

## **Criminal Code (Looting in Declared Areas) Amendment Bill 2013**

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### **Explanatory Notes**

#### **Short Title**

The short title of the Bill is the Criminal Code (Looting in Declared Areas) Amendment Bill 2013.

#### **Objectives of the Bill**

The primary objective of the Criminal Code (Looting in Declared Areas) Amendment Bill 2013 (the Bill) is to:

1. Amend the Criminal Code at section 398 (Punishment of stealing) to:
  - insert a new section 13A 'Stealing by looting in a declared area'.

#### **Reasons for the Bill**

The Bill is to insert a more serious punishment for 'Stealing by looting' in a 'declared area' as defined under the *Disaster Management Act 2003*. In such circumstance the offender will be liable to imprisonment for 14 years.

Under the *Disaster Management Act 2003* a 'declared area' means-

- (a) for a disaster situation declared under section 64(1)—the disaster district, or the part of the disaster district, for which the disaster situation is declared; or
- (b) for a disaster situation declared under section 69—the State or, if the disaster situation is declared for a part of the State, the part.

Criminal Code section 398(13) presently increases the punishment of stealing from 5 years to 10 years imprisonment if-

- (a) the offence is committed during a natural disaster, civil unrest or an industrial dispute; or
- (b) the thing stolen is left unattended by the death or incapacity of the person in possession of the property.

As mentioned, the new section 13A 'Stealing by looting in a declared area' increases imprisonment to 14 years. It is intended to underpin the significance of 'declared areas' under the *Disaster Management Act 2003* and it is believed to be more aligned with community expectations as well as contributing toward protecting citizens.

#### **Achievement of the Objectives**

The Bill achieves the objectives by way of the proposed amendments to existing legislation as described above.

#### **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the criminal law reform.

#### **Estimated Cost for Government Implementation**

Any costs in relation to the amendments will be met from existing agency resources.

### **Consistency with Fundamental Legislative Principles**

The amendment to insert a new section 13A 'Stealing by looting in a declared area' in the Criminal Code makes the offender liable to a maximum term of imprisonment for 14 years. This inherently impacts on the rights and liberties of individuals. It makes an offender liable to a greater period of imprisonment than was previously prescribed under section 398(13) 'Stealing by looting'. Section 398(13) increases the punishment of stealing from 5 years to 10 years imprisonment if, for example, the offence is committed during a natural disaster, regardless of whether the offence is committed in a 'declared area' under the *Disaster Management Act 2003*.

It is acknowledged that legislation should have sufficient regard to the rights and liberties of individuals. However, under the criminal law, sanctions that restrict rights and liberties of individuals are applied out of necessity in order to respond to those who engage in socially harmful or disruptive behaviour. This protects citizens whose rights and liberties would otherwise be significantly and unjustifiably restricted or impacted. Despite the justification for the use of sanctions based on deterrence, punishment and/or the reduction of the opportunity to re-offend though, it is recognised that offenders fundamentally remain citizens in our society with rights and liberties themselves which should not be curtailed more than necessary.

In deliberation and respect of such fundamental legislative principles, the new punishment for 'Stealing by looting in a disaster area', imposing a maximum 14 years imprisonment, is deemed necessary for three main reasons:

- It underpins the significance of 'declared areas' under the *Disaster Management Act 2003*;
- It provides a punishment that is more aligned with community expectations in such circumstances; and
- It will serve as a deterrent and contribute toward protecting citizens from opportunistic offenders in disaster areas, thereby facilitating community safety and the functioning of the criminal justice system.

Regarding proportionality and consistency of penalties, periods of imprisonment under section 398 (Punishment of stealing) already range from 5 years to 14 years imprisonment. Stealing offences that may incur 14 years imprisonment include:

- Stealing wills
- Stealing of a vehicle
- Stealing firearm for use in another indictable offence

Therefore, recognising that section 398(13) 'Stealing by looting' increases the punishment for stealing from 5 years to 10 years imprisonment including if the offence is committed during a natural disaster, the new section 13A 'Stealing by looting in a declared area' logically and reasonably attracts a more serious penalty of imprisonment for 14 years. This is proportionate and consistent with the other serious stealing offences above mentioned and it is justified for reasons sufficiently outlined.

### **Consultation**

There has been no formal consultation.

## **Notes on Provisions**

### **Part 1 Preliminary**

*Clause 1* establishes the short title to the Act as the *Criminal Code (Looting in Declared Areas) Amendment Act 2013*.

### **Part 2 Amendment of Criminal Code**

*Clause 2* provides that the Act amends the Criminal Code.

*Clause 3* amends section 398 (Punishment of stealing) by inserting a new section 13A 'Stealing by looting in a declared area' as defined under the *Disaster Management Act 2003* and, in such circumstance, the offender will be liable to imprisonment for 14 years.