

**CRIMES (CRIMINAL DESTRUCTION AND DAMAGE)
AMENDMENT BILL 1987**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Crimes Act 1900 so as to make fresh provision with respect to persons who maliciously or dishonestly destroy or damage property. The provisions relating to destruction of and damage to property are currently contained in Chapter II of Part IV of the Principal Act and are directed at the destruction of and damage to various specified kinds of property. The provisions of proposed Division 2 of the substituted Chapter II adopt a simpler approach by not discriminating between different kinds of property. However, certain provisions relating to mines and sea, harbour, river and canal works are being retained.

Certain provisions currently contained in Part III and Chapter II of Part IV of the Principal Act which specifically deal with transport are to be amalgamated and enacted in a simplified form. These provisions will be contained in proposed Part IVA^{AA} of the Principal Act.

Consequential amendments are made to sections 476 and 501 of, and the Second and Fourth Schedules to, the Principal Act.

Clause 1 specifies the short title of the proposed Act.

Clause 2 is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

Clause 3 abolishes the common law felony of arson. The elements constituting the felony of arson will in future be adequately covered by various statutory offences.

Schedule 1 (1) consequentially amends section 1 of the Principal Act (short title and contents of Act).

Schedule 1 (2) amends section 4 of the Principal Act (Interpretation) by replacing the definition of "Railway".

Crimes (Criminal Destruction and Damage) Amendment 1987

Schedule 1 (3) repeals sections 32A–32C of the Principal Act. Those sections respectively relate to destruction of an aircraft (sec. 32A), assault on an aircraft crew member (sec. 32B) and threats to destroy aircraft and other means of transport (sec. 32C). The contents of these sections will be covered by provisions that are to be included in the proposed Part IV_{AA} of the Principal Act. (See Schedule 1 (6).)

Schedule 1 (4) repeals sections 50–52 of the Principal Act. The contents of these sections, which deal with railways, will also be covered by the provisions of the proposed Part IV_{AA} of the Principal Act. (See Schedule 1 (6).)

Schedule 1 (5) replaces Chapter II of Part IV of the Principal Act with a new Chapter which contains the following provisions:

Chapter II—Criminal destruction and damage
Division 1—Interpretation

Proposed section 194 makes it clear that a reference in the new Chapter II to property excludes a reference to property that is not of a tangible nature. The proposed section also makes it clear that property includes certain wild creatures that have been reduced into possession and that an act perpetrated by a person who reasonably believed that he or she had a right to do the act is to be regarded, for the purposes of the substituted Chapter, as not having been done maliciously.

Division 2—Crimes against property generally

Proposed section 195 provides that a person who maliciously destroys or damages property will be guilty of a felony punishable by penal servitude for a term not exceeding 5 years or, if fire or explosives are used, by penal servitude for a term not exceeding 10 years.

Proposed section 196 provides that a person who maliciously destroys or damages property with the intention of causing bodily injury to another person will be guilty of a felony punishable by penal servitude for a term not exceeding 7 years or, if fire or explosives are used, by penal servitude for a term not exceeding 14 years.

Proposed section 197 provides that a person who dishonestly, with a view to gain, destroys or damages property will be guilty of a felony punishable by penal servitude for a term not exceeding 7 years or, if fire or explosives are used, by penal servitude for a term not exceeding 14 years.

Proposed section 198 provides that a person who maliciously destroys or damages property with the intention of endangering the life of another person will be guilty of a felony punishable by penal servitude for life.

Proposed section 199 provides that a person who, without lawful excuse, threatens to destroy or damage property of another, or threatens to destroy or damage one's own property in a way likely to endanger the life of another or to result in injury to another, will be guilty of a felony punishable by penal servitude for a term not exceeding 5 years.

Proposed section 200 provides that a person who has possession, custody or control of an article with the intention that it should be used for the malicious destruction of or damage to property belonging to another person will be guilty of a felony punishable by penal servitude for a term not exceeding 3 years.

Crimes (Criminal Destruction and Damage) Amendment 1987

Division 3—Crimes relating to particular
kinds of property etc.

Proposed section 201 provides that a person who maliciously—

- (a) causes water to run into a mine or one of its subterranean channels;
- (b) destroys, damages or obstructs mine shafts, passages or the like;
- (c) destroys, damages or renders useless mine equipment, buildings or other things belonging to a mine; or
- (d) hinders the working of mine equipment,

will be guilty of a felony punishable by penal servitude for a term not exceeding 7 years. The proposed section replaces section 223 of the Principal Act.

Proposed section 202 of the Principal Act provides that a person who—

- (a) maliciously destroys, damages, removes or interferes with certain coastal protection, harbour, river or canal works;
- (b) maliciously opens a floodgate or sluice; or
- (c) does any other act with the intention of obstructing or hindering the navigation of a navigable river or canal,

will be guilty of a felony punishable by penal servitude not exceeding 7 years. The proposed section replaces section 226 of the Principal Act.

Proposed section 203 provides that, where a person who makes a false or misleading statement to another person, or sends to another person a document containing such a statement, and the statement is likely to have the effect of making that other person fear for the safety of a person or of property, that person will be guilty of a misdemeanour punishable by imprisonment for a term not exceeding 5 years. The proposed section replaces section 248A of the Principal Act.

Schedule 1 (6) inserts in the Principal Act a Part IVAA which will deal with offences relating to certain transport services. The provisions of the new Part are essentially an amalgam of sections relating to aircraft and vessels which are currently contained in Part III and Chapter II of Part IV of the Principal Act. The new Part contains the following provisions:

Division 1—Offences relating to aircraft, vessels etc.

Proposed section 204 provides that a person who destroys or damages an aircraft or vessel with intent to cause the death of a person or with reckless indifference for the safety of a person will be guilty of a felony punishable by penal servitude for life. The proposed section replaces section 32A of the Principal Act, which deals only with aircraft.

Proposed section 205 provides that a person who does anything with intent to prejudice the safe operation of an aircraft or vessel will be guilty of a felony punishable by penal servitude for a term not exceeding 14 years. The proposed section replaces section 204A of the Principal Act, which relates only to aircraft.

Proposed section 206 provides that a person who assaults or threatens with violence a member of the crew of an aircraft or vessel who is acting in the performance of his or her duties will be guilty of a felony punishable by penal servitude for a term not exceeding 14 years. The proposed section replaces section 32B of the Principal Act, which deals only with crew members of an aircraft.

Proposed section 207 provides that, except in certain specified circumstances, a person who—

Crimes (Criminal Destruction and Damage) Amendment 1987

- (a) places or carries an article on board an aircraft or vessel knowing the article to be a dangerous article;
- (b) delivers an article to a person, knowing it to be a dangerous article, for the purpose of having it placed or carried on board an aircraft or vessel; or
- (c) is in possession of an article while on board an aircraft or vessel knowing it to be a dangerous article,

will be guilty of a felony punishable by penal servitude for a term not exceeding 7 years. A dangerous article includes a firearm, ammunition and explosives. The proposed section replaces section 204C of the Principal Act, which deals only with dangerous articles on board aircraft.

Proposed section 208 provides that a person who threatens to destroy, damage or endanger the safety of an aircraft, vessel or land transport vehicle or to kill or injure persons who are in or on an aircraft, vessel or land transport vehicle will be guilty of a felony punishable by penal servitude for a term not exceeding 14 years. The proposed section also makes it a felony punishable by penal servitude for life for a person to make a demand of another person, together with a threat of the kind just mentioned, and, at the same time, to discharge a firearm, cause an explosion or wound or grievously harm a person. A person who merely threatens to destroy, damage or endanger the safety of, or to kill or injure persons in or on, an aircraft, vessel or land transport vehicle will be guilty of a misdemeanour punishable by imprisonment for a term not exceeding 5 years. The proposed section replaces sections 32C and 204D of the Principal Act. The maximum penalty currently provided for in section 204D (in relation to a threat to destroy an aircraft) is being increased from imprisonment for 2 years to imprisonment for 5 years.

Proposed section 209 provides that a person who makes a statement or conveys information (with the knowledge that it is false) to the effect that, or from which it could be inferred that, there is, has been or is to be a plan, proposal, attempt, conspiracy or threat to take control of an aircraft or vessel by force, to destroy or damage or endanger the safety of an aircraft or vessel or to kill or injure persons on board an aircraft or vessel will be guilty of a misdemeanour punishable by imprisonment for a term not exceeding 2 years. The proposed section replaces section 204E of the Principal Act, which applies only to aircraft.

Proposed section 210 provides that a person who maliciously destroys, damages, removes, conceals or interferes with a mark, device or equipment used or designed to be used to assist the navigation of aircraft, vessels or boats will be guilty of a felony punishable by penal servitude for a term not exceeding 7 years. The proposed section replaces section 242 of the Principal Act, which currently applies only to navigational aids provided for shipping.

Division 2—Offences relating to railways etc.

Proposed section 211 provides that a person who maliciously does anything, or omits to do something that it is the person's duty to do, with the intention of causing the death of, or bodily injury to, a person on a railway or on any railway rolling stock will be guilty of a felony punishable by penal servitude for life. The proposed section also provides that a person who maliciously does anything, or omits to do something that the person has a duty to do, with the intention of causing railway rolling stock to be derailed, destroyed or damaged will be guilty of a felony punishable by penal servitude for a term not exceeding 14 years. The proposed section replaces sections 50, 51 and 230 of the Principal Act.

Crimes (Criminal Destruction and Damage) Amendment 1987

Proposed section 212 provides that a person who, by an unlawful act or negligent omission, endangers the safety of a person on, or who is being conveyed on, a railway will be guilty of a misdemeanour punishable by imprisonment for a term not exceeding 3 years. The proposed section replaces section 52 of the Principal Act.

Proposed section 213 makes it a misdemeanour, punishable by imprisonment for a term not exceeding 2 years, for a person, intentionally and without lawful excuse, to obstruct the passage of railway rolling stock. The proposed section replaces section 232 of the Principal Act.

Proposed section 214 will enable a jury to find a person guilty of an offence under proposed section 212 or 213 where the person is charged with an offence under proposed section 211 and the jury is satisfied that the person is guilty of an offence under proposed section 212 or 213 but not guilty of the offence charged. The proposed section 214 replaces section 231 of the Principal Act.

Schedule 1 (7) amends section 476 of the Principal Act, which enables certain indictable offences to be dealt with summarily with the consent of the accused. With the accused's consent, an accused who is charged with an offence under proposed section 195, 196, 197, 201, 202 or 210 will, if the value of the property involved does not exceed \$10,000, be within the jurisdiction of a Local Court. Other offences, which do not necessarily involve property, will also be within the jurisdiction of a Local Court with the accused's consent. The offences concerned are those arising under sections 199, 200, 203, 207, 208 (4), 209, 212 and 213.

Schedule 1 (8) amends section 501 of the Principal Act, which enables certain indictable offences to be dealt with summarily without the consent of the accused. As a result of the amendment, a Local Court will be empowered to deal with an accused charged with an offence under proposed section 195 without his or her consent provided that the value of the property involved does not exceed \$2,000.

Schedule 1 (9) inserts proposed section 552 into the Principal Act which will make it clear that a Local Court can deal summarily with certain offences arising under the proposed Chapter II of Part IV even though questions of title to property might be involved.

Schedule 1 (10) and (11) make consequential amendments to the Second and Fourth Schedules to the Principal Act, which respectively specify the sections of the Principal Act that apply to all offences (whether created by that Act or not) and the offences in relation to which it is not necessary to aver particular ownership of property concerned in the offences.
