

Crimes (Amendment) Bill

EXPLANATORY MEMORANDUM

- Clause 1 sets out the purpose of this Bill.
- Clause 2 provides that, except for clause 5, the Bill will come into operation on the day on which it receives the Royal Assent. Clause 5, which relates to the offence of contamination of goods, will come into operation on 1 January 1999.
- Clause 3 substitutes for the existing section 60B(1) of the **Crimes Act 1958** a new sub-section (1). This new sub-section expands the definition of "sexual offence" to include—
- offences against sections of the **Crimes Act 1958** which have subsequently been repealed or replaced; and
 - offences of conspiracy to commit or incitement to commit relevant sex-related offences.
- The clause also amends section 60B(2) of the **Crimes Act 1958**—
- to include prostitution offences involving children amongst the offences to which the offence of loitering relates; and
 - to increase the maximum penalty for loitering from level 8 (1 year imprisonment or a \$12 000 fine) to—
 - level 7 (2 years imprisonment or a \$24 000 fine) or,
 - in the case of a person who has been found to be a serious sexual offender within the meaning of Part 2A of the **Sentencing Act 1991**, level 6 (5 years imprisonment or a \$60 000 fine). In such cases the offence is an indictable offence which is triable summarily.
- Clause 4 inserts a transitional provision to ensure that the amendments relating to section 60B apply only to loitering offences which are alleged to have been committed after the commencement of clause 3.

- Clause 5 removes the existing section 248 of the **Crimes Act 1958** and replaces it with five new sections based on the contamination of goods provisions contained in Part 8.1 of the Model Criminal Code.
- Clause 6 inserts three new sub-sections into section 360A of the **Crimes Act 1958**.

The new section 360A(4)(a) enables the court to take into account any vexatious or unreasonable conduct engaged in by the accused that has contributed to his or her inability to afford legal representation. An extreme example of the type of conduct to which this sub-section may apply is described in *R. v. Frugniet* (County Court (Vic), 3 July 1997, unreported) at p. 5 (referred to in *Frugniet v. Victoria and Others* (1997) 148 ALR 320 at p. 322). In that case the accused were described as having—

"deliberately and calculatingly combined to frustrate the trial process ... with the objective of avoiding the force of the prosecution against them. In that process they have squandered or have caused to be squandered a very great amount of public funds."

In addition, the new section 360A(4)(e) makes it clear that the conditions referred to in section 360A(2) are conditions such as those imposed on the accused under section 27 of the **Legal Aid Act 1978**, and that the court may not impose conditions on Victoria Legal Aid relating to the identity, number or remuneration of persons representing the accused.