

**NSW PARLIAMENTARY LIBRARY
RESEARCH SERVICE**

**Law and order legislation in the
Australian States and Territories:
2003–2006**

by

Lenny Roth

Briefing Paper No 12/06

RELATED PUBLICATIONS

- Law and order legislation in the Australian States and Territories, 1995-1998: a comparative survey, *Briefing Paper No 7/99*.
- Law and order legislation in the Australian States and Territories, 1999-2002: a comparative survey, *Briefing Paper No 6/03*.

ISSN 1325-5142

ISBN 0 7313 1804 8

August 2006

© 2006

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this document may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent from the Librarian, New South Wales Parliamentary Library, other than by Members of the New South Wales Parliament in the course of their official duties.

**Law and order legislation in the
Australian States and Territories:
2003-2006**

by

Lenny Roth

NSW PARLIAMENTARY LIBRARY RESEARCH SERVICE

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

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

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

Lenny Roth (BCom, LLB), Research Officer, Law (02) 9230 3085

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

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

Should Members or their staff require further information about this publication please contact the author.

Information about Research Publications can be found on the Internet at:

www.parliament.nsw.gov.au/WEB_FEED/PHWebContent.nsf/PHPages/LibraryPublications

Advice on legislation or legal policy issues contained in this paper is provided for use in parliamentary debate and for related parliamentary purposes. This paper is not professional legal opinion.

CONTENTS

Executive summary	1
1. Introduction	1
2. Anti-terrorism.....	2
3. Multi-jurisdictional crime	9
4. Domestic violence	14
5. Offences.....	18
6. Police powers	33
7. Bail	38
8. Trials.....	41
9. Sentencing	45
10. Sentence administration	52
11. Victims' rights.....	59
12. Post-sentence sanctions on child sex offenders	61
13. Confiscation of criminal proceeds	63
14. Defendants with a mental illness.....	66
15. Juvenile justice	68
16. Conclusion.....	72
17. List of legislation.....	73

EXECUTIVE SUMMARY

This paper reviews law and order legislation that was passed in the States and Territories in the period from 1 January 2003 to 31 July 2006. It updates two earlier briefing papers that covered law and order legislation from 1995 to 1998 and from 1999 to 2002. Like the earlier papers, this paper deals with legislation containing significant reforms and it does not refer to statutes containing minor changes. Overall, this paper refers to over 230 pieces of law and order legislation that was passed across Australia in the period under review. Federal legislation was not included in the survey except for anti-terrorism laws. Ten very notable developments over the period under review were as follows:

1. Federal and State/Territory anti-terrorism laws.
2. Various legislative measures to combat organised and multi-jurisdictional crime including enactment of model laws developed by the Model Criminal Code Officers Committee: eg, model laws on cross-border investigative powers.
3. Significant reforms to domestic violence laws made or proposed in a number of jurisdictions, including recent proposals in NSW.
4. Reforms in relation child-sex offences and child pornography offences, as well as new post-sentence sanctions on child-sex offenders.
5. Measures to provide greater protection for victims in sexual assault trials.
6. Legislation in several jurisdictions that allows courts to refer defendants and offenders to intervention programs as a condition of bail or as part of the sentencing process: eg Drug Courts and the new Alcohol Court in the Northern Territory.
7. In relation to Aboriginal offenders – the establishment of a Children’s Koori Court in Victoria and the West Australian Law Reform Commission’s discussion paper containing proposals on Aboriginal customary law.
8. The abolition of prison sentences of 6 months or less in Western Australia.
9. Greater recognition of the rights of victims in relation to sentencing and parole decisions in several jurisdictions.
10. Significant reforms to juvenile justice in a few jurisdictions, including laws enacted in NSW to provide for the management of certain juvenile detainees by the Department of Corrective Services; and new juvenile justice laws in the Northern Territory, which include a statement of guiding principles based on international standards and an expansion of the pre-court diversion scheme.

1. INTRODUCTION

Outline of this paper

This paper reviews law and order legislation that was passed in the States and Territories in the period from 1 January 2003 to 31 July 2006. It updates two earlier briefing papers that covered law and order legislation from 1995 to 1998 and from 1999 to 2002.¹ Like the earlier papers, this paper deals with legislation containing significant reforms and it does not refer to statutes containing minor changes. Overall, this paper refers to over 230 pieces of law and order legislation that was passed across Australia in the period under review. Federal legislation was not included in the survey except for anti-terrorism laws.

Most of the legislative reforms have been grouped into the following typical categories: offences, police powers, bail, trials, sentencing, sentence administration and juvenile justice. However, there were a number of developments that did not fit neatly within these categories and separate sections were created for reforms relating to terrorism, multi-jurisdictional crime, domestic violence, post-sentence sanctions on child-sex offenders, confiscation of criminal proceeds, and defendants who have a mental illness.

Recent law reform proposals in NSW

Juries and sentencing

In January 2005, Chief Justice Spigelman suggested investigating the possibility of involving the jury in the sentencing process. On 25 February 2005, the Attorney General, Hon Bob Debus MP, asked the Law Reform Commission to inquire into whether or not a judge in a criminal trial might consult with the jury on aspects of sentencing. The Law Reform Commission published an issues paper in June 2006.²

Anti-gang laws

On 14 August 2006, it was reported in the media that the NSW Government is proposing to introduce new gang offences.³ According to media reports, a gang will be defined as any group of three or more people who intend to benefit from a serious offence, and the new offences will include: recruiting a member to an organised criminal gang (7 years imprisonment); knowingly contributing to gang crime (5 years imprisonment); and intimidating police or damaging property during a riot (16 years imprisonment).

¹ Simpson R and Griffith G, 'Law and order legislation in the Australian States and Territories, 1995-1998: a comparative survey', Briefing Paper No 7/99; and Drabsch T, 'Law and order legislation in the Australian States and Territories', 1999-2002: a comparative survey', Briefing Paper No 6/03.

² NSW Law Reform Commission, *Sentencing and Juries*, Issues Paper 27, June 2006. The closing date for submissions in response to the issues paper is 1 September 2006.

³ 'Gang laws to widen', *Sydney Morning Herald*, 14/8/06. See also 'NSW plans tough anti-gang laws', *ABC Online*, 13/8/06.

2. ANTI-TERRORISM

Introduction

Since the terrorist attacks in New York on 11 September 2001, the Federal Government and State and Territory Governments have enacted a vast amount of anti-terrorism laws. The first round of legislative measures followed the Council of Australian Governments (COAG) meeting on terrorism and multi-jurisdictional crime, which was held on 5 April 2002.⁴ The latest round of new laws resulted from a COAG meeting, which was held on 27 September 2005 in response to the July 2005 terrorist bombings in London.⁵ The main aspects of the Federal and State anti-terrorism laws are outlined in brief below.⁶

Federal legislation

Terrorism offences

The *Security Legislation Amendment (Terrorism) Act 2002* created a number of new terrorism offences including the offences of committing terrorist acts, providing or receiving training connected with terrorist acts, possessing things connected with terrorist acts, and other acts done in preparation for, or planning of, terrorist acts.

The Act also created a number of offences relating to terrorist organisations including membership of a terrorist organisation, providing support to a terrorist organisation, and getting funds to or from a terrorist organisation. The Act established a process for the Federal Government to list organisations as terrorist organisations. Other legislation enacted in 2002 created various other terrorism related offences.⁷

In 2002, as agreed in the COAG meeting on 5 April 2002, the States and Territories referred their legislative powers over terrorism offences to the Federal Government.⁸ Following this reference of powers, in 2003 the Federal Government re-enacted the terrorism offences to give them wider application throughout Australia.⁹

⁴ The communiqué of this meeting can be accessed on the Council of Australian Governments website: <http://www.coag.gov.au/meetings/050402/index.htm>

⁵ The communiqué of this meeting can be accessed on the Council of Australian Governments website: See <http://www.coag.gov.au/meetings/270905/index.htm>

⁶ As to Federal laws, see also the chronology on the Australian Parliamentary Library's website: <http://www.aph.gov.au/library/intguide/law/terrorism.htm>. In relation to laws and policy in the States and Territories as at 2004, see also Parliament of Australia, Joint Standing Committee on Foreign Affairs, Defence and Trade, *Watching Brief on the War on Terrorism*, June 2004.

⁷ *Criminal Code Amendment (Anti-Hoax and Other Measures) Act 2002*; *Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002*; *Criminal Code Amendment (Espionage and Related Matters) Act 2002*; *Criminal Code Amendment (Offences Against Australians) Act 2002*.

⁸ See *Terrorism (Commonwealth Powers) Act 2002* in every State.

⁹ *Criminal Code Amendment (Terrorism) Act 2003*.

Since 2003, the Federal Government has passed further legislation to amend some of the terrorism offences and to create new offences.¹⁰ It has also passed legislation to change the process for listing organisations as terrorist organisations.¹¹

Bail

Legislation enacted in 2004 provides that bail must not be granted to a person charged with, or convicted of, a terrorism offence unless there are exceptional circumstances.¹²

ASIO's powers

In 2003, the Federal Government enacted legislation to give the Australian Security and Intelligence Organisation (ASIO), with the consent of the Attorney-General, the power to obtain a warrant from a judge to question, or to detain and question, a person where there are reasonable grounds for believing that doing so will substantially assist the collection of intelligence in relation to a terrorism offence.¹³ A warrant can allow ASIO to question a person before a judge for up to 24 hours and to detain a person for up to 7 days. A person who is brought before a judge for questioning commits an offence if they fail to provide any requested information that they have or if they provide false or misleading information.

The Government made changes to this legislation later in 2003, including making it an offence to disclose information concerning the issuing of a warrant or about the questioning or detention of a person in connection with a warrant.¹⁴ Following a review of the legislation in 2005 by the Parliamentary Joint Committee on Intelligence and Security, the Government made further changes to these laws in 2006, including making it clear that a person who is subject to a questioning warrant has a qualified right to contact a lawyer and provisions to better facilitate the making of complaints by subjects of warrants.¹⁵ The Government also extended the operation of the legislation until 2016.

¹⁰ *Anti-Terrorism Act 2004; Anti-Terrorism Act (No 2) 2004; Anti-Terrorism Act 2005; and Anti-Terrorism Act (No 2) 2005.*

¹¹ *Criminal Code Amendment (Terrorist Organisations) Act 2002; Criminal Code Amendment (Terrorism) Act 2003; Criminal Code Amendment (Hizballah) Act 2003; Criminal Code Amendment (Hamas and Lashkar-e-Tayyiba) Act 2003; Criminal Code Amendment (Terrorist Organisations) Act 2004; Anti-Terrorism Act (No 2) 2004; Anti-Terrorism Act (No 2) 2005.*

¹² *Anti-Terrorism Act 2004.*

¹³ *ASIO Legislation Amendment (Terrorism) Act 2003.*

¹⁴ *ASIO Legislation Amendment Act 2003.* See also *Anti-Terrorism Act (No 2) 2005.*

¹⁵ *ASIO Legislation Amendment Act 2006.*

Police powers

Detention after arrest

Prior to legislation enacted in 2004, the police could arrest and detain a person for an initial period of 4 hours for the purpose of investigating a federal offence. A judge could extend this period by an additional 8 hours. In 2004, the Federal Government enacted legislation that allows a judge to extend the initial investigation period by up to 20 hours in relation to persons under arrest for a terrorism offence.¹⁶ The new laws also allow police to suspend or delay questioning a person suspected of committing a terrorism offence to make overseas inquiries to obtain information relevant to that terrorism investigation. In other words, this time is to be disregarded for the purposes of the maximum investigation period.

Control orders

The *Anti-Terrorism Act (No 2) 2005* allows the Federal police, with the consent of the Attorney General, to obtain from the court a control order in relation to a person if the person has trained with a terrorist organisation or making the order would substantially assist in preventing a terrorist act. The obligations that may be imposed on a person by a control order include, for example, requiring them not to go to certain places, to wear a tracking device, to not communicate with certain people, to not to use the internet, and requiring them not to carry out certain activities. The obligations that are imposed must be reasonably necessary for the purpose of protecting the public from a terrorist act. A control order can operate for up to one year. It is an offence to breach a control order.

Preventative detention orders

The *Anti-Terrorism Act (No 2) 2005* also provides for the preventative detention of persons in order to prevent an imminent terrorist act, or to preserve evidence of a terrorist act. A senior Federal police member may issue an initial preventative detention order that lasts for up to 24 hours. If an initial order is in force, a Federal police member may apply to a judge for a continuing preventative detention order. Such an order may authorise the continued detention of the person for up to 48 hours after the person was taken into custody. Legislation providing for preventative detention orders was agreed during the COAG meeting in September 2005. The States and Territories have enacted similar laws.

Interception of communications and other surveillance

The Federal Government has enacted legislation to allow police to obtain telecommunication interception warrants to investigate terrorism offences.¹⁷ There is also new legislation regulating the use of surveillance devices generally.¹⁸ One aspect of these is

¹⁶ *Anti-Terrorism Act 2004*.

¹⁷ *Telecommunications Interception Legislation Amendment Act 2002*; and *Telecommunications (Interception) Amendment Act 2004*. As to recent amendments to interception powers generally, see *Telecommunications (Interception) Amendment Act 2006*.

¹⁸ *Surveillance Devices Act 2004*.

new laws is that a police officer investigating a terrorism offence (and certain other offences) can apply to a senior police officer for an emergency use of a surveillance device.

Court proceedings

In 2004, the Federal Government enacted legislation that protects the disclosure of national security information in federal criminal proceedings.¹⁹ In 2005, the Federal Government enacted similar legislation in relation to civil proceedings.²⁰ In 2005, the Federal Government enacted legislation to change the rules for admitting in terrorism trials video-link evidence and other forms of evidence from overseas.²¹

Sentencing

In 2004, laws were enacted that provide for a mandatory non-parole period of at least 75 per cent of an offender's sentence upon conviction for a terrorism offence.²²

Review of Federal legislation

A Security Legislation Review Committee was set up to review a number of pieces of Federal anti-terrorism legislation that were enacted in 2002 and 2003.²³ The Committee published its report in June 2006, making a number of recommendations.²⁴ It is also relevant to note that in May 2006, the Australian Law Reform Commission published a discussion paper in relation to its review of federal sedition laws.²⁵

¹⁹ *National Security Information (Criminal Proceedings) Act 2004*.

²⁰ *National Security Information Legislation Act 2005*.

²¹ *Law and Justice Legislation Amendment (Video Link Evidence and Other Measures) Act 2005*. See also Lynch A, 'Use of overseas evidence in terrorism offences: The implications of the Commonwealth's new scheme for defendants and courts', (2006) 27(3) *Australian Bar Review* 288.

²² *Anti-terrorism Act 2004*.

²³ The Committee was established under the *Security Legislation Amendment (Terrorism) Act 2002*.

²⁴ Security Legislation Review Committee, *Report of the Security Legislation Review Committee*, Commonwealth of Australia, June 2006.

²⁵ See the Australian Law Reform Commission's website:
<http://www.alrc.gov.au/inquiries/current/sedition/index.htm>

State and Territory legislation

Offences

Some States have enacted some new offences to supplement the new Federal terrorism offences. In 2004, NSW updated offences in the *Crimes Act 1900*, mainly in relation to the making or possession of explosives or the placing of explosives near a building or public place.²⁶ In 2005, NSW enacted an offence of being a member of a terrorist organisation.²⁷ Queensland has created a new offence of sabotage in relation to a public facility.²⁸ Victoria has created an offence of providing information to facilitate a terrorist act.²⁹

Bail

In 2004, NSW enacted legislation to create a presumption against bail in relation to persons charged in NSW with Federal terrorism offences.³⁰

Police powers

Temporary stop and search powers

In 2002, NSW enacted laws that allow the Police Commissioner, with the consent of the Police Minister, to authorise police to exercise special powers to prevent an imminent terrorist act or to assist in apprehending persons responsible for committing a terrorist act.³¹ The authorisation may be directed at finding a particular person or vehicle, or at preventing or investigating a terrorist act in a particular area. The special powers include obtaining a person's identity, searching persons and vehicles, entering and searching premises, and seizing and detaining things. An authorisation to prevent a terrorist act must not exceed 7 days (this can be extended to 14 days) and an authorisation after a terrorist act must not exceed 24 hours (this can be extended to 48 hours).³² Similar laws have subsequently been enacted in most other jurisdictions in Australia.³³

²⁶ *Crimes Legislation Amendment (Terrorism) Act 2004* (NSW).

²⁷ *Terrorism Legislation Amendment (Warrants) Act 2005* (NSW), Schedule 4.

²⁸ *Terrorism (Community Safety) Amendment Act 2004* (Qld), cl 13, 14.

²⁹ *Terrorism (Community Protection) (Further Amendment) Act 2006* (Vic).

³⁰ *Bail Amendment (Terrorism) Act 2004* (NSW).

³¹ *Terrorism (Police Powers) Act 2002* (NSW).

³² Note that some minor amendments were made to the *Terrorism (Police Powers) Act 2002* by the *Crimes Legislation Amendment (Terrorism) Act 2004* (NSW), Sch 3.

³³ *Terrorism (Community Protection) (Amendment) Act 2006* (Vic); *Terrorism (Extraordinary Powers) Act 2005* (WA); *Terrorism (Police Powers) Act 2005* (SA); *Terrorism (Emergency Powers) Act 2003* (NT); *Terrorism (Extraordinary Temporary Powers) Act 2006* (ACT).

Search powers at transport hubs

At the COAG meeting in September 2005, State and Territory leaders agreed to enact stop, question and search powers in areas such as public transport hubs and places of mass gatherings. South Australia and the Northern Territory have enacted legislation to implement this measure.³⁴ The laws in South Australia allow the Police Commissioner to issue a Special Area Declaration in relation to public transport stations and special event sites if the Commissioner believes that such a declaration is required because of the nature of the site or area and the risk of occurrence of a terrorist act. Such a declaration allows police to stop and search anything in a person's possession in the area. The Commissioner cannot issue such a declaration unless both the Police Minister and a judicial officer have confirmed that the declaration is appropriate in the circumstances.

Covert search warrants

NSW and most other jurisdictions have enacted laws that allow a judge to issue police with covert search warrants for the purpose of preventing or responding to an act of terrorism.³⁵ This type of warrant authorises police to enter premises without the occupier's knowledge, to search the premises, and to seize and detain things on the premises.

Surveillance powers

In 2005, NSW extended from 21 days to 90 days the maximum period during which a warrant authorising the use of a listening device can be in force in relation to Federal terrorism offences.³⁶ Queensland has amended its surveillance provisions to enable a warrant to use a surveillance device to be issued even if it is not possible to identify the person who is to be under surveillance.³⁷ The new laws allow a warrant to be issued if evidence of the commission of an indictable offence (including a terrorism offence) is likely to be obtained using a surveillance device at the relevant place.

Preventative detention of persons

Following the COAG meeting on 27 September 2005, NSW and most other States/Territories have enacted laws that provide for the preventative detention of a person for a period of time (14 days in NSW) to prevent an imminent terrorist act or to preserve evidence of a recent terrorist act.³⁸ A bill to enact similar laws is currently in the West

³⁴ *Terrorism (Police Powers) Act 2005 (SA)*; *Terrorism (Emergency Powers) Amendment Act 2006 (NT)*.

³⁵ *Terrorism Legislation Amendment (Warrants) Act 2005 (NSW)*; *Terrorism (Community Safety) Amendment Act 2004 (Qld)*; *Terrorism (Community Protection) Act 2003 (Vic)*; *Terrorism (Emergency Powers) Amendment Act 2006 (NT)*; *Terrorism (Extraordinary Temporary Powers) Act 2006 (ACT)*.

³⁶ *Terrorism Legislation Amendment (Warrants) Act 2005 (NSW)*.

³⁷ *Terrorism (Community Safety) Amendment Act 2004 (Qld)*, cl 30.

³⁸ *Terrorism (Police Powers) Amendment (Preventative Detention) Act 2005 (NSW)*; *Terrorism*

Australian Parliament.³⁹ As noted above, the Commonwealth has enacted similar laws.

Powers to contain contaminated persons

In 2002, NSW enacted laws that allow a senior police officer to direct persons to remain in a particular area, to remain quarantined from other persons, and to submit to decontamination procedures if satisfied that there are reasonable grounds for doing so for the purpose of protecting persons from chemical, biological or radiological contamination.⁴⁰ Similar laws have been enacted in other Australian jurisdictions.⁴¹

Mandatory reporting of theft of chemicals

A number of jurisdictions, including NSW, have enacted laws that provide for mandatory reporting in relation to the theft of chemicals that could be used for terrorism.⁴²

Exemptions in relation to FOI laws

A number of jurisdictions, including NSW, have created exemptions from freedom of information laws for certain intelligence information concerning terrorism.⁴³

(Preventative Detention) Act 2005 (Qld); Terrorism (Community Protection) (Amendment) Act 2006 (Vic); Terrorism (Preventative Detention) Act 2005 (SA); Terrorism (Preventative Detention) Act 2005 (Tas); Terrorism (Emergency Powers) Amendment Act 2006 (NT); Terrorism (Extraordinary Temporary Powers) Act 2006 (ACT).

³⁹ *Terrorism (Preventative Detention) Bill 2005 (WA).*

⁴⁰ *Terrorism (Police Powers) Act 2002 (NSW)*, cl 35 and Schedule 2.

⁴¹ *Chemical, Biological and Radiological Emergency Powers Amendment Act 2003 (Qld); Terrorism (Community Protection) Act 2003 (Vic); Emergency Management Act 2005 (WA); Emergency Management Act 2004 (SA); Terrorism (Emergency Powers) Act 2003 (NT).* In relation to the ACT, see *Emergencies Act 2004 (ACT).*

⁴² *Explosives Act 2003 (NSW) and Explosives Regulations 2005 (NSW); Terrorism (Community Protection) Act 2003 (Vic); Security-Sensitive Dangerous Substances Act 2005 (Tas); Terrorism (Emergency Powers) Act 2003 (NT).*

⁴³ *Freedom of Information Amendment (Terrorism and Criminal Intelligence) Act 2004 (NSW); Terrorism (Community Safety) Amendment Act 2004 (Qld); Terrorism (Community Protection) Act 2003 (Vic), and Terrorism (Community Protection) (Further) Amendment Act 2006 (Vic), Part 3.*

3. MULTI-JURISDICTIONAL CRIME

Introduction

At the COAG meeting on terrorism and multi-jurisdictional crime on 5 April 2002, Federal, State and Territory leaders agreed (in part):

- In relation to organised crime – to replace the National Crime Authority with the new Australian Crime Commission.
- In relation to multi-jurisdictional crime – to:
 - Reform the laws relating to money laundering;
 - To legislate and develop administrative arrangements to allow investigations by the Australian Federal police into State offences incidental to multi-jurisdictional crime.
 - To legislate through model laws for all jurisdictions and mutual recognition for a national set of powers for cross-border investigations covering controlled operations and assumed identities, electronic surveillance devices and witness anonymity (legislation to be settled within 12 months)
 - To modernise the criminal law by legislating in the priority areas of model forensic procedures (during 2002) model computer offences (during 2002), and model serious drug offences (during 2003).
 - To enhance the capacity in each jurisdiction for the collection and processing of samples to create DNA profiles, and the uploading of profiles onto the national DNA database.
 - To undertake work as a matter of priority in the following areas:
 - Control over illegal importation of illicit drugs and firearms;
 - Extradition between States
 - Recognition of expert evidence (eg drug analysis certificates)
 - Firearms trafficking
 - Identity fraud
 - Vehicle rebirthing
 - Gangs
 - Cybercrime.⁴⁴

Laws that have been enacted to implement several of these measures are outlined below.

⁴⁴ The communiqué of this meeting can be accessed on the Council of Australian Governments website: <http://www.coag.gov.au/meetings/050402/index.htm>

Australian Crime Commission

In 2002, the Federal Government passed legislation to establish the Australian Crime Commission.⁴⁵ All States and Territories have since passed complementary legislation.⁴⁶

Money laundering offences

Since the COAG meeting in April 2002, NSW and several other jurisdictions have enacted reforms to money laundering offences.⁴⁷ In December 2005, the Federal Government released an exposure draft of proposed new money laundering laws.⁴⁸ In July 2006, the Government released a revised exposure draft bill.

Cross-border investigations

In November 2003, a joint working group of the Standing Committee of Attorneys-General and the Australasian Police Ministers Council published a report containing model laws on cross-border investigative powers.⁴⁹ The model laws relate to four areas: controlled operations, assumed identities, surveillance devices and witness identity protection. NSW has recently enacted the model laws on controlled operations⁵⁰ and the Government is currently consulting on implementing the model laws relating to surveillance devices.⁵¹ The model laws on assumed identities and witness identity protection are based on NSW laws so it has not been necessary for NSW to enact new legislation to implement these model laws.⁵² Victoria and Queensland have recently implemented the model laws.⁵³

⁴⁵ *Australian Crime Commission Establishment Act 2002* (Cth).

⁴⁶ *Australian Crime Commission (New South Wales) Act 2003*; *Australian Crime Commission (Queensland) Act 2003*; *Australian Crime Commission (State Provisions) Act 2003* (Vic); *Australian Crime Commission (Western Australia) Act 2004*; *Australian Crime Commission (South Australia) Act 2004*; *Australian Crime Commission (Tasmania) Act 2004*; *Australian Crime Commission (ACT) Act 2003*; *Australian Crime Commission (Northern Territory) Act 2005*.

⁴⁷ *Confiscation of Proceeds of Crime Amendment Act 2005* (NSW); *Crimes (Money Laundering) Act 2003* (Vic); *Criminal Law Amendment (Criminal Property) Act 2004* (WA); *Criminal Law Consolidation (Instruments of Crime) Amendment Act 2005* (SA); *Criminal Code Amendment (Money Laundering) Act 2004* (NT).

⁴⁸ *Anti-Money Laundering and Counter-Terrorism Financing Bill 2006* (Cth) (exposure draft).

⁴⁹ Standing Committee of Attorneys-General and Australasian Police Ministers Council Joint Working Group on National Investigation Powers, *Cross-Border Investigative Powers for Law Enforcement*, Australian Government, November 2003.

⁵⁰ *Law Enforcement (Controlled Operations) Amendment Act 2006* (NSW).

⁵¹ Private communication with officer at NSW Attorney General's Department, 28/8/06.

⁵² Private communication with officer at NSW Attorney General's Department, 28/8/06.

⁵³ As to Victorian laws, see *Crimes (Assumed Identities) Act 2004*; *Crimes (Controlled Operations) Act 2004*; *Surveillance Devices (Amendment) Act 2004*; *Witness (Identity Protection) Act 2004*. As to Queensland, see *Cross-Border Law Enforcement Legislation Amendment Act 2004*.

Forensic procedures and national DNA database

Background

Since 1997, all Australian jurisdictions, including the Commonwealth, have enacted laws that allow for the carrying out of forensic procedures on (including the taking of DNA samples from) suspects, certain offenders and volunteers.⁵⁴ The laws in most, if not all, jurisdictions also allow DNA samples to be placed on a DNA database. To varying degrees, the laws in each jurisdiction (except in the Northern Territory) have been based on model forensic procedure laws developed by the Model Criminal Code Officers Committee in the 1990s. Since 1998, attempts have been made to establish a national DNA database but this has been delayed due to a lack of uniformity in laws across States and Territories.⁵⁵

Developments: 2003-2006

In 2003, NSW, Queensland and Tasmania enacted reforms to their forensic procedures laws to facilitate their participation in the national DNA database.⁵⁶

In 2004, the Northern Territory enacted amendments to its forensic procedures laws, primarily to allow for reciprocal registration and enforcement of orders with other States and Territories.⁵⁷ This means, for example, that orders made in the Northern Territory in relation to a suspect in Queensland can be registered and enforced in Queensland and the suspect's DNA sample can be sent back to the Northern Territory.⁵⁸

In 2004, Victoria made two main changes to its forensic procedure laws.⁵⁹ First, a senior police officer may now authorise the carrying out of a non-intimate forensic procedure against a person who is suspected of a serious crime (previously a court order was required). Second, the laws now provide that adult offenders do not have a right to be given notice or a right to be heard in relation to an application for a forensic procedure order. In 2006, a further change was made so that persons who have been found not guilty of an offence by reason of mental impairment are treated in the same way as persons who have been found guilty of an offence (ie their DNA profiles can be retained indefinitely).⁶⁰

⁵⁴ See Australian Law Reform Commission and National Health and Medical Research Council, *Essentially Yours Report: The Protection of Human Genetic Information in Australia*, Report 96, March 2003 p982. In relation to developments up to 2000, see Griffith G, *DNA Testing and Criminal Justice*, NSW Parliamentary Library Research Service, Briefing Paper No. 5/2000, April 2000.

⁵⁵ See Griffith G and Roth L, 'DNA Evidence, Wrongful Convictions and Wrongful Acquittals', NSW Parliamentary Library Research Service, *Briefing Paper No. 11/2006*, August 2006.

⁵⁶ *Crimes Legislation Amendment Act 2003* (NSW); *Police Powers and Responsibilities (Forensic Procedures) Amendment Act 2003* (Qld); *Forensic Procedures Amendment Act 2003* (Tas).

⁵⁷ *Police Administration Amendment (Forensic Procedures) Act 2004* (NT).

⁵⁸ Hon P Henderson MP, *Northern Territory Assembly Debates*, 19/8/04.

⁵⁹ *Crimes (Amendment) Act 2004* (Vic).

⁶⁰ *Justice Legislation (Further Miscellaneous Amendments) Act 2006* (Vic).

In June 2006, the South Australian Government announced that it would introduce amendments to remove the requirement for DNA samples taken from suspects and offenders to be destroyed if the person is acquitted or the charges are dropped.⁶¹

In June 2006, the Federal Government introduced a bill to clarify that the Federal Government can share DNA information with States/Territories.⁶²

Computer offences

In January 2001, the Model Criminal Code Officers Committee published its report on property damage and computer offences. Several jurisdictions have since enacted legislation to implement the model computer offences: Commonwealth (2001), NSW (2001), ACT (2002), Victoria (2003) and South Australia (2004).⁶³

Serious drug offences

In 1998, the Model Criminal Code Officers Committee published its report on model serious drug offences. Several jurisdictions have since enacted legislation to implement the model offences: Tasmania (2001), Victoria (2001), ACT (2004), South Australia (2005), and the Commonwealth (2005).⁶⁴ NSW has made some legislative changes based on the model laws but it has not fully enacted the model offences.⁶⁵

Firearms trafficking

At the meeting of the Australasian Police Ministers' Council in July 2002, Ministers endorsed the *National Firearm Trafficking Policy Agreement*. Some States/Territories have enacted laws to give effect to provisions of this agreement.⁶⁶ In 2002, the Federal

⁶¹ See 'DNA laws close the crime net', *The Advertiser*, 9/6/06. See also Fairall P 'Forensic Procedures in South Australia', (2006) 30 *Criminal Law Journal* 1999.

⁶² *Crimes Act Amendment (Forensic Procedures) Bill (No. 1) 2006* (Cth). The Senate Legal and Constitutional Committee published its report on the bill on 1 August 2006, recommending that the bill be passed. As at 17 August, the bill had not been passed.

⁶³ *CyberCrime Act 2001* (Cth); *Crimes Amendment (Computer Offences) Act 2001* (NSW). *Criminal Code 2002* (ACT); *Crimes (Property Damage and Computer Offences) Act 2003* (Vic); *Statutes Amendment (Computer Offences) Act 2004* (SA).

⁶⁴ *Misuse of Drugs Act 2001* (Tas) and see also *Misuse of Drugs Amendment Act 2003* (Tas); *Drugs, Poisons and Controlled Substances Amendment Act 2001* (Vic); *Criminal Code (Serious Drug Offences) Amendment Act 2004* (ACT); *Controlled Substances (Serious Drug Offences) Amendment Act 2005* (SA); *Law and Justice Legislation Amendment (Serious Drug Offences and Other Measures) Act 2005* (Cth).

⁶⁵ Private communication with an officer in the Criminal Law Review Division of the NSW Attorney General's Department dated 2 August 2006.

⁶⁶ *Weapons (Handguns and Trafficking) Amendment Act 2003* (Qld); *Firearms (Trafficking and Handgun Control) Act 2003* (Vic); *Firearms Amendment Act 2003* (NT). Note that NSW enacted trafficking laws in 2001: see *Firearms Amendment (Trafficking) Act 2001* (NSW).

Government also enacted legislation to prohibit trafficking across State borders.⁶⁷

Identity fraud

In 2003, South Australia enacted laws that created offences relating to identity theft.⁶⁸ The South Australian Attorney General, Hon M Atkinson MP, noted that these were first laws of their type to be enacted in Australia.⁶⁹ The new offences include using a false identity or misusing another person's personal identity information intending to commit a serious criminal offence; producing, possessing or selling false identity information; and being in possession of equipment for making false identity information.⁷⁰

Vehicle rebirthing

In 2006, the NSW Government enacted laws to create new offences relating to car and boat rebirthing, which is the practice of allowing a stolen vehicle, or a vehicle that has parts that have been stolen, to be passed off and registered as a legitimate vehicle.⁷¹

⁶⁷ *Crimes Legislation Amendment (People Smuggling, Firearms Trafficking and Other Measures) Act 2002* (Cth).

⁶⁸ *Criminal Law Consolidation (Identity Theft) Amendment Act 2003* (SA).

⁶⁹ Hon M Atkinson, *South Australia Parliamentary Debates*, 15/10/03.

⁷⁰ For further reading on identity theft, see Losuzic R, 'Fraud and Identity Theft', NSW Parliamentary Library Research Service, *Briefing Paper No. 8/2003*, May 2003.

⁷¹ *Crimes Amendment (Organised Car and Boat Theft) Act 2006* (NSW). See also laws introduced in 2001 to address car rebirthing: *Motor Trade Legislation Amendment Act 2001* (NSW).

4. DOMESTIC VIOLENCE

Introduction

In recent years, most jurisdictions have made or proposed significant changes to their domestic violence legislation. The changes are outlined in brief below.

New South Wales

In March 2002, the Attorney-General requested the NSW Law Reform Commission to review Part 15A of the *Crimes Act 1900*. Part 15A provides for the making of apprehended domestic violence and apprehended personal violence orders. The Commission published its report in October 2003 and the report was tabled in Parliament on 24 June 2004. The report makes 56 recommendations for change including:

- clarifying the definitions of domestic and personal violence;
- extending the definition of “domestic relationship” to include the concept of kinship in indigenous relationships;
- facilitating greater recourse to mediation at all stages of the AVO process in appropriate circumstances;
- streamlining the process for obtaining telephone interim orders;
- providing for third party applications for AVOs in limited circumstances to facilitate greater access to AVOs for children and young people and people with a disability;
- clarifying the nature of procedural fairness at hearings for interim orders;
- enabling police to have limited powers to arrest and detain a defendant in certain circumstances for the purpose of serving an interim or final AVO;
- providing for the situation where children are included on an AVO that is varied or withdrawn; and
- requiring Magistrates to consider certain factors during applications to withdraw AVOs.⁷²

The NSW Government has not yet implemented these recommendations but on 10 June 2006, the NSW Premier, Hon Morris Iemma MP, announced that by the end of the year the Government would introduce new measures to address domestic violence.⁷³ The new measures will be primarily based on the Commission’s recommendations.⁷⁴

Victoria

In 2002, the Victorian Government launched its women’s safety strategy and it also released a framework for the development of an Indigenous Family Violence Strategy. On 1 November 2002, the Victorian Government requested the Victorian Law Reform

⁷² NSW Law Reform Commission, *Apprehended Violence Orders*, Report 103, 2003, p21.

⁷³ ‘Iemma’s new order beings with ending home violence’, *Sydney Morning Herald*, 11/6/06.

⁷⁴ Private communication with officer in Criminal Law Review Division of NSW Attorney General’s Department dated 2 August 2006.

Commission to review the *Crimes (Family Violence) Act 1987*. In December 2003, the Indigenous Family Violence Taskforce presented its final report.

In 2004, the Government enacted legislation to create specialist family violence courts in Ballarat and Heidelberg.⁷⁵ Some features of these new family violence courts include:

- Magistrates have knowledge and experience in family violence matters and staff appointed to the court are trained regarding family violence;
- The courts can concurrently hear a range of matters that arise from family violence (eg intervention orders, criminal offences, civil claims, family law matters).
- The courts have the power to order a defendant subject to a family violence intervention order to participate in counselling.⁷⁶
- Witnesses in the family violence courts can apply to give their evidence by closed circuit television or with a person beside them to offer emotional support.
- A child who is the aggrieved family member or a child of parties to the proceedings can only be present in court or give evidence with the court's permission.

The legislation establishing the specialist courts also contained reforms that apply to Magistrate courts at all locations. The Act requires courts, when hearing intervention order applications, to consider whether there are child family members who may satisfy the grounds for an intervention order. The Act also provides that a court can make an intervention order to protect children who witness or hear family violence and are likely to again. The Act also makes various changes to court procedures.

The Law Reform Commission's interim report was tabled in Parliament on 15 September 2005. The Government acted on recommendations in this interim report by enacting legislation in 2006 to give police holding powers.⁷⁷ The new laws allow police, after they have attended a family violence incident, to direct the alleged offender to remain at, or go to and remain at, a place stated by the police. This power is available to police when they intend to seek an intervention order for a person and they believe, on reasonable grounds, that it is necessary to ensure the protection of that person or their property.

The Law Reform Commission's final report was tabled on 1 March 2006.⁷⁸ It makes 153 recommendations on all aspects of the justice system's response to family violence. The Government said it would carefully consider the report.⁷⁹

⁷⁵ *Magistrates' Court (Family Violence) Act 2004* (Vic).

⁷⁶ The counselling program is a two year pilot project. It will be evaluated to assess whether it should be introduced to courts in other regions.

⁷⁷ *Crimes (Family Violence) (Holding Powers) Act 2006* (Vic).

⁷⁸ Victorian Law Reform Commission, *Review of Family Violence Laws: Report*, March 2006. The report can be accessed on the Commission's website: <http://www.lawreform.vic.gov.au/>

⁷⁹ Hon Rob Hulls MP, 'Hulls welcomes Family Violence Report', *Media Release*, 1/3/06. See also changes in relation to self-defence for homicide cases, in Section 5 of this paper.

In 2006, the Government also launched the new court-based Specialist Family Violence Service. A full time support worker has been appointed to various courts to help women seeking family violence intervention orders.⁸⁰

Western Australia

In 2004, the West Australian Government made major changes to the *Restraining Orders Act 1997*.⁸¹ This followed a review of the Act, work undertaken to prepare the 1999 model domestic violence laws, and reports published in 2002 by the Joondalup Family Violence Court and separately by the Auditor General.⁸² The changes included:

- Including emotional abuse in the definition of domestic violence;
- Increasing the penalties for domestic violence offences and allowing for higher penalties when such offences are committed in the presence of children;
- Increasing the penalties for breach of a violence restraining order;
- Providing for the automatic making of life-long violence restraining orders in cases of rape or extreme assault;
- Allowing orders to be made on behalf of children exposed to domestic violence;
- Requiring courts to recognise the vulnerability of children who are called to give evidence in domestic violence proceedings;
- Giving police stronger powers of investigation, entry and search;
- Giving police the power to issue on the spot temporary restraining orders to immediately remove violent offenders from the home for 24 hours;
- Providing improved protection for victims including the right to have a support person in court and protection from being cross-examined by the perpetrator.

Tasmania

Following public consultation, the Tasmanian government has developed its whole of government *Safe at Home* policy to deal with domestic violence. The Government has implemented a range of measures under this policy including enacting the *Family Violence Act 2004*. The main features of this legislation include:

- It covers family violence by spouses or partners;
- New offences of economic abuse and emotional abuse or intimidation;
- New offence of assaulting a pregnant woman;
- A presumption against bail for family violence offences;
- The presence of a child can be considered as an aggravating factor in sentencing;
- Courts can sentence family violence offenders to attend a rehabilitation program;

⁸⁰ See Hon Rob Hulls MP, 'Family Violence Service for Sunshine Magistrates Court', *Media Release*, 25/7/06.

⁸¹ *Acts Amendment (Family and Domestic) Violence Act 2004 (WA)*.

⁸² Hon J.McGinty MP, *Western Australia Parliamentary Debates*, 2/6/04, p3303ff.

- Police can issue a Family Violence Order (FVO) for a period of 12 months;
- Courts can also issue a FVO, for a specified period or indefinitely;
- If a court makes an FVO that requires the offender to vacate the premises, the court can also order that the lease of the premises be put into the victim's name;
- Protections for children and other vulnerable persons giving evidence;
- Mandatory reporting obligations for a range of professionals who are likely to become aware of cases of family violence through their work.

Australian Capital Territory

Following an extensive review of domestic violence and protection orders legislation the ACT Government enacted changes in 2005.⁸³ The changes included:

- Definition of domestic violence expanded to include threats to or acts against pets and animals, as well as burglary and destroying and damaging property;
- Definition of relative expanded to take into account the kinship and cultural ties of Aboriginals and Torres Strait Islanders and ethnic groups;
- Employers and employees of kindergartens, childcare centres, schools and other similar organisations can now take out a workplace order against people that they believe pose a risk to the children in their care.

Northern Territory

In 2005, the Northern Territory enacted laws to allow authorised police officers to issue a restraining order if it is necessary to ensure the immediate safety of a person.⁸⁴ If police make an order, it will be adjourned to a later date for a magistrate to confirm the order.

⁸³ *Domestic Violence and Protection Orders Amendment Act 2005* (ACT).

⁸⁴ *Domestic Violence Amendment (Police Orders) Act 2005* (NT)

5. OFFENCES

Introduction

The previous sections of this paper have dealt with offences relating to terrorism, and offences relevant to multi-jurisdictional crime and domestic violence. Other offences created or amended in the period under review are outlined below in alphabetical order.

Assault of officers etc

New South Wales

In 2006, the NSW Government enacted laws to provide for higher penalties in cases of assaults on public transport workers and surf lifesavers.⁸⁵

Other States

In 2003, Tasmania increased the maximum penalties for assaulting police officers and other public officers such as ambulance officers.⁸⁶ In 2004, Victoria enacted a new offence of hindering, obstructing or assaulting operational ambulance personnel.⁸⁷

In 2005, the Northern Territory enacted an offence of assaulting or obstructing another person who is providing rescue, resuscitation, medical treatment, first aid or succour of any kind.⁸⁸ This includes ambulance officers, firefighters and members of the public. The maximum penalty is 5 years imprisonment, and 7 years if there are aggravating factors.

In 2006, Queensland enacted a provision to make it clear that assaulting a police officer by spitting, biting or throwing bodily fluids or faeces constitutes a serious assault.⁸⁹ The maximum penalty for this offence is 7 years imprisonment.

Child sex offences

Age of consent

In 2003, NSW enacted laws to lower the age of consent for homosexual intercourse from 18 to 16, thereby setting a uniform age for heterosexual and homosexual intercourse.⁹⁰

⁸⁵ *Crimes (Sentencing Procedure) Amendment Act 2006* (NSW).

⁸⁶ *Police Offences Amendment Act 2003* (Tas).

⁸⁷ *Ambulance Services (Amendment) Act 2004* (Vic).

⁸⁸ *Criminal Code Amendment Act 2005* (NT).

⁸⁹ *Police Powers and Responsibilities and Other Acts Amendment Act 2006* (Qld).

⁹⁰ *Crimes Amendment (Sexual Offences) Act 2003* (NSW).

Cyber-predators

In 2003, Queensland created a new offence of using the Internet with the intent of procuring a child under the age of 16 to engage in a sexual act or providing indecent matter to a child under 16.⁹¹ The new laws allow police to catch cyber-predators by providing that it is irrelevant to the offence that the child is a fictitious person represented by an adult. Several other jurisdictions (although not NSW) have subsequently enacted similar reforms.⁹²

Child pornography

In 2004, a national police operation targeting Internet child pornography led to a large number of arrests and raised concerns about the extent of the child pornography industry. The Federal Government subsequently created new Internet child pornography offences⁹³ and the Standing Committee of Attorneys-General developed principles for nationally consistent child pornography legislation. NSW and several other States have since enacted reforms to their laws, including increasing the maximum penalties.⁹⁴

Child-sex tourism

In 2004, Western Australia enacted new offences relating to child sex tourism, which complements Federal legislation that was enacted in 1994 in response to concerns regarding Australians participating in paedophile sex tours to other countries.⁹⁵

Sentencing of child sex offences

New South Wales

In 2003, the NSW Government increased the maximum penalties for sex offences committed against children above the age of 10 and below the age of 16.⁹⁶ For example, the maximum penalty for a sex offence against a child aged between 10 and 14 was increased

⁹¹ *Sexual Offences (Protection of Children) Amendment Act 2003* (Qld).

⁹² *Criminal Law Consolidation (Child Pornography) Amendment Act 2004* (SA); *Criminal Code Amendment (Child Exploitation) Act 2005* (Tas); *Criminal Code Amendment (Cyber Predators) Act 2006* (WA); *Crimes (Sexual Offences) Act 2006* (Vic). See also *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No 2) 2004* (Cth).

⁹³ *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No 2) 2004* (Cth).

⁹⁴ *Crimes Amendment (Child Pornography) Act 2004* (NSW); *Criminal Code (Child Pornography and Abuse) Amendment Act 2004* (Qld); *Criminal Law Consolidation (Child Pornography) Amendment Act 2004* (SA); *Criminal Code Amendment (Child Abuse Material) Act 2004* (ACT); *Criminal Code Amendment (Child Exploitation) Act 2005* (Tas).

⁹⁵ *Criminal Code Amendment Act 2004* (WA).

⁹⁶ *Crimes Amendment (Sexual Offences) Act 2003* (NSW).

from 8 years imprisonment to 16 years imprisonment. The reforms also provided for increased penalties in a case where an offender takes advantage of a victim being under the influence of alcohol or a drug in order to commit the offence.

In 2003, the NSW Government also enacted laws to provide that a person convicted of a sexual offence against a child under 16 years of age cannot be sentenced to imprisonment to be served by way of periodic detention.⁹⁷

Other States

In 2003, Queensland increased the maximum penalty for indecent treatment of a child to 20 years imprisonment if the child is under 12 years of age and 14 years imprisonment if the child is under 16 years of age.⁹⁸ In 2005, South Australia enacted reforms to provide that the higher maximum penalties that apply in relation to offences committed against children under the age of 12 also apply to offences against children aged 12 or 13.⁹⁹

Sentencing guidelines in relation to child sex offenders

Queensland and South Australia have enacted reforms to change the sentencing guidelines to be applied by courts for child sex offenders.¹⁰⁰ Under the South Australian reforms, judges are directed to note that a primary policy of the criminal law is to protect children from such offenders by ensuring that, in any sentence for an offence involving sexual exploitation of a child, paramount consideration is given to the need for deterrence.

Post-sentence sanctions on child sex offenders

Post-sentence sanctions on child sex offenders are outlined in Section 12 of this paper.

Child neglect

In 2003 and 2004, the NSW Government made changes to modernise and strengthen the offences of neglect causing a danger of death or serious injury to a young child.¹⁰¹

In 2005, South Australia enacted laws to attribute criminal liability in cases where one of two or more carers of a child has killed or seriously injured the child as a result of an unlawful act and it is not possible to identify which of the carers committed the act.¹⁰²

⁹⁷ *Crimes Legislation Amendment Act 2003* (NSW).

⁹⁸ *Sexual Offences (Protection of Children) Amendment Act 2003* (Qld).

⁹⁹ *Statutes Amendment (Sentencing of Sex Offenders) Act 2005* (SA).

¹⁰⁰ *Sexual Offences (Protection of Children) Amendment Act 2003* (Qld); *Statutes Amendment (Sentencing of Sex Offenders) Act 2005* (SA).

¹⁰¹ *Crimes Legislation Further Amendment Act 2003* (NSW); and *Crimes Amendment (Child Neglect) Act 2004* (NSW).

¹⁰² *Criminal Law Consolidation (Criminal Neglect) Amendment Act 2005* (SA).

Cyber-stalking

Described as an Australian first, in 2003, Victoria amended its stalking offences to include stalking via the Internet (known as 'cyber-stalking').¹⁰³ The reforms also removed the requirement that the victim be aware of the stalking conduct in order to constitute an offence. Tasmania has also recently enacted similar provisions.¹⁰⁴

Criminal acts causing death of foetus

In 2005, the NSW Government enacted laws to ensure that offences involving the infliction of grievous bodily harm extend to the destruction of a pregnant woman's foetus.¹⁰⁵ This accorded with a recent decision of the NSW Court of Criminal Appeal.¹⁰⁶ In 2006, the Australian Capital Territory enacted similar laws.¹⁰⁷

Criminal responsibility

General principles

In 2005, the Northern Territory enacted new general principles upon which persons may be held criminally responsible for their conduct.¹⁰⁸ Over a period of 5 years, the new general principles of criminal responsibility will be progressively be applied to all offences, eventually replacing the existing general principles in the Criminal Code.¹⁰⁹ The new general principles are based on chapter 2 of the Model Criminal Code.¹¹⁰ The Australian Capital Territory has also enacted chapter 2 of the Model Criminal Code.¹¹¹

¹⁰³ *Crimes (Stalking) Act 2003* (Vic).

¹⁰⁴ *Criminal Code Amendment (Stalking) Act 2004* (Tas). For further reading see, Ogilvie E, 'The Internet and Cyberstalking', paper presented at Australian Institute of Criminology conference, *Stalking: Criminal Justice Responses*, Sydney, 7-8 December 2000. See also Urbas, G, 'Australian legislative responses to stalking', paper presented at Australian Institute of Criminology conference, *Stalking: Criminal Justice Responses*, Sydney, 7-8 December 2000.

¹⁰⁵ *Crimes Amendment (Grievous Bodily Harm) Act 2005* (NSW).

¹⁰⁶ *R v King* (2003) 59 NSWLR 472

¹⁰⁷ *Crimes (Offences Against Pregnant Women) Amendment Act 2006* (ACT).

¹⁰⁸ *Criminal Code Amendment (Criminal Responsibility Reform) Act 2005* (NT).

¹⁰⁹ Hon P Toyne MP, *Northern Territory Assembly Debates*, 30/6/05.

¹¹⁰ Hon P Toyne MP, *Northern Territory Assembly Debates*, 30/6/05.

¹¹¹ Hon P Toyne MP, *Northern Territory Assembly Debates*, 30/6/05.

The defence of intoxication

In 2004, South Australia made changes to narrow the defence of intoxication, overruling the 1979 High Court decision in *O'Connor's* case.¹¹² The changes are based on provisions developed by the Model Criminal Code Officers Committee.

Driving offences

Drug driving

Drug driving offences have existed in all jurisdictions in Australia for some time.¹¹³ However, in several jurisdictions, an offence would only be committed if the driver was under the influence of drugs 'to such an extent as to be incapable of having proper control of the vehicle'.¹¹⁴ In addition, in all jurisdictions, drug testing of drivers has only been permitted in limited circumstances: eg if the police have reasonable grounds to believe that the driver is affected by drugs, or if the driver attends hospital after an accident.¹¹⁵

In October 2003, Victoria introduced laws that (1) created a new offence of driving when a prescribed illicit drug is present in the driver's blood or oral fluid; and (2) authorised police to carry out random roadside testing of drivers for the presence of these drugs by taking saliva samples.¹¹⁶ The prescribed illicit drugs were: THC (the active ingredient in cannabis) and methylamphetamine. The laws were introduced on a trial basis and roadside drug testing commenced in December 2004. This was reported as being a world first.¹¹⁷ In 2006, the laws were made a fixture and ecstasy was added to the list of prescribed drugs.¹¹⁸ In 2005, South Australia and Tasmania also passed roadside drug testing legislation.¹¹⁹

NSW is proposing to introduce similar legislation. In November 2004, the former Minister for Roads, Hon Carl Scully MP, announced that legislation would be introduced and that a

¹¹² *Criminal Law Consolidation (Abolition of the Drunk's Defence) Act 2004 (SA)*.

¹¹³ See Johns R, 'Drink Driving and Drug Driving', NSW Parliamentary Library Research Service, *Briefing Paper No 15/04*, p33-34 and p48ff.

¹¹⁴ Johns R, 'Drink Driving and Drug Driving', NSW Parliamentary Library Research Service, *Briefing Paper No 15/04*, p33-34 and p48ff.

¹¹⁵ Johns R, 'Drink Driving and Drug Driving', NSW Parliamentary Library Research Service, *Briefing Paper No 15/04*, p33-34 and p48ff.

¹¹⁶ *Road Safety (Drug Driving) Act 2003 (Vic)*. See also minor amendments in *Transport Legislation (Miscellaneous Amendments) Act 2004 (Vic)*.

¹¹⁷ Hon Andre Haermeyer MP, 'World First Random Drug Testing to Start', *Media Release*, 30/11/04.

¹¹⁸ *Road Safety (Drugs) Act 2006 (Vic)*.

¹¹⁹ *Road Traffic (Drug Driving) Amendment Act 2005 (SA)*; *Road Safety (Alcohol and Drugs) Amendment Act 2005 (Tas)*.

12-month trial would be conducted in NSW. In May 2006, the current Minister for Roads, Hon Eric Roozendaal MLC, stated that the bill was being finalised.¹²⁰ Mr Roozendaal said that the new laws will “permit both random roadside drug testing using saliva and compulsory drug testing of any driver...involved in a fatal crash”.¹²¹

Dangerous driving

In 2004, Victoria introduced new laws relating to dangerous driving including creating a new indictable offence of dangerous driving causing death or serious injury, which carries a maximum penalty of 5 years imprisonment and licence disqualification for a minimum of 18 months.¹²² The new offence lies between the two existing offences of dangerous driving (maximum penalty of 2 years imprisonment) and culpable driving causing death (maximum penalty of 20 years imprisonment). The new laws also clarify that driving while fatigued can constitute the offence of culpable driving causing death.

In 2004, Western Australia made changes to the offence of dangerous driving to overcome evidentiary difficulties associated with the prosecution of intoxicated drivers who have been involved in accidents causing death or serious harm.¹²³ It was noted the amendments would bring Western Australia into line with other States including NSW.¹²⁴ The new laws also introduced more severe penalties for the offence of dangerous driving when committed in circumstances of aggravation: eg exceeding speeding limit by 45km/hour.

In 2005, South Australia restructured the offence of causing death by dangerous driving.¹²⁵

Leaving scene after accident

In 2005, NSW and South Australia created a new offence that is committed if a driver of a motor vehicle that is involved in a collision causing death or grievous bodily harm (in South Australia, any physical injury) fails to stop and give assistance.¹²⁶

Confiscation of cars used for street racing

In 1996, the NSW Government passed laws that allow for the confiscation of vehicles used

¹²⁰ Hon Eric Roozendaal MLC, *NSW Parliamentary Debates*, 23/5/06, p26.

¹²¹ Hon Eric Roozendaal MLC, *NSW Parliamentary Debates*, 23/5/06, p26.

¹²² *Crimes (Dangerous Driving) Act 2004* (Vic).

¹²³ *Road Traffic Amendment (Dangerous Driving) Act 2004* (WA).

¹²⁴ Hon J A McGinty MP, *Western Australia Parliamentary Debates*, 23/06/04, p4184ff.

¹²⁵ *Statutes Amendment (Vehicle and Vessel Offences) Act 2005* (SA)

¹²⁶ *Crimes Amendment (Road Accidents) (Brendan's Law) Act 2005* (NSW); *Statutes Amendment (Vehicle and Vessel Offences) Act 2005* (SA).

for unlawful street racing and other offences.¹²⁷ Queensland introduced similar laws in 2002.¹²⁸ Most other jurisdictions have also recently enacted anti-hooning laws.¹²⁹

Drug misuse and trafficking

Serious drug offences

The enactment in various jurisdictions of the model serious drug offences is discussed in Section 3 above. Other drug law developments are discussed below.

New South Wales

In 2006, the NSW Government enacted a number of amendments to drug misuse and trafficking laws including listing chemicals that are precursors to the drug GHB as prohibited drugs and creating a number of new offences including:

- Sale, commercial supply or display of ice pipes in a shop for a commercial purpose.
- Exposing a child to the manufacturing or production of a prohibited drug or to chemicals stored for that purpose.
- Procuring a child to supply or take part in the supply of a prohibited drug.¹³⁰

In 2006, the NSW Government introduced separate legislation to create a new offence of indoor, hydroponic cultivation of cannabis plants for a commercial purpose.¹³¹ These new laws also contain supplementary offences of cultivation in the presence of children.

Queensland

In 2006, Queensland enacted laws to create a new offence of possession of prescribed substances or items for the production of a dangerous drug, which has a maximum penalty of 15 years imprisonment.¹³² This offence is aimed at “the developing market for persons who supply illicit methylamphetamine manufacturers with chemicals and apparatus but

¹²⁷ *Traffic Amendment (Street and Illegal Drag Racing) Act 1996* (NSW).

¹²⁸ *Police Powers and Responsibilities and Another Act Amendment Act 2002* (Qld).

¹²⁹ *Road Traffic Amendment (impoundment and Confiscation of Vehicles) Act 2004* (WA); *Police Offences Amendment Act 2004* (Tas); *Road Traffic Amendment (Vehicle Impounding and Confiscation of Vehicles) Act 2004* (WA); *Statutes Amendment (Misuse of Motor Vehicles) Act 2004* (SA); *Road Safety and Other Acts (Vehicle Impoundment and Other Amendments) Act 2005* (Vic).

¹³⁰ *Drug Misuse and Trafficking Amendment Act 2006* (NSW).

¹³¹ *Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Act 2006* (NSW).

¹³² *Drug Legislation Amendment Act 2006* (Qld).

who do not personally engage in the manufacture of the final dangerous drug.”¹³³

The laws also create a new offence of possessing a prescribed combination of items for the production of a dangerous drug, which has a maximum penalty of 25 years imprisonment. This means that “when a clan lab is located and the prescribed combination of items is identified, the remainder of items seized will not need to be forensically tested as the prosecution will not be seeking to prove that production has occurred.”¹³⁴ The laws also introduced evidentiary provisions to remove the requirement for forensic testing of sealed pharmaceuticals and alleged clan equipment unless challenged by the defence.

Other laws enacted in 2006 allow police to enter pharmacies for the purpose of monitoring excessive sales of chemicals that are used to make amphetamines such as speed.¹³⁵

Victoria

In 2006, Victoria enacted laws to prohibit the sale of cocaine kits.¹³⁶

Western Australia

In 2003, Western Australia introduced laws that place controls on suppliers of chemicals and apparatus that can be used in the manufacture of illicit drugs.¹³⁷

In 2003, Western Australia also enacted laws to allow police to issue an infringement notice to a person who is reasonably believed to be cultivating, possessing or using cannabis within the specified limits. Outside these limits, offenders are subject to criminal prosecution. Persons issued with an infringement notice have the option of paying the penalty, attending a cannabis education session or having the matter heard in court. This reform in Western Australia was advocated by the Community Drug Summit held in August 2001.¹³⁸ South Australia introduced a similar scheme in 1986. NSW does not have an infringement notice scheme but in 2000 it introduced the Cannabis Cautioning Scheme to allow police to issue cautions in relation to minor cannabis offences.¹³⁹

In 2004, Western Australia enacted laws to make it an offence for a declared drug trafficker

¹³³ Hon L.D Lavarch MP, *Queensland Parliamentary Debates*, 30/11/05, p4557

¹³⁴ Hon L.D Lavarch MP, *Queensland Parliamentary Debates*, 30/11/05, p4558.

¹³⁵ *Police Powers and Responsibilities and Other Acts Amendment Act 2006* (Qld).

¹³⁶ *Drugs, Poisons and Controlled Substances (Prohibition of Display and Sale of Cocaine Kits) Act 2006* (Vic).

¹³⁷ *Misuse of Drugs Amendment Act 2003* (WA).

¹³⁸ Hon R. Kucera MP, *Western Australia Parliamentary Debates*, 20/3/03, p5694-5698.

¹³⁹ See Baker J and Goh D, *The Cannabis Cautioning Scheme Three Years On: An Implementation and Outcome Evaluation*, NSW Bureau of Criminal Statistics and Research, 2004.

to consort with another person whom the police have warned them is also a declared drug trafficker.¹⁴⁰ The maximum penalty is 2 years imprisonment.

Tasmania

In 2004, Tasmania strengthened the presumption that possession of a trafficable quantity of a controlled substance is evidence of an intention to sell or traffic the substance.¹⁴¹ Under the new laws, the presumption of an intent to sell or traffic can only be displaced if the accused proves that he or she had no intention to sell or traffic. The Model Criminal Code Officers Committee had recommended the model serious drug offence provisions be changed in this way and the Standing Committee of Attorneys-General adopted this proposal.¹⁴² In 2005, Tasmania enacted further reforms including allowing a trafficable quantity of drugs to be made up of a combination of different types of drugs.¹⁴³

Firearms offences

National agreement on firearms trafficking

This is discussed above in Section 3.

National agreement on handgun control

Following the shootings at Monash University in October 2002, at the Council of Australian Governments meeting in December 2002, State and Territory Leaders agreed to implement the Prime Minister's new handgun controls and a prohibited pistol buyback scheme.¹⁴⁴ All States and Territories have enacted laws to give effect to this agreement.¹⁴⁵

Other legislation in New South Wales

In 2003, the NSW Government enacted changes to firearms laws as part of a package of

¹⁴⁰ *Criminal Law Amendment (Simple Offences) Act 2004* (WA).

¹⁴¹ *Misuse of Drugs Amendment Act 2003* (Tas).

¹⁴² Hon J Jackson, *Tasmania Parliamentary Debates*, 29/4/04.

¹⁴³ *Misuse of Drugs Amendment Act 2005* (Tas).

¹⁴⁴ See Johns R, 'Firearms Restrictions: Recent Developments', NSW Parliamentary Research Service, *Briefing Paper No. 3/04*, February 2004, Ch 5.

¹⁴⁵ *Firearms Amendment (Prohibited Pistols) Act 2003* (NSW); *Weapons (Handguns and Trafficking) Amendment Act 2003* (Qld) and *Police and Other Legislation Amendment Act 2005* (Qld); *Firearms (Trafficking and Handgun Control) Act 2003* (Vic), *Firearms (Amendment) Act 2003* (Vic) and *Firearms (Further Amendment) Act 2005* (Vic); *Firearms Amendment Act 2004* (WA); *Firearms (COAG Agreement) Amendment Act 2003* (SA); *Firearms Amendment Act 2003* (Tas); *Firearms (Prohibited Pistols) Amendment Act 2003* (ACT); *Firearms Amendment Act 2003* (NT) and *Firearms Amendment Act 2004* (NT).

firearms reforms announced in September 2003.¹⁴⁶ The changes included:

- New offences including: firing at a dwelling house or building with disregard for the safety of persons (14 years imprisonment); stealing a firearm (14 years imprisonment); and an unlicensed person carrying an unregistered firearm in a public place (10 years imprisonment – aggravated offence, 14 years imprisonment).
- Increasing the time period for establishing the trafficking offence from three illegal firearm sales in 1 month to three illegal sales in 12 months.
- Clarification of the offence regime for forging firearms licences and using a forged licence to illegally obtain a firearm.¹⁴⁷

Other legislation in Western Australia

In 2004, Western Australia enacted reforms to firearms laws including:

- Providing for a higher maximum penalty where a person carries an unlicensed firearm and is also in possession of drugs or a prescribed amount of money (14 years imprisonment- up from 18 months).
- Increasing penalties for other offences including:
 - Offences relating to carrying, defacing and altering identification marks on a hand gun (7 years imprisonment – up from 18 months)
 - Dealers, repairers and manufacturers who do not appropriately secure all firearms at the close of business (2 years imprisonment for second and subsequent offences – more than doubles previous penalty).
 - Use of silencer (7 years imprisonment – up from 18 months).¹⁴⁸

Fraud etc

Identity fraud in SA

New identity fraud offences in South Australia are outlined in Section 5 above.

¹⁴⁶ *Firearms and Crimes Legislation Amendment (Public Safety) Act 2003* (NSW).

¹⁴⁷ For a discussion of this legislation, see Johns R, 'Firearms Restrictions: Recent Developments', NSW Parliamentary Research Service, *Briefing Paper No. 3/04*, February 2004, Ch 5. As to changes to bail laws in relation to firearms offences, see Section 7 of this paper. As to whether tougher gun laws are contributing to decline in crime in NSW, see 'Gun laws fall short in war on crime', *Sydney Morning Herald*, 29/10/05.

¹⁴⁸ *Firearms Amendment Act 2004* (WA).

Fraud reforms in ACT

In 2004, as part of its criminal code project, the ACT enacted laws to reform and codify the law on theft, fraud, blackmail, forgery, bribery and related matters.¹⁴⁹ The new laws are primarily based on provisions developed by the Model Criminal Code Officers Committee.

Graffiti

In 2006, as part of the NSW Government's anti-graffiti strategy, laws were enacted to require retailers to keep spray paint cans in a locked cabinet or behind a counter in such a manner that members of the public cannot gain access to them without assistance.¹⁵⁰

Home invasion: self defence

In 2003, the South Australian Government enacted amendments to broaden the defence of self-defence in relation to home invasions.¹⁵¹ The law was changed to provide a defence of self-defence in a case where an innocent occupier genuinely believed that they were defending themselves from a home invasion, and they used such force as they genuinely believed to be proportionate to the threat that they genuinely believed existed.

Homicide

Defences to homicide

Recent Legislation

In 2003, Tasmania abolished the partial defence of provocation on the basis that it was outdated and that provocation could be taken into account in sentencing.¹⁵²

As noted above, in 2003 South Australia made changes to broaden the defence of self-defence in relation to home invasions.

In 2005, Victoria enacted a number of changes to defences to homicide¹⁵³ following a report by the Victorian Law Commission in 2004.¹⁵⁴ The 2005 reforms abolished the partial defence of provocation and made other changes as outlined below:

¹⁴⁹ *Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004* (ACT).

¹⁵⁰ *Summary Offences Amendment (Display of Spray Paint Cans) Act 2006* (NSW).

¹⁵¹ *Criminal Law Consolidation (Self Defence) Amendment Act 2003* (SA).

¹⁵² *Criminal Code Amendment (Abolition of Defence of Provocation) Act 2003* (Tas).

¹⁵³ *Crimes (Homicide) Act 2005* (Vic).

¹⁵⁴ Victorian Law Reform Commission, *Defences to Homicide: Final Report*, October 2004.

- *Self-defence*: The Act made changes including:
 - Changing the form of the legal test for self-defence in relation to murder (consistent with the form of the test in NSW).
 - Creating a new alternative verdict to murder of “defensive homicide”.
 - Making it easier for an accused to rely on the defence of self-defence in cases where she has been the victim of domestic violence.
 - Providing that intoxication is not to be taken into account when considering the reasonableness of a person’s response to a situation.
- *Duress*: The Act created defences to homicide in certain circumstances of duress or of sudden or extraordinary emergency.
- *Infanticide*: The Act changed the partial defence of infanticide (which reduces murder to manslaughter) to reflect modern medical understanding about the complex factors which that lead a mother cause the death of her child after childbirth. The Act also allows this defence to be pleaded by mothers whose child has died within 2 years of being born (previously, 12 months).¹⁵⁵

The Law Reform Commission of Western Australia is reviewing the law of homicide.¹⁵⁶

Comparison with laws in NSW

NSW has not abolished the partial defence of provocation. A NSW Law Reform Commission report in October 1997 recommended that the defence be retained.¹⁵⁷

In 2001, NSW enacted legislation to clarify and simplify the law relating to self-defence.¹⁵⁸

There is no statutory defence of duress or sudden or extraordinary emergency in NSW. Under the common law, duress is not a defence to murder and it is not clear whether sudden or extraordinary emergency can be a defence to murder.¹⁵⁹

In NSW, the partial defence of infanticide is similar to the Victorian partial defence as it existed before the above-mentioned amendments were enacted.¹⁶⁰

¹⁵⁵ For a discussion of the changes in Victoria and other jurisdictions, see Coss G, ‘Provocative reforms: A comparative critique’, (2006) 30 *Criminal Law Journal* 138.

¹⁵⁶ See Law Reform Commission of Western Australia, *Review of the Law of Homicide: An Issues Paper*, May 2006.

¹⁵⁷ New South Wales Law Reform Commission, *Partial Defences to Murder: Provocation and Infanticide*, Report No. 83, October 1997.

¹⁵⁸ *Crimes Amendment (Self-Defence) Act 2001* (NSW).

¹⁵⁹ See Victorian Law Reform Commission, *Defences to Homicide: Final Report*, October 2004, p112-114.

¹⁶⁰ See *Crimes Act 1900* (NSW), s 22A.

Penalties for murder

In 2003, the Northern Territory enacted reforms to the sentencing regime for murder.¹⁶¹ The reforms increase the standard minimum non-parole period from 20 years to 25 years in cases of murder that involve particular circumstances of aggravation: eg murders that also involve sexual assault. The new laws also allow the court to set higher non-parole periods, or to order that an offender never be released. The reforms also allow a court, in some extremely limited circumstances, such as battered wife cases or mercy killings, to consider whether to apply a non-parole period of less than 20 years.

Non-fatal offences against person

In 2005, South Australia enacted reforms to non-fatal offences against the person using the approach adopted by the Model Criminal Code Officers Committee.¹⁶² The reforms replaced most statutory non-fatal offences against the person with a new, simpler offence of causing harm. Each offence has two parts: a basic offence with a penalty the same as the existing penalty for the offence, and an aggravated offence, with a higher penalty.

Perjury etc

In 2005, as part of its criminal code project, the ACT enacted laws to reform and codify the law on interfering with the administration of justice (eg perjury).¹⁶³ The new laws are primarily based on provisions developed by the Model Criminal Code Officers Committee.

Racial vilification

In 2004, Western Australia made amendments to its racial vilification offences.¹⁶⁴ The amendments created a two-tiered approach: the first tier is an offence requiring intent to be established and has a higher maximum penalty and the second tier is a strict liability offence in which it can be established that the conduct in question is likely to have the effect described. The amendments also increased the maximum penalties.

Riot offences

In response to the Cronulla riots in December 2005, the NSW Government enacted laws that created a new offence of assault during public disorder, which carries a higher penalty than that for general assault.¹⁶⁵ The maximum penalty is 7 years imprisonment for an

¹⁶¹ *Sentencing (Crime of Murder) And Parole Reform Act 2003* (NT).

¹⁶² *Statutes Amendment and Repeal (Aggravated Offences) Act 2005* (SA).

¹⁶³ *Criminal Code (Administration of Justice Offences) Amendment Act 2005* (ACT).

¹⁶⁴ *Criminal Code Amendment (Racial Vilification) Act 2004* (WA).

¹⁶⁵ *Law Enforcement Legislation Amendment (Public Safety) Act 2005* (NSW).

assault causing actual bodily harm. The new laws also increased the penalties for affray (from 5 years to 10 years) and for riot (from 10 years to 15 years). Police were also given new powers to deal with riots (see Section 6 of this paper).

Sexual assault

In 2004, Tasmania made changes to laws regarding consent in accordance with recommendations of the 1998 report of the Task Force on Sexual Assault and Rape.¹⁶⁶ The reforms are based on similar provisions in Victorian legislation. The Tasmanian Attorney General, Judy Jackson, said that these reforms were long overdue and they brought Tasmania's laws relating to consent into line with other States.¹⁶⁷ The South Australian Government is currently conducting a review of rape and sexual assault law. The Government released a discussion paper in 2006, inviting comment by 14 July 2006.¹⁶⁸

Sexual servitude

In 2004, Western Australia enacted sexual servitude offences.¹⁶⁹ This legislation complements Federal legislation enacted in 1999¹⁷⁰; and it implements an agreement by the Standing Committee of Attorneys-General to enact State legislation. In 2005, Tasmania also enacted sexual servitude offences.¹⁷¹ NSW enacted similar offences in 2001.¹⁷²

Summary offences

In 2005, Queensland enacted new summary offences legislation.¹⁷³ Some of the initiatives in the new laws identified by the Government included:

- Creating an offence for a person to possess an implement that has been or is to be used for an offence (eg burglary of a home, break into motor vehicle, assault).
- Making the law of trespass clear so that a police officer can take pre-emptive action to prevent a burglary or an assault of an occupant at home.

¹⁶⁶ *Criminal Code Amendment (Consent) Act 2004* (Tas).

¹⁶⁷ Hon J Jackson MP, *Tasmania Parliamentary Debates*, 3/12/03.

¹⁶⁸ See the Department of Justice (SA) website: http://www.justice.sa.gov.au/news_detail.asp?id=91

¹⁶⁹ *Criminal Code Amendment Act 2004* (WA).

¹⁷⁰ *Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999* (Cth).

¹⁷¹ *Sex Industry Offences Act 2005* (Tas).

¹⁷² *Crimes Amendment (Sexual Servitude) Act 2001* (NSW).

¹⁷³ *Summary Offences Act 2005* (Qld).

- Creating an offence of unlawful possession of suspected stolen property.
- Prohibitions on tattooing and certain body piercing of children.
- Provisions to deter the practice of people in public places begging for money.¹⁷⁴

Supply of volatile substances

As part of measures to deal with volatile substance abuse, Queensland and Western Australia have enacted a new offence of supplying a substance to a person in circumstances in which the supplier knows, or should suspect, that it will be used to intoxicate.¹⁷⁵ New police powers to deal with volatile substance abuse are outlined in Section 6 below.

Tampering with goods identifiers

In 2003, the NSW Government enacted laws to create an offence of tampering with unique identifiers on goods (eg mobile phones) for the purpose of concealing a theft.¹⁷⁶

Throwing objects at moving vehicles

In 2006, South Australia enacted an offence of throwing an object at a moving vehicle, which carries a maximum penalty of 5 years imprisonment.¹⁷⁷

Voyeurism

In 2004, NSW enacted a new offence of filming for indecent purposes.¹⁷⁸ These laws responded to concerns about the improper use of modern technology, including mobile phone cameras. In 2005, Queensland enacted similar laws.¹⁷⁹

¹⁷⁴ Hon J C Spence, *Queensland Parliamentary Debates*, 28/9/04, p2395.

¹⁷⁵ *Police Powers and Responsibilities and Other Legislation Amendment Act 2003* (Qld); *Criminal Law Amendment (Simple Offences) Act 2004* (WA).

¹⁷⁶ *Crimes Legislation Amendment (Property Identification) Act 2003* (NSW).

¹⁷⁷ *Criminal Law Consolidation (Throwing Objects At Moving Vehicles) Amendment Act 2006* (SA).

¹⁷⁸ *Crimes Legislation Amendment Act 2004* (NSW).

¹⁷⁹ *Justice and Other Legislation Amendment Act 2005* (Qld).

6. POLICE POWERS

Introduction

Police powers in relation to anti-terrorism, multi-jurisdictional crime and domestic violence are outlined in Sections 2, 3 and 4 of this paper. Other changes to police powers during the relevant period are outlined below according to jurisdiction.

New South Wales

Use of drug detection dogs in border areas

In 2003, NSW enacted laws to establish a trial of a new power for police to stop vehicles and use a drug detection dog in areas along the Victorian and South Australian borders.¹⁸⁰ Note that in 2001, NSW enacted laws to allow police to use drug detection dogs.¹⁸¹

Use of in-car video systems

In 2004, NSW enacted laws to enable police to use in-car video technology to *audio* record interactions with persons whose vehicles have been stopped.¹⁸² The technology will also be used to *video* record pursuits of vehicles and interactions once vehicles have been stopped.

Random breath testing on waterways

In 2005, NSW enacted laws to allow police to conduct random breath testing of persons operating vessels on NSW waterways.¹⁸³

Powers to deal with riots

In response to the Cronulla riots in December 2005, the NSW Government enacted laws to give police a range of new powers to prevent or defuse large-scale public disorder.¹⁸⁴ The new powers include lockdown powers. The Commissioner of Police may authorise a lockdown of an area where large-scale public disorder is occurring. Police can then to set up roadblocks and employ stop and search powers in or around that area. A lockdown can last for up to 48 hours or longer if extended by the Supreme Court.

¹⁸⁰ *Police Powers (Drug Detection Dogs in Border Areas Trial) Act 2003* (NSW).

¹⁸¹ *Police Powers (Drug Detection Dogs) Act 2001* (NSW).

¹⁸² *Law Enforcement (Powers and Responsibilities) Amendment (In-Car Video Systems) Act 2004* (NSW).

¹⁸³ *Marine Safety Amendment (Random Breath Testing) Act 2005* (NSW).

¹⁸⁴ *Law Enforcement Legislation Amendment (Public Safety) Act 2005* (NSW).

Queensland

Drug detection dogs

In 2005, Queensland enacted legislation to allow police to use drug detection dogs without warrant to detect unlawful dangerous drugs in places, persons or things in licensed premises and public places.¹⁸⁵ These laws were introduced as a response to acts of violence by persons under the influence of dangerous drugs in nightclubs and in malls. As noted above, since 2001, NSW police have had powers to use drug detection dogs.¹⁸⁶

Covert searches to investigate serious offences

In 2005, Queensland introduced amendments to allow the police to obtain covert search warrants to investigate a range of serious offences (previously the police could obtain such warrants to only to investigate organised crime and terrorism offences).¹⁸⁷ The laws also give police the power, if authorised under a covert search warrant, to take a vehicle to a police garage to allow police to examine it for evidence of a designated offence. In NSW covert search warrants may be only be obtained in relation to terrorism offences.¹⁸⁸

Searching for things used to damage property

In 2006, provisions were enacted to allow a police officer to search a suspect and the suspect's vehicle without warrant in order to seize evidence in relation to an offence of wilful damage or destruction of property.¹⁸⁹ For example, this may include a paint can used for graffiti or a screwdriver used to scratch a vehicle.¹⁹⁰

Searching computers and other electronic devices

In 2006, Queensland introduced laws to facilitate police searches of computers and other electronic devices (eg mobile phones) for evidence of a serious offence.¹⁹¹ Police can now obtain a warrant that requires a suspect to provide them with a password or de-encryption code to enable them to access information on a computer or other electronic device.

¹⁸⁵ *Police Powers and Responsibilities (Drug Detection Dogs) Amendment Act 2005* (Qld).

¹⁸⁶ *Police Powers (Drug Detection Dogs) Act 2001* (NSW).

¹⁸⁷ *Police and Other Legislation Amendment Act 2005* (Qld). As to covert search warrants in relation to terrorism offences, see Section 2 above.

¹⁸⁸ See Section 2 above.

¹⁸⁹ *Police Powers and Responsibilities and Other Acts Amendment Act 2006* (Qld).

¹⁹⁰ Hon J Spence MP, *Queensland Parliamentary Debates*, 21/4/06, p1364.

¹⁹¹ *Police Powers and Responsibilities and Other Acts Amendment Act 2006* (Qld).

New offence of evading police

In 2006, Queensland enacted a new offence of failing to stop a vehicle when directed to do so by a police officer in a police vehicle.¹⁹² The maximum penalty is 3 years imprisonment. A first offence can also result the impoundment of the vehicle for a period of 3 months and any subsequent offences can result in the vehicle being forfeited to the State. The owner of the vehicle will be deemed responsible for the offence unless he or she names the person who was driving the vehicle. South Australia enacted similar laws in 2006 (see below).

Extension of move on powers

In 2006, Queensland introduced amendments to extend police move on powers.¹⁹³ The new laws were designed to address “not only groups of youths who invade a family party...[but also] those who choose to illegally prey upon Queenslanders in public places.”¹⁹⁴ NSW police were given move on powers under laws enacted in 1998.¹⁹⁵

Victoria

Searching for firearms and weapons

In 2003, Victoria passed new laws to provide police with a greater capacity to search people for dangerous weapons, some dangerous articles and firearms.¹⁹⁶ The new laws allow a police officer to search a person for prohibited or controlled weapons and/or firearms if the officer has reasonable grounds to *suspect* (rather than *believe*) that a relevant offence is being or is about to be committed. The new laws also make it clear that the presence of a person in a location with a high incidence of violent crime may be taken into account by a police officer in determining whether there are reasonable grounds for the suspicion. The new laws also allow police to conduct weapons searches in non-government schools.

Investigation of organised crime

In 2004, Victoria enacted laws that allow police to obtain from the Supreme Court a coercive powers order for the purpose of investigating an organised crime offence.¹⁹⁷ At the time when such an order is made, or at a later time while the order is in force, the Supreme

¹⁹² *Police Powers and Responsibilities and Other Acts Amendment Act 2006* (Qld).

¹⁹³ *Police Powers and Responsibilities and Other Acts Amendment Act 2006* (Qld).

¹⁹⁴ Hon J C Spence MP, *Queensland Parliamentary Debates*, 21/4/06, p1364.

¹⁹⁵ *Crimes Legislation Amendment (Police and Public Safety) Act 1998* (NSW).

¹⁹⁶ *Control of Weapons and Firearms Acts (Search Powers) Act 2003* (Vic).

¹⁹⁷ *Major Crime (Investigative Powers) Act 2004* (Vic). See also minor amendments to this Act by *Corrections and Major Crime (Investigative Powers) Acts (Amendment) Act 2004* (Vic).

Court can issue a summons requiring a person to attend at a specified place for examination or to produce specified documents. The Chief Examiner may also issue a witness summons while an order is in force. Failure to appear in answer to a summons, or failure to produce documents, is an offence punishable by up to 5 years imprisonment. In addition, a person cannot refuse to answer questions at an examination or refuse to produce documents on the grounds of privilege against self-incrimination. However, answers to questions cannot be used against the witness in civil or criminal proceedings.

South Australia

Removing fortifications on gang premises

In 2003, South Australia enacted laws to allow police to obtain a court order to remove fortifications on premises if they have been constructed in breach of planning laws or where there are reasonable grounds to believe the premises are being used in connection with the commission of a serious criminal offence.¹⁹⁸ The Government said that these laws were enacted to prevent criminal organisations such as those known as outlaw motorcycle gangs fortifying their premises to prevent or delay police access.¹⁹⁹ NSW enacted laws in 2001 to give police entry and search powers in relation to suspected drug premises.²⁰⁰

Devices to prevent high-speed pursuits

In 2003, South Australia introduced legislation that allows police to use vehicle immobilisation equipment such as tyre deflation devices in connection with the pursuit of vehicles.²⁰¹ NSW introduced similar legislation in 1998.²⁰²

New offence of evading police

In 2006, South Australia enacted an offence of driving dangerously to evade police, which has a maximum penalty of 3 years imprisonment for a basic offence and 5 years for an offence with aggravating factors.²⁰³ Queensland enacted similar laws in 2006 (see above).

¹⁹⁸ *Statutes Amendment (Anti-Fortification) Act 2003 (SA)*.

¹⁹⁹ Hon M Atkinson MP, *South Australia Parliamentary Debates*, 16/9/03.

²⁰⁰ *Police Powers (Drug Premises) Act 2001 (NSW)*

²⁰¹ *Summary Offences (Vehicle Immobilisation Devices) Amendment Act 2003 (SA)*.

²⁰² *Traffic Amendment (Tyre Deflation – Police Pursuits) Act 1998 (NSW)*.

²⁰³ *Criminal Law Consolidation (Dangerous Driving) Amendment Act 2006 (SA)*.

Western Australia

Move on powers

In 2004, Western Australia enacted provisions to give police the power to order a person who is in a public place to leave it, if the officer reasonably suspects that the person is doing or is just about to do an act that involves the use of violence against a person, is breaching the peace, is obstructing any lawful activity, or is committing an offence.²⁰⁴ As noted above, police in NSW were given move on powers in 1998.²⁰⁵

Several jurisdictions: powers to deal with substance abuse

Volatile substance abuse is the practice of inhaling substances for the purpose of intoxication. One form of volatile substance abuse is the inhalation of chrome paint, which is known as ‘chroming’. In 2003, Victoria and Queensland introduced new police powers to deal with volatile substance abuse.²⁰⁶ In 2005, the Northern Territory also enacted reforms to give police greater powers including powers of seizure and disposal and powers to relocate people to places of safety.²⁰⁷ Note also that in June 2006, a Federal Parliamentary Committee published its report on petrol sniffing in remote Aboriginal Communities.²⁰⁸

²⁰⁴ *Criminal Law Amendment (Simple Offences) Act 2004* (WA).

²⁰⁵ *Crimes Legislation Amendment (Police and Public Safety) Act 1998* (NSW).

²⁰⁶ *Drugs, Poisons and Controlled Substances (Volatile substances) Act 2003* (Vic); *Police Powers and Responsibilities and Other Legislation Amendment Act 2003* (Qld).

²⁰⁷ *Volatile Substance Abuse Prevention Act 2005* (NT) and *Misuse of Drugs Amendment Act 2005* (NT).

²⁰⁸ Parliament of Australia, Senate Community Affairs Committee, *Petrol Sniffing in Remote Aboriginal Communities*, 20 June 2006.

7. BAIL

Introduction

Bail laws in relation to terrorism offences were discussed in Section 2 of this paper. Other developments across Australia are outlined below.

New South Wales

In 2003, the NSW Government enacted legislation that made three significant changes to the *Bail Act 1978*.²⁰⁹ As a result of the amendments:

- A court is not to grant bail to a person in respect of an offence of murder unless exceptional circumstances justify the grant of bail.
- A court is not to grant bail to a person in respect of a serious personal violence offence if the person is a repeat offender unless exceptional circumstances justify the grant of bail.
- A magistrate's decision to grant bail to a person accused of a serious offence can be stayed for up to 3 days pending a review of that decision by the Supreme Court.

The second amendment noted above was made in response to the murder in April 2003 of Patricia van Koeverden by her estranged husband while he was on bail.²¹⁰

Later in 2003, the Government made further amendments including providing for a presumption against bail for persons accused of serious firearms and weapons offences and a presumption against bail for repeat property offenders.²¹¹ Repeat property offenders are those who have been accused of 2 or more serious property (robbery) offences and who have been convicted of one or more serious property offences within the last 2 years. These amendments were adopted from a report produced by an internal working party.²¹²

In December 2005 the NSW Government enacted legislation in response to the Cronulla riots that occurred during December. One part of this legislation was an amendment to the *Bail Act 1978* to create a presumption against bail for riot offences, and for other serious offences committed in the course of a large scale public disorder or in connection with the exercise of police powers to prevent or control such a disorder.²¹³

²⁰⁹ *Bail Amendment Act 2003* (NSW).

²¹⁰ Hon John Hatzistergos MLC, *NSW Parliamentary Debates*, 24/6/03.

²¹¹ *Bail Amendment (Firearms and Property Offences) Act 2003* (NSW).

²¹² Hon John Hatzistergos MLC, *NSW Parliamentary Debates*, 19/11/03.

²¹³ *Law Enforcement Legislation Amendment (Public Safety) Act 2005* (NSW), Sch 3.

Queensland

In 2004, Queensland enacted legislation to formally acknowledge the role of indigenous community justice groups in the bail process.²¹⁴ In deciding bail applications, courts are now required to take into account any submissions made by a community justice group in the defendant's community including about the defendant's relationship to the community, any cultural considerations, and any considerations relating to programs and services established for offenders in which the community justice group participates. In 2005, Queensland enacted legislation to facilitate the implementation of the Queensland Magistrates Early Referral into Treatment Program (QMERIT) (similar to the MERIT program operating in NSW).²¹⁵ Under the amendment, a magistrate may refer defendants who are on bail to the QMERIT program and to other prescribed programs.

Victoria

In 2004, Victoria repealed a provision in its bail legislation which required a court to refuse bail to a person who was in custody for failing to answer bail unless the person satisfies the court that the failure was due to causes beyond his control.²¹⁶ The Victorian Law Reform Commission had recommended that this provision be repealed in its 2002 report entitled *Failure to Appear in Court in Response to Bail*. According to the Victorian Attorney-General, Hon Rob Hulls MP, repealing this provision would "ensure that the bail system operates in a fairer way for indigenous people, people from newly arrived communities and people with a physical or intellectual disability... [It] will give courts a broader discretion to take all relevant factors into account when deciding whether to grant bail."²¹⁷ The Victoria Law Reform Commission is currently conducting a general review of bail laws.²¹⁸

South Australia

South Australia enacted laws in 2005 to allow courts to include as a condition of bail a requirement that the defendant be assessed for or undertake an intervention program.²¹⁹ Similar legislation was enacted in NSW in 2002.²²⁰

²¹⁴ *Justice and Other Legislation Amendment Act 2004* (Qld), Part 2.

²¹⁵ *Justice and Other Legislation Amendment Act 2005* (Qld), Part 5.

²¹⁶ *Justice Legislation (Sexual Offences and Bail) Act 2004* (Vic).

²¹⁷ Hon Rob Hulls MP, *Victoria Parliamentary Debates*, 21/4/04.

²¹⁸ Victoria Law Reform Commission, *Review of the Bail Act: Consultation Paper*, November 2005.

²¹⁹ *Statutes Amendment (Intervention Programs and Sentencing Procedures) Act 2005* (SA). This is discussed further in relation to sentencing in Section 9 of this paper.

²²⁰ *Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002* (NSW).

Northern Territory

In 2005, Northern Territory amended its bail laws in relation to repeat offenders.²²¹ There is now a presumption against bail if a person is accused of a serious violence offence and:

- The person committed the offence while on bail for another serious offence; and
- The person was found guilty of another serious offence within 2 years of the date of the offence or of another serious violence offence within 10 years; and
- One or both of these offences was a serious violence offence.

Australian Capital Territory

In 2004, the ACT Government made a number of changes to its bail laws following a review of the laws by the ACT Law Reform Commission.²²² The changes included:

- Explicit identification of crimes that attract different types of presumption: for bail, against bail and in some cases no presumption at all.
- Bail not to be granted on a charge of murder unless special or exceptional circumstances justify a grant of bail.
- Clarification of a number of issues including a clearer guide as to the factors to be taken into account in bail decisions.
- Between the time of a guilty verdict and the imposition of a sentence bail attracts any presumptions relating to the charges involved.
- Ensuring that victim liaison officers from the police are available to keep victims informed about bail decisions when they are concerned about their safety.

²²¹ *Bail Amendment (Repeat Offenders) Act 2005 (NT)*.

²²² *Bail Amendment Act 2004 (ACT)*.

8. TRIALS

Introduction

This section outlines developments in a number of jurisdictions in relation to sexual assault trials and it then refers to other reforms to criminal trials.

Sexual assault trials

New South Wales

In 2003, the NSW Government enacted legislation to prohibit unrepresented accused persons from directly cross-examining complainants in sexual offence trials.²²³ In 2003, the NSW Government also enacted provisions to exempt child complainants in sexual assault proceedings from giving evidence in committal hearings.²²⁴

In 2004, the Government enacted legislation to give complainants an entitlement to use closed circuit television or other alternative arrangements (eg screens) when giving evidence; and to have a support person chosen by them present nearby.²²⁵

In 2005, the Government introduced several further reforms. First, the *Criminal Procedure Amendment (Evidence) Act 2005* allows the record of evidence given by the complainant in a sexual assault trial to be admitted as the evidence in any new trial ordered following an appeal. Secondly, the *Criminal Procedure Further Amendment (Evidence) Act 2005* makes it easier for complainants to give evidence in sexual offence proceedings. The Act:

- Requires courts hearing criminal proceedings to disallow improper questions that are put to witnesses in cross-examination;
- Prevents the circulation and copying of sensitive evidence and allows the prosecution to provide the accused with access to, rather than copies of, such evidence;
- Requires any part of proceedings for a sexual offence in which evidence is given by the complainant to be held in camera (ie closed court).

Thirdly, the *Criminal Procedure Amendment (Sexual Offence Case Management) Act 2005* makes pre-trial orders binding on the trial judge in prescribed sexual offence proceedings. The pre-trial orders are also binding on the trial judge in any new trial.

In December 2004, the NSW Attorney General, Hon Bob Debus MP, set up a Criminal Justice Sexual Offence Taskforce to examine issues surrounding sexual assault in the community and the prosecution of offences. In December 2005, the Taskforce published

²²³ *Criminal Procedure Amendment (Sexual Offence Evidence) Act 2003* (NSW).

²²⁴ *Crimes Legislation Amendment Act 2003* (NSW).

²²⁵ *Criminal Procedure (Sexual Offence Evidence) Act 2004* (NSW).

its report, in which it made 70 recommendations.²²⁶ One significant recommendation is that the Government establish specialist courts to deal with sexual assault offences. The Government has not yet announced whether it will implement the recommendations.

Queensland

In 2003, the Queensland Government made reforms to provide greater protection for children who are giving evidence in sexual assault trials.²²⁷ The reforms included:

- Limits on circumstances in which children have to give evidence at committal;
- Presumption in favour of pre-recording of a child's evidence before trial;
- Mandatory use of audiovisual links (such as CCTV), where available, or screens, when a child gives evidence unless the child decides otherwise;
- A child who is giving evidence about a sexual offence is entitled to have a support person and the court is to exclude non-essential persons from the courtroom;
- New principles to be applied when a court is dealing with a child witness;
- The reforms also abolished the recent complaint rule so that evidence of a complaint can be admitted regardless of when the complaint was made.

Western Australia

In 2004, the West Australian Government enacted reforms to the prosecution of sexual assault offences.²²⁸ According to the Government, the reforms were the subject of extensive consultation and they implement recommendations made by the WA Law Reform Commission and by other Committees and bodies.²²⁹ The changes include:

- In a case where a person is accused of multiple sex offences, the prosecution can more readily join the charges to be dealt with under one indictment;
- The defence can now only get access to records of communications between the complainant and their counsellor with the leave of the court.
- The Act provides for the visual recording of interviews with children suspected of having been sexually abused, and of interviews with child witnesses. The visual recording may stand as the evidence in chief in a trial;
- Complainants in cases of serious sex offences will be automatically deemed to be special witnesses. They will be entitled to pre-recordings of evidence, closed circuit television screens and the presence of a support person while giving evidence.
- The Act prohibits an unrepresented accused from directly cross-examining a complainant who is a special witness.

²²⁶ Attorney General's Department of NSW, *Criminal Justice Sexual Offences Taskforce - Responding to sexual assault: the way forward*, December 2005.

²²⁷ *Evidence (Protection of Children) Act 2003* (Qld).

²²⁸ *Criminal Law Amendment (Sexual Assault and Other Matters) Act 2004* (WA).

²²⁹ Hon J McGinty MP, *WA Parliamentary Debates*, 30/6/04, p4607ff.

Victoria

In 2001, the Victorian Government requested the Victorian Law Reform Commission to review the law and procedure governing sexual offences. The Commission published its final report in August 2004. The majority of the Commission's legislative recommendations were enacted in 2006.²³⁰ The changes include:

- There is a prohibition on cross-examining children and people with a cognitive impairment at the committal stage of the prosecution of sexual offences;
- Children and people with a cognitive impairment have a right to give their evidence in court via closed circuit television; and they also have a right to have a support person of their own choosing when giving evidence;
- There is more scope for out-of-court statements made by children to be admitted in evidence as a specific exception to the hearsay rule;
- There are clearer and tighter restrictions on the use of evidence relating to the complainant's sexual history or activities with the accused or with another person;
- There are clearer and tighter restrictions on the use of confidential counselling communications between the complainant and their counsellor;
- Unrepresented defendants cannot personally cross-examine complainants. Their questioning must be conducted by a barrister appointed by Legal Aid;
- Expert evidence on the nature and effects of sexual assault may be heard by the court more readily and may not be unfairly excluded.

The Act also enacts a new statement of principles that forms the basis for the interpretation of sexual assault laws. The principles recognise, for example, that offenders are commonly known to victims and that physical signs of a sexual offence are unlikely to be present.

In August 2006, the Government announced that it was introducing new laws to give sexual assault victims the right to give evidence via closed circuit television and to provide strict guidance for judges on jury warnings concerning delays in reporting a sexual assault.²³¹

Northern Territory

In 2004, the Northern Territory enacted new laws in relation to the evidence of child witnesses and other vulnerable witnesses in criminal proceedings for sexual offences.²³² The new laws implemented a number of recommendations made in a 1999 report by the Northern Territory Law Reform Committee. The reforms:

- Abolished oral examination of children at committal proceedings;
- Allow children to give evidence at the trial by pre-recorded statement;

²³⁰ *Crimes (Sexual Offences) Act 2006* (Vic).

²³¹ Hon Rob Hulls MP, 'Reforms to ease trauma for sexual assault victims', *Media Release*, 8/8/06.

²³² *Evidence Reform (Children and Sexual Offences) Act 2004* (NT).

- Introduced principles for child witnesses that courts must take into account;
- Introduced new provisions to allow courts to regulate the questioning of witnesses;
- Allow a court to admit hearsay evidence of a child's disclosure of sexual abuse;
- Introduced time limits for the prosecution of all sexual offences.

South Australia

The South Australian Government is currently conducting a review of rape and sexual assault law, including reviewing the treatment of complainants in the justice system. The Government released a discussion paper in 2006, inviting comment by 14 July 2006.²³³

Other trial reforms

New South Wales

In 2004, the NSW Government enacted laws to prohibit jurors from conducting their own research into the case.²³⁴ In 2006, the Government enacted laws that allow for majority (11:1) jury verdicts in criminal trials if the jury cannot reach a unanimous verdict after deliberating for a reasonable period of time, which is not less than 8 hours.²³⁵ Several other jurisdictions had previously introduced majority jury verdicts.²³⁶

Western Australia

In 2004, Western Australia enacted significant reforms to criminal procedure.²³⁷ The new laws implemented a number of recommendations of the Western Australia Law Reform Commission in its 1999 report on the review of the criminal and civil justice system. One of the recommendations implemented by the new laws was a comprehensive code of criminal practice and procedure for both summary and indictable matters.

South Australia

In 2005, South Australia enacted major reforms in relation to trials for serious offences.²³⁸ The reforms address opening statements, obligations on police to disclose information to the DPP, prosecution disclosure, and defence disclosure.

²³³ See the Department of Justice (SA) website: http://www.justice.sa.gov.au/news_detail.asp?id=91

²³⁴ *Jury Amendment Act 2004* (NSW)

²³⁵ *Jury Amendment (Verdicts) Act 2006* (NSW).

²³⁶ See Drabsch T, 'Majority Jury Verdicts in Criminal Trials', NSW Parliamentary Library Research Service, *Briefing Paper No. 15/2005*, December 2005, Chapter 4.

²³⁷ *Criminal Procedure Act 2004* (WA).

²³⁸ *Statutes Amendment (Criminal Procedure) Act 2005* (SA).

9. SENTENCING

Introduction

As a number of jurisdictions enacted some similar sentencing reforms in the period under review, this section is arranged by topic rather than by jurisdiction.

Intervention programs

New South Wales

In 2002, NSW enacted a legislative framework for the existing practice of courts referring defendants to prescribed intervention programs that address the underlying causes of offending behaviour.²³⁹ Referral to an intervention program is available at a number of points in the criminal justice process: eg as a condition of bail after being charged, after a person has pleaded guilty but before sentence, and as a condition of a good behaviour bond.²⁴⁰ Regulations have prescribed the Aboriginal circle-sentencing program and the community conference program as intervention programs under these laws.²⁴¹

Queensland

In 2006, Queensland passed legislation to make drug courts, which were introduced in 2000 on a trial basis, a permanent sentencing option; and to make some changes to the operation of drug courts.²⁴² According to the Attorney General, Hon L.D Lavarch MP, these laws followed positive evaluations of the pilot by the Australian Institute of Criminology.²⁴³ NSW has a Drug Court that was established in 1999.²⁴⁴

Victoria

In 2005, Victoria also legislated for the continued operation of the Drug Court.²⁴⁵

Western Australia

In 2003, the West Australian Government extended the time by which courts could adjourn

²³⁹ *Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002* (NSW)

²⁴⁰ Hon Ian Macdonald MLC, *NSW Parliamentary Debates*, 21/11/02.

²⁴¹ *Criminal Procedure Regulations 2005* (NSW), Part 5.

²⁴² *Drug Legislation Amendment Act 2006* (Qld).

²⁴³ Hon L Lavarch, *Queensland Parliamentary Debates*, 30/11/05, p4557.

²⁴⁴ See Lawlink website: <http://www.lawlink.nsw.gov.au/drugcrt>

²⁴⁵ *Courts Legislation (Miscellaneous Amendments) Act 2005* (Vic).

sentencing hearings from 6 months to 12 months to allow an offender who is facing imprisonment an opportunity to address their offending behaviour.²⁴⁶ In 2004, the Government enacted further reforms to provide for a new sentencing option known as conditional suspended imprisonment.²⁴⁷ A court can impose conditional suspended imprisonment when sentencing an offender to a term of imprisonment of 5 years or less. The court may suspend the prison sentence for up to 2 years with conditions as to supervision, participation and/or curfews attached. This option is initially only available to the Perth Drug Court but it may be extended to other courts in the future.²⁴⁸

South Australia

In 2005, South Australia enacted laws to provide formal statutory backing to the practice of directing defendants to undertake intervention programs.²⁴⁹ The new laws provide that a court may, on finding a person guilty of an offence, make an order adjourning the proceedings for a period of up to 12 months and granting bail to the defendant for the purpose of allowing the defendant to participate in an intervention program.

Northern Territory

In 2006, the Northern Territory enacted laws to establish an Alcohol Court, which is a specialist court to deal with offenders who are dependent on alcohol.²⁵⁰ The Magistrate's Court can refer eligible offenders to the Alcohol Court. The Alcohol Court can make alcohol intervention orders, prohibition orders and other sentencing orders.

Offenders are eligible to be referred to the Alcohol Court for an *alcohol intervention order* if they plead guilty to the offence, they are likely to be sentenced to a term of imprisonment, they appear to be dependent on alcohol, and they consent. An intervention order fully or partially suspends a term of imprisonment on the condition that the person undergoes treatment for alcohol dependency and is subject to supervision requirements.

Offenders are eligible to be referred to the Alcohol Court for a *prohibition order* if they plead guilty to the offence, they are not facing a sentence of imprisonment, and they appear to be dependent on alcohol. A prohibition order may include orders that prohibit or restrict the consumption of alcohol by the offender, or prohibit or restrict an offender from entering licensed premises. Prohibition orders are not a sentence. They complement any sentence that might be imposed on the offender by the Alcohol Court.

²⁴⁶ *Sentencing Legislation Amendment and Repeal Act 2003* (WA).

²⁴⁷ *Sentencing Legislation Amendment Act 2004* (WA).

²⁴⁸ Hon J McGinty MP, *Western Australia Parliamentary Debates*, 1/7/04, p4761-4762.

²⁴⁹ *Statutes Amendment (Intervention Programs and Sentencing Procedures) Act 2005* (SA).

²⁵⁰ *Alcohol Court Act 2006* (NT). The following information about the Alcohol Court is taken from NT Government, *Breaking the Cycle, Fact Sheet 1 Alcohol Court Bill 2005*; and NT Government *Breaking the Cycle, Q&A, Alcohol Court Act 2005* – located on the Justice Department's website: <http://www.nt.gov.au/justice/graphpages/lawmake/changed.shtml>

Australian Capital Territory

In 2004, the ACT enacted laws to encourage the use of restorative justice conferences by establishing a dedicated restorative justice unit, which functions as a central point for referral, assessment and delivery of restorative justice conferences.²⁵¹ In 2005, new sentencing laws (discussed further below) included provision for courts to make deferred sentence orders, which allow the court to adjourn proceedings to provide an offender with an opportunity to address their criminal behaviour before sentencing.²⁵²

Sentencing Aboriginal offenders

Aboriginal customary law

In 2004, the Northern Territory Government implemented a recommendation made by the NT Law Reform Committee to provide a formal mechanism for raising issues relating to customary law, or the views of members of the Aboriginal community, when a court is sentencing an Aboriginal offender.²⁵³ The new laws provide that the court may only receive such information if the party that wishes to present the information gives notice to each other party, each of the other parties has an opportunity to respond to it, and the information is presented in the form of evidence on oath, an affidavit or a statutory declaration.

The Western Australia Law Reform Commission has recently been conducting an inquiry into Aboriginal Customary Laws. In December 2005 it published a discussion paper. One of the proposals in the discussion paper is to require sentencing courts to consider any aspect of Aboriginal customary law relevant to the offence, whether the offender has been or will be dealt with under Aboriginal customary law, and the views of the Aboriginal community of the offender and the victim in relation to the offence or appropriate sentence.²⁵⁴ In 2000, the NSW Law Reform Commission recommended the enactment of a similar provision.²⁵⁵

Following controversy about the sentence imposed on an Aboriginal offender in a rape case in the Northern Territory in 2005, the Federal Indigenous Affairs Minister, Hon Mal Brough MP, called for new laws to prohibit courts from taking customary law into account when sentencing Aboriginal offenders.²⁵⁶ The Australian Law Reform Commission

²⁵¹ *Crimes (Restorative Justice) Act 2004* (ACT).

²⁵² *Crimes (Sentencing) Act 2005* (ACT).

²⁵³ *Sentencing Amendment (Aboriginal Customary Law) Act 2004* (NT).

²⁵⁴ Western Australia Law Reform Commission, *Aboriginal Customary Law: Discussion Paper*, December 2005, p220.

²⁵⁵ NSW Law Reform Commission, *Sentencing: Aboriginal Offenders*, Report No. 96, 2000, Recommendation 1.

²⁵⁶ 'Excuse of tribal law to be axed', *The Australian*, 23/5/06. For further reading, see Omeri S, 'Considering Aboriginality', (2006) 44(7) *Law Society Journal* 74.

discussed this issue in its recent report on the sentencing of federal offenders.²⁵⁷

Sentencing conferences

In 2005, Victoria legislated for the continued operation of Koori Courts.²⁵⁸ In 2005, South Australia enacted legislation to formalise the practice of using sentencing conferences in sentencing Aboriginal defendants.²⁵⁹ The new laws provide that before sentencing an Aboriginal defendant, the court may, with the defendant's consent, convene a sentencing conference and take into consideration views expressed at the conference. As noted above, NSW has also enacted a legislative framework for circle sentencing.

Sentencing of serious repeat offenders in SA

In 2003, South Australia amended its laws in relation to serious repeat offenders.²⁶⁰ Under the new laws the court may make a declaration that a person is a serious repeat offender if the person has been convicted of at least 3 serious offences and a sentence of imprisonment has been or would be imposed for each of these offences. The court may then impose a sentence for the protection of the public that is more than proportional to the seriousness of the offence and that any non-parole period fixed for the sentence must be at least 80 percent of the length of the sentence. The equivalent statute in NSW is the *Habitual Criminals Act 1957*, which is similar to the South Australian laws prior to the above amendments.

Victim impact statements

New South Wales

In 2003, the NSW Government enacted reforms to enable victim impact statements to be read out in court (rather than just submitted in written form) by victims of serious offences or their representatives.²⁶¹ In 2004, the Government enacted further reforms to expand the category of offences in relation to which a Local Court may receive and consider victim impact statements (previously restricted to offences involving death).²⁶²

Victoria

In 2005, the Victorian Government enacted legislation to create an express requirement for

²⁵⁷ Australian Law Reform Commission, *Same Crime, Same Time: Sentencing of Federal Offenders*, Report 103, June 2006, paras 29.40-29.73.

²⁵⁸ *Courts Legislation (Miscellaneous Amendments) Act 2005* (Vic).

²⁵⁹ *Statutes Amendment (Intervention Programs and Sentencing Procedures) Act 2005* (SA).

²⁶⁰ *Criminal Law (Sentencing) (Serious Repeat Offenders) Act 2003* (SA).

²⁶¹ *Victims Legislation Amendment Act 2003* (NSW).

²⁶² *Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Act 2004* (NSW).

courts to have regard to the full impact of the offence on the victim when making sentencing decisions; and also to provide that where the victim of an offence so desires, the prosecutor must read aloud in open court appropriate, admissible and relevant parts of the victim impact statement during the sentencing proceeding.²⁶³

Tasmania

In 2005, Tasmania enacted an amendment to allow the court to accept a victim impact statement made by another person on the victim's behalf, where it considers it appropriate to do so.²⁶⁴ This may be appropriate if the victim is a child, a person with a disability, or where the making of a statement by the victim is not recommended on medical grounds.²⁶⁵

Australian Capital Territory

In 2005, as part of sentencing reforms introduced into the ACT (see below), provisions were enacted to expand the availability of victim impact statements. Under the new laws, victim impact statements can be tendered for any offence punishable by imprisonment for longer than one year and for the summary offence of common assault.²⁶⁶ The new laws also broaden the class of people who can tender a statement: close family members, carers and people who are in an intimate relationship with the victim can make a statement.

Guideline judgments

In 2003, Victoria and South Australia introduced laws to allow appeal courts to issue guideline judgments in relation to sentencing.²⁶⁷ In NSW, since 2001, the Court of Criminal Appeal has had the power to issue guideline judgments.²⁶⁸ In 2004, these laws were amended to enable the NSW Sentencing Council to consult with the Attorney General in relation to a wider range of matters concerning guideline judgments.²⁶⁹

²⁶³ *Sentencing (Further Amendment) Act 2005* (Vic).

²⁶⁴ *Justice and Related Legislation (Miscellaneous Amendments) Act 2005* (Tas).

²⁶⁵ Hon J Jackson MP, *Tasmania Parliamentary Debates*, 24/3/05.

²⁶⁶ *Crimes (Sentencing) Act 2005* (ACT).

²⁶⁷ *Sentencing (Amendment) Act 2003* (Vic); *Criminal Law (Sentencing) (Sentencing Guidelines) Amendment Act 2003* (SA).

²⁶⁸ *Criminal Legislation Amendment Act 2001* (NSW).

²⁶⁹ *Crimes Legislation Amendment Act 2004* (NSW), Sch 5.

Abolition of prison sentences of 6 months or less in WA

In 2003, Western Australia enacted reforms to prohibit the imposition of prison sentences of six months or less (prison sentences of 3 months or less were abolished in Western Australia in 1995).²⁷⁰ The Attorney General stated that “such short sentences serve no useful purpose and it is more appropriate to manage such offenders under some form of sanction in the community, such as undertaking community work”.²⁷¹ No other jurisdiction in Australia has abolished prison sentences of 6 months or less.

In 2002, the NSW Government enacted reforms to provide that if a court sentences an offender to imprisonment for 6 months or less, it must give its reasons for doing so including its reasons for deciding that no other penalty is appropriate and (as a result of 2003 amendments) its reasons for not allowing the offender to participate in a rehabilitation program.²⁷² The 2002 reforms implemented a 1996 recommendation by the NSW Law Reform Commission.²⁷³ In August 2004, the NSW Sentencing Council published a report on abolishing prison sentences of six months or less.²⁷⁴ It recommended that abolition should be considered but not until: (i) primary alternatives to full-time custody are available uniformly throughout NSW; (ii) the impact of the abolition of short sentences in Western Australia is evaluated; (iii) exceptions to the abolition of short sentences are settled; and (iv) abolition is trialled throughout NSW for Aboriginal women.²⁷⁵

Abolition of suspended sentences in Victoria

On 22 August 2006, it was reported that, in line with a recommendation of the Sentencing Advisory Council, the Victorian Government was planning to introduce laws to abolish suspended sentences for serious offenders in all but exceptional circumstances.²⁷⁶

Home detention

Home detention introduced in Victoria

In 2003, Victoria introduced legislation to provide for home detention as a sentencing

²⁷⁰ *Sentencing Legislation Amendment and Repeal Act 2003* (WA).

²⁷¹ Hon J. McGinty MP, *Western Australia Parliamentary Debates*, 15/8/02, p177-180.

²⁷² *Crimes Legislation Amendment (Criminal Justice Interventions) Act 2002* (NSW), Sch 3[2].

²⁷³ NSW Law Reform Commission, *Sentencing*, Report No. 79, 1996, Recommendation No. 40.

²⁷⁴ NSW Sentencing Council, *Abolishing Prison Sentences of 6 months or less: A report of the Sentencing Council*, August 2004.

²⁷⁵ NSW Sentencing Council, *Abolishing Prison Sentences of 6 months or less: A report of the Sentencing Council*, August 2004. p4.

²⁷⁶ ‘Parliament to consider changing suspended sentencing laws’, *AAP*, 22/8/06.

option.²⁷⁷ Home detention is available in all other mainland Australian States.²⁷⁸

Changes to home detention in South Australia

In 2005, South Australia enacted amendments to provisions relating to home detention including restricting home detention to the last year of a fixed non-parole period; and providing that prisoners who receive a sentence of 12 months or less are not eligible for home detention until they have served at least half of their sentence in prison.²⁷⁹

Drug treatment correctional centre in NSW

In 2004, the NSW Government enacted legislation to provide for the establishment of a compulsory Drug Treatment Correctional Centre.²⁸⁰ This centre is designed for offenders who appear to have a long-term drug dependency, who have been convicted of and sentenced to imprisonment for an offence related to the offender's drug dependency and lifestyle, and who have been convicted of at least three other offences in the previous five years.²⁸¹ The offender's sentence must be long enough for an 18 month to 3-year drug treatment detention program. Offenders who are ordered to participate in the program are subject to intensive judicial case management by the Drug Court. The centre has opened as a section of the Parklea Correctional Centre and it accommodates 70 inmates.²⁸²

General sentencing reforms in ACT

In 2005, the ACT introduced new sentencing laws following a comprehensive review of those laws by a Sentencing Review Committee.²⁸³ The Act consolidated sentencing provisions into the one piece of legislation and introduced initiatives including allowing courts to impose a number of different orders as part of a whole sentence (combination sentences); and allowing courts to make non-association and place-restriction orders. These types of orders were made available in NSW in 2001.²⁸⁴

²⁷⁷ *Corrections and Sentencing Acts (Home Detention) Act 2003* (Vic).

²⁷⁸ Hon A Haermeyer MP, *Victoria Parliamentary Debates*, 7/6/03, p1484.

²⁷⁹ *Correctional Services (Miscellaneous) Amendment Act 2005* (SA).

²⁸⁰ *Compulsory Drug Treatment Correctional Centre Act 2004* (NSW)

²⁸¹ Hon John Della Bosca MLC, *NSW Parliamentary Debates*, 12/5/04, p8769.

²⁸² NSW Department of Corrective Services' website: <http://www.dcs.nsw.gov.au>

²⁸³ *Crimes (Sentencing) Act 2005* (ACT).

²⁸⁴ See *Justice Legislation Amendment (Non-association and Place Restriction) Act 2001* (NSW).

10. SENTENCE ADMINISTRATION

Parole and early release

New South Wales

In 2003, the NSW Government enacted reforms to the parole system including introducing a presumption of supervision in respect of a parole order made by the court, and requiring the Parole Board to give reasons for decisions to release an offender on parole.²⁸⁵

In 2004, the Government enacted a range of further reforms, many of which were based on a report into the Parole Board by Mr Vernon Dalton AM.²⁸⁶ The reforms included:

- Renaming the Parole Board as the State Parole Authority (SPA).
- Changing the SPA's constitution including requiring at least one of its members to be a person who has an understanding of the interests of victims of crime.
- Requiring the SPA to take additional matters into account in deciding whether the release of an offender is in the public interest.
- Providing that the SPA is not to release a serious offender on parole unless the Serious Offenders Review Council advises that parole should be considered.
- Setting out a list of matters to be addressed in a report provided to the SPA by the Probation and Parole Service in relation to the granting of parole.
- Changes to procedure in respect of the reconsideration of an offender for parole.
- Providing for the withdrawal of the automatic right to a review hearing.
- Providing for the swift revocation of a parole order.
- Giving victims of serious offenders access to documents held by the SPA.

In 2005, following the Supreme Court decision in *R v Blessington*²⁸⁷, the Government enacted an amendment to ensure that Bronson Blessington and certain other persons are covered by the scheme that applies to never-to-be-released prisoners. Prisoners subject to this scheme are not eligible to have their sentence redetermined until after they have served at least 30 years. In addition, when a non-parole period is fixed on a redetermination, parole cannot be granted except if the offender is in imminent danger of dying or has lost the physical ability to do harm, and the offender has demonstrated that they do not pose a risk to the community. This legislation has been challenged in the NSW Court of Criminal appeal. Some commentators believe the Court will rule the laws to be invalid.²⁸⁸

²⁸⁵ *Crimes Legislation Amendment (Parole) Act 2003* (NSW).

²⁸⁶ *Crimes (Administration of Sentences) Amendment (Parole) Act 2004* (NSW).

²⁸⁷ (2005) 153 A Crim R 205

²⁸⁸ 'Criminal court set to overrule 'cement law' for life in prison', *Sydney Morning Herald*, 18/6/06.

Queensland

In 2003, Queensland enacted reforms to allow for the suspension or cancellation of a *post-prison community based release order* (ie a parole order) where the chief executive reasonably believes that a prisoner who is subject to such an order poses an unacceptable risk of committing an offence or is preparing to leave the State.²⁸⁹ The reforms also made it clear that the chief executive may cancel a *conditional release order* if the offender breaches the order or is charged with an offence.²⁹⁰

In 2006, Queensland enacted changes to the parole system including replacing the seven community corrections boards in Queensland with three parole boards.²⁹¹ The Queensland Parole Board determines the suitability for parole of the most serious offenders serving eight years or more. Two regional parole boards consider applications for parole from other prisoners. The new laws require the parole board to notify a registered victim when a prisoner has applied for parole. The victim may then lodge a written submission.

Victoria

In 2004, Victoria enacted a legislative framework for a victims register.²⁹² Victims who are registered will be able to receive particular information about the offender during the administration of the offender's sentence of imprisonment. Victoria also enacted an express statutory right for victims to lodge a submission with the Parole Board.²⁹³

Western Australia

Western Australia enacted a number of reforms in 2003. First, it abolished the automatic one-third remission of sentences.²⁹⁴ Second, it enacted reforms to parole based on recommendations of the 1998 Hammond review.²⁹⁵ The changes included allowing the Director-General of the Justice Department to make a parole order for prisoners serving less than 12 months; and setting out a range of factors to be considered by the Parole Board when making parole decisions. Third, it extended the period for which the Director General of the Department of Justice can grant prisoners an early discharge, from 10 days to 30 days.²⁹⁶ The 30 days early discharge period may only be applied to prisoners who

²⁸⁹ *Corrective Services Amendment Act 2003* (Qld).

²⁹⁰ The conditional release system allows well behaved prisoners serving short sentences to be released to the community to serve the last weeks or months of their sentence.

²⁹¹ *Corrective Services Act 2006* (Qld).

²⁹² *Corrections (Further Amendment) Act 2004* (Vic)

²⁹³ *Corrections (Further Amendment) Act 2004* (Vic)

²⁹⁴ *Sentencing Legislation Amendment and Repeal Act 2003* (WA).

²⁹⁵ *Sentence Administration Act 2003* (WA).

²⁹⁶ *Prisons Amendment Act 2003* (WA).

have displayed exemplary behaviour during their sentence and/or where there are special circumstances relating to their health, welfare or other compassionate reasons. Early discharge is not available to prisoners serving terms for serious crimes against a person.

South Australia

In 2005, South Australia enacted some reforms following a review of aspects of the parole system by the Chief Executive of the Department of the Premier and Cabinet.²⁹⁷ The reforms included changes to the constitution of the Parole Board and:

- Removing automatic release on parole for sex offenders sentenced to less than 5 years imprisonment. This means that the Parole Board is now required to consider the applications of all sex offenders who want to be released on parole.
- Making it clear that the paramount consideration of the Parole Board when determining applications for parole is the safety of the community.
- Expanding the involvement of victims in the parole process including by:
 - Making further provision for a Victims register; and
 - Requiring the Parole Board to consider the impact of the release on parole of the prisoner is likely to have on a registered victim and his or her family.

Northern Territory

In 2003, the Northern Territory introduced a number of reforms including:

- Adding new members to the Parole Board including a police officer, a Victims of Crime representative, and community representatives.
- Setting out matters to which the Board must have substantial regard in considering the public interest where it is determining the release of a person who has been convicted of murder. These matters include:
 - Protection of the community (which is the paramount consideration).
 - The likely effect on the victim's family if the offender is released.
 - In the case of Aboriginal or Torres Strait Islanders who identify with a particular community, the likely effect of release on that community.
- Requiring the Board to record reasons for their decision when determining eligibility for Parole of a person who has been convicted of murder.²⁹⁸

In 2006, the Northern Territory enacted a number of reforms relating to victims' rights

²⁹⁷ *Correctional Services (Parole) Amendment Act 2005 (SA)*.

²⁹⁸ *Sentencing (Crime of Murder) and Parole Reform Act 2003 (NT)*.

including establishing a Victims' Register that allows victims to elect to receive information about an offender who has been imprisoned for a violent offence; and providing victims with an express statutory right to make written submissions to the Parole Board about an offender who is due to be considered for release on parole.²⁹⁹

Prison administration

New South Wales

In 2004, the NSW Government enacted laws to make it a correctional centre offence (and a criminal offence) for an inmate to possess a mobile phone, and to make a number of changes to the discipline system in correctional centres.³⁰⁰ Under the previous disciplinary system, the Governor could deal with minor correctional centre offences but was required to refer major correctional centre offences to a visiting magistrate. The new laws abolished the distinction between minor and offences. The Governor can now deal with all correctional centre offences but the Governor *may* refer a serious offence to a visiting magistrate. The new laws also increased the penalties that governors and visiting magistrates can impose for correctional centre offences.

Queensland

In 2003, Queensland enacted laws to make it clear that if a visitor is banned from a corrective services facility, the Chief Executive may order that the person also be refused access to other, or all, corrective services facilities.³⁰¹ In 2006, Queensland enacted a number of significant reforms following a review of the Act.³⁰² The changes included:

- A new system for classifying prisoners
- A new scheme for separating prisoners from the mainstream prisoner population.
- Clarifying search powers.
- Allowing for a criminal history check of anyone entering prison.
- Providing for video link contact between prisoners and families in remote areas.
- Prohibiting prisoners from accessing assisted reproductive technology.
- Prohibiting prisoners from running a business while in prison.
- Requiring prisoners to obtain permission if they want to change their name.

Victoria

In 2003, Victoria enacted some reforms to prison administration including creating an express power for corrections authorities to require prisoners to undergo tests for drugs and

²⁹⁹ *Victims of Crime Rights and Services Act 2006* (NT).

³⁰⁰ *Crimes (Administration of Sentences) Amendment Act 2004* (NSW).

³⁰¹ *Corrective Services Amendment Act 2003* (Qld).

³⁰² *Corrective Services Act 2006* (Qld).

alcohol.³⁰³ In 2004, new laws were enacted to give the Secretary to the Department of Justice the power to prevent prisoners from changing their names for improper purposes.³⁰⁴

Western Australia

In 2003, Western Australia enacted laws that contained two reforms relating to prison visitors.³⁰⁵ First, the new laws created a mechanism for banning certain persons from entering a prison for a set period of time, on certain grounds: eg if they had previously attempted to bring an unauthorised item into prison. The Government noted that all other Australian jurisdictions could ban persons from entering prisons.³⁰⁶ Secondly, the new laws provide for the taking of a visitor's biometric identification by means including palm-prints and eye-prints to achieve more accurate identification of visitors.

South Australia

In 2005, South Australia enacted legislation that made a number of changes to prison administration.³⁰⁷ Like Western Australia, one of these changes was allowing for persons to be banned from visiting prisons on certain grounds. Other changes included:

- Expanding the authority of the Chief Executive of the Department for Correctional Services in regard to a prisoner's leave of absence from prison.
- Requiring prisoners to have the permission of the manager of the correctional centre before engaging in private business activities from prison.
- Providing for random searches of prisoners to detect prohibited items.
- Providing for alcohol testing of prisoners in addition to drug testing.

Other sentence administration reforms

New South Wales

Damages for injuries while in prison

In 2004, the NSW Government enacted laws to limit the damages that are recoverable by prisoners who bring negligence claims against the State; and to allow the State to deduct from damages awards to prisoners amounts payable by the prisoners to the State under an order for restitution made under victims compensation laws.³⁰⁸ In 2005, the Government

³⁰³ *Corrections (Amendment) Act 2003* (Vic).

³⁰⁴ *Corrections and Major Crime (Investigative Powers) Acts (Amendment) Act 2004* (Vic).

³⁰⁵ *Prisons Amendment Act 2003* (WA).

³⁰⁶ Hon J McGinty MP, *Western Australia Parliamentary Debates*, 13/3/02, p8191ff.

³⁰⁷ *Correctional Services (Miscellaneous) Amendment Act 2005* (SA).

³⁰⁸ *Civil Liability (Offender Damages) Act 2004* (NSW).

enacted new laws to provide for awards of damages to prisoners to be paid into a trust fund and to enable victims to make civil claims against those funds.³⁰⁹

Victoria

Custodial community permits

In 2005, Victoria made some changes to the legislation governing the custodial community permit program following a Ministerial review of the program.³¹⁰ The legislation now distinguishes between the three types of permits: (1) corrections administration permit (eg to allow prisoner to visit a close friend who is seriously ill); (2) rehabilitation and transition permit (eg for physical fitness or education of prisoner, or to look for work); (3) fine default permit (to undertake community work to repay debt arising from unpaid fines).

Queensland

Chief Inspector of prisons and other matters

In 2006, Queensland enacted a legislative basis for the role of the Chief Inspector, which provides independent, external scrutiny regarding the treatment of prisoners.³¹¹ The new laws also made changes to enhance the official visitor scheme. On the other hand, the new laws prohibit judicial review of prison management decisions.

Victoria

Community Transitional Units

In 2005, Victoria enacted legislation to provide for the establishment of a 25-bed male Community Transitional Unit (CTU) in West Melbourne.³¹² The CTU is a supported, residential-style facility that fills the gap between open camp prisons and release into the community.³¹³ The Government stated that, “residential transition services units or pre-release centres, similar to the proposed Victorian CTU, have operated successfully interstate since early 1980, and internationally since early 1970”.³¹⁴

³⁰⁹ *Civil Liability Amendment (Offender Damages Trust Fund) Act 2005* (NSW). For a recent case in which a convicted offender has argued that he is not subject to these new laws, see ‘Paedophile fights to keep payment from victim’, *Sydney Morning Herald*, 17/8/06.

³¹⁰ *Corrections (Transition Centres and Custodial Community Permits) Act 2005* (Vic).

³¹¹ *Corrective Services Act 2006* (Qld).

³¹² *Corrections (Transition Centres and Custodial Community Permits) Act 2005* (Vic).

³¹³ Hon A Haermeyer MP, *Victoria Parliamentary Debates*, 8/12/04, p2140.

³¹⁴ Hon A Haermeyer MP, *Victoria Parliamentary Debates*, 8/12/04, p2140.

Australian Capital Territory

New sentence administration laws

In 2005, the Australian Capital Territory enacted new sentence administration laws, which complement new sentencing laws introduced earlier that year.³¹⁵

Common legislation in several States/Territories

Changes to interstate transfer of prisoners

In accordance with model provisions developed through the Standing Committee of Attorneys-General, NSW and other States have recently made changes to the national scheme for the interstate transfer of prisoners.³¹⁶ The changes include setting out a non-exhaustive list of matters that the Minister may consider when a prisoner makes a request to be transferred to, or from, another State or Territory. The reforms also allow the Minister to consider broad policy objectives when considering transfers of prisoners.

Interstate transfer of community based sentences

Since 1996, the States and Territories have been developing a scheme for the interstate transfer of community-based sentences. In 2003, the ACT enacted model legislation for this purpose.³¹⁷ In 2004, NSW implemented this model legislation.³¹⁸ The interstate transfer scheme is being trialled between NSW and the ACT. Following an evaluation of the scheme and further discussion, similar laws will be enacted in each State and Territory.

³¹⁵ *Crimes (Sentence Administration) Act 2005* (ACT). The new sentencing laws are referred to in Section 9 of this paper.

³¹⁶ *Prisoners (Interstate Transfer) Amendment Act 2005* (NSW); *Prisoners (Interstate Transfer) (Amendment) Act 2005* (Vic); *Prisoners (Interstate Transfer) Amendment Act 2005* (Tas).

³¹⁷ *Community Based Sentences (Transfer) Act 2003* (ACT).

³¹⁸ *Crimes (Interstate Transfer of Community Based Sentences) Act 2004* (NSW).

11. VICTIMS' RIGHTS

Introduction

Sections 9 and 10 of this paper have outlined changes to victims' rights in relation to sentencing and parole. Other relevant changes are outlined in this section. Note, however, that this paper does not refer to changes to victims' compensation laws.

New South Wales

In 2003, the NSW Government amended the Charter of Victims Rights to provide that a victim should be informed in a timely manner of certain aspects of the proceedings against the defendant regardless of whether the victim has requested this information.³¹⁹ The Charter was also amended to make it clear that, where an accused has been charged with a serious offence that involves sexual violence or results in actual bodily harm, mental illness or nervous shock, the victim should generally be consulted before any decision is made by the prosecution to modify or not to proceed with the charges. The 2003 reforms also provided for counselling benefits for the immediate family members of the victim to be available in cases where persons are killed by the use of a motor vehicle.³²⁰

Victoria

In 2005, Victoria enacted provisions to ensure that a victim who wants to observe the relevant criminal proceedings is not automatically excluded from the courtroom when the court makes an order for witnesses to leave the courtroom.³²¹ Courts are now required to consider the particular circumstances of the victim when making such an order.

Northern Territory

In 2006, the Northern Territory enacted major reforms to victims' rights, implementing recommendations made by the Crime Victims Advisory Committee.³²² These included:

- Establishing the Crime Victims Services Unit (CVSU), to provide financial and counselling assistance to victims and to perform other functions (see below).
- Providing legislative backing for the Minister to issue a Charter of Victims Rights setting out how victims should be treated in the justice system. Victims may contact the CVSU to seek advice in relation to breaches of the Charter and the CVSU can conduct investigations and report to the Minister.

³¹⁹ *Victims Legislation Amendment Act 2003* (NSW).

³²⁰ *Victims Legislation Amendment Act 2003* (NSW).

³²¹ *Sentencing (Further Amendment) Act 2005* (Vic).

³²² *Victims of Crime Rights and Services Act 2006* (NT).

- Establishing a Victims' Register that allows victims to elect to receive information about an offender who has been imprisoned for a violent offence, as the offender proceeds through the correctional system. The CVSU is to maintain the Register.

Western Australia

In 2004, Western Australia enacted laws to provide a legislative basis for the current information-sharing practices between the WA police service, the DPP and the Department of Justice - in particular the Department's Victims Support Service and Victims-offender Mediation Unit – to facilitate the provision of services to victims of crime.³²³

³²³ *Victims of Crime Amendment Act 2004 (WA)*.

12. POST-SENTENCE SANCTIONS ON CHILD SEX OFFENDERS

Registration and reporting

In 2000, the NSW Government established the first child sex offender registration scheme in Australia.³²⁴ The legislation requires child-sex offenders, and other serious offenders against children, to keep police informed of certain personal details for a period of time after their release into the community. It also requires the police to maintain a Child Protection Register in relation to these offenders.

The Australasian Police Ministers Council subsequently developed model legislation to implement across Australia. In September 2004, the National Child Offender Register was launched. Child offender registration legislation has now been passed in all States and Territories except South Australia, where a bill is currently before the Parliament.³²⁵ In 2004, NSW amended its legislation having regard to the model legislation.³²⁶

Supervision, restrictions and continued detention

In 2003, the Queensland Government enacted legislation that allows the Supreme Court, on application of the Attorney General, to make a supervision order or a continuing detention order in relation to a serious sex offender who is due to complete their sentence of imprisonment.³²⁷ The court may make either of these orders if it is satisfied to a high degree of probability that there is an unacceptable risk that the prisoner will commit a serious sexual offence if released from custody. Supervision orders require that the prisoner be under the supervision of a corrective services officer, and that the prisoner submit to other conditions such as notifying an officer in advance of changes to name, place of residence or employment. A continuing detention order is an order that the prisoner be detained in custody for an indefinite term. Detention orders must be reviewed at least every 12 months. In 2004, the High Court upheld the validity of this legislation.³²⁸

NSW and Western Australia recently enacted similar laws.³²⁹ Victoria has also enacted similar laws in relation to continued supervision but not detention.³³⁰ South Australia has

³²⁴ *Child Protection (Offenders Registration) Act 2000* (NSW).

³²⁵ *Child Protection (Offender Reporting) Act 2004* (Qld); *Sex Offenders Registration Act 2004* (Vic) and see also amendments by *Sex Offenders Registration (Amendment) Act 2005*; *Community Protection (Offender Reporting) Act 2004* (WA). *Community Protection (Offender Reporting) Act 2005* (Tas); *Crimes (Child Sex Offenders) Act 2005* (ACT); *Child Protection (Offender Reporting and Registration) Act 2004* (NT). The South Australian bill is the *Child Sex Offenders Registration Bill*.

³²⁶ *Child Protection (Offenders Registration) Amendment Act 2004* (NSW).

³²⁷ *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld).

³²⁸ *Fardon v Attorney General for the State of Queensland* (2004) 78 ALJR 1519.

³²⁹ *Crimes (Serious Sex Offenders) Act 2006* (NSW); *Dangerous Sexual Offenders Act 2005* (WA).

³³⁰ *Serious Sex Offenders Monitoring Act 2005* (Vic).

enacted laws in relation to continued detention but not supervision.³³¹

In 2004, the NSW Government also passed laws that allow a local court, on application by the Police Commissioner, to make a child protection prohibition order in relation to a child sex offender if satisfied that there is reasonable cause to believe that the person poses a risk to the lives or sexual safety of one or more children and that making an order will reduce the risk.³³² Such an order prohibits the person from engaging in certain conduct such as associating with specified persons and being in specified places.

Employment restrictions and Working with Children Check

Under laws enacted in NSW in 1998 it is an offence for a child sex offender to apply for, undertake or remain in child-related employment.³³³ The legislation operates together with the Working with Children Check, which requires employers to conduct criminal record and other background checks on applicants for paid, child-related employment.³³⁴ In recent years several other jurisdictions have introduced a Working with Children Check to prevent child-sex offenders and other unsuitable persons from working with children.³³⁵

Prohibitions on consorting and loitering

In 2004, Western Australia enacted laws that make it an offence for a child sex offender to:

- Habitually consort with another person whom the police have warned them is also a child sex offender;
- Be in or near a school, kindergarten, child-care centre or any other public place where children are regularly present, without reasonable excuse.³³⁶

Both offences carry a maximum penalty of two years imprisonment. In 1998, NSW enacted a similar offence of loitering near premises frequented by children.³³⁷

³³¹ *Statutes Amendment (Sentencing of Sex Offenders) Act 2005* (SA).

³³² *Child Protection (Offenders Prohibition) Orders Act 2004* (NSW).

³³³ *Child Protection (Prohibited Employment) Act 1998* (NSW).

³³⁴ *Commission for Children and Young People Act 1998* (NSW), Part 7.

³³⁵ *Commission for Children and Young People and Child Guardian Act 2000* (Qld). *Working with Children (Criminal Record Checking) Act 2004* (WA); *Working with Children Act 2005* (Vic). See also the Northern Territory's *Draft Care and Protection of Children and Young People Act*.

³³⁶ *Criminal Law Amendment (Simple Offences) Act 2004* (WA).

³³⁷ *Summary Offences Act 1988* (NSW), s 11G.

13. CONFISCATION OF CRIMINAL PROCEEDS

Introduction

In the 1980s and early 1990s, the Federal Government and the States and Territories enacted legislation providing for the confiscation of criminal proceeds upon conviction for certain serious offences.³³⁸ In 1990, NSW enacted laws establishing a *non-conviction* based, civil confiscatory regime in relation serious drug related activity (which was later extended to other serious criminal activity). In 1997, Victoria enacted similar laws.

In 1999, the Australian Law Reform Commission published its report on the Federal confiscation regime. It recommended several changes, including adding a non-conviction based regime. Since 1999, the Commonwealth and several States and Territories have replaced their laws and have included in the new laws provisions for non-conviction based confiscation.³³⁹ Developments in the period from 2003 to 2006 are outlined below.

New South Wales

There are two pieces of legislation in NSW relevant to confiscation of criminal proceeds. The *Confiscation of Proceeds of Crime Act 1989* allows courts to make orders for the confiscation of property from persons who have been convicted of a serious offence. The *Criminal Assets Recovery Act 1990* allows the Supreme Court to make orders for the confiscation of property in the absence of a conviction if the court is satisfied that it is more probable than not that the person has engaged in serious crime related activities. In 2005, the NSW Government enacted reforms to both of these Acts following a review of these laws by the Attorney General's Department and the Ministry of Police.

Changes to the *Confiscation of Proceeds of Crime Act 1989* included:

- Addressing concerns about the existing drug proceeds orders by aligning them more closely with pecuniary penalty orders sought in non-drug cases.
- Broadening the definition of tainted property to include property substantially derived or realised as a result of a serious offence or property substantially derived or realised from property used to commit such an offence.
- Providing for the issuing of freezing notices in order to create a more efficient system for the seizure, restraint, management and disposal of tainted property.

³³⁸ For further reading on the history of this legislation, see Australian Law Reform Commission, *Confiscation that Counts: A review of the Proceeds of Crime Act 1987*, Report No. 87, 1999, p20-23.

³³⁹ *Proceeds of Crime Act 2002* (Cth); *Criminal Property Confiscation Act 2000* (WA); *Criminal Proceeds Confiscation Act 2002* (Qld); *Criminal Property Forfeiture Act 2002* (NT); *Confiscation of Criminal Proceeds Act 2003* (ACT); *Criminal Assets Confiscation Act 2005* (SA).

- Changes to ensure NSW can recognise and enforce interstate confiscation orders.³⁴⁰

Changes to the *Criminal Assets Recovery Act 1990* included:

- Expanding the definition of serious crime related activities.
- Providing for assets held under a fraudulently acquired identity to be forfeited unless the holder can prove they were not obtained through illegal activity.
- Providing that proceeds of crime that are used to pay for legitimate activities or services for families and friends can be confiscated.
- Providing that loan repayments made with the proceeds of crime can be confiscated.
- Providing that if a person does not disclose all of their assets when settling confiscation matters out of court, non-disclosed assets can be confiscated.
- Extending the Act to offences committed outside NSW by persons living in NSW; and providing for the recognition of interstate forfeiture orders.³⁴¹

Victoria

In 2003, Victoria enacted a number of reforms to strengthen the provisions in the *Confiscation Act 1997*. The changes included:

- Allowing automatic forfeiture upon conviction to be available in relation to a wider range of drug trafficking and dishonesty offences.
- A new process of tainted property substitution: if a court is satisfied that property used in the commission of a crime is not available for forfeiture, the court may order that any property of the same nature or description in which the offender has an interest may be substituted for the actual tainted property. For example, an offender's car can be substituted for a rental car used to commit an offence.
- Allowing police to apply for monitoring orders in relation to accounts held with the TAB or a casino in addition to accounts held with financial institutions.
- Allowing police to issue information notices to require financial institutions to provide information about whether a person who is the subject of a confiscation investigation holds an account with the institution, and if so, the account balance.

³⁴⁰ *Confiscation of Proceeds of Crime Amendment Act 2005* (NSW).

³⁴¹ *Criminal Assets Recovery Amendment Act 2005* (NSW).

- Allowing police to apply for a court order to freeze funds in an account before a restraining order is obtained (in order to allow the police to act quickly to prevent a suspect learning about a police investigation and transferring money overseas).
- Requiring a person served with a restraining order to provide police with details of every other person known to have an interest in the restrained property.
- Allowing police to obtain a court order for the seizure of tainted or forfeited property from a public place (eg a car parked on the street).³⁴²

In 2004, Victoria made changes in relation to the civil confiscation regime including broadening the scheme so that applies to a much wider range of serious crimes and lowering the threshold of matters that the State must prove in order to confiscate assets.³⁴³

Other jurisdictions

In 2004, Queensland enacted provisions to prevent offenders from profiting from their crime by selling their stories to the media.³⁴⁴ Provisions to this effect already existed in NSW.³⁴⁵ Western Australia made changes to ensure that offenders whose assets have been confiscated do not, as a result, receive lighter sentences.³⁴⁶ South Australia and the ACT replaced their legislation and included civil confiscation measures.³⁴⁷ The South Australian Attorney General, Hon M Atkinson MP, said that the changes brought the confiscation laws in South Australia “into line with that of most jurisdictions in Australia”.³⁴⁸

³⁴² *Confiscation (Amendment) Act 2003* (Vic).

³⁴³ *Major Crime Legislation (Seizure of Assets) Act 2004* (Vic).

³⁴⁴ *Justice and Other Legislation Amendment Act 2004* (Qld).

³⁴⁵ See *Confiscation of Proceeds of Crime Act 1989* (NSW), s 4 (defn of tainted property).

³⁴⁶ *Criminal Law Amendment (Criminal Property) Act 2004* (WA).

³⁴⁷ *Criminal Assets Confiscation Act 2005* (SA); *Confiscation of Criminal Proceeds Act 2003* (ACT).

³⁴⁸ Hon M Atkinson MP, *South Australia Parliamentary Debates*, 10/11/04, p845.

14. DEFENDANTS WITH A MENTAL ILLNESS

New South Wales

In 2003, NSW enacted provisions to clarify certain aspects of criminal procedure in relation to persons who have a mental illness.³⁴⁹ One of the amendments confirmed that after a finding of not guilty by reason of mental illness and pending the court's final orders, the court may order the person's detention or release on conditions that the court sees fit.

In 2005, NSW enacted a number of reforms to criminal procedure in relation to persons who have a mental illness or an intellectual disability.³⁵⁰ The changes were largely based on recommendations by the NSW Law Reform Commission in its 1996 report concerning people with an intellectual disability in the criminal justice system, which was considered by an inter-departmental committee.³⁵¹ Changes made by the new laws included:

- Removing the Attorney General from the process of initiating hearings to determine a person's fitness to be tried and special hearings.
- Requiring the question of a person's fitness to be tried be determined by a judge rather than by a jury.
- Requiring courts to not release into the community a person found not guilty by reason of mental illness unless the court is satisfied that the safety of the person or any member of the public will not be seriously endangered.

Victoria

Victoria made amendments in 2005 to improve the operation of orders that can be made for persons with a mental illness who have been found guilty of an offence: hospital orders, hospital security orders and restricted community treatment orders.³⁵² These changes arose from the Vincent Review, which also led to a number of changes being made in 2002.

Tasmania

In 2005, Tasmania enacted laws to enable offenders with a serious mental illness to be detained in a secure mental health unit outside the prison system.³⁵³

³⁴⁹ *Crimes Legislation Amendment Act 2003* (NSW).

³⁵⁰ *Mental Health (Criminal Procedure) Amendment Act 2005* (NSW).

³⁵¹ Hon A Megarrity MP, *NSW Parliamentary Debates*, 8/11/05, p19214.

³⁵² *Sentencing and Mental Health Acts (Amendment) Act 2005* (Vic).

³⁵³ *Mental Health Amendment (Secure Mental Health Unit) Act 2005* (Tas).

When introducing the legislation, the Government stated that:

The detention of forensic patients and prisoners who have a serious mental illness within a custodial environment is contrary to contemporary trends and best practices. Currently, New South Wales and Tasmania are the only States in Australia where forensic mental health facilities are located inside the prison system and administered along custodial lines.³⁵⁴

A secure mental health unit adjacent to the Risdon prison complex was being constructed.

Northern Territory

In 2003, the Northern Territory made a few changes to new laws that had been enacted in 2002 relating to offenders who have a mental illness.³⁵⁵ The main change under the 2003 amendments was to ensure that the court takes into account the impact of the offending conduct on the victim when the court is reviewing a supervision order.

Australian Capital Territory

In 2004, the ACT made changes in relation to persons charged with a serious offence who are found to be unfit to plead.³⁵⁶ Under the new laws, if such persons are subject to a non-acquittal after a special hearing, the Mental Health Tribunal is required to review the person's fitness to plead at least once every 12 months until the person is found fit to plead. In 2005, the ACT enacted further legislation to provide that the question of whether a person is unfit to be tried is to be determined by a court rather than by the tribunal.³⁵⁷ The tribunal retains the power to review a person's fitness to be tried in certain circumstances.

In May 2005, the Government announced reforms for mental health patients who come into contact with the criminal justice system.³⁵⁸ The reforms arose out of an interdepartmental review, which was set up in February 2004. The reforms involve six key initiatives, the first of which involves clarification of the definitions that apply to forensic mental health offenders and alleged offenders.³⁵⁹ In 2006, the Government enacted laws to implement this first initiative.³⁶⁰ The 2006 laws also commence the provisions of the Criminal Code 2002 (ACT) relating to lack of capacity-mental impairment and criminal responsibility.

³⁵⁴ Hon D Llewellyn MP, *Tasmania Parliamentary Debates*, 8/11/05.

³⁵⁵ *Criminal Code Amendment Act 2003* (NT).

³⁵⁶ *Crimes Amendment Act 2004* (ACT).

³⁵⁷ *Crimes Amendment Act 2005* (ACT).

³⁵⁸ Hon J Stanhope MP, *Australian Capital Territory Parliamentary Debates*, 16/2/06, p187-188.

³⁵⁹ Hon J Stanhope MP, *Australian Capital Territory Parliamentary Debates*, 16/2/06, p188.

³⁶⁰ *Criminal Code (Mental Impairment) Amendment Act 2006* (ACT).

15. JUVENILE JUSTICE

New South Wales

In 2004, the NSW Government enacted laws to allow children who are arrested for breaching a bail condition to be detained in a juvenile detention centre (rather than in police cells) until they are taken before a magistrate.³⁶¹

Following a number of problems at the Kariiong Juvenile Justice Centre, in November 2004, the NSW Government transferred responsibility for the management of the Kariiong centre from the Department of Juvenile Justice to the Department of Corrective Services. In December 2004, it enacted legislation to implement this transfer.³⁶² As the brief summary below shows, the legislation also has broader application:

- It provides for the establishment of “juvenile correctional centres”, which are to be administered by the Department of Corrective Services. The Kariiong facility is the only centre that has been proclaimed as a juvenile correctional centre.
- It also provides for transfers of juvenile detainees/inmates between detention centres and juvenile correctional centres and between juvenile correctional centres and adult correctional centres. In brief, transfers ‘up’ may be made as follows:
 - The Director General of the Department of Juvenile Justice may, on certain grounds, order the transfer of a detainee who is of or above the age of 16 from a detention centre to a juvenile correctional centre.
 - The Minister for Justice may, on certain grounds, order the transfer of a juvenile inmate (inmates of or above the age of 16) from a juvenile correctional centre to an adult correctional centre if recommended by the Commissioner for Corrective Services or – in the case of inmates under the age of 18 – by the Serious Offenders Review Council.³⁶³

In 2006, the Government enacted new laws containing a range of other measures in relation to the management of detention centres.³⁶⁴ These measures included:

- Allowing officers from the Department of Corrective Services to assist with quelling serious disturbances at juvenile detention centres upon request from the Director-General of the Department of Juvenile Justice.

³⁶¹ *Children (Detention Centres) Amendment Act 2004* (NSW).

³⁶² *Juvenile Offenders Legislation Amendment Act 2004* (NSW).

³⁶³ *Juvenile Offenders Legislation Amendment Act 2004* (NSW). This summary of the Act was taken from Legislative Council Select Committee on Juvenile Offenders, *Report on the Inquiry into Juvenile Offenders*, NSW Parliament, July 2005, p 36-37.

³⁶⁴ *Children (Detention Centres) Amendment Act 2006* (NSW).

- Providing a legislative basis for urinalysis testing of detainees for drugs and alcohol.
- Extending the period of time for which detainees can be isolated with respect to serious offences – from 3 hours to 12 hours for detainees under the age of 16 and from 12 hours to 24 hours for detainees aged 16 and over.
- Removing the upper limit on segregation periods if the Director-General of the Department of Juvenile Justice so approves.
- Allowing for the transfer of a detainee aged between 18 and 21 from a juvenile detention centre to an adult correctional centre if the Children's Court authorises the transfer or if the detainee requests the transfer.

Victoria

In 2004, Victoria enacted laws to increase the age jurisdiction of the criminal division of the Children's Court by one year to 18 years.³⁶⁵

In 2004, Victoria enacted legislation to provide for the establishment of a Children's Koori Court.³⁶⁶ The Children's Koori Court opened in September 2005 as a division of the Children's Court in Melbourne.³⁶⁷ It can hear sentencing matters for indigenous offenders under the age of 18 who have pleaded guilty or been found guilty of an offence. The Government has described the Children's Koori Court as follows (in part):

In essence, the children's Koori court is an alternative way of administering sentences so that court processes are more culturally accessible as well as acceptable and comprehensible to the indigenous (Koori) community.³⁶⁸

The introduction of a Children's Koori Court was noted as being an Australian first.³⁶⁹

In 2005, the Government enacted a range of reforms including:

- Removing the upper age limits on undertakings and bonds and increasing the upper operational age limit for three supervisory orders.
- Increasing the age limit for imposing a sentence of detention in a youth training centre from 18 years of age to 21 years of age.

³⁶⁵ *Children and Young Persons (Age Jurisdiction) Act 2004* (Vic).

³⁶⁶ *Children and Young Persons (Koori Court) Act 2004* (Vic).

³⁶⁷ Hon Rob Hulls MP, 'First Children's Koori Court opens in Melbourne', *Media Release*, 9/09/05.

³⁶⁸ Hon S Garbutt MP, *Victoria Parliamentary Debates*, 3/11/04, p1198.

³⁶⁹ Hon Rob Hulls MP, 'First Children's Koori Court opens in Melbourne', *Media Release*, 9/09/05.

- Introducing a new process through which the court can handle children's unpaid infringement notices.
- Making a number of miscellaneous changes to improve the operation of the criminal division of the Children's Court and the juvenile justice system.³⁷⁰

Later in 2005, as part of the new *Children, Youth and Families Act 2005*, the Government enacted a legislative basis for group conferencing as a pre-sentence diversionary option for suitable young people who are facing a probation or youth supervision order.

Western Australia

Under laws enacted in 2003, the Government extended the jurisdiction of the Inspector of Custodial Services to juvenile detention centres.³⁷¹ The Office of the Inspector was set up in 2000 to provide an independent assessment of prisons and other custodial services.

In 2004, the Government made a number of changes to the *Young Offenders Act 1994*, as part of a reform package in relation to juvenile justice.³⁷² The changes included:

- Allowing the use of curfews and electronic monitoring in relation to serious and repeat offenders who are subject the most intensive forms of community order available, if approved by the court or by the Supervised Release Review Board.
- Allowing the Department of Juvenile Justice to require a young person on a community service order or in detention to wear a device for monitoring illicit drug use (this technology is not currently available but may be in the future).
- Allowing Aboriginal elders, wardens or other suitable community members to substitute for juvenile justice or police officers on juvenile justice teams so that team meetings can more easily be arranged in remote areas.
- Allowing the Department of Juvenile Justice to enter into supervision agreements with Aboriginal communities to enable responsible members of communities to be appointed to supervise young people on community orders.
- Allowing information about young offenders to be shared with the Department for Community Development and other government agencies if this will promote child protection (ie prevent them from being abused).
- Allowing sufficient identifying information about a young offender to be disclosed to victims for the purpose of victims taking civil action against the offender.

³⁷⁰ *Children and Young Persons (Miscellaneous Amendments) Act 2005* (Vic).

³⁷¹ *Inspector of Custodial Services Act 2003* (WA).

³⁷² *Young Offenders Amendment Act 2004* (WA).

Northern Territory

In 2005, the Government enacted the *Youth Justice Act 2005*, which replaces the *Juvenile Justice Act*. The Act arose out of a lengthy process of consultation with a wide range of government and community stakeholders.³⁷³ Some of the key new initiatives include:

- The inclusion of overarching objectives and guiding principles based on national standards and international conventions relating to young offenders. These principles must be taken into account when administering the Act.
- An expansion of the pre-court diversion scheme including a presumption in favour of diversion in all cases except those involving serious offences or those involving offending by young people with a history of offending or previous diversions.
- A requirement for the police, courts and detention centre staff to explain to young offenders the processes they are subject to and their rights and obligations.
- The creation of a Youth Justice Advisory Committee to allow for a greater level of community input into the youth justice system.
- A new register of appropriate support persons who can act as support persons (in relation to police investigations) when a young person's chosen support person cannot be contacted or cannot attend within a reasonable period of time.
- Provision for greater victim participation including allowing a court to adjourn sentencing proceedings and to order the young person to participate in a pre-sentencing conference that may involve victims.
- A greater range of sentencing options including provision for supervised bail, more comprehensive provisions for periodic detention, consolidated probation and good behaviour orders, and strictly monitored home detention.

Australian Capital Territory

In 2004, the ACT enacted laws to encourage the use of restorative justice conferences by establishing a dedicated restorative justice unit, which functions as a central point for referral, assessment and delivery of restorative justice conferences.³⁷⁴

³⁷³ Hon C Toyne MP, *Northern Territory Assembly Debates*, 35/5/05.

³⁷⁴ *Crimes (Restorative Justice) Act 2004* (ACT).

16. CONCLUSION

Ten very notable developments over the period under review were:

1. Federal and State/Territory anti-terrorism laws.
2. Various legislative measures to combat organised and multi-jurisdictional crime including enactment of model laws developed by the Model Criminal Code Officers Committee: eg, model laws on cross-border investigative powers.
3. Significant reforms to domestic violence laws made or proposed in a number of jurisdictions, including recent proposals in NSW.
4. Reforms in relation child-sex offences and child pornography offences, as well as new post-sentence sanctions on child-sex offenders.
5. Measures to provide greater protection for victims in sexual assault trials.
6. Legislation in several jurisdictions that allows courts to refer defendants and offenders to intervention programs as a condition of bail or as part of the sentencing process: eg Drug Courts and the new Alcohol Court in the Northern Territory.
7. In relation to Aboriginal offenders – the establishment of a Children’s Koori Court in Victoria and the West Australian Law Reform Commission’s discussion paper containing proposals on Aboriginal customary law.
8. The abolition of prison sentences of 6 months or less in Western Australia.
9. Greater recognition of the rights of victims in relation to sentencing and parole decisions in several jurisdictions.
10. Significant reforms to juvenile justice in a few jurisdictions, including laws enacted in NSW to provide for the management of certain juvenile detainees by the Department of Corrective Services; and new juvenile justice laws in the Northern Territory, which include a statement of guiding principles based on international standards and an expansion of the pre-court diversion scheme.

17. LIST OF LEGISLATION

New South Wales

Australian Crime Commission (New South Wales) Act 2003
Bail Amendment (Firearms and Property) Offences Act 2003
Bail Amendment (Terrorism) Act 2004
Bail Amendment Act 2003
Child Protection (Offenders Prohibition Orders) Act 2004
Child Protection (Offenders Registration) Amendment Act 2004
Children (Detention Centres) Amendment Act 2004
Children (Detention Centres) Amendment Act 2006
Civil Liability Amendment (Offender Damages Trust Fund) Act 2005
Civil Liability Amendment (Offender Damages) Act 2004
Compulsory Drug Treatment Correctional Centre Act 2004
Confiscation of Proceeds of Crime Amendment Act 2005
Crimes (Administration of Sentences) Amendment (Parole) Act 2004
Crimes (Administration of Sentences) Amendment Act 2004
Crimes (Interstate Transfer of Community Based Sentences) Act 2004
Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Act 2005
Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Act 2004
Crimes (Sentencing Procedure) Amendment Act 2006
Crimes (Serious Sex Offenders) Act 2006
Crimes Amendment (Child Neglect) Act 2004
Crimes Amendment (Child Pornography) Act 2004
Crimes Amendment (Grievous Bodily Harm) Act 2005
Crimes Amendment (Organised Car and Boat Theft) Act 2006
Crimes Amendment (Road Accidents) (Brendan's Law) Act 2005
Crimes Amendment (Sexual Offences) Act 2003
Crimes Legislation Amendment (Parole) Act 2003
Crimes Legislation Amendment (Property Identification) Act 2003
Crimes Legislation Amendment (Terrorism) Act 2004
Crimes Legislation Amendment Act 2003
Crimes Legislation Amendment Act 2004
Crimes Legislation Further Amendment Act 2003
Criminal Assets Recovery Amendment Act 2005
Criminal Procedure Amendment (Evidence) Act 2005
Criminal Procedure Amendment (Sexual Offence Case Management) Act 2005
Criminal Procedure Amendment (Sexual Offence Evidence) Act 2003
Criminal Procedure Amendment (Sexual Offence Evidence) Act 2004
Criminal Procedure Further Amendment (Evidence) Act 2005
Drug Misuse and Trafficking Amendment Act 2006
Firearms Amendment (Prohibited Pistols) Act 2003
Firearms and Crimes Legislation Amendment (Public Safety) Act 2003
Freedom of Information (Terrorism and Criminal Intelligence) Act 2004
Jury Amendment Act 2004
Jury Amendments (Verdicts) Act 2006

Juvenile Offenders Legislation Amendment Act 2004
Law Enforcement (Controlled Operations) Amendment Act 2006
Law Enforcement (Powers and Responsibilities) Amendment (In-Car Video Systems) Act 2004
Law Enforcement Legislation Amendment (Public Safety) Act 2005
Mental Health (Criminal Procedure) Amendment Act 2005
Police Powers (Drug Detection in Border Areas Trial) Act 2003
Prisoners (Interstate Transfer) Amendment Act 2005
Summary Offences Amendment (Display of Paint Cans) Act 2006
Terrorism (Police Powers) Amendment (Preventative Detention) Act 2005
Terrorism Legislation Amendment (Warrants) Act 2005
Victims Legislation Amendment Act 2003

Queensland

Australian Crime Commission (Queensland) Act 2003
Chemical, Biological and Radiological Emergency Powers Amendment Act 2003
Child Protection (Offender Reporting) Act 2004
Corrective Services Amendment Act 2003
Corrective Services Act 2006
Criminal Code (Child Pornography and Abuse) Amendment Act 2005
Cross-Border Law Enforcement Legislation Amendment Act 2005
Dangerous Prisoners (Sexual Offenders) Act 2003
Drug Legislation Amendment Act 2006
Evidence (Protection of Children) Amendment Act 2003
Justice and Other Legislation Amendment Act 2004
Justice and Other Legislation Amendment Act 2005
Police and Other Legislation Amendment Act 2005
Police Powers and Responsibilities (Drug Detection Dogs) Amendment Act 2005
Police Powers and Responsibilities (Forensic Procedures) Amendment Act 2003
Police Powers and Responsibilities and Other Legislation Amendment Act 2003
Police Powers and Responsibilities and Other Acts Amendment Act 2006
Sexual Offences (Protection of Children) Amendment Act 2003
Summary Offences Act 2005
Terrorism (Community Safety) Amendment Act 2004
Terrorism (Preventative Detention) Act 2005
Weapons (Handguns and Trafficking) Amendment Act 2003
Weapons and Another Act Amendment Act 2003

Victoria

Ambulance Services (Amendment) Act 2004
Australian Crime Commission (State Provisions) Act 2003
Children and Young Persons (Age Jurisdiction) Act 2004
Children and Young Persons (Koori Court) Act 2004
Children and Young Persons (Miscellaneous Amendments) Act 2005
Confiscation (Amendment) Act 2003

Control of Weapons and Firearms Acts (Search Powers) Act 2003
Corrections (Further Amendment) Act 2004
Corrections Amendment Act 2003
Corrections and Major Crime (Investigative Powers) Acts (Amendment) Act 2004
Corrections and Sentencing (Home Detention) Act 2003
Courts Legislation (Miscellaneous Amendments) Act 2005
Crimes (Amendment) Act 2004
Crimes (Assumed Identities) Act 2004
Crimes (Controlled Operations) Act 2004
Crimes (Dangerous Driving) Act 2004
Crimes (Family Violence) (Holding Powers) Act 2006
Crimes (Homicide) Act 2005
Crimes (Money Laundering) Act 2003
Crimes (Property Damage and Computer Offences) Act 2003
Crimes (Sexual Offences) Act 2006
Crimes (Stalking) Act 2003
Crimes (Transition Centres and Community Custodial Permits) Act 2005
Drugs, Poisons and Controlled Substances (Prohibition of Sale of Cocaine Kits) Act 2006
Evidence (Witness Identity Protection) Act 2004
Firearms (Amendment) Act 2003
Firearms (Further Amendment) Act 2005
Firearms (Trafficking and Handgun Control) Act 2003
Justice Legislation (Further Miscellaneous Amendments) Act 2006
Justice Legislation (Sexual Offences and Bail) Act 2004
Magistrate's Court (Family Violence) Act 2004
Major Crime (Investigative Powers) Act 2004
Major Crime Legislation (Seizure of Assets) Act 2004
Prisoners (Interstate Transfer) (Amendment) Act 2005
Road Safety (Drug Driving) Act 2003
Road Safety (Drugs) Act 2006
Sentencing and Mental Health Acts (Amendment) Act 2005
Sentencing (Amendment) Act 2003
Sentencing (Further Amendment) Act 2005
Serious Sex Offenders Monitoring Act 2005
Sex Offenders Registration (Amendment) Act 2005
Sex Offenders Registration Act 2004
Surveillance Devices (Amendment) Act 2004
Terrorism (Commonwealth Powers) Act 2003
Terrorism (Community Protection) (Amendment) Act 2006
Terrorism (Community Protection) Act 2003

Western Australia

Acts Amendment (Family and Domestic Violence) Act 2003
Australian Crime Commission (Western Australia) Act 2003
Cannabis Control Act 2003
Community Protection (Offender Reporting) Act 2003

Criminal Code (Racial Vilification) Act 2004
Criminal Code Amendment (Cyber Predators) Act 2006
Criminal Code Amendment Act 2004
Criminal Law Amendment (Criminal Property) Act 2004
Criminal Law Amendment (Sexual Assault and Other Matters) Act 2004
Criminal Law Amendment (Simple Offences) Act 2004
Criminal Procedure Act 2004
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004
Dangerous Sexual Offenders Act 2006
Emergency Management Act 2005
Firearms Amendment Act 2004
Inspector of Custodial Services Act 2003
Misuse of Drugs Amendment Act 2004
Prisons Amendment Act 2003
Road Traffic Amendment (Dangerous Driving) Act 2004
Road Traffic Amendment (Vehicle Impounding and Confiscation of Vehicles) Act 2004
Sentence Administration Act 2003
Sentencing Legislation Amendment Act 2004
Sentencing Legislation Amendment and Repeal Act 2003
Terrorism (Extraordinary Powers) Act 2005
Victims of Crime Amendment Act 2004
Young Offenders Act 2004

South Australia

Australian Crime Commission (South Australia) Act 2004
Controlled Substances (Serious Drug Offences) Act 2005
Correctional Services (Miscellaneous) Amendment Act 2005
Correctional Services (Parole) Amendment Act 2005
Criminal Assets Confiscation Act 2005
Criminal Law (Sentencing) (Sentencing Guidelines) Amendment Act 2003
Criminal Law (Sentencing) (Serious Repeat Offenders) Amendment Act 2003
Criminal Law Consolidation (Abolition of the Drunk's Defence) Act 2004
Criminal Law Consolidation (Child Pornography) Amendment Act 2004
Criminal Law Consolidation (Criminal Neglect) Amendment Act 2005
Criminal Law Consolidation (Dangerous Driving) Amendment Act 2006
Criminal Law Consolidation (Identity Theft) Amendment Act 2003
Criminal Law Consolidation (Instruments of Crime) Amendment Act 2005
Criminal Law Consolidation (Self Defence) Amendment Act 2003
Criminal Law Consolidation (Throwing Objects at Moving Vehicles) Amendment Act 2006
Firearms (COAG Agreement) Amendment Act 2003
Road Traffic (Drug Driving) Amendment Act 2005
Statutes Amendment (Anti Fortification) Act 2003
Statutes Amendment (Computer Offences) Act 2004
Statutes Amendment (Criminal Procedure) Act 2005
Statutes Amendment (Intervention Programs and Sentencing Procedures) Act 2005

Statutes Amendment (Misuse of Motor Vehicles) Act 2004
Statutes Amendment (Sentencing of Sex Offenders) Act 2005
Statutes Amendment (Vehicle and Vessel Offences) Act 2005
Statutes Amendment and Repeal (Aggravated Offences) Act 2005
Summary Offences (Vehicle Immobilisation Devices) Amendment Act 2003
Terrorism (Police Powers) Act 2005
Terrorism (Preventative Detention) Act 2005

Tasmania

Australian Crime Commission (Tasmania) Act 2004
Community Protection (Offender Reporting) Act 2005
Criminal Code Amendment (Abolishment of Defence of Provocation) Act 2003
Criminal Code Amendment (Child Exploitation) Act 2005
Criminal Code Amendment (Consent) Act 2004
Criminal Code Amendment (Stalking) Act 2004
Family Violence Act 2004
Firearms Amendment Act 2003
Forensic Procedures Amendment Act 2003
Justice and Related Legislation (Miscellaneous Amendments) Act 2005
Mental Health Amendment (Secure Mental Health Unit) Act 2005
Misuse of Drugs Amendment Act 2004
Misuse of Drugs Amendment Act 2005
Police Offences Amendment Act 2003
Police Offences Amendment Act 2004
Police Powers (Public Safety) Act 2005
Prisoners (Interstate Transfer) Amendment Act 2005
Road Safety (Alcohol and Drugs) Amendment Act 2005
Sex Industry Offences Act 2005
Terrorism (Preventative Detention) Act 2005

Northern Territory

Alcohol Court Act 2006
Australian Crime Commission (Northern Territory) Act 2005
Bail Amendment (Repeat Offenders) Act 2005
Child Protection (Offender Reporting and Registration) Act 2004
Criminal Code Amendment (Child Abuse Material) Act 2004
Criminal Code Amendment (Money Laundering) Act 2004
Criminal Code Amendment Act 2003
Criminal Code Amendment Act 2005
Domestic Violence Amendment (Police Orders) Act 2005
Evidence Reform (Children and Sexual Offences) Act 2004
Firearms Amendment Act 2003
Firearms Amendment Act 2004
Misuse of Drugs Amendment Act 2005
Police Administration Amendment (Forensic Procedures) Act 2004

Sentencing (Crime of Murder) and Parole Reform Act 2003
Sentencing Amendment (Aboriginal Customary Law) Act 2004
Terrorism (Emergency Powers) Act 2003
Terrorism (Emergency Powers) Amendment Act 2006
Terrorism (Northern Territory) Request Act 2003
Victims of Crime Assistance Act 2006
Victims of Crime Rights and Services Act 2006
Volatile Substance Abuse Prevention Act 2005
Youth Justice Act 2005

Australian Capital Territory

Australian Crime Commission (ACT) Act 2003
Bail Amendment Act 2004
Community Based Sentences (Transfer) Act 2003
Confiscation of Criminal Assets Act 2003
Crimes (Child Sex Offenders) Act 2005
Crimes (Offences Against Pregnant Women) Amendment Act 2006
Crimes (Restorative Justice) Act 2004
Crimes (Sentence Administration) Act 2005
Crimes Amendment Act 2004
Crimes Amendment Act 2005
Crimes (Sentencing) Act 2005
Criminal Code (Administration of Justice Offences) Amendment Act 2005
Criminal Code (Mental Impairment) Amendment Act 2006
Criminal Code (Serious Drug Offences) Act 2004
Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004
Domestic Violence and Protection Orders Amendment Act 2005
Firearms (Prohibited Pistols) Amendment Act 2003
Terrorism (Extraordinary Temporary Powers) Act 2006

Recent Research Service Publications



*To anticipate and fulfil the information needs of
Members of Parliament and the Parliamentary
Institution.*

[Library Mission Statement]

Note: For a complete listing of all Research Service Publications
contact the Research Service on 9230 2093. The complete list
is also on the Internet at:

<http://www.parliament.nsw.gov.au/prod/web/PHWebContent.nsf/PHPages/LibraryPublist>

(A) BACKGROUND PAPERS

<i>Principles, Personalities, Politics: Parliamentary Privilege Cases in NSW</i> by Gareth Griffith	1/04
<i>Indigenous Issues in NSW</i> by Talina Drabsch	2/04
<i>Privatisation of Prisons</i> by Lenny Roth	3/04
<i>2004 NSW Redistribution: Analysis of Draft Boundaries</i> by Antony Green	4/04
<i>2004 NSW Redistribution: Analysis of Final Boundaries</i> by Antony Green	1/05
<i>Children's Rights in NSW</i> by Lenny Roth	2/05
<i>NSW By-elections, 1965-2005</i> by Antony Green	3/05
<i>The Science of Climate Change</i> by Stewart Smith	1/06
<i>NSW State Electoral Districts Ranked by 2001 Census Characteristics</i> by Talina Drabsch	2/06

(B) BRIEFING PAPERS

<i>Native Vegetation: Recent Developments</i> by Stewart Smith	1/03
<i>Arson</i> by Talina Drabsch	2/03
<i>Rural Sector: Agriculture to Agribusiness</i> by John Wilkinson	3/03
<i>A Suburb Too Far? Urban Consolidation in Sydney</i> by Jackie Ohlin	4/03
<i>Population Growth: Implications for Australia and Sydney</i> by Stewart Smith	5/03
<i>Law and Order Legislation in the Australian States and Territories, 1999-2002: a Comparative Survey</i> by Talina Drabsch	6/03
<i>Young Offenders and Diversionary Options</i> by Rowena Johns	7/03
<i>Fraud and Identity Theft</i> by Roza Lozusic	8/03
<i>Women in Parliament: the Current Situation</i> by Talina Drabsch	9/03
<i>Crimes Amendment (Sexual Offences) Bill 2003</i> by Talina Drabsch	10/03
<i>The Consumer, Trader and Tenancy Tribunal</i> by Rowena Johns	11/03
<i>Urban Regional Development</i> by Stewart Smith	12/03
<i>Regional Development Outside Sydney</i> by John Wilkinson	13/03
<i>The Control of Prostitution: An Update</i> by Stewart Smith	14/03
<i>"X" Rated Films and the Regulation of Sexually Explicit Material</i> by Gareth Griffith	15/03
<i>Double Jeopardy</i> by Rowena Johns	16/03
<i>Expulsion of Members of the NSW Parliament</i> by Gareth Griffith	17/03
<i>Cross-examination and Sexual Offence Complaints</i> by Talina Drabsch	18/03
<i>Genetically Modified Crops</i> by Stewart Smith	19/03
<i>Child Sexual Offences: An Update on Initiatives in the Criminal Justice System</i> by Rowena Johns	20/03
<i>Horizontal Fiscal Equalisation</i> by John Wilkinson	21/03
<i>Infrastructure</i> by Stewart Smith	1/04
<i>Medical Negligence: an update</i> by Talina Drabsch	2/04
<i>Firearms Restrictions: Recent Developments</i> by Rowena Johns	3/04
<i>The Future of Water Supply</i> by Stewart Smith	4/04
<i>Plastic Bags</i> by Stewart Smith	5/04
<i>Tourism in NSW: after September 11</i> by John Wilkinson	6/04
<i>Drug Offences: An Update on Crime Trends, Diversionary Programs and Drug Prisons</i> by Rowena Johns	7/04
<i>Local Development Assessment in NSW</i> by Stewart Smith	8/04
<i>Indigenous Australians and Land In NSW</i> by Talina Drabsch	9/04
<i>Medical Cannabis Programs: a review of selected jurisdictions</i> by Rowena Johns	10/04
<i>NSW Fishing Industry: changes and challenges in the twenty-first century</i>	

by John Wilkinson	11/04
<i>Ageing in Australia</i> by Talina Drabsch	12/04
<i>Workplace Surveillance</i> by Lenny Roth	13/04
<i>Current Issues in Transport Policy</i> by Stewart Smith	14/04
<i>Drink Driving and Drug Driving</i> by Rowena Johns	15/04
<i>Tobacco Control in NSW</i> by Talina Drabsch	1/05
<i>Energy Futures for NSW</i> by Stewart Smith	2/05
<i>Small Business in NSW</i> by John Wilkinson	3/05
<i>Trial by Jury: Recent Developments</i> by Rowena Johns	4/05
<i>Land Tax: an Update</i> by Stewart Smith	5/05
<i>No Fault Compensation</i> by Talina Drabsch	6/05
<i>Waste Management and Extended Producer Responsibility</i> by Stewart Smith	7/05
<i>Rural Assistance Schemes and Programs</i> by John Wilkinson	8/05
<i>Abortion and the law in New South Wales</i> by Talina Drabsch	9/05
<i>Desalination, Waste Water, and the Sydney Metropolitan Water Plan</i> by Stewart Smith	10/05
<i>Industrial Relations Reforms: the proposed national system</i> by Lenny Roth	11/05
<i>Parliament and Accountability: the role of parliamentary oversight committees</i> by Gareth Griffith	12/05
<i>Election Finance Law: an update</i> by Talina Drabsch	13/05
<i>Affordable Housing in NSW: past to present</i> by John Wilkinson	14/05
<i>Majority Jury Verdicts in Criminal Trials</i> by Talina Drabsch	15/05
<i>Sedition, Incitement and Vilification: issues in the current debate</i> by Gareth Griffith	1/06
<i>The New Federal Workplace Relations System</i> by Lenny Roth	2/06
<i>The Political Representation of Ethnic and Racial Minorities</i> by Karina Anthony	3/06
<i>Preparing for the Impact of Dementia</i> by Talina Drabsch	4/06
<i>A NSW Charter of Rights? The Continuing Debate</i> by Gareth Griffith	5/06
<i>Native Vegetation: an update</i> by Stewart Smith	6/06
<i>Parental Responsibility Laws</i> by Lenny Roth	7/06
<i>Tourism in NSW: Prospects for the Current Decade</i> by John Wilkinson	8/06
<i>Legal Recognition of Same Sex Relationships</i> by Karina Anthony and Talina Drabsch	9/06
<i>Uranium and Nuclear Power</i> by Stewart Smith	10/06
<i>DNA Evidence, Wrongful Convictions and Wrongful Acquittals</i> by Gareth Griffith and Lenny Roth	11/06
<i>Law and Order Legislation in the Australian States and Territories: 2003-2006</i> by Lenny Roth	12/06