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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**CRIMINAL CODE AMENDMENT**

**(THEFT, FRAUD, BRIBERY AND RELATED OFFENCES)**

**BILL 1999**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Justice and Customs,

Senator The Honourable Amanda Vanstone)

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## **CRIMINAL CODE AMENDMENT**

### **(THEFT, FRAUD, BRIBERY AND RELATED OFFENCES)**

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##### GENERAL OUTLINE

The Bill amends the *Criminal Code Act 1995* by inserting new provisions into Chapter 2 (General Principles of Criminal Responsibility); inserting a substantial part of what will be new Chapter 7 (The Proper Administration of Government) which contains the theft, fraud, bribery and related offences; and inserting parts of new Chapter 10 (National Infrastructure) which includes some offences designed to protect postal and communications services. All these amendments are contained in the first schedule of the Bill. The second schedule contains numerous amendments to other legislation. Most of these concern the repeal of over 250 offences. These will no longer be necessary because it is intended that in future there will be reliance on the central *Criminal Code* offences.

The effect of the Bill is:

- to replace existing *Crimes Act 1914* offences with a more modern and transparent scheme of theft, fraud, bribery, forgery and related offences based on Chapter 3 of the Model Criminal Code;
- to provide a modern and transparent scheme for the geographical jurisdiction of the Commonwealth criminal law by replacing the existing situation where the scope of offences is often not certain;
- to provide additional protection for Commonwealth public officials (including Ministers and former Ministers) from violence and harassment by providing for new offences based on Chapter 5 of the Model Criminal Code which will enable the Commonwealth to prosecute those who seek to cause them harm;

- in accordance with the 1990-1991 recommendations of the Review of Commonwealth Criminal Law to simplify and reduce the size of the Commonwealth statute book by repealing over 250 offences which cover conduct dealt with by the proposed new *Criminal Code* offences.

In November 1990 and June 1991 the Review of Commonwealth Criminal Law comprising of Sir Harry Gibbs, GCMG, AC, KBE, the Honourable Justice Ray Watson and Mr Andrew Menzies, AM, OBE ('the Gibbs Committee') issued reports which in part recommended a complete overhaul of the *Crimes Act 1914* theft, fraud and corruption offences.

At much the same time most State and Territory Governments were also interested in reforming their law in relation to the same offences because in most cases the existing offences were outdated, too numerous and unnecessarily complex. As all Governments had committed themselves to developing a Model Criminal Code in 1991, it was not surprising that one of the early tasks for the Model Criminal Code Officers Committee (made up of State, Territory and Commonwealth criminal law advisers), was to develop a chapter on Theft, Fraud, Bribery and Related Offences. Following the circulation of discussion papers and nationwide consultation, the Committee produced a report on these offences in December 1995 ('the 1995 MCC Report').

The proposed offences in this Bill are based on the 1995 MCC Report, but also take into account recommendations of the Gibbs Committee in relation to matters which are peculiar to the Commonwealth jurisdiction. The Bill is therefore very much part of the Government's commitment to implementation of the Model Criminal Code and the development of more consistent laws around Australia.

The Bill also reflects the seriousness with which the Government views the need for propriety on the part of elected and non-elected Commonwealth public officials by providing for more comprehensive obligations and significantly increasing penalties (from a maximum of 2 to 10 years imprisonment for bribery).

The fraud provisions are also very important. Fraud against the Commonwealth is paid for by the tax-payer and every dollar lost reduces the capacity for the Government to provide services and tax cuts. It is therefore essential that there be a common set of offences which outline community obligations clearly and therefore simplifying trials. The aim of the legislation in relation to the theft and fraud offences is to draw upon the experience of the UK, Victoria and the ACT by having offences based on the UK *'Theft Act'* which provided for a code in relation to these offences in 1968, and at the same time updating that model in the light of more recent developments (such as new technologies). The new offences dovetail well with the Government's commitment to electronic commerce and the *Electronic Transactions Bill 1999*. It is important that those who use new technology to dishonestly take the property of others do not avoid prosecution because the language of the relevant offences is outdated.

Finally, there needs to be physical protection for Commonwealth public officials, particularly those who put their bodies on the line to ensure that the interests of the Australian community are protected. There will be a higher penalty where the person harmed is an AFP member, or on the staff of the NCA or the Australian Customs Service.

Clauses 1 and 2 of the Bill deal with the short title and commencement.

Clause 3 of the Bill inserts two Schedules. The first amends the *Criminal Code Act 1995*. The second amends many other laws as a consequence of the amendments to the *Criminal Code Act 1995*. Many of those amendments involve repealing unnecessary offences.

## **SCHEDULE 1**

The *Criminal Code Act 1995* has a schedule which contains the *Criminal Code*. Most of the amendments in Schedule 1 of this Bill amend the schedule to the *Criminal Code Act 1995*. They are amendments to the *Criminal Code*.

Items 1 - 12 of Schedule 1 inserts new provisions into Chapter 2 of the *Criminal Code*. The most significant of these is item 12 which inserts new Part 2.7 entitled 'Geographical Jurisdiction.'

### **Geographical Jurisdiction**

Proposed sections 14.1 to 15.4 provide for a range of geographical jurisdictional options which are to apply to all offences after the proposed legislation commences. Each time an offence is developed it will be possible to select the appropriate geographical jurisdiction. If the offence only requires a narrow territorial based geographical jurisdiction, then proposed section 14.1 will automatically apply without the need for reference to the issue. However, if it is appropriate that an offence should reach outside Australia, proposed sections 15.1 to 15.4 provide for a selection of options for extended geographical jurisdiction ranging from covering Australian citizens for what they do anywhere in the world (category A); to citizens and residents for what they do anywhere in the world (category B); anyone anywhere regardless of citizenship or residence (categories C and D). The proposed provisions will provide for more certainty about the geographical reach of various offences and will turn the mind of legislators to this very important issue in all contexts.

Items 13 and 14 contains some minor consequential amendments to the Code, but it is Item 15 which contains the bulk of the offences in the Bill. It inserts new Chapter 7 which is entitled 'The proper administration of Government.'

### **Chapter 7 - The proper administration of Government**

While it is envisaged that this chapter will eventually have other provisions as well (for example, damage offences) the provisions proposed in this Bill are expected to make up the bulk of Chapter 7. It contains theft, fraud, bribery, forgery and a number of related offences as well as the harm to Commonwealth public officials offences.

#### **Part 7.1 of Chapter 7 - Preliminary**

This Part is quite short and includes the key definitions for Chapter 7.

### **Part 7.2 of Chapter 7 - Theft and other property offences**

Division 131 deals with theft of Commonwealth property. Theft has a long and complex common law tradition. The proposed offence draws heavily on the theft offences found in the UK, Victoria and the ACT where the offence has been codified for several decades. The effective operation of the offence depends upon a number of rules which are clearly spelt out in Division 131. It is proposed that it should replace section 71 of the *Crimes Act 1914* which relies heavily on undefined and complex common law terms. Section 71 was strongly criticised by the Gibbs Committee for its complexity. The maximum penalty for theft is 10 years imprisonment which is consistent with the penalty in other jurisdictions.

Division 131 deals with the theft-related offence of receiving, and also with what will be completely new offences in the Commonwealth jurisdiction: robbery, burglary and a making off without payment offence. In the *Crimes Act 1914* the Commonwealth has a theft offence (section 71) but not all the related offences. This meant that there had to be reliance on State and Territory law if there was a robbery at a Commonwealth office (that is, theft by force) but Commonwealth law if there was theft without force. This was anomalous. The Commonwealth needs to have the capacity to protect its property and personnel regardless of whether force was used and the primary offence should have the same elements as the closely related offences of robbery and burglary. Robbery has a maximum penalty of 15 years imprisonment (20 years if in company or with a weapon) and burglary 13 years (17 years if in company or with a weapon).

### **Part 7.3 of Chapter 7 - Fraudulent conduct**

Division 13.3 contains relevant definitions, and Division 134 the two main fraud offences. These are dishonestly obtaining property by deception (proposed section 210) and dishonestly obtaining a financial advantage by deception (proposed section 220). Like theft, the fraud offences replace offences which rely heavily on common law definitions which are not at all apparent to those reading the legislation. The new

offences also follow the UK, Victorian and ACT model and carry a maximum penalty of 10 years imprisonment.

Division 135 contains other offences involving fraudulent conduct. Most of these are in addition to those recommended for inclusion in the Model Criminal Code in recognition of the vulnerability of Commonwealth assets. These include a general dishonesty offence (section 135.1) which has a maximum penalty of 5 years imprisonment; obtaining a financial advantage (section 240 - maximum penalty of 12 months imprisonment); and organised fraud (section 245 - maximum penalty of 25 years). The general dishonesty offence does not require proof that the defendant deceived the victim and therefore does not warrant the severe maximum penalty which attaches to fraud (which is 10 years). Likewise the obtaining offences also warrants a much lower penalty. Organised fraud severely punishes those who commit a series of fraud-related offences and is much the same as the existing offence of the same name at section 83 of the *Proceeds of Crime Act 1987*. It is proposed that the new offence will replace section 83.

Finally Division 135 also contains the offence of conspiracy to defraud (section 135.4). This offence was recommended for inclusion in the Model Criminal Code. Like the general dishonesty offence, it does not require proof of deception, but the fact that it involves an agreement between one or more persons means a maximum penalty of 10 years imprisonment is appropriate. It is also an offence which relies heavily on common law definitions. Proposed section 135.4 will be the first time it has been codified.

#### **Part 7.4 of Chapter 7 - False and misleading statements**

Part 7.4 contains a number of minor offences which frequently found in Commonwealth legislation. The idea here is to centralise them in the *Criminal Code* alongside other fraud related offences. This will enable the repeal of over 130 offences in other legislation and will standardise what will be required to be proved. It



is an important part of the Government's 'statute stocktake' initiative which is designed to simplify Commonwealth law.

### **Part 7.5 of Chapter 7 - Unwarranted demands**

Part 7.5 includes two offences: unwarranted demands of a Commonwealth public official (proposed section 139.1) and unwarranted demands by a Commonwealth public official (proposed section 139.2). It is the equivalent of 'blackmail' which is what the offence is called in the Model Criminal Code. 'Blackmail' is the name normally associated with unwarranted demands against someone in a private capacity so the word has not been used in this Bill. The proposed offence is new to Commonwealth law but is clearly needed if the *Criminal Code* is to have a full range of offences to protect Commonwealth interests. The proposed maximum penalty for each offence is 12 years imprisonment.

### **Part 7.6 of Chapter 7 - Bribery and related offences**

Division 141 contains the most serious of these offences: bribing a Commonwealth public official (proposed subsection 141.1(1)), and where a Commonwealth public official asks to or receives a bribe (proposed subsection 141.1(2)). These offences will bring the domestic bribery provisions up to date and in line with the recently enacted *Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999*. Like the foreign public official bribery offences, the proposed maximum penalty is 10 years imprisonment. The current penalty is very low. Section 73 (bribing a Commonwealth officer) and section 73A (bribing a member of Parliament) of the *Crimes Act 1914* only provide for a maximum penalty of 2 years imprisonment. This is anomalous when the maximum penalty under the *Crimes Act 1914* for theft is 10 years imprisonment. The penalty for the new offences will bring them in line with theft.

Division 142 provides for lesser corrupt benefits and abuse of public office offences. The corrupt benefits offence (proposed section 420) does not require the prosecution to prove the person paying the bribe intended to influence the official in the exercise of his or her duties. Instead it is only necessary to prove the payment would tend to

influence the official. The maximum penalty is therefore lower (5 years imprisonment). This offence will replace the secret commissions offences which only have a maximum penalty of 2 years imprisonment (*Secret Commissions Act 1905*). The secret commissions offences have a harsh reverse onus provision which is inappropriate for such a serious offence. The new offences require the prosecution to prove a tendency to influence but has double the penalty. A maximum of 2 years imprisonment is not an appropriate penalty for corrupt conduct.

The abuse of public office offence is also new for the Commonwealth. There are similar offences in State jurisdictions and it is based on the Model Criminal Code offence. It concerns using influence, one's duties or information acquired in an official capacity with a view to dishonestly obtaining benefits. The proposed maximum penalty is 5 years imprisonment. It is important that the standards imposed on Commonwealth public officials meet those proposed in the national model.

#### **Part 7.7 of Chapter 7 -Forgery and related offences**

Like theft, forgery can be a complicated offence if the language is obscure. The proposed offences in Division 144 will replace a range of Commonwealth forgery offences which the Gibbs Committee concluded were unacceptable in their number and variation. The penalty ranges from a maximum of 10 years imprisonment (section 85G of the *Crimes Act 1914*) to \$1000 for forging liquor stamps. The offence involves conduct which is fraudulent in character and should carry the same 10 year maximum penalty. Government processes rely very heavily on documentation. It is in the public interest that the penalty should be significant and certainly not less than theft or fraud.

Division 145 contains using, and possession with intent to use, forged document offences and a possession of a device for making forgeries offence, each with a maximum penalty of 10 years imprisonment.

In addition to these, there are also falsification of documents and giving information derived from false documents offences which carry a lower maximum penalty of 7 years imprisonment. These replace section 72 of the *Crimes Act 1914* and section 61

of the *Financial Management and Accountability Act 1997* which have the same penalty.

**Part 7.8 of Chapter 7 - Impersonation, obstruction and causing harm offences**

Commonwealth public officials, whether they be members of Parliament, judicial officers, public employees or police, are often prone to being harmed or obstructed because of their duties. There can also be considerable harm caused if they are impersonated for some reason. The existing offences in sections 75 and 76 of the *Crimes Act 1914* carry very low maximum penalties of 2 years imprisonment yet they cover conduct which can include violence. The proposed offences provide for a more discriminating approach to the penalties.

The proposed ‘causing harm’ and ‘threaten harm’ provide for a maximum penalty which is in line with equivalent State and Territory offences and Chapter 5 of the Model Criminal Code. The maximum penalty is 10 years imprisonment or 13 years where the Commonwealth public official is a judicial or law enforcement officer.

It is also proposed that there be similar offences to protect former Governors-General, Ministers and Parliamentary Secretaries as proposed by the 1995 Review of Security for Commonwealth Holders of High Public Office. This will enable the Commonwealth to take action when those who have a high profile association with the Commonwealth are the subject of attacks and harassment because of their service to the community in that capacity.

Division 148 provides for impersonation offences and Division 148 an obstruction offence (maximum penalties of 2 years imprisonment). These new central offences will enable the Bill to repeal scores of varying offences in other legislation. Apart from simplifying the statute book, it will also standardise what the prosecution will need to prove. Again, the Gibbs Committee proposed a rationalisation of offences in this way in 1990. Part 7.8 will enable the repeal of over 60 offences

### **Part 7.20 of Chapter 7 - Miscellaneous**

The numbering of this Part as 7.20 leaves room for the addition of other offences which are appropriate to include in Chapter 7 (for example, damage and computer offences). Part 7.20 saves State and Territory laws which overlap with the proposed offences so that they may be prosecuted in appropriate cases, such as where there are a series of related State charges (proposed section 261.1). Part 7.20 also preserves contempt of court and contains some interpretative provisions.

### **Chapter 10 - National infrastructure**

Item 16 inserts new Chapter 10 which is entitled ‘National infrastructure’. This chapter will deal with the protection of any part of the national infrastructure about which the Commonwealth has power and believes it is in the national interest to protect regardless of ownership details. While the ultimate content and size of this chapter is not certain, the *Crimes Act 1914* already provides for protection of the post and telecommunications (Parts VIIA and VIIB). Some of these offences are theft and fraud related, so it is proposed that they be updated and transferred from the *Crimes Act 1914* to the *Criminal Code*. Other offences which protect the postal and telecommunications services in Parts VIIA and VIIB are likely to be moved to Chapter 10 when the Government moves to develop other parts of the *Criminal Code*. For example, the ‘send narcotic substances by post’ offence (section 85W of the *Crimes Act 1914*) might be appropriate to move to the *Criminal Code* when steps are taken to enact new serious drug offences.

### **Part 10.5 of Chapter 10 - Postal services**

Part 10.5 concerns the postal services offences. These include theft and receiving of mail bags, etc (proposed sections 471.1 and 471.2) and taking or concealing them (proposed section 471.3). These replace most of section 85K of the *Crimes Act 1914*. The offences are drafted in the same terms as the equivalent offences in the ‘Protect the proper administration of government’ chapter (Chapter 7) but provides protection for Australia’s central postal services. This approach continues the policy which

existed in 1989 when the equivalent offences were first included in Part VIIA of the *Crimes Act 1914*. Part 10.5 merely continues the longstanding policy on these issues. The overall object is to review and move all *Crimes Act 1914* offences into the *Criminal Code*. In some cases, like these, the policy behind the offences will remain unchanged. However, also like these, the offences will need to be adjusted to make them consistent with related *Criminal Code* offences.

Other Part 10.5 offences include dishonest removal of stamps or postmarks (proposed section 471.4); dishonest use of stamps (proposed section 471.5); damaging or destroying mail bags, etc (proposed section 471.6 - this replaces in part section 85K of the *Crimes Act 1914* which primarily deals with other issues such as stealing articles in the post, but also their destruction); tampering with mail bags, etc (proposed section 471.7); and dishonestly obtaining delivery articles in the course of the post (proposed section 471.8).

#### **Part 10.6 of Chapter 10 -Telecommunications**

This is comprised of the offence of general dishonesty with respect to a carriage service provider (proposed section 474.1) which would replace section 85ZF of the *Crimes Act 1914*. As with the offences in Part 10.5, the new offence brings the wording of this offence into line with the general dishonesty offence at proposed section 135.1 of Chapter 7. The rationale for having this offence in chapter 10 is much the same as that for the postal offences and reflects the policy that was in place in 1989 when section 85ZF was first inserted into the *Crimes Act 1914*.

#### **Chapter 11 - Miscellaneous interpretative provisions**

Eventually the *Criminal Code* will have a very wide range of offences. It is necessary to have an interpretative chapter to deal with the interaction of these offences. Proposed section 600.1 of this chapter includes such a provision.

#### **Dictionary**

Items 17 to 41 deal with the *Criminal Code* 'Dictionary' definitions. These will be dealt with in detail in the body of this memorandum.

**SCHEDULE 2**

This contains the consequential amendments. It will repeal of over 250 offences which can be better covered by the central *Criminal Code* provisions.

**FINANCIAL IMPACT STATEMENT**

It is not possible to assess what impact the Bill will have on Commonwealth expenditure or revenue except that it should be positive. This is because the Bill will contribute to a simplification of the law, greater national consistency and deterrence of those who might consider committing theft, fraud, bribery and related offences because it provides for higher penalties and more comprehensive provisions. The crimes covered by this Bill cost the Commonwealth significant resources.

## NOTES ON CLAUSES

### **Clause 1: Short Title**

1. This clause provides for the short title of the Act.

### **Clause 2: Commencement**

2. Subclause 2(1) provides that the Act commences on Proclamation.

3. Subclause 2(2) provides that the Act, if it is not proclaimed earlier, will commence 6 months after it receives Royal Assent. This will provide the Government some flexibility about the date of commencement to ensure there is adequate awareness of the new provisions. It also avoids the undesirable outcome of having unproclaimed legislation on the statute book for too long.

4. Subclauses 2(3) to 2(9) deal with the commencement of legislation which may be amended before this Bill commences. As the timing of when a Bill of this nature is likely to commence is uncertain, the proposed provisions ensure it will operate as intended regardless of the timing.

### **Clause 3: Schedules**

5. This clause provides that the Acts specified in the Schedules to the Bill, the *Criminal Code Act 1995* in Schedule 1 and other legislation in Schedule 2, are amended as set out in each case.

## **SCHEDULE 1 - AMENDMENT OF THE CRIMINAL CODE ACT 1995**

### ***Item 1 of Schedule 1 - Regulations***

6. This item inserts new section 5 which will enable the making of regulations under the *Criminal Code Act 1995* ('the Act'). This would be made necessary by this Bill because it is proposed in item 23 of Schedule 1 that there should be a definition of 'Commonwealth authority' which may require the exclusion of some additional bodies by regulation.



***Items 2 and 3 of Schedule 1 - Adjustments to notes***

7. The Act contains notes to assist readers. These provide for a reference to proposed Part 2.7 of Chapter 2 of the *Criminal Code* which deals with geographical jurisdiction.

***Item 4 of Schedule 1 - 'engage in conduct'***

8. Subsection 4(2) of the *Criminal Code* contains the important definition of 'conduct' which means an act, an omission to perform an act or a state of affairs. Offences refer to 'engaging in conduct'. The proposed definition of 'engaging in conduct' is designed to make it clear that 'engagement' does not only infer the relevant conduct must only be an act. The use of 'engaging in conduct' is meant to cover omissions as well. This will simplify the drafting of offences.

***Item 5 of Schedule 1 - repeal of a note***

9. Item 5 repeals a note under section 5.1 of the *Criminal Code* which contains an example referring to a *Crimes Act 1914* offence that will be repealed in the proposed amendments. It is not necessary to replace the example.

***Item 6 of Schedule 1 - amendment to section 5.6***

10. Item 6 would omit the words 'of an offence' from section 5.6 of the *Criminal Code* because they are unnecessary and could result in misinterpretation of this important provision. Section 5.6 contains the rules which will apply in relation to fault where the relevant offence does not specify a fault element. It is possible some might interpret the rule as only applying to offences made up of only conduct, or only of a circumstance or a result. This was not the intention of those who developed the Model Criminal Code.

***Item 7 of Schedule 1 - defence of lawful authority***

11. Part 2.3 of the *Criminal Code* contains a range of general defences. In its September 1998 'Non-Fatal Offences Against the Person' Report, the Model Criminal Code Officers Committee recommended that there be a general lawful authority defence. This is in recognition that a code must specify this longstanding principle if it is to continue to apply. The defence is particularly relevant to offences against the person. Proposed Part 7.8 of Chapter 7 in this Bill includes offences of that nature. It is important that where, for example, a law enforcement officer is authorised by law to physically restrain a person and does so within the scope of his or her authority, then the officer cannot be charged for harming that person. There will be many other examples throughout the *Criminal Code*. The main thing to keep in mind here is that the defence will not apply if there is no clear justification or excuse provided for by another law.

***Item 8 of Schedule 1 - amendment to subsection 11.1(7)***

12. Section 11.1 of the *Criminal Code* concerns the general principles which apply in relation to an attempt to commit an offence. Subsection 11.1(7) provides that it is not an offence to commit complicity and common purpose (section 11.2) or conspiracy (section 11.5). It does not make sense to provide for attempting those offences. The proposed amendment simply extends the rule, for the same reason, to a another form of conspiracy which it is proposed should be included in Chapter 7 of the *Criminal Code* - conspiracy to defraud (proposed section 135.4).

***Items 9, 10 and 11 of Schedule 1 - amendments to section 11.6***

13. Section 11.6 of the *Criminal Code* is an interpretative provision which provides that references to offences against an Act also include relevant extensions of criminal responsibility such as attempt, complicity and conspiracy. This simplifies the drafting of criminal statutes. The proposed amendments in items 9 and 10 make it clear this rule extends to not only Acts but other laws of the Commonwealth that create offences (for example, regulations). Proposed new subsection 11.6(4) which would be inserted

by item 11 preserves references in existing laws to extensions of criminal responsibility.

**Item 12 of Schedule 1 - Part 2.7 - Geographical Jurisdiction**

14. Item 12 proposes the insertion of a new set of general principles into Chapter 2 of the *Criminal Code* which deal with the geographical reach of Commonwealth offences. These are contained in Part 2.7 entitled ‘Geographical jurisdiction.’

15. The purpose of Part 2.7 is to clarify, and to provide in an orderly way for, the geographical application of Commonwealth offences. There are several instances where the geographical reach of Commonwealth offences is not clear, or where general application provisions are not adapted to the purpose of particular offence provisions. Commonwealth offence provisions are usually enacted to give effect to a specific governmental purpose. Depending on that purpose, and considerations of international law, practice and comity, it might be appropriate for an offence to have a broad or narrow application.

16. The scheme of Part 2.7 is to provide for the most appropriate of those categories to be chosen. First, for a ‘standard geographical jurisdiction’ to govern the geographical application of future offences in the absence of any provision to the contrary. Provision is then made for four categories of ‘extended geographical jurisdiction’. One of those categories might be chosen for express application to govern the geographical application of a particular offence. The five options for geographical jurisdiction set out in Part 2.7 make available a convenient way of covering most offence provisions, although it is possible that for some reason a future law might need to specify yet another kind of jurisdiction.

***Proposed section 14.1 of Division 14 - Standard geographical jurisdiction***

17. Proposed subsection 14.1(1) enables standard geographical jurisdiction to be applied to a particular offence by an express provision to that effect. However, express application will not be necessary for offence provisions commencing at or

after the commencement of proposed section 14.1, where standard geographical jurisdiction will apply unless contrary provision is made. The same form of jurisdiction will also govern a related ancillary offence. ('Ancillary offence' is to be defined in the Dictionary (item 19), and includes, for example, attempt, incitement and conspiracy.)

18. Proposed subsection 14.1(2) sets out the situations where a particular case will fall within standard geographical jurisdiction. It does so by reference to 'conduct' and 'result', these being possible physical elements of an offence as stated in section 4.1 of the *Criminal Code*. When Part 2.7 refers to a 'result' it is referring to a result that is an element of the offence itself and not to something that is merely a consequence or effect of the offence having occurred: see proposed section 16.4.

19. Standard geographical jurisdiction will be satisfied if the conduct constituting the alleged offence occurs wholly or partly in Australia (see proposed section 16.3) or wholly or partly on board an Australian aircraft or an Australian ship (see the proposed definitions in the Dictionary (items 20 and 21)).

20. The jurisdictional requirements will also be satisfied if a *result* of the conduct occurs wholly or partly in Australia or wholly or partly on board an Australian aircraft or an Australian ship. As noted, this condition of jurisdiction can only be satisfied where a 'result' is an element of the offence. Only a few Commonwealth offences have a 'result' in that sense, so the 'result' basis for jurisdiction will only be applicable to those offences. An example might be an offence of destroying an aircraft where the conduct occurs outside Australia but the destruction of the aircraft (say a foreign aircraft) occurs in Australia, or an offence of obtaining something by deception where the deceptive conduct occurs outside Australia but the thing is received in Australia.

21. In the case of an 'ancillary offence', such as attempt, incitement or conspiracy, it may be that the conduct occurs wholly outside Australia and there is no relevant 'result' in Australia of the ancillary offence itself. In that case, by virtue of proposed paragraph 14.1(2)(c), the jurisdictional requirement might still be satisfied by

reference to the primary offence, for example where D incites a person, in a foreign country, to commit an offence and the person commits that offence (the primary offence) in Australia *or* D *intends* that the primary offence be committed in Australia.

22. Proposed subsection 14.1(3) provides the possibility of a defence where standard geographical jurisdiction is satisfied but the conduct occurs wholly in a foreign country, for example where only a ‘result’ occurs in Australia or (in the case of an ancillary offence) the primary offence is intended to occur in Australia. The defence is that there was no offence in the place where the conduct occurred (country X) corresponding to the Commonwealth offence charged. The inquiry is not into whether the particular conduct alleged would have amounted to an offence of some kind or other under the law of X. Therefore it need not be relevant that in country X there is an applicable defence, relating, for example, to age, nationality or other capacity. The inquiry is into whether X has in its law a corresponding offence. ‘Corresponding’ does not mean ‘exactly the same’ but means ‘of a corresponding kind’. For example if the charged offence was bribing an Australian official, a corresponding offence of X could be bribing an official of X. If the charged offence was destruction of (or theft of) Australian government property and X had not legislated specifically for government property, a corresponding offence could be simple destruction of (or theft of) property.

***Proposed Division 15 - Extended geographical jurisdiction***

23. This includes the categories A, B, C and D. A being the most limited extension, D being the broadest.

***Proposed section 15.1 - Extended geographical jurisdiction - category A***

24. Where this category of jurisdiction applies, jurisdiction will be satisfied if a requirement for ‘standard geographical jurisdiction’ is met *or* the alternative requirement in proposed paragraph 15.1(c) is met. That alternative requirement is met if at the time of the alleged offence the person charged with the offence was an

*Australian citizen or was a body corporate* incorporated by or under a law of the Commonwealth or of a State or Territory.

25. As in proposed section 14.1, there is a defence in proposed subsection 15.1(2) which may be available depending on the law of a foreign country where the conduct has wholly occurred. However, that defence is not available if jurisdiction is to be exercised under proposed paragraph 15.1(c) on the basis of the person's nationality.

***Proposed section 15.2 - Extended geographical jurisdiction - category B***

26. This category of jurisdiction is the same as under category A, except that a further possible basis for jurisdiction is added in proposed subparagraph 15.2(1)(c)(ii). This is that at the time of the alleged offence the person was a *resident of Australia*. The defence in subsection 15.2(2) is in the same terms as the defence in subsection 15.1(2). It may be available if jurisdiction is to be exercised on the basis of residence, but not if jurisdiction is to be exercised on the basis of nationality.

***Proposed section 15.3 - Extended geographical jurisdiction - category C***

27. Category C jurisdiction is *unrestricted*. It applies whether or not the conduct or the result of the conduct constituting the alleged offence occurs in Australia. However, by virtue of proposed subsection 15.3(2) *a defence may be available depending on the law of a foreign country where the conduct occurs*. The defence is in the same terms as in proposed subsections 15.1(2) and 15.2(2) and is not available if the person charged is of Australian nationality.

***Proposed section 15.4 - Extended geographical jurisdiction - category D***

28. Category D jurisdiction is *unrestricted* and is in the same terms as in proposed section 15.3, except that there is *no foreign law defence* corresponding to that in proposed section 15.3(2).

***Proposed section 16.1 - Attorney-General's consent***

29. The purpose of proposed section 16.1 is to require the Attorney-General's consent where a prosecution is to be brought in reliance on Part 2.7 and the conduct constituting the alleged offence occurs wholly in a foreign country and the person charged or to be charged is not of Australian nationality.

30. There will be situations, among those situations where the Attorney-General's consent is required, where it will not be appropriate for a prosecution to proceed in Australia even if the usual criteria for a prosecution are met. It is intended that the Attorney-General will have regard to considerations of international law, practice and comity, international relations, prosecution action that is being or might be taken in another country, and other public interest considerations and decide in his or her discretion whether it is appropriate that a prosecution should proceed.

31. Proposed subsection 16.1(2) contains the usual provision enabling a prosecution to be initiated before consent is given. If another Commonwealth law requires the consent of the Attorney-General or another person for a prosecution, and consent of the Attorney-General is also required under proposed section 16.1, it will be necessary for consents to be obtained under both provisions.

***Proposed section 16.2 - When conduct taken to occur partly in Australia***

32. Proposed subsection 16.2(1) is directed to the situation where a thing is sent to or from Australia. If a person, while outside Australia, sends a thing to Australia (for example by mailing a parcel) or causes it to be sent (for example by arranging for another person to mail a parcel), that action of the person might be conduct constituting an offence, and by virtue of subsection 16.2(1) it is conduct that is taken to have occurred partly in Australia. On that basis, an alleged offence could be within the jurisdiction provided by proposed sections 14.1(1), 15.1(1), or 15.2(1). (It would not matter if the sending of a thing from Australia would otherwise be conduct *wholly* within Australia, because those subsections do not distinguish between conduct wholly or partly in Australia.)

33. Moreover, such conduct would not be conduct ‘wholly outside Australia’ or ‘wholly in a foreign country’ within the meaning of those expressions in Part 2.7, for example for the purposes of the defences in proposed sections 14.1(3), 15.1(2), 15.2(2) or 15.3(2).

34. Proposed subsection 16.2(3) has a corresponding effect to subsection 16.2(2) where what is sent or caused to be sent is an electronic communication. An ‘electronic communication’ is not defined, but is intended to describe any communication by electronic means, for example by telephone, fax, or telegram, by wire, cable or radio, or through the Internet or a closed computer network. However, an electronic communication is only within the subsection if it is sent or caused to be sent ‘from a point outside Australia to a point in Australia’ or ‘from a point in Australia to a point outside Australia’. That limitation could exclude some broadcast transmissions, although an email to multiple recipients, for example, would be a number of communications sent to a number of points. Proposed subsection 16.2(3) gives an inclusive definition of ‘point’.

### ***Proposed section 16.3 - Meaning of ‘Australia’***

35. The purpose of this section is to bring the operation of the jurisdiction provisions in this Part into line with the scope of particular offence provisions. ‘Australia’ when used in a geographical sense may be given different meanings in different statutes. For example, sometimes it will include some or all of the external Territories, sometimes it will not. For the purpose of this Part, the meaning of ‘Australia’ will depend on the meaning it would have if used in the relevant offence provision.

### ***Proposed section 16.4 - Result of conduct***

36. This section makes it clear that, in this Part, a reference to a result of conduct is a reference to a result in the sense of a physical element of an offence as provided in proposed section 4.1(1). Therefore ‘result’ is not to be interpreted as meaning a consequence or effect following from or caused by an offence but not forming an element of the offence. The destruction of an aircraft is a result and an element of the



offence of destroying an aircraft. However, a consequence of that offence in the form of collateral damage to other property or a loss to an insurance company would not be an element of the offence and hence would not be a relevant 'result'.

***Item 13 of Schedule 1 - definition of 'foreign country' in section 70.1***

37. Section 70.1 provides for a definition of 'foreign country' in Division 70 of Chapter 4 of the *Criminal Code* ('The integrity and security of the international community and foreign governments') which it is proposed should be repealed and moved by Item 33 of this Bill to the Dictionary at the end of the legislation. The definition is to be used more generally, so it is more appropriate to place it in the Dictionary. Division 70 of Chapter 4 was inserted into the *Criminal Code* by the *Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999* which contains offences which prohibit the bribery of foreign public officials. The Act received Royal Assent on 17 June 1999 and will come into effect on 18 December 1999.

***Item 14 of Schedule 1 - definitions relating to aircraft and ships in subsection 70.5(4)***

38. This is another amendment to Division 70. It repeals the definitions of 'Australian aircraft', 'Australian ship', 'defence aircraft' and 'defence ship'. These definitions are moved by Items 20, 21, 29 and 30 of this Bill to the Dictionary. The definitions are unchanged.

***Item 15 of Schedule 1 - Chapter 7 - The proper administration of Government***

39. The bulk of the proposed new theft, fraud, bribery and related offences are in Chapter 7. It is proposed that this chapter will eventually include a range of other offences relevant to the protection of the proper administration of Government, such as damage and computer offences. However, effective theft, fraud and corruption offences are a very important component of the *Criminal Code*. Fraud against the

Commonwealth is considerable and corruption is something about which no society can be complacent.

**Proposed Part 7.1, Division 130 - Preliminary**

40. This deals with the definitions and interpretative clauses which it is proposed should apply throughout the chapter. Some of these are likely to be relevant to the damage offences which it is proposed will be inserted later.

***Proposed section 130.1 - Definitions***

41. The first word to be defined is '**duty**'. 'Duty' is used in many of the offences, ranging from general dishonesty (proposed section 135.1), to corruption offences such as bribery (proposed section 141.1), and forgery (proposed section 144.1).

42. Paragraph (a) of the definition ensures 'duty' is given its widest meaning and appropriately covers those duties which the 'Commonwealth public official' may not technically have but is able to hold himself or herself out as having. The community cannot be expected to know what the exact duties of an official are, so it would not be unreasonable to expect some dishonest officials will try to seek favours by promises to do things that have nothing to do with their duties.

43. Paragraph (b) of the definition of 'duty' provides for a similar definition in relation to 'public officials'. This is necessary, because many of the offences only require the prosecution to prove that the person relevant to the offence is a 'public official', not that they are a Commonwealth public official (see the bribery offence, proposed section 141.1). Many in the community are not precisely aware of what public officials are State public officials, as opposed to Commonwealth public officials.

44. 'Commonwealth public official' and 'public official' are defined in the proposed Dictionary to the *Criminal Code* at items 27 and 36 of the Bill. 'Commonwealth

public official' includes a broad group of people including Commonwealth employees and officers, Members of Parliament, judges, police, contractors, military personnel and those employed by Commonwealth authorities. 'Public official' covers the same categories but includes State and Territory officials as well as those with Commonwealth functions.

45. '**Gain**' is defined in terms of a gain in property, whether temporary or permanent, or by way of the supply of services, and includes keeping something that one has. This is much the same as subsection 14.3(1)(a) of the Model Criminal Code but also mentions services in recognition of the context of the Commonwealth *Criminal Code* which is concerned with the protection of the Commonwealth. The Model Criminal Code offences reflect State and Territory Government responsibility for criminal offences that apply more generally. Services are often very valuable and costly, and therefore the protection of the proposed offences need to specifically cover them as well. Dishonestly obtaining a gain is an important element of many dishonesty offences such as conspiracy to defraud (proposed section 135.4) and the unwarranted demands offences (proposed sections 139.1 and 139.2).

46. '**Loss**' covers temporary or permanent losses and includes not getting what one might get. It follows the Model Criminal Code definition and is usually used in the same offences as 'gain' to cover the 'flip-side' consequence of dishonest behaviour. While there will invariably be a loss to someone whenever there is a gain for another, in some cases it is more appropriate to the facts of the case to prove the defendant dishonestly caused a loss rather than a gain. Either way there is a victim and the culprit should be penalised.

47. '**Obtaining**' is defined to include obtaining for another. This is an important part of the proposed dishonesty offences. Often the defendant will be motivated to assist a relative or friend. Whether it is for himself, herself or another - there will be a victim of dishonesty. In the Commonwealth jurisdiction it will invariably be the taxpayer. This is based on subsection 14.3(2)(a) of the Model Criminal Code.

48. ***Property*** is defined widely. Like section 14.4 of the Model Criminal Code, it covers real and personal property, money, intangible property such as the right to recover funds, electricity and even wild creatures. Even in the Commonwealth context, it could include a captive wild creature. There may be very valuable Commonwealth assets which are captive wild creatures (for example, where an outback station is forfeited to the Commonwealth as a proceed of crime).

49. ***Services*** is defined broadly in recognition of the range of services provided by the Commonwealth. The definition is included in recognition of the special definition of 'gain' in the *Criminal Code* which is not found in the 'State-based' Model Criminal Code.

50. ***Supply*** is also included in support of the definitions of 'services' and 'gain' for the same reasons.

***Proposed section 130.2 - When property belongs to a person***

51. This definition is of critical importance to the theft, theft related and property fraud offences (such as proposed sections 131.1, 132.1 and 134.1). The basic definition at subsection 130.2(1) provides that property belongs to any person who owns it, or has any other proprietary right or interest in it, or who has possession or control of the property. One effect of the section is that co-owners or people with different rights to a piece of property can be guilty of theft from one another. For example, one owner of property can be guilty of theft from another owner (eg theft by one business partner from another), or an owner can be guilty of theft by taking his or her property away from someone who has possession or control of it (eg an owner who dishonestly took back his or her own goods from a pawnbroker). The owner cannot deny appropriation by relying on his or her own consent to the appropriation. Proposed subsections 131.3(1) and section 131.9 requires the consent of all those to whom it belongs. In the example, the owner of the pawn shop has not consented to the appropriation of his or her right to possession. The Commonwealth can co-own property with someone else - so this interpretative provision is as relevant to it as the Model Criminal Code provision upon which it is based (section 14.5).

52. The definition in proposed subsection 130.2(1) also provides that property also belongs to people who have any proprietary right or interest (not being an equitable interest arising either from an agreement to transfer or grant an interest, or from a

constructive trust). One example of the effect of this is that a trustee (who is the legal owner of the trust property) who dishonestly appropriates trust property will be guilty of theft from the beneficiaries (who do not *own* the trust property but do have an equitable proprietary interest in the trust property). Where there is no specific beneficiary (eg in the case of a trust for general public purposes), proposed subsection 131.5(1) makes this theft (subsection 15.5(1) of the Model Criminal Code).

53. However, equitable interests arising from agreements to transfer or grant an interest (eg to sell land or shares) are excluded. These equitable interests arise by the operation of legal rules but only in relation to contracts which are specifically enforceable. For example, the defendant agrees to sell a valuable painting to the victim. Before the sale goes ahead and the painting is transferred, the defendant gets a better offer and sells it to X. In general, contracts agreeing to sell goods are not specifically enforceable but they are when the goods have special qualities. Hence, a contract like the one in the example would be specifically enforceable and the victim would have an equitable interest in the painting. However, the framers of the UK *Theft Act* judged that this conduct should not be theft and that civil remedies were sufficient. The qualification in proposed subsection 131.5(1) will mean that this is not property belonging to another and therefore not theft.

54. Similar considerations arise in relation to constructive trusts. In an English case, the proprietor of a tied pub operated it on the basis that he would only sell the brewery's beer. In fact he also sold some of his own home brew. He was charged with theft on the basis of an argument that he was a constructive trustee of the proceeds of the sale of the home brew and that the brewery had an equitable proprietary interest in the proceeds. The Court of Appeal found that no constructive trust arose in these circumstances and, in any event, rejected the notion that a person should be guilty of theft based on the operation of such intricate legal concepts which strayed so far from ordinary conceptions of theft. The same point applies to constructive trusts generally, such as have been found to arise in the case of mistaken overpayment. Hence, proposed subsection 131.5(1) extends the qualification contained in the *Theft Act* so that equitable interests arising from constructive trusts do not fall within the definition of property belonging to another. This important and is discussed at the note as proposed subsection 131.7 which deals with fundamental mistakes. Constructive trusts - based on equitable notions of unconscionability - may be appropriate for recovery in civil actions, but they stray too far from the common conception of theft and the much more culpable sort of dishonesty involved in theft to form part of the definition of the offence of theft. Their ambit is uncertain and likely to expand. To attach the boundaries of theft to such an uncertain concept would

offend the important principle that the criminal law should be knowable in advance. No doubt that principle calls for judgements of degree on occasion. On this occasion in relation to constructive trusts and the law of theft, the better view is to agree with what the Court of Appeal said in *Attorney-General's Reference (No 1 of 1985)* [1986] 1 QB 491, 503:

“... the court should not be astute to find that a theft has taken place where it would be straining the language so to hold, or where the ordinary person would not regard the defendant's acts, though possibly morally reprehensible, as theft.”

55. The *general* definition of property belonging to another contained in proposed subsection 130.2(1) is supplemented for the purposes of the offence of theft by proposed sections 131.5 to 131.9 (section 15.5 of the Model Criminal Code).

56. Proposed subsection 130.2(2) makes it clear that the same rules also apply to money transfers under the property fraud offence (proposed subsections 134.1(9) and (10)). The Model Criminal Code does not have a special provision covering money transfers.

### ***Proposed section 130.3 - Dishonesty***

57. An important concept in the Model Criminal Code offences is the fault element of 'dishonesty'. Subsection 14.2(1) contains a straight-forward definition which was developed by the courts and is known as the *Ghosh* test. The *Ghosh* test is a familiar concept in Australia because until February 1998, it had been used in all jurisdictions, both common law and Code, in relation to conspiracy to defraud and in most jurisdictions, including the Commonwealth, in relation to the main fraud offences (s.29D and s71(1) of the *Crimes Act 1914* which use the fault elements of 'defraud' and 'fraudulent'). In *Peters v R* (1998) 151 ALR 51 the High Court held that the *Ghosh* test was no longer appropriate and developed a new test which does not include a subjective component.

58. The approach in *Peters* is not favoured because it is necessary for offences like theft to retain a broad concept of dishonesty to reflect the characteristic of moral wrongdoing.

59. Paragraph (a) of the definition of ‘dishonest’ seeks to achieve this by linking the definition of dishonesty to community standards (this is not novel, whether a person is negligent is assessed by a jury on the basis of what the reasonable person would have done in the circumstances).

60. Paragraph (b) of the definition requires knowledge on the part of the defendant that he or she is being dishonest according to the standards of ordinary people. This is crucial if the *Criminal Code* is to be true to the principle that for serious offences a person should not be convicted without a guilty mind. It reflects a preference for the law which existed prior to the 1998 decision of the High Court in *Peters* and is particularly important to the *Criminal Code* because it has additional offences which rely on ‘dishonesty’ even more so than the Model Criminal Code offences (see proposed sections 132.8, 135.1 and 135.2). The proposed definition was preferred over the *Peters* approach by the Standing Committee of Attorneys-General at its April 1998 meeting.

***Proposed section 130.4 - Determination of dishonesty to be for the trier of fact***

61. Consistent with subsection 14.2(2) of the Model Criminal Code, it is proposed that the question of whether a person is ‘dishonest’ is only appropriate for the jury (or court, if there is no jury) as the trier of the facts to determine. It is the jury which is best able to judge community standards.

***Proposed Part 7.2 - Theft and other property offences***

62. These offences include theft itself, receiving, robbery and aggravated robbery, burglary and aggravated burglary, making off without payment, going equipped for theft and dishonest taking or retention of property. The enactment of these offences would give the Commonwealth a comprehensive array of offences to replace a very outdated and vague ‘stealing’ offence (section 71 of the *Crimes Act 1914*) and reliance on varying State and Territory offences which have no similarity to the stealing offence for more serious theft related conduct such as a robbery or burglary.

***Division 131 - Theft***

63. The proposed Division on theft begins with the offence of theft which is followed up by a number of interpretative provisions that are important to the proper operation of the offence. They are necessary because under Australian civil law concepts of property ownership are by no means simple. Being a transparent law, the *Criminal Code* provides an explanation of how those concepts interact with the offence of theft.

***Proposed section 131.1 - Theft***

64. Proposed subsection 131.1(1) contains the elements of the offence of theft. A person is guilty if the person dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property.

65. The elements of the theft offence at subsection 15.1(1) of the Model Criminal Code have been faithfully followed in this Bill notwithstanding the different nature of



the Commonwealth jurisdiction. This is in recognition that theft is sufficiently complex as it is without restructuring it just for the purpose of providing the Commonwealth jurisdictional connection, but also because it is convenient and transparent to place the connection in a separate paragraph.

66. Referring to the property belonging to the ‘Commonwealth entity’ at paragraph 131.1(1)(b), which is defined as the Commonwealth or a Commonwealth authority in the Dictionary to the *Criminal Code* (item 25 of the Bill), also has the advantage of isolating that precise element of the offence so that the prosecution is not required to prove the person knew the person/organisation who owned the property was a Commonwealth entity. Under the existing law the prosecution is not required to prove the defendant knew it was the Commonwealth that he or she was stealing from for the person to be found guilty but under the *Criminal Code* this must be made clear in the legislation. The *Criminal Code* requires laws that create offences to be very clear about anything that does not need to be proved, otherwise fault must be proved in accordance with section 5.6. It is therefore appropriate that the offence should make it clear that proof the person knew the victim was a ‘Commonwealth entity’ is not required. This is achieved in subsection 131.1(3) which provides that absolute liability applies to the ‘property belongs to a Commonwealth entity’ element of the offence.

67. Subsection 6.2(2) provides that if a law that creates an offence provides that absolute liability applies to a particular physical element of the offence (in this case property belonging to the Commonwealth entity), then a fault element (for example, knowledge) does not have to be proved and there is no defence of mistake of fact.

68. This method of preserving the status quo with respect to proof of the Commonwealth jurisdictional connection is transparent, precise and preserves the structure of the offence. It is used throughout the Bill.

69. The penalty for theft is a maximum of 10 years imprisonment. The current stealing offence has a maximum penalty of 7 years. The proposed penalty is

consistent with that for State and Territory offences and the Model Criminal Code. A single theft can involve millions of dollars worth of property. The Commonwealth can be a victim just like any other organisation. There is no reason why the penalty should be less than that for State and Territory theft offences.

70. Proposed subsection 131.1(4) nominates extended geographical jurisdiction category D for the purpose of Part 2.7 (applying whether or not any part of the offence occurs in Australia). The reasons for that approach are as follows.

71. Australia, as a country following the common law system of criminal justice, has not, traditionally and as a general rule, sought to bring within its criminal laws conduct occurring beyond Australia. It has been, and is, accepted that general law offences such as theft by one individual from another should not be given extended reach unless there is a particular reason to do so, for example a need to fill a law enforcement vacuum.

72. However, an offence, such as theft, against the national government is of a different character, as signified by the placing of these offences in a chapter of the *Criminal Code* entitled 'The proper administration of Government'. Moreover, offences that have been contained in the *Crimes Act 1914*, which for the most part are offences against the Commonwealth government or government services, have for a long time been given extended reach. (See section 3A of the *Crimes Act 1914*.)

73. The offences under consideration are all ones where the victim will be, by definition, not merely an Australian victim but an Australian government entity. The offences exist to protect Australian government property, other Australian government interests or both (protection of a 'Commonwealth entity'). It is inevitable that, in the course of performance of necessary government functions, that property and those interests will be exposed to criminal activity outside Australia. Action by way of Commonwealth prosecution will generally be justifiable to protect national interests, and will sometimes be necessary, for example if no foreign authority is able and

willing to take such action. Conversely, if a foreign authority is able and willing to take such action there will be no need for the Commonwealth to do so.

74. It should be noted that in Australian law and practice the creation of an offence does not signify an intention that all conduct capable, legally, of prosecution will be prosecuted. At the Commonwealth level prosecutions by the Director of Public Prosecutions are subject to discretions guided by the Director's published policy, and all prosecutions are subject to the over-riding powers of the Director and the Attorney-General.

75. Moreover, proposed section 16.1 requires the Attorney-General's consent where a prosecution is to be brought in reliance on Part 2.7 and the conduct constituting the alleged offence occurs wholly in a foreign country and the person charged or to be charged is not of Australian nationality. It is intended that, in deciding in his discretion whether to give consent, the Attorney-General will have regard to considerations of international law, comity and practice, any prosecution action that is being or might be taken in another country, and other public interest considerations bearing on the particular case.

***Proposed section 131.2 - Special rules about the meaning of dishonesty***

76. As mentioned above, there are a number of interpretative rules that go with the offence of theft. The first concerns the meaning of dishonesty. The general meaning is defined at proposed section 130.3.

77. The first of the special rules for theft are that a person's appropriation of property belonging to another is taken not to be dishonest if done in the belief the other cannot be discovered (proposed subsection 131.2(1)). This is a longstanding rule that operates well in relation to abandoned property. If it did not exist others would not even be able to remove junk dumped near their land. There is no reason why the rule should not operate in relation to property owned or co-owned by the Commonwealth. However, subsection 131.2(2) provides an exception to the rule in relation to trustees or personal representatives. There should be no incentive for them to benefit from

losing the person to whom the property belongs. The rule is the same as that provided in subsections 15.2(1) and (2) of the Model Criminal Code.

78. Another special rule is that a person's appropriation of property belonging to another may be dishonest even if the person or another is willing to pay for the property (proposed subsection 131.2(3)). To do otherwise would undermine the offence.

79. It should also be noted that there is a general claim of right defence at section 9.5 of the *Criminal Code*. The defence will apply in relation to any property offence if at the time of the conduct constituting the offence the person is under a mistaken belief about a proprietary or possessory right and the existence of that right would have negated any fault element.

### ***Proposed section 131.3 - Appropriation of property***

80. This is a critical interpretative provision for the theft offence and closely follows section 15.3 of the Model Criminal Code. The UK *Theft Act* (which is the inspiration for the Model Criminal Code theft provisions) has a definition of appropriation which treats "any assumption of the rights of the owner" as an appropriation. By contrast, the common law equivalent of this element of theft required a taking and carrying away without the consent of the owner. The *Theft Act* term is more abstract on its face than the common law. It is possible to assume the rights of an owner in relation to goods without touching them: to point to someone else's car and offer to sell it would amount to an appropriation. The true breadth of the term has been the subject of considerable controversy.

81. The first view is that "appropriates" is the equivalent of the old term "convert" and has as its natural meaning a one-sided transaction which is *adverse* to the owner. This was the view expressed by the House of Lords in *Morris* in 1984 [1984] AC 320. But *Morris* conflicted with the second view expressed in 1972 in another House of Lords case, *Lawrence* [1972] AC 626. The majority held that an appropriation could occur even if the owner consented. In 1992 in *Gomez* [1992] 3 WLR 1067, the majority of the House of Lords resolved the conflict in favour of the second view. It overturned the *Morris* view and held that appropriation is neutral and not to be read as importing the common law concept of "without the consent of the owner" (a phrase which the majority found to have been deliberately omitted from the new definition of

theft). There was a powerful dissent from Lord Lowry. *Gomez* has been subjected to strong criticism. For example, the leading commentator on the law of theft, (Smith, *The Law of Theft* (7th ed, 1993), paragraph 12-13) has commented:

“The majority gave scant consideration to the merits of the two views [ie *Lawrence* versus *Morris*]. The proposition in *Lawrence* was *ratio decidendi*, that in *Morris obiter dictum*, and that was good enough for the majority. They thought it would serve no useful purpose to seek to construe the Act by reference to the CLRC Report. Lord Lowry, who did refer to the Report, demonstrated convincingly in his dissenting speech that it was the dictum in *Morris* which truly represented the intention of the CLRC and therefore that of the Parliament which enacted the CLRC’s proposals with no material change. . . Sadly only Lord Lowry was prepared to give these words their ordinary meaning and the decision of the majority excludes it.”

82. The consequences of the distinction can be demonstrated in an example based on *Lawrence*. Say a taxi driver deceives a foreign traveller by telling her that the fare for a journey is \$50. In fact it is \$20. The customer hands the driver her purse and allows the driver to take whatever money is necessary. The driver takes \$50. On the neutral view of appropriation, the driver could be convicted of either theft (despite the fact that the victim consented to the defendant taking the money) or obtaining property by deception. On the “adverse interference” approach, the defendant could only be convicted of obtaining property by deception: because of the victim's consent, the taking would not amount to an appropriation.

83. Those developing the Model Criminal Code faced a choice between these views. The choice has conceptual and practical consequences. First, if virtually any dealing with goods counts as an appropriation, the more work dishonesty has to do to distinguish theft from innocent transactions. Although considerable reliance is placed on the concept of dishonesty - especially for the difficult cases - it is obviously preferable to rely on more clear-cut criteria where possible. Second, there was strong support in consultation for retaining the distinction between theft and fraud. The effect of *Gomez* is to collapse the distinction between theft and fraud because all obtaining by deception cases will also be theft. This is because under *Gomez*, consent is not relevant to appropriation. The Model Criminal Code Officers Committee concluded that this strays too far from the central and commonly-understood meaning of theft as involving non-consensual takings. So far as possible, the law should reflect common understandings of offences as basic as theft and fraud.

84. The practical consequences of maintaining the distinction between theft and fraud in cases like *Lawrence* and *Gomez* are not great whichever way it is resolved. The penalty for both offences is the same. If all deception cases are charged as obtaining by deception, there will be no difficulty in obtaining a conviction. The difficulty in *Lawrence* and *Gomez* arose because the prosecution made a mistake and charged the defendant with theft instead of fraud and there were no provisions for obtaining alternative verdicts. If the defendant had been charged with obtaining by deception there would have been no difficulty in obtaining a conviction. Under proposed subsection 131.3(1), if the defendant were charged with theft in a case where the property had been obtained by deception, the result would be not guilty of theft because the victim consented to the appropriation. This consent is not vitiated by fraud. This difficulty is cured by making obtaining by deception an alternative verdict to theft. The consultation on the Model Criminal Code favoured this solution but suggested that it should also work in reverse so that if fraud was wrongly charged it would also be possible to convict of theft (as in proposed subsections 134.1(15) and (16)).

85. The issue of consent in cases where there are multiple owners is also important. Proposed subsection 131.3(1) provides that *anyone* to whom the property belongs consents to having their rights assumed (“...without the consent of *a* person to whom it belongs...”). Thus in cases where an object belongs to a number of people - as can be the case under the proposed provisions - if the consent of any one of them is missing at the time of the assumption of their rights, an appropriation may occur. That does not mean that the defendant is automatically guilty of theft. For example, if the defendant did not know of the other owner’s interest, then the defendant lacks the fault element for an appropriation (knowledge about the lack of consent) and is not dishonest. On the other hand, a defendant who knows full well of the other owner’s interest and dishonestly proceeds to assume those rights cannot rely on the consent of another co-owner to deny the appropriation. Assuming the presence of the other elements, such a defendant will be guilty of theft. So where one co-owner of a painting sells it to the defendant, and the defendant knows that the other co-owner does not and would not consent to the sale, the defendant cannot rely on the consent of the one co-owner to deny appropriation.

86. Subsection 131.3(1) also addresses the nature of the rights of the owner which are protected - ownership, possession or control of property. It is important that it should not be too vague.

87. Proposed subsection 131.3(2) deals with bona fide purchasers and recipients. It covers cases where a person innocently acquires property (eg goods) and subsequently discovers that the person from whom he or she received the goods did not have the right to dispose of them, usually because the goods were stolen. For example, a person sells a car to the defendant who was acting in good faith. Later the defendant finds out that the first person had stolen the car, but the defendant decides to keep it. Despite the fact of payment, this is either dishonest or liable to be regarded as dishonest and the other elements of the offence of theft are present. The defendant could not rely on the consent of the thief because he or she does not have the consent of the owner as required by proposed subsections 131.3(1) and 131.3(10). Proposed subsection 131.3(2) prevents this from being theft by providing it is not an appropriation. This also closely follows the relevant provisions of the Model Criminal Code (subsections 15.3(2)).

88. Under the UK *Theft Act*, where the defendant was *given* the car, the analogous section to subsection 131.3(2) does not operate because it only protects transactions which were “for value”. Both are situations where the defendant was honest at the point he or she acquired the goods and the culpability derives from failure to return the goods. As in other situations where the defendant discovers that goods belong to another subsequent to acquiring them (where there is a mistake), the fact that the defendant did not initiate a dishonest transaction distinguishes him or her from the thief or the fraudster. Although the fact that the defendant paid for the goods in the one case but not the other makes some difference to the assessment, payment is not enough of a difference to warrant conviction for theft in one case but not the other. They are also substantially different from the case of a person in possession of goods on some basis of trust (eg an employee or a bailee) who makes off with the goods. In both these cases, the defendant initially believed he or she had become the owner of the goods. It was concluded that as a matter of consistency, the section should be widened slightly to include the *bona fide* recipient of a gift.

89. However, the proposed exemption is limited. If the defendant sold the car to another, he or she would be guilty of obtaining the purchase price by deception (see the proposed fraud offences at sections 134.1 and 134.2. This is because the defendant does not obtain ownership of the car and the real owner could claim it back from the defendant or anyone to whom the defendant sold it.

***Proposed section 131.4 - Theft of land or things forming part of land***

90. Proposed section 131.4 is much the same as section 15.4 of the Model Criminal Code and follows the traditional approach on the question of theft of land. The one

difference is that the proposed provision does not refer directly to tenancy but it is covered by subparagraph 131.4(1)(b)(ii) which is more general but reflects the same principle. Generally, under the existing law it is not possible to commit theft in relation to land or things forming part of the land and severed from it by the person. The exceptions are where:

- (a) a trustee appropriates land by dealing with it in breach of trust;
- (b) a person who is not in possession of the land severs something forming part of it;
- (c) a tenant steals a fixture.

91. These restrictions appear to be based on the concept of theft as involving things that can be taken and carried away. Land can be the subject of the separate fraud offence and that is generally the more appropriate way of dealing with dishonesty in relation to land. The Model Criminal Code Officers Committee canvassed in consultation as to whether land should be the subject of theft, for example where a person moves a fence in order to appropriate another person's land. While many favoured extending the provisions to include land, to do so may trespass on areas better dealt with by the civil land laws. Indeed if the defendant adversely possessed the land for 15 years, he or she would become its owner. It would seem inconsistent if the defendant could also be guilty of theft for the same conduct. There are no demonstrated problems justifying the proposed extension. The Committee concluded that although including land may appeal to logic, there were uncertainties and the benefits were hard to identify.



### ***Proposed section 131.5 - Trust property***

92. Proposed section 131.5 is the equivalent of subsection 15.5(1) of the Model Criminal Code. It has been placed in a separate section to improve reader awareness of the provision.

93. Proposed subsection 131.5(1) provides that property also belongs to people who have any proprietary right or interest (not being an equitable interest arising either from an agreement to transfer or grant an interest, or from a constructive trust). One example of the effect of this is that a trustee (who is the legal owner of the trust property) who dishonestly appropriates trust property will be guilty of theft from the beneficiaries (who do not *own* the trust property but do have an equitable proprietary interest in the trust property). Where there is no specific beneficiary (eg in the case of a trust for general public purposes), proposed subsection 131.5(1) makes this theft.

94. However, equitable interests arising from agreements to transfer or grant an interest (eg to sell land or shares) are excluded because of the definitions of ‘property’ and what is meant by ‘property belonging to a person’ (proposed sections 130.1 and 130.2). These equitable interests arise by the operation of legal rules but only in relation to contracts which are specifically enforceable. For example, the defendant agrees to sell a valuable painting to the victim. Before the sale goes ahead and the painting is transferred, the defendant gets a better offer and sells it to X. In general, contracts agreeing to sell goods are not specifically enforceable but they are when the goods have special qualities. Hence, a contract like the one in the example would be specifically enforceable and the victim would have an equitable interest in the painting. However, the framers of the UK *Theft Act* judged that this conduct should not be theft and that civil remedies were sufficient. The qualification in proposed section 131.2 means that this is not property belonging to another and therefore not theft.

95. Similar considerations arise in relation to constructive trusts which are also excluded by proposed section 131.2. In an English case, the proprietor of a tied pub operated it on the basis that he would only sell the brewery’s beer. In fact he also sold some of his own home brew. He was charged with theft on the basis of an argument that he was a constructive trustee of the proceeds of the sale of the home brew and that the brewery had an equitable proprietary interest in the proceeds. The Court of Appeal found that no constructive trust arose in these circumstances and, in any event, rejected the notion that a person should be guilty of theft based on the operation of such intricate legal concepts which strayed so far from ordinary conceptions of theft. The same point applies to constructive trusts generally, such as have been found to

arise in the case of mistaken overpayment. Hence, proposed section 131.2 extends the qualification contained in the UK *Theft Act* so that equitable interests arising from constructive trusts do not fall within the definition of property belonging to another. Constructive trusts - based on equitable notions of unconscionability - may be appropriate for recovery in civil actions, but they stray too far from the common conception of theft and the much more culpable sort of dishonesty involved in theft to form part of the definition of the offence of theft. Their ambit is uncertain and likely to expand. To attach the boundaries of theft to such an uncertain concept would offend the important principle that the criminal law should be knowable in advance. It would also strain the common understanding of what is meant by theft.

96. Proposed subsection 131.5(2) makes it clear that an intention to defeat a trust is an intention to permanently deprive for the purposes of the offence. This also follows subsection 15.5(1) of the Model Criminal Code.

***Proposed section 131.6 - Obligation to deal with property in a particular way***

97. Proposed section 131.6 follows subsection 15.5(2) of the Model Criminal Code. The *general* definition of property belonging to another contained in proposed section 130.2 is supplemented for the purposes of the offence of theft by proposed section 131.6. So, for example, if the defendant receives money from another person and is under an obligation (this must be a legal obligation) to retain and deal with that money in a particular way but the defendant deals with it another way, the money is said to belong to the victim. The cases have held that the obligation must be legal rather than moral. This is made explicit in proposed section 131.6. The application of this provision will depend very much on the facts of the transaction. The most difficult cases involve cash deposits. The section only applies if the particular cash is to be used, for example for the purchase of tickets. If the cash is to be mixed with the general cash of the organisation and there is a liability to provide tickets or a refund at a later time, then the cash ceases to belong to another. There is a debt to the depositor and the situation is dealt with on the normal principles relating to debtors and creditors.

***Proposed section 131.7 - Property obtained because of fundamental mistake***

98. Proposed section 131.7 follows subsections 15.5(3) and (4) of the Model Criminal Code. It also includes an additional provision that makes it clear money includes cheques, negotiable instruments and electronic funds transfers.

99. Proposed section 131.7 deals with the problem when the victim makes a *fundamental* mistake and gives the defendant some property; the defendant does

nothing to induce the mistake. Fundamental mistakes are mistakes about the identity of the defendant, the essential nature of the property, or the quantity of the goods (but not the amount of money). The problem is whether the victim's mistake is so fundamental that it vitiates the consent to the defendant appropriating the property and the victim's intention to transfer ownership of the property to the defendant. Other sorts of non-fundamental mistakes (eg the year of manufacture of a car) do not give rise to this problem. These mistakes do not vitiate consent or intent to pass ownership and the defendant does not incur any criminal liability. However, in the case of fundamental mistakes, if the defendant decides to keep the goods the question is whether he or she should be guilty of theft.

100. There are two situations relating to fundamental mistakes: (i) where the defendant knows of the mistake at the time ("T1") of transfer and decides to keep the goods; and (ii) where the defendant does not know of the mistake at T1 but discovers it later ("T2") and then decides to keep the goods. At common law in England, the defendant was guilty of theft in both T1 and T2 situations (*Middleton* (1873) LR 2 CCR 38).

101. The more difficult cases arise when the defendant only finds out about the mistake later at T2 and then the defendant decides to keep the property. This came up in the case of *Ashwell* (1885) 16 QBD 190. The prevailing view was that the taking did not occur at T1 when a valuable coin was handed over. Their view was that the appropriation did not occur until T2, when the defendant discovered what the coin really was, namely a sovereign. At T2, on the authority of *Middleton*, the mistake as to the nature of the subject matter meant that there was no consent to the taking and that ownership had not passed (ie it was still property belonging to another). The opposing view was as follows. The taking occurred at T1, was with consent and occurred at a time when the defendant lacked fraudulent intent. At T2, when the intent became fraudulent, there was no taking without consent and ownership of the property had passed to the defendant.

102. In Australia, the majority judges in the High Court case of *Ilich* (1987) 162 CLR 110 expressed their disapproval of the reasoning in *Middleton* and *Ashwell*. *Ilich* was a decision on the WA Code but in the course of the decision, the majority indicated its agreement with the reasoning in *Potisk* (1973) 6 SASR 389 (a SA Full Court decision on common law larceny which had also rejected the English cases). In *Ilich*, the High Court ruled that cases where property passes because of a non-fundamental mistake are not theft under the Codes because at the time of the conversion (ie T2) the property belongs to the defendant. The reasoning of the High Court was that at T1, the owner knew the identity of the payee and the nature of what he was transferring, namely

money. The normal presumption with money is that ownership passes with possession. Consent to the taking is not required under the WA Code, so that issue did not arise. At T2, the time of the “conversion”, ownership of the \$500 in question had passed to Ilich and therefore it was not property belonging to another.

103. Under the UK *Theft Act*, fundamental and non-fundamental mistakes can count as theft, even at T2. The *Theft Act* approach in this type of case is to say that the appropriation occurs at the time the defendant dishonestly decides to keep the money. The question is whether the property belongs to another at this point. There are a variety of routes to the conclusion that it does. This is because the UK *Theft Act* has such a wide definition of property belonging to another: it includes any case where the victim has a proprietary right or interest or is under a legal obligation to return the property.

104. First, in cases of fundamental mistakes as to the identity of the transferee, the nature of the subject matter or the quantity of the goods, the intent to pass ownership is vitiated by the mistake and hence the property still belongs to the victim. If the defendant is aware of the mistake at either T1 or T2 and dishonestly decides to appropriate the property, he or she will be guilty of theft.

105. Second, English cases have held that where certain sorts of mistakes are made, although legal ownership of the property passes, there is a constructive trust and the transferor retains an equitable proprietary interest in the property transferred. Thus, the property still belongs to another under s5(1) of the UK *Theft Act* because the person has a “proprietary right or interest” in it. The type of mistake here is not so fundamental as to prevent ownership passing but must be serious enough that it would be unconscionable for the defendant to retain the property; hence he or she becomes a constructive trustee for the victim who, as beneficiary, has an equitable proprietary interest in the property. Exactly when this is so will vary according to the essentials of the transaction, but it is wider than mistakes as to the identity of the transferee or the nature of the subject matter. In England, the Court of Appeal has cast doubt on the notion of using constructive trusts as a basis for the law of theft. For the reasons outlined above, proposed section 131.2 specifically excludes constructive trusts from the ambit of property belonging to another and hence from the ambit of theft. Hence, this route to a conviction for theft is not open under the proposed provisions.

106. The third category of cases produces the most difficult problem. These are cases of non-fundamental mistake where the ownership does pass - such as in a case where a \$200 debt is mistakenly paid twice. Under the *Theft Act*, this will be theft if the defendant is under a legal obligation to repay the money. This is because s5(4) of the

UK *Theft Act* deems the property to belong to the victim if the defendant receives the money by another's mistake and is under a legal obligation to make restoration in whole or in part of the property or its proceeds.

107. Whether the defendant is under such an obligation is a matter of civil law and may include, among other things, decisions about the law of quasi-contract and whether a contract is void or voidable. If the contract is voidable, it may be argued that the defendant is not under a legal obligation to return the property until the contract is avoided. In many of these cases, the intricacies of the civil law are such that the defendant may be able to argue that he or she is not dishonest because he or she did not know that keeping the property was dishonest. However, defendants who take advantage of other's mistakes or who make secret profits may be regarded as dishonest. But that does not necessarily mean that such people are guilty of theft. Dishonesty is an important element of the law of theft and fraud but it is not the only element. Leaving such cases to be determined solely by reference to the concept of dishonesty avoids the basic question about whether the intricacies of the civil law appropriately mark out the boundary of the physical elements of theft.

108. Proposed section 131.7 is therefore a rejection of the uncertain ambit of constructive trusts for the purpose of extending the boundaries of when property belongs to another for the purposes of the law of theft.

109. There are strong arguments that the mistake cases - particularly the T2 cases - should not be treated as theft but as matters involving civil liability. The victim has brought about his or her own misfortune and it is unduly harsh to cast the onus of rectifying the situation onto the defendant on pain of committing theft. Thus, while the victim in *Ilich* is certainly entitled to sue to recover his money, he should not be able to have the other person arrested and prosecuted for theft, any more than any other creditor could if the debtor spent money on a holiday rather than paying the creditor's account. In some cases these overpayments will arise because the victim has chosen to set up business arrangements which are prone to error because this is cheaper than setting up a less error-prone system. Although the defendant may be under an obligation to return the property, the culpability is of a much less serious sort than theft or fraud where the defendant initiates a dishonest transaction. In these cases, the defendant has had temptation thrust upon him or her. To make a defendant like *Ilich*, or the recipient of a social security overpayment, guilty of theft in these T2 cases is to cast a duty to act in relation to innocently acquired property on pain of committing theft.

110. The potential width of this sort of liability is also of concern. In theory, it turns civil obligations into criminal ones where hitherto that has not been the case. It may be that all sorts of business transactions involving mistakes would now carry potential criminal liability. The 1995 Model Criminal Code report mentions the following examples of cases which now would be brought within the law of theft. (1) A purchaser pays a vendor for goods; neither realised that the purchaser already owned them. The vendor refuses to repay the money. (2) An insurer pays money to an insured for goods that both believed to have been destroyed by fire. Subsequently the defendant finds the goods but does not tell the victim. (3) An employer pays a manager a lump sum to terminate her contract. It turns out that breaches of the contract would have entitled the employer to terminate the contract without payment. Neither knew of the breaches at the time of the contract. They subsequently discover this but the employee refuses to repay. The House of Lords and the Court of Appeal in England differed on whether the defendant was under an obligation to repay in the employment case. In all these cases (save the last), the defendant would be civilly liable to give back the money or goods mistakenly given to him or her. The question is whether it is justifiable to impose criminal liability for the offence of theft as well.

111. While the consultation on the Model Criminal Code revealed that opinion was divided on this issue, for the reasons advanced in relation to constructive trusts, it has been concluded that the civil law distinctions - while appropriate to the context of determining civil recovery - are too obscure on the whole to define the boundaries of an offence as serious as theft. It is therefore proposed that it is appropriate to limit the use of the law of mistake to the existing Australian law as stated by the High Court in *Ilich*, subject to the qualifications outlined below. This involves the following rules:

- (a) Mistakes as to the nature of the subject matter or the identity of the transferee will continue to negate the intent to confer ownership (subsections 131.7(1) and (3)). If the defendant knows of this sort of mistake either at T1 or T2, the property still belongs to the victim and the victim will be deemed not to have consented to its appropriation and the defendant will commit theft. (Mistakes as to quantity are not included on the basis that they are not sufficiently fundamental: the person intends to hand over goods of that sort and there is no mistake about the identity of the transferee).
- (b) Other mistakes do not vitiate either the consent to the appropriation or the intention to pass ownership. The defendant does not commit theft if he or she knows of the mistake either at T1 or T2 because the property no longer belongs to another.

- (c) Mistaken overpayments by cash, cheque or direct credit are a special case (subsection 131.7(1) and paragraph 137(3)(b)). Where the defendant is aware of the mistake at the point of transfer (T1), the absence of what may be termed the inertia factor makes this case sufficiently like the finding cases to warrant the offence of theft. This raises a question about when the relevant time is. In a supermarket if the defendant immediately knows the overpayment at the register, this is clearly a T1 situation. On the other hand, in a case like *Ilich*, where the defendant does not become aware of the mistake until some time after transfer, it is clearly a T2 situation. The defendant will not be guilty of theft but the victim would be able to recover the money civilly. Cases where the defendant receives a cheque in the mail are more difficult. In accordance with the reasoning of Kriewaldt J in *Wauchope* that this would not be theft because the defendant did not become aware of the mistake until some time after the drawer intended to convey ownership (ie it is a T2 situation). Mistaken direct credits to bank accounts are similar to cheques. If a bank customer saw the teller mistakenly credit his or her account with \$2000 rather than \$200, and said nothing, that would be theft. In practice, direct credits will overwhelmingly be T2 cases because the defendant will only find out about the mistake some time after the transfer. If there was a fundamental mistake (eg wrong account because of a mistaken identity), the defendant would be liable for theft at T2. If it was a non-fundamental mistake (eg the correct account but the wrong amount), the defendant would not be guilty of theft. The victim would have civil remedies to recover what is in effect a debt.

112. These are fair rules developed after consultation and a thorough review of the relevant case law by the Model Criminal Code Officers Committee.

***Proposed section 131.8 - Property of a corporation sole***

113. Proposed section 131.8 follows subsection 15.5(5) of the Model Criminal Code and preserves ownership for a corporation sole where there is a vacancy in the corporation.

***Proposed section 131.9 - Property belonging to 2 or more persons***

114. Proposed section 131.9 follows subsection 15.5(6) of the Model Criminal Code. It provides that the person to whom property belongs includes all the owners.

***Proposed section 131.10 - Intention to permanently deprive***

115. The proposed theft offence (section 131.1) retains the longstanding common law element of intention to permanently deprive. Proposed section 131.10 provides guidance as to the meaning of intention to permanently deprive and is based on section 15.6 of the Model Criminal Code. There was strong support for the retention of this element of the offence in consultation in recognition of the significant penalty for theft.

116. Proposed section 131.10(1) expands the concept of permanent deprivation by including an intention to treat the property as one's own to dispose of regardless of the rights of the other person. This is a helpful crystallisation of the common law position and judicial interpretations seem to favour that view. “Disposals” and “borrowings” will need to have a quality of permanence about them before the section can be satisfied (eg the defendant melts down the victim's antique bracelet intending to give back the melted silver). Similar points apply to proposed section 110(2) relating to parting with property under conditions which the person may not be able to fulfil. This is treated as an example of disposing of property regardless of the other's rights in terms of proposed section 131.10(1).

***Proposed section 131.11 - General deficiency***

117. Proposed section 131.11 follows section 15.7 of the Model Criminal Code and replaces a similar provision at section 71A of the *Crimes Act 1914*. It is an evidentiary provision which allows the prosecution to prove the defendant guilty of theft even though the prosecution cannot identify the particular sums of money or property taken if the prosecution can prove a general deficiency in the victim's money or property referable to the defendant's conduct. A typical example is where the defendant is an employee and takes small amounts of money from the till over a period of time. This type of provision exists in many jurisdictions.

***Proposed Division 132 - Other property offences***

118. Division 132 contains the theft related offences of receiving, robbery, aggravated robbery, burglary and aggravated burglary, each of which link back to the offence of theft, or in the case of burglary other serious offences. The Division also contains the



lesser offences of making off without payment, going equipped for theft or other property offences, the dishonest taking and retention of property offence.

***Proposed section 132.1 - Receiving***

119. Proposed subsection 132.1(1) contains the elements of the offence of receiving. A person is guilty if the person dishonestly receives stolen property, knowing or believing the property to be stolen. Proposed subsection 132.1(3) provides that property is stolen whether it is ‘original stolen property’ or what is described as ‘tainted property’. Each of those terms are defined with reference to theft (proposed section 131.1) and property fraud (proposed section 134.1). It is the reference to those offences which provide the ‘Commonwealth entity’ element of the *Criminal Code* offence of receiving.

120. The maximum penalty is the same as theft and property fraud - 10 years imprisonment. This is appropriate since it involves much the same type of activity.

121. The proposed offence is based on section 16.8 of the Model Criminal Code, although it is drafted slightly differently. Receiving property belonging to the Commonwealth is an offence under subsection 71(3) of the *Crimes Act 1914*. Like the existing offence of stealing Commonwealth property, the existing receiving offence has a lower penalty (7 years).

122. While both the Gibbs Committee and the Model Criminal Code Officers Committee thought there was scope for eliminating the offence of receiving and relying on theft, there was very strong support in consultation for having a separate offence of receiving. Most considered the ‘receiving’ label corresponded with community understanding of a form of criminality which is different from theft. It is important that where it is appropriate the language of the *Criminal Code* should reflect community understanding.

123. Apart from that reason, receiving is also relevant to the property fraud offence (proposed section 134.1) where the property is obtained by deception. Unlike fraud,

theft does not cover property appropriated with the consent of the owner. There will also be situations where there was uncertainty about whether the property had been stolen or obtained by deception - but certainty that one or the other occurred. There are good reasons for having an offence of receiving.

124. Proposed section 132.1 is a much less complex form of the offence than that contained in the UK *Theft Act*. The *Theft Act* attempts to graft a variety of complicity provisions into the basic receiving offence. It produces a complex and unwieldy offence with overlaps into the law of complicity. Section 132.1 confines itself to receiving. The normal rules of complicity and accessory after the fact apply to those who assist a thief or a receiver.

125. The definition of 'original stolen property' in subsection 132.1(5) covers property, or part of property, appropriated in the course of theft and in the possession and custody of the person who appropriated it. Alternatively it is property in the possession of the person who obtained it in the course of property fraud (proposed section 134.1). This is the equivalent of paragraphs 16.8(2)(a) and (b) of the Model Criminal Code.

126. Proposed subsection 132.1(6) makes it clear that after the property is restored it ceases to be original stolen property for the purposes of the proposed offence. The same is also the case where the person who previously had it ceases to have a right to its restitution. This follows similar provisions in Victoria and the ACT. There is a public interest in encouraging people to return stolen property or to regularise ownership where there is a dispute over the property. This is similar to subsection 16.8(3) of the Model Criminal Code.

127. Proposed subsection 132.1(7) deals with 'tainted property'. The definition ensures that the offence of receiving still attaches to the receiver where stolen property is sold or exchanged. The 'proceeds' of the transaction is defined as 'tainted property' if the receiver still has possession or custody of them whether it derived from theft or property fraud. The aim here is not to make receiving an offence that can continue down a chain of people. To do so would make the offence too open ended. Although the drafting is different, this approach follows subsection 16.8(2)(c) of the Model Criminal Code.

128. Proposed subsection 132.1(8) extends the offence to make it clear that it covers the receipt of funds credited into an account. This additional provision is as a consequence of changes to the property fraud offence (proposed subsections 134.1(9)

and (10)) which clarify the position with respect to money transfers. The money transfer provisions will be dealt with in more detail in the notes on proposed section 134.1. However it should be noted that paragraph 132.1(8)(b) is included to provide for an equivalent to subsection 132.1(6) in the context of money transfers.

129. Proposed subsections 132.1(9) and (10) includes alternative verdicts provisions which are quite different from subsection 16.8(4) of the Model Criminal Code. It enables the trier of fact (a court or jury) to conclude the person is guilty of theft or property fraud rather than receiving, or vice versa. There was concern that the subsection 16.8(4) could lead to an uncomfortable result because it does not require the jury to agree on which charge should prevail - if they believe the person is guilty of one of the offences but cannot agree on which, then the person is to be convicted of theft. This means that if the trier of fact is a jury and half of the members think the person has committed theft, the other half receiving, it suggests there is an unhealthy level of uncertainty. There really should be agreement as to whether the person committed one offence or the other. This is particularly important in the Commonwealth context where there are Constitutional guarantees concerning trial by jury. Although the approach of the Model Criminal Code is unlikely to be unsafe because the offences are so closely related, it is important that the legislation is not seen to be watering down the Constitutional guarantees. If the legislature agrees with this change, the Standing Committee of Attorneys-General can be asked to consider amending the Model Criminal Code to reflect proposed subsections 132.1(9) and (10).

130. Proposed subsection 132.1(11) is a transitional provision designed to ensure that property illegally appropriated or obtained contrary to Commonwealth law before the commencement of the legislation will be caught by the proposed offence. The amendment recognises that the existing offences vary from the proposed offences and is therefore carefully drafted to ensure there is no retrospectivity.

### ***Proposed section 132.2 - Robbery***

131. Proposed section 132.2 is relatively straightforward and follows section 16.1 of the Model Criminal Code. A person is guilty of the offence of robbery if the person commits theft (which is of course theft against a Commonwealth entity) and proximate to the theft the person uses or threatens to use force on another person with the intent to commit the theft or to escape. Due to subsection 131.1(1) it would not be necessary for the prosecution to prove the person knew that he or she was stealing from a Commonwealth entity.

132. The proposed maximum penalty is 15 years imprisonment. This is higher than the 12 1/2 year penalty proposed in the Model Criminal Code but reflects growing community concern about the prevalence of this type of crime and the fact it involves violent conduct.

133. There is currently no Commonwealth robbery offence. If there is a robbery involving the Commonwealth, it relies on State or Territory law. The Gibbs Committee favoured retaining Commonwealth theft and fraud offences because they are of “direct and real concern to the Commonwealth”, noting that while the AFP has authority to investigate State and Territory offences, the prosecution decision and the priority given to these matters would remain with the State and Territory authorities. The aggravated offences like robbery and burglary should be of concern to the Commonwealth for the same reasons. Although robbery and burglary are not commonly committed against the Commonwealth entities, the same can be said in relation to many other offences that are covered by Commonwealth legislation.

134. To have the aggravated offences and the general offences under the law of different jurisdictions would be untidy and fragment what should be an integrated system of offences. Robbery is intimately connected to the scope of theft – it is theft involving the use of force or a threat to use force. It would be clumsy and confusing to charge a person for a Commonwealth theft offence which has different concepts from an accompanying charge of robbery based on a completely different State theft offence. While it is possible to overcome some of the problems with this by providing for the concurrent operation of Commonwealth and State offences, it is desirable that the Commonwealth provide for its own complete scheme of offences. When the prosecution uses the Commonwealth law it will have a complete set of offences. There will be no further need for mixing the offences.

135. For the convenience of State and Territory authorities, proposed section 261.1 provides it is not intended to exclude or limit the operation of State or Territory laws. This will overcome potential operational difficulties in some circumstances (such as where the robbery is part of a series involving non-Commonwealth premises) and will be necessary to negate any inference that the Commonwealth offences are

exhaustive and exclusive (*Queen v Loewenthal; ex parte Blacklock* (1974) 131 CLR 338). This follows the approach at section 75 of the *Trade Practices Act 1974* which was upheld in the High Court in *The Queen v Credit Tribunal; ex parte General Motors Acceptance Corporation* (1976) 137 CLR 545 at 563 and section 76F of the *Crimes Act 1914* (which achieves a similar outcome in relation to computer offences).

***Proposed section 132.3 - Aggravated robbery***

136. Proposed section 132.3 contains a separate more serious offence where a robbery is committed in the company of others or with an offensive weapon. This is similar to section 16.2 of the Model Criminal Code and has the same maximum penalty of 20 years imprisonment.

137. Proposed subsection 132.3(3) provides for a definition of ‘offensive weapon’. This term was not defined in the Model Criminal Code. It has been defined here to take into account the particularly frightening practice of threatening people with syringes.

***Proposed section 132.4 - Burglary***

138. Proposed section 132.4 contains the burglary offences. There is more to this provision than section 16.3 of the Model Criminal Code because of the peculiarities of Commonwealth jurisdiction. However, the substance of the offence is much the same.

139. Subsection 132.4(1) provides a person is guilty of the offence of burglary if the person enters, or remains in, a building as a trespasser with intent to commit theft in the building (which is of course in this Bill theft against a Commonwealth entity). Due to the cross reference to subsection 131.1(1) (‘theft’) it would not be necessary for the prosecution to prove the person knew the person was stealing from a Commonwealth entity.

140. The maximum penalty of 13 years imprisonment is less than robbery because the basic offence does not involve violent conduct, but it is more than theft because it involves trespassing in a building.

141. Subsection 132.4(2) provides a person is guilty of the offence of burglary if he or she enters, or remains in a building as a trespasser with intent to commit an offence in the building which is against the Commonwealth law and involves causing harm to another or damage to property. The offence must be one which is punishable by 5 or more years imprisonment. Subsection 132.4(3) provides it is not necessary to prove the person knew the offence was punishable by imprisonment for 5 or more years (few

people would know the penalty). The penalty is a maximum of 13 years imprisonment.

142. Subsection 132.4(6) provides for a similar offence with the same penalty, but one where it is a building owned or occupied by a Commonwealth entity and the relevant offence is against the law of the Commonwealth, State or Territory. In this case subsection 132.4(7) provides it is not necessary to prove the person knew the offence was punishable by imprisonment for 5 or more years or due to subsection 132.4(8) that the building is owned or occupied by the Commonwealth. Many people do not have an appreciation of the differences between Commonwealth, State and Territory functions and legislative responsibilities.

143. Subsection 132.4(10) follows subsection 16.3(2) by providing that a person is not a trespasser just because the person is permitted to enter or remain in the building for a purpose that is not the persons intended purpose or because of deception. In those circumstances it would only be appropriate to charge the person with theft. Burglary is all about obtaining entry without permission. The person would of course be a trespasser if he or she gained entry for a specific period and then stayed on longer. A theft in those circumstances would be burglary.

144. Finally, proposed subsection 132.4(12) defines building to include part of a building, a mobile home or caravan or other structures adapted for residential purposes. This closely follows subsection 16.3(3) of the Model Criminal Code and is appropriate in the Commonwealth context. Commonwealth entities do have mobile and fixed residential accommodation for staff which requires the protection provided for by this Bill.

### ***Proposed section 132.5 - Aggravated burglary***

145. Proposed section 132.5 contains a separate more serious offence where a burglary is committed in the company of others or with an offensive weapon. This is similar to section 16.4 of the Model Criminal Code but has a slightly higher maximum penalty of 17 years imprisonment (rather than 15 years). The penalty is less than aggravated robbery (20 years) as it can be committed in the absence of other people, while robbery involves using or threatening force. If that occurs, the charge should be aggravated robbery.

146. Proposed subsection 132.5(3) provides for a definition of 'offensive weapon'. This term was not defined in the Model Criminal Code. It has been defined here to take into account the particularly frightening practice of threatening people with syringes.

***Proposed section 132.6 - Making off without payment***

147. The offence in proposed section 132.6 is necessary where ownership of property passes to the defendant before he or she decides to dishonestly appropriate it (eg filling up a car with petrol and deciding to leave without paying). The defendant has not committed theft, as the dishonest intention was not formed until *after* the defendant has taken the property and ownership has passed. There is also no deception because the defendant merely leaves without paying and so the obtaining property or financial advantage by deception offences do not apply either. The offence also applies to services. The offence is based on section 16.6 of the Model Criminal Code. It has a place in Commonwealth law because Commonwealth entities now often have shop-front agencies which sell valuable items.

148. As with the UK and ACT, the penalty for making off is substantially lower than theft (2 years imprisonment) in recognition of the fact that it does not contain all the elements of theft and is less culpable conduct.

***Proposed section 132.7 - Going equipped for theft or a property offence***

149. Proposed section 132.7 contains another lesser theft related offence which, for completeness, should accompany theft, robbery, burglary and property fraud. It is a preparatory offence which can be committed well before it can be said that an attempted theft or burglary offence has occurred. Although it has been argued that the law should be restricted to attempt, this offence has a long history and where it can be proved from the nature of the article or admissions that the defendant had the article in order to commit theft then offence will be useful. As it is a preparatory offence the maximum penalty is lower than the other theft related offences – 3 years imprisonment. The offence closely follows section 16.7 of the Model Criminal Code.

***Proposed section 132.8 - Dishonest taking or retention of property***

150. Proposed section 132.8 contains the final theft related offence. It is based on section 16.5 of the Model Criminal Code which deals with the dishonest taking of motor vehicles. In the Commonwealth context the problem of people taking motor vehicles is probably not as much a problem as people taking equipment, computers and other such items because of the significant number of assets possessed by Commonwealth entities and the size of their work places.

151. Under proposed section 132.8 there is no need to prove intention to permanently deprive so the maximum penalty for this offence is significantly less than theft - 2 years imprisonment. The offence will provide for a replacement of section 30 of the *Crimes Act 1914* which although favoured by the Gibbs Committee, is a very broad offence which could cover very minor infringements. It is proposed at paragraphs 132.8(1)(a) and (2)(b) that the offence should only cover items of significance.

152. Of course, improper disposal or misapplication of the property would amount to theft. Theft covers any person who dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it (proposed sections 131.1(1) and 131.3).



***Proposed section 132.9 - Geographical jurisdiction***

153. For the same reasons as indicated above with theft, these offences should have category D extended geographical jurisdiction.

***Proposed Part 7.3 - Fraudulent Conduct***

154. Proposed Part 7.3 contains the fraud and fraud related offences. These include two fraud offences: obtaining property by deception (property fraud) and obtaining a financial advantage by deception (financial fraud); a general dishonesty offence (which has a lower penalty); conspiracy to defraud; organised fraud; and lesser misleading statement and information and an obtaining financial advantage offences. This part has more offences than the equivalent part of the Model Criminal Code because it is proposed that the *Criminal Code* should be used to centralise all fraud related offences together - not only the serious offences. The proposed offences in this part will enable the repeal of scores of Commonwealth offences which duplicate each other and should be standardised. This was recommended by the Gibbs Committee in 1990 and is part of the Government's 'statute stocktake' initiative which is designed to simplify and reduce the size of the statute book.

***Proposed Division 133, section 133.1 - Preliminary - definitions***

155. Proposed section 133.1 contains some definitions which are exclusive to Part 7.3.

156. The definition of ***account*** is included to provide assistance with the scope of the proposed provisions in relation to money transfers which are covered by the property fraud offence (proposed subsections 134.1(9) and (10)). These will be discussed further below.

157. The definition of ***deception*** is critical to the two fraud offences (proposed sections 134.1 and 134.2). The requirement to prove 'deception' distinguishes these two serious offences (with maximum penalties of 10 years imprisonment) from the less serious offences. The definition is very similar to the one at section 17.1 of the Model Criminal Code except that it makes the fault elements with respect to the deception more explicit. The deception may be intentional or reckless. This accords with the intentions of the Model Criminal Code Officers Committee as explained in their 1995 report on this topic and the existing UK *Theft Act*. The definition also brings the law on fraud up to date by taking into account the deception of computers, machines and electronic devices. This aspect has been drafted a little more broadly to make the Bill less dependent on existing technology. The existing *Crimes Act 1914*

fraud provisions were not developed with an eye to computer technology. This is particularly important now that Government does much of its business electronically.

***Proposed Division 134 - Obtaining property or a financial advantage by deception***

158. Proposed Division 134 contains the two central fraud offences based on the offences at sections 17.2 and 17.3 of the Model Criminal Code.

***Proposed section 134.1 - Obtaining property by deception***

159. Proposed section 134.1 is the property fraud offence. This offence is separate from obtaining a financial advantage by deception offence (proposed section 134.2) because it shares concepts with the theft offence (proposed section 131.1). A person is guilty if the person, by a deception, dishonestly obtains property belonging to another with the intention of permanently depriving the other of the property. Some of these concepts have been explained in the context of the theft offence and will not be repeated again here (for example, dishonesty). The maximum penalty of 10 years imprisonment is the same as theft and the obtaining a financial advantage offence, and is consistent with existing State and Territory offences. This is appropriate as it includes similar conduct. The offence is based on section 17.2 of the Model Criminal Code.

160. There is no equivalent proposed section 134.1 in the *Crimes Act 1914*. The main existing offence, section 29D, has the same penalty but is unacceptably broad in its coverage. It is proposed that section 29D be replaced by the two fraud offences for more serious conduct involving a deception, and a lesser general dishonesty offence with a lower penalty of 5 years imprisonment. This merely reflects the reality of how courts are likely to sentence under section 29D. Where deception is not proven, the sentence will invariably be lower.

161. Like the other offences, proposed subsection 134.1(2) makes it clear the prosecution does not have to prove the defendant knew he or she obtaining property from a Commonwealth entity.

162. The word “by” in the phrase, “by any deception”, requires that there be a causal link between the deception and the obtaining. The fact that the defendant practised a deception will not be enough if that deception was not the cause of the obtaining. If the defendant falsely represented he or she was starving in order to obtain food from another person but, unbeknown to the defendant, that person was giving food away to anyone as part of a sales promotion, the defendant's deception would not have been the

cause of obtaining the food. However, the person may be guilty of attempting the offence (under section 11.1 of the *Criminal Code*).

163. A causation issue arises in cases involving credit cards where the merchant is presented with a credit card without authorisation. Apart from cases in which the merchant and the person using the card are partners in fraud, presentation of the card is always an implied representation that the person is an authorised user. Cases on the corresponding UK *Theft Act* provision accept that unauthorised use of a credit card is an implied deception which induces the other person to part with the goods or services. It has been objected that the deception does not induce the transaction in these cases, since the merchant is assured of payment in any event. But English courts have taken a more robust view of the law, holding that the implied deception does induce the transfer because the transaction will not proceed if the merchant knew for certain at use of the card was authorised. This has been accepted as a sufficient causal connection by English courts (*Charles* [1977] AC 177 and *Lambie* [1982] AC 449). Australian courts can adopt the same course.

164. The definition of obtaining at proposed subsection 134.1(3) is wider than the definition of appropriation adopted in proposed section 131.3 in that it does not involve any absence of consent. The deception causes the defendant to consent to the transfer. This offence is wider than the common law offence of obtaining by false pretences which only applied to obtaining *ownership*. Proposed subsection 134.1(3) applies to obtaining ownership, possession or control of property. It includes obtaining for another or enabling another to obtain or retain. So where the defendant deceives the victim into giving goods to another person, the defendant is guilty. The definition also takes into account money transfers. Subsection 134.1(4) is included to make it clear that the general definition of obtaining in proposed section 130.1 does not apply. Subsection 134.1(5) makes it clear that willingness to pay is irrelevant to this offence.

165. Proposed subsection 134.1(6) provides that intention to permanently deprive is an element for this offence as it is for theft. The extended meanings of intent to permanently deprive set out proposed section 131.10 are for the convenience of readers repeated again in this offence at proposed subsections 134.1(6), (7) and (8). The requirement is met if the defendant intends to treat the property as his or her own to deal with, or keeps it in circumstances equivalent to a permanent deprivation, or parts with it on conditions he or she may not be able to comply with. An intention to return the equivalent quantity of a fungible (an interchangeable commodity) is a sufficient fault element for the offence. A fraudster who obtains money by deception with the intention of replying an equivalent amount at a later date will be convicted of

the offence so long as the court is satisfied that the money was obtained dishonestly. The intention to return an equivalent sum is no answer to the charge.

166. Proposed subsections 134.1(9) to (11) extend the offence of obtaining property by deception to cover fraudulently induced electronic money transfers. In these cases, a deception by the offender induces an electronic transfer of funds from the victim's account to an account held by the defendant or another person. The proposed provisions are intended to outflank the decision of the House of Lords in *Preddy* [1996] 3 WLR 255, which held that fraudulent inducement of an electronic money transfer did not fall within the scope of the equivalent to this offence.

167. The problem which concerned the House of Lords arises when A, a fraudster, deceives in order to induce an electronic transfer of funds from the account of B to an account held by A or a third person. Though most people speak of 'having money in the bank', the money has no tangible existence. If the account is in credit, the bank is merely a debtor and the bank customer B is a creditor who has no more than a 'chose in action' (an enforceable legal right) against the bank. In *Preddy*, the House of Lords held that the fraudster does not obtain or appropriate property belonging to another when funds are transferred electronically from the victim's account. The effect of the transfer is to extinguish, in part or whole, B's claim against the bank by the fraudster A or the third person. The House of Lords declined to take the view that customer B's rights had been transferred from B to A.

168. The analysis in *Preddy* is remote from community understanding of bank transactions and it is possible that the High Court might decline to follow that case. However, in view of the rapid growth of electronic transactions and the corresponding decline in transactions involving tangible tokens of monetary value, a cautious approach is warranted. The proposed provisions accordingly extend the scope of the offence of obtaining property by deception to include electronic money transfers.

169. It should be noted that the need to rely on the new provisions only arises when the money transfer does not involve the use of a cheque or other tangible token of value. The High Court has recently held in *Parsons* that the unmodified offence of obtaining property by deception applies if the transfer is effected by means of a cheque or other valuable security.

170. The Model Criminal Code Officers Committee made the point in its May 1997 Conspiracy to Defraud Report, that fraudulently induced money transfers will be covered by the obtaining a financial advantage by deception fraud offence (proposed section 134.2). It is nevertheless desirable to maintain the existing structure of liability

in which the offence of obtaining property by deception extends to cover fraudulent inducement of a money transfer. The offence of obtaining property by deception is linked to the offence of receiving (proposed section 132.1). The new provisions, which treat an electronic transfer of funds as a transfer of property, ensure that a person who receives the benefit of the transfer, knowing that it was a product of fraud, will be guilty of the offence of receiving.

171. Turning to the new provisions, proposed subsection 134.1(9) makes it clear that the offence covers money transfers by providing that such amounts are taken to be property belonging to the victim and that the other person arranging the transfer is taken to have obtained the property with the intention of permanently depriving the victim. Proposed subsection 134.1(10) stipulates that the amount transferred should be taken to be the property of the victim and that there was an intention to permanently deprive the person of it. Proposed subsection 134.1(11) stipulates that a debit to one account debits which is causally related to a credit in another account is taken as the transfer of the amount of credit from the debited account to the credited account.

172. As with theft, proposed subsections 134.1(13) and (14) contains general deficiency provisions because just like theft, property fraud can take place over a period of time in small hard to identify sums.

173. Proposed subsections 134.1(15) and (16) contain alternative verdict provisions in recognition that theft and property fraud are similar offences and that it is not always easy to identify the most appropriate charge from the outset. The penalties for each offence are of course the same (a maximum of 10 years) and the provision makes reference to the need for procedural fairness. It is critical that when the alternative verdict becomes a more realistic proposition than the original charge, the defendant is provided with adequate opportunity to address the elements of the alternative offence.

#### ***Proposed section 134.2 - Obtaining a financial advantage by deception***

174. Proposed section 134.2 is the financial fraud offence. Though this offence will extend to cases in which money or other tangible items of value are obtained by deception, the primary effect of the proposed provision is to impose criminal liability on those who obtain intangible financial benefits by deception. Obtaining services without payment by means of a deception is a classic instance falling within the scope of this offence.

175. A person is guilty if the person, by a deception, dishonestly obtains a financial advantage. The maximum penalty of 10 years imprisonment is the same as theft and the obtaining property by deception offence, and is consistent with existing State and

Territory offences. This is appropriate as it includes similar conduct. The offence is based on section 17.3 of the Model Criminal Code.

176. The offence does not have an extended definition of ‘obtaining’ because of the abstract nature of a financial advantage compared to property. Proposed section 134.2 follows section 82 of the Victorian Crimes Act which does not attempt to define financial advantage. Victoria did not follow the UK *Theft Act* formulation of the offence of ‘obtaining a pecuniary advantage by deception’. The definition of the concept of “pecuniary advantage” was characterised by the English courts as “a judicial nightmare”. The ACT uses the term financial advantage but then restricts it to things like obtaining an overdraft or an increase in remuneration. This follows amendments to the UK Act in 1978, but there is no justification for limiting the concept of financial advantage.

177. It is of note that the meaning of ‘financial advantage’ has been rarely litigated in Victoria, where the legislation leaves it undefined. In *Matthews v Fountain* [1982] VR 1045, 1049-50 the Victorian Supreme Court held that ‘financial advantage’ was a simple concept wisely left to the commonsense interpretation of juries and magistrates. In that case, the court held that a penniless debtor, who wrote a valueless cheque to gain relief from being harried by a creditor, gains a financial advantage by deferring the demand for payment. Reliance on the ordinary meaning of the words has not resulted in uncertainty or confusion.

178. Although the concept of financial advantage is broad enough to cover virtually all cases of obtaining property by deception, the practice in Victoria, supported by the principal text for prosecutors, appears to be to confine proposed section 134.2 to cases which do not involve obtaining tangible property (eg credit, services, etc). This approach conforms with the structure of the legislation.

### ***Proposed section 134.3 - Geographical jurisdiction***

179. For the reasons given in relation to theft, extended geographical jurisdiction category D applies to the fraud offences.

### ***Proposed Division 135 - Other offences involving fraudulent conduct***

180. These additional offences were not included in the Model Criminal Code. However, they are justified in a *Criminal Code* designed to protect the administration of the Commonwealth government.

***Proposed section 135.1 - General dishonesty***

181. Proposed section 135.1 contains a codified equivalent to section 29D of the *Crimes Act 1914*. Section 29D cannot fairly be described as a transparent offence. It relies on the meaning of 'defraud' which is dependent on case law for its meaning. Indeed most jurisdictions do not have a 'defraud' offence and the Model Criminal Code Officers Committee did not consider it to be suitable for general use. However, the Gibbs Committee favoured retaining it and there is a case for using it to protect Commonwealth entities because of their vulnerability to dishonest conduct.

182. Consistent with decisions such as that of the House of Lords in *Scott* [1975] AC 819 and Australian cases *O'Donovan v Vereker* (1987) 76 ALR 97 at 110 and *Eade* (1984) 14 A Crim R 186, the proposed offence does not require the prosecution to prove that the accused deceived the victim and as such falls below the appropriate level of culpability required for an offence with a maximum penalty of 10 years imprisonment. In recognition that the offence is much broader than fraud, it is proposed that section 135.1 should have a maximum penalty of 5 years imprisonment. Where there is evidence of deception, the more serious fraud offences should be charged (proposed sections 134.1 and 134.2). Indeed the vast majority of the offences charged under section 29D of the *Crimes Act 1914* involve deception and can be charged under proposed sections 134.1 and 134.2. There will be the occasional case where obtain by deception cannot be charged. In those circumstances there may be questions as to whether it is appropriate that the person be charged with a serious offence, but there will no doubt be some cases where it is justified. Human ingenuity is such that schemes have been and will continue to be devised that make it difficult to establish that the accused deceived the victim. In most jurisdictions, including the UK, it has been decided that such schemes should only be dealt with where there is a conspiracy or by specific offences developed to combat the scheme after it is discovered (for example, taxation legislation).

183. Section 29D of the *Crimes Act 1914* was developed in the aftermath of the 'bottom of the harbour' scandal on the recommendation of the Special Crown

Prosecutor, Roger Gyles QC in his 1982/83 annual report. There is little said about the reasons for the offence in his report or in the explanatory documents for the legislation, but it would seem much of the motivation for the amendment was to deal with 'bottom of the harbour' type cases about which there was concern deception could not be established. Against this, deception can be established in most of the 'bottom of the harbour' cases but there was significant concern that there be a strong response to such cases. The Commonwealth has special problems in protecting public revenue given its broad and vulnerable interests (taxation, social security, grants, etc) and obligations to the community as a result of the sheer size of Commonwealth activities.

184. The idea of special protection for the public revenue is also consistent with the way the law developed in the UK where section 32(1)(a) of the *Theft Act* preserved the common law offence of cheating the public revenue. Cheating the public revenue does not require proof of deception, though it is narrower than conspiracy to defraud in that it must be shown that the public is affected by the conduct (*Mavji* (1987) 84 Cr.App.R 34 at p.38).

185. Turning to the substance of proposed section 135.1, the first part of it (subsection 135.1(1) concerns the person who does anything with the intention of dishonestly obtaining a gain from another - in this case a Commonwealth entity. Subsection 135.1(2) makes it clear that it is not necessary to prove the person knew the other person was a Commonwealth entity. While the common law interpretation of 'defraud' tends to focus on causing losses, it would be anomalous and artificial to require the prosecution to prove losses if it is more natural to present the case as one of obtaining a gain.

186. Proposed subsection 135.1(3) focuses on doing anything with the intention of dishonestly causing a loss to a Commonwealth entity. This is at the heart of the common law meaning of 'defraud'. Proposed subsection 135.1(4) removes the requirement to prove the person knew it was a Commonwealth entity.



187. Proposed subsection 135.1(5) imposes liability for conduct where the person dishonestly causes a loss or risk of loss, provided the person realised that the conduct involved substantial risk, at least, of causing loss. The offence resembles section 17.4 of the Model Criminal Code which is the conspiracy to defraud offence, which specifies a fault element of recklessness. In the Model Criminal Code and the *Criminal Code* 'recklessness' requires proof that the defendant was both aware of a substantial risk and also lacked justification for incurring that risk (section 5.4). The proposed offence requires awareness of a substantial risk, but omits the implied reference to community standards of acceptable conduct in the definition of recklessness, where it refers to the unjustifiability of the risk. Since liability for the proposed offence requires proof of 'dishonesty', which is determined by reference to the standards of ordinary people, any further reference to general standards of conduct inherent in the concept of recklessness is unnecessary and would be likely to breed confusion.

188. Proposed subsection 135.1(5) imposes liability if loss or a risk of loss is caused dishonestly and the offender was aware that loss would occur or that there was a substantial risk of loss. The element of dishonesty requires proof that the offender realised that the conduct which caused the loss or risk of loss would be considered dishonest according to the standards of ordinary people in the community. This captures the common law meaning of 'defraud' that it should also include imperilling another person's assets (*Wai Yu - Tsang* [1992] 1 AC 269 at 280). Proposed subsection 135.1(5) is an improvement on the Model Criminal Code provision and is repeated in comparable offences elsewhere in the Bill (for example, conspiracy to defraud at proposed section 135.4). Subsection 135.1(6) excludes the requirement to prove the person knew it was a Commonwealth entity.

189. Finally, subsection 135.1(7) reflects another meaning that has been given by the courts to 'defraud'. A person is guilty of the offence if the person does anything with the intention of dishonestly influencing a public official in the exercise of the official's duties as a public official. This is also consistent with the case law in *Withers* [1975]

AC 842 and *Scott* . It is proposed that ‘public official’ should be defined in the dictionary as covering State, Territory and Commonwealth officials in recognition that many in the community are not knowledgeable of the distinction between different governmental functions and officials. It would therefore be unreasonable to require the prosecution to prove that the person knew the public official was a Commonwealth public official. Subsection 135.1(8) provides for this.

190. As mentioned above, the maximum penalty for these offences is 5 years imprisonment.

***Proposed section 135.2 - Obtaining a financial advantage***

191. Proposed section 135.2 supplements the protection provided by proposed section 135.1 with yet another lesser offence. This covers those who obtain a financial advantage for themselves or someone else from a Commonwealth entity knowing they are not eligible to receive that financial advantage. While the offence will often overlap with more serious theft and fraud offences, it provides an alternative with a lower penalty where it is difficult to establish dishonesty. The maximum penalty reflects this - it is 12 months imprisonment. The proposed offence is similar to sections 1347 and 1348 of the *Social Security Act 1991* and recognises a general provision of that nature is likely to be useful in relation to many different types of Commonwealth payments, whether it be welfare, bounties or grants. The proposed offence will enable the Bill to repeal a number of obtaining offences in other legislation (for example, subsection 18(2)(a) of the *Bounty (Bed Sheeting) Act 1977* at item 70 of Schedule 2 of this Bill). The proposed offence was recommended by the Gibbs Committee in 1990 and is consistent with the position of the Model Criminal Code Officers Committee 1995 report in that it recognises there is a place for some summary offences. The Gibbs Committee considered that the offence would be too broad if it extended to any advantage. They recommended that it be limited to knowingly obtaining a pension, benefit, bounty or grant from the Commonwealth to which the person is not entitled. Proposed section 135.2 achieves much the same result by using the ‘financial advantage’ terminology. It is also more consistent with the rest

of the Bill and less open to argument (it would not be helpful to have a debate about what is, or is not a benefit).

***Proposed section 135.3 - Organised fraud***

192. Proposed section 135.3 is very similar to section 83 of the *Proceeds of Crime Act 1987*. A person is guilty if the person commits 3 or more public fraud offences, and derives a substantial benefit for any or all of those offences and at least one was committed after the commencement of the Bill. The penalty is a maximum of 25 years imprisonment.

193. While the proposed offence is not included in the Model Criminal Code because it was considered to be too severe and unnecessary by the Model Criminal Code Officers Committee, the Gibbs Committee considered that it should be included in the Commonwealth *Criminal Code*.

194. The organised fraud offence reflects the higher level of criminality involved in the organisation of several frauds which would otherwise be offences in their own right. There is a community expectation that these matters should be dealt with harshly and it is therefore inappropriate to merely leave it to the courts to impose cumulative sentences. It is better to have a specific offence that allows the jury to convict on a more serious charge, and then allows the Judge to impose an appropriate penalty. Further, a decision to completely remove the provision would send the wrong signal to the community about the Government's policy on organised crime.

195. Proposed subsection 135.3(2) provides that failure to prove this offence does not preclude the defendant from being convicted of individual public fraud offences. Proposed subsection 135.3(3) provides a broad definition of what is meant by deriving a substantial benefit and subsection 135.3(6) extends 'benefits' to include any advantage, not just property. 'Public fraud offence' includes the proposed fraud and general dishonesty offences of the *Criminal Code*, the existing general dishonesty offences (which will be repealed by the Bill) and offences under the *Crimes (Taxation Offences) Act 1980*.

***Proposed section 135.4 - Conspiracy to defraud***

196. Like proposed section 135.1, proposed section 135.4 is a series of general dishonesty offences. Proof of deception is not required. Indeed it has all the same components as proposed section 135.1 except there must be a conspiracy. The explanation of those components will not be repeated again here. The other difference is that the maximum penalty is 10 years imprisonment. While conspiracy usually carries the same penalty as the primary offence, the proposed penalty reflects what was recommended for the Model Criminal Code (May 1997 report) and by the Gibbs Committee. Proposed section 135.1 will replace subsection 86(2) of the *Crimes Act 1914* which has a maximum penalty of 20 years imprisonment. This is far too high and is inconsistent with the penalty for similar offences in other jurisdictions. The usual maximum penalty is 10 years imprisonment.

197. Since the May 1997 report was published, the High Court in *Peters v R* (1998) 151 ALR 51 (a case which concerned the Commonwealth Crimes Act 1914 conspiracy to defraud offence) commented that it disagreed with the way the Model Criminal Code conspiracy to defraud offence was drafted. Proposed section 135.4 takes into account the suggestions of the High Court by attaching dishonesty to the various types of conduct. This approach was endorsed by the Standing Committee of Attorneys-General at its April 1998 meeting.

198. Subsections 250(9) to (14) contain a number of interpretative and procedural provisions which reflect what is contained in the general conspiracy offence at section 11.5 of the *Criminal Code* which was enacted in 1995 and section 86 of the *Crimes Act 1914* which at the same time was harmonised with section 11.5.

***Proposed section 135.5 - Geographical jurisdiction***

199. Proposed section 135.5 provides for extended geographical jurisdiction category D which is the same as that for theft of Commonwealth property.

***Proposed Part 7.4 - False and Misleading Statements***

200. False and misleading statements are often made as a prelude to committing fraud. For many years now Governments have been enacting false and misleading statement offences which have relatively low penalties (ranging from fines to 2 years imprisonment) in a very wide range of legislation. The offence is useful where the person is caught early in the process and the particular conduct did not involve large amounts of money. In 1990 the Gibbs Committee concluded that centralising these offences in the *Criminal Code* would be more efficient because standardising the offence would assist practitioners. It would also simplify and reduce the size of the Commonwealth statute book. The proposed offences in this Division will allow this Bill to repeal of over 130 offences and therefore make an important contribution to the Government's 'statute stocktake' initiative. The proposed offences will replace a limited untrue representation offence at section 29C of the *Crimes Act 1914*.

***Proposed section 136.1, Division 136 - False and misleading statements in applications***

201. There are two types of offences. The more serious offence requires proof that the defendant knew the statement in the application was false and misleading. It provides for a maximum penalty of 12 months imprisonment (proposed subsection 136.1(1)). The other only requires proof that the defendant was reckless as to whether the statement was false and misleading. It provides for a maximum penalty of 6 months imprisonment (proposed subsection 136.1(4)).

202. Both offences provide for a defence where the defendant can point to evidence that the false or misleading statement was not false or misleading in relation to a material particular (subsections 136.1(2),(3), (5) and (6)). It would be too onerous to require the prosecution to prove that the defendant knew or was reckless as to materiality. However the proposed defence should ensure that materiality is taken into account.

203. Proposed subsection 136.1(7) provides for alternative verdicts in similar terms to other provisions elsewhere in the Bill. There will be situations where it becomes

apparent during the hearing that the defendant is guilty of the second offence rather than the first.

204. Consistent with other theft and fraud related offences, proposed subsection 136.1(8) provides for extended geographical jurisdiction category D.

205. It is important that 'benefit' is defined broadly at proposed subsection 136.1(9) because the applications covered by this offence covers a wide range of functions.

***Proposed Division 137 - False or misleading information or documents***

206. There are also a considerable number of offences of this type. While the Gibbs Committee concluded in its 1990 report that these offences might be more convenient to locate in the relevant legislation, there are more advantages in centralising the offences and slimming down the statute book.

***Proposed section 280 - False and misleading information***

207. Proposed section 137.1 requires proof that the person knows the information provided or omitted is false and misleading. The information must be given to a Commonwealth entity, given to a person exercising powers or performing functions under or in connection with a law of the Commonwealth or in compliance or purported compliance with a law of the Commonwealth. The maximum penalty is 12 months imprisonment. Again there is a defence were the information is not false or misleading in a material particular. While a recklessness offence is appropriate where the person is involved in completing an application, it would go too far to extend it to this offence.

***Proposed section 137.2 - False and misleading documents***

208. Proposed section 137.2 is an additional offence which has been found necessary as a result of the review of the various offences. It is also suitable for including in the central offence. The person is guilty if he or she produces a document, knows it is false or misleading and it is produced in compliance or purported compliance with a law of the Commonwealth. The maximum penalty matches the other offences - 12 months imprisonment. Proposed subsection 137.2(3) contains a defence often found in this type of offence where the document has been identified as being false.

***Proposed section 137.3 - Geographical jurisdiction***

209. Consistent with other theft and fraud offences, proposed subsection 137.3(8) provides for extended geographical jurisdiction category D.

***Proposed Part 7.5 - Unwarranted Demands***

210. There is no Commonwealth equivalent to the proposed unwarranted demands offences. The Model Criminal Code provides for a blackmail offence at sections 18.1 to 18.3 and raised the question of the need for a similar Commonwealth offence. While the description ‘blackmail’ is more associated with a more general offence, there is no doubt that the Commonwealth could be a victim of this type of offence and should be able to deal with such demands without having to resort to State or Territory offences. The existing obstruction and threat offences (sections 30K and 76 of the *Crimes Act 1914*) provide for a maximum penalty of 12 months and 2 years imprisonment. This is clearly inadequate when compared to the State and Territory offences where the proposed penalty for blackmail is 12 years imprisonment.

***Proposed Division 138, section 138.1 - unwarranted demands with menaces***

211. Proposed subsection 138.1(1) defines what is an ‘unwarranted demand with menaces.’ This is based on section 18.2 of the Model Criminal Code. Paragraph 138.1((1) provides that the person making the demand must not believe that he or she has reasonable grounds for making the demand and does not reasonably believe that the use of menaces is a proper means of enforcing the demand. Not all demands with

menaces count as blackmail. The fault element of the offence is to make an *unwarranted* demand. Whether the demand is warranted (eg whether a sum of money is owed) and whether the menace is warranted (eg whether that type of threat is a proper means of enforcing that demand) distinguish criminal from non-criminal demands backed by menaces. If a demand for payment is backed by a menace (eg a threat to sue where a debt is owed), that is not an offence under proposed Part 7.5. A threat to sue for that debt is a proper means of enforcing that demand.

212. The first limb of the test proposed in section 138.1 is subjective: did the *defendant* believe there were reasonable grounds for making the demand. The test for the second limb is objective: did the defendant *reasonably* believe that the use of the menace was a proper means of enforcing the demand.

213. Under the UK *Theft Act* and in the jurisdictions that have followed it, the test for whether a menace is proper is subjective. In the non-*Theft Act* jurisdictions, the test of whether the demand or the threat was proper is *objective*: The objective test was criticised by the Criminal Law Revision Committee in the UK because it had led to cases such as *Dymond* where a woman had written to a man who she alleged had sexually assaulted her demanding that he apologise and pay her money. If he did not, she threatened to “summons” him and “let the town know all about your going on”. The fact that the threat was construed as a threat to bring a *criminal* rather than a civil prosecution was found to be improper, despite the fact that the woman believed it was proper and that she would have been entitled to threaten civil action. (For example, it is not blackmail to write a solicitor’s letter demanding compensation for a negligently caused injury, threatening to bring a civil action for damages if the compensation is not paid). It was also said to be improper to threaten to tell the town about it, though it would not be improper to tell the town that he refused to pay the damages in respect of the civil assault claim. These are very fine distinctions for a serious blackmail type offence.

214. The approach taken in proposed subsection 138.1(1) provides for a carefully balanced test which is similar to other evaluative elements in the Bill, such as ‘dishonesty’ and elsewhere in the *Criminal Code* (for example, in some of the defences - self defence and duress, sections 10.2 and 10.4).

215. Proposed subsection 138.1(2) makes it clear the demand may be for something other than property and subsection 138.1(3) that it need not be in relation to conduct to be engaged in by the person making the demand (the person could be associated with



someone who enforces demands). Subsection 138.1(3) is based on subsection 18.3(4) of the Model Criminal Code.

216. Proposed section 138.1 defines ‘menaces.’ This is based on subsection 18.3(1) of the Model Criminal Code. It covers things which are a threat of conduct which is detrimental or unpleasant to another person or something more general in nature which is implied by the position of the person making the threat.

217. Subsection 18.3 (3) of the Model Criminal Code attempts to adapt the concept of a menace to suit one directed at an organisation. This is of course very important in the Commonwealth context. Proposed subsections 138.1(2) and (3) provide guidance as to what is involved in a menace against an individual compared to what is involved where it is directed against an organisation. The concept of the menace causing a person of normal stability and courage to act unwillingly is of course more suited to the circumstances of an individual. What would ordinarily cause an unwilling response and or vulnerability is a more appropriate and realistic criteria for an organisation.

***Proposed Division 139 - Unwarranted demands***

218. It is proposed that there be two offences: unwarranted demands of a Commonwealth public official (proposed section 139.1) and unwarranted demands by a Commonwealth public official (proposed section 139.2). The proposed offences do not deal with unwarranted demands made against the Government as a whole. Threats of that nature are more appropriate to be dealt with by special national security offences which at a later stage can be included in Chapter 5 of the *Criminal Code* which has tentatively been entitled ‘The integrity and security of the Commonwealth’.

***Proposed section 139.1 - Unwarranted demands of a Commonwealth public official***

219. Proposed section 139.1 provides that a person is guilty if the person makes an unwarranted demand of another person and the demands or the menaces are directly related to the other person’s capacity as a Commonwealth public official or any influence the person has in that capacity; and the person does so with the intention of obtaining a gain or causing a loss or influencing the official in the exercise of the official’s duties as a Commonwealth public official. The maximum penalty is 12 years imprisonment. The penalty is more than bribery (10 years) because it involves threats.

220. As it is a Commonwealth offence, proposed section 139.1 focuses on the Commonwealth public official’s capacity and influence. Unwarranted demands in relation to matters that have nothing to do with the person’s capacity and influence as

a Commonwealth public official will be dealt with by equivalent State or Territory offences.

221. The requirement that the prosecution prove the person intended to obtain a gain, cause a loss or influence the official in the exercise of those duties is consistent with other Chapter 7 fraud and bribery related offences. If the conduct consisted of a threat alone, then proposed section 147.2 would apply. This approach follows section 18.1 of the Model Criminal Code and the UK *Theft Act* which provides these terms as substitutes for the common law requirement that there be a demand for property. Of course these are supplemented with the intention to influence the official in the exercise of his or her duties as a Commonwealth public official (subparagraph 139.1(c)(iii)).

***Proposed section 139.2 - Unwarranted demands made by a Commonwealth public official.***

222. Proposed section 139.2 deals with the opposite situation to section 139.1. The Commonwealth public official is guilty if he or she makes an unwarranted demand of another person and the demand or menaces are directly or indirectly related to either that person's capacity as a Commonwealth public official or influence they have as a result of that capacity (for example, threatening a member of the public with the release of humiliating information contained in a file). Like the other offence, the official would need to do so with the intention of obtaining a gain, causing a loss or influencing another Commonwealth public official in the exercise of the other official's duties. The other Commonwealth public official could be a work colleague - the aim of the threat may be to influence the work colleague to approve a project which benefits the family of the defendant.

223. This type of offence covers some of the same ground as extortion which also overlaps with the proposed bribery offence. Extortion meant "the taking of money by any officer by colour of his office, either where none at all is due, or not so much is due, or it is not yet due." The Model Criminal Code Officers Committee report recommended that blackmail and bribery should be designed in a way whereby those offences were wide enough to cover extortion. The same approach was taken with the UK *Theft Act* and the equivalent Victorian legislation. The Gibbs Committee saw the need for an extortion type offence but proposed that it only have a maximum penalty of 2 years imprisonment. The proposed offence is more focused on significant conduct and has the more appropriate maximum penalty of 12 years imprisonment.

***Proposed section 139.3 - Geographical jurisdiction***

224. Proposed section 139.3 provides that there be extended geographical jurisdiction category C (proposed section 15.3) for the unwarranted demands offences.

### **Proposed Part 7.6 - Bribery and related offences**

225. The new offences proposed in this Part are very significant. They build upon the *Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999* which inserted offences of prohibiting the bribery of foreign public officials in Chapter 4 of the Criminal Code : ‘The integrity and security of the international community and foreign governments’. The new offences deal with bribery and other forms of corruption of Commonwealth public officials. The existing offences, sections 73 and 73A of the *Crimes Act 1914* and section 4 of the *Secret Commissions Act 1905* only have a maximum penalty of 2 years imprisonment. It is proposed that the maximum penalties for the new bribery offences (proposed section 141.1) be 10 years imprisonment which will give it the same penalty as theft, fraud and the new bribery of foreign public officials offences. The new offences are consistent with the statement made by the Government in the context of the bribery of foreign public officials offences that bribery will not be tolerated in Australia. Other offences include giving and receiving corrupting benefits (proposed section 142.1) and abuse of public office (proposed section 142.2). These new offences will set appropriately high standards and targets the key object and title of chapter 7: The proper administration of government.

### ***Proposed Division 140 - Preliminary***

226. Proposed Division 140 contains some important interpretative provisions.

### ***Proposed section 140.1 - Definition***

227. ‘Benefit’ is defined to include any advantage and is not limited to property. Bribes can be paid by many different means. This follows section 20.1 of the Model Criminal Code.

### ***Proposed section 140.2 - Obtaining***

228. Subsection 140.2(1) makes it clear that a person is taken to have obtained a benefit for another if he or she induces someone else to give that person a benefit.

### ***Proposed section 141.1 - Bribery of a Commonwealth public official***

229. The drafting of proposed section 141.1 varies from subsection 20.2(1) of the Model Criminal Code more than what otherwise would have been the case had it not been for the recent enactment of the *Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999*. The bribery offence inserted by that Act into Chapter 4 (section 70.2) closely follows a model which is being followed by OECD countries. It

is therefore important that there be consistency in drafting with section 70.2 as well as the Model Criminal Code offence if misinterpretation is to be avoided.

***Proposed subsection 141.1(1) and (2) - Giving a bribe***

230. Proposed paragraph 141.1(1)(a) and (b) therefore closely follows the bribery of foreign public officials offence rather than the slightly less wordy Model Criminal Code offence. However, it differs from section 70.2 because it requires proof that the person dishonestly provided the benefit.

231. The essence of the common law fault elements for bribery was an intent to incline an official to perform his or her duty in a way that is “contrary to the known rules of honesty and integrity.” The original Griffith’s Codes used the term “corruptly” to capture this meaning in the *general* offence of bribery but the amended offence in WA has omitted the word. The term is not used in a number of the Code offences relating to a member of Parliament, but it is used in the WA offences. In South Australia, the new statutory provision uses the term “improperly”. However, sections 73 and 73A of the *Crimes Act 1914* have no equivalent to dishonesty. The offences are very broad, they simply require proof that the payment was in order to influence or affect a Commonwealth officer or member of either House of Parliament.

232. In many cases, it will be clear that a benefit given to a public official in order to influence his or her duty to do or refrain from doing an act will constitute a bribe. However, unless some additional fault element is specified, payment of the official’s salary would constitute bribery because it is a benefit given in order to influence the official’s duty, as would an official’s demand for salary or a salary increase as a condition of doing his or her job. There are also very difficult questions in this area about the legitimate ambit of politics. Offering a parliamentarian a benefit to vote in a certain way seems a clear case of bribery, but few would want to see ordinary political negotiations coming within the scope of the bribery offence. The fault element of ‘dishonesty’ therefore provides an important safety-valve. ‘Dishonesty’ provides for a flexible assessment of the particular dealing against the standards of ordinary people and provides a workable way of capturing the essence of bribery and corrupt payments.

233. Proposed subsection 141.1(2) also requires that the person providing the benefit does so with the intention of influencing a public official in the exercise of the public official’s duties as a public official. ‘Public official’ is to be defined in the dictionary to the *Criminal Code* (see item 36 of this Bill) to be a Commonwealth, State or Territory official. This is in recognition that some in the community cannot

distinguish between the functions of the Commonwealth and State Governments. It would therefore be too onerous to require the prosecution to prove the defendant knew the person they were bribing was a Commonwealth public official and that it was with the intention of influencing the person in relation to Commonwealth duties. Subsection 141.1(2) makes it clear that it is not necessary to prove that the defendant knew these things.

234. As mentioned above, the maximum penalty is 10 years imprisonment. This is appropriate - it is a crime that is not only dishonest but undermines community confidence in the integrity of Government. It deserves the same penalty as theft and fraud.

***Proposed subsection 141.1(3) - Receiving a bribe***

235. Proposed subsection 141.1(3) provides a Commonwealth public official is guilty of an offence if the official dishonestly asks for a benefit, or receives one, or agrees to receive one and does so with the intention that the exercise of the official's duties as a Commonwealth public official will be influenced. This is based on subsection 20.2(2) of the Model Criminal Code, though it is drafted quite differently. Again, it is necessary for the offence to relate appropriately to the other bribery offences in the *Criminal Code*. The maximum penalty is the same as that for the other bribery offence, 10 years imprisonment.

***Proposed subsection 141.1(4) - Geographical jurisdiction***

236. Subsection 141.1(4) provides for similar reasons to theft that extended geographical jurisdiction category D applies to both offences.

***Proposed Division 142 - Offences relating to bribery***

237. The Model Criminal Code makes no distinction between public and private sector 'bribery'. Instead, it recommended a two-level offence structure with a serious offence of bribery and lesser offences of giving and receiving other corrupting benefits that apply to both the public and the private sector. These lesser corrupting benefits offences carry a maximum penalty of 5 years imprisonment. It was decided not to use the existing term 'secret commissions' to describe these lesser offences as secrecy is not an element of either the existing or the proposed offences. The term 'corrupting benefits' is more descriptive of the offence and will avoid confusion with the secret commissions offences.

238. While bribery is traditionally the public sector corruption offence and secret commissions covers private sector 'bribery, the Commonwealth *Secret Commissions Act 1905* (although its scope does extend to some private sector activity) is only used to combat Commonwealth public sector corruption. The proposed corrupting benefits and abuse of public office offence will, because of the restricted jurisdiction of the Commonwealth, continue the focus on public sector corruption. In doing this there is no suggestion that the Government is opposed to having the same rules for the private and public sectors as proposed by the Model Criminal Code Officers Committee. There are compelling arguments for that approach which State and Territory Governments will need to consider when implementing the Model Criminal Code.

***Proposed section 142.1 - Corrupting benefits given to, or received by a Commonwealth public official***

239. The drafting of these offences has been influenced by the bribery offences which have been harmonised with the bribery of foreign public officials offences as well as the Model Criminal Code offences. It is important that the scheme of offences in the *Criminal Code* is integrated. Therefore the drafting of proposed section 142.1 does vary from section 20.3 of the Model Criminal Code. However, the substance is of these offences is very similar.

***Proposed subsection 142.1(1) - Giving a corrupting benefit***

240. Proposed subsection 142(1) provides a person is guilty if the person dishonestly provides/ offers a benefit to another and the receipt, or expectation of the receipt, of the benefit would ***tend to influence*** a public official in the exercise of the official's duties as a public official. This differs from bribery where the prosecution must prove the person dishonestly provided / offered the benefit with the ***intention of influencing*** the public official. A person will be guilty of the corrupting benefits offence if the person is reckless as to the circumstance that the benefit may tend to influence the public official. (Subsection 5.6(2) of the *Criminal Code* provides that if the offence does not specify a fault in relation to a circumstance of conduct then recklessness will be the fault element). This means that the person will be guilty if the prosecution can prove he or she was aware of a substantial risk that the tendency to influence exists or will exist and having regard to the circumstances it is unjustifiable to take that risk (see

section 5.4(1) of the *Criminal Code*). It is in view of this that the maximum penalty is 5 years imprisonment.

241. The maximum penalty of 5 years imprisonment is more than double that for the offence which it will replace at section 4 of the *Secret Commissions Act 1905* (2 years imprisonment). The penalty in the secret commissions offence is justifiably lower because it contains a very draconian presumption at subsection 4(2), that any gift or consideration is an inducement. All the prosecution has to demonstrate is that the accused, without the knowledge and agreement of the principal, accepts a gift and that this gift was in any way likely to influence the agent. The prosecution establishes that this gift is an inducement or reward through the deeming provision in subsection 4(2), which states that a gift or consideration is deemed to be given as an inducement or reward if 'the receipt or any expectation thereof would be in any way likely to influence the agent to do or to leave undone something contrary to his or her duty'. The accused cannot even escape liability by proving the gift did not influence him or her. (Subsection 4(2) has been described by a leading Australian commentary on fraud offences as a 'conclusive presumption'.) It is contrary to the principles governing the standard of proof in the *Criminal Code* that a corruption offence which can result in significant stigma and loss of employment should be able to be 'proven' in this way. Further, where the person has significant culpability and the amount is large, a maximum penalty of 2 years imprisonment is manifestly inadequate.

242. Like the giving a bribe offence (proposed subsection 141.1(1)) and for the same reasons, subsection 142.1(2) does not require the prosecution to prove that the defendant knew the person being bribed was a Commonwealth public official or that the duties are Commonwealth duties.

***Proposed subsection 142.1(3) - Receiving a corrupting benefit***

243. Proposed subsection 142.1(3) provides a Commonwealth public official is guilty if the official dishonestly asks for, receives, agrees to receive (etc) a benefit and the receipt, or expectation of receipt, of the benefit would tend to influence a



Commonwealth public official in the exercise of duties as Commonwealth public official. The maximum penalty is 5 years imprisonment. The same issues concerning the appropriateness and the replacement of section 4 of the *Secret Commissions Act 1905* which are discussed above apply here.

***Proposed subsection 142.1(4) - Benefit in the nature of a reward***

244. Proposed subsection 142.1(4) addresses a concern that the proposed offences may be misconstrued as not covering benefits in the nature of a reward. While the Model Criminal Code Officers Committee report considered this unnecessary, the proposed subsection has been inserted to clarify this point. A large reward in one instance can have a tendency to influence a particular official and others in relation to dealings with the person making the payment. It is important to cover this as rewards are specifically covered by the *Secret Commissions Act 1905* which will be replaced by the proposed Bill.

***Proposed section 142.2 - Abuse of public office***

245. Proposed subsection 142.2 would bring the Commonwealth standard in this respect up to that of offences found in State legislation and is based on section 20.5 of the Model Criminal Code. It has its origin in the common law ‘misfeasance of office’ offences which includes everything from nepotism to misuse of planning information. The Gibbs Committee did not favour the Model Criminal Code approach of having a single offence dealing with abuse of office. The Gibbs Committee preferred two ‘specific’ offences:

- (a) defrauding the Commonwealth or any person in the exercise or in the purported exercise of powers of office; and
- (b) an office-holder exercising in a dishonest way or for an improper motive a *power or function* invested in him or her by virtue of his or her holding office.

246. The first Gibbs Committee offence is unnecessary as it is covered by the proposed fraud offences which have penalties which provide a sufficient range for offenders to be appropriately sentenced. The second offence is an abuse of public office offence but does not have the qualification that the accused must intend to obtain a benefit for himself, herself or another or cause a detriment to another and is

narrower than the proposed offence in that it does not apply to the exercise of influence.

247. Proposed section 142.2(1) provides a Commonwealth public official is guilty if the official exercises any influence that the official has in that capacity or engages in any conduct in the exercise of duties; or uses any information obtained in that capacity and does so with the intention of dishonestly obtaining a benefit or causing a detriment to another. The provision follows section 20.5 of the Model Criminal Code but improves on it by providing at subsections 142.2(2) and (3) an additional offence to cover those who uses information obtained in their capacity as a Commonwealth public official after they cease to be a Commonwealth public official. This improvement will be brought to the attention of the Standing Committee of Attorneys-General when they next consider the Model Criminal Code. The Model Criminal Code is not set in concrete. It is expected it will continue to be improved as jurisdictions work together towards an improved and more consistent criminal law. However, it is important that all improvements are fed back to the Standing Committee.

248. Unlike bribery (proposed section 141.1), the abuse of public office does not require that the office holder act at the instigation of another or seek to influence another, and it differs from unwarranted demands (proposed sections 139.1 and 139.2) in that it does not involve threats. Therefore the proposed maximum penalty is 5 years imprisonment, less than the penalty for unwarranted demands or bribery.

### ***Proposed section 142.3 - Geographical jurisdiction***

249. Subsection 142.2 provides for similar reasons to theft that extended geographical jurisdiction category D applies to the corrupting benefits and abuse of public office offences.

### **Proposed Part 7.7 - Forgery and related offences**

250. Forgery is yet another offence that is reproduced throughout a number of Commonwealth Statutes although it could be dealt with much more easily by a central

Commonwealth *Criminal Code* offence. The Gibbs Committee noted that not only are there too many forgery offences, the maximum penalties range from 10 years imprisonment under s85G of the *Crimes Act 1914* for forging postal stamps, to \$1000 for forging prescribed liquor stamps. The Gibbs Committee concluded that there should rarely be a need to include forgery offences outside the Commonwealth *Criminal Code*. The only compelling exceptions are the offences which relate to the counterfeiting of currency. Both the Gibbs Committee and the Model Criminal Code Officers Committee favoured separate offences in relation to the matters dealt with in the *Crimes (Currency) Act 1981* which deals with specific problems associated with counterfeiting currency and securities. While the offences in that Act need to be harmonised with the Commonwealth *Criminal Code*, this will be done separately.

251. The offences in proposed Part 7.7 are forgery (proposed section 144.1), using a forged document (proposed section 145.1), possession of a forged document (proposed section 145.2) and the forging devices offences (proposed section 145.3), which carry a maximum penalty of 10 years imprisonment; and the falsification of documents and giving of information derived from false documents offences (proposed sections 145.4 and 145.5), which carry a maximum penalty of 7 years imprisonment.

### ***Proposed Division 143 - Preliminary***

252. The definitions and interpretative clauses are very important to the proper operation of these offences. Forgery and related offences are inherently complex and this is not made easier by developments in document making technologies. The new forgery provisions provide an opportunity to update the existing *Crimes Act 1914* offences which are largely a product of the pre-computer era.

### ***Proposed section 143.1 - Definitions***

253. The first of these is 'document'. The proposed definition is similar to subsection 19.1(1) of the Model Criminal Code but for reasons of consistency with other legislation is aligned with section 25 of the *Acts Interpretation Act 1901*. The

definition covers everything from traditional paper based documents with writing on them to coding for computers.

254. 'Information' is defined to cover electronic information. This aligns the terminology with the comprehensive but 'technology neutral' language of the *Electronic Transactions Bill 1999*.

255. Proposed subsection 143.1(2) also makes it clear that 'document' includes cards used for commercial transactions. This is particularly important because card fraud is being increasingly identified as a major problem in Australia and they are used in dealings with the Commonwealth.

***Proposed section 143.2 - False documents***

256. Proposed section 143.2 contains a detailed definition of what is a ‘false document.’ The definition is based on section 19.2 of the Model Criminal Code and covers documents which suggest they were made/authorised:

- by someone else when they were not;
- in particular terms when they were not;
- altered when they were not;
- by someone who exists when they do not.

257. Proposed subsections 143.2(2) and (3) also makes it clear ‘making’ can include ‘altering’ and that ‘document’ includes purported copies of documents. It is necessary to carefully define all the possible ways of manipulating documents. The ‘false document’ definition is used in all the more serious forgery and forgery related offences in Part 7.7.

***Proposed section 143.3 False Commonwealth documents***

258. Proposed section 143.3 provides a Commonwealth jurisdictional context to the definition of ‘false document’. The provision shadows proposed section 143.2 but ties the various components of the definition to ‘Commonwealth entities’ and ‘Commonwealth public officials’. While proposed section 143.3 may appear at first glance to involve unnecessary repetition, it serves to ensure that the offences and the definition of ‘false document’ are not cluttered with unnecessary jurisdictional references that may obscure the more important function of the offence which is to clearly state the proposed obligations.

***Proposed section 143.4 - Inducing acceptance of false documents***

259. Proposed section 143.4 follows subsection 19.1(3) of the Model Criminal Code by ensuring the prosecution does not have to prove an intent to induce a particular

person to accept a false document is genuine. This is needed because forgers will often not be concerned about who they deceive so much as that the deception induces the person to do something that they want.

***Proposed section 144.1 of Division 144 - Forgery***

260. Proposed subsection 144.1(1) provides the person is guilty if the person does two things. First, the person makes a false document with the intention that he or she or someone else will use it to dishonestly induce a third person in their capacity as a Commonwealth public official to accept it as genuine. Secondly, intends that if the false document is accepted, to dishonestly obtain a gain, dishonestly cause a loss or dishonestly influence the exercise of a public function or duty. Like comparable offences in this Bill, proposed subsection 144.1(2) provides it is not necessary to prove that the defendant knew that the capacity was a capacity as a Commonwealth public official.

261. Proposed subsection 144.1(3) provides for the same offence where the false document is used to cause a computer, machine or electronic device to respond to the document as if the document were genuine and the response is in connection with the operation of a Commonwealth entity; subsection 144.1(5) where it is any third person but the false document is a Commonwealth document; and subsection 144.1(7) where it is a computer, machine or electronic device and the false document is a Commonwealth document. It should be noted that proposed subsection 143.1(2) makes it clear that a document includes credit and debit cards and that where relevant it is not necessary for the prosecution to prove that the defendant knew the public official or document were specifically Commonwealth in nature. The offences follow the substance of section 19.3 of the Model Criminal Code but are considerably longer because of the need to properly attract Commonwealth jurisdiction.

262. The proposed maximum penalty for the forgery offences is 10 years imprisonment. This is higher than that provided for in the Model Criminal Code (7 years and 6 months). The penalty for the Commonwealth forgery offence should

not be less than that contained in the existing Commonwealth offences – 10 years imprisonment. This is also the same as the penalty for theft and fraud. While the rationale of the Model Criminal Code Officers Committee for the lower penalty is in recognition that forgery is preparatory to fraud, it causes significant harm in its own right quite apart from fraud. The distinction is hard to justify.

263. The inclusion of the fault element of 'dishonesty' is a change from the existing Commonwealth offences. Like other offences in this chapter, the evaluative element of dishonesty will ensure the offence does not include trivial matters and is appropriate for such a serious offence.

264. Although the UK *Theft Act* uses dishonesty in relation to other offences, the UK adopted a complex definition of "intent to prejudice" in relation to forgery. 'Dishonesty' is better because:

- (a) it is consistent with theft and fraud as it substitutes 'dishonesty' for the common law concepts of 'fraudulently' and 'intent to fraud';
- (b) it is not complex and it will cover conduct that may not be caught under a definition of 'prejudice'; and
- (c) there was strong support for it in the consultation on the Model Criminal Code.

265. Another difference from the existing offences is that the proposed provisions based on the Model Criminal Code require that the prosecution prove the accused intended that the accused or another *would* use the document to induce a person to accept it as genuine and either cause a gain or loss, or influence the exercise of a public duty. Intention that the document will induce a person to do something to their prejudice is a feature of the law in the UK, NSW, Victoria and the ACT.

266. Section 63 of the *Crimes Act 1914* provides that forgery requires an intent that the counterfeit seals, or other things referred to, *may* be used, acted on or accepted as genuine to the prejudice of the Commonwealth, any State or person with the intent that it/he/she may, in the belief that it is genuine, be induced to do, or refrain from doing,



any act. Section 63 is too vague for a serious offence which has a maximum penalty of 10 years imprisonment. The offence should only catch those who intend to use the document to induce a person to accept it as genuine, or obtain a gain or cause loss, or influence the exercise of a public duty.

267. Under the existing offences it is only necessary to prove that the victim be induced to do, or to refrain from doing, any act. Unlike the requirement of proof in the current offence that accepting the document as genuine must "influence the exercise of a public duty", or the UK approach of linking the act or omission to the performance of a duty. There is no mention of duty in the current Commonwealth provision. The UK Law Commission described the Commonwealth and a similar Canadian provision as creating:

... a very wide offence which would penalise such practical jokes as making a forged invitation to a social function made with no more wicked intent than raising a laugh at another's expense by inducing him to act upon the invitation. We do not think that such conduct should be within a serious offence such as forgery.

268. Requiring that the document influence the exercise of a public duty prevents the forgery offences from operating too widely. It has been suggested by some that under the Model Criminal Code provision there may be situations where a false document causes the Commonwealth or a Minister to act in a way that brings about enormous expense or causes significant changes in policy and there was no public duty to act. For example, it might be argued that a forged letter which causes the activation of disaster relief efforts might be said to be not to have influenced the exercise of a public duty as there was no duty to provide the relief. While this is probably unlikely to be accepted by a court this Bill defines 'duty' at proposed section 130.1 to make it clear that it covers the full range of government activity.

***Proposed Division 145 - Offences relating to forgery***

269. These are using a forged document (proposed section 145.1), possessing a forged document (proposed section 145.2), and the forging devices offences (proposed section 145.3); and the falsification of documents and giving of information derived from false documents offences (proposed sections 145.4 and 145.5).

***Proposed section 145.1 - Using forged document***

270. Proposed section 145.1 follows the same pattern as the forgery offences except the offences here concern use of the false document. The person must know that the document is a false document and uses it with respect to the intended outcomes already detailed above in the forgery offences. The maximum penalty is the same as forgery - 10 years imprisonment. The offences are based on section 19.4 of the Model Criminal Code but are considerably longer because of the need to attract Commonwealth jurisdiction. They replace the outdated *Crimes Act 1914* offence of 'uttering'.

271. The requirement that the prosecution prove knowledge of the falsity of the document is important. Section 5.3 of the *Criminal Code* provides that a person has knowledge of a circumstance or a result if he or she is aware that it exists or will exist in the ordinary course of events.

272. This is consistent with the existing Commonwealth provisions and those of most States and Territories. In the UK the fault element may be knowledge or belief and the Gibbs Committee favoured 'knowledge' which, as defined by them, includes not only awareness that a circumstance exists or will exist but that it is *probable* that it exists or will exist. The Gibbs Committee definition of knowledge is broader than the *Criminal Code* definition which is closer to the ordinary meaning of 'knowledge'.

273. Under the *Criminal Code* definition of knowledge a person who uses a genuine document, which the person believed to be a forgery, will not be guilty of the offence of using a false document but will be guilty of attempting to commit that offence under s11.1 of the *Criminal Code*. However, if the Gibbs Committee definition of

knowledge was used, this conduct would result in a charge of using a false document. That would go too far.

274. The existing *Crimes Act 1914* provisions on uttering (use) do not require a person to intend to use a false document for the offence to be made out. The Model Criminal Code and Gibbs Committee approaches both provide that this intent *should* be required. The Gibbs Committee noted:

“However, circumstances are conceivable where use of a forged document, with knowledge as to its falsity, even a document of the limited descriptions dealt with in the *Crimes Act*, should not be subject to criminal sanctions. For instance, where a Commonwealth record has been altered to a minor extent in circumstances amounting to forgery, a person may wish, for some quite proper purpose, to use the record to the extent that it is a valid record.”

***Proposed section 145.2 - Possession of forged document***

275. Proposed section 145.2 follows the same pattern as the using forgery offences except the offences here concern knowing that the document is a false document and having it in one’s possession with respect to the intended outcomes already detailed above in the forgery and use forgery offences. The maximum penalty is the same as forgery - 10 years imprisonment. The offences are based on section 19.5 of the Model Criminal Code but are considerably longer because of the need to attract Commonwealth jurisdiction.

276. Proposed section 145.2 varies from subsection 65(2) of the *Crimes Act 1914* which limits the possession offence to prescribed objects and documents. This offence should apply to the full range of documents as it is with similar offences in NSW, Victoria and the ACT and with the other forgery related offences. The Gibbs Committee notes that at present the Commonwealth has had to provide for possession of a false document in specific legislation (eg., s9A *Passports Act 1938*). When the

central offence of possession of false documents is enacted in the Commonwealth *Criminal Code* these offences can be repealed.

***Proposed section 145.3 - Possession, making or adaptation of devices etc for making forgeries***

277. Sections 65(2), 68 and 69 of *Crimes Act 1914* provide special offences for possessing important seals, dies and stamps. Proposed section 145.3 dispenses with this unnecessary complexity by proposing offences which will cover all such circumstances. Proposed subsection 145.3(1) provides that a person is guilty of the offence if the person knows that a device, material or thing designed or adapted for the making of a false document (everything from a scanner to credit card blanks) and the person has it in their possession with the intention that he or she or another will use it to commit forgery. Proposed subsection 145.3(2) covers making or adapting such things with intention that it will be used for forgery. These offences carry a maximum penalty of 10 years imprisonment. A person who has committed this offence may be more the cause of the forgery problem than the person who is using the forgeries. It is important to have severe sanctions to ensure such people are dealt with appropriately.

278. Proposed subsections 145.3(3) and (4) deal with the same situations but where it cannot be shown the person possessed, made or adapted the device with the intention of committing forgery. Here the person will be guilty if he or she does not have a lawful excuse. The lower maximum penalty of 2 years imprisonment is appropriate here. It is the same as the penalty currently found in subsection 65(2) of the *Crimes Act 1914*.

***Proposed section 145.4 - Falsification of documents***

279. Proposed section 145.4 is the equivalent of the Model Criminal Code false accounting offence (section 19.7).

280. Subsection 145.4(1) provides a person is guilty if the person gives information to another person and the information was derived from a document known by that person to be false and misleading in a material particular, and the document is kept for the purposes of a Commonwealth law or made or held by the Commonwealth and the person does all this for gain or loss. Subsection 145.4(2) covers the same situation but covers any document where the intention is to obtain a gain or cause a loss to the Commonwealth.

281. The Model Criminal Code focuses on false accounts because in the State context because of “the central importance of accounts in the world of commerce”. In the Commonwealth context there are many other documents of importance that are required by law to be kept and can cause losses to the Commonwealth and others (for example, immigration, employment and quarantine records).

282. There are offences of this nature at sections 72 and 74 of the *Crimes Act 1914* and section 61 of the *Financial Management and Accountability Act 1997*. It is appropriate that there be a central offence which will avoid the need for duplication in other legislation. The justification for the offence of false accounting is that forgery is still essentially an offence about altering other people's documents and so does not cover a person who authors a false account. The central importance of accounts justifies the creation of a serious offence and in our view the same applies to any accounts prepared for the Commonwealth. These are just as important as those prepared for the private sector. The maximum penalty should be as recommended – 7 years imprisonment, which is the same as the penalty for contravening section 72 of the *Crimes Act 1914* or section 61 of the *Financial Management and Accountability Act 1997*.

***Proposed section 145.6 Geographical jurisdiction***

283. Subsection 145.6 provides for similar reasons to theft that extended geographical jurisdiction category D applies to the forgery related offences.

**Part 7.8 - Causing harm to, and impersonation and obstruction of, Commonwealth public officials**

284. The primary purpose of this Bill was to improve the theft, fraud, corruption and forgery related offences, but an important issue for the Government and Chapter 7 of the *Criminal Code* is the protection those performing duties for the Commonwealth. The existing offences are inadequate and provide less than satisfactory sanctions where the obstruction involves violence. Rather than rely on State offences, the proposed offences will give the Commonwealth a common set of offences which can be utilised by law enforcement to protect the Commonwealth's most important asset - its people. At the same time the proposed amendments will enable the Commonwealth to be the first jurisdiction to implement the basic harm and threaten harm offences of the 'Offences Against the Person' Chapter of the Model Criminal Code (Chapter 5) which was completed in September 1998.

285. The basic forms of the obstruction and impersonation of Commonwealth officer offences are at sections 75 and 76 of the *Crimes Act 1914*, but it is proposed that they be replaced by offences that adequately cover similar offences in other legislation. The proposed new offences will enable the repeal of more than 60 offences located throughout the Commonwealth statute book.

286. In 1990 the Gibbs Committee stated that a reduction in the number of these offences will mean that "...the courts, the legal profession and the police would...be able to deal more effectively with a limited number of omnibus offence provisions with which they would become familiar than [with] a much greater number of provisions in particular Acts." and "...some matters are of such significance in the administration of law and justice that it is desirable that they be governed by general provisions carefully thought out in advance rather than provisions drafted ad hoc for the purposes of each particular statute."

***Proposed section 146.1 of Division 146 - Definitions***

287. A definition of ‘Commonwealth law enforcement officer’ is needed because there are additional penalties in the harm and threaten harm offences where the victim is a Commonwealth law enforcement officer. It is proposed that this should only cover those whose occupation exposes them to the danger of being harmed by criminals: Australian Federal Police, National Crime Authority and Australian Customs Service personnel.

288. ‘*Deception*’ is defined to cover intentional or reckless deception, whether by words or conduct. This definition an important element of the impersonation offence.

289. ‘*Harm*’ is defined because it is used in the harm and threaten harm offences. The definition follows that at section 5.1.1 of the Model Criminal Code. There was extensive nation-wide consultation on the definition. It covers physical and mental harm.

290. ‘*Harm to a person’s mental health*’ also follows the Model Criminal Code definition. It does not cover ordinary emotional reactions.

291. ‘*Physical harm*’ covers a wide range of possibilities including infection with a disease (particularly relevant to attacks and threats carried out with a syringe).

292. ‘*Serious harm*’ is carefully defined to ensure that technical arguments about the mathematical changes of infection with certain life-threatening diseases are not too easily used to avoid criminal responsibility when the victim has been deliberately attacked with something that is infected with such a disease. It covers the cumulative effect of harm, the likelihood of endangerment and the likelihood of it being significant and longstanding. Again this follows the Model Criminal Code (section 5.2.2).

### ***Proposed section 146.2 - Causing harm***

293. Again, consistent with the objectives behind the ‘serious harm’ definition, a person’s conduct is taken to cause harm if it substantially contributes to harm. This follows section 5.1.3 of the Model Criminal Code.

***Proposed Division 147 - Causing harm to Commonwealth public officials***

294. This provides for basic cause harm offences. There is no attempt to deal with more serious offences against the person such as sexual penetration, serious assaults or homicide. They are matters where the best approach is to rely on State and Territory law. However many cases of obstruction will involve some harm being caused to Commonwealth public officials. It is not appropriate that all those cases should be dealt with by the lesser obstruction offence. The more serious offence is necessary in some cases. There are four offences: causing harm to a Commonwealth public official (proposed section 147(1)); causing harm to a former Governor-General, Minister or Parliamentary Secretary (proposed section 147(2)); threatening to cause harm or serious harm to a Commonwealth public official (proposed section 147.2); and threatening to cause serious harm to a former Governor-General, Minister or Parliamentary Secretary (proposed section 147.2(3)).

***Proposed section 147.1 - Causing harm to a Commonwealth public official etc***

295. Proposed subsection 147.1(1) provides a person is guilty if the person causes harm to a Commonwealth public official, intends to do so, does so without the official's consent and because of the official's status as a Commonwealth public official or any conduct engaged in by the official in the official's capacity as a Commonwealth public official. The proposed offence is based on section 5.1.17 of the Model Criminal Code. It does not extend being reckless as to causing the harm. The focus here is one someone who deliberately harms the Commonwealth public official. Recklessly causing harm is more appropriate for the State and Territory offences. Likewise attacks which have nothing to do with the person's status as a Commonwealth public official should be left to the State and Territory law.

296. The proposed maximum penalty of 10 years imprisonment, or 13 years where the official is a Commonwealth judicial or law enforcement officer is the same as proposed for the Model Criminal Code offence.



297. Proposed subsection 147.1(2) provides for a similar offence where the victim is a former Governor-General, former Minister or former Parliamentary Secretary. The shortcomings of the current restriction to ‘acting in the course of duty’ were identified by the 1995 Review of Security for Commonwealth Holders of High Public Office, a review prepared for the Prime Minister by Deputy Secretary Greg Wood of the Department of the Prime Minister and Cabinet. The Review recommended that section 76 of the *Crimes Act 1914* be broadened so that the offence applies where:

- (a) a Minister or the Governor-General is assaulted or threatened while not performing an official function but the threat or assault is as a result of the office holders’ official position or activities; and
- (b) a former Minister or former Governor-General is assaulted or threatened as a result of their former duties.

***Proposed section 147.2 - Threatening to cause harm to a Commonwealth public official etc***

298. Proposed subsection 147.2(1) provides a person is guilty if he or she makes a ***threat to cause serious harm*** (either through someone else like a spouse or by aiming the threat at someone else) intending or reckless as to whether the victim will fear that the threat will be carried out. Further it must be shown the threat is made because of the official’s status as a Commonwealth public official or because of any conduct engaged in by the official because of his or her status. The maximum penalty is 7 years imprisonment, or 9 years where the official is a Commonwealth judicial or law enforcement officer. This offence is based on section 5.1.21 of the Model Criminal Code.

299. Proposed subsection 147.2(2) covers ***threats to cause harm***, but not serious harm, and includes an offence in the same terms as proposed subsection 147.2(1). The maximum penalty is 2 years imprisonment. The Model Criminal Code Officers Committee recommended that this would be an appropriate penalty for threatening less than serious harm.

300. Proposed subsection 147.2(3) covers threats to cause serious harm to a former Governor-General, former Minister and former Parliamentary Secretary and includes an offence in the same terms as proposed subsections 147.2(1) and 147.2(2). The maximum penalty is 7 years imprisonment.

301. Proposed subsection 147.2(4) makes it clear that threats include those that are express or implied, or conditional or unconditional. Depending on their nature, conditional threats can also be caught by the unwarranted demands offence (proposed section 139.1). This follows subsection 5.1.19(1) of the Model Criminal Code.

302. Proposed subsection 147.2(5) provides that it is not necessary for the prosecution to prove the victim actually feared that the threat would be carried out. It is sufficient that the defendant intended, or was reckless about causing, fear.

***Proposed section 147.3 - Geographical jurisdiction***

303. Proposed section 147.3 provides that there be extended geographical jurisdiction category C (proposed section 15.3) for these offences.

***Division 148 - Impersonation of Commonwealth public officials***

304. Section 75 of the *Crimes Act 1914* makes it an offence to impersonate or falsely represent oneself to be an officer in particular circumstances. A number of provisions in other Acts make it an offence to pretend to be an officer with particular powers, (eg s. 97 of the *Marriage Act* prohibits a person from pretending he or she is a person whose consent to the marriage of another person is required). These other offences do not currently require proof of the additional matters provided for in section 75 .

305. The Gibbs Committee concluded there was a need to extend section 75 to cover a person who impersonates or falsely represents himself or herself to be an officer with the intention of obtaining a gain, causing a loss or influencing the exercise of a public duty (as in the general dishonesty offence at proposed section 135.1). The situation where one officer impersonates another or falsely represents to be another is clarified in the proposed section 148.2). A key aim of these offences is to protect the public against being disadvantaged by a person pretending to be an officer who exercises powers he or she is not empowered to exercise. They are also designed to protect the integrity of the office so the person must be purporting to perform the functions of the office at the relevant time.

***Proposed section 148.1 - Impersonation of an official by a non-official***

306. Proposed subsection 148.1(1) provides a person other than a Commonwealth public official is guilty if on a particular occasion the person ***by a deception impersonates*** another person in that person's capacity as a Commonwealth public official and does so knowing it to be in circumstances when the official is likely to be on duty. This is based on the Gibbs Committee recommendations, though it was considered desirable to also require proof of deception, which under proposed section 146.1 means an intentional or reckless deception, whether by words or other conduct.

This is to make it very clear that the offence is not meant to cover satirical presentations which may be performed in jest. The maximum penalty is 2 years imprisonment.

307. Proposed subsection 148.1(2) provides a person other than a Commonwealth public official is guilty if on a particular occasion the person by *falsely representing* himself or herself to be another person in that person's capacity as a Commonwealth public official and does so in the *assumed character* of the official. The maximum penalty is 2 years imprisonment.

308. Proposed subsection 148.1(3) provides that should a person other than a Commonwealth public official impersonate or falsely represent themselves in another person's capacity as a Commonwealth public official and does so with the intention of obtaining a gain, causing a loss, or influencing the exercise of a public duty or function, the person will be guilty of an offence punishable with a penalty of 5 years imprisonment.

***Proposed section 148.2 - Impersonation of an official by another official***

309. The offences in proposed section 148.2 cover the same situations where the Commonwealth public official is being impersonated or falsely represented by another Commonwealth public official. The maximum penalties are the same.

***Proposed section 148.2 - Geographical jurisdiction***

310. Proposed section 147.3 provides that there be extended geographical jurisdiction category C (proposed section 15.3) for these offences.

***Proposed Division 149 - Obstruction of Commonwealth public officials***

311. Section 76 of the *Crimes Act 1914* makes it an offence to obstruct, resist, hinder, use violence against, threaten or intimidate a officer carrying out a function or duty or a person exercising a power, function or duty under a law of the Commonwealth or on behalf of the Commonwealth.

312. In spite of section 76, many other Acts create offences, using varying terminology, of obstructing or hindering persons engaged in duties under those Acts. Sometimes the protection goes beyond officers and sometimes it applies to the statutory authority rather than an individual officer. The Gibbs Committee considered that there should be a new, central offence prohibiting obstruction, resistance, interference, hindering and the use or threatened use of violence, threats or intimidation.

313. The meaning of wilfully (or knowingly) obstruct has been considered in a number of cases relating to obstruction of police in the performance of their duties. Lying to an officer who asks questions in the performance of a duty to investigate was held in *Tankey v Smith* (1981) 36 ACTR 19 to amount to wilful obstruction. However, mere failure to answer questions does not amount to wilful obstruction (*Rice v Connolly* [1966] 2 All ER 649). The distinction is that a citizen has a right to refuse to answer questions but no right to deliberately deceive. There may, however, be exceptional cases where the manner of a person together with his or her silence amounts to wilful obstruction, (eg an innocent person deliberately seeking to attract suspicion to protect the guilty person).

314. There are over 50 offences which can be replaced by a general offence of obstructing an officer. The Gibbs Committee recommended that the legislation prohibit obstruction, resistance, interference, hindering and the use of violence, threats or intimidation without reasonable excuse. It also recommended that the offence cover all Commonwealth public officials while engaged in the discharge or attempted discharge of any duty or function as such an official.

***Proposed section 149.1 - Obstruction of Commonwealth public official***

315. Proposed subsection 149.1(1) provides a person is guilty if the person knows the other person is a Commonwealth public official and obstructs the official in the performance of the officials functions. Proposed subsection 149.1(2) provides it is not necessary to prove the person knew the official was a Commonwealth public official of that the functions were functions as a Commonwealth public official.

Proposed subsection 149.1(6) provides for a broad definition of functions. Further proposed subsection 149.1(3) provides it is not necessary to show the person was aware that the official was performing those functions. This reflects the fact many in the community are often not aware of what are Commonwealth functions.

316. The proposed maximum penalty is 2 years imprisonment. The Geographical jurisdiction - Category C (section 15.3).

**Proposed Part 7.20, Division 261 - Miscellaneous**

317. Division 261 provides for some general provisions which apply to the whole of Chapter 7. Readers will note that the numbering of this Part suggests that in the future there will be a large number of provisions to be inserted into Chapter 7. This is correct. It is proposed that Chapter 7 will eventually include damage offences, computer offences and offences concerning Commonwealth land. It is important that the *Criminal Code* also has room to grow without disrupting its structure and numbering.

***Proposed section 261.1 - Saving of other laws***

318. Proposed section 261.1 makes it clear that other Commonwealth, State and Territory laws are not limited or excluded by proposed Chapter 7. There is an overlap with State and Territory offences. This provision is designed to ensure that when State police wish to lay a series of charges which may involve one offence against a Commonwealth entity, then they have the option of charging under the State or Territory law.

***Proposed section 261.2 - Contempt of court***

319. Proposed section 261.2 is included to ensure that the court will always have the option of punishing contempts of court rather than using the offences in this Chapter (for example, obstruction).

***Proposed section 261.3 - Ancillary offences***

320. Proposed section 261.3 is included to ensure an unintended consequence of referring specifically to another offence (like theft) in another offence (such as

receiving) does not mean that under subsection 11.6(2) of the *Criminal Code* the reference is to the ancillary offences as well.

### **Item 16 of Schedule 1 - Chapter 10 - National Infrastructure**

321. Item 16 inserts two new chapters. Chapter 10 which is concerned with the national infrastructure and Chapter 11 which deals with interpretative provisions. Chapter 10 will deal with the protection of any part of the national infrastructure about which the Commonwealth has power and believes it is in the national interest to protect regardless of ownership arrangements. While the ultimate content and size of this chapter is not certain, the *Crimes Act 1914* already provides for protection of the post and telecommunications (Parts VIIA and VIIB). Some of these offences are theft and fraud related, so it is proposed that they be updated and transferred from the *Crimes Act 1914* to the *Criminal Code*. Other offences which protect the postal and telecommunications services in Parts VIIA and VIIB are likely to be moved to Chapter 10 when the Government moves to develop other parts of the *Criminal Code*. For example, the send narcotic substances by post offence (section 85W of the *Crimes Act 1914*) might be appropriate to move to the *Criminal Code* when steps are taken to enact new serious drug offences.

### **Part 10.5 - Postal services**

322. Part 10.5 concerns the postal services offences. These include theft and receiving of mail bags, etc (proposed sections 471.1 and 471.2) and taking or concealing them (proposed section 471.3). These replace most of section 85K of the *Crimes Act 1914*. The offences are drafted in the same terms as the equivalent offences used in the 'Protect the proper administration of government' chapter (Chapter 7) but provides protection for the core of Australia's postal service. This approach continues the policy which existed in 1989 when the equivalent offences were first included in Part VIIA of the *Crimes Act 1914*. Part 10.5 merely continues the longstanding policy on these issues. The overall object is to review and move all *Crimes Act 1914* offences into the *Criminal Code*. In some cases, like these, the policy behind the offences will

remain unchanged. However, also like these, the offences will need to be adjusted to make them consistent with related *Criminal Code* offences.

323. Other Part 10.5 offences include dishonest removal of stamps or postmarks (proposed section 471.4); dishonest use of stamps (proposed section 471.5); damaging or destroying mail bags, etc (proposed section 471.6 - this replaces part of section 85K of the *Crimes Act 1914*); tampering with mail bags, etc (proposed section 471.7); and dishonestly obtaining delivery articles in the course of the post (proposed section 471.8).

***Proposed section 470.1 of Division 470 - Definitions***

324. The proposed definitions closely follows those in section 85E of the *Crimes Act 1914*. The terms ‘article in the course of post’, ‘carry by post’, ‘mail receptacle’, ‘postage stamp’, ‘postal message’ and ‘unwritten communication’ follow terminology used in the postal industry and the *Australian Postal Corporation Act 1989*. ‘Property’ has been defined with reference to the Chapter 7 theft and fraud offences (see section 130.1).



***Proposed section 470.2 - Dishonesty***

325. Proposed section 470.2 uses the same definition as that found in proposed section 130.3 of Chapter 7 and is repeated here for the convenience of readers. A detailed explanation of the term is found in the notes on proposed section 130.3.

***Proposed section 470.3 - Determination of dishonesty to be a matter for the trier of fact***

326. Proposed section 470.3 is the same as proposed section 130.4 and is explained in the notes on that section.

***Proposed Division 471 - Postal offences***

327. All the postal offences are in this Division.

***Proposed section 471.1 - Theft of mail receptacles, articles or postal messages***

328. Proposed subsection 471.1(1) provides a person is guilty if the person dishonestly appropriates a mail receptacle, an article in the course of post or a postal message and does so with the intention of permanently depriving the other person of the mail receptacle, article or postal message. This offence contains the same elements as the theft offence at proposed section 131.1 and penalty (a maximum of 10 years imprisonment). Subsections 471.1(2), (3) and (4) mirror the relevant theft offence interpretative provisions.

329. The postal theft offence replaces part of section 85K of the *Crimes Act 1914* which refers to 'fraudulent taking', 'stealing' and 'misappropriating' and relies on the common law meaning of these terms. The new offence will simplify the terminology and harmonise it with the general *Criminal Code* theft offence. The offence at section 85K has a maximum penalty of 5 years imprisonment. Proposed section 471.1 will justifiably increase that penalty. Items that are in the post can often be valuable and there is no reason having a lower penalty just because they were stolen from the post.

***Receiving stolen mail receptacles, articles or postal messages***

330. Proposed subsection 471.2(1) provides a person is guilty if the person dishonestly receives a stolen mail receptacle, an article in the course of post or a postal message knowing or believing it to be stolen. This offence contains the same elements as the receiving offence at proposed section 132.1 and penalty (a maximum of 10 years imprisonment). Subsections 471.2(2), (3) and (4) mirror the relevant receiving offence interpretative provisions.

331. The postal receiving offence replaces subsection 85K(2) of the *Crimes Act 1914* which refers to 'receiving' 'stolen fraudulently taken' or 'misappropriated' articles and relies on the common law meaning of these terms. The new offence will simplify the terminology and harmonise it with the general *Criminal Code* receiving offence. The offence at section 85K has a maximum penalty of 5 years imprisonment. Proposed section 471.2 will justifiably increase that penalty significantly. Items that are in the post can often be valuable and there is no reason having a lower penalty just because they were received from the post.

***Proposed section 471.3 - Taking or concealing of mail-receptacles, articles or postal messages***

332. Proposed subsection 471.3(1) provides a person is guilty if the person dishonestly takes or conceals a mail receptacle, an article in the course of the post or postal message. The proposed maximum penalty is 5 years imprisonment. This deals with less serious conduct covered by section 85K of the *Crimes Act 1914* which referred to 'fraudulently taking' and 'fraudulently concealing'. 'Dishonestly' means much the same thing as 'fraudulently'. The existing maximum penalty of 5 years imprisonment is appropriate.

***Proposed section 471.4 - Dishonest removal of postage stamps or postmarks***

333. Proposed section 471.4 provides a person is guilty if the person dishonestly removes any postage stamp or removes a post mark from a previously used stamp. It is appropriate to only have a minor offence for this type of conduct. The maximum

penalty is 12 months imprisonment. This is the same as provided for in the offence which it partly replaces (section 85J of the *Crimes Act 1914*).

***Proposed section 471.5 - Dishonest use of previously used, defaced or obliterated stamps***

334. Proposed subsection 471.5(1) provides a person is guilty if the person dishonestly uses for postal services a previously used, obliterated or defaced postage stamp. Proposed subsection 471.5(2) provides for a presumption as to usage where the stamp is affixed to an article. Consistent with *Criminal Code* principles, the burden of proof in respect of contrary evidence (see subsection 13.3(1) of the *Criminal Code*). The ‘evidential burden’ is defined at subsection 13.3(6) which provides it means, in relation to a matter, the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter in question exists or does not exist. If the person satisfies that standard, then it is for the prosecution to prove the matter in dispute beyond a reasonable doubt. In view of the fact the defendant is more likely to be able to point to such evidence and the less serious nature of the offence (maximum penalty of 12 months imprisonment), it is appropriate to have a presumption in this instance. The offence replaces part of section 85J of the *Crimes Act 1914* which also contains a similar presumption.

***Proposed section 471.6 - Damaging or destroying mail receptacles, articles or postal messages***

335. Proposed section 471.6 provides a person is guilty if the person engages in conduct that causes damage to or the destruction of a mail receptacle, article in the course of post or postal message and the person intends his or her conduct will cause that damage or is reckless as to whether his or her conduct will cause the damage. The maximum penalty is 10 years imprisonment. This offence is based on a soon to be released Model Criminal Code damage offence and replaces the remaining component of section 85K of the *Crimes Act 1914*. Damage can of course produce the same level of deprivation of property as theft. The penalty should therefore be the same as that

for the postal theft offence (proposed subsection 471.1(1)). The maximum penalty should be 10 years imprisonment. This is consistent with State and Territory penalties in relation to damage offences. While damage offences are generally outside the subject matter of this Bill, it was more efficient to include them here now rather than placing a redrafted offence into the *Crimes Act 1914*.

***Proposed section 471.7 - Tampering with mail receptacles***

336. Proposed subsection 471.7(1) provides a person is guilty if the person dishonestly opens a mail receptacle or tampers with a mail receptacle. A mail receptacle can of course have many articles of monetary and personal value. Tampering with a large mail receptacle, like a mail bag, has the potential to disrupt the lives of hundreds of Australians as a result of one incident. It is therefore appropriate that the maximum penalty should be 5 years imprisonment. The proposed offence replaces sections 85L of the *Crimes Act 1914*.

337. Proposed subsection 471.7(2) provides the person is guilty if the person intentionally opens a mail receptacle, does so without authorisation and knows that he or she is not authorised. This is a lesser preparatory offence with a maximum of 2 years imprisonment. It is appropriate to have this in the event that the person is caught before they have an opportunity to start tampering with the mail. The offence replaces subsection 85L(2) of the *Crimes Act 1914*.

***Proposed section 471.8 - Dishonestly obtaining delivery of articles***

338. Proposed section 471.8 provides a person is guilty if the person dishonestly obtains delivery of, or receipt of, an article in the course of the post that is not directed to the person. This of course would not cover inadvertently keeping something that has been misdirected. The focus is on someone who does something dishonest to obtain the delivery or receipt of the article. It is therefore appropriate that the same penalty as the general dishonesty offence (proposed section 135.1) should apply. This is also consistent with the penalty for the offence that it replaces, section 85 M of the *Crimes Act 1914*.

***Proposed section 471.9 - Geographical jurisdiction***

339. Proposed section 471.9 provides that the appropriate Geographical jurisdiction should be Category C (section 15.3).

***Proposed Division 472 - Miscellaneous***

340. Proposed section 472.1 provides the usual savings provision for other laws of the Commonwealth, the States and Territories. There is some overlapping. In some cases it will be more convenient to charge under another offence. The same approach is taken with the theft, fraud, bribery and related offences in Chapter 7.

341. Proposed section 472.2 preserves the meaning of expressions in the *Australian Postal Corporation Act 1989* and in what is to remain of Part VIIA of the *Crimes Act 1914*.

**Proposed Part 10.6 - Telecommunications**

342. This is comprised of the offence of general dishonesty with respect to a carriage service provider (proposed section 474.1) which would replace section 85ZF of the *Crimes Act 1914*. As with the offences in Part 10.5, the new offence brings the wording of this offence into line with the general dishonesty offence at proposed section 135.1 of Chapter 7. The rationale for having this offence in chapter 10 is much the same as that for the postal offences and reflects the policy that was in place in 1989 when section 85ZF was first inserted into the *Crimes Act 1914*.

***Proposed Division 473 - Preliminary***

343. Proposed Division 473 contains definitions and a procedural provision.

***Proposed section 473.1 - Definitions***

344. These include 'loss', 'obtaining' and 'property' which are the same as those used for the general dishonesty offence in Chapter 7. 'Carriage service' and 'carriage service provider' are the same as those in Part VII B of the *Crimes Act 1914*.

***Proposed section 473.2 - Dishonesty***

345. Proposed section 473.2 uses the same definition as that found in proposed section 130.3 of Chapter 7 and is repeated here for the convenience of readers. A detailed explanation of the term is found in the notes on proposed section 130.3.

***Proposed section 473.3 - Determination of dishonesty to be a matter for the trier of fact***

346. Proposed section 473.3 is the same as proposed section 130.4 and is explained in the notes on that section.

***Proposed Division 474 - Telecommunications offences***

347. Proposed Division 474 is designed to include a range of telecommunications offences currently found in Part VIIB of the *Crimes Act 1914*. However, only one of

those offences concerns something that comes within the general subject matter of this Bill - the defrauding a carrier offence at section 85ZF.

***Proposed section 474.1 - General dishonesty with respect to a carriage service provider***

348. Proposed section 474.1 provides a person is guilty if the person does anything with the intention of dishonestly obtaining a gain or causing a loss to a carriage service provider in connection with the supply of a carriage service. It also covers knowingly risking such a loss. This offence contains the key elements of the general dishonesty offence at proposed section 135.1 and has the same penalty (a maximum of 5 years imprisonment). It does not include the influencing a Commonwealth public official component because that aspect is not relevant to this context.

349. The telecommunications dishonesty offence replaces part of section 85ZF of the *Crimes Act 1914* which refers to ‘defrauding’ and relies on the common law meaning of the term. The new offence will simplify the terminology and harmonise it with the *Criminal Code* general dishonesty offence which like section 85ZF also has a maximum penalty of 5 years imprisonment.

***Proposed section 475.1 of Division 475 - Saving of other laws***

350. Proposed section 475.1 provides the usual savings provision for other laws of the Commonwealth, the States and Territories. There is some overlapping. In some cases it will be more convenient to charge under another offence. The same approach is taken with the theft, fraud, bribery and related offences in Chapter 7.

***Chapter 11 - Miscellaneous interpretative provisions***

351. Eventually the *Criminal Code* will have a very large variety of offences. It is necessary to have an interpretative chapter to deal with the interaction of these offences.

***Proposed section 600.1 of Division 600 of Part 11.1 - Laws that create offences***

352. Proposed section 600.1 makes it clear that a law that creates an offence includes law that indirectly creates an offence. This is important because some offences rely on reference to other laws.



***Item 17 of Schedule 1 - Dictionary - 'aggravated burglary'.***

353. This simply refers to the offence of the same name at proposed section 132.5 and is included for cross-referencing purposes

***Item 18 of Schedule 1 - Dictionary - 'aggravated robbery'.***

354. This simply refers to the offence of the same name at proposed section 132.3 and is included for cross-referencing purposes

***Item 19 of Schedule 1 - Dictionary - 'ancillary offence'.***

355. This is a short-hand term for provisions in Part 2.4 of the *Criminal Code* which extend criminal responsibility. They concern attempt (section 11.1), complicity and common purposes (section 11.2), innocent agency (section 11.3), incitement (section 11.4) and conspiracy (section 11.5). Often special rules need to apply to these provisions collectively (for example, the rules in relation to geographical jurisdiction in Part 2.7 of the *Criminal Code*).

***Item 20 of Schedule 1 - Dictionary - 'Australian aircraft'***

356. This broad definition ensures there is sufficient jurisdiction to cover Australian aircrafts. It is the same definition which was contained in the Criminal Code Amendment (Bribery of Foreign Public Officers) Act 1999.

***Item 21 of Schedule 1 - Dictionary - 'Australian ship'***

357. This broad definition ensures there is sufficient jurisdiction to cover Australian ships. It is the same definition which was contained in the Criminal Code Amendment (Bribery of Foreign Public Officers) Act 1999.

***Item 22 of Schedule 1 - Dictionary - 'burglary'.***

358. This simply refers to the offence of the same name at proposed section 132.4 and is included for cross-referencing purposes

***Item 23 of Schedule 1 - Dictionary - 'Commonwealth authority'***

359. This is one of the more important definitions for Chapter 7 and will also be relevant to future Chapters. The proposed definition sets the scope of the protection of the theft, fraud, bribery and related offences which are to assist with the proper administration of government. It is necessary to cover statutory bodies created by the Commonwealth to perform government functions. In most cases a reference to a body established by or under a law of the Commonwealth will be appropriate. It is therefore proposed that all those bodies be captured under the definition of 'Commonwealth authority'. However there are some exceptions which are clearly separate from the Commonwealth government that should be excluded. These are aboriginal councils and associations; the ACT, NT and Norfolk Island Governments; corporations and bodies such as registered unions and employer associations. The current definition in section 3 of the *Crimes Act 1914*, which defines 'public authority under the Commonwealth' as meaning any authority or body constituted by or under a law of the Commonwealth or of a Territory lacks sufficient discrimination. The definition will also enable the exclusion of other bodies by regulation when appropriate.

***Item 24 of Schedule 1 - Dictionary - 'Commonwealth contract'***

360. This is relevant to the definition of 'Commonwealth service provider' which it is proposed should be inserted by item 28.

***Item 25 of Schedule 1 - Dictionary - 'Commonwealth entity'***

361. This is the collective term for the Commonwealth bodies to be protected by the Chapter 7 theft, fraud, bribery and related offences. It includes Commonwealth authorities which are described at item 23 and the Commonwealth itself (covering its departments and other non-statutory bodies established by the executive).

***Item 26 of Schedule 1 - Dictionary - 'Commonwealth judicial officer'***

362. This definition links with the definition of 'Commonwealth public official' which is relevant to the scope of the Chapter 7 offences which concern the duties of

Commonwealth public official (for example, the bribery offence). Certain judicial officers are covered by the *Crimes Act 1914* definition of ‘Commonwealth officer’ (subsection 3(1)) which covers any person holding office under the Commonwealth. This would include judges of federal courts but there is less certainty about the status of judicial registrars, and State and Territory judges and officials performing judicial functions. It is important that there should be no doubt about the coverage and that the protection afforded to the administration of government should extend to judicial officers. The definition is very comprehensive.

***Item 27 of Schedule 1 - Dictionary - ‘Commonwealth public official’***

363. The definition of ‘Commonwealth officer’ in subsection 3(1) of the *Crimes Act 1914* is very unsatisfactory. This is because there have even been doubts expressed in the past that it covers Ministers and it does not even cover the Governor-General. It is critical that all people who perform duties and functions for the Commonwealth are covered. This is not only relevant to corruption offences, but the whole range of Chapter 7 offences. It also includes ‘Commonwealth service providers’ - those who provide services by contract rather than as an office holder or employee (see the proposed definition at item 28). Often these people have responsibilities that are indistinguishable from departmental officers. While they are covered by the *Crimes Act 1914* definition of ‘Commonwealth officer’ for some offences (non-disclosure, theft, falsification or records, corruption, impersonation and obstruction - sections 75 to 76), there is no reason why they should not be subject to the full range of Chapter 7 offences (including the fraud related offences).

***Item 28 of Schedule 1 - Dictionary - ‘contracted service provider’***

364. The definition of ‘contracted service provider’ covers parties to a contract with a ‘Commonwealth entity’ but also subcontractors. Often it is the subcontractors who provide the services.

***Item 29 of Schedule 1 - Dictionary - ‘defence aircraft’***

365. This broad definition ensures there is sufficient jurisdiction to cover Australian aircraft. It is the same definition which was contained in the Criminal Code Amendment (Bribery of Foreign Public Officers) Act 1999.

***Item 30 of Schedule 1 - Dictionary - 'defence ship'***

366. As per 29.

***Item 31 of Schedule 1 - Dictionary - 'electronic communication'***

367. This is an important definition for the *Criminal Code* to ensure that where there are references to communications there adequate coverage for a whole range of options now technically possible. The definition is consistent with the terminology of the *Electronic Transactions Bill 1999*.

***Item 32 of Schedule 1 - Dictionary - 'engage in conduct'***

368. This simply refers to the interpretation provision at proposed for subsection 4.1(2) by item 4.

***Item 33 of Schedule 1 - Dictionary - 'foreign country'***

369. This is important for the purposes of the geographical jurisdiction provisions in proposed Part 2.7. It covers the full range of countries and territories that are outside Australia.

***Item 34 of Schedule 1 - Dictionary - 'person'***

370. This has been inserted because to simplify the drafting, a most of Chapter 7 offences refer to 'person'. While paragraph 22(1)(a) of the *Acts Interpretation Act 1901* includes the body politic or corporate as well as the individual, it needs be made clear that for the purposes of the *Criminal Code* it includes a Commonwealth authority that is not a body corporate and that 'another' has a corresponding meaning.

***Item 35 of Schedule 1 - Dictionary - 'primary offence'***

371. This is a useful description which simplifies the drafting of some provisions (note proposed Part 2.7). It simply distinguishes most offences from what is defined as ‘ancillary offences’ by item 19.

***Item 36 of Schedule 1 - Dictionary - ‘public official’***

372. A generic definition of ‘public official’ is necessary to make a number of offences to work in the way they are intended. In some cases it should only be necessary that the defendant knew he or she was dealing with a public official, not necessarily a ‘Commonwealth public official’ (for example, see the bribery offence at proposed section 141.1).

***Item 37 of Schedule 1 - Dictionary - ‘receiving’***

373. This simply refers to the offence of the same name at proposed section 132.1 and is included for cross-referencing purposes

***Item 38 of Schedule 1 - Dictionary - ‘robbery’***

374. This simply refers to the offence of the same name at proposed section 132.2 and is included for cross-referencing purposes

***Item 39 of Schedule 1 - Dictionary - ‘services provided to a Commonwealth entity’***

375. This is necessary to make the definition of ‘Commonwealth service provider’ at item 28 to work properly. The services must be in connection with the performance of the Commonwealth entity’s functions.

***Item 40 of Schedule 1 - Dictionary - ‘subcontractor’***

376. This is necessary to make the definition of ‘Commonwealth service provider’ at item 28 to work properly. It ensures the subcontractor is providing services in connection with the performance of the Commonwealth entity’s functions.

***Item 41 of Schedule 1 - Dictionary - ‘theft’***

377. This simply refers to the offence of the same name at proposed section 131.1 and is included for cross-referencing purposes

## SCHEDULE 2 - AMENDMENT OF OTHER LAWS

### Part 1 - Amendments

#### *Aboriginal and Torres Strait Islander Commission Act 1989*

##### **Item 1**

This item repeals subsection 90(4) of the *Aboriginal and Torres Strait Islander Commission Act 1989* (ATSIC Act) and substitutes a replacement subsection. Section 90 ATSIC Act deals with secrecy and subsection 90(4) provides that the term “offence against this Act” includes a reference to offences against specified provisions of the *Crimes Act 1914* where those offences relate to the ATSIC Act. The substituted subsection provides that the term refers to certain *Crimes Act* provisions and to certain *Criminal Code* provisions which are specified. The *Crimes Act* sections which are reinserted in substituted paragraph (4)(a) refer to ancillary offences (such as conspiracy) but do not include *Crimes Act* fraud related offences at sections 29C and 29D. The proposed provision will instead refer to the *Criminal Code* fraud related offences.

##### **Item 2**

Item 2 repeals subsection 191(4) and substitutes a replacement subsection (4). Section 191 deals with secrecy and subsection 191(4) provides that an “offence against this Act” includes a reference to offences against specified provisions of the *Crimes Act 1914* where those offences relate to the ATSIC Act or regulations. The *Crimes Act* provisions which are reinserted in substituted paragraph (4)(a) are the ancillary offence sections of 6, 7, 7A and subsection 86(1) but exclude *Crimes Act* sections 29C and 29D because these latter sections are themselves being repealed by Schedule 2 of this Bill. Substituted paragraph 4(b) provides that the fraud related and false or misleading statements in application offences in the *Criminal Code* come within the term “offence against this Act”.

##### **Item 3**

Item 3 repeals subsections 197(2) and (3). Subsection 197(2) created an offence of making a statement that the person knows to be false or misleading in a material particular in an application for a guarantee or a grant or a loan under the ATSIIC Act or present a document that the person knows contains information which is false or misleading in a material particular. Subsection 197(3) provided the penalty for conviction of a subsection 197(2) offence. These offences will be replaced by the equivalent offences in the *Criminal Code*.

#### **Item 4**

This item amends paragraph 199(9)(b) ATSIIC Act. Subsection 199(9) provides that a reference in section 199 ATSIIC Act (which deals with the conduct of directors, servants or agents) to an offence against the ATSIIC Act includes a reference to certain specified offences where the offence relates to the ATSIIC Act, regulations, Regional Council election rules, the TSRA election rules or zone election rules. Paragraph 199(9)(b) ATSIIC Act provides that the term “offence against the Act”, when used in section 199, includes reference to offences against certain specified *Crimes Act* sections where those offences relate to the ATSIIC Act, regulations, Regional Council election rules, the TSRA election rules or zone election rules. The amendment in this item omits the reference to sections 29C (false pretences offence) and 29D (fraud offence) *Crimes Act 1914* because these sections are themselves repealed and replaced by *Criminal Code* offences.

#### **Item 5**

Item 4 also amends paragraph 199(9)(b) ATSIIC Act by inserting after “*Crimes Act 1914*” a reference to the *Criminal Code* fraud related and false or misleading statement in application offences so that the term “offence against this Act”, when used in section 199, will include offences against the specified *Crimes Act* and *Criminal Code* offences where the offences relate to the ATSIIC Act or regulations Regional Council election rules, the TSRA election rules or zone election rules.

#### **Item 6**



The item inserts subsection 10 at the end of section 199 of the Act. Subsection 10 provides that Part 2.5 of the *Criminal Code* does not apply to an offence against the Act. The item also adds a note after subsection 10 explaining that Part 2.5 deals with corporate criminal responsibility. This subsection is included to make it clear section 199 (conduct of directors, servants and agents) of the Act itself deals with corporate criminal responsibility.

### ***Aboriginal Councils and Associations Act 1976***

#### **Item 7**

Item 7 repeals subsection 39(6) *Aboriginal Councils and Associations Act 1976* (ACA Act). Subsection 39(6) created an offence where a person, in answer to a requirement under subsection 39(4) ACA Act (namely a requirement from a person who has been duly authorised by the Registrar to examine the documents of an Aboriginal Council) to answer questions and produce documents, makes a statement knowing it to be false or misleading in a material particular. This offence is replaced by the equivalent *Criminal Code* offence.

#### **Item 8**

Item 8 repeals subsection 60(6) ACA Act which created an offence where a person makes a statement in answer to a requirement under subsection (4) knowing the statement to be false or misleading in a material particular. A subsection (4) requirement is where a person, who has been duly authorised by the Registrar to examine documents of an Incorporated Aboriginal Association, requires a person to answer questions and produce documents. Subsection 60(6) will be replaced by the equivalent *Criminal Code* offence.

#### **Item 9**

This item amends subsection 60(7). The subsection provides that a person is not excused, on the grounds of self-incrimination, from answering a question or producing

a document which the person is required to answer or produce by a duly authorised person.

However the subsection also provides that answers given by a person or documents produced or anything obtained as a direct or indirect result of the answer or production is not admissible in evidence against the person in any proceedings except proceedings for an offence against the section. Item 9 amends subsection 60(7) by providing that the exception now extends to proceedings under the *Criminal Code* false or misleading information or documents offence provisions that relates to this section. This is necessary because the former offence at subsection 60(6) has been repealed by item 8 and replaced by the equivalent *Criminal Code* offences.

### **Item 10**

This item amends subsection 68(3). This subsection is similar to subsection 60(7) in that it provides that a person is not excused, on the grounds of self-incrimination, from answering a question or producing a document which the person is required to answer or produce by a duly authorised person.

However the subsection also provided that answers given by the person or documents produced or anything obtained as a direct or indirect result of the answer or production is not admissible in evidence against the person in any proceedings except proceedings for an offence against the subsection 69(2). Subsection 69(2) created an offence where a person appearing before the Registrar when required to do so under subsection 68(2) makes a false or misleading statement.

This item repeals the reference in subsection 68(3) to subsection 69(2) because item 11 repeals subsection 69(2). As a result this item provides that the exception extends to the *Criminal Code* false or misleading information offences that relate to section 68.

### **Item 11**

As stated in the previous paragraph item 11 repeals subsection 69(2) which created an offence of making a statement that the person knows to be false or misleading in a

material particular when appearing before the Registrar for examination under subsection 68(2). The offence is replaced by the equivalent *Criminal Code* offence.

### ***Aboriginal Land Rights (Northern Territory) Act 1976***

#### **Item 12**

Item 12 repeals subsection 23A(3). That subsection had created an offence of knowingly furnishing information that is false or misleading in response to a notice served on the person by an authorised person requiring the person to furnish information or produce documents relating to the matters specified in subsection (2). The offence is replaced by the equivalent *Criminal Code* offence.

#### **Item 13**

Item 13 repeals subsection 23C(3) which created an offence of obstructing or hindering an authorised person in exercise of powers under this section to obtain access to the buildings and places specified in subsection (2). The offence is replaced by the equivalent *Criminal Code* offence.

#### **Item 14**

Item 14, which is consequential on the repeal of section 54B by item 16, omits the words “or section 54B” from subsection 54(3). Subsection 54(3) provides that self-incrimination is not an excuse not to produce a document or answer a question under section 54 of the Act. The section also provides that the answer to a question is not admissible in evidence in proceedings against the person except proceedings under paragraph 6(c) or section 54B of the Act. In place of the omitted reference to section 54B the item substitutes that the exception also extends to proceedings under the *Criminal Code* false or misleading offences that relate to this Act. The substituted reference is made because the repealed section 54B was a false or misleading information offence which is replaced by the equivalent *Criminal Code* offence.

#### **Item 15**

This item amends subsection 54A(3). The subsection provides that a person is not excused, on the grounds of self-incrimination, from answering a question put to the person under subsection (2) by a Commissioner who is conducting an inquiry under the Act. However the subsection also provides that the answer given by a person is not admissible in evidence against the person in any proceedings except proceedings for an offence against the section or against section 54B. Item 16 repeals section 54B and therefore the substituted wording inserted in subsection 54A(3) is consequential upon item 16. The substituted wording provides that the exception extends to proceedings under the equivalent *Criminal Code* false or misleading information offences.

### **Item 16**

Item 16 repeals section 54B. Section 54B created offences of making a statement to a Commissioner, who is conducting a section 54 or 54A examination, that the person knows to be false or misleading in a material particular (paragraph (a)) or producing a document to a Commissioner who is conducting an inquiry under the Act where the person knows the document is false or misleading in a material particular (paragraph (b)). The two offences in section 54B are replaced by the equivalent *Criminal Code* offences.

### ***Aged Care Act 1997***

### **Item 17**

Section 93-3 of the Act, which created false or misleading information and documents offences in relation to affairs of an approved provider that is a corporation or in relation to the payment of a subsidy, is repealed by item 17. They are replaced by the equivalent *Criminal Code* offences.

### **Item 18**

Section 96-8 of the Act, which created an offence of giving to the Secretary false or misleading information for the purpose of determining a person's income, is repealed

by item 18. It is replaced by the general offence in the *Criminal Code* of giving false or misleading information.

***Agricultural and Veterinary Chemical Products (Collection of Interim Levy) Act 1994***

**Item 19**

This item repeals the reference in section 18(2) to sections 71, 72, 73, 74, 75 and 76 *Crimes Act 1914*. The item is consequential on item 154 in Schedule 2 which repeals these sections in the *Crimes Act 1914*. The repealed sections are replaced by *Criminal Code* offences.

**Item 20**

Item 20 repeals section 35 which created offences of giving false or misleading information or producing false or misleading documents. The offences are replaced by the equivalent offences inserted into the *Criminal Code* .

***Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994*****Item 21**

Item 21 repeals section 37 which created offences of giving false or misleading information or producing false or misleading documents. The offences are replaced by the equivalent *Criminal Code* offences.

***Agricultural and Veterinary Chemicals (Administration) Act 1924*****Item 22**

Item 22 repeals the reference in subsection 69F(3) to sections 71, 72, 73, 74, 75 and 76 *Crimes Act 1914*. The item is consequential on item 154 in Schedule 2 which repeals these sections in the *Crimes Act 1914*. The repealed sections are replaced by *Criminal Code* offences.

***Air Navigation Regulations 1947*****Item 23**

The item repeals regulation 124 which created an offence of obstructing or impeding a person from exercising a power or performing a duty under the Act or Regulations. It is replaced by the equivalent *Criminal Code* offence.

***Airports Act 1996*****Item 24**

The item substitutes a new heading “Incorrect records” which more accurately describes the remaining contents of Part 17. The Part originally consisted of 6 sections (sections 226 to 231 inclusive) 5 of which created offences; 2 of which are repealed by this Bill and the remaining offences can be categorised as incorrect records offences.

**Item 25**

The item is a minor consequential amendment following from the new Part 17 heading inserted by item 24. The item amends section 226, which provides a simplified outline of the Part, so that the outline provides that it is an offence to keep an incorrect record in connection with the operation of the Act. The section no longer provides that it is also an offence under the Part to make a false statement.

### **Item 26**

This item repeals section 227 which created a general offence of making false or misleading statements. The offence is replaced by the false or misleading statements in applications and false or misleading information offences in the *Criminal Code*.

### **Item 27**

This item repeals section 229 which created a more specific offence of giving false or misleading information to airport-operator companies in purported compliance with requirements under the Act. The offence is covered by the *Criminal Code* offence of giving false or misleading information.

## ***Antarctic Treaty (Environment Protection) Act 1980***

### **Item 28**

This item repeals section 22. Section 22 creates an offence where a person falsely represents that he is an inspector. The offence is replaced by the equivalent *Criminal Code* offence.

### **Item 29**

The item repeals section 23 which creates an offence of assaulting or threatening an inspector acting in the performance of his duties. The offence is replaced by the equivalent *Criminal Code* offence.

## ***Auditor-General Act 1997***

### **Item 30**

This item inserts a note at the foot of subsection 33(3) of the Act stating that section 149.1 of the *Criminal Code* deals with obstruction of Commonwealth public officials. The subsection requires the occupier of premises which an authorised official enters or proposes to enter to provide all reasonable facilities to the official for the effective exercise of powers under the section.

### **Item 31**

This item repeals section 34 of the Act. Section 34 creates an offence of making a statement to an audit official that the person knows is false or misleading in a material particular. The section also requires the person to identify the relevant particular in a document where the person gives a document to an audit official knowing that the document is false or misleading in a material particular. The offence is replaced by the *Criminal Code* false or misleading information offence.

### **Item 32**

Item 32, which is consequential on the repeal of section 34 by item 31, omits the words “or 34” from section 35. Section 35 provides that self-incrimination is not an excuse not to produce a document or answer a question under section 32 of the Act. The section also provides that the answer or document, or anything directly or indirectly obtained therefrom, is not admissible in evidence in proceedings against the person except proceedings under sections 32 or 34 of the Act. In place of the omitted reference to section 34 the item substitutes that the exception also extends to proceedings under the equivalent false or misleading information or document offences in the *Criminal Code*.

## ***Australian Citizenship Act 1948***

### **Item 33**

This item makes some consequential amendments to paragraph 21(1A)(a) of the Act as a result of the repeal of sections 29A (false pretences), 29B (false representation) and 29C (statements in applications for grant of money etc) of *the Crimes Act* by item



149. Section 21 provides that a person is taken to have obtained a certificate of Australian citizenship as a result of migration-related fraud if the person was convicted of certain offences under the *Migration Act* or the repealed sections of the *Crimes Act* and the offence was connected with the person's entry into Australia or the grant of a visa or permission to enter. The item substitutes a reference to the *Criminal Code* fraud related offences

***Australian Federal Police Act 1979*****Item 34**

This item amends part of the definition of “class 2 general offence” in paragraph 12B(a)(i) and (ii). Those paragraphs, prior to item 34 coming into force, provide that a general offence is an offence of any of the kinds mentioned in specified sections of the *Crimes Act 1914* and in the *Secret Commissions Act 1905*. All but 2 of the sections specified in subparagraph (a)(i) are repealed from the *Crimes Act* by items 151, 154 and 161 in this Schedule and the *Secret Commissions Act 1905* (referred to in subparagraph (a)(ii)) is totally repealed by item 365 of the Schedule. The *Crimes Act 1914* offences which are listed in subparagraph (a)(i) are at sections 32, 33, 34, 37, 42, 43, 44, 72, 73, 73A, 74 and 88 *Crimes Act*; with the exception of sections 34, 37, 42, 43 and 44 *Crimes Act* they are repealed by items 151, 154 and 161. The item inserts 2 replacement paragraphs (a)(i) and (ii); the new (a)(i) inserts reference to the *Criminal Code* false or misleading documents offence, bribery related offences and falsification of documents offences. The remainder of the *Crimes Act* sections which were referred to in the original subparagraph (a)(i) and which are not repealed by Schedule 2, namely sections 34, 37, 42, 43 and 44 *Crimes Act 1914*, are referred to in substituted subparagraph (a)(ii).

**Item 35**

Item 35 repeals section 62 (misrepresentation by applicant). This offence is replaced by the equivalent *Criminal Code* offence.

**Item 36**

The item repeals paragraph 63(a) which creates an offence of a person who is not a member of the Australian Federal Police personating or passing himself or herself off as a member. This offence is replaced by the equivalent *Criminal Code* offence.

**Item 37**

The item repeals subsection 64(1) which created an offence of assaulting, resisting, obstructing or hindering, or aiding, inciting or assisting another person to assault, resist, obstruct or hinder a member in the execution of his or her duty. The principal offences are replaced by the equivalent *Criminal Code* offences. The ancillary offences of aid, incite, assist another person to carry out the principal offence apply to the *Criminal Code* offences under Part 2.4 of Chapter 2 of the *Criminal Code* (Chapter contains the General Principles of Criminal Responsibility).

### **Item 38**

This item is consequential upon the repeal of subsection 64(1) by item 37. The item omits the reference to subsection (1) and the penalty that may be imposed under that subsection. It substitutes a reference to the *Criminal Code* offences which replace the repealed subsection (1).

### **Item 39**

The item repeals subsection 64(3) which provided that subsection (1) is not intended to exclude or limit the concurrent operation of any law of the Australian Capital Territory. This subsection is no longer necessary because the offences in *the Criminal Code* which replace the offence in subsection (1) are offences against the laws of the Commonwealth only (per section 1.1 of Chapter 1 of *the Criminal Code* (section 1.1 states “The only offences against laws of the Commonwealth are those offences created by, or under the authority of, this Code or any other Act.”)).

## ***Australian Film Commission Act 1975***

### **Item 40**

The item repeals section 42 of the Act which created an offence of knowingly supplying to the Commission or an authorised person, in response to a requirement to do so, information that is false or misleading in a material particular. The offence is replaced by the equivalent *Criminal Code* offence.

***Australian Horticultural Corporation (Export Control) Regulations***

**Item 41**

Item 42 of Schedule 2 of this Bill repeals item 4 of Schedule 2 of the Regulations. Item 4 lists certain prescribed offences for the purpose of the Regulations and refers to offences against 29A (false pretences), 29B (false representation), 29C (statements in applications for grant of money etc.) or 29D (fraud) *Crimes Act 1914*. These *Crimes Act* sections are repealed by item 149 of Schedule 2 of this Bill. Item 4 of Schedule 2 of the Regulations is therefore repealed and the substituted item refers to the replacement offences in the *Criminal Code*.

***Australian Horticultural Corporation (Honey Export Control) Regulations***

**Item 42**

Item 42 of Schedule 2 of this Bill repeals item 4 of Schedule 2 of the Regulations. Item 4 lists certain prescribed offences for the purpose of the Regulations and refers to offences against 29A (false pretences), 29B (false representation), 29C (statements in applications for grant of money etc.) or 29D (fraud) or Part V (forgery) of the *Crimes Act 1914*. The individual *Crimes Act* sections are repealed by item 149 of Schedule 2 of this Bill and Part V *Crimes Act* is repealed by item 153. Item 4 of Schedule 2 of the Regulations is therefore repealed and the substituted item refers to the replacement offences in the *Criminal Code*.

***Australian Institute of Aboriginal and Torres Strait Islander Studies Act 1989***

**Item 43**

Item 43 repeals section 46 of the Act which creates offences of making a statement in connection with, or with an application for, a grant or loan from the Institute which the person knows to be false or misleading in a material particular or of presenting a document that, to the person's knowledge, contains information that is false or

misleading in a material particular. These offences are replaced by the equivalent *Criminal Code* offences.

#### **Item 44**

The item amends paragraph 47(9)(b). Paragraph 47(9)(b) provides that a reference to an offence against the Act includes specific *Crimes Act* offences (including the ancillary offence provisions, statements in applications for grant of money [29C], fraud [29D] or conspiracy sections). The item omits from paragraph 47(9)(b) the references to sections 29C and 29D *Crimes Act 1914* because these sections are repealed by item 149 of Schedule 2. The offences in those sections are replaced by *Criminal Code* offences.

**Item 45**

This item is consequential on item 44 and adds in to paragraph 47(9)(b) reference to the *Criminal Code* offences replacing the repealed sections 29C and 29D *Crimes Act 1914*.

**Item 46**

The item inserts subsection 10 at the end of section 47 of the Act. Subsection 10 provides that Part 2.5 of the *Criminal Code* does not apply to an offence against the Act. The item also adds a note after subsection 10 explaining that Part 2.5 deals with corporate criminal responsibility. This subsection is included to make it clear section 47 (conduct of directors, servants and agents) of the Act itself deals with corporate criminal responsibility.

***Australian Protective Service Act 1987*****Item 47**

This item repeals the reference to section 30 *Crimes Act 1914* (seizing goods in Commonwealth custody) from subparagraph 13(2)(a)(i) of the Act because section 30 *Crimes Act* is itself repealed by item 149. Section 13 of the Act provides certain powers of arrest for protective service officers. Section 30 is replaced by an equivalent offence in *the Criminal Code*.

**Item 48**

This item repeals the references to sections 71, 73, 75, 76 *Crimes Act 1914* (these are offences in Part VI *Crimes Act* - Offences by and against Public Officers) from the subparagraph 13(2)(a)(i) because these sections are repealed by item 154 of Schedule 2 of the Bill. The offences in those sections are replaced by *Criminal Code* offences.

**Item 49**

This item inserts a new paragraph 13(2)(c) which, in effect, provides that powers of arrest under the Act extend to the specified *Criminal Code* offences of theft, bribery, corruption, causing harm to Commonwealth public official, impersonation and obstruction.

### ***Australian Security Intelligence Organization Act 1979***

#### **Item 50**

The item repeals section 33 which created an offence of obstructing or hindering a person acting in pursuance of a warrant under the Act. The offence is replaced by the equivalent *Criminal Code* offence.

### ***Australian Trade Commission Act 1985***

#### **Item 51**

The item repeals the subsection 95(2) which created an offence of making, in connection with an application or proposal for a contract of insurance etc a statement that the person knows is false or misleading in a material particular or presenting a document the person knows contain false or misleading information. These offences are replaced by the equivalent *Criminal Code* offences.

### ***Bankruptcy Act 1966***

#### **Item 52**

The item omits reference to section 263B *Bankruptcy Act* from subsection 84(5). The item is consequential on item 55 which repeals section 263B (false proof of debts). Section 84 deals with the manner of proving debts and subsection 84(5) provides when a proof of debt shall be deemed not to have been lodged with the trustee.

#### **Item 53**

The item omits reference to section 263B *Bankruptcy Act* from subsection 85(2C). The item is consequential on item 55 which repeals section 263B (false proof of

debts). Subsection 85(2C) deals with when a proof of debt shall be deemed not to have been lodged with the trustee.

#### **Item 54**

The item repeals subsection 263(2) which created an offence of disposing, receiving etc property of a bankrupt, property of a deceased estate or property under a deed of assignment knowing that it has been seized (offence at paragraph (2)(a)) or of obstructing or endeavouring to obstruct a person in the discharge of the person's duty with the intent to defeat the seizure of the property (offence at paragraph (2)(b)). The offence at paragraph (2)(b) is replaced by the obstruct hinder offence in the *Criminal Code*. The item inserts a substituted subsection (2) which reinserts the original offence at paragraph (2)(a).

#### **Item 55**

The item repeals section 263B which created the offence of false proof of debts. The offence is replaced by a *Criminal Code* offence

#### **Item 56**

Item 48 repeals section 264 which creates an offence of forgery of process and is replaced by the *Criminal Code* forgery related offences.

#### **Item 57**

The item repeals section 267A which created an offence where a bankrupt gives a statement to the trustee under section 139U of the Act which is false or misleading in a material particular. The offence is replaced by the equivalent general offence in the *Criminal Code*.

#### **Item 58**

The item repeals section 267C which creates an offence of giving false or misleading information to the trustee under section 139U or producing books that are false or



misleading in response to a requirement under subsection 6A(3), paragraph 77C(1)(a) or section 139V. The offences are replaced by the general *Criminal Code* false or misleading information/document offences.

### **Item 59**

The item repeals section 268A which created an offence of submitting a declaration to a meeting of creditors when the person knows the declaration is false or misleading in a material particular or that a material matter has been omitted from the declaration. The offence is replaced by the *Criminal Code* false or misleading information offence.

***Bounty and Capitalisation Grants (Textile Yarns) Act 1981*****Item 60**

Section 16 provides that a Collector or authorised officer may require a person to answer questions and produce documents. Item 60 omits the reference in subsection (1A) to subsection (1B) and is consequential on item 61 which repeals subsection 16(1B). The item also substitutes a reference to the *Criminal Code* false or misleading documents offence which is the replacement offence for the offence at the repealed subsection 16(1B).

**Item 61**

This item repeals subsection 16(1B) which created an offence of producing a book or document (in response to a requirement to do so) which contains false or misleading information. The offence is replaced by the *Criminal Code* false or misleading documents offence.

**Item 62**

Item 62, which is consequential on the repeal of subsections 18(3) and (4) by item 63, omits the words “or 18(3) or (4)” from subsection 16(3). Subsection 16(3) provides that self-incrimination is not an excuse not to produce a document or answer a question under section 16 of the Act. The section also provides that the answer or document is not admissible in evidence in proceedings against the person except proceedings under paragraph 18(1)(c) or subsections 18(3) or (4) of the Act. In place of the omitted reference to subsections 18(3) or (4) the item substitutes that the exception also extends to *Criminal Code* false or misleading information or document proceedings that relate to this Act.

**Item 63**

The item repeals subsections 18(2) [knowingly obtaining, or attempting to obtain, a bounty which is not payable], 18(3) [making a false or misleading statement or

producing a false or misleading document], 18(4), 18(5) and 18(6) [ these 3 subsections deal with corporate criminal responsibility]. The offences at subsections (2) and (3) are replaced by the equivalent *Criminal Code* offences and the corporate criminal responsibility provisions in the remaining subsections are replaced by Part 2.5 in Chapter 2 of the *Criminal Code* (General Principles of Criminal Responsibility).

#### **Item 64**

The item repeals subsection 18(7) and substitutes a replacement subsection (7). The replacement subsection (7) is consequential upon repeal of subsection 18(2) by item 63. The replacement paragraph (7)(a) provides that, in respect of the same claim for bounty, a person shall not be convicted both of an offence against section 135.2 *Criminal Code* [ in place of the repealed subsection 18(2) - obtaining a bounty which is not payable] and an offence against or arising out of subsection 10B(1) [unchanged from original]. The replacement paragraph 7(b) provides that, in respect of the same claim for bounty, a person shall not be convicted both of an offence against section 135.2 *Criminal Code* [ in place of the repealed subsection 18(2) - obtaining a bounty which is not payable] and an offence against the *Criminal Code* false or misleading statements/information/documents offences.

#### **Item 65**

Section 18B deals with recovery of a bounty on conviction of an offence. Subsection 18(1) provides that this applies where a person is convicted of offences against subsection 10B(1) or 18(2) or (3). The amendment of subsection 18B(1) by this item is consequential on the repeal by item 63 of subsections 18(2) and (3). The item omits the reference to repealed subsections 18(2) or (3). The offences are replaced by the equivalent *Criminal Code* offences.

#### **Item 66**

This item omits the words “under this subsection” in subsection 18B(1). This item is consequential upon item 65 which inserts reference to conviction of certain *Criminal*

*Code* offences. As a result the penalties which are being referred to in the subsection in addition to which the court may make an order to pay the Commonwealth are no longer limited to penalties under subsections; they include penalties under specified *Criminal Code* sections. Accordingly the words “under this subsection” are now inaccurate and so are omitted.

**Item 67**

The item repeals section 21K. Subsection 21K(1) created offences of making false or misleading statements in an application or giving a person a book or document that is false or misleading in a material particular. These offences are replaced by the equivalent *Criminal Code* offences. Subsections (2), (3) and (4), which deal with corporate criminal responsibility, are also repealed by this item. Part 2.5 of the Chapter 2 of the *Criminal Code* deals with corporate criminal responsibility and will apply to the Act (Chapter 2 deals with the General Principles of Criminal Responsibility).

**Item 68**

This item omits the reference in subsection 21L(1) to subsection 21K(1). This item is consequential upon item 67 which repeals section 21K. Accordingly this item substitutes reference to the *Criminal Code* offences replacing the subsection 21K(1) offences, namely the false or misleading information/document offences.

**Item 69**

This item is consequential upon item 67 which repealed section 221K which section was referred to in subsection 21L(1) and omits the words “under that subsection” from the latter subsection. Now that 21K is to be repealed and there are several replacement *Criminal Code* offences the term is no longer appropriate.

***Bounty (Bed Sheeting) Act 1977*****Item 70**

This item omits the reference in subsection 16(3) to paragraph 18(2)(c). It is consequential upon item 71 which repeals the whole of subsection 18(2). The substituted words refer to the replacement false or misleading statement *Criminal Code* offence.

**Item 71**

The item repeals subsection 18(2) which contains offences at paragraphs 18(2)(a) of obtaining a bounty which is not payable, at 18(2)(b) of obtaining (or attempting to obtain) a bounty by means of a false or misleading statement or false or misleading document, and at 18(2)(c) of making a false or misleading statement to an officer. The offences are replaced by the equivalent *Criminal Code* offences.

#### **Item 72**

This item is also consequential on item 71 and omits the reference in subsection 18(3) to subsection (2) and substitutes the replacement *Criminal Code* offence provisions, namely the obtain financial advantage and false or misleading statements/information/documents offences.

#### **Item 73**

This item repeals the words “under that subsection” which are a reference to the earlier reference in the subsection to subsection (2) which has itself been repealed by item 71.

#### ***Bounty (Books) Act 1986***

#### **Item 74**

The item is consequential on repeal, by item 75, of subsection 25(3). That subsection created an offence of producing a false or misleading document and is replaced by the equivalent *Criminal Code* offence. Accordingly the reference in subsection 25(2) to subsection 25(3) is omitted and reference inserted to the *Criminal Code* offence.

#### **Item 75**

This item repeals subsection 25(3) which is an offence of producing a false or misleading document and which is replaced by the equivalent *Criminal Code* offence.

#### **Item 76**

The item is consequential on the repeal of subsections 25(3) and paragraph 27(3)(a) by items 75 and 77 respectively and omits the words referring to proceedings under these

2 provisions. Subsection 25(3) provides that self-incrimination is not an excuse not to produce a document or answer a question when required to do so under the Act. The section also provides that the answer or document is not admissible in evidence in proceedings against the person except proceedings under subsection 25(3) and paragraph 27(3)(a) of the Act. In place of the omitted reference to subsection 25(3) and paragraph 27(3)(a) the item substitutes that the exception (to non-admissibility in evidence) relates to proceedings under the replacement *Criminal Code* false or misleading statement/information/document offences that relate to this Act.

### **Item 77**

The item repeals subsections 27(2), (3), (4), (5) and (6). Subsections (2) and (3) contain offences and subsections (4), (5) and (6) provide for corporate criminal responsibility. Subsection (2) creates an offence of obtaining a bounty that is not payable and subsection (3) creates offences of making a false or misleading statement or producing a false or misleading document; these offences are replaced by the equivalent *Criminal Code* offences. The corporate criminal responsibility provisions are replaced by Part 2.5 of Chapter 2 of the Criminal Code (Chapter 2 is the General Principles of Criminal Responsibility).

### **Item 78**

The item repeals subsection 27(7) and substitutes a replacement subsection. The subsection provides that a person must not be convicted of both of the 2 types of offences which are specified in paragraphs 27(7)(a) and (b) in respect of the same claim for bounty. The substituted paragraphs are consequential upon the repeal by item 77 of subsections (2) and (3). Substituted paragraph (7)(a) replaces the prohibited combination of convictions under subsection (2) and subsection 16(1) with the combination of convictions under the *Criminal Code* obtain financial advantage offence (which is the replacement for subsection (2) offence) and subsection 16(1). Substituted paragraph (7)(b) replaces the prohibited combination of convictions under both subsections (2) and (3) with the combination of offences under the *Criminal*

*Code* obtain financial advantage offence and the *Criminal Code* false or misleading statements/information/documents offences.

### **Item 79**

This item repeals subsections 27(9), (10) and (11). Because these subsections deal with offences against subsection (2) they must be repealed as a consequence of the repeal of subsection (2) by item 77; subsection (9) provides that a subsection (2) offence is an indictable offence, subsection (10) provides that a court of summary jurisdiction may hear subsection (2) proceedings and subsection (11) provides penalties where a court of summary jurisdiction convicts a person of a subsection (2) offence.

### **Item 80**

This item omits the reference in subsection 29(1) to subsections 27(2) or (3) which are themselves repealed by item 77. Subsection 29(1) provides that where a person is convicted of a subsection 16(1) offence or a subsection 27(2) or (3) offence the court may in addition to imposing a penalty under the subsection order the person to refund the bounty wrongfully obtained. The substituted paragraph inserts, in place of subsection 27(2) and (3), reference to the *Criminal Code* obtain financial advantage offence and the *Criminal Code* false or misleading statements/information/documents offences.

### **Item 81**

This item further amends subsection 29(1) and omits the words “under that subsection” which is a reference back to the repealed subsection 27(2) or (3).

### ***Bounty (Citric Acid) Act 1991***

### **Item 82**

This item, which omits the reference in subsection 21(2) to subsection (3), is consequential upon item 83 which repeals subsection 21(3). Subsection 21(2)



requires a notice to a person requiring the production of a document to set out the effect of subsection 21(3). Item 82 inserts substituted wording referring to the *Criminal Code* offence which replaces the subsection 21(3) offence (namely the false or misleading document offence).

### **Item 83**

The item repeals subsection 21(3). Subsection 21(3) requires a person who produces a document, in response to a notice under subsection 21(1), that is false or misleading in a material particular to specify the material particular which is false or misleading to the person's knowledge.

**Item 84**

Item 84, which is consequential on the repeal of subsection 21(3) [by item 83] and paragraph 23(3)(a) [by item 85] omits the words “proceedings under, or arising out of or by virtue of, subsection 21(3) or paragraph 23(3)(a)” from subsection 21(5).

Subsection 21(5) provides that self-incrimination is not an excuse not to produce a document or answer a question under section 21 of the Act. The section also provides that the answer or document (or any information or thing obtained therefrom) is not admissible in evidence in criminal proceedings against the person except proceedings under the previously mentioned provisions omitted by this item. In place of the omitted subsections the item substitutes that the exception also extends to *Criminal Code* false or misleading statement/information/documents proceedings that relate to this Act.

**Item 85**

This item repeals subsections 23(2), (3), (4), (5) and (6). The offences at subsections 23(2) and (3) are replaced by equivalent *Criminal Code* offences as follows; subsection (2) - obtain (or attempt to obtain) a bounty that is not payable, paragraph (3)(a) - make false or misleading statements - and paragraph 3(b) - present a false or misleading document. Subsections (4), (5) and (6) deal with corporate criminal responsibility and are replaced by Part 2.5 of Chapter 2 of the *Criminal Code* (General Principles of Criminal Responsibility).

**Item 86**

The item is consequential upon item 85 repealing subsections (2) and (3) and provides that a person must not be convicted, in relation to the same claim for bounty, both of offences against subsection (2) - substituted paragraph (a) in the item changes this to the equivalent *Criminal Code* offence - and also against subsection 12(1).

Paragraph (b) prohibits conviction of both the offence against the *Criminal Code* offence substituted for the subsection (2) offence and conviction against the *Criminal Code* false or misleading statements/information/documents offences.

**Item 87**

This item is consequential on repeal of subsections 23(2) and (3) and omits the reference in subsection 25(1) to subsections 23(2) or (3) which are themselves repealed by item 85. Subsection 25(1) provides that where a person is convicted of a subsection 12(1) offence or a subsection 23(2) or (3) offence the court may in addition to imposing a penalty under the subsection order the person to refund the bounty wrongfully obtained. The substituted paragraph inserts, in place of subsection 23(2) and (3), reference to the equivalent *Criminal Code* offences (obtaining financial advantage, making a false or misleading statement in an application, giving false or misleading information and producing a false or misleading document).

**Item 88**

This item further amends subsection 25(1) by omitting the words “under that subsection” which appear later in 25(1) and which are a reference back to conviction under subsection 12(1) or 23(2) or (3). This amendment is consequential on item 85 which repeals subsections (2) and (3). No replacement wording is necessary.

***Bounty (Computers) Act 1984*****Item 89**

Item 89 repeals subsection 16(7) which created an offence for a manufacturer to furnish information that the manufacturer knows to be false or misleading. It is replaced by the equivalent *Criminal Code* offence.

**Item 90**

Section 25 provides that a Collector or authorised officer may require a person to answer questions and produce documents. Item 90 amends subsection 25(2), which originally provided that a notice requiring a person to produce a document must set out the effect of subsection (3), by omitting the reference to subsection (3) and substituting a reference to section the *Criminal Code* false or misleading documents

offence (which is the equivalent offence to subsection (3)). The item is consequential on item 91 which repeals subsection 25(3).

### **Item 91**

The item repeals subsection 25(3) which created an offence of producing a book that is false or misleading in a material particular. It is replaced by the equivalent *Criminal Code* offence.

### **Item 92**

Item 92, which is consequential on the repeal of subsection 25(3) by item 91 and the repeal of paragraph 27(3)(a) by item 93, omits the words “proceedings under, or arising out of or by virtue of, subsection (3) or paragraph 27(3)(a)”. Subsection 25(5) provides that self-incrimination is not an excuse not to produce a document or answer a question under section 25 of the Act. The section also provides that the answer or document is not admissible in evidence in proceedings against the person except proceedings under, subsection (3) or paragraph 27(3)(a). In place of the omitted references to these provisions the item substitutes that the exception also extends to proceedings under the *Criminal Code* offences of making false or misleading statements in applications, giving false or misleading information and producing false or misleading documents where the proceedings relate to this Act.

### **Item 93**

The item repeals subsections 27(2) and (3). Subsection 27(2) created an offence of obtaining, or attempting to obtain, a bounty not payable. Subsection 27(3) created an offence of making a false or misleading statement (paragraph (a)), or presenting a false or misleading document (paragraph (b)). The offences are replaced by the equivalent *Criminal Code* offences.

### **Item 94**

Item 94 amends subsection 27(4) by omitting the reference to subsection (2) [repealed by item 93] and substituting the reference for the *Criminal Code* offence of obtaining a bounty that is not payable.

#### **Item 95**

The item amends subsection 29(1). The subsection provides that where a person is convicted of an offence against subsection 15(1) or 27(2) or (3) the court may, in addition to imposing a penalty under the subsection order the person to refund the amount of the bounty. The item omits the reference to subsections (2) and (3) and the substituted words provide that where the person is convicted of a subsection 15(1) offence or of the *Criminal Code* offences of obtaining bounty not payable or of the false or misleading statement/information/document offences the court may make the refund order.

#### **Item 96**

This item further amends subsection 29(1) by omitting the words “under the subsection” because the alternative offence provisions conviction under one of which enables the court to make the refund order are not all subsections. This amendment is consequential on item 93 repealing subsections 27(2) and (3).

### ***Bounty (Fuel Ethanol) Act 1994***

#### **Item 97**

Item 97 amends subsection 50(3). Subsection 50(2) provides that an authorised officer may, by written notice, require a person to give information, produce books or attend at a specified place to answer questions. Subsection (3) provides that the notice must set out the effect of section 51. Section 51 creates an offence of producing documents which are false or misleading in a material particular. Item 97 omits the reference to section 51 because that section is repealed by item 98. The item substitutes a reference to the equivalent *Criminal Code* false or misleading documents offence.

**Item 98**

Item 98 repeals section 51 which had created an offence of producing documents, in response to a section 50 notice, which the person knows is false or misleading in a material particular. It is replaced by the equivalent *Criminal Code* offence.

**Item 99**

Item 99, which is consequential on the repeal of section 51 and the repeal of paragraph 55(3)(a), omits the words “proceedings under, or arising out of or because of, section 51 or paragraph 55(3)(a)”. Subsection 52(2) provides that the answer or document (or information or thing obtained therefrom) is not admissible in evidence in criminal proceedings against the person except proceedings under, section 51 or paragraph 55(3)(a). In place of the omitted references to these provisions the item substitutes that the exception also extends to *Criminal Code* false or misleading statement/information/document proceedings that relate to this Act.

**Item 100**

The item repeals subsections 55(2), (3) and (4) and inserts a replacement subsection (4). Subsection 55(2) creates an offence of obtaining a bounty not payable. Subsection 55(3) creates an offence of making false or misleading statements or presenting false or misleading documents. The item does not reinsert any provision in relation to these 2 subsections. These offences are replaced by the equivalent *Criminal Code* offences. Subsection (4) provides that (at paragraph (a)) a person must not be convicted, in respect of the same claim for bounty, of both an offence arising out of subsection (2) and subsection 30(2). In view of the repeal of subsection (2) substituted paragraph (4)(a) provides that a person must not be convicted both of an offence against the *Criminal Code* obtain financial advantage offence) and a subsection 30(2) offence. Original paragraph (4)(b) provides that a person must not be convicted both of a subsection (2) and subsection (3) offence. Since both subsections are repealed by item 100 the substituted paragraph (4)(b) prohibits convictions both against the *Criminal Code* obtain financial advantage offences and the *Criminal Code* false or misleading statement/information/document offences .

**Item 101**

This item repeals section 56 which deals with corporate criminal responsibility and is replaced by Part 2.5 of Chapter 2 of the Criminal Code (Chapter 2 deals with the General Principles of Criminal Responsibility).

**Item 102**

The item amends subsection 58(1). The subsection provides that where a person is convicted of an offence against subsection 30(2) or 55(2) or (3) the court may, in addition to imposing a penalty under the subsection order the person to refund the amount of the bounty. The item omits the reference to subsections 55(2) and (3) and the substituted words provide that where the person is convicted of a subsection 30(2) offence or an offence against section the *Criminal Code* obtain financial advantage

offences or the *Criminal Code* false or misleading statement/information/document offences the court may make the refund order.



**Item 103**

This item further amends subsection 58(1) by omitting the words “under the subsection” because the alternative offence provisions conviction under one of which enables the court to make the refund order are not all subsections. This amendment is consequential on item 100 repealing subsections 55(2) and (3).

***Bounty (Machine Tools and Robots) Act 1985*****Item 104**

Item 104 amends subsection 33(2). Subsection 33(1) provides that an authorised officer may, by notice, require a person to give information, produce books or attend at a specified place to answer questions. Subsection (2) provides that the notice must set out the effect of subsection (3). Subsection (3) creates an offence of producing documents which are false or misleading in a material particular. Item 104 omits the reference to subsection (3) because that section is repealed by item 105. The item substitutes a reference to the *Criminal Code* false or misleading document offence.

**Item 105**

Item 105 repeals subsection 33(3) which created an offence of producing a false or misleading document. It is replaced by the equivalent *Criminal Code* offence.

**Item 106**

Item 106, which is consequential on the repeal of subsection 33(3) by item 105 and the repeal of paragraph 35(3)(a) by item 107, omits the words “proceedings under, or arising out of or by virtue of, subsection (3) or paragraph 35(3)(a)”. Subsection 33(5) provides that self-incrimination is not an excuse not to produce a document or answer a question under section 33 of the Act. The section also provides that the answer or document is not admissible in evidence in criminal proceedings against the person except proceedings under, or arising out of or by virtue of subsection 33(3) or paragraph 35(3)(a). In place of the omitted references the item substitutes that the

exception also extends to *Criminal Code* obtain financial advantage offence proceedings that relate to this Act.

**Item 107**

The item repeals subsections 35(2) and (3). Subsection 35(2) creates an offence of obtaining or attempting to obtain a bounty. Subsection 35(3) creates an offence of making a false or misleading statement or producing a false or misleading document. They are replaced by the equivalent *Criminal Code* offences.

**Item 108**

The item repeals subsection 35(4) and inserts a replacement subsection (4). Subsection (4) provides that a person must not be convicted, in respect of the same claim for bounty, of both an offence arising out of subsection (2) and subsection 23(1). In view of the repeal of subsection (2) substituted paragraph (4)(a) provides that a person must not be convicted both of a *Criminal Code* obtain financial advantage offence and a subsection 23(1) offence. Original paragraph (4) also provides that a person must not be convicted both of a subsection (2) and subsection (3) offence. Since both subsections are repealed the substituted paragraph (4)(b) prohibits convictions both against the *Criminal Code* obtain financial advantage and false or misleading statement/information/document offences.

**Item 109**

The item amends subsection 37(1). The subsection provides that where a person is convicted of an offence against subsection 23(1) or 35(2) or (3) the court may, in addition to imposing a penalty under the subsection, order the person to refund the amount of the bounty. The item omits the reference to subsections 35(2) and (3) and the substituted words provide that where the person is convicted of a subsection 23(1) offence or an offence against the *Criminal Code* obtain financial advantage offence and the *Criminal Code* false or misleading statement/information/document offence the court may make the refund order.

**Item 110**

This item further amends subsection 37(1) by omitting the words “under the subsection” because the alternative offence provisions conviction under one of which enables the court to make the refund order are not all subsections. This amendment is consequential on repeal of subsections 35(2) and (3).

### ***Bounty (Photographic Film) Act 1989***

#### **Item 111**

Item 111 amends subsection 22(2). Subsection 22(1) provides that an authorised officer may, by written notice, require a person to attend at a specified place to give information, produce books and answer questions. Subsection (2) provides that the notice must set out the effect of subsection (3). Subsection (3) creates an offence of producing documents which are false or misleading in a material particular. Item 111 omits the reference to subsection (3) because that section is repealed by item 112. The item substitutes a reference to the equivalent *Criminal Code* offence.

#### **Item 112**

Item 112 repeals subsection 22(3) which had created an offence of producing documents, in response to a subsection (1) notice, which the person knows is false or misleading in a material particular. It is replaced by the equivalent *Criminal Code* offence.

#### **Item 113**

Item 113, which is consequential on the repeal of subsection 22(3) and the repeal of paragraph 24(3)(a), omits the words “proceedings under, or arising out of or because of, subsection (3) or paragraph 24(3)(a)”. Subsection 22(5) provides that a person is not excused from answering a question or producing a document on the ground of self-incrimination but the answer or document (or information or thing obtained therefrom) is not admissible in evidence in criminal proceedings against the person except proceedings under, subsection (3) or paragraph 24(3)(a). In place of the omitted references to these provisions the item substitutes that the exception also

extends to false or misleading statements/information/documents offences under the *Criminal Code* that relate to this Act.

#### **Item 114**

This item repeals subsections 24(2), (3), (4), (5) and (6). The offences at subsections 23(2) and (3) are replaced by equivalent *Criminal Code* offences; subsection (2) - obtain (or attempt to obtain) a bounty that is not payable, paragraph (3)(a) - make false or misleading statements and paragraph 3(b) - present a false or misleading document. Subsection (4), (5) and (6) deal with corporate criminal responsibility and are replaced by Part 2.5 of Chapter 2 of the *Criminal Code* (General Principles of Criminal Responsibility).

#### **Item 115**

The item repeals subsection 24(7) and inserts a replacement subsection (7). Subsection (7) provides that (at paragraph (a)) a person must not be convicted, in respect of the same claim for bounty, of both an offence arising out of subsection (2) and subsection 30(2). In view of the repeal of subsection 24(2) substituted paragraph (7)(a) provides that a person must not be convicted both of a *Criminal Code* obtain financial advantage offence and a subsection 14(1) offence. Original paragraph (7)(b) provides that a person must not be convicted both of a subsection (2) and subsection (3) offence. Since both subsections are repealed the substituted paragraph (7)(b) prohibits convictions both against the *Criminal Code* obtain financial advantage and false or misleading statement/information/document offences.

#### **Item 116**

The item amends subsection 26(1). The subsection provides that where a person is convicted of an offence against subsection 13(1) or 24(2) or (3) the court may, in addition to imposing a penalty under the subsection, order the person to refund the amount of the bounty. The item omits the reference to subsections 13(1) or 24(2) or (3) and the substituted words provide that where the person is convicted of a

subsection 13(1) offence or a *Criminal Code* obtain financial advantage or false or misleading statement/information/document offence the court may make the refund order.

**Item 117**

This item further amends subsection 26(1) by omitting the words “under the subsection” because the alternative offence provisions conviction under one of which enables the court to make the refund order are not all subsections. This amendment is consequential on item 114 repealing subsections 24(2) and (3).

***Bounty (Ships) Act 1989*****Item 118**

Item 118 amends subsection 23(2). Subsection 23(1) provides that an authorised officer may, by notice, require a person to give information, produce books or attend at a specified place to answer questions. Subsection (2) provides that the notice must set out the effect of subsection (3). Subsection (3) creates an offence of producing documents which are false or misleading in a material particular. Item 118 omits the reference to subsection (3) because that section is repealed by item 119. The item substitutes a reference to the *Criminal Code* false or misleading documents offence.

**Item 119**

Item 119, which is consequential on the repeal of subsection 23(3) and paragraph 25(3)(a) omits reference to these provisions from subsection 23(5). Subsection 23(5) provides that self-incrimination is not an excuse not to produce a document or answer a question under section 23 of the Act. The section also provides that the answer or document is not admissible in evidence in criminal proceedings against the person except proceedings under the repealed provisions. In place of the omitted reference to the repealed provisions the item substitutes reference to the equivalent *Criminal Code* false and misleading statements/information/documents offences.

**Item 121**

This item repeals subsections 25(2), (3), (4), (5) and (6). The offences at subsections 23(2) and(3) are replaced by equivalent *Criminal Code* offences; subsection (2) - obtain (or attempt to obtain) a bounty that is not payable, paragraph (3)(a) - make false or misleading statements and paragraph 3(b) - present a false or misleading document. Subsection (4), (5) and (6) deal with corporate criminal responsibility and are replaced by Part 2.5 of Chapter 2 of the *Criminal Code* (General Principles of Criminal Responsibility).

**Item 122**

The item repeals subsection 25(7) and inserts a replacement subsection (7).

Subsection (7) provides that (at paragraph (a)) a person must not be convicted, in respect of the same claim for bounty, of both an offence arising out of subsection (2) and subsection 14(1). In view of the repeal of subsection 25(2) substituted paragraph (7)(a) provides that a person must not be convicted both of an offence against the *Criminal Code* 'obtain financial advantage' offence and an offence for lodgement of an excessive claim (subsection 14(1)). Original paragraph (7)(b) provides that a person must not be convicted both of a subsection (2) and subsection (3) offence. Since both subsections are repealed by item 121 the substituted paragraph (7)(b) prohibits convictions both against the *Criminal Code* obtain financial advantage and false or misleading statements/information/documents offences in respect of the same bounty claim.

### **Item 123**

This item repeals subsections 25(9), (10) and (11). Because these subsections deal with offences against subsection (2) they must be repealed as a consequence of the repeal of subsection (2); subsection (9) provides that a subsection (2) offence is an indictable offence, subsection (10) provides that a court of summary jurisdiction may hear subsection (2) proceedings and subsection (11) provides penalties where a court of summary jurisdiction convicts a person of a subsection (2) offence.

### **Item 124**

This item omits the reference in subsection 27(1) to subsections 25(2) or (3) which are themselves repealed by item 121. Subsection 27(1) provides that where a person is convicted of an offence of excessive bounty claim or an offence of obtaining a bounty which is not payable or making a false or misleading statement or producing a false or misleading document the court may in addition to imposing a penalty under the subsection order the person to refund the bounty wrongfully obtained. The substituted paragraph inserts the references for the applicable *Criminal Code* offences in place of the references to the original offences of this nature in the Act.



**Item 125**

This item further amends subsection 27(1) by omitting the words “under the subsection” because the alternative offence provisions (conviction under one of which enables the court to make the refund order) are not all subsections.

***Broadcasting Services Act 1992*****Item 126**

The item inserts a definition of the term “offence against this Act” into the Act. The purpose of the definition is to ensure that duly authorised officers under the Act are able to continue to investigate false and misleading information offences relating to the Act after the offence previously at the section 208 is repealed by item 127 and replaced by the *Criminal Code* offences.

**Item 127**

The item repeals the offence in section 208 of making a statement in an application under the Act, or in a response to a request for information under the Act, that is false or misleading in a material particular. The offence is replaced by equivalent offences in the *Criminal Code*.

***Child Care Payments Act 1997*****Item 128**

The item amends section 243 which provides the penalty and orders a court may make if a person is convicted of a fraud related offence relating to a child car payment. The item omits the reference to 4 fraud related offences in *the Crimes Act 1914* which are themselves repealed by later items in Schedule 2. The item substitutes reference to the fraud related offences in *the Criminal Code*.

***Civil Aviation Act 1988*****Item 120**

Item 120 repeals subsection 23A(3) which creates an offence of making a false or misleading statement in purported compliance with regulations under subsection (1). The offence is replaced by an equivalent offence in the *Criminal Code*.

***Civil Aviation Regulations 1988***

**Item 130**

The item repeals the offence in regulation 285 of obstructing or impeding a person exercising power conferred on the person by the regulations. The offence is replaced by an equivalent *Criminal Code* offence.

***Coal Excise Act 1949***

**Item 131**

This item amends paragraph 5(c) of the *Coal Excise Act 1949*. Section 5 provides that provisions of the *Excise Act 1901* shall be read as one with the *Coal Excise Act 1949*. The item omits reference in section 5 *Coal Excise Act* to the offences in the *Excise Act* of obtaining any drawback or refund of duty which is not payable. These offences are replaced by the obtaining financial advantage offences in the *Criminal Code*. Later items in this Schedule repeal these offences from the *Excise Act 1901*.

**Item 132**

The item repeals the offence at section 27 of obstructing, molesting, resisting or hindering a officer in the performance of his duty under the Act. The offence is replaced by an equivalent generic offence under the *Criminal Code*. The term “Commonwealth public official” is widely defined in the *Criminal Code*.

***Coal Industry Act 1946***

**Item 133**

Item 133 repeals the false or misleading statement offence at subsection 53(4). The offence is replaced by an equivalent offence in the *Criminal Code*.

***Commonwealth Electoral Act 1918***

**Item 134**

This item repeals 2 offences; at subsection 184(6) and (7). Section 184 deals with applications for postal votes. The offences repealed relate to an elector making a false statement in an application for a postal vote or in any declaration relating to such an application (subsection (6)). The offence at subsection (7) is to induce an elector to make a false statement in a postal vote application or in a declaration relating to such an application. The subsection (6) offence is replaced by an equivalent offence inserted in the *Criminal Code* by Schedule 1 of the Bill. The ancillary offence at subsection (7) is provided by the ancillary offence provisions in Part 2.5 of Chapter 2 of the *Criminal Code* (Chapter 2 is the General Principles of Criminal Responsibility).

### **Item 135**

Item 135 repeals the offences in subsections 184A(5) and (6). Section 184A deals with applications for registration as general postal voter and the offences repealed are those of making a false statement in an application for general voter registration or in any declaration relating to such an application (subsection (5)). The offence at subsection (6) is to induce an elector to make a false statement in an application under the section or in a declaration relating to such an application. The subsection (5) offence is replaced by an equivalent offence inserted in the *Criminal Code* by Schedule 1 of the Bill. The ancillary offence at subsection (6) is provided by the ancillary offence provisions in Part 2.5 of Chapter 2 of the *Criminal Code* (Chapter 2 is the General Principles of Criminal Responsibility).

### **Item 136**

The item repeals paragraph 339(1)(f) which created an offence of forging any nomination paper or ballot-paper or uttering any nomination or ballot-paper knowing it to be forged. The offence is replaced by equivalent *Criminal Code* offences.

### **Item 137**

Item 137 is a minor consequential punctuation amendment which inserts a full-stop after paragraph 339(1)(h) as a result of the repeal of paragraph 339(1)(k).

**Item 138**

This item repeals paragraph 339(1)(k) which created an offence of making a false or misleading statement in any claim, application or return (but excluding statements in the person's nomination paper) or in answer to a question under the Act or regulations. The offence is replaced by equivalent *Criminal Code* offences.

**Item 139**

This item repeals subsections 339(3) and (4). Subsection (3) created an offence of making a false or misleading statement in his or her nomination paper or omitting from a statement in his or her nomination paper any matter or thing without which the statement is misleading in a material particular. Subsection (4) provides a defence to the subsection (3) offence if the person proves he did not know or could not reasonably be expected to have known the statement was false or misleading. The offence in subsection (3) is replaced by an equivalent offence in the *Criminal Code*. Part 2.3 of Chapter 2 of the *Criminal Code* provides general defences that are available to all offences.

**Item 140**

This item repeals section 344 which created offences of forging electoral papers or uttering any forged electoral paper knowing it to be forged. The offences are replaced by equivalent *Criminal Code* offences.

***Commonwealth Inscribed Stock Act 1911*****Item 141**

This item repeals section 48 of the *Commonwealth Inscribed Stock Act 1911*. Section 48 creates an offence where a person, with intent to defraud, forges or utters a forged prescribed document relating to the transfer of stock, a relevant power of attorney, or the signature of any person as witness to the execution of any instrument or document

in respect of stock. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### ***Commonwealth Places (Application of Laws) Act 1970***

#### **Item 142**

This item inserts into subsection 5(2) of the *Commonwealth Places (Application of Laws) Act 1970* (“the Act”) a reference to section 4 of the *Crimes Act 1914*. The insertion adds section 4 to the list of *Crimes Act* provisions which do not apply to the applied provisions as defined by the Act. The Act defines the applied provisions as those provisions which apply, or are deemed to have applied, in accordance with section 4 of the Act. Section 4 of the Act provides for the application of State law to Commonwealth places. The effect of item 142 is to remove the application of common law principles with respect to criminal liability in relation to Commonwealth places. This is because the Act applies State offences to Commonwealth places. They may not work properly if they are not interpreted with reference to the general principles that apply in the particular State.

#### **Item 143**

This item adds subsection 2B to section 5 of the *Commonwealth Places (Application of Laws) Act 1970* (“the Act”). The proposed subsection 5(2B) states that Chapter 2 of the *Criminal Code* does not apply in relation to, or in relation to matters arising under, the applied provisions. Chapter 2 of the *Criminal Code* establishes the general principles of criminal responsibility under the Code and governs the application of the general principles to offences under Commonwealth law which are created by legislation other than the *Criminal Code*. The Act defines the applied provisions as those provisions which apply, or are deemed to have applied, in accordance with section 4 of the Act. Section 4 of the Act provides for the application of State law to Commonwealth places. The effect of item 143 is to deny the application of Chapter 2 of the *Criminal Code* with respect to criminal liability in relation to Commonwealth places. This is because the Act applies State offences to Commonwealth places. They

may not work properly if they are not interpreted with reference to the general principles that apply in the particular State.

### ***Complaints (Australian Federal Police) Act 1981***

#### **Item 144**

This item inserts paragraph (ea) in subsection 27(5) of the *Complaints (Australian Federal Police) Act 1981* (“the Act”). Subsection 27(5) of the Act relevantly provides that a person is not excused from furnishing any information, producing a document or answering any question as required under section 27 by reason of the matters detailed in paragraphs 27(5)(a), (b) or (c), but the information, the production of the record or the answer to the question is not admissible in evidence against the person in proceedings other than the proceedings detailed in paragraphs 27(5)(d), (e) or (f).

Proposed paragraph 5(ea) adds to the list of exempt proceedings a prosecution under proposed sections 137.1, 137.2 or 149.1 of the *Criminal Code*. These latter sections establish the generic offence provisions under the *Criminal Code* in relation to giving false or misleading information, producing a false or misleading document, or obstructing, hindering, intimidating or resisting a Commonwealth public official. The term ‘Commonwealth public official’ is defined in the proposed addition to the *Criminal Code* dictionary (clause 27 of Schedule 1).

#### **Item 145**

This item repeals subsection 44(2) of the *Complaints (Australian Federal Police) Act 1981* (“the Act”). Subsection 44(2) establishes offences in relation to obstructing, hindering or resisting the Ombudsman or any other person in the exercise of functions under that Part of the Act, and furnishing false or misleading information or making a false or misleading statement to the Ombudsman or to an authorised person. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### ***Crimes Act 1914***

**Item 146**

This item removes the references in paragraph (c) of the definition of ‘Commonwealth officer’ in subsection 3(1) of the *Crimes Act 1914* (“the Act”) to sections 72, 73, 74 and 75 of the Act. This item is consequential upon item 154, which repeals sections 72, 73, 74 and 75 of the Act.

**Item 147**

This item removes the references in paragraph (d) of the definition of ‘Commonwealth officer’ in subsection 3(1) of the *Crimes Act 1914* (“the Act”) to sections 72, 73, 74, 75 and 76 of the Act. This item is consequential upon item 154, which repeals sections 72, 73, 74, 75 and 76 of the Act.

**Item 148**

This item amends the definition of ‘section 17B offence’ in subsection 17(3) of the *Crimes Act 1914* (“the Act”). It omits references in the definition to sections 29A, 29B, 29C, 29D, 71 and 72 of the Act and substitutes references to proposed sections 131.1, 132.1, 132.6, 132.7, 134.1, 134.2, 135.1, 135.2, 135.4, 145.4 and 145.5 of the *Criminal Code*, which replace the omitted sections by virtue of this Bill. This item is consequent upon items 149 and 154 which repeal sections 29A, 29B, 29C, 29D, 71 and 72 of the Act. The proposed new sections insert into the *Criminal Code* offences relating to theft, receiving, making off without payment, going equipped for theft or a property offence, obtaining property by deception, obtaining a financial advantage by deception, general dishonesty, obtaining a financial advantage, conspiracy to defraud, falsification of documents and giving information derived from false or misleading documents.

**Item 149**

This item repeals sections 29A, 29B, 29C, 29D and 30 of the *Crimes Act 1914*. These sections respectively create offences of obtaining from the Commonwealth, or causing or procuring to be paid by the Commonwealth, any chattel, money, valuable security



or benefit by false pretences and with intent to defraud; imposing, or endeavouring to impose, upon the Commonwealth by any untrue representation and with a view to obtaining money or other benefit or advantage; making an untrue statement in connection with, or in support of, an application to the Commonwealth for any grant, payment or allotment of money or allowance; defrauding the Commonwealth; and taking goods or property out of the possession, custody or control of the Commonwealth without lawful authority. The primary offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill, and the ancillary offences are applied to the primary replacement offences through the application of Chapter 2 (section 11.1 - attempt) of the *Criminal Code*.

### **Item 150**

This item repeals paragraph 30K(a) of the *Crimes Act 1914*, which creates an offence of obstructing or hindering the provision of any public service by the Commonwealth. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### **Item 151**

This item repeals sections 32 and 33 of the *Crimes Act 1914*, which create offences of judicial corruption, corrupting any person holding judicial office, official corruption and corrupting Commonwealth officers. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill. The term ‘Commonwealth public official’ is defined in the proposed addition to the *Criminal Code* dictionary (clause 27 of Schedule 1).

### **Item 152**

This item repeals section 50 of the *Crimes Act 1914*, which creates an offence of obstructing or resisting any person charged with the execution of an order or warrant of any federal court or a court acting in the exercise of federal jurisdiction or any court

of a Territory. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### **Item 153**

This item repeals Part V of the *Crimes Act 1914*, which comprises sections 63 to 69 inclusive of that Act. These sections create offences of forging, or uttering a forgery of, seals, official signatures, Commonwealth documents or official marks, and making special paper; and create definitions relevant to these offences. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### **Item 154**

This item repeals sections 71, 71A, 72, 73, 73A, 74, 75 and 76 of the *Crimes Act 1914* (“the Act”). These sections respectively create offences of stealing or fraudulently misappropriating or fraudulently converting or receiving Commonwealth property; falsification of books or records by Commonwealth officers; corruption and bribery of Commonwealth officers or members of the Federal Parliament; making a false return or certificate by Commonwealth officers; impersonating a Commonwealth officer; and obstructing, resisting, hindering, using violence against, threatening or intimidating Commonwealth officers. Section 71A additionally provides that proof of a general deficiency is sufficient for the purposes of prosecuting an offence under section 71 of the Act. Each of these offences is being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 155**

This item repeals sections 85J, 85K, 85L and 85M of the *Crimes Act 1914*. These sections respectively create postal offences, namely offences of using or fraudulently removing postage stamps; stealing, fraudulently taking or concealing, misappropriating, destroying or receiving mail-bags or postal items; tampering with mail-bags; and improperly obtaining articles in the course of the post. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 156**

This item repeals section 85P of the *Crimes Act 1914*. This section creates offences of stealing, fraudulently taking or concealing, misappropriating or destroying a postal article, or receiving a postal article knowing it to have been stolen or fraudulently taken, concealed or misappropriated. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 157**

This item repeals section 85ZF of the *Crimes Act 1914*. This section creates offences of defrauding a carrier or causing a carrier to supply a carriage service to another person without payment for that service. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 158**

This item repeals subsection 86(2) of the *Crimes Act 1914* (“the Act”), which creates an offence of conspiring to commit an offence against section 29D of the Act. This item is consequential upon item 149, which repeals section 29D of the Act.

**Item 159**

This item is consequent upon item 160.

**Item 160**

This item repeals paragraph 86(10)(c) of the *Crimes Act 1914* (“the Act”), which refers to subsection 86(2) of the Act. It is consequent upon item 158, which repeals subsection 86(2).

**Item 161**

This item repeals section 88 of the *Crimes Act 1914*, which creates the offences of corruptly buying or selling offices in the Australian Public Service or in the public service of a Territory. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

***Customs Act 1901*****Item 162**

This item omits from paragraph (c) of the definition of ‘records offence’ in subsection 4(1) of the *Customs Act 1901* the references to sections 29D and 86A of the *Crimes Act 1914*, and substitutes references to sections 134.1, 134.2 and 135.1 of the *Criminal Code*. This item is consequent upon item 149 which repeals section 29D of the *Crimes Act*. Sections 134.1, 134.2 and 135.1 are equivalent offence provisions that are being inserted into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 163**

This item inserts subsection (3) into section 183UA of the *Customs Act 1901* (“the Act”). Subsection 183UA(3) states that for the purposes of the relevant Part of the Act, an offence against sections 141.1, 142.1, 142.2 and 149.1 of the *Criminal Code* that relate to the Act are taken to be an offence against the Act. These sections of the *Criminal Code*, which are being inserted by virtue of Schedule 1 of this Bill, create offences of bribery of a Commonwealth public official, receiving by a Commonwealth public official of a bribe, corrupting benefits given to or received by a Commonwealth public official, abuse of public office by a Commonwealth public official, and

obstructing, hindering, intimidating or resisting a Commonwealth public official. The term ‘Commonwealth public official’ is defined in the proposed addition to the *Criminal Code* dictionary (clause 27 of Schedule 1).

#### **Item 164**

This item repeals section 232 of the *Customs Act 1901*, which creates offences of Customs or Police officers collusively seizing or delivering up certain ships, boats, carriage or goods or making any agreement or conniving in these activities, or being concerned in the importation or exportation of certain goods for the purpose of seizing any ship, boat, carriage or goods and obtaining any reward for such seizure; and any person bribing or threatening any such officer in order to cause neglect of the officer’s duty. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 165**

This item repeals the offences in paragraph 232A(b) of assaulting, resisting, molesting or obstructing a Customs officer or intimidation of a Customs officer. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### ***Diary Produce Act 1986***

#### **Item 166**

This item repeals section 112 of the *Dairy Produce Act 1986* (“the Act”), which creates certain offences in relation to applications for payment under the Act. These offences are doing anything for the purpose of obtaining a payment that is not payable; forging or altering a declaration or other required document that is used for the purpose of obtaining a payment under the Act; signing a declaration or other document that contains false or misleading information or statements; and presenting a document which contains information or a statement that is false or misleading. These offences

are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 167**

This item is consequent upon item 166. It omits the reference to subsection 112(1) of the *Dairy Produce Act 1986* (“the Act”) in subsection 114(1) of the Act and substitutes reference to sections 135.2, 136.1, 137.1 and 137.2 of the *Criminal Code*. These sections, which create offences equivalent to subsection 112(1) of the Act, are being inserted into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 168**

This item repeals from subsection 117(1) of the *Dairy Produce Act 1986* (“the Act”) the reference to section 112 of the Act, and is consequent upon item 166.

#### ***Defence Act 1903***

#### **Item 169**

This item repeals section 73B of the *Defence Act 1903* (“the Act”), which creates the offences of forging or uttering a forged warrant or order under the Act or under the *Defence Force Discipline Act 1982*. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 170**

This item omits the reference to section 73B of the *Defence Act 1903* (“the Act”) from section 73F of the Act, and is consequent upon item 169.

#### **Item 171**

This item repeals section 80 of the *Defence Act 1903*, which creates the offences of fraudulently personating or representing himself or herself to be a member of the Defence Force with the intent of obtaining free rail or tram travel or evading a toll.

These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### **Item 172**

This item repeals section 81 of the *Defence Act 1903*, which creates the offences of obstructing or interfering with any member or portion of the Defence Force in the performance of any naval, military or air-force service or duty. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### **Item 173**

This item repeals section 116Z of the *Defence Act 1903*, which creates the offence of impersonating a ranger. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### ***Defence (Special Undertakings) Act 1952***

#### **Item 174**

This item repeals section 24 of the *Defence (Special Undertakings) Act 1952* (“the Act”), which creates offences of knowingly misleading or otherwise interfering with or impeding a Commonwealth officer or other person in the execution of a power or duty conferred under the Act. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### ***Diplomatic and Consular Missions Act 1978***

#### **Item 175**

This item repeals subsection 5(8) of the *Diplomatic and Consular Missions Act 1978* (“the Act”) which creates an offence of obstructing or hindering a person acting in pursuance of a warrant issued under section 5 of the Act. This offence is being



replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### ***Disability Discrimination Act 1992***

#### **Item 176**

This item amends subsection 111(1) of the *Disability Discrimination Act 1992* (“the Act”) by removing the reference to a proceeding under section 112 of the Act and substituting a reference to proceedings under sections 137.1 or 137.2 of the *Criminal Code*, which are being inserted into the *Criminal Code* by virtue of Schedule 1 of this Bill. This item is consequent upon item 177.

#### **Item 177**

This item repeals section 112 of the *Disability Discrimination Act 1992* (“the Act”) which creates an offence of giving false or misleading information or making a false or misleading statement to the Commission or to any other person exercising powers or performing functions under the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### ***Distillation Act 1901***

#### **Item 178**

This item repeals section 72 of the *Distillation Act 1901* (“the Act”) which creates an offence of obstructing, molesting, resisting or hindering an officer in the performance of a duty under the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### ***Environment Protection (Alligator Rivers Region) Act 1978***

#### **Item 179**

This item repeals subsection 27(2) of the *Environment Protection (Alligator Rivers Region) Act 1978* (“the Act”) which creates an offence of furnishing false or

misleading information in purported compliance with subsection 27(1) of the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 180**

This item repeals section 32 of the *Environment Protection (Alligator Rivers Region) Act 1978* (“the Act”) which creates an offence of obstructing or hindering the Supervising Scientist or the Institute in their performance of functions or powers. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### ***Excise Act 1901***

#### **Item 181**

This item repeals paragraphs 120(1)(v), (va) and (vb) of the *Excise Act 1901* (“the Act”) which provide that a person shall not obtain any drawback, refund of duty or rebate (other than diesel fuel rebate) which is not payable. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 182**

This item repeals paragraph 120(2)(c) of the *Excise Act 1901* (“the Act”) which provides a penalty for an offence against paragraphs 120(1)(v), (va) and (vb) of the Act. This item is consequent upon item 174 which repeals the latter paragraphs.

#### **Item 183**

This item repeals section 123 of the *Excise Act 1901* (“the Act”) which creates an offence of obstructing, molesting, resisting or hindering an officer in the performance of a duty under the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 184**

This item repeals paragraph 124(1)(a) of the *Excise Act 1901* (“the Act”) which creates an offence of an officer making any collusive seizure or delivering up or making any agreement to deliver up or not to seize any goods liable to forfeiture or conspiring or conniving to neglect his or her duties under the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 185**

This item amends paragraph 124(1)(d) of the *Excise Act 1901* (“the Act”) by effectively removing the offence of assaulting, resisting, molesting, obstructing or intimidating an officer acting in the execution of his or her duties under the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 186**

This item repeals paragraph 124(1)(e) of the *Excise Act 1901* (“the Act”) which provides the penalty for an offence against paragraph 124(1)(a) of the Act. This item is consequent upon item 184 which repeals paragraph 124(1)(a).

***Export Control Act 1982*****Item 187**

This item repeals section 12 of the *Export Control Act 1982* (“the Act”) which creates an offence of obstructing or hindering an authorized officer in the exercise of the authorized officer’s powers or functions under the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 188**

This item repeals section 16 of the *Export Control Act 1982* (“the Act”) which creates an offence of making a false or misleading statement in a declaration furnished for the purposes of the regulations, and also relevantly provides a deeming provision and a summary offence provision. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### ***Export Expansion Grants Act 1978***

#### **Item 189**

This item repeals section 18 of the *Export Expansion Grants Act 1978* (“the Act”) which creates offences of obtaining or attempting to obtain a grant that is not payable, obtaining or attempting to obtain a grant by means of a false or misleading statement or certain documents containing false or misleading information, and making a false or misleading statement to the Commission or to a person having duties or functions for the purposes of the Act. Section 18 also provides a relevant deeming provision for the purposes of demonstrating a corporation’s fault element, and summary and indictable offence provisions. The primary offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill, and the ancillary offences are applied to the primary replacement offences through the application of Chapter 2 (section 11.1 - attempt) of the *Criminal Code*. The deeming provision for the purposes of demonstrating a corporation’s fault element is being replaced by application of Chapter 2 (Part 2.5 - Corporate Criminal Responsibility) of the *Criminal Code*.

***Export Inspection and Meat Charges Collection Act 1985*****Item 190**

This item amends paragraph 10(2)(a) of the *Export Inspection and Meat Charges Collection Act 1985* (“the Act”) by omitting the reference to subsection 10(3) of the Act and substituting references to sections 137.1 and 137.2 of the *Criminal Code*. This item is consequent upon item 191, which repeals subsection 10(3) of the Act.

**Item 191**

This item repeals subsection 10(3) of the *Export Inspection and Meat Charges Collection Act 1985* (“the Act”) which creates an offence of presenting a document, making a statement or submitting a return which is false or misleading. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

***Export Market Development Grants Act 1997*****Item 192**

This item repeals paragraph (b) of the definition of ‘relevant offence’ in subsection 16(2) of the *Export Market Development Grants Act 1997*, which refers to sections 29A, 29B, 29C and 29D of the *Crimes Act 1914*. This item is consequent upon item 149 of this Schedule, which repeals these *Crimes Act* provisions.

**Item 193**

This item amends paragraph 16(2)(d) of the *Export Market Development Grants Act 1997* (“the Act”) by removing the reference to paragraph 16(2)(b) of the Act. This item is consequent upon item 192 of this Schedule, which repeals paragraph 16(2)(b).

**Item 194**

This item incorporates sections 134.1, 134.2, 135.1, 135.2, 135.3, 135.4 and 136.1 of the *Criminal Code* into the definition of ‘relevant offence’ in subsection 16(2) of the

*Export Market Development Grants Act 1997* (“the Act”). These offences are being inserted into the *Criminal Code* by virtue of Schedule 1 of this Bill. This item effectively replaces the references in the definition of ‘relevant offence’ to certain *Crimes Act* provisions which are being repealed by item 149 of this Schedule.

### **Item 195**

This item repeals paragraph 78(1)(b) of the *Export Market Development Grants Act 1997* which refers to sections 29A, 29B, 29C and 29D of the *Crimes Act 1914*. This item is consequent upon item 149 of this Schedule, which repeals these *Crimes Act* provisions.

### **Item 196**

This item removes the reference in 78(1)(d) of the *Export Market Development Grants Act 1997* (“the Act”) to paragraph 78(1)(b) of the Act. This item is consequent upon item 195 of this Schedule, which repeals paragraph 78(1)(b) of the Act.

### **Item 197**

This item adds references to sections 134.1, 134.2, 135.1, 135.2, 135.3, 135.4 and 136.1 of the *Criminal Code* to paragraph 78(1)(d) of the *Export Market Development Grants Act 1997* (“the Act”). These offences are being inserted into the *Criminal Code* by virtue of Schedule 1 of this Bill. This item effectively replaces the references in paragraph 78(1)(d) to certain *Crimes Act* provisions which are being repealed by item 149 of this Schedule.

### **Item 198**

This item repeals section 102 of the *Export Market Development Grants Act 1997* (“the Act”). Section 102 establishes corporate criminal responsibility deeming provisions for the purposes of a prosecution for an offence against sections 29A, 29B, 29C or 29D of the *Crimes Act 1914* (“primary offence provisions”) and sections 5, 6, 7, 7A or 86(1) of the *Crimes Act* (“ancillary offence provisions”) in relation to a grant

under the Act. The primary offence provisions of the *Crimes Act* are being repealed by item 149 of this Schedule and replaced by equivalent offences by virtue of Schedule 1 of this Bill. The *Crimes Act* ancillary offence provisions are being replaced for the purposes of the Act by the ancillary offence provisions in Chapter 2 of the *Criminal Code* (Part 2.4 - Extensions of criminal responsibility), which will apply to the primary offence provisions of the *Criminal Code*. The section 102 deeming provisions for the purposes of demonstrating a corporation's fault element are replaced by application of Chapter 2 (Part 2.5 - Corporate Criminal Responsibility) of the *Criminal Code*.

### **Item 199**

This item repeals and substitutes paragraph 103(1)(a) of the *Export Market Development Grants Act 1997* ("the Act") which refers to sections 29A, 29B, 29C and 29D of the *Crimes Act 1914* and substitutes references to sections 134.1, 134.2, 135.1, 135.2, 135.3, 135.4 and 136.1 of the *Criminal Code*. The *Criminal Code* sections replace the offence provisions of sections 29A, 29B, 29C and 29D of the *Crimes Act*. This item is consequent upon item 149 of this Schedule, which repeals these *Crimes Act* provisions.

### ***Farm Household Support Act 1992***

#### **Item 200**

This item repeals subsection 41(6) of the *Farm Household Support Act 1992* ("the Act") which creates an offence of giving false or misleading information in purported compliance with subsection 41(1) of the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 201**

This item repeals subsection 42(6) of the *Farm Household Support Act 1992* ("the Act") which creates an offence of giving false or misleading information in purported

compliance with subsection 42(1) of the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### **Item 202**

This item repeals subsection 54(8) of the *Farm Household Support Act 1992* (“the Act”) which creates an offence of giving false or misleading information in purported compliance with a notice given under subsection 54(1) of the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### ***Financial Management and Accountability Act 1997***

#### **Item 203**

This item repeals section 61 of the *Financial Management and Accountability Act 1997* which creates an offence of an official falsifying any account, statement, receipt or record kept or issued for the purposes of the Act or regulations or instruments made under the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### ***Financial Sector (Shareholdings) Act 1998***

#### **Item 204**

This item repeals section 37 of the *Financial Sector (Shareholdings) Act 1998* (“the Act”) which creates an offence of making a statement which is false or misleading, either to a person exercising powers or performing functions under the Act or in purported compliance with a requirement covered by paragraph 26(1)(c) of the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### ***First Home Owners Act 1983***



**Item 205**

This item repeals section 38 of the *First Home Owners Act 1983* (“the Act”) which creates offences of making a false or misleading statement in connection with an application for assistance under the Act or obtaining payment of assistance by means of impersonation or a fraudulent device. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

***Fisheries Management Act 1991*****Item 206**

This item inserts a definition of ‘offence against this Act’ into subsection 4(1) of the *Fisheries Management Act 1991* (“the Act”), which is the interpretation section of the Act. The definition stipulates that an ‘offence against this Act’ includes an offence against section 136.1, 137.1, 137.2, 148.1, 148.2, 147.1 and 149.1 of the *Criminal Code*. These sections are being inserted in to the *Criminal Code* by virtue of Schedule 1 of this Bill. The definition is necessary to ensure that officers can continue to investigate offences which relate to the Act where the offences have been repealed from the Act and replaced by equivalent offences in the *Criminal Code*.

**Item 207**

This item amends subsections 9(1) and 9(2) of the *Fisheries Management Act 1991* (“the Act”) by removing references to section 107 of the Act. This item is consequent upon item 208, which repeals section 107 of the Act.

**Item 208**

This item repeals section 107 of the *Fisheries Management Act 1991* (“the Act”) which creates an offence of presenting a document, making a statement or giving a return or information which is false or misleading to AFMA or another person performing duties under the Act or the regulations. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 209**

This item inserts into section 164 of the *Fisheries Management Act 1991* (“the Act”) a new subsection 10. Subsection 10 provides that Part 2.5 of the *Criminal Code* does not apply to an offence against the Act. The item also adds a note after subsection 10 explaining that Part 2.5 deals with corporate criminal responsibility. This subsection

is included to make it clear that section 164 of the Act (which covers the conduct of directors, servants and agents) itself deals with corporate criminal responsibility.

***Foreign Acquisitions and Takeovers Act 1975*****Item 210**

This item repeals section 36A of the *Foreign Acquisitions and Takeovers Act 1975* (“the Act”) which creates an offence of making a false or misleading statement, or omitting from a statement any matter without which the statement is false or misleading, or giving a document that is false or misleading, to the Treasurer or an officer of The Treasury in connection with the operations of the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

***Great Barrier Reef Marine Park Act 1975*****Item 211**

This item inserts a definition of ‘offence against this Act’ into subsection 3(1) of the *Great Barrier Reef Marine Park Act 1975* (“the Act”), which is the interpretation section of the Act. The definition stipulates that an ‘offence against this Act’ includes an offence against section 137.1 or 137.2 of the *Criminal Code*. These sections are being inserted in to the *Criminal Code* by virtue of Schedule 1 of this Bill. The definition is necessary to ensure that officers can continue to investigate offences which relate to the Act where the offences have been repealed from the Act and replaced by equivalent offences in the *Criminal Code*.

**Item 212**

This item amends paragraph 39P(4)(c) of the *Great Barrier Reef Marine Park Act 1975* (“the Act”) by omitting the reference to section 39R of the Act and substituting a reference to a prosecution for an offence against sections 137.1 or 137.2 of the *Criminal Code*. The substituted reference permits the use of records and other documents produced in purported compliance with section 39P to be used in prosecutions for offences against the nominated sections of the *Criminal Code*. This item is consequent upon item 213, which repeals section 39R of the Act.



**Item 213**

This item repeals section 39R of the *Great Barrier Reef Marine Park Act 1975* (“the Act”) which creates an offence of giving information or a return that is false or misleading in purported compliance with regulations made for the purposes of the relevant Division of the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 214**

This item inserts into section 64 of the *Great Barrier Reef Marine Park Act 1975* (“the Act”) a new subsection 8. Subsection 8 provides that Part 2.5 of the *Criminal Code* does not apply to an offence against the Act. The item also adds a note after subsection 8 explaining that Part 2.5 deals with corporate criminal responsibility. This subsection is included to make it clear that section 64 of the Act (which covers the conduct of directors, servants and agents) itself deals with corporate criminal responsibility.

***Great Barrier Reef Marine Park Regulations*****Item 215**

This item repeals subregulation 19(1) of the *Great Barrier Reef Marine Park Regulations* (“the Regulations”) which creates an offence of making a statement or furnishing information that is false or misleading in an application for a permission under the Regulations. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 216**

This item amends paragraph 19(2)(b) of the *Great Barrier Reef Marine Park Regulations* (“the Regulations”) by omitting the reference to subregulation 19(1) of the Regulations and substituting a reference to sections 136.1 137.1 of the *Criminal Code*. The substituted reference permits the Authority to give notice in writing to the

person revoking a permission where the person has been convicted of an offence against the nominated sections of the *Criminal Code*. This item is consequent upon item 215, which repeals subregulation 19(1) of the Regulations.

### ***Hazardous Waste (Regulation of Exports and Imports) Act 1989***

#### **Item 217**

This item repeals section 54 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (“the Act”) which creates an offence of obstructing, hindering or resisting an inspector in the exercise of powers under the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 218**

This item repeals section 55 of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (“the Act”) which creates offences of making a statement or giving to the Minister or an inspector a document that is false or misleading. Subsection 55(2) exempt the giving of a document from the scope of the offence provisions if the person giving the document indicates the false or misleading aspect of the document and provides the correct information if available. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill, and the exemption in subsection 55(2) is replaced by proposed subsection 137.2(3) of the *Criminal Code*.

### ***Health Insurance Act 1973***

#### **Item 219**

This item repeals paragraphs 124B(1)(d) and (e) of the definition of ‘relevant offence’ in the *Health Insurance Act 1973* (“the Act”) and substitutes a new paragraph 124B(1)(d). The repealed paragraphs incorporated into the definition offences against sections 29A, 29B, 29C, 29D, 30, 67 and 86A of the *Crimes Act 1914* (“primary

offence provisions”) and sections 6, 7 or 7A of the *Crimes Act* (“ancillary offence provisions”). The primary offence provisions of the *Crimes Act* are being repealed by items 149 and 153 of this Schedule and replaced by equivalent offences by virtue of Schedule 1 of this Bill. The *Crimes Act* ancillary offence provisions are being replaced for the purposes of the definition by the ancillary offence provisions in Chapter 2 of the *Criminal Code* (Part 2.4 - Extensions of criminal responsibility), which will apply to the primary offence provisions of the *Criminal Code*. The substituted paragraph 124B(1)(d) incorporates into the definition offences against sections 134.1, 134.2, 135.1, 135.2, 135.3, 135.4, 136.1, 137.1, 144.1, 145.1, 145.4 and 145.5 of the *Criminal Code*.

### ***Health Insurance Commission Act 1973***

#### **Item 220**

This item repeals paragraphs 3A(2)(d) and (e) (the definition of ‘relevant offence’ for the purposes of Division 2 of Part IID) in the *Health Insurance Commission Act 1973* (“the Act”) and substitutes a new paragraph 3A(2)(d). The repealed paragraphs incorporated into the definition offences against sections 29A, 29B, 29C, 29D, 30, 67 and 86A of the *Crimes Act 1914* (“primary offence provisions”) and sections 6, 7 or 7A of the *Crimes Act* (“ancillary offence provisions”) in the prescribed circumstances. The primary offence provisions of the *Crimes Act* are being repealed by items 149 and 153 of this Schedule and replaced by equivalent offences by virtue of Schedule 1 of this Bill. The *Crimes Act* ancillary offence provisions are being replaced for the purposes of the definition by the ancillary offence provisions in Chapter 2 of the *Criminal Code* (Part 2.4 - Extensions of criminal responsibility), which will apply to the primary offence provisions of the *Criminal Code*. The substituted paragraph 3A(2)(d) incorporates into the definition offences against sections 134.1, 134.2, 135.1, 135.2, 135.3, 135.4, 136.1, 137.1, 137.2, 145.2 and 145.3 of the *Criminal Code*.

#### **Item 221**



This item repeals paragraphs 3A(2A)(e) and (f) (the definition of ‘relevant offence’ for the purposes of Division 3 of Part IID) in the *Health Insurance Commission Act 1973* (“the Act”) and substitutes a new paragraph 3A(2A)(e). The repealed paragraphs incorporated into the definition offences against sections 29A, 29B, 29C, 29D, 30, 67 and 86A of the *Crimes Act 1914* (“primary offence provisions”) and sections 6, 7 or 7A of the *Crimes Act* (“ancillary offence provisions”) in the prescribed circumstances. The primary offence provisions of the *Crimes Act* are being repealed by items 149 and 153 of this Schedule and replaced by equivalent offences by virtue of Schedule 1 of this Bill. The *Crimes Act* ancillary offence provisions are being replaced for the purposes of the definition by the ancillary offence provisions in Chapter 2 of the *Criminal Code* (Part 2.4 - Extensions of criminal responsibility), which will apply to the primary offence provisions of the *Criminal Code*. The substituted paragraph 3A(2A)(e) incorporates into the definition offences against sections 134.1, 134.2, 135.1, 135.2, 135.3, 135.4, 136.1, 137.1, 137.2, 145.2 and 145.3 of the *Criminal Code*.

### ***Historic Shipwrecks Act 1976***

#### **Item 222**

This item repeals and substitutes subsection 10(2) of the *Historic Shipwrecks Act 1976* (“The Act”). Subsection 10(2) creates two offences, namely the failure by a person to whom a notice has been given by the Minister under subsection 10(1) of the Act to refuse or fail to comply with the terms of the notice, and the furnishing of false or misleading information by a person to whom a notice has been given by the Minister under subsection 10(1) of the Act in purported compliance with the notice. The substituted subsection 10(2) repeats the first offence. The second offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 223**

This item inserts into subsection 10(3) of the *Historic Shipwrecks Act 1976* a reference to sections 137.1 and 137.2 of the *Criminal Code*. The effect of the insertion is to

permit information furnished by a person in purported compliance with section 10 to be used in a prosecution of the person for an offence against the nominated sections of the *Criminal Code*.

#### **Item 224**

This item repeals subsection 17(3) of the *Historic Shipwrecks Act 1976* which creates an offence of making a statement that is false or misleading in purported compliance with subsection 17(1) of the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 225**

This item repeals and substitutes subsection 23(5) of the *Historic Shipwrecks Act 1976* (“the Act”). The effect of this item is to repeal the offence of making a statement that is false or misleading in answer to a question that a person is required to answer under section 23 of the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 226**

This item repeals subsection 23(7) of the *Historic Shipwrecks Act 1976* (“the Act”) which creates offences of hindering, obstructing, assaulting or threatening an inspector exercising a power under section 23 of the Act. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 227**

This item amends subsections 26(1) and (3) of the *Historic Shipwrecks Act 1976* (“the Act”) by removing the references to subsection 23(7) of the Act. This item is consequent upon item 226, which repeals subsection 23(7) of the Act.

#### ***Home Deposit Assistance Act 1982***

**Item 228**

This item repeals subsections 61(2) and (2) of the *Home Deposit Assistance Act 1982* (“the Act”). These subsections create offences of making a statement that is false or misleading with intent to deceive an officer or in connection with an application for a grant, and obtaining payment of a grant by means of a statement that is false or misleading or by impersonation or by a fraudulent device. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 229**

This item amends subsection 61(3) of the *Home Deposit Assistance Act 1982* (“the Act”) by removing the reference to an offence against section 61 of the Act and substituting a reference to an offence against sections 136.1 or 137.1 of the *Criminal Code*. This item is consequent upon item 228 which repeals the offence provisions of section 61.

***Homes Savings Grants Act 1976*****Item 230**

This item repeals subsection 50(1) of the *Homes Savings Grants Act 1976* (“the Act”). Subsection 50(1) creates the offences of making a false or misleading statement in connection with an application for a grant under the Act or with intent to deceive an officer exercising powers or duties or functions under the Act, or obtaining a grant under the Act by means of a false or misleading statement or by impersonation or by a fraudulent device, or making or presenting a statement or document that is false or misleading to an officer. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 231**

This item amends subsection 50(2) of the *Home Savings Grants Act 1976* (“the Act”) by removing the reference to an offence against subsection 50(1) of the Act and substituting a reference to an offence against sections 136.1 or 137.1 of the *Criminal Code*. This item is consequent upon item 230 which repeals the offence provisions of section 50.

***Human Rights and Equal Opportunity Commission Act 1986*****Item 232**

This item repeals section 25 of the *Human Rights and Equal Opportunity Commission Act 1986* which creates an offence of giving information or making a statement that is false or misleading to the Commission or to a person acting on behalf of the Commission. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 233**

This item adds a note to the end of section 26 of the *Human Rights and Equal Opportunity Commission Act 1986* stating that sections 136.1, 137.1 and 137.2 of the

*Criminal Code* deal with making false or misleading statements, giving false or misleading information and producing false or misleading documents.

#### **Item 234**

This item amends section 33 of the *Human Rights and Equal Opportunity Commission Act 1986* (“the Act”) by removing the reference to section 25 of the Act. This item is consequent upon item 232, which repeals section 25 of the Act.

#### ***Immigration (Guardianship of Children) Act 1946***

#### **Item 222**

This item repeals and substitutes section 10 of the *Immigration (Guardianship of Children) Act 1946* (“the Act”) which creates an offence of making a false or misleading statement in any application for the purposes of the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill. The substituted section 10 is a deeming provision that provides that for the purposes of section 136.1 of the *Criminal Code* an application made for the purposes of the Act is taken to be an application for a benefit. This deeming provision is necessary to ensure that where a person makes an application under the Act which contains a false or misleading statement that the person’s conduct would fall within the offence established by section 136.1 of the *Criminal Code* and in particular paragraph 136.1(c).

#### ***Imported Food Control Act 1992***

#### **Item 236**

This item repeals the definition of ‘forging’ in subsection 3(1) of the *Imported Food Control Act 1992* (“the Act”). This item is consequent upon item 240, which establishes a definition of forgery for the purposes of the relevant Division of the Act by creating a new section 19A of the Act.

#### **Item 237**

This item repeals the definition of ‘uttering’ in subsection 3(1) of the *Imported Food Control Act 1992* (“the Act”). This item is consequent upon item 240, which establishes a definition of forgery for the purposes of the relevant Division of the Act by creating a new section 19A of the Act.

### **Item 238**

This item repeals the note in section 18 of the *Imported Food Control Act 1992* (“the Act”), which refers to the definitions of ‘forging’ and ‘uttering’ in subsection 3(1) of the Act. This item is consequent upon items 236 and 237, which respectively repeal these definitions.

### **Item 239**

This item repeals the note in section 19 of the *Imported Food Control Act 1992* (“the Act”), which refers to the definitions of ‘forging’ and ‘uttering’ in subsection 3(1) of the Act. This item is consequent upon items 236 and 237, which respectively repeal these definitions.

### **Item 240**

This item creates a new section 19A of the *Imported Food Control Act 1992* (“the Act”), which establishes definitions of ‘forging’ and ‘uttering’ for the purposes of the relevant Division of the Act.

### **Item 241**

This item repeals subsection 30(6) of the *Imported Food Control Act 1992* (“the Act”) which creates offences of making a statement or presenting a document that is false or misleading to an authorised officer. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

## ***Income Tax Assessment Act 1936***

### **Item 242**

This item repeals paragraphs (a) and (b) of the definition of ‘serious taxation offence’ in section 251A (the interpretation section) of the *Income Tax Assessment Act 1936* (“the Act”) and substitutes a new paragraph (a). The repealed paragraphs incorporated into the definition offences against sections 29D and 86A of the *Crimes Act 1914* (“primary offence provisions”) and sections 6, 7 or 7A and subsection 86(1) of the *Crimes Act* (“ancillary offence provisions”) in the prescribed circumstances. Section 29D of the *Crimes Act* is being repealed by item 149 of this Schedule and replaced by equivalent offences by virtue of Schedule 1 of this Bill. The *Crimes Act* ancillary offence provisions are being replaced for the purposes of the definition by the ancillary offence provisions in Chapter 2 of the *Criminal Code* (Part 2.4 - Extensions of criminal responsibility), which will apply to the primary offence provisions of the *Criminal Code*. The substituted paragraph (a) incorporates into the definition offences against sections 134.1, 134.2, 135.1, 135.2, 135.3 and 135.4 of the *Criminal Code*, being offences that relate to a tax liability as prescribed by the substituted paragraph (a).

### ***Industrial Chemicals (Notification and Assessment) Act 1989***

#### **Item 243**

This item repeals section 81 of the *Industrial Chemicals (Notification and Assessment) Act 1989* (“the Act”) which creates the offence of making a statement or giving information that is false or misleading in response to any requirement of the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### ***Industrial Research and Development Incentives Act 1976***

#### **Item 244**

This item repeals section 37 of the *Industrial Research and Development Incentives Act 1976* (“the Act”). Section 37 creates offences of making a statement or presenting a book, record or document that is false or misleading in connection with an

application or grant to the Board or to a person having duties or functions under the Act. Section 37 also provides a relevant deeming provision for the purposes of demonstrating a corporation's fault element. The offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill. The deeming provision for the purposes of demonstrating a corporation's fault element is being replaced by application of Chapter 2 (Part 2.5 - Corporate Criminal Responsibility) of the *Criminal Code*.



***Industry Research and Development Act 1986*****Item 245**

This item repeals subsection 44(1), (2), (3), (4) and (5) of the *Industry Research and Development Act 1986* (“the Act”). Subsection 44(1) creates an offence of obtaining or attempting to obtain a subsidy that is not payable, and subsection 44(2) creates offences of making a statement or giving an account, book, document or other record that is false or misleading to the Board or to a person exercising a power or function under the Act. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill, and the ancillary offences are applied to the primary replacement offences through the application of Chapter 2 (section 11.1 - attempt) of the *Criminal Code*. Subsection 44(3), (4) and (5) provide relevant deeming provisions for the purposes of demonstrating a corporation’s fault element. The deeming provisions are being replaced by application of Chapter 2 (Part 2.5 - Corporate Criminal Responsibility) of the *Criminal Code*.

**Item 246**

This item amends subsection 44(6) of the *Industry Research and Development Act 1986* (“the Act”) by omitting the references to subsection 44(1) and (2) of the Act and substituting references to sections 135.2, 136.1, 137.1 and 137.2 of the *Criminal Code*. This item is consequent upon item 245, which repeals subsection 44(1) and (2). The effect of the substituted references to the *Criminal Code* provisions is to prevent a person being convicted under multiple provisions of the *Criminal Code* in respect of the same claim for subsidy.

**Item 247**

This item repeals subsection 44(8), (9) and (10) of the *Industry Research and Development Act 1986* (“the Act”) which refer to an offence against subsection 44(1). This item is consequent upon item 245, which repeals subsection 44(1).

***Inspector-General of Intelligence and Security Act 1986*****Item 248**

This item inserts paragraph (ca) into subsection 18(6) of the *Inspector-General of Intelligence and Security Act 1986* (“the Act”). The effect of paragraph (ca) is to enable any information, document or answer given in compliance with section 18 to be admitted in evidence in a prosecution for an offence against section 137.1 of the *Criminal Code*.

**Item 249**

This item repeals subsection 18(8) of the *Inspector-General of Intelligence and Security Act 1986* (“the Act”) which creates an offence of giving information or giving an answer that is false or misleading when require to give information or answer a question under section 18. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

***Insurance Acquisitions and Takeovers Act 1991*****Item 250**

This item amends subsection 73(2) of the *Insurance Acquisitions and Takeovers Act 1991* (“the Act”). The amendment effectively removes the references to subsections 73(6), (7) and (8) of the Act and substitutes references to sections 137.1 and 137.2 of the *Criminal Code*. The effect of the references to the nominated *Criminal Code* provisions is that a notice under subsection 73(1) must additionally set out the effect of those *Criminal Code* sections. This item is consequent upon item 251, which repeals subsections 73(6), (7) and (8) of the Act.

**Item 251**

This item repeals subsections 73(6), (7) and (8) of the *Insurance Acquisitions and Takeovers Act 1991* (“the Act”). These subsection create the offences of giving information or producing a document that is false or misleading in purported

compliance with a notice given under subsection 73(1) of the Act. Subsection 73(8) additionally provides that the offence created by subsection (7) (producing a false or misleading document) does not apply to a person who indicates in the prescribed manner that the document is false or misleading. These offences and the related provision in subsection 73(8) are being replaced by the insertion of equivalent offences and provisions into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 252**

This item effectively amends subsection 73(9) of the *Insurance Acquisitions and Takeovers Act 1991* by inserting a reference to prosecutions for offences against sections 137.1 and 137.2 of the *Criminal Code*. The effect of the amendment is to enable any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document given in compliance with section 73 to be admitted in evidence in a prosecution for an offence against section 137.1 and 137.2 of the *Criminal Code*.

#### **Item 253**

This item repeals section 74 of the *Insurance Acquisitions and Takeovers Act 1991* (“the Act”) which creates offences of making a statement or producing a document which is false or misleading to the Minister or to an officer, or omitting from a statement given to the Minister or to an officer any matter or thing without which the statement is false or misleading, in connection with the operation of the Act. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### ***Insurance Act 1973***

#### **Item 254**

This item repeals subsection 22(5) of the *Insurance Act 1973* which creates an offence of a body corporate making an application under section 22, or giving a notice to APRA under subsection 22(4), that is false or misleading. This offence is being

replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### **Item 255**

This item repeals subsection 49C(3) of the *Insurance Act 1973* which creates an offence of person giving any information, or producing any document, that is false or misleading if that information or document is relevant to whether or not a body corporate that is a constitutional corporation is a supervised body corporate. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### **Item 256**

This item repeals and substitutes subsection 56(1) of the *Insurance Act 1973* (“the Act”). Subsection 56(1) creates offences of a person refusing or failing to comply with a requirement of APRA or an inspector under section 55 of the Act to the extent to which he or she is able to comply, or furnishing information or making a statement that is false or misleading in purported compliance with a requirement of APRA or an inspector under section 55, or making a statement that is false or misleading when appearing before an authorised person or an inspector for examination in pursuance of a requirement of APRA or an inspector under section 55. Section 55 relevantly provides that APRA or an inspector may require a person to produce certain documents, to give reasonable assistance to an inspector, or to appear before an inspector for examination concerning matters relevant to an investigation. The second and third of these offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill. The first offence is re-inserted in section 56 as subsection (1), providing that a person is guilty of an offence if a requirement of APRA or the inspector under section 55 is applicable to the person and the person refuses or fails to comply with the requirement to the extent that the person is able to comply.

### **Item 257**

This item is consequent on item 256 and effectively amends subsection 56(2) of the *Insurance Act 1973* by adding a prosecution for an offence against sections 137.1 and 137.2 of the *Criminal Code* to those exempted from the effect of subsection 56(2). Subsection 56(2) provides that answers given by a person being examined by an authorised person or an inspector are not admissible in evidence in criminal proceedings against the person, other than in exempted proceedings. The exempted proceedings are those stated in subsection 56(2), which following this amendment will be proceedings in relation to the offences stated in amended subsection 56(1) and in the nominated section of the *Criminal Code*. The offences in the nominated sections of the *Criminal Code*, namely sections 137.1 and 137.2, replace the offences repealed from subsection 56(1) by virtue of item 256 of this Schedule.

#### **Item 258**

This item repeals subsection 80(4) of the *Insurance Act 1973* (“the Act”) which is being inserted into the Act by the *Insurance Laws Amendment Act 1998* (“the amending Act”) (Act no. 35 of 1998), section 5 of Schedule 2. Schedule 2 of the amending Act is awaiting proclamation. Subsection 80(4) creates an offence of obstructing or hindering the Commissioner or the inspector in the exercise of powers under section 80 of the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 259**

This item repeals subsection 82(2) of the *Insurance Act 1973* (“the Act”) which is being inserted into the Act by the *Insurance Laws Amendment Act 1998* (“the amending Act”) (Act no. 35 of 1998), section 5 of Schedule 2. Schedule 2 of the amending Act is awaiting proclamation. Subsection 82(2) creates an offence of giving information or evidence under section 81 of the Act that is false or misleading. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 260**

This item is consequent on item 259 and effectively amends subsection 82(4) of the *Insurance Act 1973* (“the Act”) by adding a prosecution for an offence against sections 137.1 and 137.2 of the *Criminal Code* to those exempted from the effect of subsection 82(4). Subsection 82(4) is being inserted into the Act by the *Insurance Laws Amendment Act 1998* (“the amending Act”) (Act no. 35 of 1998), section 5 of Schedule 2. Schedule 2 of the amending Act is awaiting proclamation. Subsection 82(4) provides that questions made to a person under subsection 82(3) and the answers given in response, and any information, document or thing obtained as a direct or indirect consequence of giving an answer, are not admissible in evidence in criminal proceedings against the person, other than in exempted proceedings. The exempted proceedings are those stated in subsection 82(4), which following this amendment will be proceedings in relation to the offences in the nominated section of the *Criminal Code*, namely sections 137.1 and 137.2, which replace the offence repealed from subsection 82(2) by virtue of item 259 of this Schedule.

### **Item 261**

This item amends section 128 of the *Insurance Act 1973* (“the Act”) by removing references to subsections 80(4) and 82(2) of the Act. This item is consequent upon items 258 and 259 of this Schedule which repeal subsections 80(4) and 82(2).

### ***Insurance (Agents and Brokers) Act 1984***

### **Item 262**

This item repeals subsection 34A(9) of the *Insurance (Agents and Brokers) Act 1984* which creates offences of making a statement, or producing a document, that is false or misleading to the ASIC or to an authorised officer. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### **Item 263**

This item repeals subsection 34P(5) of the *Insurance (Agents and Brokers) Act 1984* (“the Act”) which creates offences of making a statement, or producing a document, that is false or misleading to an authorised officer. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### ***Interstate Road Transport Act 1985***

#### **Item 264**

This item amends paragraph 19(3)(a) of the *Interstate Road Transport Act 1985* (“the Act”) by removing the reference to section 47 of the Act and substituting a reference to section 137.1 of the *Criminal Code*, which is being inserted into the *Criminal Code* by virtue of Schedule 1 of this Bill. The offence created by section 137.1 of the *Criminal Code* replaces the offence contained in section 47 of the Act. This item is consequent upon item 266, which repeals section 47.

**Item 265**

This item amends paragraph 45(4)(a) of the *Interstate Road Transport Act 1985* (“the Act”) by removing the reference to section 47 of the Act and substituting a reference to section #137.1 of the *Criminal Code*, which is being inserted into the *Criminal Code* by virtue of Schedule 1 of this Bill. The offence created by section 137.1 of the *Criminal Code* replaces the offence contained in section 47 of the Act. This item is consequent upon item 266, which repeals section 47.

**Item 266**

This item repeals section 47 of the *Interstate Road Transport Act 1985* which creates an offence of making a statement that is false or misleading to an interstate motor vehicle officer and provides a consequent definition. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 267**

This item amends section 53 of the *Interstate Road Transport Act 1985* (“the Act”) by removing the references to section 47 of the Act and substituting references to section 137.1 of the *Criminal Code*, which is being inserted into the *Criminal Code* by virtue of Schedule 1 of this Bill. The offence created by section 137.1 of the *Criminal Code* replaces the offence contained in section 47 of the Act. This item is consequent upon item 266, which repeals section 47.

***Life Insurance Act 1995*****Item 268**

This item repeals section 249 of the *Life Insurance Act 1995* (“the Act”) which creates offences of making a statement in a document that is false or misleading, or omitting a material particular from a document without which the document is false or misleading, where that document is required under the Act to be signed by a person.



These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

***Marriage Act 1961*****Item 269**

This item repeals section 96 of the *Marriage Act 1961* (“the Act”) which creates offences of making or furnishing a statement that is false or misleading in connection with a declaration under the Act or in connection with a proposed religious ceremony of marriage, or forging a document or the signature thereto, or presenting a document which the person knows to be forged for the purpose of inducing another person to solemnize a marriage, or forging a certificate of the kind referred to in subsection 16(2A) of the Act or the signature thereto. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 270**

This item repeals section 97 of the *Marriage Act 1961* (“the Act”) which creates an offence of a person falsely representing himself or herself to be a person whose consent to the marriage of another person is required by the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 271**

This item repeal subsections 98(1) and (1A) of the *Marriage Act 1961* (“the Act”) which create offences of presenting to a person authorised to solemnize a marriage or register a marriage a document purporting to be the consent or dispensation of consent of a person to a marriage where the first person knows the signature to the document is forged or obtained by fraud, or presenting or forwarding to a person authorised to solemnize a marriage or register a marriage a document that the first person knows is false or misleading. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 272**

This item repeals section 102 of the *Marriage Act 1961* (“the Act”) which creates an offence of making a statement that is false or misleading in or in support of an application for registration under Division 1 of Part IV of the Act or in an application for authority to solemnize marriages under subsection 39(2) of the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### **Item 273**

This item amends subsection 108(1) of the *Marriage Act 1961* (“the Act”) by removing references to sections 96 and 97 of the Act. This item is consequent upon items 269 and 270, which repeal sections 96 and 97.

### ***Meat Export Charge Collection Act 1984***

#### **Item 274**

This item repeals subsection 12(8) of the *Meat Export Charge Collection Act 1984* (“the Act”) which creates an offence of obstructing or hindering an authorised person acting pursuant to a warrant granted under subsection 12(3) of the Act or acting pursuant to subsection 12(7) of the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### ***Meat Inspection Act 1983***

#### **Item 275**

This item repeals section 27 of the *Meat Inspection Act 1983* (“the Act”) which creates an offence of obstructing or hindering an authorised officer in the exercise of the authorised officers’ powers or functions under the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### ***Migration Act 1958***

**Item 276**

This item amends the definition of ‘offence against this Act’ in subsection 5(1) of the *Migration Act 1958* (“the Act”) by inserting paragraph (f). Paragraph (f) adds offences against sections 137.1, 137.2 and 149.1 of the *Criminal Code* to the list of offences comprising an offence against the Act. The amendment of the definition is necessary to ensure that officers can continue to investigate offences which relate to the Act where the offences have been repealed from the Act and replaced by equivalent offences in the *Criminal Code*.

**Item 277**

This item amends subsection 18(2) of the *Migration Act 1958* (“the Act”) by omitting references to sections 22 and 23 of the Act and substituting references to sections 137.1 and 137.2 of the *Criminal Code*. This item is consequent upon items 278 and 279, which repeal sections 22 and 23. The offences created by sections 137.1 and 137.2 of the *Criminal Code* replace the offences contained in sections 22 and 23 of the Act.

**Item 278**

This item repeals section 22 of the *Migration Act 1958* (“the Act”) which creates an offence of giving information that is false or misleading in purported compliance with a notice under subsection 18(1) of the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 279**

This item repeals section 23 of the *Migration Act 1958* (“the Act”) which creates an offence of producing a document that is false or misleading in purported compliance with a notice under subsection 18(1) of the Act, except where the person indicates in the manner prescribed that the document is false or misleading (subsection 23(2)). This offence is being replaced by the insertion of an equivalent offence into the

*Criminal Code* by virtue of Schedule 1 of this Bill. The exception in subsection 23(2) is being replaced by subsection 137.2(3) of the *Criminal Code*.

### **Item 280**

This item is consequent upon items 278 and 279 and effectively amends section 24 of the *Migration Act 1958* (“the Act”) by adding a prosecution for an offence against sections 137.1 and 137.2 of the *Criminal Code* to those exempted from the effect of section 24. Section 24 relevantly provides that giving information or producing a document under the relevant Division of the Act, and any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document, are not admissible in evidence in criminal proceedings against the person, other than in exempted proceedings. The exempted proceedings are those stated in subsection 24, which following this amendment will be proceedings in relation to the offences under the Division of the Act in question and sections 137.1 and 137.2 of the *Criminal Code*. The offences in these sections of the *Criminal Code* replace the offences contained in sections 22 and 23 of the Act, which are repealed by virtue of items 278 and 279 of this Schedule.

### **Item 281**

This item repeals section subsection 137(9) of the *Migration Act 1958* (“the Act”) which creates an offence of giving information that is false or misleading in purported compliance with a notice under subsection 137(1) of the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### **Item 282**

This item is consequent upon item 283 and amends subsection 308(4) of the *Migration Act 1958* (“the Act”) by removing the reference to section 487 of the Act and substituting references to sections 137.1 and 137.2 of the *Criminal Code*. This amendment removes a prosecution for an offence against section 487 and adds a

prosecution for an offence against sections 137.1 or 137.2 of the *Criminal Code* to those excepted from the effect of subsection 308(4). Subsection 308(4) relevantly provides that any information or document provided in response to a requirement under subsection 308(1) of the Act, and any information or thing (including any document) obtained as a direct or indirect result of information or a document provided in response to requirement under subsection 308(1), are not admissible in evidence in criminal proceedings against the person, other than in excepted proceedings. The excepted proceedings are stated in subsection 308(4) to be proceedings for an offence against section 487 of the Act, which will be repealed by this Bill (item 283 of this Schedule) and replaced by sections 137.1 and 137.2 of the *Criminal Code*.

**Item 283**

This item repeals section 487 of the *Migration Act 1958* (“the Act”) which creates an offence of obstructing, hindering, deceiving or misleading any person exercising powers or performing duties under or for the purposes of the Act or the regulations. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 284**

This item inserts into section 493 of the *Migration Act 1958* (“the Act”) a new subsection 9. Subsection 9 provides that Part 2.5 of the *Criminal Code* does not apply to an offence against the Act or the regulations. The item also adds a note after subsection 9 explaining that Part 2.5 deals with corporate criminal responsibility. This subsection is included to make it clear that section 493 of the Act (which covers the conduct of directors, servants and agents) itself deals with corporate criminal responsibility.

***Motor Vehicle Standards Act 1989*****Item 285**

This item repeals section 31 of the *Motor Vehicle Standards Act 1989* (“the Act”) which creates an offence of obstructing, hindering, or resisting an inspector in the performance of his or her functions under the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

***National Health Act 1953*****Item 286**

This item repeals paragraph 103(5)(c) of the *National Health Act 1953* which creates an offence of obtaining a payment in respect of the supply of a pharmaceutical benefit

which is not payable. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.



***National Occupational Health and Safety Commission Act 1985***

**Item 287**

This item repeals subsections 62(3) and (4) of the *National Occupational Health and Safety Commission Act 1985*. Subsection 62(3) creates an offence for a person who provides a notice required by the National Occupational Health and Safety Commission under section 62 which includes information that is false or misleading in a material particular. Subsection 62(4) provides that an offence against subsection 62(3) is punishable on summary conviction. The offence under subsection 62(3) is replaced by the equivalent *Criminal Code* offence.

**Item 288**

Item repeals all the words after the words “except in” of the *National Occupational Health and Safety Commission Act 1985*. The item is consequential on item 287 and repeals the references in subsection 62(6) to subsection 61(3), to the *Crimes Act 1914* ancillary offence provisions at sections 6, 7, and 7A and to the *Crimes Act* conspiracy offence subsection 86(1).

***Native Title Act 1993***

**Item 289**

Item 289 repeals the words “sections 70, 72, 73, 74 and 75 of the *Crimes Act 1914*” in subsection 203DF(8) of the *Native Title Act 1993* and substitutes the words “section 70 of the *Crimes Act 1914*” in the provision. The offences in sections 72, 73, 74 and 75 of the *Crimes Act 1914* are replaced by *Criminal Code* offences.

**Item 290**

This item adds at the end of section 203DF of the *Native Title Act 1993* a new subsection (9) (“*Auditor or investigator taken to be a Commonwealth public official*”). Subsection 203DF(9) is inserted to avoid any doubt that an auditor or inspector appointed under the *Native Title Act 1993* is taken, for the purposes of the

*Criminal Code*, to be a Commonwealth public official. A extended definition of Commonwealth public official is provided in the Dictionary to the *Criminal Code*.

### ***Navigation Act 1912***

#### **Item 291**

This item repeals section 160 of the *Navigation Act 1912*. Section 160 creates various offences in relation to forgery, using any document which has been forged or fraudulently altered, giving false evidence and making false representation in connection with a deceased seamen's property.

The item substitutes a new section 160 which reinstates paragraph 160(c) which is the offence of giving false evidence knowing it to be false. The remainder of the offences in repealed section 160 are replaced by the equivalent *Criminal Code* offences.

#### **Item 292**

This item repeals paragraphs 386(a) and (b) of the *Navigation Act 191*. Paragraphs 386(a) and (b) create offences that no person will make in any document, produced to any person who is authorised to receive the document, any statement which is untrue in any particular.

The offence will be replaced by the equivalent *Criminal Code* offences.

#### **Item 293**

This item repeals paragraph 386(e) of the *Navigation Act 1912*. Paragraph 386(e) creates an offence that no person shall give any bribe, recompense, or reward to, or make any collusive agreement with, any official performing any duty under the *Navigation Act 1912*. The offence is replaced by the equivalent *Criminal Code* offence.

#### **Item 294**

Item 294 replaces section 387 of the *Navigation Act 1912* with a new substitute paragraph. Section 387 creates an offence if a person by violence, threat or intimidation, hinders or interferes with the master or an officer of a ship in the performance of that person's duty in relation to the maintenance of discipline on board the ship.

The item substitutes a new section 387 which, in effect, reinstates paragraph 160(b) of the *Navigation Act 1912*, and provides an offence where a person, by violence, threat or intimidation, hinders or interferes the master of a ship or an officer of a ship in the performance of the master's or officer's duty in relation to maintenance of discipline on board the ship. The penalty for the offence in the original paragraph 160(b) is inserted for the replacement offence.

#### **Item 295**

This item repeals subsection 389A(1) and (2) of the *Navigation Act 1912*.

Subparagraph 389A(1)(a) creates an offence if a person knowingly makes a false representation for the purpose of obtaining a certificate for himself or another person. Subparagraphs 389A(1)(b), (c) and (d) provide no person shall forge or fraudulently alter a certificate, fraudulently use a certificate that is forged, altered, cancelled or suspended or to which he or she is not justly entitled, or allow a person to use fraudulently a certificate. Subsection 389A(2) provides that a person who contravenes paragraph 389A(1) is guilty of an offence. The repealed offences are replaced by *Criminal Code* offences.

#### **Item 296**

The item is consequential on item 296 and repeals the reference in subsection 389A(3) of the *Navigation Act 1912* to subsection 389A(1) because that subsection is repealed by item 295.

#### **Item 297**

The item is consequential on item 295 and repeals the reference in paragraph 389A(5)(b) of the *Navigation Act 1912* to subsection 389A(1) because that subsection is repealed by item 295.

***Northern Territory (Self-Government) Act 1978***

**Item 298**

Item 298, which repeals section 52 of the *Northern Territory (Self-Government) Act 1978*, is consequential on the repeal of the *Secret Commissions Act 1905* by item 365 of Schedule 2 of this Bill. Section 52 had applied the *Secret Commissions Act 1905* to trade and commerce with the Northern Territory. Reliance will now be placed on *Criminal Code* offences.

***Nuclear Non-Proliferation (Safeguards) Act 1987***

**Item 299**

Item 299 omits the words “section 76 of the *Crimes Act 1914*” in subsection 31(2) of the *Nuclear Non-Proliferation (Safeguards) Act 1987* and substitutes reference to the *Criminal Code* obstruction of Commonwealth public officials offence. Subsection 31(2) provided that the offence of obstructing an Agency inspector in subsection 31(1) will not affect the operation of section 76 of the *Crimes Act 1914*; it now provides that the subsection will not affect the operation of the equivalent *Criminal Code* offence.

***Occupational Health and Safety (Commonwealth Employment) Act 1991***

**Item 300**

This item repeals subsection 43(3) of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*. Subsection 43(3) creates an offence if a person in purported compliance with a requirement under section 43, knowingly or recklessly gives information that is false or misleading in a material particular. The offence in subsection 43(3) is replaced by the equivalent *Criminal Code* offence.

***Occupational Health and Safety (Maritime Industry) Act 1991*****Item 301**

This item repeals subsection 90(3) of the *Occupational Health and Safety (Maritime Industry) Act 1991*. Subsection 90(3) creates an offence if a person in purported compliance with a requirement under section 90, knowingly or recklessly gives information that is false or misleading in a material particular. The offence in subsection 90(3) is replaced by the equivalent *Criminal Code* offence.

***Offshore Minerals Act 1994*****Item 302**

Item 302 substitutes a replacement Note 2 at the foot of subsection 328(1) of the *Offshore Minerals Act 1994* providing that the *Criminal Code* deals with offences in relation to the proper keeping of the register (for example falsification of records); the repealed Note had referred to section 72 *Crimes Act 1914* which is itself repealed by this Schedule and replaced by *Criminal Code* offences.

**Item 303**

Item 303 inserts reference to the *Criminal Code* with the result that subsection 405(2) *Offshore Minerals Act 1994*. provides that the *Crimes Act 1914* and the *Criminal Code* contain provisions that are relevant to the operation of the *Offshore Minerals Act 1994*.

**Item 304**

This item repeals Note 2 at the foot of subsection 405(2) of the *Offshore Minerals Act 1994* and substitutes a new Note 2. Note 2 makes reference to section 29B of the *Crimes Act 1914* for a general offence of making untrue representations with a view to obtaining a benefit or advantage. The substituted Note 2 makes reference to Parts 7.3 and 7.4 of the *Criminal Code* which deal with fraudulent conduct and false or misleading statements.

**Item 305**

This item repeals Note 4 at the bottom of subsection 405(2) of the *Offshore Minerals Act 1994* and substitutes a new Note 4. Note 4 makes reference to section 72 of the *Crimes Act 1914* for a general offence of falsification of books and records by “Commonwealth officers”. The substituted Note 4 makes reference to section 145.4 of the *Criminal Code* which provides for the general offence relating to the falsification of documents kept for the purposes of a law of the Commonwealth.

**Item 306**

This item repeals all the words after “giving false testimony” in Note 5 at the bottom of subsection 405(2) of the *Offshore Minerals Act 1994*. The words after “giving false testimony” in Note 5 make reference to section 76 *Crimes Act 1914* which provides an offence for obstructing a public officer. The offence in section 76 is replaced by the equivalent *Criminal Code* offence.

**Item 307**

The item is consequential on item 308. It adds a new Note 7 which refers to section 149.1 of the *Criminal Code*.

***Ombudsman Act 1976*****Item 308**

The item amends paragraph 9(4)(d) and is consequential on item 309 which repeals subsection 36(2) of the Act which is referred to in the paragraph. Subsection 9(4) details several instances (at paragraphs 9(4)(a, (aa), (ab) and (b)) where it is not an excuse not to produce a document or answer a question under the Act. The subsection also provides that the answer or document is not admissible in evidence in proceedings against the person except proceedings referred to in paragraphs 9(4)(c) or (d). The item provides that, in addition to the reference in paragraph 9(4)(d) to section 36, the exemption will extend to proceedings under the *Criminal Code* which replace the offences in subsection 36(2) of the Act repealed by item 309. The offences repealed by item 309 are obstruct/hinder and false or misleading statement offences and the reference in paragraph 9(4)(d) is to the replacement *Criminal Code* offences.

**Item 309**

Item 309 repeals subsection 36(2) of the *Ombudsman Act 1976*. Paragraph 36(2)(a) creates an offence if a person obstructs the Ombudsman or any other person in the exercise of his or her functions under the *Ombudsman Act 1976*. Paragraph 36(2)(b) creates an offence if a person furnishes information or makes a statement to the Ombudsman or to an authorised person knowing that it is false or misleading in a material particular. The offences in subsection 36(2) are replaced by the equivalent *Criminal Code* offences.

***Passenger Movement Charge Collection Act 1978*****Item 310**

Item 310 repeals subsection 8(2) of the *Passenger Movement Charge Collection Act 1978*. Subsection 8(2) creates an offence if a person when required to answer a question or produce a document in pursuant to subsection 7(2) of the Act, makes a statement, or produces a document, that is false or misleading in a material particular. The offence under subsection 8(2) is replaced by the equivalent *Criminal Code* offence.

### ***Passports Act 1938***

#### **Item 311**

The item is consequential on item 313 and omits reference to paragraph 9B(f) in subsection 5(3) of the *Passports Act 1938* because paragraph 9B(f) is omitted and replaced by paragraph 9B(b) by item 313.

#### **Item 312**

The item is consequential on item 313 and omits reference to paragraph 9B(f) in subsection 5(4) of the *Passports Act 1938* because paragraph 9B(f) is omitted and replaced by paragraph 9B(b) by item 313.

#### **Item 313**

This item repeals section 9B of the *Passports Act 1938*. Section 9B creates a number of offences in relation to forgery and falsifying of Australian and foreign country issued passports. Section 9B is replaced by a new provision containing offences dealing only with the falsification within Australia of foreign passports. The remainder of the offences in the repealed section 9B which relate to forgery and falsification of Australian passports are replaced by *Criminal Code* offences.

### ***Petroleum Excise (Prices) Act 1987***

#### **Item 314**



The item repeals subsection 6(3) of the *Petroleum Excise (Prices) Act 1987*.

Subsection 6(3) creates an offence if a person in purported compliance with section 6, knowingly or recklessly gives information that is false or misleading in a material particular. An oil producer of excisable crude petroleum oil entered for home consumption during a particular month is required to give to the Minister such information as is required. The offence under subsection 6(3) is replaced by the equivalent *Criminal Code* offence.

### **Item 315**

This item amends subsection 10(6) and is consequential on item 316 which repeals subsection 10(8) of the *Petroleum Excise (Prices) Act 1987*. This item omits the words “subsection (8)” in subsection 10(6) and substitutes a reference to the *Criminal Code* offence which replaces the false or misleading information offence at subsection (8). The result of the item is that subsection 10(6) now provides that a statement or disclosure made, an answer given or a document produced (or any thing obtained directly or indirectly from the statement, disclosure or document) in response to a requirement under section 10 is not admissible in evidence in criminal proceedings against the person except proceedings under the *Criminal Code* false or misleading information offence.

### **Item 316**

The item repeals subsection 10(8) of the *Petroleum Excise (Prices) Act 1987*.

Subsection 10(6) creates an offence if a person in purported compliance with a requirement under the section, knowingly or recklessly gives information that is false or misleading in a material particular. An oil producer of excisable crude petroleum oil entered for home consumption during a particular month is required to give to the Minister such information as is required. The offence under subsection 10(8) is replaced by the equivalent *Criminal Code* offence.

### ***Pooled Development Funds Amendment Bill 1999***

**Item 317**

This item amends section 47 of the *Pooled Development Funds Act 1992* as amended by the *Pooled Development Funds Amendment Bill 1999*. Item 25 of Schedule 1 of the latter Bill repeals subsection 47(4) of the Act. The repealed subsection provided that the term “revocation provision” means certain specified provisions under the Act. Item 317 of this Bill inserts a new subsection 47(4) which provides that a reference in subsection 47(1) to a provision of the Act includes a reference to the *Criminal Code* offences of false or misleading statements in applications, giving false or misleading information and producing false or misleading documents.

**Item 318**

Item 318 repeals section 52 of the *Pooled Development Funds Act 1992*. Section 52 created offences of making false or misleading statements and producing documents containing false or misleading information. The repealed offences are replaced by the equivalent *Criminal Code* offences.

***Prawn Export Promotion Act 1995*****Item 319**

The item is consequential on item 320. Item 320 repeals subsection 22(3) which created offences of making false or misleading statements in a document or return or giving false or misleading information. This item repeals the reference in paragraph 22(2)(a) of the *Prawn Export Promotion Act 1995* to subsection 22(3) because that subsection is repealed by item 320. Subsection 22(2) provides that self-incrimination is not an excuse not to submit a return or information. The section also provides that any return or information (and any information or thing obtained as a direct or indirect consequence of the giving of the return or information) is not admissible in evidence in criminal proceedings against the person except proceedings under subsections 22(1) or (3). In place of the omitted reference to subsection 22(3) the item substitutes that the exception also extends to the *Criminal Code* offences of giving false or misleading information or producing false or misleading documents where the proceedings relate to the Act (these are the *Criminal Code* offences which replace the repealed subsection 22(3) offences).

**Item 320**

Item 320 repeals subsection 22(3) of the *Prawn Export Promotion Act 1995*. Subsection 22(3) creates offences of making false or misleading statements in a document or return or giving false or misleading information. The offences under subsection 22(3) are replaced by the equivalent *Criminal Code* offences.

***Prices Surveillance Act 1983*****Item 321**

Item 321 repeals subsection 32(2) of the *Prices Surveillance Act 1983*. Subsection 32(2) creates offences of refusing or failing to comply with a notice under subsection (1) of the Act (paragraph (a)) and knowingly furnishing false or misleading information (paragraph (b)). The offence at paragraph (b) is replaced by the equivalent Criminal Code offence and the offence at paragraph (a) is reinserted into the Act by the substituted subsection (2).

**Item 322**

Item 322 adds a note at the end of section 32 of the *Prices Surveillance Act 1983*. The Note provides that sections 137.1 and 137.2 of the *Criminal Code* deal with false or misleading information and documents.

***Primary Industries Levies and Charges Collection Act 1991*****Item 323**

Item 323 is consequential on the repeal of subsection 24(3) by item 324. Subsection 24(3) created an offence of producing a document, or making a statement or return or information that is false or misleading in a material particular. Item 323 omits the reference in subsection 24(2) to subsection 24(3) because the latter subsection has been repealed. Subsection 24(2) provides that self-incrimination is not an excuse not to submit a return or information. The section also provides that any return or information (and any information or thing obtained as a direct or indirect consequence of the giving of the return or information) is not admissible in evidence in criminal proceedings against the person except proceedings under subsections 24(1) or (3). In place of the omitted reference to subsection 24(3) the item substitutes that the exception also extends to the *Criminal Code* offences of giving false or misleading information or producing false or misleading documents where the proceedings relate

to the Act (these are the *Criminal Code* offences which replace the repealed subsection 24(3) offences).

**Item 324**

Item 324 repeals subsection 24(3) of the *Primary Industries Levies and Charges Collection Act 1991*. Subsection 24(3) creates offences of making false or misleading statements in a document or return or giving false or misleading information. The offences under subsection 24(3) are replaced by the equivalent *Criminal Code* offences.

***Proceeds of Crime Act 1987*****Item 325**

Item 325 amends the definition of organised fraud offence in subsection 7(2) of the *Proceeds of Crime Act 1987*. An organised fraud offence is defined in subsection 7(2) to mean an offence against section 83 of the *Proceeds of Crime Act 1987*. As a result of the repeal by item 327 of this Schedule of section 83 this item makes a consequential amendment to the definition of organised fraud offence in subsection 7(2). The item amends the definition to provide that the term means an offence against section 135.3 *Criminal Code* which is the replacement offence of organised fraud under the *Criminal Code*.

**Item 326**

Item 326 makes some consequential amendments to the definition of “relevant offence” in subsection 34C(2) of the *Proceeds of Crime Act 1987* as a result of the repeal by items 149 and 154 of the Schedule of the *Crimes Act* offences referred to in the subsection. The subsection provides that offences under *Crimes Act 1914* sections 29A (false pretences), 29B (false representation), 29C (statements in applications for grant of money), 29D (fraud), 71 (stealing property of the Commonwealth), 86 or 86A (conspiracy) are relevant offences. The substituted wording inserted by the item in subsection 34C(2) refers to the *Criminal Code* offences replacing the repealed *Crimes Act* offences (the conspiracy offence is covered

by Part 2.5 of Chapter 2 of the Criminal Code [Chapter 2 deals with the General Principles of Criminal Responsibility]).

**Item 327**

Item 327 repeals Division 2 of Part V of the *Proceeds of Crime Act 1987*. Division 2 of Part V includes the offence of organised fraud in section 83 of the *Proceeds of Crime Act 1987*. The offence of organised fraud under section 83 is replaced by the *Criminal Code* organised fraud offence (proposed section 135.3).

**Item 328**

Item 328 omits the reference to section 83 in subsection 84(1) of the *Proceeds of Crime Act 1987*. Subsection 84(1) provides that an offence against a number of provisions including section 83 in the *Proceeds of Crime Act 1987* are indictable offences. Section 83 is replaced by the *Criminal Code* organised fraud offence at section 135.3.

***Protection of Movable Cultural Heritage Act 1986*****Item 329**

This item inserts a new subsection in section 3 of the Act defining the term “offence against this Act” in the Act to ensure that duly authorised officers can continue to investigate offences which relate to the Act where the offences have been repealed from the Act and replaced by the offences in the *Criminal Code* referred to in the item.

**Item 330**

This item repeals section 44 of the *Protection of Movable Cultural Heritage Act 1986*. Section 44 creates an offence if a person, without reasonable excuse, obstructs or hinders an inspector exercising powers under the Act. The offence under section 44 is replaced by the equivalent *Criminal Code* offence.

**Item 331**

This item repeals section 45 of the *Protection of Movable Cultural Heritage Act 1986*. Section 45 creates an offence if a person, by words or conduct, falsely represents that



he or she is an inspector. The offence under section 45 is replaced by the equivalent *Criminal Code* offence.

**Item 332**

The item is consequential on item 331 and omits the reference in subsection 46(1) of the *Protection of Movable Cultural Heritage Act 1986* to section 45 because that subsection is repealed by item 331. Subsection 46(1) provides that the specified offences are indictable offences. The offence under section 45 of impersonating an inspector is replaced by equivalent *Criminal Code* offence.

**Item 333**

The item is consequential on item 330 and repeals the reference in subsection 46(2) of the *Protection of Movable Cultural Heritage Act 1986* to section 44 because that subsection is repealed by item 330. Subsection 46(2) provides that the specified offences are summary offences. The offence under section 44 (obstruction of inspector) is replaced by the equivalent *Criminal Code* offence.

**Item 334**

The item is consequential on item 331 and repeals the reference in paragraph 46(4)(b) of the *Protection of Movable Cultural Heritage Act 1986* to section 45 because that subsection is repealed by item 331. Subsection 46(4) provides the maximum penalty a court of summary jurisdiction may impose where a person is convicted of the specified offences. The offence under section 45 is replaced by equivalent *Criminal Code* offence which contains the maximum penalty a court may impose on conviction of the offence.

***Public Lending Right Act 1985*****Item 335**

This item repeals subsection 22(1) of the *Public Lending Right Act 1985*. Subsection 22(1) creates an offence if a person, in or in connection with a claim, knowingly makes to the Public Lending Right Committee, a statement whether oral or in writing, or present to the Public Lending Right Committee a document that is false or

misleading in a material particular. The offences under subsection 22(1) are replaced by equivalent *Criminal Code* offences.

**Item 336**

The item is consequential on item 343 and repeals the reference in subsection 22(2) of the *Public Lending Right Act 1985* to subsection 22(1) because that subsection is repealed by item 342. Subsection 22(2) provides that where a person is convicted of a subsection 22(1) offence the court may in addition to imposing a penalty under the subsection order the person to repay to the Commonwealth the amount of any payment wrongfully made to the person under the Scheme. The substituted paragraph inserts, in place of the reference to subsection 22(1), reference to the *Criminal Code* offences of giving false or misleading information and producing a false or misleading document (these are the offences which replace the offences in subsection 22(1)).

**Item 337**

This amendment is consequential on item 335 repealing subsection 22(1). The item further amends subsection 22(2) by omitting the words “under that subsection” because the offence provision conviction pursuant to which the court may order the person to make repayment is now a *Criminal Code* offence and not an offence under section 22.

**Item 338**

This item repeals subsection 22(4) of the *Public Lending Right Act 1985*. Subsection 22(4), deals with corporate criminal responsibility and is replaced by Part 2.5 of Chapter 2 of the *Criminal Code* (General Principles of Criminal Responsibility).

***Public Service Act 1999*****Item 339**

Item 339 is consequential on item 31 which repeals subsection 34 of the *Auditor-General Act 1997*. This item amends subsection 43(2) *Public Service Act 1999* which refers to several sections of the *Auditor-General Act* and omits the reference to section 34 of the latter Act. Section 43 *Public Service Act* provides for the Commissioner’s

special inquiry powers. Section 34 *Auditor-General Act* creates an offence of making a statement to an audit official that the person knows is false or misleading in a material particular. The section also requires the person to identify the relevant particular in a document where the person gives a document to an audit official knowing that the document is false or misleading in a material particular. The offence is replaced by the equivalent *Criminal Code* offence.

### **Item 340**

Item 340 is consequential on item 31 by the repeal of the word “, 34” in subsection 50(2) of the *Public Service Act 1999*. Section 50 provides for the Merit Protection Commissioner’s functions and subsection 50(2) contains reference to several *Auditor-General Act* sections including section 34 which is repealed by item 31 of this Bill. Section 34 creates an offence of making a statement to an audit official that the person knows is false or misleading in a material particular. The section also requires the person to identify the relevant particular in a document where the person gives a document to an audit official knowing that the document is false or misleading in a material particular. The offence created by section 34 is replaced by an equivalent *Criminal Code* offence.

### ***Quarantine Act 1908***

#### **Item 341**

This item repeals the note inserted after subsection 70B(2) of the Act by the Quarantine Amendment Bill 1998. The item inserts 2 new notes the first of which refers to section 74C for the offence of failure to answer a question asked under subsection 70B(2) and the second of which refers to the *Criminal Code* false or misleading information offence where a person gives such information in answer to a question under the subsection. The replacement notes are inserted because the former note indicated that the offences of failure to answer a question or giving a false or misleading answer to a question were both offences under section 74C. This was the case upon the Quarantine Amendment Bill amending section 74C because that Bill

inserted subsection 74C(3) and (4) and 74C(3) provided for the false or misleading answer offence and subsection 74C(1) already provided for the failure to answer a question or produce a document offence. However item 343 of this Bill repeals subsections 74C(3) and (4) and the offence at 74C(3) is replaced by the equivalent *Criminal Code* false or misleading information offence. Hence the need for 2 notes indicating the different locations of the relevant offences.

**Item 342**

This item repeals the note inserted after subsection 70B(3) of the Act by item 245 of the Quarantine Amendment Bill 1998. The item inserts 2 new notes the first of which refers to section 74C for the offence of failure to produce a document and the second of which refers to the *Criminal Code* false or misleading document offence. The replacement notes are inserted because the former note indicated that the offences of failure to produce a document or producing a false or misleading document were both offences under section 74C. This was the case upon the Quarantine Amendment Bill amending section 74C because that Bill inserted subsection 74C(3) and (4) and 74C(3) provided for the false or misleading document offence and subsection 74C(1) already provided for the failure to answer a question or produce a document offence. However item 343 of this Bill repeals subsections 74C(3) and (4) and the offence at 74C(4) is replaced by the equivalent *Criminal Code* false or misleading document offence. Hence the need for 2 notes indicating the different locations of the relevant offences

**Item 343**

This item repeals subsections 74C(3) and (4) of the Act which are inserted in the Act by the *Quarantine Amendment Bill 1998* which amends the *Quarantine Act 1908*. Subsections 74C(3) and (4) creates offences where a person gives false or misleading answers to a question or fails to correct a false or misleading document. The offences in subsections 74C(3) and (4) are replaced by equivalent *Criminal Code* offences.

**Item 344**

Item 344 repeals section 79 of the *Quarantine Act 1908*. Section 79 creates offences for a person who forges any document, utters any forged document, fraudulently lends any certificate or document to another person. The offences under section 79 are replaced by equivalent *Criminal Code* offences.

**Item 345**

Item 345 repeals paragraph 79A(2)(a) of the Act and substitutes a replacement paragraph. Paragraph 79A(2) is inserted in the Act by the *Quarantine Amendment Bill 1998*. Paragraph 79A(2)(a) provides that the answer or document given in response to a requirement under the Act (including a thing obtained as a direct or indirect result of giving the answer or producing the document) is not admissible in evidence in criminal proceedings against the person except proceedings under the specified sections including subsection 74C(4). Subsection 74C(4) is repealed by item 343 and in place of the omitted reference to it the item substitutes that the exception also extends to proceedings that relate to this Act under the *Criminal Code* false or misleading documents offence.

### **Item 346**

Item 346 repeals section 81 of the *Quarantine Act 1908*. Section 81 create offences for bribing, assaulting, obstructing and intimidating an officer in the performance of his or her duties under the *Quarantine Act 1908*. The offences under section 81 are replaced by equivalent *Criminal Code* offences.

### ***Racial Discrimination Act 1975***

### **Item 347**

The item is consequential on item 348 and omits the reference in subsection 27D(1) of the *Racial Discrimination Act 1975* to section 27E because that section is repealed by item 348. Subsection 27D(1) provides that self-incrimination is not an excuse not to produce a document or answer a question under section 27B of the *Racial Discrimination Act 1975*. The section also provides that the answer or document is not admissible in evidence in proceedings against the person except in proceedings under section 27E. Section 27E creates an offence where a person furnishes false or misleading information to the Commission. Inserted in substitution for the omitted reference to section 27E is a reference to the equivalent *Criminal Code* offence for the repealed section 27E offence.



**Item 348**

Item 35 repeals section 27E of the *Racial Discrimination Act 1975*. Section 27E create offences if a person furnishes information or makes a statement to the Racial Discrimination Commission or to the Racial Discrimination Commissioner or to any other person exercising powers or performing functions under the *Racial Discrimination Act 1975*, knowing that the information or statement is false or misleading in a material particular. The offences under section 27E are replaced by equivalent *Criminal Code* offences.

***Radiocommunications Act 1992*****Item 349**

This item inserts a new subsection 11(1) which provides a definition of the term “offence against this Act” to ensure that duly authorised officers can continue to investigate offences which relate to the Act where the offences have been repealed from the Act and replaced by equivalent offences in the *Criminal Code*.

**Item 350**

The item is consequential on item 355 and omits the reference in subparagraph 124(3)(b)(iv) of the *Radiocommunications Act 1992* to section 302 because that section is repealed by item 355. Section 124 deals with cancelling certificates of proficiency by the ACA and subsection 124(3) lists matters which must be taken by the ACA in its decision to cancel a certificate. Section 302 created an offence of making a false or misleading statement and is replaced by the equivalent offence in the *Criminal Code*.

**Item 351**

The item is consequential on items 350 and 355 and inserts, in place of the omitted reference to section 302 in paragraph 124(3)(b)(iv), a new subparagraph 124(3)(b)(iva) which provides that the ACA (in deciding whether to cancel a

certificate of proficiency) must have regard to whether the operator has been convicted of an offence against the *Criminal Code* false or misleading information or documents offences which replace section 302 (repealed by item 355).

### **Item 352**

The item is consequential on item 355 and omits the reference in subparagraph 171(3)(b)(ii) of the *Radiocommunications Act 1992* to section 302 because that section is repealed by item 362. Section 171 deals with cancelling permits and subsection 171(3) specifies matters the ACA must have regard to in deciding whether to cancel a permit. One of the matters specified was whether the permit holder or agent of the holder has been convicted of an offence against section 302 which is a false or misleading information offence. The item omits the reference to section 302 because it has been repealed.

### **Item 353**

The item is consequential on item 352 and 355. Item 355 repeals the false or misleading information offence at section 302 and item 352 omits the reference in subparagraph 171(3)(b)(ii) to section 302 convictions as a matter the ACA must take into account in deciding whether to cancel a permit. This item, in place of the omitted reference to section 302 in subparagraph 171(3)(b)(ii), inserts a new subparagraph 171(3)(b)(iii) which requires the ACA to have regard to whether the permit holder has been convicted of an offence against the *Criminal Code* false or misleading statement in applications offence or false or misleading information offence.

### **Item 355**

The item is consequential on item 355 and omits the reference in subsection 210(6) of the *Radiocommunications Act 1992* to section 302 because that section is repealed by item 355. Section 302 creates an offence of making false or misleading statements or giving false or misleading information and is replaced by equivalent *Criminal Code* offences. Subsection 210(6)) provides that evidence of anything said at a compulsory

conference or any document produced at the conference is not admissible in evidence in proceedings against the person except proceedings for an offence against section 302. In place of the omitted reference to section 302 the item substitutes that the exception extends to proceedings that relate to this Act under the *Criminal Code* offences which are equivalent to the repealed section 302 offence.

### **Item 356**

Item 323 repeals section 302 of the *Radiocommunications Act 1992*. Section 302 creates offences where a person, for the purposes of or in connection with the *Radiocommunications Act 1992*, knowingly or recklessly makes, or authorises the making of, a statement that is false or misleading in a material particular; or omits, or authorises the omission of, any matter or thing without which an application is misleading in a material respect.

The offences under section 302 are replaced by the equivalent *Criminal Code* offences.

***Resource Assessment Commission Act 1989*****Item 357**

This item repeals and substitutes subsection 54(1) of the *Resource Assessment Commission Act 1989* (“the Act”). Subsection 54(1) creates offences of giving to the Commission information or documents that the person knows are false or misleading, and giving information or producing a document that the person knows is false or misleading at a hearing. The substituted subsection 54(1) recreates the offences specified by paragraph 54(1)(b), namely giving information or producing a document that the person knows is false or misleading at a hearing. The offences repealed from section 54 by virtue of this Schedule are replaced by equivalent *Criminal Code* offences.

**Item 358**

This item omits the words “give it to the Commission’ (first occurring) in subsection 54(2) of the *Resource Assessment Commission Act 1989*. This item is consequent upon item 357.

***Retirement Savings Accounts Act 1997*****Item 359**

This item omits the reference to paragraph 150(1)(b) from section 145 of the *Retirement Savings Accounts Act 1997* (“the Act”) and substitutes a reference to section 137.1 of the *Criminal Code*. This item is consequential upon item 362, which repeals section 150 of the Act.

**Item 360**

This item repeals and substitutes the heading of Part 12 of the *Retirement Savings Accounts Act 1997* (“the Act”). The new heading better describes the contents of Part 12 of the Act following amendments made by virtue of this Schedule.

**Item 361**

This item amends section 148 of the *Retirement Savings Accounts Act 1997* (“the Act”), which is the objects section of Part 12 of the Act. The amendment omits the words “the making of false or misleading statements” and is consequent upon the repeal of relevant sections of Part 12, namely sections 150, 152 and 153, by virtue of this Schedule. This item is consequent upon items 362 and 363, which repeal sections 150, 152 and 153.

**Item 362**

This item repeals section 150 of the *Retirement Savings Accounts Act 1997* (“the Act”). Section 150 creates offences of making a statement to an RSA officer that is misleading, or omitting from a statement made to an RSA officer any matter or thing without which the statement is misleading. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 363**

Item 363 repeals sections 152 and 153 of the *Retirement Savings Accounts Act 1997*. Sections 152 and 153 creates offences of making a statement to an RSA officer that is false or misleading or omitting from a statement made to an RSA officer any matter or thing without which the statement is misleading. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

***Seat of Government (Administration) Act 1910*****Item 364**

The item repeals section 7 of the *Seat of Government (Administration) Act 1910* which refers to the *Secret Commissions Act 1905*. This item is consequential upon item 365, which repeals the whole of the *Secret Commissions Act 1905*.

## *Secret Commissions Act 1905*

### **Item 365**

This item repeals the whole of the *Secret Commissions Act 1905* (“the Act”). The main purpose of the repeal of the Act is to replace the offence at section 4 with the proposed corrupting benefits offences (proposed section 142.1). The reasons for this are given in the part of this Explanatory Memorandum relevant to that Section. However the Gibbs Committee also recommended the repeal of the remaining offences in the Act as follows.

It is proposed that section 5, which concerns false accounts, be replaced by proposed sections 145.4 and 145.5 of the *Criminal Code* which have a substantially higher and more appropriate maximum penalty of 7 years imprisonment.

Section 6 concerns an agent secretly buying from or selling to himself or herself. This offence does not require proof that the person received any gain or caused any loss. Where a gain or loss occurs the proposed theft and fraud related offences will apply. If in the unlikely event that there is no gain or loss it should not be an offence. The Gibbs Committee recommended that the offence should be restricted to agents who are shareholders in private companies as it is too stringent for those who are shareholders of public companies. However it is the Government’s view that the corrupt payments offences be limited to circumstances where the Commonwealth is a victim. The proposed Commonwealth offence will have no application to the private sector. If the offence is restricted to the public sector, the conduct it covers should be regulated by disciplinary and audit requirements, not the Commonwealth *Criminal Code*. Companies, whether they be private or public, should rely on the legislation which regulates them rather than the *Criminal Code*. The offence should therefore be repealed.

Section 7 allows civil recovery of the amount of a secret gift. The Gibbs Committee points out that the section is not appropriate to include in the *Criminal Code* and that the principal will probably have a right to recover the gift or consideration under the

civil law. This is a civil issue and there is no case for special legislation. Section 7 should be repealed.

Sections 8 and 11 deal with evidential matters. The general law as provided under the *Evidence Act 1995* should apply. These provisions can also be repealed. This is consistent with the recommendations of the Gibbs Committee.

Section 9 rules out providing evidence that the corrupt payment was customary. The proposed *Criminal Code* bribery and corrupt benefits offences rely on the concept of 'dishonesty'. No Australian jury will accept that there is a custom of bribery within the Commonwealth which is within community standards of honesty.

Section 10 deals with aiding and abetting. Section 11.2 of the *Criminal Code* provides for a general aiding and abetting provision. Therefore section 10 can also be repealed.

### ***Sex Discrimination Act 1984***

#### **Item 366**

This item amends subsection 91(1) of the *Sex Discrimination Act 1984* ("the Act") by removing the reference to a proceeding under section 93 of the Act and substituting a reference to proceedings for offences against sections 137.1 or 137.2 of the *Criminal Code*, which are being inserted into the *Criminal Code* by virtue of Schedule 1 of this Bill. This item is consequent upon item 367, which repeals section 93 of the Act.

#### **Item 367**

This item repeals section 93 of the *Sex Discrimination Act 1984* ("the Act"). Section 93 creates offences of furnishing information or making a statement to the Commission, to the Commissioner or to any other person exercising powers or performing functions under the Act knowing that the information or statement is false or misleading. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### ***Ships (Capital Grants) Act 1987***

**Item 368**

This item omits the reference in subsection 29(2) of the *Ships (Capital Grants) Act 1987* (“the Act”) to subsection 29(3) of the Act. This item is consequent upon item 369, which repeals subsection 29(3).

**Item 369**

This item repeals subsection 29(3) of the *Ships (Capital Grants) Act 1987* (“the Act”). Subsection 29(3) creates an offence of producing a document or other record made by another person that the first person knows is false or misleading, pursuant to a notice under subsection 29(1) of the Act. Subsection 29(3) also exempts the giving of a document or record from the scope of the offence provision if the person giving the document indicates the false or misleading aspect of the document or record. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill, and the exemption in subsection 29(3) is replaced by proposed subsection 137.2(3) of the *Criminal Code*.

**Item 370**

This item repeals subsections 30(1) and 30(2) of the *Ships (Capital Grants) Act 1987*. Subsection 30(1) creates an offence of obtaining, or attempting to obtain, a grant that is not payable. Subsection 30(2) creates an offence of making a statement or producing a certificate under subsection 21(1), particulars under subsection 21(2), or other document or record, that is false or misleading, to the Secretary or other person exercising a power or performing a function or duty under the Act. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 371**

This item repeals subsections 30(4), (5) and (6) of the *Ships (Capital Grants) Act 1987* (“the Act”) which provide deeming provisions for the purposes of demonstrating a corporation’s fault element in relation to the offences prescribed under subsections



3091) and (2) of the Act. This item is consequent upon item 370, which repeals subsections 30(1) and (2). The deeming provisions for the purposes of demonstrating a corporation's fault element are being replaced by application of Chapter 2 (Part 2.5 - Corporate Criminal Responsibility) of the *Criminal Code* to offences within the *Criminal Code*.

### **Item 372**

This item repeals and substitutes subsection 30(7) of the *Ships (Capital Grants) Act 1987* ("the Act"). Subsection 30(7) provides that a person must not be convicted of both an offence against or arising out of subsection 30(1) *and* an offence against or arising out of subsection 30(2) *or* an offence against or arising out of subsection 17(1) of the Act. The substituted subsection 30(7) is consequent upon item 370, which repeals subsections 30(1) and 30(2). It provides that a person must not be convicted of both an offence against or arising out of subsection 135.2 of the *Criminal Code and* an offence against or arising out of subsection 17(1) of the Act *or* an offence against or arising out of sections 136.2, 137.1 or 137.2 of the *Criminal Code*. Subsections 30(1) and (2) are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### **Item 373**

This item repeals subsections 30(9), (10) and (11) of the *Ships (Capital Grants) Act 1987* ("the Act") which provide indictable and summary offence provisions and a penalty provision in relation to an offence against subsection 30(1) of the Act. This item is consequent upon item 370, which repeals subsection 30(1).

### **Item 374**

This item omits the reference in subsection 32(1) of the *Ships (Capital Grants) Act 1987* ("the Act") to subsections 30(1) and (2) of the Act and substitutes references to sections 135.2, 136.1, 137.1 and 137.2 of the *Criminal Code*. This item is consequent upon item 370, which repeals subsections 30(1) and (2).

**Item 375**

This item omits the words “under that subsection” in subsection 32(1) of the *Ships (Capital Grants) Act 1987* (“the Act”) which relevantly is a reference to a conviction of an offence against subsections 30(1) or (2). This item is consequent upon item 370, which repeals subsections 30(1) and (2).

***Spirits Act 1906*****Item 376**

This item repeals section 8 of the *Spirits Act 1906* which creates offences forging or falsely applying any prescribed stamp seal or label, or representing any stamp seal or label to be a prescribed stamp seal or label. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

***Stevedoring Industry Levy Collection Act 1977*****Item 377**

This item repeals and substitutes section 8B of the *Stevedoring Industry Levy Collection Act 1977* (“the Act”). Section 8B creates an offence of intentionally or recklessly failing to comply with the requirements under section 8A of the Act, or giving information in a statement referred to in subsection 8A(1) which the person knows is false or misleading in a material particular. The latter of these offences is being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill. The substituted section 8B recreates the former offence, namely that person must not intentionally or recklessly fail to comply with the requirements of section 8A.

**Item 378**

This item repeals and substitutes subsection 9(1) of the *Stevedoring Industry Levy Collection Act 1977* (“the Act”). Subsection 9(1) creates the offences of failing or

neglecting duly to furnish a return or information that a person is required to furnish under section 6 of the Act, and furnishing for the purposes of the Act a return or information that is false or misleading. The latter of these offences is being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill. The substituted subsection 9(1) recreates the former offence, namely failing or neglecting duly to furnish a return or information that a person is required to furnish under section 6 of the Act.

### **Item 379**

This item repeals subsection 10(5) of the *Stevedoring Industry Levy Collection Act 1977* (“the Act”). Subsection 10(5) creates an offence of, without reasonable excuse, obstructing or hindering an authorised officer acting in pursuant of a warrant granted under subsection 10(3) of the Act or acting in pursuance of subsection 10(4). This offence is being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill. The defence of reasonable excuse is being replaced by application of Chapter 2 (Part 2.7 - Circumstances in which there is no criminal responsibility) of the *Criminal Code* to offences within the *Criminal Code*.

### ***Student Assistance Act 1973***

### **Item 380**

This item repeals and substitutes subsection 49(1) of the *Student Assistance Act 1973* (“the Act”) Subsection 49(1) creates offences of making false or misleading statements in connection with the matters prescribed by paragraph by subparagraphs (1)(a)(i)-(iv), obtaining payments under the Act or under a current educational assistance scheme that is not payable, obtaining payments under the Act or under a current educational assistance scheme by means of a false or misleading statement or by impersonation or fraud, making or presenting a statement or document that is false or misleading to an officer or employee of the Department, and contravening section 48 without reasonable excuse. All but the last of these offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of

this Bill. The final offence, namely contravening section 48 of the Act without reasonable excuse, is re-inserted into the Act by virtue of the substituted subsection 49(1).

### **Item 381**

This item amends subsection 49(2) of the *Student Assistance Act 1973* by removing reference to subsection 49(1) and substituting references to sections 135.2, 136.1, 137.1 and 137.2 of the *Criminal Code*. Subsection 49(2) provides that where a person is convicted of an offence against the nominated sections, the court may, in addition to imposing a penalty, order the person to pay to the Commonwealth an amount equal to any amount paid under the Act, or under a current special educational assistance scheme, as a result of the act, failure or omission in respect of which the person was convicted. This item is consequent upon item 380, which repeals subsection 49(1) of the Act.

### ***Superannuation Act 1976***

### **Item 382**

The item effectively amends subsection 163A(2) of the *Superannuation Act 1976* (the Act”) by removing the reference to subsection 163A(4) and substituting a reference to section 137.2 of the *Criminal Code*. Subsection 163A(2) provides that a notice under section 163A requiring a person to give information or produce a document shall set out the effects of the provisions nominated by subsection 163A(2). This item is consequential upon item 383, which repeals subsection 163A(4).

### **Item 383**

This item repeals subsection 163A(4) of the *Superannuation Act 1976* (“the Act”). Subsection 163A(4) creates an offence where a person who produces a document in pursuance to a notice under subsection 163A(1) of the Act that, to the knowledge of the person, is false or misleading, fails also to give at the same time a signed statement stating that the document is false or misleading and setting out the material which to

the person's knowledge is false or misleading. This offence is effectively being replaced by the insertion of equivalent provisions into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 384**

This item repeals and substitutes paragraphs 163A(5)(a) and (b) of the *Superannuation Act 1976* ("the Act") by effectively removing the reference to subsection 167(1) and substituting a reference to section 137.2 of the *Criminal Code*. Paragraphs 163A(5)(a) and (b) provide that self-incrimination is not an excuse not to produce a document or give information under subsection 167(1) of the Act. These paragraphs further provide that the information, document or any thing obtained as a direct or indirect consequence of the information or the production of the document is not admissible in evidence in proceedings against the person except proceedings under subsection 167(1). In place of the omitted reference to subsection 167(1) the item substitutes that the exception also extends to proceedings under the offence that relate to this Act that is inserted in the *Criminal Code* by section 137.1 in Schedule 1 of the Bill. This item is consequent upon item 385, which repeals subsection 167(1).

#### **Item 385**

This item repeals subsections 167(1), (1A) and (2) of the *Superannuation Act 1976* ("the Act"). Subsection 167(1) create offences of making a statement, in connection with, or in support of, an application for a benefit under the Act that to the person's knowledge is false or misleading; obtaining payment of a benefit under the Act that is not payable; obtaining payment of a benefit under the Act by means of a statement that is false or misleading to the person's knowledge; making a false or misleading statement to an officer exercising powers or performing functions in relation to the Act; and presenting a false or misleading document to an officer exercising powers or performing functions in relation to the Act. Subsections 167(1A) and (2) provide a summary offence provision and a relevant definition, and these definitions are repealed as a consequence of the repeal of the offence in subsection 167(1).

The offences under subsection 167(1) are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### **Item 386**

This item amends subsection 167(3) of the *Superannuation Act 1976* (“the Act”) by omitting the reference to subsection 167(1) of the Act and substituting references to sections 135.2, 136.1, 137.1 and 137.2 of the *Criminal Code*. Subsection 167(3) provides that where a person is convicted of an offence against the nominated sections, the court may, in addition to imposing a penalty in respect of the offence, order the person to pay to the Commissioner or to the Board an amount equal to any amount paid as a result of the act, failure or omission in respect of which the person was convicted. This item is consequent upon item 385, which repeals subsection 167(1) of the Act.

### ***Superannuation Industry (Supervision) Act 1993***

#### **Item 387**

This item amends section 299V of the *Superannuation Industry (Supervision) Act 1993* (“the Act”) by removing the reference to paragraph 302(1)(b) of the Act and substituting a reference to section 137.1 of the *Criminal Code*. Section 299V provides that for the purposes of paragraph 302(1)(b) a person does not omit a matter or thing from a statement made to a SIS officer (within the meaning of section 301 of the Act) merely because the person has, in making the statement, failed to quote his or her tax file number. This item is consequential upon item 388, which repeals section 302.

#### **Item 388**

This item repeals section 302 of the *Superannuation Industry (Supervision) Act 1993*. Subsection 302(1) create offences of makes a statement to an SIS officer that is false or misleading, or omits from a statement made to an SIS officer any matter or thing without which the statement is misleading. Subsection 302(2) provides a relevant defence to the offence provisions of subsection 302(1). The offences under subsection

302(1) are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill. Subsection 302(2) is being repealed as a consequence of the repeal of subsection 302(1).

### **Item 389**

This item repeals section 304 of the *Superannuation Industry (Supervision) Act 1993* (“the Act”). Section 304 creates offences of recklessly making a statement to an SIS officer that is false or misleading or omitting from a statement made to an SIS officer any matter or thing without which the statement is misleading in a material particular. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### **Item 390**

This item repeals section 305 of the *Superannuation Industry (Supervision) Act 1993*. Section 305 creates offences if a person intentionally makes a statement to an SIS officer that is false or misleading or omitting from a statement made to an SIS officer any matter or thing without which the statement is misleading in a material particular. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### ***Sydney Airport Demand Management Act 1997***

### **Item 391**

This item amends subsection 62(4) of the *Sydney Airport Demand Management Act 1997* (“the Act”) by removing references to sections 29A and 29B of the *Crimes Act 1914* and substituting references to sections 134.1, 134.2, 135.1 and 135.2 of the *Criminal Code*. Subsection 62(4) is a definition section and provides that for the purposes of the nominated sections, the Slot Manager is to be taken to be a public authority under the Commonwealth. This item provides that this will remain the case in relation to the fraud related offences in the *Criminal Code*. This item is consequent upon item 149, which repeals sections 29A and 29B of the *Crimes Act*.

**Item 392**

This item amends subsection 62(4) and provides that the Slot Manager will be a ‘Commonwealth entity’ for the purposes of the fraud related *Criminal Code* offences. The term ‘Commonwealth entity’ will be defined in the *Criminal Code* pursuant to clause 25 of this Bill, which inserts the definition in the *Criminal Code*.

**Item 393**

This item amends subsection 62(5) by omitting reference to *Crimes Act 1914* sections 73 (corruption and bribery of Commonwealth officers) and 75 (personating public officers) and substituting references to the bribery and personation offences in sections 141.1, 142.1, 142.2, 148.1 and 148.2 of the *Criminal Code*. Subsection 65(2) provides that for the purposes of the nominated sections, the persons specified in paragraphs 62(5)(a)-(c) are to be taken to be Commonwealth officers. This item is consequent upon item 154, which repeals sections 73 and 75 of the *Crimes Act*.

**Item 394**

This item is a further amendment to subsection 62(5) and will provide that the persons specified in paragraphs 62(5)(a)-(c) are to be taken to be Commonwealth public officials for the purposes of the nominated *Criminal Code* sections. The term “Commonwealth public official will be defined in the *Criminal Code* pursuant to clause 27 of this Bill, which inserts the definition in the *Criminal Code*.

***Taxation Administration Act 1953*****Item 395**

This item amends paragraph (c) of the definition of ‘tax-related offence’ in subsection 3E(11) of the *Taxation Administration Act 1953* (“the Act”). The amendment removes references to sections 29D and 86A of the *Crimes Act 1914* and substitutes references to sections 134.1, 134.2, 135.1, 135.2, 135.3 and 135.4 of the *Criminal Code*. The effect of amending the definition is that it will provide that the reference in the



definition of “tax-related offence” to the defraud and conspiracy provisions in the *Crimes Act 1914* is replaced by reference to the *Criminal Code* fraud related offences. Part 2.5 of Chapter 2 of the *Criminal Code* (Chapter 2 sets out the General Principles of Criminal Responsibility) provides for ancillary offences including conspiracy. This item is consequent upon item 149, which repeals section 29D of the *Crimes Act*.

### **Item 396**

This item amends subsection 8J(3), paragraph (c) of the meaning of ‘relevant offence’ in the relevant Subdivision of the *Taxation Administration Act 1953*. The amendment removes references to sections 29D and 86A of the *Crimes Act 1914* and substitutes references to sections 134.1, 134.2, 135.1, 135.2, 135.3 and 135.4 of the *Criminal Code*. The effect of amending the meaning is that it will provide that the reference in the definition of “tax-related offence” to the defraud and conspiracy provisions in the *Crimes Act 1914* is replaced by reference to the *Criminal Code* fraud related offences. Part 2.5 of Chapter 2 of the *Criminal Code* (Chapter 2 sets out the General Principles of Criminal Responsibility) provides for ancillary offences including conspiracy. This item is consequent upon item 149, which repeals section 29D of the *Crimes Act*.

### **Item 397**

This item repeals section 8X of the *Taxation Administration Act 1953* which creates an offence of hindering or obstructing another person in the exercise of the other person’s powers, or the performance of the other person’s functions, under, or pursuant to or in relation to a taxation law. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

### **Item 398**

This item amends paragraph 8Z(1)(d) of the *Taxation Administration Act 1953* by removing references to sections 29D and 86A of the *Crimes Act 1914* and substituting references to sections 134.1, 134.2, 135.1, 135.2, 135.3 and 135.4 of the *Criminal Code*. Section 8Z relates to an evidentiary certificate the Commissioner may issue

setting out facts the Commissioner considers relevant to, in the case of paragraph 8Z(1)(d), fraud and conspiracy convictions relating to a tax liability. The item replaces the reference to fraud and conspiracy convictions under the *Crimes Act 1914* with such convictions under the equivalent *Criminal Code* offences. This item is consequent upon item 149, which repeals section 29D of the *Crimes Act*.

### ***Telecommunications (Interception) Act 1979***

#### **Item 399**

This item omits the reference to section 83 of the *Proceeds of Crime Act 1987* (“the POC Act”) from paragraph 5D(4)(a) of the *Telecommunications (Interception) Act 1979* (“the Act”). Paragraph 5D(4)(a) of the Act defines offences against the nominated provisions to be class 2 offences for the purposes of the Act. This item is consequent upon item 327 of this Schedule, which repeals section 83 of the POC Act. Section 83, which creates an organised fraud offence, is replaced by the organised fraud offence in the *Criminal Code*.

#### **Item 400**

This item is a further amendment to subsection 5D(4) of the *Telecommunications (Interception) Act 1979* (“the Act”). Paragraph 5D(4)(a) of the Act defines offences against the nominated provisions to be class 2 offences for the purposes of the Act. The amendment inserts a new paragraph (aa) which refers to section 135.3 of the *Criminal Code*. Section 135.1 establishes an offence of organised fraud.

### ***Torres Strait Fisheries Act 1984***

#### **Item 401**

This item inserts a definition of “offence against this Act” in subsection 3(1) of the *Torres Strait Fisheries Act 1984* (“the Act”) the Act. The definition includes offences against sections 136.1, 137.1, 137.2, 148.1, 148.2, 147.1 and 149.2 of the *Criminal Code*, which are being inserted into the *Criminal Code* by virtue of Schedule 1 of this

Bill. The amendment is necessary to ensure that fisheries officers can continue to investigate offences which relate to the Act where the offences have been repealed from the Act and replaced by equivalent offences in the *Criminal Code*.

#### **Item 402**

This is a very minor consequential item which adds the word “and” after paragraphs 43(1)(a), (b), (c) and (ca) of the *Torres Strait Fisheries Act 1994* (“the Act”). The amendment is necessary because paragraph (e) is the paragraph immediately following paragraph (ca) and is the final paragraph in the subsection as a result of paragraphs (d), (f) and (g) being repealed by items 403 and 404.

#### **Item 403**

This item repeals paragraph 43(1)(d) of the *Torres Strait Fisheries Act 1994* which creates an offence of stating a false name or place or residence to an officer when lawfully required to state his or her name and place of residence. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 404**

This item repeals paragraphs 43(1)(f) and (g) of the *Torres Strait Fisheries Act 1994* (“the Act”) which create offences of assaulting, resisting or obstructing an officer in the exercise of the officer’s powers under the Act and impersonating an officer. It is replaced by the false and misleading information offence in the *Criminal Code*. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 405**

This item repeals subsection 43(2) of the *Torres Strait Fisheries Act 1994* (“the Act”). Subsection 43(2) creates offences of giving information when lawfully required to do so, or making a statement or furnishing information in an application under the Act, or

making a statement or furnishing information in a record, return, or other document relating to fishing made in the circumstances prescribed by paragraph 43(2)(ba), where that statement or information is false or misleading to the person's knowledge. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 406**

This item inserts subsection 53A(4) in the *Torres Strait Fisheries Act 1994* ("the Act"). Subsection 53(4) provides that Part 2.5 of the *Criminal Code* does not apply to an offence against the Act or the regulations. The item also adds a note after subsection 4 explaining that Part 2.5 deals with corporate criminal responsibility. This subsection is included to make it clear section 53A (conduct of directors, servants and agents of bodies corporate) of the Act itself deals with corporate criminal responsibility under the Act.

#### **Item 407**

This item amends subsection 55(1) of the *Torres Strait Fisheries Act 1994* ("the Act") by removing the reference to subsection 43(2) of the Act. Subsection 55(1) provides that offences against the nominated sections under the Act are indictable offences. This item is consequent upon item 405, which repeals subsection 43(2).

***Veterans' Entitlements Act 1986*****Item 408**

This item repeals subsection 54(7) of the *Veterans' Entitlements Act 1986* (“the Act”) which creates an offence of giving information that is false or misleading in purported compliance with subsection 54(1) of the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 409**

This item repeals subsection 54A(7) of the *Veterans' Entitlements Act 1986* (“the Act”) which creates an offence of giving information that is false or misleading in purported compliance with subsection 54(1) of the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 410**

This item repeals subsection 54AA(8) of the *Veterans' Entitlements Act 1986* (“the Act”) which creates an offence of giving information that is false or misleading in purported compliance with subsection 54(1) of the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 411**

This item repeals subsection 127(5) of the *Veterans' Entitlements Act 1986* (“the Act”) which creates an offence of giving information that is false or misleading in purported compliance with subsection 54(1) of the Act. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

***Wool Tax (Administration) Act 1964*****Item 412**

This item repeals section 27A of the *Wool Tax (Administration) Act 1964* (“the Act”). Subsection 27A(1) creates offences of forging a certificate or uttering a certificate knowing it to be forged; altering or signing a certificate without lawful authority; delivering a document (not being a certificate) that purports to be a certificate; representing that a certificate relates to wool other than wool in respect of which the certificate was given; and altering a mark or brand on any wool or on any container of wool with intent to evade payment of tax. Subsection 27A(2) defines ‘certificate’ for the purposes of subsection 27A(1). These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

***Workplace Relations Act 1996*****Item 413**

This item repeals section 304 of the *Workplace Relations Act 1996*, which creates an offence of falsely representing oneself to be an inspector. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 414**

This item repeals section 304A of the *Workplace Relations Act 1996*, which creates an offence of falsely representing oneself to be an authorised officer. This offence is being replaced by the insertion of an equivalent offence into the *Criminal Code* by virtue of Schedule 1 of this Bill.

**Item 415**

This item repeals and substitutes section 305 of the *Workplace Relations Act 1996* (“the Act”). Section 305 creates offences of hindering or obstructing an inspector in the exercise of powers, or the performance of functions, as an inspector; contravening

a requirement made by an inspector under subparagraph 86(1)(b)(iv) or subsection 86(2) of the Act without reasonable excuse; and making a statement that is false or misleading to the person's knowledge to an inspector exercising powers or performing functions as an inspector. The substituted section 305 recreates the second offence. The first and third offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 416**

This item repeals and substitutes section 305A of the *Workplace Relations Act 1996* ("the Act"). Section 305A creates offences of hindering or obstructing an authorised officer; contravening a requirement made by an authorised officer under subparagraph 83BH(4)(d) or subsection 83BH(5) of the Act without reasonable excuse; and making a statement that is false or misleading to the person's knowledge to an authorised officer. The substituted section 305A recreates the second offence. The first and third offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

#### **Item 417**

This item repeals section 306 of the *Workplace Relations Act 1996* ("the Act"). Section 306 creates offences of hindering or obstructing a person in the exercise of a power under subsection 134(1) of the Act, and making a statement that to the person's knowledge is false or misleading to a person exercising a power under subsection 134(1) or section 285B or section 285C of the Act. These offences are being replaced by the insertion of equivalent offences into the *Criminal Code* by virtue of Schedule 1 of this Bill.

## **Part 2 - Transitional provisions**

### **Item 418**

#### **Transitional - pre-commencement offences**

Subitem (1) provides that provisions that are amended or repealed by this Schedule continue to apply to offences committed before the commencement of the item, to proceedings for an offence alleged to have been committed before the item commences and to any matter connected with or arising out of such proceedings.

Subitem (2) provides that subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*. Section 8 provides that the repeal in whole or in part of an Act does not affect the previous operation of the particular Act.

### **Item 419**

#### **Transitional - pre-commencement notices**

This item relates to a notice given before the commencement of the item under a provision in force immediately before the commencement of the item where the provision required the notice to set out the effect of one or more other provisions. The validity of the notice is not affected by the amendment by this Schedule of the provision which required the notice to set out the effect of the other provisions or by the repeal by this Schedule of all or any of the other provisions.