

2002

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Attorney-General)

## Criminal Code 2002

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2002

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

## **Criminal Code 2002**

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### **A Bill for**

An Act relating to the criminal law, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Chapter 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Criminal Code 2002*.

4 **2 Commencement**

5 This Act commences on 1 January 2003.

6 *Note* The naming and commencement provisions automatically commence on  
7 the notification day (see *Legislation Act 2001*, s 75).

8 **3 Dictionary**

9 The dictionary at the end of this Act is part of this Act.

10 *Note 1* The dictionary at the end of this Act defines certain words and  
11 expressions used in this Act, and includes references (*signpost*  
12 *definitions*) to other words and expressions defined elsewhere in this  
13 Act.

14 For example, the signpost definition '*conduct*—see section 13.' means  
15 that the expression 'conduct' is defined in that section.

16 *Note 2* A definition in the dictionary (including a signpost definition) applies to  
17 the entire Act unless the definition, or another provision of the Act,  
18 provides otherwise or the contrary intention otherwise appears (see  
19 *Legislation Act 2001*, s 155 and s 156 (1)).

20 **4 Notes**

21 A note included in this Act is explanatory and is not part of this Act.

22 *Note* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of  
23 notes.

1 **5 Codification**

2 (1) The only offences against Territory laws are the offences created  
3 under this Act or any other Act.

4 *Note* A reference to an Act includes a reference to the statutory instruments  
5 made or in force under the Act, including regulations (see *Legislation*  
6 *Act 2001*, s 104).

7 (2) This section does not apply until the default application date.

8 (3) Subsection (2) and this subsection expire on the default application  
9 date.

1 **Chapter 2**                    **General principles of**  
2    **criminal responsibility**

3 **Part 2.1**                    **Purpose and application**

4 **6**                    **Purpose of ch 2**

5 (1) The purpose of this chapter is to codify general principles of  
6 criminal responsibility under Territory laws.

7 (2) It contains all the general principles of criminal responsibility that  
8 apply to any offence, irrespective of how the offence is created.

9 **7**                    **Application of ch 2**

10 This chapter applies to all offences against this Act and all other  
11 offences against Territory laws.

12 **8**                    **Delayed application of ch 2 to certain offences**

13 (1) Despite section 7, the provisions of this chapter (other than the  
14 immediately applied provisions) do not apply to offences created  
15 before 1 January 2003 until the default application date.

16 (2) However, subsection (1) does not apply to an offence so far as an  
17 Act or subordinate law—

18 (a) expressly applies this chapter to the offence; or

19 (b) displaces the subsection either expressly or by manifest  
20 contrary intention.

21 **Examples of different kinds of displacement**

22 1 *Express displacement*

23 The *Food Handling Act 2000* (hypothetical), section 50 provides for an  
24 offence of unlawful handling. The offence was created before  
25 1 January 2003. Section 50 is amended to include the following subsection:

- 1 (2) The Criminal Code, section 8 (1) (Delayed application of ch 2 to certain  
2 offences) does not apply to an offence against this section.  
3 Section 50 (2) illustrates a provision expressly displacing the Criminal Code,  
4 s 8 (1).
- 5 2 *Manifest contrary intention*  
6 The *Liquor Act 2001* (hypothetical), section 30 provides for an offence of  
7 unlawful sale of liquor. The offence was created before 1 January 2003.  
8 Section 30 is amended to include the following subsection:  
9 (2) An offence against this section is a strict liability offence for the  
10 Criminal Code.  
11 Section 30 (2) illustrates a provision displacing the Criminal Code,  
12 section 8 (1) by a manifest contrary intention so far as section 8 (1) relates to  
13 the provision of this chapter relating to strict liability.
- 14 *Note* An example is part of the Act, is not exhaustive and may extend, but  
15 does not limit, the meaning of the provision in which it appears (see  
16 *Legislation Act 2001*, s 126 and s 132).
- 17 (3) To remove any doubt, a power to make subordinate laws for an Act  
18 includes power to make subordinate laws applying this chapter to, or  
19 displacing the application of subsection (1) to, offences against  
20 subordinate laws under that Act.
- 21 (4) In interpreting the immediately applied provisions in relation to an  
22 offence, the other provisions of this Act may be considered.
- 23 (5) This section expires on the default application date.
- 24 **9 Delayed application of div 2.3.2 etc**  
25 (1) Despite sections 7 and 8, the provisions of division 2.3.2 (Lack of  
26 capacity—mental impairment) and section 66 (2) (d) do not apply to  
27 offences until the default application date.  
28 (2) This section expires on the default application date.

1 **10 Definitions—*default application date* and *immediately***  
2 ***applied provisions***

3 In this Act:

4 *default application date* means 1 January 2006 or, if another date is  
5 prescribed under the regulations for this definition, that date.

6 *immediately applied provisions* mean the following provisions of  
7 this chapter:

- 8 • section 15 (5) (which deals with evidence of self-induced  
9 intoxication)
- 10 • section 25 (Children under 10)
- 11 • section 26 (Children 10 and over but under 14)
- 12 • section 30 (Intoxication—interpretation)
- 13 • section 31 (Intoxication—offences involving basic intent)
- 14 • section 32 (Intoxication—negligence as fault element)
- 15 • section 33 (Intoxication—relevance to defences)
- 16 • section 34 (Involuntary intoxication)
- 17 • section 44 (Attempt)
- 18 • section 45 (Complicity and common purpose)
- 19 • section 46 (Innocent agency)
- 20 • section 47 (Incitement)
- 21 • section 48 (Conspiracy)
- 22 • part 2.6 (Proof of criminal responsibility)
- 23 • part 2.7 (Geographical application) other than section 66  
24 (2) (d)

1 **Part 2.2** **The elements of an offence**

2 **Division 2.2.1** **General**

3 **11** **Elements**

- 4 (1) An offence consists of physical elements and fault elements.
- 5 (2) However, the law that creates the offence may provide that there is  
6 no fault element for some or all of the physical elements.
- 7 (3) The law that creates the offence may provide different fault  
8 elements for different physical elements.

9 **12** **Establishing guilt of offences**

10 A person must not be found guilty of committing an offence unless  
11 the following is proved:

- 12 (a) the existence of the physical elements that are, under the law  
13 creating the offence, relevant to establishing guilt;
- 14 (b) for each of the physical elements for which a fault element is  
15 required—the fault element or 1 of the fault elements for the  
16 physical element.

17 *Note 1* See pt 2.6 on proof of criminal responsibility.

18 *Note 2* See pt 2.7 on geographical jurisdiction.

19 **Division 2.2.2** **Physical elements**

20 **13** **Definitions—*conduct* and *engage in conduct***

21 In this Act:

22 ***conduct*** means an act, an omission to do an act or a state of affairs.

1            *engage in conduct* means—

- 2            (a) do an act; or  
3            (b) omit to do an act.

4            **14 Physical elements**

5            A *physical element* of an offence may be—

- 6            (a) conduct; or  
7            (b) a result of conduct; or  
8            (c) a circumstance in which conduct, or a result of conduct,  
9            happens.

10          **15 Voluntariness**

- 11          (1) Conduct can only be a physical element if it is voluntary.  
12          (2) Conduct is voluntary only if it is a product of the will of the person  
13          whose conduct it is.

14          **Examples of conduct that is not voluntary**

- 15          1 a spasm, convulsion or other unwilled bodily movement  
16          2 an act done during sleep or unconsciousness  
17          3 an act done during impaired consciousness depriving the person of the will to  
18          act

19          *Note*      An example is part of the Act, is not exhaustive and may extend, but  
20          does not limit, the meaning of the provision in which it appears (see  
21          *Legislation Act 2001*, s 126 and s 132).

- 22          (3) An omission to do an act is voluntary only if the act omitted is an  
23          act that the person can do.  
24          (4) If the conduct required for an offence consists only of a state of  
25          affairs, the state of affairs is voluntary only if it is a state of affairs  
26          over which the person is capable of exercising control.

- 1 (5) Evidence of self-induced intoxication cannot be considered in  
2 deciding whether conduct is voluntary.

3 *Note* For when intoxication is *self-induced*, see s 30.

## 4 **16 Omissions**

5 An omission to do an act can only be a physical element if—

- 6 (a) the law creating the offence makes it a physical element; or  
7 (b) the law creating the offence impliedly provides that the offence  
8 is committed by an omission to do an act that, by law, there is a  
9 duty to do.

## 10 **Division 2.2.3 Fault elements**

### 11 **17 Fault elements**

- 12 (1) A *fault element* for a particular physical element may be intention,  
13 knowledge, recklessness or negligence.  
14 (2) Subsection (1) does not prevent a law that creates an offence from  
15 providing other fault elements for a physical element of the offence.

### 16 **18 Intention**

- 17 (1) A person has *intention* in relation to conduct if the person means to  
18 engage in the conduct.  
19 (2) A person has *intention* in relation to a result if the person means to  
20 bring it about or is aware that it will happen in the ordinary course  
21 of events.  
22 (3) A person has *intention* in relation to a circumstance if the person  
23 believes that it exists or will exist.

### 24 **19 Knowledge**

25 A person has *knowledge* of a result or circumstance if the person is  
26 aware that it exists or will exist in the ordinary course of events.

1    **20    Recklessness**

- 2        (1) A person is *reckless* in relation to a result if—
- 3            (a) the person is aware of a substantial risk that the result will
- 4                      happen; and
- 5            (b) having regard to the circumstances known to the person, it is
- 6                      unjustifiable to take the risk.
- 7        (2) A person is *reckless* in relation to a circumstance if—
- 8            (a) the person is aware of a substantial risk that the circumstance
- 9                      exists or will exist; and
- 10            (b) having regard to the circumstances known to the person, it is
- 11                      unjustifiable to take the risk.
- 12        (3) The question whether taking a risk is unjustifiable is a question of
- 13            fact.
- 14        (4) If recklessness is a fault element for a physical element of an
- 15            offence, proof of intention, knowledge or recklessness satisfies the
- 16            fault element.

17    **21    Negligence**

- 18            A person is *negligent* in relation to a physical element of an offence
- 19            if the person's conduct merits criminal punishment for the offence
- 20            because it involves—
- 21            (a) such a great falling short of the standard of care that a
- 22                      reasonable person would exercise in the circumstances; and
- 23            (b) such a high risk that the physical element exists or will exist.

24    **22    Offences that do not provide fault elements**

- 25        (1) If the law creating an offence does not provide a fault element for a
- 26            physical element that consists only of conduct, intention is the fault
- 27            element for the physical element.

- 1 (2) If the law creating an offence does not provide a fault element for a  
2 physical element that consists of a circumstance or a result,  
3 recklessness is the fault element for the physical element.

4 **Division 2.2.4 Cases where fault elements are not**  
5 **required**

6 **23 Strict liability**

- 7 (1) If a law that creates an offence provides that the offence is an  
8 offence of strict liability—  
9 (a) there are no fault elements for any of the physical elements of  
10 the offence; and  
11 (b) the defence of mistake of fact under section 36 (Mistake of  
12 fact—strict liability) is available.  
13 (2) If a law that creates an offence provides that strict liability applies to  
14 a particular physical element of the offence—  
15 (a) there are no fault elements for the physical element; and  
16 (b) the defence of mistake of fact under section 36 is available in  
17 relation to the physical element.  
18 (3) The existence of strict liability does not make any other defence  
19 unavailable.

20 **24 Absolute liability**

- 21 (1) If a law that creates an offence provides that the offence is an  
22 offence of absolute liability—  
23 (a) there are no fault elements for any of the physical elements of  
24 the offence; and  
25 (b) the defence of mistake of fact under section 36 (Mistake of  
26 fact—strict liability) is not available.

<b>Chapter 2</b>	General principles of criminal responsibility
<b>Part 2.2</b>	The elements of an offence
<b>Division 2.2.4</b>	Cases where fault elements are not required

Section 24

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- 1       (2) If a law that creates an offence provides that absolute liability  
2           applies to a particular physical element of the offence—  
3           (a) there are no fault elements for the physical element; and  
4           (b) the defence of mistake of fact under section 36 is not available  
5           in relation to the physical element.  
6       (3) The existence of absolute liability does not make any other defence  
7           unavailable.

1 **Part 2.3** **Circumstances where there is**  
2 **no criminal responsibility**

3 **Division 2.3.1** **Lack of capacity—children**

4 **25** **Children under 10**

5 A child under 10 years old is not criminally responsible for an  
6 offence.

7 **26** **Children 10 and over but under 14**

8 (1) A child aged 10 years or older, but under 14 years old, can only be  
9 criminally responsible for an offence if the child knows that his or  
10 her conduct is wrong.

11 (2) The question whether a child knows that his or her conduct is wrong  
12 is a question of fact.

13 (3) The burden of proving that a child knows that his or her conduct is  
14 wrong is on the prosecution.

15 **Division 2.3.2** **Lack of capacity—mental**  
16 **impairment**

17 **27** **Definition—*mental impairment***

18 (1) In this Act:

19 *mental impairment* includes senility, intellectual disability, mental  
20 illness, brain damage and severe personality disorder.

21 (2) In this section:

22 *mental illness* is an underlying pathological infirmity of the mind,  
23 whether of long or short duration and whether permanent or  
24 temporary, but does not include a condition (a *reactive condition*)

1            resulting from the reaction of a healthy mind to extraordinary  
2            external stimuli.

3            (3) However, a reactive condition may be evidence of a mental illness if  
4            it involves some abnormality and is prone to recur.

5            **28    Mental impairment and criminal responsibility**

6            (1) A person is not criminally responsible for an offence if, when  
7            carrying out the conduct required for the offence, the person was  
8            suffering from a mental impairment that had the effect that—

9                    (a) the person did not know the nature and quality of the conduct;  
10                   or

11                   (b) the person did not know that the conduct was wrong; or

12                   (c) the person could not control the conduct.

13            (2) For subsection (1) (b), a person does not know that conduct is wrong  
14            if the person cannot reason with a moderate degree of sense and  
15            composure about whether the conduct, as seen by a reasonable  
16            person, is wrong.

17            (3) The question whether a person was suffering from a mental  
18            impairment is a question of fact.

19            (4) A person is presumed not to have been suffering from a mental  
20            impairment.

21            (5) The presumption is displaced only if it is proved on the balance of  
22            probabilities (by the prosecution or defence) that the person was  
23            suffering from a mental impairment.

24            (6) The prosecution may rely on this section only if the court gives leave.

25            (7) If the tribunal of fact is satisfied that a person is not criminally  
26            responsible for an offence only because of mental impairment, it  
27            must make or return a special verdict that the person is not guilty of  
28            the offence because of mental impairment.

1    **29    Mental impairment and other defences**

2       (1) A person cannot rely on a mental impairment to deny voluntariness  
3       or the existence of a fault element, but may rely on mental  
4       impairment to deny criminal responsibility.

5       (2) If the tribunal of fact is satisfied that a person carried out conduct  
6       because of a delusion caused by a mental impairment, the delusion  
7       itself cannot be relied on as a defence, but the person may rely on  
8       the mental impairment to deny criminal responsibility.

9       **Division 2.3.3            Intoxication**

10    **30    Intoxication—interpretation**

11       (1) In this Act:

12           *fault element of basic intent* means a fault element of intention for a  
13           physical element that consists only of conduct.

14           *intoxication* means intoxication because of the influence of alcohol,  
15           a drug or any other substance.

16       (2) For this Act, intoxication is *self-induced* unless it came about—

17           (a) involuntarily; or

18           (b) because of fraud, sudden or extraordinary emergency, accident,  
19           reasonable mistake, duress or force; or

20           (c) from the use of a drug for which a prescription is required and  
21           that was used in accordance with the directions of the doctor or  
22           dentist who prescribed it; or

23           (d) from the use of a drug for which no prescription is required and  
24           that was used for a purpose, and in accordance with the dosage  
25           level, recommended by the manufacturer.

- 1        (3) However, subsections (2) (c) and (d) do not apply if the person  
2            using the drug knew, or had reason to believe, when the person took  
3            the drug that the drug would significantly impair the person's  
4            judgment or control.

5        **31 Intoxication—offences involving basic intent**

- 6        (1) Evidence of self-induced intoxication cannot be considered in  
7            deciding whether a fault element of basic intent exists.

8            *Note*      A fault element of intention in relation to a result or circumstance is not  
9            a fault element of basic intent.

- 10       (2) This section does not prevent evidence of self-induced intoxication  
11            being considered in deciding whether conduct was accidental.

- 12       (3) This section does not prevent evidence of self-induced intoxication  
13            being considered in deciding whether a person had a mistaken belief  
14            about facts if, when carrying out the conduct making up the physical  
15            element of the offence, the person considered whether or not the  
16            facts existed.

- 17       (4) A person may be taken to have considered whether or not facts  
18            existed when carrying out conduct if—

19            (a) the person had considered, on a previous occasion, whether the  
20            facts existed in the circumstances surrounding that occasion;  
21            and

22            (b) the person honestly and reasonably believed that the  
23            circumstances surrounding the present occasion were the same,  
24            or substantially the same, as the circumstances surrounding the  
25            previous occasion.

26       **32 Intoxication—negligence as fault element**

- 27       (1) If negligence is a fault element for a particular physical element of  
28            an offence, in deciding whether the fault element exists for a person  
29            who is intoxicated, regard must be had to the standard of a  
30            reasonable person who is not intoxicated.

- 1 (2) However, if intoxication is not self-induced, regard must be had to  
2 the standard of a reasonable person intoxicated to the same extent as  
3 the person concerned.

4 **33 Intoxication—relevance to defences**

- 5 (1) If any part of a defence is based on actual knowledge or belief,  
6 evidence of intoxication may be considered in deciding whether the  
7 knowledge or belief exists.
- 8 (2) However, subsection (1) does not apply to an offence if:
- 9 (a) each physical element of the offence has a fault element of  
10 basic intent; and
- 11 (b) any part of a defence is based on actual knowledge or belief.
- 12 (3) If any part of a defence is based on reasonable belief, in deciding  
13 whether the reasonable belief exists, regard must be had to the  
14 standard of a reasonable person who is not intoxicated.
- 15 (4) If a person's intoxication is not self-induced, in deciding whether  
16 any part of a defence based on reasonable belief exists, regard must  
17 be had to the standard of a reasonable person intoxicated to the same  
18 extent as the person concerned.

19 **34 Involuntary intoxication**

20 A person is not criminally responsible for an offence if the person's  
21 conduct making up the offence was as a result of intoxication that  
22 was not self-induced.

23 **Division 2.3.4 Mistake and ignorance**

24 **35 Mistake or ignorance of fact—fault elements other than**  
25 **negligence**

- 26 (1) A person is not criminally responsible for an offence that has a  
27 physical element for which there is a fault element other than  
28 negligence if—

- 1            (a) when carrying out the conduct making up the physical element,  
2            the person is under a mistaken belief about, or is ignorant of,  
3            facts; and
- 4            (b) the existence of the mistaken belief or ignorance negates a fault  
5            element applying to the physical element.
- 6            (2) In deciding whether a person was under a mistaken belief about  
7            facts, or was ignorant of facts, the tribunal of fact may consider  
8            whether the mistaken belief or ignorance was reasonable in the  
9            circumstances.

10        **36     Mistake of fact—strict liability**

- 11        (1) A person is not criminally responsible for an offence that has a  
12        physical element for which there is no fault element if—
- 13            (a) when carrying out the conduct making up the physical element,  
14            the person considered whether or not facts existed, and was  
15            under a mistaken but reasonable belief about the facts; and
- 16            (b) had the facts existed, the conduct would not have been an  
17            offence.
- 18        (2) A person may be taken to have considered whether or not facts  
19        existed when carrying out conduct if—
- 20            (a) the person had considered, on a previous occasion, whether the  
21            facts existed in the circumstances surrounding that occasion;  
22            and
- 23            (b) the person honestly and reasonably believed that the  
24            circumstances surrounding the present occasion were the same,  
25            or substantially the same, as the circumstances surrounding the  
26            previous occasion.
- 27        *Note*        Section 24 (Absolute liability) prevents this section applying to offences  
28        of absolute liability.

1 **37 Mistake or ignorance of law creating offence**

2 (1) A person can be criminally responsible for an offence even though,  
3 when carrying out the conduct required for the offence, the person is  
4 mistaken about, or ignorant of, the existence or content of a law that  
5 creates the offence.

6 (2) However, the person is not criminally responsible for the offence  
7 if—

8 (a) the law creating the offence expressly or impliedly provides  
9 that a person is not criminally responsible for the offence in  
10 those circumstances; or

11 (b) the person's ignorance or mistake negates a fault element  
12 applying to a physical element of the offence.

13 **38 Claim of right**

14 (1) A person is not criminally responsible for an offence that has a  
15 physical element relating to property if—

16 (a) when carrying out the conduct required for the offence, the  
17 person is under a mistaken belief about a proprietary or  
18 possessory right; and

19 (b) the existence of the right would negate a fault element for any  
20 physical element of the offence.

21 (2) A person is not criminally responsible for any other offence arising  
22 necessarily out of the exercise of a proprietary or possessory right  
23 that the person mistakenly believes to exist.

24 (3) This section does not negate criminal responsibility for an offence  
25 relating to the use of force against a person.

1    **Division 2.3.5            External factors**

2    **39    Intervening conduct or event**

3            A person is not criminally responsible for an offence that has a  
4            physical element to which absolute or strict liability applies if—

- 5            (a) the physical element is brought about by someone else over  
6            whom the person has no control or by a non-human act or  
7            event over which the person has no control; and  
8            (b) the person could not reasonably have been expected to guard  
9            against the bringing about of the physical element.

10   **40    Duress**

11        (1) A person is not criminally responsible for an offence if the person  
12        carries out the conduct required for the offence under duress.

13        (2) A person carries out conduct under duress only if the person  
14        reasonably believes that—

- 15            (a) a threat has been made that will be carried out unless an  
16            offence is committed; and  
17            (b) there is no reasonable way to make the threat ineffective; and  
18            (c) the conduct is a reasonable response to the threat.

19        (3) However, the person does not carry out conduct under duress if the  
20        threat is made by or on behalf of a person with whom the person is  
21        voluntarily associating to carry out conduct of the kind required for  
22        the offence.

23   **41    Sudden or extraordinary emergency**

24        (1) A person is not criminally responsible for an offence if the person  
25        carries out the conduct required for the offence in response to  
26        circumstances of sudden or extraordinary emergency.

- 1 (2) This section applies only if the person reasonably believes that—  
2 (a) circumstances of sudden or extraordinary emergency exist; and  
3 (b) committing the offence is the only reasonable way to deal with  
4 the emergency; and  
5 (c) the conduct is a reasonable response to the emergency.

6 **42 Self-defence**

- 7 (1) A person is not criminally responsible for an offence if the person  
8 carries out the conduct required for the offence in self-defence.  
9 (2) A person carries out conduct in self-defence only if—  
10 (a) the person believes the conduct is necessary—  
11 (i) to defend himself or herself or someone else; or  
12 (ii) to prevent or end the unlawful imprisonment of himself  
13 or herself or someone else; or  
14 (iii) to protect property from unlawful appropriation,  
15 destruction, damage or interference; or  
16 (iv) to prevent criminal trespass to land or premises; or  
17 (v) to remove from land or premises a person committing  
18 criminal trespass; and  
19 (b) the conduct is a reasonable response in the circumstances as  
20 the person perceives them.  
21 (3) However, the person does not carry out conduct in self-defence if—  
22 (a) the person uses force that involves the intentional infliction of  
23 death or really serious injury—  
24 (i) to protect property; or  
25 (ii) to prevent criminal trespass; or  
26 (iii) to remove a person committing criminal trespass; or

1            (b) the person is responding to lawful conduct that the person  
2                            knows is lawful.

3            (4) Conduct is not lawful for subsection (3) (b) only because the person  
4                            carrying it out is not criminally responsible for it.

5            **43    Lawful authority**

6            A person is not criminally responsible for an offence if the conduct  
7                            required for the offence is justified or excused under a law.

1 **Part 2.4** **Extensions of criminal**  
2 **responsibility**

3 **44 Attempt**

- 4 (1) If a person attempts to commit an offence, the person commits the  
5 offence of attempting to commit that offence.
- 6 (2) However, a person commits the offence of attempting to commit an  
7 offence only if the person carries out conduct that is more than  
8 merely preparatory to the commission of the offence attempted.
- 9 (3) The question whether conduct is more than merely preparatory is a  
10 question of fact.
- 11 (4) A person may be found guilty of attempting to commit an offence  
12 even though—
- 13 (a) it was impossible to commit the offence attempted; or  
14 (b) the person committed the offence attempted.
- 15 (5) For the offence of attempting to commit an offence, intention and  
16 knowledge are fault elements for each physical element of the  
17 offence attempted.
- 18 *Note* Only 1 of the fault elements of intention or knowledge needs to be  
19 established for each physical element of the offence attempted (see s 12  
20 (Establishing guilt of offences)).
- 21 (6) However, any special liability provisions that apply to an offence  
22 apply also to the offence of attempting to commit the offence.
- 23 (7) Any defence, procedure, limitation or qualifying provision applying  
24 to an offence applies to the offence of attempting to commit the  
25 offence.
- 26 (8) If a person is found guilty of attempting to commit an offence, the  
27 person cannot later be charged with committing the offence.

1 (9) The offence of attempting to commit an offence is punishable as if  
2 the offence attempted had been committed.

3 (10) This section does not apply to an offence against section 45  
4 (Complicity and common purpose) or 48 (Conspiracy).

#### 5 **45 Complicity and common purpose**

6 (1) A person is taken to have committed an offence if the person aids,  
7 abets, counsels or procures the commission of the offence by  
8 someone else.

9 (2) However, the person commits the offence because of this section  
10 only if—

11 (a) the person's conduct in fact aids, abets, counsels or procures  
12 the commission of the offence by the other person; and

13 (b) when carrying out the conduct, the person either—

14 (i) intends the conduct to aid, abet, counsel or procure the  
15 commission of any offence (including its fault elements)  
16 of the type committed by the other person; or

17 (ii) intends the conduct to aid, abet, counsel or procure the  
18 commission of an offence by the other person and is  
19 reckless about the commission of the offence (including  
20 its fault elements) in fact committed by the other person.

21 (3) To remove any doubt, the person is taken to have committed the  
22 offence only if the other person commits the offence.

23 (4) Despite subsection (2), any special liability provisions that apply to  
24 an offence apply also to the offence of aiding, abetting, counselling  
25 or procuring the commission of the offence.

26 (5) A person must not be found guilty of aiding, abetting, counselling or  
27 procuring the commission of an offence if, before the offence was  
28 committed, the person—

29 (a) ended his or her involvement; and

1 (b) took all reasonable steps to prevent the commission of the  
2 offence.

3 (6) A person may be found guilty of aiding, abetting, counselling or  
4 procuring the commission of an offence even if the person who  
5 committed the offence is not prosecuted or found guilty.

6 (7) To remove any doubt, if a person is taken to have committed an  
7 offence because of this section, the offence is punishable as if, apart  
8 from the operation of this section, the person had committed the  
9 offence.

#### 10 **46 Innocent agency**

11 (1) A person is taken to have committed an offence if—

12 (a) the person procures someone else to engage in conduct that  
13 (whether or not together with conduct engaged in by the  
14 person) makes up the physical elements of the offence  
15 consisting of conduct; and

16 (b) any physical element of the offence consisting of a  
17 circumstance exists; and

18 (c) any physical element of the offence consisting of a result of the  
19 conduct happens; and

20 (d) when the person procured the other person to engage in the  
21 conduct, the person had a fault element applying to each  
22 physical element of the offence.

23 (2) To remove any doubt, if a person is taken to have committed an  
24 offence because of this section, the offence is punishable as if, apart  
25 from the operation of this section, the person had committed the  
26 offence.

1 **47 Incitement**

2 (1) If a person urges the commission of an offence (the *offence incited*),  
3 the person commits the offence of incitement.

4 Maximum penalty:

5 (a) if the offence incited is punishable by life  
6 imprisonment—imprisonment for 10 years, 1 000 penalty units  
7 or both; or

8 (b) if the offence incited is punishable by imprisonment for 14  
9 years or more (but not life imprisonment)—imprisonment for 7  
10 years, 700 penalty units or both; or

11 (c) if the offence incited is punishable by imprisonment for 10  
12 years or more (but less than 14 years)—imprisonment for 5  
13 years, 500 penalty units or both; or

14 (d) if the offence incited is punishable by imprisonment for less  
15 than 10 years, either or both of the following:

16 (i) the lesser of the maximum term of imprisonment for the  
17 offence incited and imprisonment for 3 years;

18 (ii) 300 penalty units; or

19 (e) if the offence incited is not punishable by imprisonment—the  
20 number of penalty units equal to the maximum number of  
21 penalty units applying to the offence incited.

22 (2) However, the person commits the offence of incitement only if the  
23 person intends that the offence incited be committed.

24 (3) Despite subsection (2), any special liability provisions that apply to  
25 an offence apply also to the offence of incitement to commit the  
26 offence.

27 (4) A person may be found guilty of the offence of incitement even  
28 though it was impossible to commit the offence incited.

- 1 (5) Any defence, procedure, limitation or qualifying provision applying  
2 to an offence applies to the offence of incitement in relation to the  
3 offence.
- 4 (6) This section does not apply to an offence against section 44  
5 (Attempt), 48 (Conspiracy) or this section.

6 **48 Conspiracy**

- 7 (1) If a person conspires with someone else to commit an offence (the  
8 *offence conspired*) punishable by imprisonment for longer than  
9 1 year or by a fine of 200 penalty units or more (or both), the person  
10 commits the offence of conspiracy.
- 11 (2) However, the person commits the offence of conspiracy only if—
- 12 (a) the person entered into an agreement with at least 1 other  
13 person; and
- 14 (b) the person and at least 1 other party to the agreement intend  
15 that an offence be committed under the agreement; and
- 16 (c) the person or at least 1 other party to the agreement commits an  
17 overt act under the agreement.
- 18 (3) Despite subsection (2), any special liability provisions that apply to  
19 an offence apply also to the offence of conspiracy to commit the  
20 offence.
- 21 (4) The offence of conspiring to commit an offence is punishable as if  
22 the offence conspired had been committed.
- 23 (5) A person may be found guilty of the offence of conspiracy even  
24 though—
- 25 (a) it was impossible to commit the offence conspired; or
- 26 (b) the person and each other party to the agreement is a  
27 corporation; or

- 1 (c) each other party to the agreement is—  
2 (i) a person who is not criminally responsible; or  
3 (ii) a person for whose benefit or protection the offence  
4 exists; or  
5 (d) all other parties to the agreement are acquitted of the  
6 conspiracy (unless to find the person guilty would be  
7 inconsistent with their acquittal).
- 8 (6) A person must not be found guilty of the offence of conspiracy to  
9 commit an offence if, before the commission of an overt act under  
10 the agreement, the person—  
11 (a) withdrew from the agreement; and  
12 (b) took all reasonable steps to prevent the commission of the  
13 offence conspired.
- 14 (7) A person for whose benefit or protection an offence exists cannot be  
15 found guilty of conspiracy to commit the offence.
- 16 (8) Any defence, procedure, limitation or qualifying provision applying  
17 to an offence applies to the offence of conspiracy to commit the  
18 offence.
- 19 (9) A court may dismiss a charge of conspiracy if it considers that the  
20 interests of justice require it to dismiss the charge.
- 21 (10) A proceeding for an offence of conspiracy must not be begun  
22 without the consent of the Attorney-General or the director of public  
23 prosecutions.
- 24 (11) However, a person may be arrested for, charged with, or remanded  
25 in custody or on bail in relation to, an offence of conspiracy before  
26 the consent has been given.

1 **Part 2.5** **Corporate criminal**  
2 **responsibility**

3 **49 General principles**

- 4 (1) This Act applies to corporations as well as individuals.

5 *Note* A law that creates an offence applies to a corporation as well as to an  
6 individual (see *Legislation Act 2001*, s 161).

- 7 (2) The Act applies to corporations in the same way as it applies to  
8 individuals, but subject to the changes made by this part and any  
9 other changes necessary because criminal responsibility is being  
10 imposed on a corporation rather than an individual.

11 **50 Physical elements**

12 A physical element of an offence consisting of conduct is taken to  
13 be committed by a corporation if it is committed by an employee,  
14 agent or officer of the corporation acting within the actual or  
15 apparent scope of his or her employment or within his or her actual  
16 or apparent authority.

17 **51 Corporation—fault elements other than negligence**

- 18 (1) In deciding whether the fault element of intention, knowledge or  
19 recklessness exists for an offence in relation to a corporation, the  
20 fault element is taken to exist if the corporation expressly, tacitly or  
21 impliedly authorises or permits the commission of the offence.

- 22 (2) The ways in which authorisation or permission may be established  
23 include—

24 (a) proving that the corporation's board of directors intentionally,  
25 knowingly or recklessly engaged in the conduct or expressly,  
26 tacitly or impliedly authorised or permitted the commission of  
27 the offence; or

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- 1 (b) proving that a high managerial agent of the corporation  
2 intentionally, knowingly or recklessly engaged in the conduct  
3 or expressly, tacitly or impliedly authorised or permitted the  
4 commission of the offence; or
- 5 (c) proving that a corporate culture existed within the corporation  
6 that directed, encouraged, tolerated or led to noncompliance  
7 with the contravened law; or
- 8 (d) proving that the corporation failed to create and maintain a  
9 corporate culture requiring compliance with the contravened  
10 law.
- 11 (3) Subsection (2) (b) does not apply if the corporation proves that it  
12 exercised appropriate diligence to prevent the conduct, or the  
13 authorisation or permission.
- 14 (4) Factors relevant to subsection (2) (c) and (d) include—
- 15 (a) whether authority to commit an offence of the same or a  
16 similar character had been given by a high managerial agent of  
17 the corporation; and
- 18 (b) whether the employee, agent or officer of the corporation who  
19 committed the offence reasonably believed, or had a  
20 reasonable expectation, that a high managerial agent of the  
21 corporation would have authorised or permitted the  
22 commission of the offence.
- 23 (5) If recklessness is not a fault element for a physical element of an  
24 offence, subsection (2) does not enable the fault element to be  
25 proved by proving that the board of directors, or a high managerial  
26 agent, of the corporation recklessly engaged in the conduct or  
27 recklessly authorised or permitted the commission of the offence.
- 28 (6) In this section:
- 29 *board of directors*, of a corporation, means the body exercising the  
30 corporation's executive authority, whether or not the body is called  
31 the board of directors.

1        **corporate culture**, for a corporation, means an attitude, policy, rule,  
2        course of conduct or practice existing within the corporation  
3        generally or in the part of the corporation where the relevant  
4        conduct happens.

5        **high managerial agent**, of a corporation, means an employee, agent  
6        or officer of the corporation whose conduct may fairly be assumed  
7        to represent the corporation's policy because of the level of  
8        responsibility of his or her duties.

## 9        **52 Corporation—negligence**

10       (1) This section applies if negligence is a fault element in relation to a  
11       physical element of an offence and no individual employee, agent or  
12       officer of a corporation has the fault element.

13       (2) The fault element of negligence may exist for the corporation in  
14       relation to the physical element if the corporation's conduct is  
15       negligent when viewed as a whole (that is, by aggregating the  
16       conduct of a number of its employees, agents or officers).

17       *Note*     The test of negligence for a corporation is that set out in s 21  
18       (Negligence).

## 19       **53 Corporation—mistake of fact—strict liability**

20       A corporation may only rely on section 36 (Mistake of fact—strict  
21       liability) in relation to the conduct that would make up an offence  
22       by the corporation if—

23       (a) the employee, agent or officer of the corporation who carried  
24       out the conduct was under a mistaken but reasonable belief  
25       about facts that, had they existed, would have meant that the  
26       conduct would not have been an offence; and

27       (b) the corporation proves that it exercised appropriate diligence to  
28       prevent the conduct.

1 **54 Corporation—intervening conduct or event**

2 A corporation may not rely on section 39 (Intervening conduct or  
3 event) in relation to a physical element of an offence brought about  
4 by someone else if the other person is an employee, agent or officer  
5 of the corporation.

6 **55 Evidence of negligence or failure to exercise appropriate  
7 diligence**

8 Negligence, or failure to exercise appropriate diligence, in relation  
9 to conduct of a corporation may be evidenced by the fact that the  
10 conduct was substantially attributable to—

- 11 (a) inadequate corporate management, control or supervision of  
12 the conduct of 1 or more of the corporation's employees,  
13 agents or officers; or
- 14 (b) failure to provide adequate systems for giving relevant  
15 information to relevant people in the corporation.

1 **Part 2.6** **Proof of criminal**  
2 **responsibility**

3 **56 Legal burden of proof—prosecution**

- 4 (1) The prosecution has the legal burden of proving every element of an  
5 offence relevant to the guilt of the person charged.

6 *Note* See s 11 (Elements) on what elements are relevant to a person's guilt.

- 7 (2) The prosecution also has the legal burden of disproving any matter  
8 in relation to which the defendant has discharged an evidential  
9 burden of proof on the defendant.

- 10 (3) In this Act:

11 *legal burden*, in relation to a matter, means the burden of proving  
12 the existence of the matter.

13 **57 Standard of proof—prosecution**

- 14 (1) A legal burden of proof on the prosecution must be discharged  
15 beyond reasonable doubt.

- 16 (2) Subsection (1) does not apply if a law provides for a different  
17 standard of proof.

18 **58 Evidential burden of proof—defence**

- 19 (1) Subject to section 59 (Legal burden of proof—defence), a burden of  
20 proof that a law imposes on a defendant is an evidential burden  
21 only.

- 22 (2) A defendant who wishes to deny criminal responsibility by relying  
23 on a provision of part 2.3 (Circumstances where there is no criminal  
24 responsibility) has an evidential burden in relation to the matter.

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- 1 (3) Subject to section 59, a defendant who wishes to rely on any  
2 exception, exemption, excuse, qualification or justification provided  
3 by the law creating an offence (whether or not it accompanies the  
4 description of the offence) has an evidential burden in relation to the  
5 matter.
- 6 (4) To remove any doubt, for a strict liability offence that allows the  
7 defence of reasonable excuse, a defendant has an evidential burden  
8 in relation to the defence.
- 9 (5) The defendant no longer has the evidential burden in relation to a  
10 matter if evidence sufficient to discharge the burden is presented by  
11 the prosecution.
- 12 (6) The question whether an evidential burden has been discharged is a  
13 question of law.
- 14 (7) In this Act:
- 15 *evidential burden*, in relation to a matter, means the burden of  
16 presenting or pointing to evidence that suggests a reasonable  
17 possibility that the matter exists or does not exist.

18 **59 Legal burden of proof—defence**

19 A burden of proof that a law imposes on the defendant is a legal  
20 burden only if the law expressly—

- 21 (a) provides that the burden of proof in relation to the matter in  
22 question is a legal burden; or
- 23 (b) requires the defendant to prove the matter; or
- 24 (c) creates a presumption that the matter exists unless the contrary  
25 is proved.

26 **60 Standard of proof—defence**

27 A legal burden of proof on the defendant must be discharged on the  
28 balance of probabilities.

1 **61 Use of averments**

2 A law that allows the prosecution to make an averment (however  
3 expressed) does not allow the prosecution—

4 (a) to aver any fault element of an offence; or

5 (b) to make an averment in prosecuting for an offence that is  
6 directly punishable by imprisonment.

## 1 Part 2.7 Geographical application

### 2 62 Application and effect of pt 2.7

- 3 (1) This part applies to all offences.
- 4 (2) This part extends the application of a Territory law that creates an  
5 offence beyond the territorial limits of the ACT (and Australia) if  
6 the required geographical nexus exists for the offence.
- 7 (3) If a law that creates an offence provides for any geographical  
8 consideration for the offence, that provision prevails over any  
9 inconsistent provision of this part.

#### 10 Examples for s (3)

- 11 1 A law creating an offence may provide that the place of commission of the  
12 offence is (explicitly or by necessary implication) an element of the offence.
- 13 2 A law creating an offence may provide for its application outside the ACT  
14 and exclude (explicitly or by necessary implication) the requirement for a  
15 geographical nexus between the ACT and an element of the offence.

16 *Note* An example is part of the Act, is not exhaustive and may extend, but  
17 does not limit, the meaning of the provision in which it appears (see  
18 *Legislation Act 2001*, s 126 and s 132).

### 19 63 Interpretation for pt 2.7

- 20 (1) For this part, the *required geographical nexus* is the geographical  
21 nexus mentioned in section 64 (2).
- 22 (2) For this part, the place where an offence is committed is the place  
23 where any of the physical elements of the offence happen.
- 24 (3) For this part, the place where an offence has an effect includes—
- 25 (a) any place whose peace, welfare or good government is  
26 threatened by the offence; and
- 27 (b) any place where the offence would have an effect (or would  
28 cause such a threat) if the offence were committed.

1 **64 Extension of offences if required geographical nexus**  
2 **exists**

- 3 (1) An offence against a law is committed if—
- 4 (a) disregarding any geographical considerations, all elements of  
5 the offence exist; and
- 6 (b) a geographical nexus exists between the ACT and the offence.
- 7 (2) A *geographical nexus* exists between the ACT and an offence if—
- 8 (a) the offence is committed completely or partly in the ACT,  
9 whether or not the offence has any effect in the ACT; or
- 10 (b) the offence is committed completely outside the ACT (whether  
11 or not outside Australia) but has an effect in the ACT.

12 **65 Geographical application—double criminality**

- 13 (1) This part applies to an offence committed partly in the ACT and  
14 partly in a place outside the ACT (whether or not outside Australia),  
15 even if it is not also an offence in that place.
- 16 (2) This part applies to an offence committed completely outside the  
17 ACT (whether or not outside Australia) only if—
- 18 (a) it is also an offence in the place where it is committed; or
- 19 (b) it is not also an offence in that place, but the tribunal of fact is  
20 satisfied that the offence is such a threat to the peace, welfare  
21 or good government of the ACT that it justifies criminal  
22 punishment in the ACT.

23 **66 Geographical application—procedure**

- 24 (1) The required geographical nexus is conclusively presumed for an  
25 offence unless rebutted under subsection (2) or (4).
- 26 (2) If a person charged with an offence disputes the existence of the  
27 required geographical nexus for the offence, the following  
28 provisions apply:

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- 1 (a) the court must proceed with the trial of the offence in the usual  
2 way;
- 3 (b) if, at the end of the trial, the tribunal of fact is satisfied on the  
4 balance of probabilities that the required geographical nexus  
5 does not exist, it must make or return a finding to that effect,  
6 and the court must dismiss the charge;
- 7 (c) however, if, disregarding any geographical considerations, the  
8 tribunal of fact would find the person not guilty of the offence  
9 (other than because of mental impairment), it must make or  
10 return a verdict of not guilty;
- 11 (d) also, if, disregarding any geographical considerations, the  
12 tribunal of fact would find the person not guilty of the offence  
13 only because of mental impairment, it must make or return a  
14 verdict that the person is not guilty of the offence because of  
15 mental impairment.
- 16 *Note* Par (d) does not apply to offences until the default application  
17 date (see s 9 (1)). For findings in relation to mental illness  
18 before that date, see *Crimes Act 1900*, pt 13.
- 19 (3) This section applies to any alternative verdict available by law to the  
20 tribunal of fact in relation to another offence with which the person  
21 was not charged.
- 22 (4) The tribunal of fact may make or return a finding of guilty in  
23 relation to the other offence (mentioned in subsection (3)) unless  
24 satisfied on the balance of probabilities that the required  
25 geographical nexus does not exist for the other offence.
- 26 (5) If the issue of whether the required geographical nexus exists for an  
27 offence is raised before the trial (including at a special hearing under  
28 the *Crimes Act 1900*, section 315), the issue must be reserved for  
29 consideration at the trial.

1 **67 Geographical application—suspicion etc that offence**  
2 **committed**

- 3 (1) This section applies if a person may exercise a function under a law  
4 on reasonable suspicion or belief that an offence has been  
5 committed.
- 6 (2) The person may exercise the function if the person suspects or  
7 believes, as the case requires, on reasonable grounds that all the  
8 elements required for the offence exist.
- 9 (3) Subsection (2) applies whether or not the person suspects or  
10 believes, or has any ground to suspect or believe, that the required  
11 geographical nexus exists for the offence.

1 **Chapter 4** Property damage and  
2 **computer offences**

3 **Part 4.1** Property damage offences

4 **Division 4.1.1** Interpretation for part 4.1

5 **100** Definitions for pt 4.1

6 In this part:

7 *causes* damage or another result—a person *causes* damage or  
8 another result if the person’s conduct substantially contributes to the  
9 damage or other result.

10 *damage* property, includes the following:

- 11 (a) destroy the property;
- 12 (b) cause the physical loss of the property by interfering with the  
13 property (including by removing any restraint over the property  
14 or abandoning the property);
- 15 (c) cause loss of a use or function of the property by interfering  
16 with the property;
- 17 (d) deface the property;
- 18 (e) for a document—obliterate or make illegible the whole or part  
19 of the document;
- 20 (f) for an animal—harm or kill the animal;
- 21 (g) for a plant or other thing forming part of land—cut it from the  
22 land.

1        *property* means any real or personal property of a tangible nature,  
2        including—

- 3            (a) a wild creature that is tamed or ordinarily kept in captivity or  
4            that is in, or is being taken into, the possession of a person; and  
5            (b) any organ or part of a human body and any blood, ova, semen  
6            or other substance extracted from a human body.

7        **101 Person to whom property belongs**

- 8            (1) For this part, property belongs to anyone having possession or  
9            control of it, or having any proprietary right or interest in it (other  
10           than an equitable interest arising only from an agreement to transfer  
11           or grant an interest or from a constructive trust).  
12           (2) If property is subject to a trust, a reference to the people to whom it  
13           belongs includes a reference to anyone having a right to enforce the  
14           trust.  
15           (3) If property belongs to 2 or more people, a reference to the person to  
16           whom the property belongs is a reference to all the people.

17        **102 Threats**

18        For this part—

- 19            (a) a threat may be made by any conduct and may be explicit or  
20            implicit and conditional or unconditional; and  
21            (b) a threat to a person includes a threat to a group of people; and  
22            (c) fear that a threat will be carried out includes apprehension that  
23            it will be carried out.

1 **Division 4.1.2 Offences**

2 **103 Damaging property**

3 (1) A person commits an offence if the person—

4 (a) causes damage to property belonging to someone else; and

5 (b) intends to cause, or is reckless about causing, damage to that  
6 property or any other property belonging to someone else.

7 Maximum penalty: 1 000 penalty units, imprisonment for 10 years  
8 or both.

9 (2) A conviction for an offence against this section is an alternative  
10 verdict to a charge for—

11 (a) an offence against section 116 (Unauthorised modification of  
12 data to cause impairment); or

13 (b) an offence against section 117 (Unauthorised impairment of  
14 electronic communication).

15 **104 Arson**

16 (1) A person commits an offence if the person—

17 (a) causes damage to a building or vehicle by fire or explosive;  
18 and

19 (b) intends to cause, or is reckless about causing, damage to that or  
20 any other building or vehicle.

21 Maximum penalty: 1 500 penalty units, imprisonment for 15 years  
22 or both.

23 (2) A person commits an offence if the person—

24 (a) makes to someone else (*person B*) a threat to damage, by fire  
25 or explosive, a building or vehicle belonging to person B or to  
26 another person; and

1 (b) intends to cause, or is reckless about causing, person B to fear  
2 that the threat will be carried out.

3 Maximum penalty: 700 penalty units, imprisonment for 7 years or  
4 both.

5 (3) In the prosecution of an offence against subsection (2) it is not  
6 necessary to prove that the person threatened (person B) actually  
7 feared that the threat would be carried out.

8 (4) In this section:

9 *building* includes—

10 (a) part of a building; or

11 (b) any structure (whether or not moveable) that is used, designed  
12 or adapted for residential purposes.

13 *vehicle* means motor vehicle, motorised vessel or aircraft.

## 14 **105 Causing bushfires**

15 (1) A person commits an offence if the person—

16 (a) intentionally or recklessly causes a fire; and

17 (b) is reckless about the spread of the fire to vegetation on  
18 property belonging to someone else.

19 Maximum penalty: 1 500 penalty units, imprisonment for 15 years  
20 or both.

21 *Note* The fault element of recklessness can be satisfied by proof of intention,  
22 knowledge or recklessness (see s 20 (4)).

23 (2) In this section:

24 *causes* a fire—a person *causes* a fire if the person does any of the  
25 following:

26 (a) lights a fire;

27 (b) maintains a fire;

1 (c) fails to contain or extinguish a fire that was lit by the person if  
2 it is not beyond the person's capacity to contain or extinguish  
3 it.

4 *spread*, of a fire, means spread of the fire beyond the capacity of the  
5 person who caused the fire to contain or extinguish it.

6 **106 Threat to cause property damage—fear of death or**  
7 **serious harm**

8 (1) A person commits an offence if the person—

9 (a) intentionally makes to someone else a threat to damage  
10 property; and

11 (b) is reckless about causing that person to fear that the carrying  
12 out of the threat will kill or cause serious harm to that person  
13 or another person.

14 Maximum penalty: 700 penalty units, imprisonment for 7 years or  
15 both.

16 *Note* The fault element of recklessness can be satisfied by proof of intention,  
17 knowledge or recklessness (see s 20 (4)).

18 (2) In the prosecution of an offence against this section it is not  
19 necessary to prove that the person threatened actually feared that the  
20 threat would be carried out.

21 (3) In this section:

22 *serious harm* means any harm (including the cumulative effect of  
23 more than 1 harm) that—

24 (a) endangers, or is likely to endanger, human life; or

25 (b) is, or is likely to be, significant and longstanding.

1 **107 Threat to cause property damage**

- 2 (1) A person commits an offence if the person—
- 3 (a) intentionally makes to someone else a threat to damage  
4 property belonging to that person or to another person; and
- 5 (b) intends that person to fear that the threat will be carried out.
- 6 Maximum penalty: 200 penalty units, imprisonment for 2 years or  
7 both.
- 8 (2) In the prosecution of an offence against this section it is not  
9 necessary to prove that the person threatened actually feared that the  
10 threat would be carried out.

11 **108 Possession of thing with intent to damage property**

- 12 (1) A person commits an offence if the person possesses a thing with  
13 the intention that the person or someone else will use it to damage  
14 property belonging to another person.
- 15 Maximum penalty: 300 penalty units, imprisonment for 3 years or  
16 both.
- 17 (2) In this section:
- 18 *possess* a thing includes—
- 19 (a) have control over disposing of the thing (whether or not the  
20 thing is in the custody of the person); or
- 21 (b) have joint possession of the thing.

1 **Division 4.1.3 Defences**

2 *Note* A defendant bears an evidential burden in relation to the defences in this  
3 division (see s 58 (3)).

4 **109 Consent—pt 4.1 offences**

5 (1) A person (*person A*) is not criminally responsible for an offence  
6 against this part if, when the conduct required for the offence was  
7 carried out—

8 (a) a person entitled to consent to the damage to the property  
9 concerned had consented; or

10 (b) person A believed that a person entitled to consent to the  
11 damage to the property concerned—

12 (i) had consented; or

13 (ii) would have consented if the person had known about the  
14 damage to the property and its circumstances.

15 (2) For the application of this defence to an offence against section 105  
16 (Causing bushfires):

17 *damage*, to property, means the risk of fire spreading to the  
18 property.

19 **110 Claim of right—pt 4.1 offences**

20 (1) A person is not criminally responsible for an offence against this  
21 part if, when engaging in the conduct required for the offence, the  
22 person believed that the person had a right or interest in the property  
23 concerned that entitled the person to engage in the conduct.

24 (2) In this section:

25 *right or interest in property* includes a right or privilege in or over  
26 land or waters, whether created by grant, licence or otherwise.

1 **111 Self defence**

2 To remove any doubt, section 42 (Self-defence) applies to an  
3 offence against this part.

1 **Part 4.2** **Computer offences**

2 **112 Definitions for pt 4.2**

3 In this part:

4 *causes*—a person *causes* unauthorised access to or modification of  
5 data, or impairment of electronic communication or of the  
6 reliability, security or operation of data, if the person’s conduct  
7 substantially contributes to the unauthorised access, modification or  
8 impairment.

9 *access*, to data held in a computer, means—

- 10 (a) the display of the data by the computer or any other output of  
11 the data from the computer; or  
12 (b) the copying or moving of the data to another place in the  
13 computer or to a data storage device; or  
14 (c) for a program—the execution of the program.

15 *data* includes—

- 16 (a) information in any form; and  
17 (b) a program (or part of a program).

18 *data held in a computer* includes—

- 19 (a) data entered or copied into the computer; and  
20 (b) data held in a removable storage device in the computer; and  
21 (c) data held in a data storage device on a computer network of  
22 which the computer forms part.

1        ***data storage device*** means anything containing or designed to  
2        contain data for use by a computer.

3        **Examples of data storage devices**

- 4        1     a disc  
5        2     a file server

6        *Note*     An example is part of the Act, is not exhaustive and may extend, but  
7        does not limit, the meaning of the provision in which it appears (see  
8        *Legislation Act 2001*, s 126 and s 132).

9        ***electronic communication*** means a communication of information  
10       in any form by way of guided or unguided electromagnetic energy.

11       ***impairment***, of electronic communication to or from a computer,  
12       includes—

- 13       (a) the prevention of the communication, and  
14       (b) the impairment of the communication on an electronic link or  
15       network used by the computer;

16       but does not include a mere interception of the communication.

17       ***modification***, of data held in a computer, means—

- 18       (a) the alteration or removal of the data, or  
19       (b) an addition to the data.

20       ***serious computer offence*** means—

- 21       (a) an offence against section 115, 116 or 117; or  
22       (b) conduct in another jurisdiction that is an offence in that  
23       jurisdiction and would be an offence against section 115, 116  
24       or 117 if the conduct happened in the ACT.

1 **113 Limited meaning of *access to data* etc**

2 In this part, a reference to—

- 3 (a) access to data held in a computer; or  
4 (b) modification of data held in a computer; or  
5 (c) impairment of electronic communication to or from a  
6 computer;

7 is limited to access, modification or impairment caused (directly or  
8 indirectly) by the execution of a function of a computer.

9 **114 Meaning of *unauthorised access, modification or***  
10 ***impairment***

11 (1) For this part, access to or modification of data, or impairment of  
12 electronic communication or of the reliability, security or operation  
13 of data, by a person is *unauthorised* if the person is not entitled to  
14 cause the access, modification or impairment.

15 (2) However, the access, modification or impairment is not  
16 unauthorised only because the person has an ulterior purpose for  
17 causing it.

18 **115 Unauthorised access, modification or impairment with**  
19 **intent to commit serious offence**

20 (1) A person commits an offence if—

- 21 (a) the person causes—  
22 (i) unauthorised access to data held in a computer; or  
23 (ii) unauthorised modification of data held in a computer, or  
24 (iii) unauthorised impairment of electronic communication to  
25 or from a computer; and

26 (b) the person knows the access, modification or impairment is  
27 unauthorised; and

1 (c) the person intends to commit, or enable the commission of, a  
2 serious offence (by the person or by someone else).

3 Maximum penalty: the maximum penalty applicable if the person  
4 had committed, or enabled the commission of, the serious offence in  
5 the ACT.

6 (2) In the prosecution of an offence against this section it is not  
7 necessary to prove that the defendant knew that the offence was a  
8 serious offence.

9 (3) A person can be found guilty of an offence against this section—

10 (a) even if committing the serious offence is impossible; or

11 (b) whether the serious offence is to be committed at the time of  
12 the unauthorised conduct or at a later time.

13 (4) It is not an offence to attempt to commit an offence against this  
14 section.

15 (5) In this section:

16 *serious offence* means an offence punishable by imprisonment for  
17 5 years or longer, and includes an offence in another jurisdiction  
18 that would be a serious offence if committed in the ACT.

## 19 **116 Unauthorised modification of data to cause impairment**

20 (1) A person commits an offence if—

21 (a) the person causes unauthorised modification of data held in a  
22 computer; and

23 (b) the person knows the modification is unauthorised; and

24 (c) the person—

25 (i) intends by the modification to impair access to, or to  
26 impair the reliability, security or operation of, data held  
27 in a computer; or

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- 1                   (ii) is reckless about any such impairment.
- 2           Maximum penalty: 1 000 penalty units, imprisonment for 10 years  
3           or both.
- 4           (2) A person can be found guilty of an offence against this section even  
5           if there is or will be no actual impairment to access to, or the  
6           reliability, security or operation of, data held in a computer.
- 7           (3) A conviction for an offence against this section is an alternative  
8           verdict to a charge for—
- 9                   (a) an offence against section 103 (Damaging property); or
- 10                   (b) an offence against section 117 (Unauthorised impairment of  
11                   electronic communication).

12           **117 Unauthorised impairment of electronic communication**

- 13           (1) A person commits an offence if—
- 14                   (a) the person causes an unauthorised impairment of electronic  
15                   communication to or from a computer; and
- 16                   (b) the person knows the impairment is unauthorised; and
- 17                   (c) the person—
- 18                           (i) intends to impair electronic communication to or from  
19                           the computer; or
- 20                           (ii) is reckless about any such impairment.
- 21           Maximum penalty: 1 000 penalty units, imprisonment for 10 years  
22           or both.
- 23           (2) A conviction for an offence against this section is an alternative  
24           verdict to a charge for—
- 25                   (a) an offence against section 103 (Damaging property); or
- 26                   (b) an offence against section 116 (Unauthorised modification of  
27                   data to cause impairment).

1 **118 Possession of data with intent to commit serious**  
2 **computer offence**

- 3 (1) A person commits an offence if the person has possession or control  
4 of data with the intention of—  
5 (a) committing a serious computer offence; or  
6 (b) enabling the commission of a serious computer offence  
7 (whether by the person or by someone else).

8 Maximum penalty: 300 penalty units, imprisonment for 3 years or  
9 both.

- 10 (2) For this section:

11 *possession or control of data* includes—

- 12 (a) possession of a computer or data storage device holding or  
13 containing the data; or  
14 (b) possession of a document in which the data is recorded; or  
15 (c) control of data held in a computer that is in the possession of  
16 someone else (whether the computer is in or outside the ACT).

- 17 (3) A person can be found guilty of an offence against this section even  
18 if committing the serious computer offence is impossible.

- 19 (4) It is not an offence to attempt to commit an offence against this  
20 section.

21 **119 Producing, supplying or obtaining data with intent to**  
22 **commit serious computer offence**

- 23 (1) A person commits an offence if the person produces, supplies or  
24 obtains data with the intention of—  
25 (a) committing a serious computer offence; or

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1 (b) enabling the commission of a serious computer offence  
2 (whether by the person or by another person).

3 Maximum penalty: 300 penalty units, imprisonment for 3 years or  
4 both.

5 (2) For this section:

6 *produce, supply or obtain data* includes—

7 (a) produce, supply or obtain data held or contained in a computer  
8 or data storage device; or

9 (b) produce, supply or obtain a document in which the data is  
10 recorded.

11 (3) A person can be found guilty of an offence against this section even  
12 if committing the serious computer offence concerned is impossible.

13 **120 Unauthorised access to or modification of restricted data**  
14 **held in computer**

15 (1) A person commits an offence if—

16 (a) the person causes unauthorised access to or modification of  
17 restricted data held in a computer; and

18 (b) the person knows the access or modification is unauthorised;  
19 and

20 (c) the person intends to cause the access or modification.

21 Maximum penalty: 200 penalty units, imprisonment for 2 years or  
22 both.

23 (2) In this section:

24 *restricted data* means data held in a computer to which access is  
25 restricted by an access control system associated with a function of  
26 the computer.

1 **121** **Unauthorised impairment of data held in computer disc,**  
2 **credit card etc**

3 A person commits an offence if—

4 (a) the person causes unauthorised impairment of the reliability,  
5 security or operation of data held in a computer disc, credit  
6 card or other device used to store data by electronic means; and

7 (b) the person knows the impairment is unauthorised; and

8 (c) the person intends to cause the impairment.

9 Maximum penalty: 200 penalty units, imprisonment for 2 years or  
10 both.

## 1 Part 4.3 Sabotage

### 2 122 Definitions for pt 4.3

3 (1) In this part:

4 *causes* damage or disruption—a person *causes* damage or  
5 disruption if the person’s conduct substantially contributes to the  
6 damage or disruption.

7 *damage*, to a public facility, means—

- 8 (a) damage to the facility or part of the facility; or
- 9 (b) disruption to the use or operation of the facility.

10 *property offence* means—

- 11 (a) an offence against part 4.1 (Property damage offences); or
- 12 (b) conduct in another jurisdiction that is an offence in that  
13 jurisdiction and would be an offence against part 4.1 if the  
14 conduct happened in the ACT.

15 *public facility* means any of the following (whether publicly or  
16 privately owned):

- 17 (a) a government facility, including premises used by government  
18 employees for official duties;
- 19 (b) a public infrastructure facility, including a facility providing  
20 water, sewerage, energy, fuel, communication or other services  
21 to the public;
- 22 (c) a public information system, including a system used to  
23 generate, send, receive, store or otherwise process electronic  
24 communications;
- 25 (d) a public transport facility, including a vehicle used to transport  
26 people or goods;

- 1 (e) a public place, including any premises, land or water open to  
2 the public.

3 *unauthorised computer function* means any of the following  
4 (within the meaning of part 4.2 (Computer offences)):

- 5 (a) unauthorised access to data held in a computer;  
6 (b) unauthorised modification of data held in a computer;  
7 (c) unauthorised impairment of electronic communication to or  
8 from a computer.

9 **123 Sabotage**

10 A person commits an offence if—

- 11 (a) the person causes damage to a public facility by committing a  
12 property offence or by causing an unauthorised computer  
13 function; and  
14 (b) the person intends to cause—  
15 (i) major disruption to government functions; or  
16 (ii) major disruption to the use of services by the public; or  
17 (iii) major economic loss.

18 Maximum penalty: 2 500 penalty units, imprisonment for 25 years  
19 or both.

20 **124 Threaten sabotage**

21 (1) A person commits an offence if—

- 22 (a) the person intentionally makes to someone else a threat to  
23 cause damage to a public facility by committing a property  
24 offence or by causing an unauthorised computer function; and  
25 (b) the person intends the other person to fear that the threat will  
26 be carried out and will cause—

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- 1                   (i) major disruption to government functions; or  
2                   (ii) major disruption to the use of services by the public; or  
3                   (iii) major economic loss.
- 4           Maximum penalty: 1 500 penalty units, imprisonment for 15 years  
5           or both.
- 6   (2) In the prosecution of an offence against this section it is not  
7       necessary to prove that the person threatened actually feared that the  
8       threat would be carried out.
- 9   (3) For this section—
- 10       (a) a threat can be made by any conduct and can be explicit or  
11       implicit and conditional or unconditional; and
- 12       (b) a threat to a person includes a threat to a group of people; and
- 13       (c) fear that a threat will be carried out includes apprehension that  
14       it will be carried out.



1 **Schedule 1 Consequential amendments**

2 (see s 127)

3 **Part 1.1 Bail Act 1992**

4 **[1.1] Section 3 (1), definition of *domestic violence offence*,**  
5 **paragraph (c)**

6 *substitute*

7 (c) the Criminal Code, section 103, 104, 106, 107 or 108 (which  
8 deal with property offences); or

9 (d) any of the following provisions of the *Road Transport (Safety*  
10 *and Traffic Management) Act 1999*:

11 (i) section 6 (1) (which is about negligent driving);

12 (ii) section 7 (1) (which is about furious, reckless or  
13 dangerous driving);

14 (iii) section 8 (1) or (2) (which are about menacing driving).

15 *Note* A reference to an offence against a Territory law includes a reference to  
16 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

17 **[1.2] Schedule 1, item 37**

18 *omit*

19 **Part 1.2 Building Act 1972**

20 **[1.3] Section 107 (1), note 2**

21 *substitute*

22 *Note 2* A reference to an offence against a Territory law includes a reference to  
23 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

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## 1 Part 1.3 Casino Control Act 1988

### 2 [1.4] Section 100 (1) (b), note

3 *substitute*

4 *Note* A reference to an offence against a Territory law includes a reference to  
5 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

## 6 Part 1.4 Children and Young People 7 Act 1999

### 8 [1.5] Section 71

9 *omit*

### 10 [1.6] Section 72 (1)

11 *substitute*

- 12 (1) If a police officer reasonably believes that a person is a child under  
13 the age of 10 years and had carried out, or is carrying out, conduct  
14 that makes up the physical elements of an offence, the police officer  
15 may apprehend the child, and for that purpose may use necessary  
16 and reasonable force.

17 *Note* The Criminal Code, div 2.3.1 deals with the criminal responsibility of  
18 children.

## 19 Part 1.5 Clinical Waste Act 1990

### 20 [1.7] Section 2, definition of *offence against this Act*, note

21 *substitute*

22 *Note* A reference to an offence against a Territory law includes a reference to  
23 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

1 **Part 1.6 Crimes Act 1900**

2 **[1.8] Division 6.3**

3 *omit*

- 4 • section 116 (1)  
5 • section 117 (1)  
6 • sections 118 and 118A  
7 • sections 120 and 121.

8 **[1.9] Sections 116 and 117**

9 *renumber subsections when Act next republished under the*  
10 *Legislation Act 2001*

11 **[1.10] Division 6.5**

12 *omit*

13 **[1.11] Part 9, heading**

14 *substitute*

15 **Part 9 Accessories**

16 **[1.12] Section 180**

17 *omit*

18 **[1.13] Sections 182 to 184**

19 *omit*

20 **[1.14] Part 14**

21 *omit*

22 **[1.15] Schedule 1, item 37**

23 *omit*

1 **[1.16] Dictionary, definition of *domestic violence offence*,**  
2 **paragraph (c)**

3 *substitute*

4 (c) the Criminal Code, section 103, 104, 106, 107 or 108 (which  
5 deal with property offences); or

6 (d) any of the following provisions of the *Road Transport (Safety*  
7 *and Traffic Management) Act 1999*:

8 (i) section 6 (1) (which is about negligent driving);

9 (ii) section 7 (1) (which is about furious, reckless or  
10 dangerous driving);

11 (iii) section 8 (1) or (2) (which are about menacing driving).

12 *Note* A reference to an offence against a Territory law includes a reference to  
13 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

14 **Part 1.7 Discrimination Act 1991**

15 **[1.17] Section 108E, note**

16 *substitute*

17 *Note* A reference to an offence against a Territory law includes a reference to  
18 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

19 **Part 1.8 Electricity Safety Act 1971**

20 **[1.18] Section 112 (3), note 1**

21 *substitute*

22 *Note 1* A reference to an offence against a Territory law includes a reference to  
23 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

1 **Part 1.9 Fair Trading (Consumer**  
2 **Affairs) Act 1973**

3 **[1.19] Section 12I (3), note 1**

4 *substitute*

5 *Note 1* A reference to an offence against a Territory law includes a reference to  
6 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

7 **Part 1.10 Gas Safety Act 2000**

8 **[1.20] Section 58 (3), note 1**

9 *substitute*

10 *Note 1* A reference to an offence against a Territory law includes a reference to  
11 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

12 **Part 1.11 Guardianship and**  
13 **Management of Property Act**  
14 **1991**

15 **[1.21] Section 50 (2), note**

16 *substitute*

17 *Note* A reference to an offence against a Territory law includes a reference to  
18 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

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## 1 **Part 1.12**                      **Legislation Act 2001**

### 2 **[1.22] Section 189**

3            *omit*

4            *the Crimes Act 1900, part 9*

5            *substitute*

6            the Criminal Code, part 2.4 (Extensions of criminal responsibility)  
7            or the *Crimes Act 1900*, section 181 (Accessory after the fact)

### 8 **[1.23] Section 189, example and note**

9            *substitute*

#### 10 **Example**

11 X is the holder of a licence under the *Plant Development Act 2001* (hypothetical).  
12 Section 23 of the Act provides for the cancellation of a licence if a licence holder  
13 commits an offence against the Act. While his business premises are being  
14 inspected, X incites an employee to obstruct the inspector. As a result, the  
15 employee obstructs the inspector (which is an offence against the Act). X is later  
16 convicted of the offence of incitement against the Criminal Code, section 47  
17 (which is an offence in the Criminal Code, pt 2.4). Because of the Legislation  
18 Act, section 189, X is taken to have committed an offence against the Plant  
19 Development Act and is therefore liable to have his licence cancelled.

20 *Note*        The result would be the same if X had been convicted of conspiracy  
21 relating to the offence of obstruction in the Plant Development Act.

22            Apart from the Legislation Act, section 189, the following offences in  
23 the Criminal Code, pt 2.4 could also apply to the offence in the Plant  
24 Development Act:

- 25            • aiding and abetting (s 45 (Complicity and common purpose))
- 26            • attempt (s 44 (Attempt)).

27 *Note*        An example is part of the Act, is not exhaustive and may extend, but  
28 does not limit, the meaning of the provision in which it appears (see  
29 *Legislation Act 2001*, s 126 and s 132).

1 **[1.24] Section 192 (4) (a)**

2 *substitute*

- 3 (a) an offence against the Criminal Code, section 45 (Complicity  
4 and common purpose); or

5 **[1.25] Dictionary, part 1, new definition of *Criminal Code***

6 *insert*

7 *Criminal Code* means the *Criminal Code 2002*.

8 **Part 1.13 Occupational Health and**  
9 **Safety Act 1989**

10 **[1.26] Section 93 (1), note**

11 *substitute*

12 *Note* A reference to an offence against a Territory law includes a reference to  
13 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

14 **Part 1.14 Protection Orders Act 2001**

15 **[1.27] Section 9 (2) (c) and (d)**

16 *substitute*

- 17 (c) the Criminal Code, section 103, 104, 106, 107 or 108 (which  
18 deal with property offences); or
- 19 (d) any of the following provisions of the *Road Transport (Safety*  
20 *and Traffic Management) Act 1999*:
- 21 (i) section 6 (1) (which is about negligent driving);
- 22 (ii) section 7 (1) (which is about furious, reckless or  
23 dangerous driving);

1 (iii) section 8 (1) or (2) (which are about menacing driving).

2 *Note* A reference to an offence against a Territory law includes a reference to  
3 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

4 **[1.28] Schedule 1, item 37**

5 *omit*

6 **Part 1.15 Race and Sports Bookmaking**  
7 **Act 2001**

8 **[1.29] Section 94 (3), note 1**

9 *substitute*

10 *Note 1* A reference to an offence against a Territory law includes a reference to  
11 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

12 **Part 1.16 Road Transport (Driver**  
13 **Licensing) Act 1999**

14 **[1.30] Section 27 (1)**

15 *substitute*

16 (1) The regulations may apply publications of the National Road  
17 Transport Commission approved, or of matters approved, by the  
18 Australian Transport Council or any other instrument as in force  
19 from time to time.

20 *Note 1* The text of an applied, adopted or incorporated law or instrument,  
21 whether applied as in force from time to time or as at a particular time,  
22 is taken to be a notifiable instrument if the operation of the *Legislation*  
23 *Act 2001*, s 47 (5) or (6) is not disappplied (see s 47 (7)).

24 *Note 2* A notifiable instrument must be notified under the *Legislation Act 2001*.

1 **Part 1.17 Road Transport (General) Act**  
2 **1999**

3 **[1.31] Section 229 (1)**

4 *substitute*

5 (1) The regulations may apply publications of the National Road  
6 Transport Commission approved, or of matters approved, by the  
7 Australian Transport Council or any other instrument as in force  
8 from time to time.

9 *Note 1* The text of an applied, adopted or incorporated law or instrument,  
10 whether applied as in force from time to time or as at a particular time,  
11 is taken to be a notifiable instrument if the operation of the *Legislation*  
12 *Act 2001*, s 47 (5) or (6) is not disappplied (see s 47 (7)).

13 *Note 2* A notifiable instrument must be notified under the *Legislation Act 2001*.

14 **Part 1.18 Road Transport (Safety and**  
15 **Traffic Management) Act 1999**

16 **[1.32] Section 34 (1)**

17 *substitute*

18 (1) The regulations may apply publications of the National Road  
19 Transport Commission approved, or of matters approved, by the  
20 Australian Transport Council or any other instrument as in force  
21 from time to time.

22 *Note 1* The text of an applied, adopted or incorporated law or instrument,  
23 whether applied as in force from time to time or as at a particular time,  
24 is taken to be a notifiable instrument if the operation of the *Legislation*  
25 *Act 2001*, s 47 (5) or (6) is not disappplied (see s 47 (7)).

26 *Note 2* A notifiable instrument must be notified under the *Legislation Act 2001*.

1 **Part 1.19** **Road Transport (Safety and**  
2 **Traffic Management)**  
3 **Regulations 2000**

4 **[1.33] Regulation 23B (2), note 3**

5 *omit*

6 Criminal Code, s 10.3 (as applied by reg 115).

7 *insert*

8 Criminal Code, s 41.

9 **[1.34] Regulation 34**

10 *substitute*

11 **34 Application of Criminal Code**

12 The Criminal Code applies to an offence against the Australian  
13 Road Rules.

14 *Note* The Criminal Code sets out the general principles of criminal  
15 responsibility.

16 **[1.35] Regulation 35**

17 *omit*

18 for the Criminal Code, chapter 2

19 **[1.36] Regulation 36**

20 *omit*

21 defence under the Criminal Code, chapter 2

22 *insert*

23 other defence

1 **[1.37] Regulation 115**

2 *substitute*

3 **115 Application of Criminal Code to regulations**

4 The Criminal Code applies to an offence against these regulations.

5 *Note* The Criminal Code sets out the general principles of criminal  
6 responsibility.

7 **[1.38] Regulation 116**

8 *omit*

9 for the Criminal Code, chapter 2

10 *insert*

11 Criminal Code

12 **[1.39] Regulation 117**

13 *omit*

14 defence under the Criminal Code, chapter 2

15 *insert*

16 other defence

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1 **Part 1.20** **Road Transport (Vehicle**  
2 **Registration) Act 1999**

3 **[1.40] Section 16 (1)**

4 *substitute*

- 5 (1) The regulations may apply publications of the National Road  
6 Transport Commission approved, or of matters approved, by the  
7 Australian Transport Council or any other instrument as in force  
8 from time to time.

9 *Note 1* The text of an applied, adopted or incorporated law or instrument,  
10 whether applied as in force from time to time or as at a particular time,  
11 is taken to be a notifiable instrument if the operation of the *Legislation*  
12 *Act 2001*, s 47 (5) or (6) is not disappplied (see s 47 (7)).

13 *Note 2* A notifiable instrument must be notified under the *Legislation Act 2001*.

14 **Part 1.21** **Taxation Administration Act**  
15 **1999**

16 **[1.41] Section 70 (3)**

17 *substitute*

- 18 (1) For this section, a reference to an offence against a law of the  
19 Commonwealth includes a reference to an offence against the  
20 *Crimes Act 1914* (Cwlth), section 6 or the *Criminal Code* (Cwlth),  
21 section 11.1, 11.4 or 11.5 that relates to an offence against that law  
22 of the Commonwealth.

23 *Note* A reference to an offence against a Territory law includes a reference to  
24 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

1 **Part 1.22 Tree Protection (Interim**  
2 **Scheme) Act 2001**

3 **[1.42] Section 40 (3), note 1**

4 *substitute*

5 *Note 1* A reference to an offence against a Territory law includes a reference to  
6 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

7 **Part 1.23 Utilities Act 2000**

8 **[1.43] Section 74 (2), note 1**

9 *substitute*

10 *Note 1* A reference to an offence against a Territory law includes a reference to  
11 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

12 **[1.44] Section 166 (2), note 1**

13 *substitute*

14 *Note 1* A reference to an offence against a Territory law includes a reference to  
15 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

16 **[1.45] Section 201 (2), note 1**

17 *substitute*

18 *Note 1* A reference to an offence against a Territory law includes a reference to  
19 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

20 **[1.46] Section 226, note**

21 *substitute*

22 *Note* A reference to an offence against a Territory law includes a reference to  
23 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

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1 **Part 1.24** **Victims of Crime (Financial**  
2 **Assistance) Act 1983**

3 **[1.47] Section 2, definition of *serious crime*, paragraph (e)**  
4 **and note**

5 *substitute*

- 6 (e) an offence against a law of the Commonwealth, a State or  
7 another Territory corresponding to a provision of the Criminal  
8 Code, part 2.4 (Extensions of criminal responsibility) or the  
9 *Crimes Act 1900*, section 181 (Accessory after the fact) in  
10 relation to an offence mentioned in paragraphs (a) to (d).

11 *Note* A reference to an offence against a Territory law includes a reference to  
12 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

13 **[1.48] Section 2, definition of *sexual crime*, paragraph (c) and**  
14 **note**

15 *substitute*

- 16 (c) an offence against a law of the Commonwealth, a State or  
17 another Territory corresponding to a provision of the Criminal  
18 Code, part 2.4 (Extensions of criminal responsibility) or the  
19 *Crimes Act 1900*, section 181 (Accessory after the fact) in  
20 relation to an offence mentioned in paragraph (b).

21 *Note* A reference to an offence against a Territory law includes a reference to  
22 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

23 **Part 1.25** **Waste Minimisation Act 2001**

24 **[1.49] Section 48 (3), note 1**

25 *substitute*

26 *Note 1* A reference to an offence against a Territory law includes a reference to  
27 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

1 **Part 1.26 Water and Sewerage Act 2000**

2 **[1.50] Section 39 (3), note 1**

3 *substitute*

4 *Note 1* A reference to an offence against a Territory law includes a reference to  
5 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

6 **Part 1.27 Workers Compensation Act**  
7 **1951**

8 **[1.51] Section 161 (2), note**

9 *omit*

10 *Note* Under the Criminal Code, pt 2.4, it is an offence to attempt to commit  
11 an offence, to aid, abet or incite a person to commit an offence or to  
12 conspire with a person to commit an offence. Also, under the *Crimes*  
13 *Act 1900*, s 181 it is an offence to receive or assist a person knowing  
14 they have committed an offence. Those provisions apply to an offence  
15 against this section.

16 **[1.52] Section 214 (2), note**

17 *substitute*

18 *Note 1* A reference to an offence against a Territory law includes a reference to  
19 a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

# Dictionary

(see s 3)

*Note 1* The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

*Note 2* In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms relevant to this Act:

- Act
- ACT
- contravene
- corporation
- function
- person
- proceeding
- provision
- subordinate law

***access***, for part 4.2 (Computer offences)—see section 112.

***causes***—

(a) for part 4.1 (Property damage offences)—see section 100.

(b) for part 4.2 (Computer offences)—see section 112.

(c) for part 4.3 (Sabotage)—see section 122.

***conduct***—see section 13.

***creates***—a law *creates* an offence if it directly or indirectly creates the offence or affects its scope or operation.

***damage***—

(a) for part 4.1 (Property damage offences)—see section 100.

(b) for part 4.3 (Sabotage)—see section 122.

***data***, for part 4.2 (Computer offences)—see section 112.

- 1        ***data held in a computer***, for part 4.2 (Computer offences)—see  
2        section 112.
- 3        ***data storage device***, for part 4.2 (Computer offences)—see  
4        section 112.
- 5        ***death*** means—
- 6        (a) the irreversible cessation of all function of a person’s brain  
7        (including the brain stem); or
- 8        (b) the irreversible cessation of circulation of blood in a person’s  
9        body.
- 10       ***default application date***—see section 10.
- 11       ***electronic communication***, for part 4.2 (Computer offences)—see  
12       section 112.
- 13       ***employee*** includes a servant.
- 14       ***engage in conduct***—see section 13.
- 15       ***evidential burden***—see section 58 (7).
- 16       ***fault element***—see section 17.
- 17       ***fault element of basic intent***—see section 30.
- 18       ***immediately applied provisions***—see section 10.
- 19       ***impairment***, for part 4.2 (Computer offences)—see section 112.
- 20       ***intention***—see section 18.
- 21       ***intoxication***—see section 30.
- 22       ***knowledge***—see section 19.
- 23       ***law*** means an Act or subordinate law, and includes a provision of an  
24       Act or subordinate law.
- 25       ***legal burden***—see section 56.
- 26       ***mental impairment***—see section 27.

- 1        **modification**, for part 4.2 (Computer offences)—see section 112.
- 2        **negligent**—see section 21.
- 3        **offence** means an offence against a law.
- 4        **physical element**—see section 14.
- 5        **property**, for part 4.1 (Property damage offences)—see section 100.
- 6        **property offence**, for part 4.3 (Sabotage)—see section 122.
- 7        **public facility**, for part 4.3 (Sabotage)—see section 122.
- 8        **reckless**—see section 20.
- 9        **required geographical nexus**, for part 2.7 (Geographical  
10 application)—see section 63.
- 11       **self-induced**, intoxication—see section 30.
- 12       **serious computer offence**, for part 4.2 (Computer offences)—see  
13 section 112.
- 14       **special liability provision** means—
- 15       (a) a provision providing that absolute liability applies to 1 or  
16       more (but not all) of the physical elements of an offence; or
- 17       (b) a provision providing that, in a prosecution for an offence, it is  
18       not necessary to prove that the defendant knew something; or
- 19       (c) a provision providing that, in a prosecution for an offence, it is  
20       not necessary to prove that the defendant knew or believed  
21       something.
- 22       **unauthorised computer function**, for part 4.3 (Sabotage)—see  
23 section 122.

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## Endnotes

### Republications of amended laws

- 1 For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

### Penalty units

- 2 The *Legislation Act 2001*, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

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