Act 1999***: This Act facilitates the taking of evidence and submissions from a participating state by way of audio links and audio visual links where the necessary facilities are available, the evidence cannot be more conveniently given in Tasmania, and it is fair to each of the parties.
- ***Justices Amendment Act 1999***: A court is required, when deciding whether or not to make a restraining order, to consider the protection and welfare of the person for whose benefit the order is sought to be of paramount importance. However, the court is also required to give consideration to a family access order and whether access between a party and a child of a party is relevant to the order.
- ***Sentencing Amendment Act 1999***: The *Sentencing Act 1997* is amended to provide, inter alia, that a court must take into account any period of time the offender was held in custody in relation to the proceedings. Accordingly, the court may order that the sentence of imprisonment may commence on a day earlier than that on which it was imposed.

2000

- ***Criminal Law (Aggravated Burglary and Repeat Offenders) Act 2000***: The *Criminal Code* offence of aggravated burglary is amended by removing the element of being in the company of another person at the time of the offence. The Act also amends the *Sentencing Act 1997* by increasing the maximum term of imprisonment that may be imposed by a court of petty sessions for a crime triable summarily from

three to five years.

- ***Driving Offences (Miscellaneous Amendments) Act 2000***: This Act introduces a new offence of dangerous driving causing grievous bodily harm.
- ***Forensic Procedures Act 2000***: This Act provides for the carrying out of forensic procedures on persons arrested for, or suspected of committing, certain offences, for the purpose of including that information on the national DNA database. Part 2 of the Act sets out provisions relating to the carrying out of forensic procedures on suspects and charged persons including the circumstances in which the tests may be carried out, whether by consent or court order. Forensic procedures in regard to volunteers are contained in Part 4 of the Act. Part 5 specifies who may carry out the procedures and who is to be present at the time. The Act also makes provision for the admissibility of evidence, the destruction of forensic material and the DNA database system.
- ***Police Offences Amendment (Loitering Near Children) Act 2000***: A new offence prohibiting a person found guilty of a sexual offence from loitering near children in the vicinity of a school, public toilet, playground, swimming pool or games arcade is inserted into the *Police Offences Act 1935*.
- ***Police Offences Amendment (Public Drunkenness) Act 2000***: The *Police Offences Act 1935* is amended to remove the offence of being drunk and disorderly in public. However, the Act provides for the custody of an intoxicated person if that person is likely to cause injury to him/herself or another person, or damage to property. An intoxicated person can only be held in custody if a place of safety or a responsible person willing to take the person into care cannot be found.
- ***Police Powers (Vehicle Interception) Act 2000***: This Act confers additional powers on police officers to enable them to stop and search vehicles and obtain information regarding the identity of drivers, owners and passengers of vehicles used in connection with the commission of certain offences.
- ***Road Safety (Alcohol and Drugs) Amendment Act (No 2) 2000***: This Act permits the consumption of alcohol by a person in a public passenger vehicle with a liquor permit.
- ***Witness Protection Act 2000***: A witness protection scheme is established by this Act. Amongst other things, it enables a new entry to be made in the register of births and marriages and provides for the termination of protection and restoration of a person's former identity.

2001

- ***Criminal Code Amendment Act 2001***: The *Criminal Code Act 1924* and the *Police Offences Act 1935* are amended with respect to certain sexual offences. An indecent act with, or aimed at, a person under the age of 17 years is prohibited.

Sexual intercourse with a person who has a mental impairment is also prohibited unless that person provided their free consent. The *Police Offences Act 1935* is amended to require a complaint to be made within 12 months in regard to a person who, with indecent intent, assaults either a child under 14 years or a female.

- ***Criminal Code Amendment (Evidence) Act 2001***: The *Criminal Code Act 1924* is amended so it is not necessary to prove an intent to deceive or defraud a particular person in relation to offences of false pretences, cheating and fraud. It also inserts section 266B to provide that an entry in any book of account or other records made by any means is evidence that the money, goods, financial advantage or other advantage was received, obtained or acquired by that person or another person.
- ***Criminal Code Amendment (Interfering with Witnesses) Act 2001***: This Act extends the offence of interfering with witnesses to include a person who uses, causes, inflicts, procures or threatens any violence, punishment, damage, loss or disadvantage to another person on account of that person having given evidence in a judicial proceeding.
- ***Criminal Code Amendment Act (No 2) 2001***: The *Criminal Code* is amended to provide that a pregnancy may be legally terminated if two medical practitioners have certified that the continuation of the pregnancy would involve a greater risk of injury to the physical or mental health of the pregnant woman than the termination of the pregnancy. The woman must also have given her informed consent to the procedure.
- ***Evidence Act 2001***: This Act reforms the law relating to evidence in Tasmania to ensure that it is not unnecessarily complicated or out of date. It follows the adoption of the *Uniform Evidence Act 1995* by the Commonwealth. The Act contains chapters on adducing evidence, the admissibility of evidence (including various rules on relevance, hearsay, opinion, admissions, tendency and coincidence, credibility, character and privileges) and proof.
- ***Evidence (Audio and Audio Visual Links) Amendment Act 2001***: Prior to this Act, evidence could be received or given by way of audio or audio visual link only if it was from outside Tasmania. However, this Act amends the *Evidence (Audio and Audio Visual Links) Act 1999* to extend its application to evidence from other places within Tasmania. Section 10B is inserted to enable the putting of documents to a remote person by the transmission of a copy to the place where the person is giving evidence or making a submission.
- ***Evidence (Children and Special Witnesses) Act 2001***: The purpose of this Act is to provide for the taking of evidence from children and special witnesses. It enables a child to have a support person with them when giving evidence. The admission of a prior statement of an affected child is permitted if it relates to a matter in issue in the proceedings and the defendant is given an opportunity to cross-examine the child. The Act also provides that the evidence of an affected child is to be given by

audio-visual link unless the prosecutor applies to have the child give oral evidence in court.

A special witness is a person who satisfies the court that by reason of intellectual, mental or physical disability he or she is likely to be unable to give evidence satisfactorily in the ordinary manner. It also extends to a person who by reason of age, cultural background, relationship to a party in the proceeding, the nature of the subject matter of the evidence or any other relevant factor is likely to suffer severe emotional trauma or be so intimidated or distressed as to be unable to give evidence satisfactorily.

- ***Evidence of Commission Act 2001***: This Act provides for matters relating to evidence obtained in Tasmania for other jurisdictions and the examination of witnesses outside Tasmania. The Supreme Court is empowered to make an order for the oral or written examination of witnesses, the production of documents, inspection or detention of any property, and medical examination of a person so as to give effect to a request from another jurisdiction. However a person may not be compelled to give evidence that he or she could not be compelled to give in similar proceedings in Tasmania.
- ***Misuse of Drugs Act 2001***: The purpose of this Act is to provide a complete restatement of the law governing the illicit use of drugs and so replace the existing provisions in the *Poisons Act 1971*. Part 2 of the Act sets out the major offences such as manufacture and cultivation with the intention of selling the controlled drug, trafficking and supply, as well as property derived from major offences. Minor offences are contained in Part 3 of the Act. The Act contains enforcement measures by setting out various powers that enable the police to seize the controlled substance and conduct personal searches. It also provides for the forfeiture of controlled substances.
- ***Police Offences Amendment Act 2001***: A number of out-of-date offences are repealed by this Act, such as being a person without lawful means of support, males dressing in female apparel in daylight, and pretending to have the ability to tell fortunes.
- ***Police Offences Amendment Act (No 2) 2001***: Numerous amendments are made to the *Police Offences Act 1935* by this Act. Amongst other things, it permits nude bathing in authorised places, empowers police to direct a person to leave a public place and not return for a specified period of time, prohibits the possession of a dangerous article in a public place, and enables police to arrest, without a warrant, any person suspected on reasonable grounds of stealing a motor vehicle.

2002

- ***Evidence Amendment Act 2002***: The *Evidence Act 2001* is amended to prohibit the publication of the name, address or other identifying factor of a person in respect of whom a crime under section 133 (incest) is alleged to have been

committed, the person who is alleged to have committed the crime, or a witness in the proceedings.

- ***Justice (Amendment of Custody Legislation) Act 2002:*** Amongst other things, this Act amends the *Criminal Justice (Mental Impairment) Act 1999* to enable a court to issue a warrant for the arrest of a person subject to a continuing care order who has escaped from the hospital and to provide for his or her return to that hospital. It also provides for the interstate transfer of patients who have absconded.
- ***National Crime Authority (State Provisions) Amendment Act 2002:*** This Act makes a number of amendments to the *National Crime Authority (State Provisions) Act 1985*. It is an offence to refuse or fail to comply with a notice requiring the attendance of a person before a member of the National Crime Authority or the production of documents specified in the notice. It also increases the penalty for obstructing or hindering a member from performing their duties, or disrupting a hearing, from 20 penalty units or a term of imprisonment for one year, to 200 penalty units or a term of imprisonment for five years.
- ***Sentencing Amendment Act 2002:*** The purpose of this Act is to amend the *Sentencing Act 1997* and the *Corrections Act 1997* to provide for non-parole periods in respect of sentences of imprisonment. The *Sentencing Act* is amended to require the court to provide its reasons for making an order that a life prisoner is not eligible for parole, or is not eligible for parole for a specified period. Amendments to the *Corrections Act 1997* provide that in the event of a prisoner being considered for release on parole, the victims' register is to be searched and any victim is to be notified of the possibility of a parole order. The victim may subsequently submit within 30 days a written statement of the effect of any injury, loss or damage suffered by him or her in respect of the offence.
- ***Terrorism (Commonwealth Powers) Act 2002:*** Similar to legislation passed in other States and Territories, this Act refers certain matters relating to terrorist acts to the Commonwealth Parliament.
- ***Traffic Offence Detection Devices (New Arrangements) Act 2002:*** The *Vehicle and Traffic Act 1999* is amended to provide for the use of devices, such as red light and speeding cameras, in the detection of traffic offences.

4.5 Victoria

1999

- ***Crimes (Criminal Trials) Act 1999:*** This Act establishes a substantial pre-trial disclosure regime. It requires the prosecution to file and serve on the defendant a summary of the prosecution opening and a notice of pre-trial admissions 28 days before the day on which the trial is due to start. The defence must file and serve on the prosecution a response to the summary of the prosecution and pre-trial admissions identifying the matters with which issue is taken and on what basis, not

less than 14 days before the start of trial.

- ***Crimes at Sea Act 1999***: The purpose of this Act is to give effect to a cooperative scheme dealing with crimes at sea. The criminal law of Victoria is to apply in the area adjacent to it for a distance of 12 nautical miles from the baseline by the force of the law in Victoria. The criminal law applies in the area beyond 12 nautical miles up to a distance of 200 nautical miles or the outer limit of the continental shelf, whichever is the greater, by force of the law of the Commonwealth. The Act provides that responsibility administering criminal justice in the area covered by the scheme is to be divided between the Commonwealth and the States.
- ***Magistrates' Court (Amendment) Act 1999***: The purpose of this Act is to reform the criminal justice system with the aim of providing more efficient, accountable and fair court proceedings. Committal proceedings are reformed to provide for full and early disclosure and to prevent cross-examination without leave. The system of appeals from the Magistrates' Court in criminal proceedings is changed and the Court is empowered to prohibit the publication of material relevant to a pending proceeding.
- ***Police Regulation and Firearms (Amendment) Act 1999***: Amongst other things, the Act inserts Division 3 into Part VA of the *Police Regulation Act 1958*. The Division covers the various powers of the police as they relate to the search and seizure of things believed on reasonable grounds to be evidence of the commission of a relevant offence. The Act also allows for the recognition of interstate firearm permits in Victoria so that a separate permit does not need to be obtained.
- ***Prostitution Control (Amendment) Act 1999***: This Act facilitates the prosecution of persons who operate a brothel or escort agency without a licence by placing the onus on the accused to prove that he or she had an honest belief that such services were not being provided. The definition of 'sexual services' is also amended to provide a clearer delineation between prostitution and live sexually explicit entertainment. It is hoped that these amendments will achieve the purpose of generally strengthening the control of prostitution in Victoria.⁴⁶
- ***Sentencing Amendment Act 1999***: This Act introduces deferred sentencing for young offenders under the age of 25 years to encourage them to take responsibility for addressing the factors that contributed to their offending. Courts are also provided with additional flexibility by the modification of sentencing orders so that they may be tailored to promote the rehabilitation of offenders. New sections are inserted into the *Sentencing Act 1991* regarding the variation of combined custody and treatment orders. It also clarifies that courts have the power to award costs to a party involved in an application for compensation for pain and suffering.

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See further Briefing Paper No 21/99, *The Regulation of Prostitution: A Review of Recent Developments*, by Stewart Smith.

2000

- ***Control of Weapons (Amendment) Act 2000***: All knives are considered controlled weapons as a result of this Act. A new prohibition against the display and advertisement for sale of prohibited weapons is inserted into the *Control of Weapons Act 1990*. It is an offence to sell a prohibited weapon to a person who has neither an exemption nor an approval, and a seller of prohibited weapons must ensure that a purchaser of a prohibited weapon has provided proof of their identity. The seller must also keep a record for three years of each prohibited weapon sold.
- ***Courts and Tribunals Legislation (Amendment) Act 2000***: This Act removes the power of the Court of Appeal to direct, if the application for leave to appeal is dismissed on certain grounds, that the time spent in custody pending an appeal is not to be reckoned as a period of imprisonment already served.
- ***Crimes (Amendment) Act 2000***: This Act extends the definition of rape by providing that a person commits rape if a first person compels a male person to sexually penetrate the first person or a third person. It is irrelevant whether the person who is sexually penetrated consents to the act of penetration. The Act also creates a single new offence in regard to the sexual penetration of a child under 10. Prior to this Act, separate offences existed for a child under ten years and a child between the age of ten and 16. The penalty for the possession of child pornography is increased from two years imprisonment to five.
- ***Crimes (Questioning of Suspects) Act 2000***: The requirement that a person must consent to questioning when he or she is held in custody is removed from the *Crimes Act 1958*. The class of people who may be the subject of an application for questioning is expanded by this Act to include a person in prison, including a youth training centre, or a person held in custody because of his or her connection with the criminal justice system even if they are not detained in a prison or police gaol.
- ***Juries Act 2000***: This Act aims to ensure juries are more representative of the community. Of particular importance, is the specification that a person may only be found guilty of an offence punishable by life imprisonment if the jury is unanimous in its finding of guilt.
- ***Magistrates' Court (Committal Proceedings) Act 2000***: The test for obtaining leave to cross-examine witnesses at committal is simplified by this Act. Previously, leave would only be granted if the court was satisfied that the scope and purpose of the questioning was substantially relevant to the facts in issue. However, this Act simply requires the defence to identify an issue to which the proposed questioning relates and to provide a reason why the evidence of the particular witness is relevant to that issue. Additional factors must be considered by the court where the witness is under the age of 18, including the need to minimise trauma, and any relevant characteristic of the witness such as age, culture, personality, education and level of understanding. Greater flexibility has been introduced into the system as the categories of people who may witness documents has been expanded, the time

limits for service of documents are not as rigid, and the defence may seek leave to call a witness who was unavailable at the time of the committal.

- ***Tobacco (Amendment) Act 2000***: As a result of this Act, it is an offence for people to smoke in enclosed restaurants and cafes, dining areas and controlled shopping centres.
- ***Victims of Crime Assistance (Amendment) Act 2000***: The *Victims of Crime Assistance Act 1996* is amended to enable primary victims of an act of violence to be given monetary compensation for the significant adverse effects suffered by them. The Act increases the amounts that may be awarded to secondary and related victims in certain circumstances. Compensation may be recovered from defendants in criminal proceedings without having to commence civil proceedings so long as the victim lodges their application within 12 months of a finding of guilt.
- ***Witness Protection (Amendment) Act 2000***: This Act enables authorities from other jurisdictions to apply for Victorian identity documents for persons in their witness protection program. It also provides for the extraterritorial operation of offences regarding the disclosure of information about witnesses.

2001

- ***Corrections (Custody) Act 2001***: The *Corrections Act 1986* is amended to clarify the functions and powers of those escorting and supervising prisoners and other persons before the court. Section 30A is inserted into the Act to enable the release of information about a prisoner to the primary victim so long as it does not endanger the security of any prison or the safe custody and welfare of the prisoner. Information that may be released includes details about the length of the sentence to be served, the date and circumstances in which the prisoner is to be released and details of any escape by the prisoner. Amendments are also made in regard to the checking of mail sent to, and received by, prisoners.
- ***Drugs, Poisons and Controlled Substances (Amendment) Act 2001***: Amendments regarding the trafficking and cultivation of drugs of dependence are made to the *Drugs, Poisons and Controlled Substances Act 1981*. In contrast to prior legislation, this Act clearly provides for separate offences for trafficking and cultivating in specified amounts of drugs of dependence and sets out the penalties for those offences. A new offence of trafficking in a commercial quantity of two or more drugs of dependence is introduced, to enable the aggregation of the quantities of those drugs. These amendments were in response to recommendations made by the Model Criminal Code Officers Committee. Automatic forfeiture and civil forfeiture processes are also available for the new offences of trafficking in a commercial quantity of drugs.
- ***Prostitution Control (Proscribed Brothels) Act 2001***: The *Prostitution Control Act 1994* is amended to enable an application to be made by the police to the Magistrates' Court for premises to be declared a proscribed brothel where the

business of a brothel has been carried on at any time during the 14 day period prior to the filing of the application.

- ***Road Safety (Alcohol and Drugs Enforcement Measures) Act 2001***: Amongst other things, this Act amends the *Road Safety Act 1986* so the instructor of a learner driver is taken to be in charge of the vehicle and accordingly bound by the law as it relates to the blood alcohol content of drivers. The Act is also amended to require motorcyclists to have a blood alcohol content of zero in the first year of their licence.
- ***Road Safety (Further Amendment) Act 2001***: As a result of this Act, 0.07 is fixed as the reading at which drink drivers must lose their licence regardless of whether they accept a penalty notice or are convicted by a court.
- ***Sentencing (Emergency Service Costs) Act 2001***: The main purpose of this Act is to amend the *Sentencing Act 1991* to provide for the recovery of costs incurred by emergency services once a person has been convicted or found guilty of an offence relating to the contamination of goods or a bomb hoax. The offender must pay the State an amount determined by the court on account of the reasonable costs incurred by the emergency services in providing an immediate response to the situation caused by the offence.
- ***Tobacco (Further Amendment) Act 2001***: This Act, among other things, extends the ban on smoking to all retail shopping centres.

2002

- ***Crimes (DNA Database) Act 2002***: The *Crimes Act 1958* is amended to facilitate Victoria's participation in the national DNA database system. The Act is based on the *Model Forensic Procedures Bill* developed by the Model Criminal Code Officers Committee. It expands the range of offences for which a forensic sample may be obtained to include false imprisonment, contamination of goods, and bomb hoaxes. Police are able to obtain a forensic sample from an offender who is not in custody by way of court order. The Act outlines the key procedures regarding storage of forensic material on the database, access to the database, and disclosure of information from the database.
- ***Criminal Justice Legislation (Miscellaneous Amendments) Act 2002***: This Act embodies the major legislative reforms of the Criminal Justice Enhancement Program including improved access to justice, improved care for the accused, and improved efficiency and quality of processes. The Act provides for progressive electronic disclosure of the prosecution case to the defence and for the use of fingerscans for faster and more reliable identification of persons in custody. Charges may be filed electronically with a court. The Act enables magistrates to determine a matter in the defendant's absence on an outline of evidence to improve the efficiency of summary proceedings where the defendant fails to appear. However safeguards are provided in the form of penalty caps and re-hearing rights.

- ***Magistrates' Court (Koori Court) Act 2002:*** A Koori Court Division is established in the Magistrates' Court to ensure greater participation of the Aboriginal community in the sentencing process of the court. The Koori Court Division is to exercise its jurisdiction with as little formality as possible and proceedings are to be conducted in such a way as to be comprehended by the defendant and any member of the Aboriginal community present in court. The Koori Court Division has jurisdiction if the defendant is Aboriginal and the offence is within the jurisdiction of the Magistrates' Court other than a sexual offence or an offence against section 22 of the *Crimes (Family Violence) Act 1987*. The defendant must be willing to plead guilty and consent to the proceedings being dealt with by the Division.
- ***National Crime Authority (State Provisions) (Amendment) Act 2002:*** This Act removes the defence of 'reasonable excuse' for a person who fails to either comply with a notice to produce documents or attend a hearing of the National Crime Authority for the purpose of answering questions. General common law defences are to apply instead. The Act also removes the derivative use immunity to enable an investigatory body to derive evidence to be used at a later trial from self-incriminatory evidence given by a person at a National Crime Authority hearing.

A number of matters are also clarified including the application of legal professional privilege, the use of reasonable force in the execution of a warrant, the power of the National Crime Authority to allow persons to be present at a hearing, and the disclosure of information by legal practitioners.

- ***Road Safety (Alcohol Interlocks) Act 2002:*** The Magistrates' Court is empowered to require the use of alcohol interlocks as a condition of the grant of a driver's licence or permit to certain disqualified drivers for the purposes of rehabilitating such drivers and the minimisation of harm to the community. Alcohol interlock conditions are to be imposed in all cases involving repeat offenders but may also be used in the case of a first time offender who has a blood alcohol level of more than 0.15.
- ***Road Safety (Responsible Driving) Act 2002:*** The *Road Safety Act 1986* is amended to permit the immediate suspension of a driver's licence or permit where the blood alcohol concentration is found to be greater than 0.15. In the case of a learner or probationary driver, the blood alcohol level need only be 0.07 to enable immediate suspension of their licence.
- ***Sentencing Amendment Act 2002:*** A Drug Court Division of the Magistrates' Court is established by this Act. The Drug Court is empowered to make a drug treatment order as a sentencing order to facilitate the rehabilitation of the offender, to reduce the level of criminal activity associated with drug and alcohol dependency, and to reduce the health risks of the offender associated with his or her drug or alcohol dependency. The Act requires the Drug Court to consider the rehabilitation of the offender and the subsequent protection to the community to be

of greater importance than the other purposes of sentencing.

The drug treatment order is comprised of two parts, treatment and supervision, which lasts for two years, and a custodial order as the second part. The custodial segment is a term of imprisonment of up to two years that must be imposed on the offender. However, the custodial order need only be served if activated by the court following a breach or cancellation of the drug treatment order. A drug treatment order can only be made if the offender pleads guilty to an offence within the jurisdiction of the Magistrates' Court, other than sexual offences or acts involving the infliction of actual bodily harm. The offender must not commit further offences punishable by imprisonment whilst subject to the order and they must attend the Drug Court when required.

4.6 Western Australia

1999

- ***Acts Amendment (Criminal Procedure) Act 1999:*** The *Justices Act 1902* is amended to enable a court to convict a defendant for a non-indictable offence if the court proceeded to hear and determine the complaint in the absence of the defendant. The court is empowered to take as proved any allegation in the summons that was served on the defendant without the need to provide affidavit evidence or to call witnesses.
- ***Acts Amendment (Police Immunity) Act 1999:*** This Act provides that police officers are not to be held liable for the consequences of any of their lawful actions unless they were acting in a corrupt and malicious manner.
- ***Prisons Amendment Act 1999:*** Prison services may be provided under contract as a result of this Act. The Act provides the minimum requirements to be included in a contract with a private organisation, as well as the necessary authorisation of contract workers to enable them to perform their functions.
- ***Restraining Orders Amendment Act 1999:*** The *Restraining Orders Amendment Act 1997* is amended to enable the registration of foreign restraining orders in Western Australia.
- ***Sentence Administration Act 1999:*** The purpose of this Act is to provide for the administration of sentences and other orders imposed on offenders. The Act includes provisions for parole, work release orders, home detention orders, early release orders, release programmes, community correction orders, community correction centres, staff and the Parole Board.
- ***Weapons Act 1999:*** This Act divides weapons into three categories – prohibited weapons, controlled weapons, and other articles carried or possessed as weapons. Controlled weapons are weapons that may only be carried by those with a lawful excuse. Articles that are not firearms but are carried with the intention of using

them to injure or disable a person, or to cause a person to fear that it will be used in that way, fit into the third category. The Act provides police with the power of search and seizure without a warrant if a person is reasonably suspected of committing an offence, carrying a weapon in relation to an offence, or carrying something that is evidence of the commission of an offence. Police are given the power of search and seizure with a warrant regarding a place where it is suspected a weapon or other evidence relating to an offence may be found.

2000

- ***Acts Amendment (Evidence) Act 2000***: The purpose of this Act is to facilitate the admission of documentary and foreign evidence in trials involving complex commercial crime. Evidence may be given in the form of a chart, summary or other explanatory document if it is likely to aid the comprehension of other evidence. The Act also provides for the benefits of modern technology by allowing into evidence a document that accurately reproduces another document irrespective of whether the original document still exists. Children and vulnerable witnesses are permitted to give evidence on videotape to protect them from the trauma of giving evidence in open court. A complainant in a sexual offence may authorise the publication of their name without being held to have committed a crime.
- ***Acts Amendment (Fines Enforcement) Act 2000***: This Act enables fines to be converted to a work and development order where the offender does not have the means to pay the amount owed, does not hold a vehicle licence, and does not have any personal property that could be seized to satisfy the amount owed.
- ***Acts Amendment (Fines Enforcement and Licence Suspension) Act 2000***: As a result of this Act, an offender is permitted to submit a request to the Registrar to not make a licence suspension or cancellation order on grounds that it would deprive him or her of the means of obtaining urgent medical treatment for a known illness or disability suffered by the offender or a member of his or her family. The request may also be made if the cancellation or suspension of the licence would deprive the offender of the principal means of obtaining income with which the penalty may be paid.
- ***Crimes at Sea Act 2000***: The purpose of this Act is to give effect to a cooperative national scheme for dealing with crimes at sea. Accordingly, the criminal law of Western Australia is to apply of its own force for a distance of 12 nautical miles from the baseline of the state. Beyond 12 nautical miles to a distance of 200 nautical miles from the baseline or the outer limit of the continental shelf, whichever is greater, the criminal law of Western Australia is to be applied with the force of a Commonwealth law.
- ***Criminal Code Amendment (Home Invasion) Act 2000***: The *Criminal Code* is amended to provide a defence against home invasion. It enables an occupant in possession of a dwelling to use any force, or anything reasonably believed to be necessary, to prevent a home invader from entering or leaving the dwelling, to

defend himself or herself from violence used or threatened by the invader, or to prevent the invader from committing an offence in the dwelling.

- ***Criminal Property Confiscation Act 2000***: This Act provides for the confiscation of property acquired as a result of, or used for, criminal activity. The onus is placed on the offender to prove that the property was not used for crime or acquired with the proceeds of a crime.
- ***Offenders (Legal Action) Act 2000***: An offender is not permitted to take legal action in respect of a harm suffered in the course of committing an offence as a result of this Act.
- ***Prisoners (International Transfer) Act 2000***: The international transfer of prisoners to and from Western Australia is facilitated by this Act. It gives effect to the scheme established by the *International Transfer of Prisoners Act 1997 (Cth)*, which enables Australians imprisoned in foreign countries and foreign nationals imprisoned in Australia to be returned, in certain circumstances, to their home countries to complete the remainder of their sentence.
- ***Prostitution Act 2000***: This Act increases the powers available to police to control child prostitution, street prostitution, kerb crawlers, advertising and sponsorship. Solicitation of a prostitute or client is prohibited in view or hearing of a public place. Causing or inducing a child to act as a prostitute, obtaining payment or entering an agreement for prostitution by a child, or engaging in prostitution at a place where a child is present are behaviours prohibited by the Act. Part 4 of the Act sets out a number of police powers including detention, search and seizure without a warrant, and the commission of certain offences by undercover officers to obtain evidence of the commission of an offence.
- ***Restraining Orders Amendment Act 2000***: This Act expands the categories of persons who can apply for an order on behalf of a child to include a child welfare officer. A court conducting family law proceedings may also make a restraining order on its own motion.
- ***Road Traffic Amendment Act 2000***: This Act makes it an offence for a person responsible for a vehicle to fail to provide information, or to provide false information, regarding the identity of the driver or person in charge of a vehicle at the time of the offence.
- ***Sentencing Amendment Act 2000***: Part 14A, which provides for sentence reporting and formulation, is inserted into the *Sentencing Act 1995* by this Act. It requires a sentencing report to be prepared for certain offences that sets out each mitigating, aggravating, or other factor that was taken into account to arrive at the particular sentence. The report must indicate the degree to which each of those factors affected the sentence, as well as the minimum and maximum penalty for the offence. Consequently, it is hoped that the Act will promote consistency in sentencing and provide a sentencing regime that is more easily understood by the

public.⁴⁷

2001

- ***Acts Amendment (Criminal Investigation) Act 2001***: This Act ensures that any power under the *Surveillance Devices Act 1998* may be exercised by a state police officer in that capacity even if he or she is also a member of the National Crime Authority.
- ***Criminal Code Amendment Act 2001***: The *Criminal Code* is amended to prohibit statements or acts that create false apprehension as to the existence of a threat or danger. This Act was in response to a spate of false anthrax attacks in Western Australia.
- ***Criminal Law Amendment Act 2001***: The penalties that apply to offenders who commit such offences as grievous bodily harm, wounding, various assaults, and robbery against persons over 60 years of age are significantly increased by this Act. The *Sentencing Act 1995* is amended to require the court to consider the vulnerability of the victim when sentencing.

2002

- ***Acts Amendment (Lesbian and Gay Law Reform) Act 2002***: Amongst other things, this Act amends the *Criminal Code* to lower the age of consensual homosexual activity from 21 to 16 years so there is no longer a distinction between the age of consent for homosexual and heterosexual activity. The criminal offences of indecency and gross indecency that are limited to acts between males are repealed with the effect that such acts remain unlawful irrespective of the gender of the victim or perpetrator. The availability of the defence of reasonable but mistaken belief that a child was over the age of 16 with respect to the offence of having a sexual relationship with a child less than 16 years, is limited to those persons who are not more than five years older than the child.
- ***Criminal Investigation (Identifying People) Act 2002***: The purpose of this Act is to enable the police to obtain a person's personal details and identifying particulars for forensic use. Prior to this Act, police had the power to obtain fingerprints and photographs for identification purposes. This power is expanded to include dental impressions, foot and ear prints, and samples for DNA profiling. Generally, an officer cannot request a person to undergo an identifying procedure if they have not been charged with, or imprisoned for an offence, and if they have not volunteered to undergo the procedure. However, an exception is provided if it is reasonably suspected that an offence has been committed and the person will afford evidence of the offence or the identity of the person who committed the offence. The Act specifies the procedures to be followed to obtain both intimate and non-intimate

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See further Briefing Paper No 2/02, *Sentencing Law: A Review of Developments in 1998-2001*, by Rowena Johns.

particulars, clarifies the admissibility of the evidence obtained and provides for the operation of a state DNA database that is to be linked with the national database - CrimTrac.

- ***Criminal Code Amendment (Corruption Penalties) Act 2002***: This Act amends the *Criminal Code* to increase the maximum penalty for a variety of corruption related offences from three to seven years imprisonment. The offences of destroying evidence and concealing a crime are also redesignated as crimes rather than misdemeanours.
- ***Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002***: The purpose of this Act is to facilitate the investigation of organised crime by broadening police powers in regard to compulsory examination procedures, the use of surveillance devices, and the power to enter and search premises without a warrant as they relate to the commission of an offence in the course of organised crime. Measures are also introduced to enable the dismantling of heavily fortified premises. Legal professional privilege is partially abrogated in that it cannot prevent a person producing a document otherwise subject to that privilege in response to a summons to attend proceedings before a special commissioner.
- ***Criminal Law (Procedure) Amendment Act 2002***: The *Justices Act 1902* and the *Criminal Code* are amended to abolish preliminary hearings and establish in their place, onerous on-going statutory disclosure requirements for the Director of Public Prosecutions and the police. Fewer disclosure requirements are imposed on defendants.
- ***Terrorism (Commonwealth Powers) Act 2002***: The purpose of this Act is to refer certain matters relating to terrorist acts to the Commonwealth Parliament.

4.7 Australian Capital Territory

1999

- ***Children and Young People Act***: This Act, inter alia, recognises that the support of young offenders is the responsibility of parents, with community and government assistance. They are to be responsible for providing young offenders with positive opportunities to become a valued member of society. The age of criminal responsibility is set at eight years. However, there is a rebuttable presumption that a child over the age of eight, but younger than 14, is incapable of committing an offence because he or she does not have the capacity to know that the act or omission was wrong.
- ***Courts and Tribunals (Audio Visual and Audio Linking) Act 1999***: The use of audio visual and audio link technology is facilitated by this Act by enabling the person presiding over a relevant court or tribunal to direct that evidence is to be received, a submission made, or a person is to appear by way of an audio visual or audio link.

- ***Crimes (Amendment) Act 1999***: The *Crimes Act 1900* is amended to implement a number of reforms relating to accused persons who are unfit to plead on grounds of mental impairment. The Magistrates' Court is given greater flexibility when dealing with a person with a mental impairment. The court is empowered to require a defendant who appears to have a mental impairment to be assessed to determine whether treatment or care is required. The Act also limits any period of detention imposed so as to be no longer than the period for which the person would have been imprisoned if found guilty of the offence in normal criminal proceedings.
- ***Crimes Amendment Act (No 2) 1999***: The presumption of marital coercion is abolished by this Act so that a wife who commits an offence in the presence of her husband cannot be presumed to have been coerced by her husband.
- ***Evidence (Amendment) Act 1999***: This Act enables courts to give or receive evidence and submissions by audio visual and audio links from or to another court in the ACT or interstate. However, the court must first be satisfied that the appropriate facilities are available, it is more convenient, and that no party would be unfairly prejudiced by the use of such technology.
- ***Motor Traffic (Amendment) Act (No 2) 1999***: The introduction of red light and speed cameras into the ACT is facilitated by this Act.
- ***Motor Traffic (Amendment) Act (No 3) 1999***: This Act regulates the use of motor vehicles to prohibit racing, burnouts, and the attempting of speed records.
- ***Prisoners (International Transfer) Act 1999***: This Act gives effect to the legislative scheme established by the *International Transfer Of Prisoners Act 1997* (Cth) to enable the transfer of prisoners to and from the ACT.
- ***Supervised Injecting Place Trial Act 1999***: The purpose of this Act is to allow for a trial of a supervised injecting centre for drug dependent persons. The Act enables an independently evaluated scientific trial to be conducted of the public health benefits and risks of such a place. The facility is to be closed after two years of operation; is to be staffed with qualified health professionals; and is to provide diversionary services, counselling, drug and alcohol detoxification and rehabilitation services. Staff and other persons involved with the facility are exempted from certain criminal proceedings. However the Act expressly prohibits the sale or supply of a substance by a staff member in the facility, the possession by a drug dependent person of more than 0.5 grams of a substance whilst in the facility, and the possession by a drug dependant person of a substance whilst outside the facility.
- ***Victims of Crime (Financial Assistance) (Amendment) Act 1999***: This Act focuses on a range of victims' needs by providing a combination of rehabilitative, practical and financial assistance. The Act limits the purposes for which financial assistance may be provided and the range of victims to whom it may be granted.

Financial assistance for expenses associated with the injury and lost earnings is generally limited under this Act to the primary victims of a violent offence or those persons who are injured whilst providing assistance to the police. However, it will also be available to the relatives of primary victims who die from their injuries. The *Crimes Act 1900* is amended to enable victims to apply for a reparation order against the offender at the time of sentencing so as to make the offender account for the consequences of his or her actions.

2000

- ***Children and Young People Amendment Act 2000***: The minimum age of criminal responsibility is increased from eight to ten years as a result of this Act.
- ***Crimes Amendment Act 2000***: Following recommendations made by the Model Criminal Code Officers Committee, this Act amends the *Crimes Act 1900* to insert offences relating to product contamination or the threat thereof. It prohibits the contamination, or threat of contamination, of goods with the intent of causing public alarm or economic loss. False statements about the contamination of goods are also prohibited by the Act.
- ***Crimes Amendment Act (No 3) 2000***: This Act prevents evidence of self-induced intoxication from being considered when determining whether an act or omission that is an element of an offence was intentional or voluntary.
- ***Crimes Amendment Act (No 4) 2000***: The offence of stalking is amended by this Act so as to remove the need to prove that there was intent to cause serious harm. Harassment, as a ground of stalking, is added to the offence, so that stalking with the intent to cause harassment is an offence. The person stalked does not need to prove that they apprehended or feared harm, nor that they were harassed.
- ***Crimes (Forensic Procedures) Act 2000***: This Act provides a legislative scheme for taking and using forensic and DNA material for criminal investigations, and so enables the ACT to participate in the national DNA database. The Act details the circumstances in which forensic procedures on suspects may be authorised; procedures that may be carried out with the consent of a suspect or by order of the police or court; the carrying out of forensic procedures on serious offenders; and the carrying out of forensic procedures on volunteers.
- ***Justice and Community Safety Legislation Amendment Act 2000***: Amongst other things, this Act enables a juror to disclose protected information to a legal practitioner to obtain legal advice in relation to an alleged contempt of court or alleged offence relating to jury deliberations.
- ***Justice and Community Safety Legislation Amendment Act 2000 (No 2)***: As a result of this Act, a juror is permitted to disclose protected information to a legal practitioner to obtain legal advice in relation to a disclosure to a court, royal commission, the Director of Public Prosecutions or a police officer for the purpose

of an investigation concerning an alleged contempt of court or alleged offence relating to jury deliberations or a juror's identity. Protected information may also be disclosed by a juror in accordance with an authorisation by the Attorney-General to conduct research into juries and jury service.

- ***Magistrates Court Amendment Act 2000***: The *Magistrates Court Act 1930* is amended to enable employers to apply for a restraining order to protect their employees.
- ***Periodic Detention Amendment Act 2000***: The purpose of this Act is to clarify the terms and provisions of the periodic detention order in relation to a period of imprisonment and an inability to serve a detention period. A detainee who is in lawful custody for the whole detention period is taken to have served the detention period in accordance with the *Periodic Detention Act 1995*. The Act also provides that where a periodic detainee is sentenced to a term of imprisonment greater than one month, the periodic detention order will be automatically cancelled.
- ***Poisons and Drugs Amendment Act 2000***: The *Poisons and Drugs Act 1978* is amended to increase the penalty for the unauthorised supply of anabolic steroids for human use from six months to five years, as well as updating the list of anabolic steroids to which the Act applies.
- ***Smoking Products Legislation Amendment Act 2000***: As a result of this Act, it is an offence to sell certain non-tobacco smoking products to persons under the age of 18. It is also an offence to smoke these products in areas where smoking is prohibited.
- ***Spent Convictions Act 2000***: This Act creates a spent convictions scheme to prevent certain convictions from becoming part of a person's criminal history if the offender completes a period of crime-free behaviour (ten years for adults, five years for juveniles). The scheme does not include convictions for which a period of imprisonment of longer than six months was imposed, a sexual offence, or the conviction of a corporation.

2001

- ***Bail Amendment Act 2001***: This Act enables a court to issue a warrant for the arrest of a person who has breached a condition of their bail. It also creates a presumption against bail for a person accused of committing a serious offence whilst on bail for a serious offence. A serious offence is defined as an offence that may be punished by a term of imprisonment equal to or greater than five years and covers such offences as sexual assault, assault occasioning actual bodily harm, robbery and burglary. The person must demonstrate the existence of special or exceptional circumstances in order to rebut the presumption.
- ***Crimes Amendment Act 2001***: Following recommendations made by the Model Criminal Code Officers Committee, the *Crimes Act 1900* is amended to insert

offences relating to the misleading recruitment for sexual services and sexual slavery. Accordingly, it is an offence to cause someone to enter into or remain in sexual servitude, to conduct a business involving the sexual servitude of others, or to deceptively recruit for sexual services. An aggravated form of the offence is committed when a person under the age of 18 is involved.

- ***Crimes Amendment Act 2001 (No 2)***: The offence of stalking is amended to include electronic forms of communication. A new offence of sending, to a young person by electronic means, pornographic material, or suggestions to include a young person in sexual acts, is also established by this Act.
- ***Crimes Legislation Amendment Act 2001***: Amongst other things, this Act provides for the routine fingerprinting and photographing of suspects over the age of 16 who are in lawful custody for an offence. However, identifying material taken from a young person must be destroyed if he or she is cleared of the offence or is not prosecuted within a particular period of time.

This Act also enhances a number of police powers. A police officer may direct a person who is reasonably believed to have engaged, or is likely to engage, in violent conduct to leave the vicinity and not return for a particular period of time. The Act also provides for a greater range of circumstances in which a police officer may stop and search a person and vehicle. Intoxicated persons may only be taken into custody if there is no other reasonable alternative for their care or protection.

- ***Criminal Code 2001***: This Act is the first stage of a two part reform of criminal legislation in the ACT. The Act codifies the general principles of criminal responsibility and is based on Chapter 2 of the *Model Criminal Code* developed by the Standing Committee of Attorneys-General. The physical and fault elements of an offence are set out, as are the standards and burdens of proof of criminal responsibility. It also outlines the circumstances in which there is no criminal responsibility.
- ***Protection Orders Act 2001***: Section 5 of the Act contains its objects which are:
 - (a) to prevent violence between family members and others in a domestic relationship, recognising that domestic violence is a particular form of interpersonal violence that needs a greater level of protective response; and
 - (b) to provide a mechanism to facilitate the safety and protection of people who experience domestic or personal violence.

Two types of protection orders are available under the Act - a domestic violence order which may be made as a final, interim or emergency order, and a personal protection order which may be made as a final or interim order. This Act consolidates the provisions concerning restraining orders previously found in the *Magistrates Court Act 1930* and the *Domestic Violence Act 1986* into a single process.

- ***Rehabilitation of Offenders (Interim) Act 2001***: This Act provides for home detention as a remand option for adults and juveniles who have been denied bail

and as a means of serving a term of imprisonment of 18 months or less. A Sentence Administration Board is also established by this Act.

- ***Road Traffic (Safety and Traffic Management) Amendment Act 2001***: The police and courts are given the power to seize vehicles that have been used to commit menacing driving offences.
- ***Road Transport (Safety and Traffic Management) Amendment Act 2001 (No 3)***: As a result of this Act, the police are empowered to seize vehicles within ten days of the vehicle being used for street racing offences.

2002

- ***Crimes (Abolition of Offence of Abortion) Act 2002***: The purpose of this Act is to abolish any common law rule that creates an offence regarding the procurement of a woman's miscarriage.
- ***Crimes Amendment Act 2002***: The *Crimes Act 1900* is amended by the insertion of the offence of causing public alarm. The offence refers to situations where people intend to cause public alarm or anxiety by deliberately raising suspicions that human life or health is at risk.
- ***Crimes (Bushfires) Amendment Act 2002***: Following the recommendations of the Model Criminal Code Officers Committee, a new offence of causing a bushfire is inserted into the *Crimes Act 1900*. Accordingly, a person is guilty of an offence if he or she intentionally or recklessly causes a fire and is reckless about the spread of the fire to vegetation on property belonging to someone else.
- ***Criminal Code 2002***: This Act is the second stage of the codification of the criminal law in the ACT. The *2001 Criminal Code* is repealed but its provisions are incorporated into this Act. It implements chapters one, two and four of the *Model Criminal Code*. Chapter two sets out the general principles of criminal responsibility, including the elements of an offence (both physical and fault elements), circumstances where there is no criminal responsibility (children, mental impairment, intoxication, mistake and ignorance, external factors), extensions of criminal responsibility, proof of criminal responsibility and geographical application. Property damage and computer offences are set out in chapter four. The Act will replace common law offences in the ACT, but does not come into force until January 2006.
- ***Law Reform (Miscellaneous Provisions) Amendment Act 2002***: Amongst other things, this Act abolishes the common law offences of maintenance, champerty and being a common barrator.
- ***Medical Practitioners (Maternal Health) Amendment Act 2002***: This Act provides that an abortion may only be carried out by a medical practitioner in an approved medical facility, with a maximum penalty of imprisonment for five years.

- ***Rehabilitation of Offenders (Interim) Amendment Act 2002 (No 2)***: This Act, among other changes, requires a victim to be told of a decision to make a parole order: if the victim made a submission to the Parole Board, the Board is aware of a victim's concern about the need for protection from violence or harassment by the offender, or the victim's details are entered in the victims' register.

4.8 Northern Territory

1999

- ***Bail Amendment Act 1999***: The purpose of this Act is to empower magistrates to grant bail by telephone to a person apprehended by the police on a warrant, as opposed to requiring the person to be brought before the magistrate.
- ***Criminal Code Amendment Act 1999***: Following the recommendations of the Model Criminal Code Officers Committee, the *Criminal Code* is amended to include offences relating to the contamination of goods. Consequently, it is an offence to contaminate goods, or threaten to contaminate goods, with intent to cause public alarm or economic loss. It is also an offence to make false statements as to the contamination of goods with intent to cause public alarm or economic loss. The maximum penalty that may be imposed is a term of imprisonment for ten years.
- ***Criminal Code Amendment Act (No 2) 1999***: This Act substitutes section 323 of the *Criminal Code* with a new charge of stealing or receiving. As a result, a person charged with either stealing property or receiving property believed to be stolen may be found guilty of either offence irrespective of the one with which they were charged. Section 279 of the *Criminal Code* is also repealed to remove the automatic penalty discount for abandoning an attempt to commit an offence. However, the court retains its discretion to take the voluntary abandonment of an offence into account when sentencing.
- ***Domestic Violence Amendment Act 1999***: Protection orders made in New Zealand may be registered and enforced in the Northern Territory as a result of this Act.
- ***Evidence Amendment Act 1999***: The *Evidence Act* is amended to enable persons to give evidence, make submissions, or appear before a court in the Northern Territory by means of an audio, visual or audio-visual link from a place outside the courtroom, whether that be in the Northern Territory, interstate, or overseas. However, a court must be satisfied that the use of such technology is more convenient and the necessary facilities are available.
- ***Juvenile Justice Amendment Act 1999***: The purpose of this Act is to introduce part VIA – Alternative Fine and Penalty Payment Procedures – into the *Juvenile Justice Act*. Warning letters are to be sent at the first stage, but, if the infringement notice remains outstanding, the certificate must be registered at the second stage. An enforcement order will be made at the third stage, and a juvenile may apply to

satisfy the penalty by a community service order. In the event that a community service order is not made and the penalty remains outstanding, the juvenile may be detained or the matter may be referred to the court for hearing. The Act also permits the use of such restraint devices as handcuffs when escorting a juvenile outside of a detention centre.

- ***Juvenile Justice Amendment Act (No 2) 1999***: The mandatory sentencing regime is amended by this Act to introduce some flexibility for second stage offenders. A juvenile aged 15 years or over who has been found guilty of one or more property offences, must either have a conviction recorded and be ordered to spend at least 28 days in detention, or, participate in a diversionary program.
- ***Sentencing Amendment Act (No 2) 1999***: As a result of this Act, the *Sentencing Act* is amended with the effect that a court is not required to sentence an offender to the mandatory minimum term of imprisonment where exceptional circumstances exist. However, this is subject to a number of conditions – the offender must not have previously had the benefit of the exceptional circumstances clause, he or she must be before the court for a single and trivial property offence, reasonable efforts must have been made to make full restitution, mitigating circumstances must be present, and the offender must have cooperated with law enforcement agencies and be of otherwise good character. Mitigating circumstances are defined to expressly exclude intoxication due to alcohol or the use of illicit drugs.

The Act is also amended to require an offender to be sentenced to a term of imprisonment if he or she has been previously found guilty of a violent offence. A term of imprisonment is mandatory should an offender be found guilty of a sexual offence. The Act also enables a victim impact statement to be prepared by a person close to the victim should the victim be incapable of giving consent.

2000

- ***Crimes at Sea Act 2000***: The purpose of this Act is to give effect to a cooperative scheme dealing with crimes at sea. Consequently, the criminal law of the Northern Territory is to apply by force of Northern Territory law in the area adjacent to it for a distance of 12 nautical miles from the baseline. The criminal law of the Northern Territory is to apply beyond 12 nautical miles to a distance of 200 nautical miles or the edge of the continental shelf, whichever is the greater, by force of Commonwealth law. Administration of criminal justice in the area will be shared between the Northern Territory and the Commonwealth.
- ***Firearms Amendment Act (No 2) 2000***: The definition of ‘disqualifying offence’ is broadened by this Act to include the offences of sexual assault, drug trafficking and stalking irrespective of whether a firearm was involved. A new category, ‘offence of violence’ is created as a lesser version of the ‘disqualifying offence’. The category is designed to align the *Firearms Act* more closely with the *Domestic Violence Act*, and provides for a compulsory five year prohibition period and automatic revocation of licence should an offence of violence be committed and a

domestic violence order confirmed. It provides for the return of a firearm licence should an application for a domestic violence order be dismissed or fail to be confirmed.

- ***International Transfer of Prisoners (Northern Territory) Act 2000***: This Act is designed to give effect to the *International Transfer of Prisoners Act 1997* (Cth) by enabling the transfer of prisoners to and from the Northern Territory. Before a prisoner may be transferred to Australia, he or she must demonstrate community ties with an Australian state or territory or Australian citizenship, that he or she is subject to imprisonment under a final order, at least six months of the sentence remains, and the offence would have constituted an offence in Australia.
- ***Misuse of Drugs Amendment Act 2000***: The *Misuse of Drugs Act* is amended so a person convicted of an offence involving a trafficable amount of drugs is presumed to have intended to supply the drugs. A person convicted of an offence involving a commercial quantity of drugs, is presumed to have intended to supply the drugs for commercial gain. The onus is on the alleged offender to prove otherwise.
- ***Police Administration Amendment Act 2000***: The *Police Administration Act* is amended to create a pre-court diversion scheme for juvenile offenders. Alternatives to charging the juvenile with an offence include verbal or written warnings, a formal caution, and diversionary programs such as family conferencing. However, the juvenile offender and his or her parent/guardian must agree to the diversion, otherwise prosecution of the matter may proceed.
- ***Prisons (Correctional Services) Amendment Act (No 2) 2000***: An officer in charge of a prison is empowered by this Act to order the interception, opening and reading of incoming and outgoing prisoners' mail by a statutorily appointed legal practitioner, including documents passed during a visit to or from a prisoner's legal representative. Such an order may be made if there is concern that the mail contains material that may jeopardise the security and good order of a prisoner or prison or the order is necessary to prevent the breach of a law.
- ***Sentencing of Juveniles (Miscellaneous Provisions) Act 2000***: The purpose of this Act is to increase the upper age of juveniles from 17 to 18 years of age in regard to the application of the criminal law. Consequently, the Act provides that a person convicted of a property offence when 17 years of age prior to the passage of this Act (an adult 'first strike') is to have their first conviction reclassified as a juvenile 'first strike' if they subsequently reoffend.
- ***Surveillance Devices Act 2000***: The *Listening Devices Act 1990* is repealed and replaced by this Act. It prohibits covert and intrusive surveillance of private activities and conversations unless sanctioned by a judicial authority. The Act provides for the operation, installation and maintenance of listening devices, optical surveillance devices, tracking devices and data surveillance devices by law enforcement officers who have obtained the necessary warrant. A warrant will only

be granted if it can be demonstrated that there are reasonable grounds for believing that an offence has been or is likely to be committed, and a surveillance device would assist an investigation into that offence or enable evidence to be obtained. However, consideration must also be given to the nature of the offence, the extent to which the device will interfere with the privacy of any person, whether the evidence or information might be obtained by some other means, and the likely value of such evidence or information.

2001

- ***Bail Amendment Act 2001***: This Act is a part of a package that includes the *Domestic Violence Amendment Act 2001*. It extends the forfeiture provisions of the *Bail Act* to bail conditions as well as bail undertakings. Conditions of bail in a domestic violence matter might include a prohibition of the accused approaching or contacting the victim, hence the importance of extending the forfeiture provisions.
- ***Criminal Code Amendment Act 2001***: This Act provides that a person who engages in defensive conduct is not to be held criminally responsible if he or she believes the conduct is necessary to:
 - defend him/herself;
 - prevent or terminate the unlawful deprivation of liberty;
 - protect property in his or her possession;
 - prevent trespass; or
 - remove a trespasser;and the conduct is a reasonable response in the circumstances as perceived by the person. However, it is not defensive conduct if force is used with the intention of causing death or grievous bodily harm in order to protect property, to prevent trespass, or to remove a trespasser. The right of self and property defence is extended by this Act to include occupants of commercial premises.
- ***Criminal Code Amendment Act (No 2) 2001***: The *Criminal Code* is amended by this Act to include the offences of home and business invasion so that any person who unlawfully enters a dwelling house or business premises and unlawfully causes damage is guilty of an offence. A definition of damage is provided that makes it clear that damage includes an interference with property that does not necessarily result in the permanent damage or destruction of the property or any financial loss.
- ***Criminal Code Amendment Act (No 3) 2001***: The purpose of this Act is to amend the *Criminal Code* to provide for computer related offences such as unlawful access to data, unlawful modification of data and the unlawful impairment of electronic communication. Each offence is liable to a maximum penalty of imprisonment for ten years. The Act includes a broad territorial nexus provision so a computer crime committed elsewhere may be prosecuted in the Northern Territory if it had an effect in the Northern Territory.

- ***Domestic Violence Amendment Act 2001***: This Act enables senior police officers, subject to certain conditions, to make a short term or interim restraining order without reference to the courts. The order is returnable before a court or magistrate within 48 hours. An unrepresented defendant cannot directly cross-examine a person with whom he or she is in a domestic relationship, unless the court makes an appropriate order. Cross-examination is to be conducted through a third person.
- ***Evidence Amendment Act 2001***: The *Evidence Act* is amended to create a presumption in favour of a vulnerable witness giving evidence with the use of special measures such as a support person. Amendments are made so that a support person need only be visible to the judge and jury, in contrast to the previous requirement that they be visible to all parties. If the status of a witness is called into question, they are to be treated as a vulnerable witness until the Court has made a determination on the matter.

A new part VIA is inserted into the *Evidence Act* in relation to confidential communications. It provides for the confidentiality of communications between counsellors and complainants of sexual offences. However, it also establishes a process by which such communications can be adduced or produced in evidence with leave of the court. Before granting leave, a court must consider the probative value of the evidence, whether it is available by other means, and the public interest in preserving confidentiality.

- ***Fines and Penalties (Recovery) Act 2001***: A fines recovery unit is established by this Act which also provides for the enforcement of fines and penalties. Payment may be enforced through a hierarchy of penalties including licence suspension, vehicle registration suspension, civil enforcement, community work orders and imprisonment as a last resort.
- ***Justices Amendment Act 2001***: This Act establishes the right of the prosecution to appeal against the dismissal of a case by a magistrate.
- ***Justices Amendment Act (No 2) 2001***: Following the passage of this Act, a court may issue a warrant to arrest a person who failed to attend court as required by a notice.
- ***Juvenile Justice Amendment Act 2001***: Section 66 of the *Juvenile Justice Act* is amended to allow the use of handcuffs in an emergency situation to temporarily restrain a juvenile detainee in order to protect him or her from self harm, or to protect other detainees, staff or visitors from harm. Police officers and other prison officers are also empowered to assist in an emergency situation in a detention centre.
- ***Juvenile Justice Amendment Act (No 2) 2001***: The mandatory sentencing regime for juveniles in relation to property offences is effectively ended by this Act as it repeals the divisions in the *Juvenile Justice Act* regarding repeat property offenders and punitive work orders. The power of the court to order a juvenile to participate

in a diversionary program is expanded as it may be used in other circumstances than for repeat property offenders. The provisions relating to victim impact statements and reports are also amended to enable the inclusion of a statement of the victim's wishes in respect of the order a court may make regarding the offence.

- ***Police Administration Amendment Act 2001***: Prior to this Act, a summons prepared by a Justice of the Peace needed to be served to require an alleged offender to attend court in answer to a charge. This Act grants police the power to issue a Notice to Appear to an adult offender.
- ***Prisons (Correctional Services) Amendment Act 2001***: The unfettered right of the Director of Correctional Services to transfer prisoners between prisons is restored by this Act.
- ***Public Order and Anti-Social Conduct Act 2001***: Members of the police force are granted preventative powers in relation to the maintenance of public order and to prevent anti-social behaviour. Antisocial conduct is defined in the Act as including the harassment or alarm of persons leaving a place, disrupting the flow of pedestrian or vehicular traffic, disrupting the peaceful and orderly conduct of event, and disrupting the peace or good order of a place. These powers can be exercised to keep the peace and good order of such places as shops, child care centres, parks, schools, railway stations and in the vicinity of automatic teller machines. A court is given the power to declare a place to be a 'place of anti-social conduct' with the effect that the place is to be considered public for the purposes of police action.
- ***Sentencing Amendment Act 2001***: The purpose of this Act is to fix a non-parole period of not less than 70% of the term of imprisonment for offences against persons under the age of 16.
- ***Sentencing Amendment Act (No 2) 2001***: A court is required by this Act to take the transmission of a sexually transmissible medical condition into account when sentencing an offender for a sexual offence. The court is also to consider whether the offender was aware that they had a sexually transmissible disease at the time of the offence. The definition of harm is expanded in regard to victim impact statements and reports to include the contraction, or fear of contraction, of a sexually transmissible medical condition.
- ***Sentencing Amendment Act (No 3) 2001***: The mandatory sentencing regime for property offences is repealed by this Act which inserts a new division on aggravated property offences into the *Sentencing Act*. This division requires a court to order an offender to either serve a term of imprisonment for an aggravated property offence or to participate in an approved project under a community work order, unless exceptional circumstances exist. Punitive work orders are changed to community work orders, with section 33A stating their purpose as 'to reflect the public interest in ensuring that a person who commits an offence makes amends to the community for the offence by performing work that is of benefit to the

community'.⁴⁸

- ***Sentencing Amendment Act (No 4) 2001:*** The police are given the power to arrest, without a warrant, an offender who is suspected, on reasonable grounds, of having breached a condition of a bond, suspended sentence or undertaking.
- ***Summary Offences Amendment Act 2001:*** The offence of possession, carriage and use of offensive weapons contained in section 56A of the *Summary Offences Act* is repealed by this Act, as the new *Weapons Control Act* is designed to comprehensively deal with all offensive weapons and related offences. The Act also amends section 61 of the *Summary Offences Act* to require a person in possession of stolen property to give an account of how the property was obtained, and how and why it was retained.
- ***Weapons Control Act 2001:*** The purpose of this Act is to regulate weapons, other than firearms, and body armour by creating a three-tiered scheme of 'prohibited weapons', 'controlled weapons' and 'offensive weapons'. The Act limits the sale, display, marketing and possession of the most dangerous weapons and provides exemptions for those in the community who need access to prohibited weapons. It creates a category of 'prohibited persons' who are not to have access to prohibited weapons of any kind. The category includes people who have been convicted of a disqualifying offence, are subject to a domestic violence order or restraining order of any kind, or any other person it is in the public interest to exclude. A specific offence of selling a prohibited weapon or body armour to a person who has neither an exemption nor an approval is provided in the Act.

2002

- ***Bail Amendment Act 2002:*** The *Bail Act* is amended to enable the representatives of persons, in respect of whom questions about fitness and mental impairment arise, to enter bail undertakings on their behalf.
- ***Crimes (Victims Assistance) Amendment Act 2002:*** The Victims Assistance Scheme is reviewed by this Act so as to streamline court procedures, improve its efficiency, and better address the needs of victims. In contrast to the prior scheme, the offender is no longer a party to the proceedings, with only the applicant and the Northern Territory to remain. A victim must have reported the offence to police to be entitled to assistance, unless circumstances prevented the offence being reported. The privilege attached to medical documents related to an assistance application is abolished, and assistance will not be provided to a person who was injured in the process of committing a crime. The court is also empowered to award costs against an applicant in the event that the court dismisses or strikes out their application.
- ***Criminal Code Amendment Act 2002:*** The purpose of this Act is to create the

⁴⁸ See further Briefing Paper No 2/02, *Sentencing Law: A Review of Developments in 1998-2001*, by Rowena Johns.

offence of causing someone to enter into or remain in sexual servitude. It also makes it an offence to deceptively recruit for sexual services, which are defined as ‘the commercial use or display of the body of the person providing the services for the sexual gratification of others’. The maximum penalty that may be imposed is 15 years imprisonment, however, the penalty increases to 20 years if the offence involves a child over the age of 12 years, and life imprisonment if a child under the age of 12 is involved.

- ***Criminal Code Amendment (Mental Impairment and Unfitness to be Tried) Act 2002:*** Sections six, 35 and 36 of the *Criminal Code* are repealed by this Act to remove references to normality of mind, insanity and intoxication. Part IIA – Mental Impairment and Unfitness to be Tried – is inserted in its place. The defence of mental impairment replaces the defence of insanity, nevertheless, the substantive law regarding the defence remains unchanged. Part IIA also deals with the issue of unfitness to stand trial and empowers the Supreme Court to determine questions of detention and release. In the event that a person is found to be unfit to stand trial, the judge must determine whether there are reasonable prospects that the accused person might regain the necessary capacity within 12 months. A special hearing is to be held in accordance with the Act if it is likely that a person will not regain capacity. The court must release a person unconditionally or declare them liable to supervision should he or she be found not guilty by reason of mental impairment.
- ***Criminal Code Amendment (Witness Intimidation) Act 2002:*** This Act makes it an offence to intimidate a witness who is about to give evidence, has already given evidence, or will have to give evidence in the future. An offender is liable to imprisonment for seven years.
- ***Criminal Property Forfeiture Act 2002:*** This Act provides for the forfeiture of property acquired as a result of, or used for, criminal activity. It overhauls the prior system, as contained in the *Crimes (Forfeiture of Proceeds) Act*, as a conviction is no longer a condition precedent for forfeiture and accordingly aims ‘to target the proceeds of crime in general and drug-related crime in particular in order to prevent the unjust enrichment of persons involved in criminal activities’. Power to gather information is provided by the Act in the form of monitoring, suspension, examination and production orders, as well as search warrants. It also contains the power to detain a person reasonably suspected of having property liable for forfeiture or property tracking documents in his or her possession. The Act enables restraining orders to be used to ensure property remains available for forfeiture.
- ***Criminal Records (Spent Convictions) Amendment Act 2002:*** This Act provides that a person found guilty of an offence when 17 years old, may be treated as a juvenile for the purposes of the *Criminal Records (Spent Convictions) Act* regardless of when the finding of guilt was imposed.
- ***Juvenile Justice Amendment Act 2002:*** This Act removes the requirement that a court must order a report on the circumstances of a juvenile when imposing a term of detention. Consequently, the court has the discretion to determine whether a

report is necessary.

- ***Misuse of Drugs Amendment Act 2002***: This Act is part of an effort to target drug suppliers who conduct their business through rented premises and aims to discourage the manufacture and distribution of dangerous drugs. It enables police to make an application to the local court to have premises declared to be drug premises if it is reasonably suspected that they are being used for the supply of drugs. Indications that the premises are drug premises include such things as whether police have been obstructed in their duties on the premises; the presence of persons acting as lookouts; whether things found on the premises indicate the manufacture, supply or use of a drug; or the presence of drugs, documents, cash or persons under the influence of drugs. Premises may also be declared to be drug premises if police find dangerous drugs at the premises on three separate occasions within a 12 month period.

The Act also makes a number of additional amendments. It is an offence to possess a precursor to be used in the manufacture of dangerous drugs. Another offence is the possession of a document containing instructions for the manufacture of a dangerous drug if the person also possesses equipment that may be used in its production. The possession of equipment for the manufacture of a dangerous drug is a further offence, as is the supply of a precursor if it is known that its intended use is to produce a dangerous drug.

- ***Misuse of Drugs (Consequential Amendments) Act 2002***: Following the enactment of the *Misuse of Drugs Amendment Act 2002*, this Act entitles a landlord of premises declared to be 'drug premises' to terminate the tenancy with 14 days notice. The Act also enables the suspension of a liquor licence subsequent to a 'drug premises' declaration.
- ***Public Order and Anti-Social Conduct Act Repeal Act 2002***: The purpose of this Act is to repeal the *Public Order and Anti-Social Conduct Act 2001*. It followed a change in government after the election on 18 August 2001. Whilst in opposition, the Australian Labor Party had argued that the Act duplicated powers already in existence as part of the *Summary Offences Act*.⁴⁹
- ***Tobacco Control Act 2002***: This Act prohibits smoking in such areas as an enclosed public space, an enclosed workplace area, an outdoor public venue, a food service area, public transport, and in shared accommodation. It also makes it an offence to supply tobacco and other smoking products to children.
- ***Witness Protection (Northern Territory) Act 2002***: The purpose of this Act is to establish a program to arrange and provide protection and assistance to persons who have been witnesses in criminal proceedings. The Act complements the *Witness Protection Act* (Cth) and enables the Northern Territory to participate in the

⁴⁹ NTPD (LA), 15 May 2002, p 1225.

National Witness Protection Scheme. Police may apply to the Supreme Court for an order authorising the creation of a new entry in the register of births, including the issue of a new birth certificate.

5 TRENDS IN CRIMINAL JUSTICE

Between 1999 and 2002, much legislation was passed in the States and Territories along similar themes. The *Model Criminal Code* has influenced the direction of the criminal law as a number of jurisdictions have instituted reforms in accordance with the recommendations made by the Model Criminal Code Officers' Committee. Accordingly, trends have emerged in the areas of sentencing; court administration; policing; the development of new computer, terrorism and sexual offences; as well as legislation designed to effect national schemes regarding the use of forensics, witness protection and crimes at sea. Dr Don Weatherburn, the Director of the Bureau of Crime Statistics and Research, has also observed the emergence of a trend in recent years to enact a specific prohibition against behaviour that was already an offence under more general legislation.⁵⁰

5.1 Court Administration

A number of jurisdictions have enacted various statutes to improve the efficiency of the criminal justice system. The benefits of technology has been increasingly realised as legislation is passed to enable the use of audio and audio-visual links to give evidence and make submissions. The aim is to improve the efficiency of the criminal justice system as defendants are not required to appear before the court in person for every mention of their matter. The requirements of pre-trial disclosure for both parties have also increased as a consequence of this desire for the system to be more efficient. The *Criminal Procedure Amendment (Pre-Trial Disclosure) Act 2001* (NSW) and *Crimes (Criminal Trials) Act 1999* (Vic) are examples of legislation to this effect.

Specialised courts have been established in recent years with the introduction of drug courts in New South Wales, Queensland, South Australia, Western Australia and Victoria. A drug court is also expected to open in the Northern Territory in 2003. Special courts have developed in order to provide for the special needs of participants in domestic violence matters, vulnerable witnesses and Aboriginal and Torres Strait Islanders. For example, a Koori Court was established in Victoria by the *Magistrates Court (Koori Court) Act 2002* (Vic).

5.2 Bail

In recent years, there has been a trend of enacting statutes that expressly state the conditions that may be imposed on persons released on bail. For example, the *Bail Amendment (Confiscation of Passports) Act 2002* (NSW) and *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001* (NSW) expressly provide for the confiscation of passports and imposition of non-association and place restriction orders as conditions

⁵⁰ Weatherburn D, 'Law and Order Blues', *The Australian and New Zealand Journal of Ciminology*, 35(2), 2002, p 136.

of bail in certain circumstances. Participation in diversionary and intervention programs as a condition of bail has also been expressly provided for with the passage of the *Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002* (NSW).⁵¹

5.3 Sentencing

A number of the developments in sentencing between 1999 and 2002 appear almost contradictory in nature. Whilst the ideals of restorative justice with its emphasis on restoration and restitution have had a continued impact on the direction of sentencing principles, demand for an increase in maximum terms of imprisonment has not abated as the courts are still criticised by some for being 'too soft'. Maximum penalties have been increased for such offences as sexual assault, gang related crime, and the lighting of bushfires. In some jurisdictions, sentencing principles have been codified and courts are required to prepare reports noting the specific factors taken into account when sentencing.

Proponents argue this will increase the accountability of courts, encourage consistency in sentencing and promote public understanding of the sentencing process. Further examples include the introduction of mandatory sentencing, standard minimum sentencing, and guideline judgments. Court discretion has been limited through the introduction of such legislation as the *Crimes Legislation Amendment (Existing Life Sentences) Act 2001* (NSW), which prevents a non-release offender from having their sentence redetermined before 30 years, and the introduction of grid sentences with the *Sentencing Amendment Act 2000* (WA). Conversely, in the Northern Territory mandatory sentencing has been repealed.

The predominance of the use of imprisonment as a penalty continues. There was a 45% increase in the number of prisoners between 30 June 1992 and 30 June 2002, whereas the corresponding increase in the Australian population was only 15%.⁵² Indigenous offenders continue to be imprisoned at a high rate, with indigenous persons forming 20% of the prison population on 30 June 2002 compared to 14% on 30 June 2002.⁵³ However, there has also been increased recognition of the need for new responses to the problem of crime as the effectiveness of a term of imprisonment is seen as limited in certain cases. For example, debate has arisen over whether drugs are better classified as an issue of health rather than law enforcement. Consequently, a number of jurisdictions have been willing to experiment in terms of sentencing, with provision for drug rehabilitation and the establishment of injecting rooms. Legislation has also been passed providing other alternatives to imprisonment as more diversionary programs become available. For example, the *Police Administration Amendment Act 2000* (NT) established a pre-court diversion scheme for juvenile offenders.

⁵¹ See further Briefing Paper No 15/02, *Bail Law and Practice: Recent Developments*, by Rowena Johns.

⁵² Australian Bureau of Statistics, *Prisoners in Australia*, 2002.

⁵³ Ibid.

5.4 Police Powers

A number of initiatives have been developed as part of an attempt to combat organised crime. Recognition of the need for cooperation between jurisdictions has increased as organised crime frequently operates across borders. Police have been given greater search and entry powers in a number of jurisdictions with regard to suspected 'drug houses'. Police powers in times of terrorist threat have been substantially increased in New South Wales and other states.

The legislative trend of increasing police powers appears likely to continue with the passing of such legislation as the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW), *Police Powers (Internally Concealed Drugs) Act 2001* (NSW), *Police Powers (Drug Premises) Act 2001* (NSW), *Police Powers and Responsibilities Act 2000* (Qld) and various statutes authorising the obtaining of forensic samples. The *Police Powers (Internally Concealed Drugs) Act 2001* (NSW) and the *Crimes (Forensic Procedures) Act 2000* (NSW) are significant in that they extend the search powers of police beyond persons charged with a criminal offence to those who are merely suspected of committing an offence.

5.5 New Offences

A variety of new offences have been introduced as a result of technological developments and new threats. Some offences were previously dealt with under more general laws, but, a number of statutes have been amended to insert a specific offence in recognition of its seriousness. Accordingly, the offence of product contamination, or threat of product contamination, has been introduced in a number of jurisdictions in response to the contamination of a packet of biscuits in 1997 which resulted in the biggest ever product recall and the loss of millions of dollars by Arnotts. The offence of stalking has also been amended in various states and territories to facilitate proof of the occurrence of an offence. New offences have also been introduced in relation to computer crime, sexual servitude and serious drug offences.

In 2001, concern over gang activity led the NSW Government to introduce a legislative package of new offences to target gang-related crime. This package included the *Justice Legislation Amendment (Non-Association and Place Restriction Act 2001* (NSW), *Crimes Amendment (Aggravated Sexual Assault in Company) Act 2001* (NSW), *Police Powers (Vehicles) Amendment Act 2001* (NSW), *Crimes Amendment (Gang and Vehicle Related Offences) Act 2001* (NSW) and the *Motor Trade Legislation Amendment Act 2001* (NSW).⁵⁴

5.6 The implementation of national schemes

The Prime Minister and State and Territory Premiers and Chief Ministers agreed on 5 April 2002 that a new national framework was needed to combat terrorism and multi-

⁵⁴ See further Briefing Paper No 16/02, *Gangs in NSW*, by Roza Lozusic.

jurisdictional crime.⁵⁵ The need for effective co-operation between jurisdictions was recognised. It is therefore noteworthy that there has been a trend in recent years to enact legislation in accordance with the models developed by the Commonwealth, in particular, the *Model Criminal Code*, with the treatment of offences in different jurisdictions subsequently becoming more consistent. Also stressed was the need to modernise the law in relation to forensic procedures, computer offences and serious drug offences.⁵⁶ The criminal law has already moved toward reform in this regard.

Legislation has been passed in various States and Territories with the purpose of giving effect to national schemes. Amending legislation has structured new offences or restructured old offences in accordance with the recommendations of the Model Criminal Code Officers Committee. Subsequent to the development of a national DNA database, CrimTrac, various statutes have been enacted to allow the exchange of forensic information between jurisdictions and to authorise the obtaining of forensic samples. The passage of legislation regarding crimes at sea has enabled the development of a consistent and simplified response to such offences throughout Australia. Other national schemes that have resulted in statutory action in various jurisdictions include the areas of witness protection and the transfer of international prisoners.

In response to the terrorist attacks in New York in 2001 and Bali in 2002, legislation was passed in 2002 by every state, except Victoria, to ensure that terrorism could be adequately dealt with in Australia, and that no loopholes existed by reason of a gap between the scope of state and commonwealth legislation. The various *Terrorism (Commonwealth Powers) Acts* referred matters relating to terrorism to the Commonwealth Parliament for this purpose.

6 CONCLUSION

Richard Fox has identified six areas in which he believes the criminal law is likely to evolve:⁵⁷

1. **Shifting sovereignty over criminal law** – The increased involvement of the federal government in criminal justice can already be seen with the establishment of a national DNA database, the delegation of power to pass legislation in relation to terrorism, and the institution of a consistent scheme for dealing with crimes at sea.
2. **Searching for corporate sanctions** – Fox believes that further efforts will be made to find the most effective way to punish criminal corporate behaviour whether by civil or criminal means.

⁵⁵ Australia, Productivity Commission, Steering Committee, *Report on Government Services*, 2003, p 5.13.

⁵⁶ Ibid.

⁵⁷ Fox R, 'Future Directions in the Criminal Law' Paper presented at the 4th National Outlook Symposium on Crime in Australia, New Crimes or New responses, Canberra, June 2001, p 2ff.

3. **Supplementary civil remedies** – An example of this is the introduction of laws in a number of states and territories that remove a guilty verdict as a precondition to the forfeiture of the proceeds of crime.
4. **Procedural reform** – The law has already moved in this direction with the introduction of legislation that increases the pre-trial disclosure requirements of both parties and grants penalty discounts for early guilty pleas.
5. **Sex, Drugs and Decriminalisation** – Whilst there has been movement towards the decriminalisation of prostitution and consensual homosexual behaviour, the scope of the criminal law has expanded in its attempts to prevent the exploitation and abuse of children. The treatment of certain drug offences is also changing as it is increasingly viewed as a medical rather than criminal issue, for example, the introduction of safe injecting facilities.
6. **Rethinking values, doctrines and purposes** – Fox believes new defences will emerge in such areas as mercy killings. He predicts that the approach to criminal behaviour will be questioned in the future in terms of whether the best response to such behaviour is through educative and administrative means or the criminal justice system. The ideals of restorative justice have already influenced sentencing principles, and alternative solutions are being sought as evidenced by the use of drug rehabilitation programs in place of a term of imprisonment.

Much legislation has been passed since 1999 in the realm of law and order. The original briefing paper released in 1999 observed a trend ‘towards a more national uniform approach to high profile law and order problems’.⁵⁸ A review of the legislation enacted in the four years between 1999 and 2002 indicates that this trend towards uniformity has continued. It is uncertain whether the trend of granting further powers to police will abate particularly whilst the terrorist threat retains its high profile. Numerous statutes since 1999 have limited sentencing discretion. It is not clear whether this trend will continue, or, if it will reverse, as the repeal of mandatory sentencing law in the Northern Territory may indicate. Whatever the outcome, public interest in and debate about law and order is certain to continue.

⁵⁸ Briefing Paper No 7/99, *Law and Order Legislation in the Australian States and Territories, 1995-1998: A Comparative Survey*, by Rachel Simpson and Gareth Griffith, p 47.