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**Law and order legislation  
in the Australian States and  
Territories, 1995-1998:  
a comparative survey**

by

**Rachel Simpson and Gareth Griffith**

**Briefing Paper No 7/99**

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## 1.0 INTRODUCTION

Events in New South Wales in 1998, including the death of off-duty police officer Peter Forsyth in February, the murder of 14 year old schoolboy, Edward Lee in Punchbowl in October and the drive-by shooting of Lakemba police station in November have once again caused the law and order debate to intensify. People are becoming more fearful of crime, and assertions that the incidence of crime has risen, along with concerns about the corresponding cost to the community, have combined to make crime prevention and “law and order” a priority for all governments. The phenomenon of crime in Australia is discussed in Part 2.0 below. Crime prevention has also become a priority for the Police Service and concerned community groups, all of whom have their own theories on how best to combat and prevent crime.<sup>1</sup>

The object of this Paper is to survey the States and Territories to evaluate the legislative response of State and Territory Governments across Australia to this problem of crime prevention and the law and order question generally. The paper does not attempt to evaluate the success of various measures, simply to highlight the steps taken. The survey covers the period 1995 to the end of 1998. It does not take note of every minor amendment in the field of criminal legislation, but it does seek to offer a reasonably comprehensive coverage of the major legislative initiatives, taking account of the main features of the relevant reforms.

For an act to be considered a crime, it must be prohibited and punishable by the state.<sup>2</sup> The scope of what can be a ‘crime’ is, therefore, very wide. For the purposes of this paper, the source of what is ‘criminal’ is not restricted to the various state crimes legislation. Similarly, ‘law and order’ is a difficult term to define. For the purposes of this paper, it has been taken to mainly include the following broad areas: street crime and 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.<sup>3</sup>

It is accepted that legislation is only part of any response to law and order issues. The police service, through its policies for example, and welfare and other social groups also play an important role in crime prevention and the efficiency of the legal justice system.<sup>4</sup> Such

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<sup>1</sup> For an introduction to police powers and crime prevention, in the context of street offences, see Briefing Paper No 9/98, *Street Offences and Crime Prevention* by Gareth Griffith and Rachel Simpson, and particularly part 2(B), pages 5-11, titled “viewpoints in the contemporary debate”.

<sup>2</sup> P Nygh & P Butt (eds), *Butterworths Concise Australian Legal Dictionary*, Sydney, 1997, p. 98.

<sup>3</sup> It should be noted at the outset that Beverley Schurr’s review of Australian criminal legislation, published twice a year in the *Criminal Law Journal* (June and December), has been used as a guide in the compilation of the comparative survey of law and order legislation presented in this paper.

<sup>4</sup> The role of community networks and social support in crime prevention are discussed in detail in the National Campaign Against Violence and Crime’s 1999 report *Pathways to Prevention: Developmental and early intervention approaches to crime in Australia*.

matters are, however, beyond the scope of this paper, which concentrates on the legislative response of Australian State and Territory governments to the law and order debate. Nor does this Paper deal in any detail with developments towards a model criminal code in Australia, or with certain areas in which national uniform schemes have been introduced, as in relation to witness protection, international transfer of prisoners and the classification of publications, films and computer games.

## 2.0 THE PHENOMENON OF CRIME

In an attempt to understand statements about the increasing incidence of crime, there are two issues which must be taken into consideration. When looking at crime rates, the **actual** incidence of crime and the **perceived** incidence of crime are both important.<sup>5</sup> It has been asserted by the NSW Bureau of Crime Statistics and Research that

... public opinion about the risk of criminal victimisation is probably more influential in shaping State Government spending priorities in law and order than actual risk. If public concern about crime is driven by an exaggerated assessment of the risks of victimisation then strategies need to be put in place to address the problem.<sup>6</sup>

Certainly, the general public's perception and fear of crime has changed. The results of Bulletin Magazine surveys conducted by AGB McNair in 1986, 1992 and 1994 testify to this. The respondents, taken from across Australia, were asked to rank 12 issues in order of perceived importance. The issues ranged from 'violence-crimes' to 'interest rates' and 'industrial disputes'. In the 1994 survey, 70% of respondents thought 'violence/crimes' was an issue of "real concern". In fact, violence was considered of greater concern than any other issue, closely followed by 'hospitals/health'. By way of comparison, in 1992, 65% of respondents ranked 'violence/crimes' as an issue of "real concern" and in 1986 the corresponding figure was only 51% of respondents.<sup>7</sup> Research published by the NSW Bureau of Crime Statistics and Research in May 1996 confirmed that fear of crime is an issue of general public concern, although in relation to certain offences (break and enter and motor vehicle theft) the perception of risk is greater than the actual risk. In relation to violence offences (for example robbery or assault) the fear was much less exaggerated than the actual risk. The research also pointed to a variation among the States in relation to the perceived risk of victimisation.<sup>8</sup>

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<sup>5</sup> The National Campaign Against Violence and Crime (NCAVAC) published an extensive study on the fear of crime in May 1998, which includes a literature review, fieldwork research, an audit of existing fear reduction programs and strategies and further suggestions for reducing the fear of crime.

<sup>6</sup> D Weatherburn, E Matka & B Lind, *Crime Perception and Reality: public Perceptions of the Risk of Criminal Victimisation in Australia*, Crime and Justice Bulletin No 28, NSW Bureau of Crime Statistics and Research, May 1996, p. 2.

<sup>7</sup> 'Jobless no longer a top priority', *The Bulletin*, Vol 116, No 5951, December 1994, p. 12.

<sup>8</sup> Weatherburn, n 6, p. 3.

The table below illustrates the recorded incidence of certain crimes by offence category, and represents the number of victims per 100,000 population in 1997. The information is extracted from the Australian Bureau of Statistics publication *Recorded Crime Australia* for 1997. The information is derived from administrative systems used by State and Territory police to record crime. The offences will have been reported to the police by the victim, a witness or another person, or they may have been detected by the police. There are limitations to these figures, a point made by the ABS, which pointed out that these statistics “do not provide a total picture of crime, as not all crime comes to the attention of the police.”<sup>9</sup> Keeping these limitations in mind, these statistics do, however, provide a useful indication of the incidence of certain crimes.

Offence	NSW	Vic	Qld	SA	WA	Tas	NT	ACT	Aust
<b>Murder</b>	1.75	1.41	2.21	1.55	1.67	1.48	4.28	1.29	1.74
<b>Attempted Murder</b>	1.59	0.91	3.32	2.23	1.28	0.21	2.14	0.65	1.72
<b>Manslaughter</b>	0.18	.004	0.29	0.20	0.50	0.21	10.7	-	0.21
<b>Driving Causing Death</b>	n.a	0.50	1.15	1.01	2.00	0.21	0.53	-	n.a
<b>Assault</b>	892.49	361.16	518.75	927.69	763.91	415.42	1 368.55	540.35	668.78
<b>Sexual Assault</b>	74.32	61.50	96.58	82.31	88.98	40.76	133.06	31.63	76.29
<b>Kidnapping/ Abduction</b>	4.32	2.00	3.12	2.50	2.11	0.84	0.53	2.58	3.01
<b>Armed Robbery</b>	79.34	25.69	36.55	25.27	58.89	9.50	11.22	36.15	48.64
<b>Unarmed Robbery</b>	121.00	27.79	34.96	57.37	59.28	21.96	26.72	37.44	66.08
<b>Blackmail/ Extortion</b>	0.89	2.63	2.47	1.49	3.45	0.42	1.60	0.97	1.90
<b>Unlawful entry with intent *</b>	2 632.10	1 608.66	2 082.92	1883.02	3 145.27	2 995.56	2 557.02	1 414.17	2 254.69
<b>Motor Vehicle Theft</b>	871.98	660.61	500.08	544.67	844.71	517.63	535.45	504.21	703.67
<b>Other Theft</b>	2 632.95	2 596.44	2 721.31	3 185.28	4 204.31	2 724.60	3 781.82	3 002.96	2 856.35

\* Unlawful Entry with intent includes two sub-categories, that which involves property, and other.

The relative change in the incidence of crime over time is also important. The incidence of the above crime categories in NSW, per 100 000 population, from the year ending December 1993 to the year ending 1997 is contained in the table below.<sup>10</sup> Again, the limitations of these statistics must be pointed out, most notably the fact that reporting patterns will have an effect on the perceived incidence of crime. The change in some crimes, for example sexual assault, may be due at least in part by the public’s acceptance of the acts

<sup>9</sup> Australian Bureau of Statistics (ABS), *Recorded Crime Australia 1997*, July 1998, ABS Catalogue number 4510.0, p. 103.

<sup>10</sup> This information is taken from the 1993 to 1997 editions of the Australian Bureau of Statistics publication, *National Crime Statistics*, ABS catalogue number 4510.0.



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as a crime and the victims' willingness to report the crime to the police. Police practices, including the categorisation of certain activities as "criminal" or not, as well as the legislature's role in defining what constitutes a crime, will also impact on any crime statistics.

Offence	1993	1994	1995	1996	1997
<b>Murder</b>	1.95	1.77	1.72	1.6	1.75
<b>Attempted Murder</b>	1.36	1.02	0.95	1.34	1.59
<b>Manslaughter</b>	0.10	0.17	0.10	0.26	0.18
<b>Driving Causing Death</b>	0.07	1.88	2.99	3.74	n.a
<b>Assault</b>	-	-	619.06	770.85	892.49
<b>Sexual Assault</b>	63.31	76.15	66.05	81.16	74.32
<b>Kidnapping/ Abduction</b>	5.22	3.73	2.91	3.45	4.32
<b>Armed Robbery</b>	38.57	36.67	62.32	48.66	79.34
<b>Unarmed Robbery</b>	61.51	84.80	94.47	93.57	121.00
<b>Blackmail/ Extortion</b>	0.13	0.15	0.29	0.66	0.89
<b>Unlawful Entry with Intent</b>	1 841.60	1 983.87	2 178.48	2 446.81	2 632.10
<b>Motor Vehicle Theft</b>	651.38	751.79	761.85	787.18	871.98
<b>Other Theft</b>	-	-	2 279.78	2 542.23	2 632.95

Where there is a dash there was no statistic for that particular offence.

These figures are consistent with the NSW Bureau of Crime Statistics and Research's data, according to which, between the 12 month periods January to December 1997 and January to December 1998, there was a statistically significant upward trend in the monthly numbers of recorded criminal incidents for the following offences:<sup>11</sup>

- assault (up by 6.2%)
- robbery with a weapon not a firearm (up 29.7%)
- break and enter - dwelling (up by 7.0%)
- break and enter - non-dwelling (up by 6.8%)
- steal from a motor vehicle (up by 5.9%)
- steal from a dwelling (up by 7.7%)
- malicious damage to property (up by 11.9%)

The offences of sexual assault (down by 14.1%) and indecent assault, act of indecency or other sexual offence (down by 18.7%) were the only two offences for which a significant

<sup>11</sup> NSW Bureau of Crime Statistics and Research, *New South Wales Recorded Crime Statistics 1998*, Statistical Report Series, March 1999, p. 4.

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downward trend was recorded. The incidence of murder, robbery with a weapon, robbery with a firearm, motor vehicle theft, steal from a retail store, steal from person and fraud did not record a statistically significant trend in either direction.<sup>12</sup> These statistics have been interpreted by the head of the NSW Bureau of Crime Statistics and Research, Dr Don Weatherburn, as representing a plateau in the incidence of the most serious crimes in NSW, with robbery standing out as the only offence which continues to rise significantly.<sup>13</sup>

### 3.0 LAW AND ORDER LEGISLATION IN THE AUSTRALIAN STATES AND TERRITORIES

The survey below lists law and order legislation in the Australian States and Territories from 1995 to 1998. The legislation is listed by State and Territory, by year and alphabetically. As noted, there are a number of areas in which there has been legislation Australia-wide. Notable in this regard is the national scheme for the regulation of firearms regulation, adopted by the Australian Police Ministers' Council in 1996 following the Port Arthur tragedy, in relation to which only the legislation as passed in NSW will be discussed in some detail.<sup>14</sup>

#### 3.1 New South Wales

##### 1995

- ***Crimes Amendment (Child Pornography) Act 1995***: This Act makes possession of child pornography an offence, and gives police powers to enter and search premises for child pornography.
- ***Criminal Legislation Amendment Act 1995***: This Act extends the exceptions to the presumption in favour of bail under the *Bail Act 1978* to include conspiracy to commit murder and attempted murder.<sup>15</sup>

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<sup>12</sup> Ibid.

<sup>13</sup> G Bearup, 'Rising crime shows signs of reaching plateau', *The Sydney Morning Herald*, 4 March 1999, p. 5. See also B Lagan, 'Wave of error', *The Sydney Morning Herald*, 6 March 1999, p. 35. By way of comparison, the corresponding NSW Bureau of Crime Statistics and Research figures for 1997 reported that the increase in the incidence of robbery with a weapon not a firearm was 76.8%, robbery with a firearm was 33.4%, motor vehicle theft was 12.5%, and steal from a motor vehicle was 10.9%, significantly higher than in the 1998 figures.

<sup>14</sup> Again it should be noted that Beverley Schurr's review of Australian criminal legislation, published twice a year in the *Criminal Law Journal* (June and December), has been used as a guide in the compilation of sections 3.1 to 3.8 of this paper.

<sup>15</sup> For a discussion of the operation of the *Bail Act 1978*, see Briefing Paper No 25/97, *Bail in NSW*, by Rachel Simpson.

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- ***Criminal Procedure Amendment (Indictable Offences) Act 1995***: This Act enables certain indictable offences to be dealt with summarily, including having, or attempting to have sexual intercourse with a person between 14 and 16 years, aiding or abetting suicide, interfering with corpses, bigamy and larceny or other property crimes where the value of stolen goods is less than \$5 000. The Act also prescribes maximum penalties which can be imposed for those offences.<sup>16</sup>
- ***Disorderly Houses Amendment Act 1995***: This Act removed the habitual use of premises for prostitution as grounds for declaring premises to be a disorderly house. It also provided that it is not an offence under the *Summary Offences Act 1988* for a person who owns, manages, or is employed in a brothel to live off the earnings of prostitution of another person, and created an offence of inducing a person to commit an act of prostitution or to surrender the proceeds of prostitution. It also enabled the Land and Environment Court to close a brothel down on the application of the local council of the area where the brothel operates.<sup>17</sup>
- ***Evidence Act 1995***: This Act replaces the 1898 Act and was enacted as a move towards uniform evidence rules, with the Commonwealth *Evidence Act 1995*.<sup>18</sup> Two features of the new rules include:
  - visual identification evidence is not admissible unless an identification parade has been held, or it was not reasonable to hold the parade or the suspect declined to participate;
  - picture or photo evidence is not admissible if the photos suggest they were taken in police custody, if the suspect is in custody at the time the picture identification is made and the picture used was taken before he or she was placed in custody unless the suspect's identification has changed substantially, or if the suspect was in custody at the time the picture identification was made and no identification parade was held, unless the suspect has declined to participate or the suspect's identification had changed substantially.
- ***Local Government (Alcohol-Free Zones) Act 1995***: This Act enables local councils to apply that an alcohol-free zone be established in a public place or car park, to operate for up to three years, and to be patrolled by police officers.

**1996**

<sup>16</sup> See further Bills Digest No 27/94, *Criminal Procedure (Indictable Offences) Amendment Bill 1994*, by Gareth Griffith.

<sup>17</sup> This Act was originally introduced as a bill in 1992, then reintroduced in 1995 in virtually the same form, when it was passed. For a discussion of the 1992 Bill, and other more general issues relating to prostitution and law reform, see Briefing Paper No 27/95, *Prostitution in New South Wales: Law Reform Issues*, by Vicki Mullen.

<sup>18</sup> See further Briefing Paper No 23/94, *Reform of Evidence Laws in NSW*, by Vicki Mullen.

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- ***Children (Community Service Orders) Amendment (Maximum Hours) Act 1996:*** This Act increases the maximum number of hours of community service work that persons may be required to perform under a community service order;
- ***Crimes Amendment (Children's Evidence) Act 1996:*** This Act gives all children the right to have a supportive person present when they give evidence in criminal proceedings, and provides for the use of close-circuit television facilities and other special arrangements where children are giving evidence in proceedings involving personal assaults or apprehended violence orders.
- ***Crimes Amendment (Mandatory Life Sentences) Act 1996:*** This Act imposes mandatory life sentences for murder and supply of a commercial amount of heroin or cocaine where the court is satisfied that the level of culpability is so extreme that the community interest in retribution, punishment, community services and deterrence can only be met through the imposition of a life sentence. The provisions do not apply to a person under the age of 18 years at the time the offence was committed.<sup>19</sup>
- ***Crimes Amendment (Review of Convictions and Sentences) Act 1996*** which enables reviews to be carried out under Part 13A of the *Crimes Act 1900* in relation to sentences as well as convictions, and in relation to proceedings giving rise to sentences and convictions;
- ***Criminal Legislation Amendment Act 1996:*** This Act, *inter alia*, reforms the law concerning the effect of intoxication on criminal liability. Self-induced intoxication is no longer relevant when considering intent when a person is charged with an offence which is not one of specific intent. Offences of specific intent are offences of which an intention to cause a specific result is an element and include murder, administering poison with intent to injure or annoy, kidnapping and assault with intent to have sexual intercourse.<sup>20</sup>

This Act also increases the penalty for having custody of an offensive weapon in a public place from 10 penalty units (the \$1,000) or 6 months imprisonment to 20 penalty units (then \$2,000) or 12 months imprisonment.

- ***Fines Act 1996:*** This Act regulates the administration of fine payment and enforcement. It establishes a State Debt Recovery Office with responsibility for the fines system. The Act moves away from imprisonment for fine default, and sets out a hierarchy of methods of fine enforcement, progressing from suspension of driver's

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<sup>19</sup> See further Bills Digest No 3/95, *Crimes (Mandatory Life Sentences) Amendment Bill 1995*, by Gareth Griffith.

<sup>20</sup> For further discussion, see Briefing Paper No 30/95, *Intoxication and Criminal Responsibility*, by Vicki Mullen.

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license or car registration, civil action for debt recovery, imposition of a community service order and periodic detention.<sup>21</sup>

- ***Firearms Act 1996***: This Act repeals and replaces the *Firearms Act 1989*, and was part of a national approach to the control of firearms. It establishes a strict licensing and permits scheme for the possession and use of firearms and for the safe keeping of firearms, for which a genuine reason for having a license or permit is the prerequisite.<sup>22</sup>

The Act also establishes a registration scheme for firearms and contains provisions regulating the sale of firearms. Schedule 1 of the Act contains a list of prohibited firearms which includes a machine gun, sub machine gun, self-loading rifle, repeat action shotgun, a firearm fitted with a silencer, a canon or a firearm which looks like a walking stick or cane.

- ***Home Detention Act 1996***: This Act provides for home detention as a means of serving a sentence of imprisonment in certain cases where the sentence of a term of imprisonment does not exceed 18 months, except in respect of violent offences (murder, sexual assault, armed robbery etc), and where the offender does not have a history of violent offences.<sup>23</sup>
- ***Periodic Detention of Prisoners Amendment Act 1996***: This Act makes a number of amendments designed to tighten the periodic detention scheme to prevent non-attendance of detainees, including:
  - the Act inserts a new section 5AA into the *Periodic Detention Act 1981* whereby courts sentencing an offender to periodic detention are also required to make an order that the offender have his or her fingerprints and photograph taken. The effect of this section is that the offender has these identifying details taken twice - once at the court at the time of sentencing, and again at their initial arrival at the detention centre.
  - the maximum number of weeks by which a sentence of periodic detention can be extended for failure to report is increased from two to six weeks.
  - the Act inserts a new section 20A into the *Periodic Detention Act 1981* which enables the Commissioner for Corrective Services or his delegate (correctional officers) to send home a detainee who, for example, is under threat of violence from fellow detainees.

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<sup>21</sup> See further Briefing Paper No 30/96, *The Fine Default System in NSW: Background and Proposed Legislative Changes*, by Gareth Griffith.

<sup>22</sup> See further Briefing Paper No 11/96, *Gun Control: Historical Perspective and Contemporary Overview* by Marie Swain.

<sup>23</sup> See further Briefing Paper No 20/96, *The Home Detention Bill 1996: Commentary and Background*, by Honor Figgis.

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- the discretion previously available to the court in regard to cancelling an order of periodic detention for three failures to report is restricted so the court cannot refuse to cancel the periodic detention order unless the detainee has actually applied for a leave of absence or exemption from the order. The court's discretion in respect of the penalty it imposes upon cancelling the order is, however, extended to allow for non-custodial orders such as a community service order where appropriate. The formula for calculating the unserved portion of the sentence is also clarified in section 27.
  - a new section 21AA is inserted into the *Periodic Detention Act 1981* which gives Correctional officers the option to treat the late arrival of a periodic detainee as a failure to report or as a late arrival whereby the detainee makes up the lost time at a later date.
- ***Sentencing Amendment (Parole) Act 1996:*** This Act revises the procedures relating to the parole of prisoners who are serious offenders, to require victim submissions to be taken into consideration, and to require the Serious Offenders Review Council to consider the public interest.
  - ***Traffic Amendment (Street and Illegal Drag Racing) Act 1996:*** This Act prohibits practices associated with motor vehicle drag racing (for example operating a motor vehicle in such a manner as causes it to lose traction against the road surface), and provides for confiscation and impounding of any vehicles used for such practices.
  - ***Victims Compensation Act 1996:*** This Act, which forms part of a package overhauling victims rights and compensation, abolishes the use of common law principles for the assessment of damages, and adopts instead a Table of Injuries approach, as set out in Schedule 1 to the Act. It also redefines the term 'act of violence', making specific reference to such an act involving 'violent conduct'. In addition alterations are made to the statutory terms 'primary victim', 'secondary victim' and 'family victim', with same gender relationships being covered under the last category of claimants. Under the Act, orders for restitution against offenders can be made and a levy is imposed on persons found guilty of a crime punishable by imprisonment.<sup>24</sup>
  - ***Victims Rights Act 1996:*** This Act establishes a charter of rights for victims of crime. It does not, however, create any legally enforceable rights. The Act also establishes two bodies for the promotion of rights of victims, the Victims Crime Bureau and the Victims Advisory Board.<sup>25</sup>

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<sup>24</sup> See further Briefing Paper No 12/96, *Victims Rights and Victims Compensation: Commentary on the Legislative Reform Package 1996*, by Fiona Manning and Gareth Griffith.

<sup>25</sup> See reference to Briefing Paper No 12/96, above.

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Further, the Act makes provision for the consideration of victim impact statements in sentencing violent or serious offenders.

**1997**

- ***Children (Protection and Parental Responsibility) Act 1997***: This Act repeals the *Children (Parental Responsibility) Act 1994* and has a number of relevant functions:
  - it empowers police to remove children from certain public places (declared operational areas under the Act) where the police officer believes the child is under 16 years of age and is in circumstances which place the child at risk, not under the supervision of a responsible adult. The police officer must escort the child to the residence of the child's parent or carer, or a close relative.
  - A police officer is empowered to request the child's name, age and address for the purposes of the Act, and may use reasonable force for the purpose of removing the child from the public place.
  - The police are also empowered to conduct a frisk search of the child and remove any concealed weapon found in the child's possession. The Act also provides for Local Crime Prevention Plans developed in conjunction with local councils.<sup>26</sup>
- ***Crimes Amendment (Assault of Police Officers) Act 1997***: This Act creates new offences relating to assaults committed against police officers in execution of their duty. Three categories of assault are provided for: assault not occasioning actual bodily harm, assault occasioning bodily harm, and assault consisting of malicious wounding or inflicting serious bodily harm.
- ***Crimes Amendment (Child Pornography) Act 1997***: This Act creates the offence of publishing child pornography, and prescribes the maximum penalty for that offence of a fine of \$110,000 and imprisonment for five years in the case of an individual, and in the case of a corporation, a fine of \$220,000. The Act also doubles the previous maximum penalty for possession of child pornography.
- ***Crimes Amendment (Detention After Arrest) Act 1997***: This Act enables police to detain a person after arrest merely for the purposes of investigation. It provides for the maximum period of time that a person who is under arrest may be detained for that purpose, and provides for the rights of a person so detained.<sup>27</sup>

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<sup>26</sup> Orange, Ballina and Moree local council areas have been declared operational areas for the purposes of this legislation, enabling police to remove children under 16 from a public place. See further Briefing Paper No 6/97, *The Children (Parental Responsibility) Act 1994: An Update*, by Marie Swain.

<sup>27</sup> See further Briefing Paper No 8/97, *Police Powers of Detention After Arrest*, by Gareth Griffith.

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- ***Crimes Amendment (Diminished Responsibility) Act 1997***: This Act replaces the defence of diminished responsibility to a charge of murder. The Act replaces the defence with a new, stricter, defence - substantial impairment by abnormality of mind. The new defence requires that the accused prove that the abnormality of mind arise from an underlying, pre-existing mental or physiological condition, other than a condition of a transitory mind, and specifies that the effects of any self-induced intoxication must be disregarded. The Act also requires that the accused declare that he or she is planning to rely on the defence before the trial commences.<sup>28</sup>
- ***Crimes Legislation Amendment Act 1997***: This Act, *inter alia* amends the *Crimes Act 1900* to extend the circumstances where the presumption that a boy under the age of 14 years is incapable of sexual intercourse **does not** apply (for example section 66A, having sexual intercourse with children under 10 years). The Act also contains a number of procedural provisions.
- ***Crimes Legislation Further Amendment Act 1997***: This Act, *inter alia* amends the *Crimes Act 1900* to create a new “circumstance of aggravation” which refers to a person being under the influence of a drug other than alcohol whilst driving dangerously. The effect of the amendment is to enable a person to be charged with the more serious offence of aggravated dangerous driving if that person is under the influence of a drug or combination of drugs.
- ***Law Enforcement (Controlled Operations) Act 1997***: This Act allows for law enforcement agencies to undertake what would be otherwise illegal activities in the course of fighting crime and provides for authorisation, conduct and accountability of those activities.
- ***Sentencing Legislation Further Amendment Act 1997***, which affects the redetermination of life sentences imposed prior to the 1989 truth in sentencing laws in a number of ways:
  - by restricting judicial discretion to redetermine life sentences to circumstances where the court finds there is “special reason”.
  - by requiring the court to have regard to all the circumstances surrounding the offence for which the life sentence was originally imposed, and all the offences committed by the offender, wherever those offences were committed.
  - by increasing the waiting period from eight years to 20 years in the case of any offender who, at the time of sentencing, was recommended by the sentencing court never to be released before the offender can have the original sentence redetermined.
  - by increasing the waiting period from two to three years before an offender can re-apply for redetermination where the original application was refused.

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<sup>28</sup>See further Briefing Paper No 19/97, *Crimes Amendment (Diminished Responsibility) Bill 1997: Commentary and Background*, by Gareth Griffith and Honor Figgis.



The Act also makes similar provisions with respect to the Parole Board and Serious Offenders Review Council to take into account any recommendations of the original sentencing judge when exercising their functions with respect to pre-1989 life sentences.

- ***Summary Offences Amendment Act 1997***: This Act makes a number of amendments relating to offensive implements:
  - it expands the offence of having custody of an offensive implement in a public place to include a school.
  - it makes it an offence to use or visibly carry a knife in a public place or a school, in the presence of any person in a manner that would cause a person present at the scene fear for his or her personal safety.
  - the offence of sale of a knife or knife blade to a person under the age of 16 years is created, and under the Act, an employer who had knowledge of an employee's actions in doing so is made liable for the employee's actions.

The other relevant amendments concern under-age drinking: a police officer who reasonably suspects a person who is consuming liquor in a public place is a minor may require that person to state his or her full name and residential address and provide proof of age. It is an offence for the person to refuse to provide the police officer with that information.

- ***Traffic Amendment (Street and Illegal Drag Racing) Act 1997***: This Act enables police to impound a vehicle they reasonably suspect of having been involved in drag racing in the **past 10 days**. The vehicle may be seized from a public place or any other place, with the consent of the owner or occupier or under the authority of a search warrant, and may be sold or disposed of in certain circumstances.
- ***Traffic and Crimes Amendment (Menacing and Predatory Driving) Act 1997***: This Act creates an indictable offence of predatory driving, with a maximum penalty of five years' imprisonment, and a summary offence of driving in a manner which the driver ought to know might menace. It also increases the penalty for menacing driving to \$3,300 or 18 months imprisonment (or both) for a first offence, and \$5,500 or 2 years imprisonment (or both) for a subsequent offence.
- ***Young Offenders Act 1997***: This Act established procedures for dealing with children who commit certain offences through the use of police cautions and warnings, and youth justice conferences rather than court proceedings.<sup>29</sup>

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The operation of the *Young Offenders Act 1997* is discussed in detail in Briefing paper No 5/99, *Juvenile Justice: Some Recent Developments*, by Honor Figgis.

*New South Wales***1998**

- ***Bail Amendment Act 1998***: This Act extends the exception to the presumption in favour of bail to include: manslaughter, wounding with the intent to do bodily harm or resist arrest, aggravated sexual assault or assault with intent to have sexual intercourse, attempting, assaulting with intent or having sexual intercourse with a child under 10 years, homosexual intercourse with a male under 10 years, kidnapping and domestic violence and offences contravening AVOs where the accused has failed to comply with certain bail conditions.
- ***Crimes Legislation Amendment Act 1998***: This Act makes a number of miscellaneous amendments to the criminal law and procedure, including abolishing the common law rule granting immunity to a wife against prosecution as an accessory after the fact to a felony committed by her husband.
- ***Crimes Legislation Amendment (Child Sexual Offences) Act 1998***: This Act creates the offence of persistent sexual abuse of a child, which is defined as sexual abuse of a child on three or more separate occasions on separate days during any period. This offence is punishable by penal servitude for 25 years.

The Act also creates the summary offence of loitering by a convicted child sexual offender near premises frequented by children. The maximum penalty for this offence is 50 penalty units (\$5,500) or two years' imprisonment, or both.

- ***Crimes Legislation Further Amendment Act 1998***: This Act makes a number of procedural amendments including amendments relating to self-induced intoxication, possession of child pornography, and provisions by which funds in the Confiscated Proceeds Account may be spent in aid of crime prevention programs and programs supporting safer communities.
- ***Crimes Legislation (Police and Public Safety) Act 1998***: This Act further amends the *Summary Offences Act 1988* in relation to offensive implements:
  - an offence of having custody of a knife in a public place or school without a reasonable excuse is created;
  - police are empowered under this Act to conduct an electronic or frisk search of a person or examine any bag or other personal effect on a person in a public place or school where the police reasonably suspects the person has unlawful custody of a knife, firearm or prohibited weapon, and to confiscate anything which the police reasonably believe to be a dangerous implement;
  - police are also empowered to give reasonable directions to a person in a public place whose behaviour or presence is obstructing another person or traffic, or where the person's behaviour constitutes harassment or intimidation or is likely to frighten another person, and
  - where a police officer reasonably believes a person may be able to assist in the investigation of an alleged indictable offence because the person was at

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or near the place around the time the alleged offence was committed, the police officer is empowered to request the person's name and address.<sup>30</sup>

- ***Criminal Procedure Amendment (Sentencing Guidelines) Act 1988***: This Act makes provision for guideline judgements to be given by a Court, on the application of the Attorney-General. A guideline judgement is a judgement which contains guidelines which must be taken into account when sentencing offenders.<sup>31</sup>

Note that this Act does not limit the discretion of the Court to give a guideline judgement without application from the Attorney-General, nor does it compel the Court to give a guideline judgement where it thinks it is inappropriate to do so.

- ***Criminal Procedure Legislation Amendment (Bail Agreements) Act 1998***: This Act amends the *Bail Act 1978* so as to provide for the enforcement of bail agreements made under that Act.<sup>32</sup> It also amends the *Justices Act 1902* to give bail the same definition as under the *Bail Act 1978* and to abolish various recognisances (sums of money payable to the State unless the person appears in court, for example).
- ***Drug Misuse and Trafficking Amendment (Ongoing Dealing) Act 1998***: This Act creates an indictable offence of supplying prohibited drugs on an ongoing basis, defined as on 3 or more separate occasions during any period of 30 consecutive days. The maximum penalty for this offence is 3,500 penalty units (\$385,000) or 20 years imprisonment or both. This offence is an offence for which there is an exception to the presumption in favour of bail under the *Bail Act 1978*.
- ***Fines Amendment Act 1998***: This Act make a number of amendments relating to the enforcement and administration of the fines system in NSW, including: ensuring the maximum number of hours community service work that a person under 18 years can be required to perform is 100, and that the work can be performed under several orders concurrently, and enabling the RTA to issue a first driver's license to a person who has an unpaid fine for an offence committed when he or she was a child.
- ***Home Invasion (Occupants Protection) Act 1998***: This Act provides protection as well as civil and criminal immunity to occupants who use physical force to defend themselves (or other occupants, or their property) against invaders of their dwelling-

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<sup>30</sup> See further Briefing Paper No 9/98, n 1, for a discussion of crime prevention in the context of street offences.

<sup>31</sup> See further Briefing Paper No 18/98, *Mandatory and Guideline Sentencing: Recent Development*, by Honor Figgis.

<sup>32</sup> See further Briefing Paper No 25/97, n 15.

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places. Protection is granted if the occupant considers, on reasonable grounds, that it is necessary to use physical force.<sup>33</sup>

- ***Pawnbrokers and Second-Hand Dealers Amendment Act 1998***: This Act makes a number of amendments in relation to the granting and renewal of licenses, the retention of goods that are suspected of having been stolen, the keeping of records, the sale of pawned goods at public auctions and the provision of information to the Commissioner of Police.
- ***Periodic Detention of Prisoners Amendment Act 1998***: This Act tightens the eligibility for periodic detention, provides that an offender must sign an undertaking, prior to commencing periodic detention, that he or she will comply with the requirements of periodic detention, and relocates cancellation proceedings in relation to periodic detention from the courts to the Parole Board.
- ***Periodic Detention of Prisoners Further Amendment Act 1988***: This Act contains procedures to be followed after the Parole Board cancels an order for periodic detention (after which time the prisoner may serve either a custodial sentence or is placed on parole).
- ***Police Powers (Vehicles) Act 1988***: This Act empowers police to stop and search vehicles which they reasonably suspect to have been involved in the commission of an indictable offence. The police officer may request the driver or any owner of the vehicle to disclose his or her identity and that of any passenger in the vehicle at or near the time the offence was committed. Failure on the part of the driver or owner may result in a maximum penalty of 50 penalty units (\$5,500) or 12 months' imprisonment or both. A police officer may also be authorised to stop and search a vehicle if it is reasonably suspected that the vehicle was used in or in connection with the commission of an indictable offence.
- ***Traffic Amendment (Confiscation of Keys and Driving Prevention) Act 1998***: This Act empowers police to prevent people who are under the influence of drugs or alcohol from driving motor vehicles.
- ***Traffic Amendment (Tyre Deflation - Police Pursuits) Act 1998***: This Act provides for the use by police of tyre deflation devices in connection with the pursuit of vehicles by the police.
- ***Weapons Prohibition Act 1998***: This Act replaces the *Prohibited Weapons Act 1989*. It requires each person who uses a prohibited weapon to have a genuine reason for possessing or using the weapon. A prohibited weapon includes a knife, bomb, spear gun, crossbow, slingshot (other than homemade), blow-pipe, mace,

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See further Briefing Paper No 17/98, *Home Invasion and Self-Defence: An Update*, by Gareth Griffith.

*Queensland*

whip with a lash comprised wholly or partly of metal, cat o' nine tails, knuckle duster, studded glove or anti-personnel spray, as well as miscellaneous articles such as handcuffs, silencers or body armour vests. The Act also provides for an amnesty period to enable the surrender of prohibited weapons.

### 3.2 Queensland

#### 1995

- ***Criminal Offence Victims Act 1995***: This Act articulates the fundamental principles of justice for victims of crime. It provides for a scheme of compensation to a person for injury suffered as a result of an indictable offence committed against that person. It also permits compensation to be paid to dependants of a victims of murder or manslaughter, or for funeral or other expenses to be paid to a victim where there are no dependants.
- ***Drugs Misuse Amendment Act 1995***: This Act amends the *Drugs Misuse Act 1986* to allow the recording of particulars of people and companies purchasing the chemicals which can be used to manufacture illicit drugs, enabling police to better trace the supply of chemicals for illicit drug manufacturing purposes.

#### 1996

- ***Courts (Video Link) Amendment Act 1996***: This Act provides for the use of video link facilities in bail or remand proceedings where the detainee is entitled or required to be present. The detainee remains in the correctional centre, but is taken to be present in the court for the proceedings. In other proceedings, the Court may authorise the use of video link facilities if all parties consent. The aim of the legislation is to reduce the risks posed to the community in the transport of prisoners to and from the courts. The Act applies in relation to proceedings before the Magistrates, District and Supreme Courts.
- ***Drugs Misuse Amendment Act 1996***: This Act, *inter alia*, creates the offence of publishing or possessing instructions for producing dangerous drugs, and enables certain drugs offences to be dealt with summarily.
- ***Juvenile Justice Legislation Amendment Act 1996***: This Act represents a major change to juvenile justice legislation in Queensland. The Act gives police the scope to obtain permission from a magistrate to have the fingerprint of palm print of a child taken, as part of the process of investigating an offence. The intention of this provision is to discourage police from arresting juveniles for the purpose of taking finger prints. The Act also provides for community conference scheme for children who admit or are found guilty of an offence. It also provides for the confidentiality identifying information of participants in community conference agreements, or to whom a caution has been given.

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- ***Weapons Amendment Act 1996***: This Act provides for a new licensing system for possession, acquisition and sale of weapons, and is part of the national approach to firearm control agreed upon by the Australian Police Ministers' Council: It establishes a firearms register and an amnesty period for the surrender of prohibited weapons.<sup>34</sup> For more detail see the NSW section, p. 8, above.

**1997**

- ***Criminal Law Amendment Act 1997***:<sup>35</sup> This Act makes a number of substantial amendments to the *Criminal Code Act 1899 (the Criminal Code)*. Relevant amendments include:
  - the reduction in age from 15 to 14 from which a minor can be held criminally responsible for his or her actions;
  - bringing into line the penalties for carnal knowledge of girls and sodomy of boys (14 years imprisonment) and increasing the penalties for other sexual offences against children and intellectually impaired persons;
  - broadening of the defence available to home owners who use force to prevent or repel another person from unlawfully entering or remaining on the premises - the defence is also extended, with slight variations, to the protection of moveable property, and to persons assisting that person;
  - extension of the domestic discipline provisions;
  - creation of a new offence of torture; creation of new offences of computer hacking and misuse; insertion of a new Chapter 58A, dealing with indictable offences which may be dealt with summarily;
  - insertion of a provision according to which parties must give advance notice of their intention to bring evidence by expert witnesses and give the other party a copy of the expert's report, and a provision which requires parties attend the pre-trial directions regarding the admissibility of evidence and conduct of the trial.

The Act also amended the *Vagrants, Gaming and Other Offences Act 1931* to make possession of a graffiti instrument an offence, punishable by up to 70 penalty units or two years' imprisonment.

- ***Penalties and Sentences (Serious Violent Offences) Amendment Act 1997***: This Act, *inter alia*, introduces separate provisions for the punishment of serious violent offences. Under the new provisions, serious violent offenders must serve a minimum of 80% of their term of imprisonment before becoming eligible to apply for parole or community release.

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<sup>34</sup> For a discussion of the gun control debate, see Briefing Paper No 11/96, n 22, above.

<sup>35</sup> This Act repealed the *Criminal Code Act 1995*, which was never proclaimed, following criticism from the legal profession and other interested groups.

*South Australia*

- ***Police Powers and Responsibilities Act 1997***: This Act consolidates the powers of police officers into one statute, and standardises the way in which those powers and responsibilities of police officers are to be exercised. These powers are divided into a number of areas: entry, inspection, inquiries, arrests and crime scenes; roadblocks; searching people and vehicles with and without a warrant; power to seize evidence; powers relating to arrest; investigations and questioning; powers in relation to persons in custody; surveillance powers; power to give directions in notified areas; standard safeguards (for example information to be given to an arrested person, limitation on period of detention for search etc); assault or obstruction of police officers, and other miscellaneous powers.
- ***Weapons and other Legislation Amendment Act 1997***: Relevant provisions include applying minimum ages to persons using shooting galleries - 11 years for general shooting galleries and 15 years for shooting galleries at which paint pellet sports are played. The Act also creates the offence of possession of a knife in a night club, unless used for preparation of food provided on the premises.

**1998**

- ***Police and Other Legislation (Miscellaneous Provisions) Act 1998***: This Act, *inter alia*, extends the powers of a police officer to give reasonable direction to a person who, by their presence or behaviour near an automatic teller machine is causing anxiety to a reasonable person. The Act also creates the offences of unlawfully entering another person's vehicle, and unlawfully entering another person's vehicle with intent to commit an indictable offence, and the offence of carrying a knife in a public place without a reasonable excuse.

**3.3 South Australia****1995**

- ***Criminal Law (Undercover Operation) Act 1995***: This Act allows police to engage in otherwise illegal operations for the purpose of gathering evidence of serious criminal behaviour.
- ***Criminal Law Consolidation (Mental Impairment) Amendment Act 1995***: This Act regulates the procedure for dealing with 'mentally impaired' defendants accused of indictable offences in the District or Supreme Courts. A 'mental impairment' is defined to include a mental illness, mental disability or senility.
- ***Statutes Amendment (Attorney-General's Portfolio) Act 1995***: This Act, *inter alia*, creates a new offence - the manufacture, sale, distribution, supply, possession or use of body armour without the approval of the Commissioner of Police. Body

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armour is defined to include a protective jacket, vest or other article of apparel designed to resist the penetration of a projectile discharged from a firearm.

- ***Statutes Amendment (Paedophiles) Act 1995***: This Act enables people to make a complaint to the Local Court seeking a ‘paedophile restraining order’ against a person to restrain them from loitering near children or in the vicinity of a specified place or in specified places or loitering near children in any circumstances. The order may be made if the person has prior convictions for child sexual offences, or has been found loitering near children on at least one prior occasion and there is reason to think the person may do so again.
- ***Statutes Amendment (Recording of Interviews) Act 1995***: This Act requires police to electronically record interviews with persons suspected of having committed an indictable offence. Evidence of an unrecorded interview is inadmissible. The Act also enables children under the age of 12, or an illiterate or intellectually disabled witness to give evidence in the form of an audio or video recording.
- ***Summary Offences (Overcrowding at Public Venues) Amendment Act 1995***: This Act increases police powers to control overcrowding in a place of public entertainment where there is a serious risk of injury or damage as a result of the overcrowding: A member of the Police Force may enter a place of public entertainment for the purpose of ascertaining the risk of injury or damage, and authorised police officers may order persons to leave the premises or order the occupier to remove persons or take any other necessary steps. It also authorises police officers to close the venue immediately for a period of up to 12 hours if necessary to alleviate the danger.

**1996**

- ***Correctional Services (Miscellaneous) Amendment Act 1996***: This Act makes a number of amendments to the *Correctional Services Act 1982*, including amendments relating to work release, empowering the Department of Correctional Services with the authority to release a prisoner into home detention, and empowering correctional officers to stop, search and detain any person on prison property who is reasonably suspected of attempting to bring drugs or other contraband into the prison. The Act also enables prison management to open and examine incoming and outgoing mail for drugs.
- ***Criminal Assets Confiscation Act 1996***: This Act repeals the *Crimes (Confiscation of Profits) Act 1986* and provides for the confiscation of the proceeds of crime (criminal assets).
- ***Firearms (Miscellaneous Amendment) Act 1996***: This Act contains amendments reflecting the national uniform approach agreed upon by the Australian Police



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Ministers' Council and the national buy back/compensation scheme.<sup>36</sup> For more detail see the NSW section, p. 8, above.

- ***Racial Vilification Act 1996***: This Act formally creates the criminal offence of racial vilification, which is defined to be “hatred towards, serious contempt or severe ridicule”, and must include a serious threat of violence to a person or property in public. The Act also creates a civil remedy for those people who suffer a wrong as a result of racial vilification.
- ***Statutes Amendment (Sentencing of Young Offenders) Act 1996***: This Act has the effect that the whole of the *Criminal Law (Sentencing) Act 1988* applies when sentencing young people, not only those provisions specifically directed towards young offenders. Specific and general deterrence must be taken into account when sentencing young offenders. The Act also has a number of practical effects: for example it confers on Youth Court all the powers enjoyed by the Magistrates Court, for example, to order home detention.

**1997**

- ***Criminal Law Consolidation (Self Defence) Amendment Act 1997***: This Act simplifies the law relating to self-defence. It does so by requiring the jury to find that the force used by the accused was objectively reasonable in all the circumstances. This differs from the previous test insofar as it required that the jury find the accused believed the force used was reasonable. The Act replaces the previous general section dealing with self-defence with two sections: acts directed at the defence of life, bodily integrity or liberty; and acts directed at the defence of property.

**1998**

- ***Criminal Law (Forensic Procedures) Act 1998***: This Act enables forensic procedures to be carried out in order to obtain evidence relevant to the investigation of criminal offences. Forensic procedures include taking of hand, finger, foot or toe prints; an examination of an external part or orifice of a person's body; the taking of a sample of hair from person's body; the taking of a sample of blood, by a buccal swab, of saliva, finger nail or toe nail or of material from under a fingernail or toenail the taking of a sample of biological material or other material from an external part of the body; the taking of a dental impression, or the taking of an impression or cast of a wound.
- ***Criminal Law (Sentencing) (Victim Impact Statements) Amendment Act 1998***: This Act enables victim impact statements to be given at trial by the person who has suffered injury, loss or damage resulting from an indictable offence committed by another.

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<sup>36</sup>

For a discussion of the gun control debate, see Briefing Paper No 11/96, n 22, above.

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- ***Evidence (Use of Audio and Audio Visual Links) Amendment Act 1998***: This Act amends the *Evidence Act 1929* to allow for evidence to be taken by audio or audio visual links in proceedings before South Australian courts, and for courts in other states to use audio or audio visual links to take evidence or receive submissions from a person in South Australia.
- ***Statutes Amendment (Fine Enforcement) Act 1998***: This Act reforms the system of fine enforcement. The options for payment are increased, including voluntary automatic deduction from wages, and banks accounts. The Act also abolishes imprisonment for fine default in favour of alternative penalties including driver disqualification, cessation of ability to do business with the Registrar of Motor Vehicles and registration of a charge on land owned by the debtor. The Act also includes a number of administrative changes, including removing from the police the responsibility for executing default notices. This role is transferred to the Penalty Management Unit of the Courts Administration Authority.
- ***Statutes Amendment (Young Offenders) Act 1998***: This Act is concerned with offenders serving a sentence in prison for offences committed when a juvenile. For example, it enables a court to remand a youth who has attained 18 years of age in a juvenile training facility rather than an adult detention centre where the offence was committed while a juvenile.

### 3.4 Tasmania

#### 1995

- ***Bail Amendment Act 1995***: This Act empowers police officers to impose bail conditions on police bail, and a number of procedural safeguards in relation to the imposition of unreasonable conditions by police. The Act also empowers police to arrest persons released on bail who have contravened, or are about to contravene, police imposed bail conditions.
- ***Criminal Code Amendment (Stalking) Act 1995***: This Act creates the offence of stalking. Stalking is defined as any of the following acts done with the intention of causing another person physical or mental harm, apprehension or fear: following a person, loitering outside the place of residence of a person or a place frequented by a person, entering or interfering with the property of another person; keeping a person under surveillance, or giving offensive material to a person. It is also stalking when these acts are done to a third person if it is intended to cause harm, fear or apprehension to another person as a consequence of the act. The ***Justices Amendment Act (No 2) 1995*** creates certain exceptions for officers and certain other persons.
- ***Criminal Law (Detention and Interrogation) Act 1995***: This Act empowers police to detain an arrested person for a reasonable time for the purpose of questioning and

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carrying out investigations. The Act sets out 12 indicia which must be considered when determining what amounts to a reasonable time, and the rights of the accused while in custody, for example, the right to an interpreter and the right to communicate with a friend, relative and legal practitioner.<sup>37</sup>

- ***Criminal Process (Identification and Search Procedures) Amendment Act 1995:*** This Act sets out procedures for fingerprinting persons aged 11 to 16 after they have been arrested and charged. Fingerprinting may only be undertaken with the consent of the young person and their parents, or by order of a magistrate, and must be destroyed if the proceedings do not end in a conviction.
- ***Evidence Amendment (Children and Special Witnesses) Act 1995:*** This Act introduces special provisions for the receipt of evidence from children under the age of 17 years and special witnesses. A special witness includes a person whose evidence may be affected by giving evidence in the ordinary way due to characteristics such as a person's intellectual, mental or physical disability or a person's age, cultural background, relationship to a party in the proceedings and the nature of the evidence. The Act allows certain evidence to be given by way of video link, and provides for the presence of a support person for a child witness. In a related Act, the ***Justices Amendment (Child Witnesses) Act 1995***, provision is made whereby a child witness may only be summoned for cross examination in the taking of depositions in the Local Court where the magistrate finds there are special circumstances requiring the presence of the child.
- ***Police Offences Amendment (Liquor) Act 1995:*** This Act prohibits the consumption of liquor in public streets and in any other public place prescribed in regulations. The possession of opened or unsealed containers of liquor in public streets or prescribed public places without reasonable excuse is also prohibited. The Act also applies to persons who are in stationary motor vehicles in public streets or prescribed public places. Police officers are empowered to detain, search and seize any liquor found on a person who he or she reasonably believes to be contravening the provisions.

**1996**

- ***Criminal Injuries Compensation Amendment Act 1996:*** This so-called 'Martin Bryant' amendment inserted new sections 13-41 into the principal Act. It provides that where a person is convicted of a serious offence and applications for compensation are likely to exceed \$100,000 in value, the court may take control of the property of the defendant and, on conviction, order forfeiture of property. The State becomes the owner of the property, and all the money and all proceeds from the sale of the property is to be paid into the special victims fund. In her review of

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<sup>37</sup>

See further Briefing Paper No 8/97, n 27.

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criminal legislation, Schurr notes that, unlike proceeds of crime legislation, nothing in this Act requires the property to be linked to the offence.<sup>38</sup>

- ***Criminal Procedure (Attendance of Witnesses) Act 1996***: The Act provides for securing the attendance of witnesses in criminal proceedings in the Supreme Court. Amongst other things, a judge may require an intended witness to enter into a recognisance on terms to be determined by the judge in order to secure the attendance of the witness or the production of documents etc in his or her possession (section 12). Where, on application by the prosecution or the accused person, a judge may issue a warrant for the arrest of an intended witness where the judge believes on reasonable grounds that the intended witness may (a) leave Tasmania to avoid giving evidence, or (b) fail, or has failed, to comply with the terms of a recognisance (section 13).
- ***Firearms Act 1996***: This was part of the uniform gun control laws established after the Port Arthur tragedy, as discussed earlier in this paper in relation to the relevant NSW Act, p. 8.

**1997**

- ***Children, Young Persons and their Families Act 1997***: This is discussed below in some detail in combination with the *Youth Justice Act 1997*. It can be noted here that the Act, which is not yet in force, establishes a Commissioner for Children in Tasmania. Further, the Secretary of the relevant Department is to establish one or more advisory panels to provide advice on cases of actual or suspected abuse or neglect. It is part of a general overhaul of the youth justice system in Tasmania.
- ***Corrections Act 1997***: This Act, which repeals a number of major pieces of legislation dealing with prisons, probation and parole (including the *Parole Act 1975*, the *Prison Act 1977* and the *Probation of Offenders Act 1973*), consolidates and amends this area of the law:
  - Part 2 of the Act deals with the administration of corrective services, retaining the office of Director of Corrective Services.
  - Part 3 deals with the establishment and control of prisons, including access to prisons by official visitors and others. Under this Part, 'formal searches' by an electronic or mechanical device may be conducted to detect the presence of drugs or weapons. Provision is also made for a prisoner's child to live with that prisoner if the Director is satisfied that certain conditions apply (for example, if it is in the child's best interests to live with his or her parent or guardian in prison).
  - Part 4 deals with the custody and treatment of prisoners and detainees. It sets out the rights of prisoners and detainees which are said to be based on

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<sup>38</sup> B Schurr, 'Review of Australian Criminal Legislation: July to December 1996' (1997) 21 *Criminal Law Journal* 152 at 156.

*Tasmania*

the Australian Standard Guidelines adopted by all Australian Governments. As well, provision is made for the random testing and searching of prisoners and detainees.

- Part 5 is concerned with transfers and other matters; Part 6 with interstate leave of absence for prisoners; and matters relevant to prison discipline is set out in Part 7.
- Part 8 deals with parole and includes provision for a three-person Parole Board. For the first time, parole criteria are also set out, which include: the likelihood of the prisoner reoffending; the protection of the public; and the rehabilitation of the offender.
- ***Criminal Code Amendment (Alternative Verdicts) Act 1997***: Chapter 39 of the Criminal Code makes provision for alternative verdicts. That is, an offender charged with one crime can, evidence permitting, be convicted of an alternative crime where the jury is not satisfied of the offender's guilt in respect to the first crime, but is satisfied that the offender is guilty of a related crime arising out of the same incident. For example, an offender charged with rape can be convicted, in the alternative, of indecent assault if the jury is not satisfied that sexual penetration occurred. This alternative would not need to be have been expressly included on the indictment.

Following a proposal suggested by the judges of the Supreme Court, this alternative verdicts scheme was expanded under the present Act to include the crimes of: inciting to commit a crime; attempting to commit a crime; and being an accessory after the fact to a crime (section 342AA). For example, on an indictment for attempted rape the jury could, as an alternative, convict of any of the available alternative verdicts, such as aggravated sexual assault, incest or indecent assault. According to the Second Reading Speech, the amendment would avoid the expense and delay of conducting second trials.<sup>39</sup>

- ***Criminal Code Amendment (Aggravated Burglary) Act 1997***: This Act was passed in response to perceived community concerns about the prevalence of home invasions. It amends section 245 of the Criminal Code by adding additional circumstances of aggravation to the crime of aggravated burglary. Thus, in addition to such circumstances as the carrying of a weapon or using or threatening to use violence, a person commits aggravated burglary under section 245 if: (a) the burglary is committed with any other person or persons; (b) the place that is burgled is 'ordinarily used for the purposes of human habitation'; or (c) any person(s) is deprived of liberty or otherwise assaulted.
- ***Road (Alcohol and Drugs) Amendment Act 1997***: Before this amending legislation was passed the principal Act permitted only one causal factor for driving under the influence charges, that is, alcohol or drugs (not both). This amendment corrected this anomaly by allowing for the prosecution of persons who drive under the

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*Tasmanian Parliamentary Debates*, 1 October 1997.

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influence of a combination of alcohol and drugs. This provision applies to a licenced driver who is accompanying a learner driver.

Another feature of the present Act is that it requires a zero blood alcohol content for those drivers who have been convicted on three separate occasions within a ten year period. This requirement remains in force for ten years, after which time its removal is made subject to the provision of a medical report that the driver is not alcohol dependent. A holder of a 'restricted licence' under section 36 of the *Traffic Act 1925* is also made subject to the zero alcohol content requirement, as is the driver of a taxi licenced under the *Taxi Industry Act 1995*.

Further, police officers were given a power of arrest under the present Act where a suspected offender fails or refuses to supply his or her name and address, or provides details that are reasonably believed to be false.

- ***Search Warrants Act 1997***: The purpose of this Act was to provide the police with general powers of search and seizure, as well as to consolidate into one Act all provisions relating to police search warrants. The Second Reading Speech commented that the legislation was designed to amend the previous situation where, for example, there was no general power for a police officer to search premises in order to obtain evidence relevant to the commission of an offence.<sup>40</sup>

Under the present legislation, a justice of the peace may issue a warrant to search premises if satisfied by information on oath that there are reasonable grounds for suspecting that there is, or will be in the next 72 hours, any evidential material at the premises. Applications may be made to a justice in person or, in certain situations, by telephone. The warrant is not to remain in force longer than 28 days. The legislation sets out when search warrants may be issued, what things may be authorised by a search warrant and other relevant matters, including those circumstances where searches may be conducted without a warrant in 'emergency situations'.

Following Schurr, it can be added that police must make an announcement prior to entry and it is an offence to obstruct entry or execution or a search of a person. The occupier must be shown a copy of the warrant and has a right to observe the search. Incidental powers to the execution of a warrant include: police may conduct 'frisk' (pat down) or 'ordinary' (removal of jacket, hat, shoes, gloves) searches, but have no authorisation to conduct strip searches; and police or any person assisting may take forensic samples 'from any thing'.<sup>41</sup>

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<sup>40</sup> *Tasmanian Parliamentary Debates*, 30 September 1997.

<sup>41</sup> B Schurr, n 41, p. 161.

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The *Search Warrants (Consequential Amendments) Act 1997* repealed all other provisions in various Acts relating to police powers to obtain search warrants.

- ***Sentencing Act 1997***: This Act amended and consolidated Tasmania's sentencing law. The legislation sets out the principles of sentencing in section 3(e), as these relate to deterrence, rehabilitation and punishment. However, in a strict sense the legislation is not a codification of the law of sentencing. As the Second Reading Speech noted, no mention is made in it of the general common law sentencing principles, including the principle of proportionality.<sup>42</sup> The Act will, therefore, operate alongside and in addition to the common law.

Schurr notes that among the penalties available is an 'area restriction order', which orders that the offender must not 'loiter in an area or class of areas' during the period of the order (section 70).<sup>43</sup> There is no statutory limit on the length of such an order. This is one of a number of orders which are in addition to the sentence imposed on an offender, the others being a 'restitution order' and a 'compensation order'. The last requires the offender to pay compensation for any injury, loss, destruction or damage caused in the commission of the offence of burglary, stealing or unlawfully injuring property (the order is discretionary for other offences).

A new statutory scheme of 'probation orders' is also established under the Act (sections 37-42). The maximum term of probation orders is three years and they can be combined with imprisonment, community service orders or a fine. Each probation order contains specified 'basic' conditions, including: reporting to a probation officer; not leaving Tasmania without permission; notifying any change of address and complying with reasonable and lawful directions given by a probation officer. A sentencing court may also order that one or more 'special conditions' are to be included in a probation order, as for example: attendance at education or other programs; assessment and treatment for alcohol or drug dependency; testing for alcohol or drug use; and medical, psychological or psychiatric assessment or treatment. It is an offence to breach a condition of a probation order without a reasonable excuse.<sup>44</sup>

By way of consolidation, the Act repealed section 392 of the *Criminal Code Act 1924* (the 'dangerous criminals' provision) and substituted in its place a substantially similar regime under sections 19-23 of the present Act.

- ***Youth Justice Act 1997 (and the Children, Young Persons and their Families Act 1997)***: As part of the overhaul of the youth justice system in Tasmania these two

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<sup>42</sup> *Tasmanian Parliamentary Debates*, 13 August 1997.

<sup>43</sup> B Schurr, n 41, p. 161.

<sup>44</sup> H Figgis, *Probation: An Overview*, NSW Parliamentary Library Briefing Paper No 21/1998, p 22.

*Tasmania*

Acts are designed to replace the *Child Welfare Act 1960*. However, it should be noted that neither of the 1997 Acts have been proclaimed to commence as yet and are not due to be in force before mid-1999. At present, therefore, the system is still operating under the *Child Welfare Act 1960*.<sup>45</sup>

It is said that the new model under the 1997 Acts represents a shift from the 'welfare model' to a 'restorative justice model' in which there is greater emphasis on children being held accountable for their actions.<sup>46</sup> At the same time the Act is designed to divert young people charged with minor offences, including first offenders, from the court process where appropriate. For young people who are repeat offenders the *Youth Justice Act 1997* provides a greater range of sentencing options for the court, including the introduction of a community service order for offenders over the age of 13. Using Schurr as a guide, it can be said that the Act:

- places restrictions on the power of arrest and encourages the use of complaint or summons;
- permits detainees in custody in a detention centre to have their children present with them;
- requires that where a child is born to a youth in custody, the birth certificate does not reveal in any way that the mother was in custody;
- establishes a statutory basis for formal and informal cautioning. In appropriate cases cautions may be administered by an Aboriginal elder or by a member of a particular religious, ethnic or other community to which the youth belongs; and
- establishes community conferencing. Young offenders may be referred to conferences by either police or the courts.<sup>47</sup>

Before the *Youth Justice Act 1997* can be proclaimed to commence five new programs must have been established: a police cautioning/conferencing program; a community service order program; non-custodial community placement services for young offenders; a community conferencing program; and the completion of the Youth Justice Information System.

The *Children, Young Persons and their Families Act 1997* incorporates an emphasis on supporting young people to maintain contact with their family and involving families in making decisions about the ongoing safety and wellbeing of their children. Indeed, the first principle upon which the administration of the Act is based is that 'the primary responsibility for a child's care and protection lies with the child's family' (section 8). Under Part 5 of the Act, family group conferences are provided for where a child is 'at risk' and, further to an advisory panel report, such

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<sup>45</sup> Australian Institute of Health and Welfare, *Juvenile Justice and Youth Welfare: A Scoping Study*, 1998, p 58.

<sup>46</sup> *Tasmanian Parliamentary Debates*, 2 October 1997.

<sup>47</sup> Schurr, n 41, p. 163.



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a conference is considered to be a suitable way of determining what arrangements should be made 'to secure the child's care and protection'.

Interestingly, in contrast to the present model under the Child Welfare Act, neither of the 1997 Acts appear to include a provision for a parent to be fined or ordered to pay compensation in respect of offences committed by a child.

## 1998

- ***Magistrates Court (Children's Division) Act 1998***: As part of the overhaul of the youth justice system associated with the *Youth Justice Act 1997 and the Children, Young Persons and their Families Act 1997*, this Act establishes a new Court, the Magistrates Court (Children's Division), which replaces the old Children's Court. This new Court will not deal with the determination of offences, but with protection orders and related welfare matters. The Court's procedures and powers will in fact be similar to the old Children's Court. Its proceedings will not be open to the general public. Note that this Act will commence on the day the *Children, Young Persons and their Families Act 1997* commences.

## 3.5 Victoria

## 1995

- ***Drugs, Poisons and Controlled Substances (Amendment) Act 1995***: In order to facilitate the admission of analytical evidence in proceedings under the principal Act, this amendment allows Victorian courts to accept certificates issued by analysts or botanists in other States and Territories. Thus, if it is necessary to prove to a Victorian court the identity of a drug or plant that has been analysed interstate, neither the analyst or botanist must now be called. Note, however, that this does not affect the defendant's right under section 120(2) to have the analyst or botanist called if he or she wishes. Rather, a certificate of interstate analysts or botanists will be admitted in proceedings only where neither the prosecution nor the defence requires their personal attendance in court.
- ***Miscellaneous Acts (Health and Justice) Amendment Act 1995***: Amending the *Prostitution Control Act 1994*, a new offence of permitting children over 18 months to be in a brothel was created. Also, the rules relating to health checks and applications for licences were amended.

## 1996

- ***Children and Young Persons (Miscellaneous Amendments) Act 1996***: Repealing the *Youth Affairs Act 1986* and amending the *Children and Young Persons Act 1989*, this Act establishes a more comprehensive scheme for dealing with the transfer of young persons between prison and youth training centres or youth

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residential centres by providing: (a) the transfer by the Adult Parole Board of a child under 17 to a youth residential centre from prison if certain criteria are met; (b) the transfer by the Youth Residential Board of a person from a youth residential centre to a youth training centre if the person reaches an age which makes detention in a youth training centre appropriate; and (c) in relation to a young person who was originally sentenced to imprisonment but is detained in a youth training centre, the Youth Parole Board may order the transfer back to prison of that person, where it is appropriate for the remainder of his or her sentence to be served in prison.

The main power under the *Youth Affairs Act 1986* related to the funding of organisations that provide youth services. With the repeal of that Act, this power now resides in the Minister for Youth and Community Services. The changes followed the merger of the two portfolios of Community Services and Youth Affairs.

- ***Corrections (Amendment) Act 1996***: One aspect to this Act is that, by inserting a new Part 9A into the *Corrections Act 1986*, it brings the powers of search and seizure in police gaols under this legislation (which also sets out the search and seizure powers exercised by prison officers). Among the search powers included under Part 9A is the power to conduct a ‘formal search’ on any person ‘who wishes to enter or remain in a police gaol as a visitor’, with ‘formal search’ being defined as a ‘search to detect the presence of drugs, weapons or metal articles carried out by an electronic or mechanical device’. In addition, ‘for the good order or security of a police gaol or detained persons’, general searches may be conducted, at random if necessary, on ‘any charged person, a visitor to the police gaol, a police officer or any other person in the police gaol’ (however, a ‘visitor’ for these purposes does not include a relative or friend of a detained person, a child, a magistrate or a Supreme Court or County Court judge). Note that a ‘detained person’ and ‘charged person’ are defined differently under the Act, but that the former would appear to incorporate the latter. Note, too, that before these amendments search and seizure powers in police gaols were contained in the *Corrections (Police Gaols) Regulations*.
- ***Firearms Act 1996***: This was part of the uniform gun control laws established after the Port Arthur tragedy, as discussed earlier in this paper in relation to the relevant NSW Act, p. 8.
- ***Miscellaneous Acts (Further Omnibus Amendments) Act 1996***: Included were amendments to the *Prostitution Control Act 1994* the effect of which was to prohibit the operation of brothels from floating vessels, as well as from other mobile alternatives (indeed, from any premises which are not buildings on land).
- ***Victims of Crime Assistance Act 1996***: Repealing the *Criminal Injuries Compensation Act 1958*, this Act established a Victims of Crime Assistance Tribunal, consisting of the Chief Magistrate and all other magistrates and acting magistrates (section 19(2)). The Act provides for a maximum payment of: (a) \$60,000 for primary victims; (b) \$50,000 for secondary victims, who suffer either

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because they were present and witness the act of violence or because they are the parents or guardian of the primary victim; and (c) \$100,000 for related victims, who can be either close family members or dependents of a person who dies as a direct result of an act of violence. The Tribunal must refuse an application if the alleged act of violence was not reported to the police within a reasonable time (section 52). In considering what would be a 'reasonable time' the Tribunal can have regard to a range of things, including the victim's age at the time the act of violence occurred, whether the victim is intellectually disabled and the nature of the injury suffered by the victim (section 53). The Tribunal can also take into account such things as the applicant's prior 'criminal activity' and whether the applicant provoked the act of violence in question (section 54). Certain of the Tribunal's final decisions are reviewable by the Administrative Appeals Tribunal (section 59).

**1997**

- ***Crimes (Amendment) Act 1997***: At least two distinct categories of amendments were introduced under this legislation, the first relating to evidentiary issues arising from sexual offences, the second to forensic procedures. Under the first category, in order to overcome the perceived limitation of section 37A of the *Evidence Act 1958*, the amendments ensure that where a defendant or defence counsel in a sexual assault trial wishes to cross-examine a complainant about the complainant's sexual activities, the defendant must give notice in writing to the DPP at least 14 days before the trial, setting out the initial questions, the scope of the questions and the relevance of the questioning. The legislation also removes any possible scope for suggestion that delay in making a complaint in a sexual assault case carries an implication that the complaint may be false (section 61 of the *Crimes Act 1958*).

Under the second category, significant amendments were made to the forensic procedures law as this is stated under the *Crimes Act 1958*. These included new provisions for the giving of consent to the taking and retention of samples (whether intimate or non-intimate). Also, the requirement that intimate forensic procedures be carried out by medical practitioners was amended to permit such things as the taking of blood and saliva samples to be carried out by a registered nurse.<sup>48</sup>

- ***Crimes (Mental Impairment and Unfitness to be Tried) Act 1997***: As the Attorney General explained in the Second Reading Speech, this legislation abolished what was known as 'the Governor's pleasure system' and established new procedures to deal with persons who are charged with an indictable offence before the County Court or the Supreme Court and 'who are found to be unfit to be tried or not guilty on the ground of mental impairment'. In effect, the legislation provides for the courts rather than the executive to be responsible for making 'highly sensitive release decisions'.<sup>49</sup>

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<sup>48</sup> For a more detailed summary see - B Schurr, n 41, p. 159.

<sup>49</sup> VPD, 18 September 1997, p 184.

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Under section 20 of the legislation the defence of ‘mental impairment’ replaces the common law defence of insanity.

- ***Drugs, Poisons and Controlled Substances (Amendment) Act 1997***: This Act was passed to encourage the development of the commercial production of hemp in Victoria. It followed a three-year field research program to test what is called ‘low-THC hemp’, that is, cannabis varieties containing less than 0.35 per cent of the psychoactive component, tetrahydrocannabinol. Before the present amendments the provisions of the *Drugs, Poisons and Controlled Substances Act 1981* prevented the development of hemp processing by classifying cannabis as a narcotic plant and a drug of dependence, regardless of the content of THC. The amendments inserted two new parts in that principal Act to: (a) make provision for the issuing of authorities to grow and process low-THC cannabis for commercial and research purposes relating to non-therapeutic use; and (b) to exempt from the operation of the Act certain processed products made from cannabis or cannabis seeds and which do not pose a drug risk.
- ***Law and Justice Legislation Amendment Act 1997***: This Act introduced a raft of miscellaneous amendments, including:
  - *Summary Offences Act 1966 and Crimes Act 1958* - the law of criminal trespass as set out in section 9(1)(d) of the Summary Offences Act was amended, and the offence of forcible entry as set out in section 207(1) of the Crimes Act was repealed. The amendments provide that if a person is warned to leave a place but refuses to do so, the offence of trespass is complete if the person refuses to leave the property (unless the person has a lawful excuse, such as a policeman or firefighter).
- ***Law and Justice Legislation (Further Amendment) Act 1997***: This Act was described as introducing ‘a number of technical amendments across a range of justice legislation’.<sup>50</sup> For example, clarifying an anomaly between the *Magistrates’ Court Act 1989* and the *Bail Act 1977*, the latter was amended to ensure that a bail justice must not remand a person in custody for a period of more than 8 days. Also, in assessing if there is an ‘unacceptable risk’ in granting bail, the court is now directed to consider ‘the attitude, if expressed to the court, of the alleged victim of the offence to the grant of bail’ (section 4(3)(e) of the Bail Act). Amongst other things, the *Firearms Act 1996* was amended to recognise permits to purchase firearms issued by other jurisdictions participating in mutual notification arrangements.
- ***Police and Corrections (Amendment) Act 1997***: This Act contains a miscellany of amendments to a number of principal statutes, including the *Firearms Act 1996*, the *Corrections Act 1986*, the *Control of Weapons Act 1990* and the *Police Regulation Act 1958*. Some of these amendments are as follows:

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<sup>50</sup> VPD, 9 October 1997, p 437.

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- *Control of Weapons Act 1990* - in keeping with the national policy of the Australasian Police Ministers Council, the possession, manufacture, sale or purchase of body armour was prohibited (except where a general or individual exemption applies).
- *Firearms Act 1996* - among the other things, the principal Act was amended to ensure that, in relation to clay target shooting, junior licence holders have access to category C firearms. This was again said to be in conformity with the policy of the Australasian Police Ministers Council.
- ***Prostitution Control (Amendment) Act 1997***: The operation of the Prostitution Control Board was amended in various ways, including altering the conduct of disciplinary inquiries relating to licences and managers providing prostitution services. The Act also introduced an offence of contempt of the Board.
- ***Sentencing (Amendment) Act 1997***: A major purpose of this Act was to deal with the situation where an offender promises to assist law enforcement authorities, with the result that he or she is then dealt with more leniently than the circumstances would otherwise permit, but afterwards fails to honour the promise when his or her accomplices are tried. To meet this situation, the *Sentencing Act 1991* was amended: first to alter the sentencing guidelines in section 5 to ensure that the court notes in the record that a less severe sentence has been awarded on the basis of a promise, after sentencing, to assist law enforcement authorities; and, secondly, to allow the DPP to appeal against the sentence once it is clear that the offender does not intend to make good his or her promise. In other words, offenders who breach an undertaking to assist law enforcement authorities can be resentenced.

Various amendments were also made to the fine enforcement scheme, including those arrangements where certain fines can be converted into community work orders.

Moreover, the Act rendered bodies corporate liable to a maximum fine for an offence against the *Crimes Act 1958* of 5 times the maximum to which natural persons are liable.

- ***Sentencing and Other Acts (Amendment) Act 1997***: In the Second Reading Speech for the relevant Bill the Attorney General commented that the proposed legislation was the product of a year-long review process which had progressed in three distinct ways: a sentencing survey and information paper published in the *Herald Sun* which elicited around 40,000 responses; public meetings and focus group meetings held by the Victorian Community Council Against Violence; and interviews with over 100 judges, magistrates and other key stakeholders in the criminal justice system conducted by a Crown Prosecutor. It was said, in addition, that the 'community has clearly indicated dissatisfaction with sentencing levels for certain serious offences' and the purpose of the proposed legislation was to address this concern by restoring 'the faith and confidence of the public in the criminal

## Victoria

justice system'.<sup>51</sup> The wide-ranging provisions of the legislation in question sought to achieve this by:

- increasing the maximum penalties for 68 offences (77 sentences remained the same and 12 were reduced). Most increases were in the order of two to three years, but some were considerably larger, as for example in the case of the offence of 'production of child pornography' where the maximum penalty increased from 2 to 10 years.
  - new part 2A was inserted into the *Sentencing Act 1991* providing that, if a person is declared to be a 'serious offender' and a prison sentence is to be imposed, then the sentencing court: (a) must, unless otherwise ordered by the court, impose a sentence which is cumulative on any existing sentence; (b) must regard the protection of the community from the offender as the principal purpose for which the sentence is imposed: and (c) may, in order to achieve the purpose in (b), impose a sentence longer than that which is proportionate to the gravity of the offence considered in the light of its objective circumstances.
  - a new offence of supplying a 'drug of dependence' to a child less than 18 years was introduced.
  - a new sentencing option of combined custody and treatment orders was introduced when a court is satisfied that drunkenness or drug addiction contributed to the commission of the offence. In considering a sentence of not more than 12 months imprisonment, the court may stipulate that the second half of that period be served in the community.
  - amending the *Bail Act 1977* to require a court to refuse bail to a person charged with trafficking in a commercial quantity of a drug of dependence (unless exceptional circumstances exist).
  - amending the *Children and Young Persons Act 1989* so as to limit the jurisdiction of the Children's Court to hear and determine offences of attempted murder, culpable driving or arson causing death. Supporting this change, the Second Reading Speech stated, 'Recent cases involving children charged with serious crimes have highlighted the need for such cases to be heard in the higher courts before a jury and in circumstances where the judge has full sentencing power if the child is convicted'.<sup>52</sup>
- ***Victims of Crime Assistance (Amendment) Act 1997***: Amendments under this Act related to the operation of the Victims of Crime Assistance Tribunal which started work on 1 July 1997. Specifically, the amendment concerned: delegations by the Chief Magistrate to Tribunal staff; the power of the Tribunal to issue a warrant for the arrest of a witness who does not answer a summons; and the protection of court staff from civil actions. The Act also amended the *Victims of Crime Assistance Act 1996* to allow, subject to a medical report, prompt payment for urgently needed psychiatric treatment in the form of an interim award.

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<sup>51</sup> VPD, 24 April 1997, pp 871-872.

<sup>52</sup> Ibid, p 875.

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**1998**

- ***Bail (Amendment) Act 1998***: This Act clarified the test which a court should apply before granting bail to a person charged in Victoria with importation of drugs under the Commonwealth *Customs Act 1901*. In particular, a court must be satisfied that exceptional circumstances exist before granting bail to a person charged with importing a commercial quantity of drugs under the Commonwealth Act.
- ***Crimes (Amendment) Act 1998***: This Act dealt with a number of discreet areas, as follows:
  - First, it ensured that section 60B (Loitering near schools) of the Victorian *Crimes Act 1958* would apply to persons who have been found guilty of relevant prior sexual offences, regardless of when those offences were committed.
  - Secondly, it extended section 60B to include loitering by persons who have been convicted of certain prostitution offences involving children (including causing or inducing a child to take part in prostitution).
  - Thirdly, the Act removed section 248 of the Crimes Act and replaced it with 5 new sections based on the contamination of goods provisions in Part 8.1 of the Model Criminal Code.
  - Fourthly, apparently in response to problems encountered in particular cases (for example, *R v Frugniet*), the Crimes Act was altered to enable a 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. Also, it was made clear that it is for the accused to prove that he or she cannot afford the costs of obtaining legal representation, rather than for Victoria Legal Aid to prove that he or she can.
- ***Crimes, Confiscation and Evidence Acts (Amendment) Act 1998***: Section 464ZD of the Victorian *Crimes Act 1958* was amended to ensure that all persons on whom forensic procedures are conducted are provided with a copy of every forensic report as soon as practicable. In addition, section 464ZE was amended to ensure that a failure to provide a copy of every forensic report to the person within 7 days of its receipt by the prosecution will result in evidence obtained by the forensic procedure being inadmissible (this is made subject to certain exceptions in sections 464ZE(2) and (2A)).
- ***Firearms (Amendment) Act 1998***: Further to a review of the operation of the *Firearms Act 1996* certain issues were identified requiring legislative amendment. These were said to be mostly ‘concerned with minor technical or drafting matters, or clarifying established policy settings in the Act’.<sup>53</sup> The key objectives of the 1998 Act were defined to include: improving the consistency and workability of the 1996

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VPD (LA), 19 February 1998, p 144.

*Western Australia*

statute; and, while maintaining the nationally agreed firearms licensing system, the registration of firearms, training standards and sales and storage requirements, to reduce unintended or unforeseen impacts where no community benefit is realised. However, parts of the proposed legislation proved to be controversial, particularly the provision in the Bill to alter the 28-day waiting period rule on the purchase of firearms to ensure there is sufficient time for police checks on applicants. The amendments did not apply to those purchasing a firearm for the first time. In effect, section 107 of the principal Act continues to enforce the 28 day waiting period for those acquiring their first firearm; but provides that in any other case the permit is not issued until sufficient time has expired to allow the Chief Commissioner to consider the application properly.

- ***Public Prosecutions (Amendment) Act 1998***: The powers of the Victorian DPP were expanded to include amongst other things: the taking over of any summary or indictable prosecution; the conduct of proceedings of a civil nature, such as confiscation of proceeds of crime and prerogative applications related to criminal proceedings and contempt of court; and the granting of an indemnity from prosecution (not just recommending that the Attorney General grant the indemnity).
- ***Summary Offences (Amendment) Act 1998***: The Act inserts new section 53 (6AA-6AD) into the *Summary Offences Act 1966* and provides that, where a person in Victoria is convicted of making a false report to the police, in addition to any other punishment the offender may be liable to also pay police costs arising from the false report. The liability is defined as ‘a reasonable amount for expenses, including remuneration payable to members of the police force, incurred by the State arising out of or incidental to the commission of the offence’.

### 3.6 Western Australia

#### *1995*

- ***Sentencing Act 1995***: This Act, together with the *Sentencing Administration Act 1995* establishes a new sentencing regime in WA. The Act contains a wider range of sentencing options than previously existed in WA, for example new conditional release orders, intensive supervision orders and community based orders are created, which enable the offender to be released on conditions the court considers necessary. It also enables victim impact statements to be taken into account by the Courts when determining a sentence. The Act also abolishes imprisonment for periods of three months or less, replacing such sentences with intensive supervision orders or suspended sentences.

#### *1996*



*Western Australia*

- ***Criminal Code Amendment Act (No 2) 1996***: This Act creates the offence of home burglary, distinct from burglary in any other place, and gives this new offence a more severe maximum penalty (18 years). Where circumstances of aggravation accompany burglary, a higher maximum penalty also applies (20 years). Circumstances of aggravation include possession or pretending to possess an explosive, where there are more than one offender, where bodily harm was inflicted on another person, where there was a threat to injure or kill another person or to deprive that person of his or her liberty, or where the offender knew or should have known that there was another person other than a co-offender in the premises at the time of the burglary. The Act also provides that where a person convicted of an offence of home burglary has two or more previous convictions for such an offence, the court **must** sentence the offender to a minimum of 12 months' imprisonment (12 months' detention in a juvenile facility where the offender is not an adult).
- ***Criminal Law Amendment Act 1996***: This Act contains a number of relevant provisions.
  - It extends Western Australia's extraterritorial jurisdiction in relation to criminal offences, insofar as if an act or omission would constitute an offence within WA, the person committing the act or omission attracts the jurisdiction of WA regardless of where the person resides. This provision is aimed at drug traffickers where the headquarters is located outside WA, who provide drugs within the State.
  - Summary penalties have been ascribed to a number of offences to enable them to be dealt with in the Magistrate's Court. The offences include minor sexual offences and offences related to fraud, impersonation and obstructing the course of justice.
  - The Act also broadens the scope of sections dealing with protection of person and property. It makes it lawful for a person to use such force as is reasonably necessary to prevent the commission of any offence in the home. Previously only indictable offences were within the scope of the provisions. The Act also extends the definition of a "dwelling house" to include any place used for human habitation.
- ***Criminal Law (Mentally Impaired Defendants) Act 1996***: This Act applies to mentally impaired defendants from when they are first charged with an offence through to their ultimate release from a custodial order. Mental impairment is defined to include intellectual disability, mental illness, brain damage or senility. The Act contains provisions relating to: the remand of a defendant who appears to have a serious mental illness to a hospital for a psychiatric examination; the question of mental unfitness to stand trial (both summarily and in superior courts); which give summary courts the power to release defendants either conditionally or unconditionally because of unsoundness of mind (ie acquittal), and the establishment of the Mentally Impaired Defendants Review Board, whose role it is to make decisions about the custody of mentally impaired defendants.

*Western Australia*

- ***Firearms Amendment Act 1996***: This Act contains comprehensive amendments to the *Firearms Act 1973*, reflecting the national uniform approach agreed upon by the Australian Police Ministers' Council and the national buy back/compensation scheme.<sup>54</sup> For more detail see the NSW section, p. 8, above.

**1997**

- ***Restraining Orders Act 1997***: This Act contains a number of procedural reforms which include: distinguishing between violence restraining orders (which relate to protection from personal violence) and misconduct restraining orders (which relate to damage to property, disorderly conduct etc); providing for a restraining order to be made to prevent a person from loitering near schools or places frequented by children if that loitering causes children or their parents to fear for their safety; requiring that firearms be surrendered or seized when a violence restraining order is made, and allowing for applications for violence restraining orders to be made over the telephone in urgent cases.

**1998**

- ***Acts Amendment (Video and Audio Links) Act 1998***: This Act applies where a person is committed for trial or sentence before any court for an indictable offence and is in custody (whether in relation to that offence or not). The court may order that, instead of being brought before the court personally, the person may be brought before a video link or other similar device.
- ***Bail Amendment Act 1998***: This Act, *inter alia*, extends the exceptions to the presumption of the right to bail to include situations where the offence was committed while the accused was on parole, work release or home detention. It also extends this exception to situations where the offence itself is in breach of bail conditions. Breach of some bail conditions ("protective conditions" - those aimed at protecting the safety, welfare or property of alleged victims) does, by itself, constitute an offence under the amended Act.

The Act also removes the right of police officers and justices of the peace to grant bail to repeat serious offenders in urban areas. In remote and non-urban areas police still enjoy this discretion.

- ***Criminal Law Amendment Act (No 1) 1998***: This Act makes a number of amendments:
  - The Act authorises the taking of forensic samples (blood, saliva, hair or nail clippings or buccal swab) from persons in custody where there is a reasonable expectation that the material gathered will form evidence of the commission of an offence.

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For a discussion of the gun control debate, see Briefing Paper No 11/96, n 22, above.

*Australian Capital Territory*

- The Act replaces the provisions relating to stalking which removes the requirement of intent on the part of the accused - it is sufficient that the victim fears for his or her safety or is prevented from going about his or her normal life.
- The Act also amends the *Sentencing Act 1995* so that when the Court is determining a life sentence, the normal factors which determine eligibility for parole should not be considered - instead the Court must have regard to the community's interest in punishment, retribution and deterrence.
- ***Criminal Law Amendment Act (No 2) 1998***: This Act, *inter alia*, increases the maximum penalty for grievous bodily harm from seven to 10 years. The Act also provides that where an offender has promised to assist law enforcement agencies but reneges on that promise, the prosecution can request the court substitute the sentence that would have been imposed if the cooperation had not been taken into account.
- ***Police Amendment Act 1998***: This Act amends the *Police Act 1892* with respect to police powers to stop, detain and search a person who is suspected of causing or intending to cause damage consisting of graffiti, and empowers the police to seize any thing that an officer suspects relates to the commission of a graffiti offence.
- ***Surveillance Devices Act 1998***: This Act repeals and replaces the *Listening Devices Act 1978*. The Act makes it an offence to use a listening device to record any private conversation to which he or she is not a party, and if he or she is a party, without consent. The Act also prohibits optical surveillance used to record private activities to which the person is not a party, and the use of a tracking device to determine the geographical location of a person or object without consent. Exemptions are provided for the police, Anti-Corruption Commission and the National Crime Authority.

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#### 1995

- ***Crimes Amendment Act 1995***: This Act, *inter alia*, abolishes the "year and a day" rule in the ACT. This rule provides that a person cannot be convicted of murder if the victim dies more than a year and a day after the infliction of the injury which caused the death. An example given where this rule may be inappropriate is with respect to syringe injuries where the blood may contain HIV. It also provides that, where a person is accused of sexual acts against a child under 10 years of age and the jury is convinced all the elements of the offence are proven except for the child's age at the time, the jury does not have to acquit the accused, but may instead find the accused guilty of a sexual offence against a child under 16.

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- ***Periodic Detention Act 1995***: This Act creates a periodic detention system for the ACT, similar to that which operates in NSW. Periodic detention will involve convicted offenders attending at the detention centre for between 12 and 104 consecutive periods from 7.00 pm on Fridays until 4.30 pm on Sundays. This corresponds to an obligation from three months up to two years. Offenders will be assessed for suitability according to 22 matters listed in 429A of the *Crimes Act 1900*, including the nature and the circumstances of the offence; the probable effect that any sentence or order would have on any of the person's family or dependents; the prospect of rehabilitation of the offender, and the deterrent effect that any sentence order under consideration may have on any person.

**1996**

- ***Crimes (Amendment) Act 1996***: This Act authorises police to take blood, saliva or hair samples from a charged person in custody without his or her consent, after authorisation from a magistrate.
- ***Crimes (Amendment) Act (No 2) 1996***: This Act created the offence of stalking in the ACT.
- ***Criminal Injuries Compensation (Amendment) Act 1996***: This Act introduces a levy of \$30 payable by any person convicted of an offence or who has paid an infringement notice. The sentencing court may excuse offenders who are under 18 years of age, or who have been convicted of another offence on the same day, or where another offence has been taken into consideration in sentencing.
- ***Firearms Act 1996***: This Act, which repealed the *Weapons Act 1991*, was part of the uniform gun control laws established after the Port Arthur tragedy, as discussed earlier in this paper in relation to the relevant NSW Act, p. 8.
- ***Prohibited Weapons Act 1996***: With the introduction of the *Firearms Act 1996* and the repeal of the *Weapons Act 1991* another piece of legislation was required to deal with prohibited weapons not classed as firearms. This was the purpose of the present Act which sets out a list of prohibited weapons in Schedule 1. The penalties under the Act are a fine of up to \$10,000 or imprisonment for 12 months for a person, or a fine of up to \$50,000 for a body corporate.
- ***Weapons (Amendment) Act 1996 and Weapons Act (Amendment) (No 2) 1996***: Both these Acts were repealed by the *Firearms Act 1996*, as part of the national gun law scheme.

**1997**

- ***Crimes (Amendment) Act 1997***: This Act amended section 349ZL of the *Crimes Act 1900* by broadening the kinds of searches which can be made at a police station. Prior to the amendment, there was only power for a watch-house sergeant to order

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a strip search. The amendment, on the other hand, permits a less extreme course of action, by allowing an ordinary search or a frisk search to be conducted where a police officer suspects on reasonable grounds that the person in lawful custody may be carrying evidential material or seizable items.

- ***Crimes (Amendment) Act (No 3) 1997***: This Act amends section 444 of the Crimes Act 1900 to permit a court, when imposing a sentence on an adult, to take into account the unserved component of any juvenile sentence still applying to that person, and to discharge it. This would prevent an adult offender, on the expiry of his or her sentence, being returned to a juvenile detention facility to complete the outstanding balance of a juvenile custodial order or an attendance centre order.
- ***Crimes (Amendment) Act (No 4) 1997***: The effect of this Act is to permit police officers to issue ‘offence notices’ (or expiation notices) in respect to noise abatement offences (under section 546C of the *Crimes Act 1900*) and drinking in public places offences (under section 84 of the *Liquor Act 1975*).
- ***Juries (Amendment) Act 1997***: This Act gives a judge in a criminal trial a discretion to direct that an expanded jury of up to 16 jurors be empanelled, thus reducing the risk of a criminal trial having to be abandoned because the number of jurors falls below the required minimum number. Unlike the reserve juror system, all members of the jury are of equal status and when the time comes for the jury to retire and consider its verdict, if more than 12 remain, the number is reduced to 12 by the names of the jurors being drawn out of a ballot-box until 12 jurors remain unselected (section 31A).

Another feature of the Act is that it seeks to enure the confidentiality of the jury process by creating 3 new offences: disclosing information about the deliberation of a jury if the person is aware that, as a consequence, the information will be, or is likely to be, published; soliciting or obtaining information about jury deliberations with the intention of publishing or facilitating the publication of that information; and publishing information about the deliberations of a jury (section 42C).

- ***Magistrates Court (Amendment) Act 1997***: Consistent with the amendments made to the domestic violence legislation, under the ***Domestic Violence (Amendment) Act 1997***, this Act enables the Magistrates Court, when it makes a restraining order against a person who holds a firearms licence, to order the seizure of the licence and the ammunition as well as any firearm. Note that restraining orders are similar to protection orders made under the domestic violence legislation, except that restraining orders are not limited to the protection of certain classes of persons, for example, spouses or de facto spouses.
- ***Motor Traffic (Amendment) Act (No 2) 1997***: Among the amendments introduced under this Act was an increase in the minimum licence cancellation period for

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culpable driving. A special probationary licence is still available where a person can prove that exceptional circumstances exist.

- ***Prostitution (Amendment) Act 1997***: This Act requires brothel and escort agency operators to provide updated information to the Registrar of Brothels and Escort Agencies annually.

**1998**

- ***Children's Services (Amendment) Act 1998***: The *Children's Services Act 1986* was amended by the present Act to allow fines imposed on children to be recovered under the new fine recovery scheme under the *Magistrates Court (Amendment) Act 1998*. Provision is made for a child fine defaulter to be committed to a period of detention at a juvenile institution.
- ***Crimes (Amendment) Act 1998***: This Act amends the *Crimes Act 1900* with respect to the purposes of sentencing, which are: to punish the offender to an extent which is appropriate in all the circumstances; to deter the offenders from reoffending; to rehabilitate the offender; to make a clear statement regarding the unacceptableness of the offender's conduct, or to protect the community from the offender.
- ***Crimes (Amendment) Act (No 2) 1998***: This Act creates a number of knife-related offences: possession of a knife in a public place or school, and sale of a knife to a person under the age of 16 years. It also empowers police officers to conduct a search of a person where there is a reasonable suspicion that the person has possession of a knife, and seize any knife found as a result of the search.
- ***Crimes (Amendment) Act 1998 (No 3)***: This Act, which is to be read with the *Magistrates Court (Amendment) Act 1998*, ensures that periods of imprisonment for fine default are served cumulatively. It also revises the provisions which enable fine defaulters to perform community service work as an alternative to imprisonment.
- ***Crimes (Amendment) Act (No 4)***: This Act provides, in a trial on indictment before the Supreme Court, that the defence may address the jury last. However, where relevant matters are asserted by the defence which are not supported by the evidence before the jury, the Act also ensures that the prosecution is able to address the jury in reply.
- ***Crime Prevention Powers Act 1998***: This Act empowers police officers to direct a person to leave the vicinity of a public place if that officer has reasonable grounds that the person has engaged, or is likely to engage, in violent conduct in that place.
- ***Remand Centres (Amendment) Act 1998***: This Act enables fine defaulters to serve out their period of imprisonment at a remand centre.

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- ***Juvenile Justice Amendment Act 1995***: This Act, *inter alia*, provides that juvenile detention centres should not accommodate young offenders who are older than 17. They must be accommodated in adult facilities. The Act also removes the requirement that the Minister approve of the use of isolation as a punishment in a juvenile detention centre.
- ***Sentencing Act 1995***: This Act provides a new sentencing regime in the NT. It includes a range of penalties - release without conviction, bonds, fines, community service orders, suspended sentences, home detention and imprisonment. It also provides for indefinite sentences for violent offenders, with periodic review and the possibility of discharge of the indefinite sentence. The Act also empowers the court to impose ancillary penalties, including orders for restitution, compensation, cancellation of license and surrender of passport.
- ***Summary Offences Amendment Act 1995***: This Act provides that a police officer is required to immediately open all containers, opened or unopened, in the immediate vicinity or possession of a person the officer believes has broken the "2 kilometre rule" and empty those containers. The "two kilometre rule" is contained within section 45D of the *Summary Offences Act*: a person who, within 2 kilometres of licensed premises drinks liquor in a public place or on unoccupied private land is guilty of an offence. The previous monetary penalty of \$200 is repealed by the Act, the only penalty now being the forfeiture of the liquor.
- ***Summary Offences Amendment Act (No 3) 1995***: This Act makes it an offence for a convicted sex offender to loiter near schools, kindergartens, child-care centres and public places frequented by children.

**1996**

- ***Bail Amendment Act 1996***: This Act extends the presumption against bail to include serious drug offences contained in the Commonwealth *Customs Act 1901*, such as the importation of heroin into Australia from another country.
- ***Criminal Code Amendment Act (No 2) 1996***: This Act creates the offence of sexual intercourse or gross indecency by a provider of services to mentally ill or handicapped persons, the maximum penalty being imprisonment for seven years.
- ***Criminal Code Amendment Act (No 3) 1996***: This Act provides justification for a police officer who uses force causing death or grievous bodily harm while attempting to arrest a person who he or she reasonably believes, if not arrested, may

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- commit an offence punishable by life imprisonment or has taken flight to avoid arrest, and has been called upon to surrender but has not done so.
- ***Criminal Code Amendment Act (No 4) 1996***: This Act creates the offence of possession of child pornography. The offence of selling, offering or advertising for distribution child pornography is also created, with a maximum penalty of 10 years' imprisonment. The Act also creates the offence of publishing indecent articles, which are defined in the Act to be child pornography or articles which promote crime or violence or an article which describes or depicts, in a manner that is likely to cause offence to a reasonable adult, the use of violence or coercion to compel a person to participate in sexual conduct, sexual conduct with the body of a dead person, the use of urine or excrement in association with degrading, dehumanising or sexual conduct, bestiality, or acts of torture or the infliction of extreme violence or cruelty. These Acts are part of a national drive for uniform child pornography laws, recommended by the Standing Committee of Attorneys-General.
  - ***Criminal Code Amendment Act (No 5) 1996***: This Act enables the Administrator to impose conditions on the release from custody of persons acquitted on the grounds of insanity. For example, such a person may be subject to requirements of regular or periodical reporting, counselling or treatment.
  - ***Juvenile Justice Amendment Act 1996***: This Act empowers the courts to vary and revoke juvenile good behaviour bonds. It also establishes a juvenile community service order scheme. The scheme mirrors that which is contained within the *Sentencing Act 1995* which applies to adults, and has provisions for breach, variation and revocation of the orders.
  - ***Juvenile Justice Amendment Act (No 2) 1996***: This Act implements a system of mandatory minimum sentences for property offenders aged between 15 and 17 years. It is a similar system to that implemented with respect to adults in the *Sentencing Amendment Act (No 2) 1996*. Where a juvenile is found guilty of a property offence and has one or more similar convictions a minimum sentence of 28 days detention in a juvenile detention centre applies. In addition to that order, the court may make a punitive work order of not more than 224 hours to be completed within such time as the court orders.
  - ***Juvenile Justice Amendment Act (No 3) 1996***: This Act makes provision for victim impact statements and victim reports to be taken into consideration by a court when sentencing a juvenile convicted of an offence. Both primary and secondary victims, who suffered harm as a result of the juvenile's actions, are entitled to make a statement.
  - ***Misuse of Drugs Amendment Act 1996***: This Act enables a penalty notice for an amount of up to \$200 to be issued for certain cannabis offences: possession and cultivation of one or two plants, and possession of up to 1g cannabis oil, 50g of



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cannabis plant material, 10g of cannabis oil or 10g of cannabis seed. If the person does not pay the penalty in the notice, the police may commence prosecution.

- ***Sentencing Amendment Act 1996***: This Act enables victim impact statements to be presented to the court in relation to all offences where there is an identifiable victim. The statements must detail the harm suffered by the victim arising from the offence. Both primary and secondary victims of the crime may make statements.
- ***Sentencing Amendment Act (No 2) 1996***: This Act, *inter alia*, introduces mandatory minimum penalties for certain property offences. The penalty scale is as follows: adult 1st offence - 14 days; adult with one prior property offence conviction - 90 days; adults with two or more prior property offence convictions - 12 months; juvenile aged between 15 and 17 years with one or more prior property offence convictions - 28 days in a detention centre (to be served continuously or periodically). The offender may also be sentenced to a punitive work order not exceeding 224 hours, which cannot be served at a rate exceeding 8 hours per day. If an offender breaches the work order, the court must then sentence the person to a mandatory minimum sentence of 28 days imprisonment.
- ***Summary Offences Amendment Act (No 2) 1996***: This Act makes it an offence to possess, carry or use an offensive weapon without a lawful excuse. The maximum penalty for this offence is imprisonment for 12 months or a fine of \$2,000.

**1997**

- ***Firearms Act 1997***: This Act is part of the national uniform approach agreed upon by the Australian Police Ministers' Council.<sup>55</sup> For more detail see the NSW section, p. 8, above.
- ***Justices Amendment Act 1997***: This Act enhances and enlarges the jurisdiction of the Magistrate's Court to deal with crimes triable summarily. There is a class of offences which are triable summarily without the consent of the accused. In respect of a property crime, the value of property involved is lifted from \$400 to \$5,000. The five year maximum sentence which a court may impose for a property crime tried summarily has not been changed. However, the court's power to send the case to the Supreme Court for sentencing if it considers the maximum penalty available to it is inadequate has been curtailed - it may only do so now with the consent of the prosecution. Previously, a court comprised of two or more justices of the peace was able to deal with property matters involving up to \$10 value. This Act abolishes this power of JPs. The Act also amends section 121 of the *Justices Act* with respect to those offences for which the accused may decide to have tried summarily in the Magistrates Court. The Act extends this class of offences so that all unlawful use of motor vehicle offences, regardless of the property damage, all unlawful entries

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<sup>55</sup> For a discussion of the gun control debate, see Briefing Paper No 11/96, n 22, above.

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except those at night or where the offender is armed, and all property offences irrespective of value may now be tried summarily with the accused's consent.

**1998**

- ***Court Security Act 1998***: This Act appoints security officers to courts, and empowers those officers to require a person on or entering a court's premises to state his or her name and address, and reason for being on the premises, and provide evidence as to his or her identity. The person may be asked to submit his or her person or any goods in his or her possession to a screening search (by means of electronic scanning), and when necessary in the interests of security, a frisk search. Persons entering a court may be required to deposit with the security officer any placard, poster or other object which is threatening, insulting, offensive, indecent or likely to engender violence, create a breach of the peace or unreasonably cause substantial annoyance to another person on the court's premises. The person may also be required to deposit with the security officer any object reasonably capable of concealing a firearm, explosives or offensive weapon. If the person fails to comply with any of these requirements, the security officer may cause the person to be removed from the court premises. Offences of failing to comply are also created, with penalties ranging from a maximum penalty of \$2,000 for failing to provide a name, address etc to a maximum penalty of \$25,000 or five years imprisonment for possessing a firearm, explosive or offensive weapon on court premises.
- ***Criminal Code Amendment Act 1998***: This Act amends the *Criminal Code* so that, if an accused person pleads 'not guilty' to an offence, and the prosecutor does not intend to adduce any evidence in respect of that offence, the prosecutor must, prior to the empanelling of the jury, inform the trial judge of this decision. The judge may then make a finding that the accused is not guilty. This finding will have the same effect as if the accused had been found not guilty by the jury.
- ***Justices Amendment Act 1998***: This Act, along with the ***Bail Amendment Act 1998***, fixes an anomaly whereby magistrates had not been empowered to grant bail to a person who had been convicted by the Court of Summary Jurisdiction and sentenced to a non-custodial order, and who had instituted an appeal in the Supreme Court. Previously only justices of the Supreme Court had enjoyed such a power to grant bail regardless of whether the appellant was in custody or not.
- ***Juvenile Justice Act (No 2) 1998***: This Act enables a court, when sentencing a juvenile, to give credit for time already spent in detention, by backdating the sentence. It also widens the provision in section 25 of the *Juvenile Justice Act* which provides that juveniles be treated as if they were adults in respect of certain offences against the *Traffic Act*. These offences include driving under the influence alcohol or drug, refusing to submit to a breath test, dangerous driving, driving while disqualified or unlicensed and driving an unregistered or uninsured vehicle.

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- ***Kava Management Act 1998***: As a consequence of this Act, there was the imposition of an immediate ban on the sale, supply and possession of kava in the NT. The Act provides for the declaration of licence areas where kava may be sold and used by community residents, subject to the issue of wholesale and retail licenses. Supply of a commercial quantity of kava - more than 25 kg or 25 litres when prepared as a drink, carries a maximum penalty of 14 years imprisonment. Those in possession of a small amount of kava - 2kg or less than 25 litres when prepared as a drink, are subject to seizure and destruction of kava in their possession.

The ***Police Administration Amendment Act 1998***, passed consequently to the *Kava Management Act 1998* empowers the police with the same powers with respect to kava that they enjoy with respect to illegal drugs.

- ***Sentencing Amendment Act 1998***: This Act, along with the ***Juvenile Justice Amendment Act 1998*** extend the situations in which a court may order an offender to undertake a punitive work order, and strengthens the mandatory sentencing regime in respect of property offenders. With respect to mandatory sentencing, the Acts make the following amendments:
  - the intention of the provisions is clarified, namely to sentence the offender to actual imprisonment. The sentence cannot be served by way of periodic detention, suspension, community service orders or home detention.
  - the mandatory period cannot be taken into consideration in the case of a sentence in excess of the mandatory period for the purpose of determining a non-parole period. The non-parole period must relate only to the non-property offences.
  - the mandatory period cannot be served concurrently with the term of imprisonment for another offence.
  - offenders with lengthy criminal records for serious non-property offences are not to take advantage of mandatory minimum sentences - such sentences are the absolute minimum and the court may impose a lengthier sentence on such offenders according to the particular circumstances of the case.
  - the offences which attract compulsory detention are extended to include section 61 of the *Summary Offences Act*, which deals with persons suspected of having stolen goods.

The Acts also make a number of amendments with respect to punitive work orders:

- the punitive work order scheme is extended to all offences. Prisoners undertaking punitive work orders are not entitled to any payment as provided for normal prison work undertaken.
- punitive work orders may be undertaken as the whole sentence, or as a part of an actual term of imprisonment or detention.
- the commission of an offence in another Australian jurisdiction constitutes a breach of a punitive work order, not only a breach of a NT law, as previously applied. Where a punitive work order is subject to a review, the court which imposed the order must be the review court.

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#### **4.0 CONCLUSION**

From this survey of criminal legislation in the Australian States and Territories, it is clear that, to some extent or other, the law and order debate has had a significant impact in all jurisdictions. Revised sentencing laws, the introduction of tougher penalties and a focus on sex-related and weapons offences are among the common themes of recent criminal legislation, as is a new emphasis on the role of the victim in the criminal justice system. All these initiatives can be viewed as part of the 'get tough' on crime approach which in the 1990's has become the common currency of the political debate about law and order. However, that debate has also given rise to certain creative and experimental responses to the seemingly intractable problems of criminal behaviour, especially as this relates to young offenders. Notable in regard is the introduction in many jurisdictions of youth conferencing schemes which, in relation to juvenile justice at least, seems to point towards a different pathway through the law and order maze, one that combines the tough features of restitution with a more community based approach to justice.

The reforms in firearms legislation highlight the trend in certain areas towards a more national uniform approach to high profile law and order problems. With developments towards a model criminal code and other initiatives, we may observe a more general trend in future towards greater uniformity. On the other hand, we can also expect State and Territory law and order legislation to exhibit identifiably unique features.