



Australian Capital Territory

Crimes Act 1900 No 40

Republication No 6A

Effective: 15 December 1999 – 23 December 1999

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Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Crimes Act 1900* effective from 15 December 1999 to 23 December 1999.

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SCHEDULE 2

DOMESTIC VIOLENCE OFFENCES UNDER THE CRIMES ACT 1900

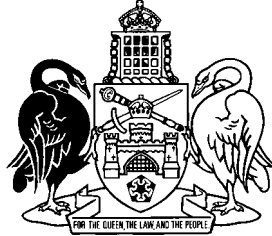
SCHEDULE 3 FORMS

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Australian Capital Territory

Crimes Act 1900

An Act to consolidate the statutes relating to criminal law

PART 1—PRELIMINARY AND INTERPRETATION

1 Short title

This Act may be cited as the *Crimes Act 1900*.

2 Repeals and savings

(1) The Acts mentioned in Schedule 1 are, to the extent expressed, repealed, except as to offences committed and things done or commenced before the passing of this Act, which shall be dealt with and continued, and in respect of which every right and liability shall remain as if this Act had not been passed.

(2) All persons appointed under any Act, or section of an Act, repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed under this Act.

3 Application

The provisions of this Act, in so far as they can be applied, shall be in force with respect to all offences, whether at common law or by statute, whensoever committed and in whatsoever court tried.

3A Territorial application of the criminal law of the Territory

- (1) An offence against a law of the Territory is committed if—
- (a) all elements necessary to constitute the offence (disregarding any territorial considerations) exist; and

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- (b) a territorial nexus exists between the Territory and at least 1 element of the offence.
- (2) A territorial nexus exists between the Territory and an element of an offence if—
- (a) the element is or includes an event occurring in the Territory; or
 - (b) the element is or includes an event that occurs outside the Territory but while the person alleged to have committed the offence is in the Territory.
- (3) The territorial nexus referred to in paragraph (1) (b) (in this section called the *necessary territorial nexus*) shall be presumed to exist, but the presumption is rebuttable in accordance with subsection (4).
- (4) If a person charged with an offence disputes the existence of the necessary territorial nexus, the court shall proceed with the trial of the offence in the usual way and if at the conclusion of the trial the court, or, in the case of a jury trial, the jury, is satisfied on the balance of probabilities that the necessary territorial nexus does not exist, it shall, subject to subsection (5), make or return a finding to that effect and the charge is to be dismissed.
- (5) If the court, or, in the case of a jury trial, the jury, would, disregarding territorial considerations, find the person not guilty of the offence (but not on the ground of mental illness), the court or jury shall make or return a finding of not guilty.
- (6) The issue of whether the necessary territorial nexus exists shall, if raised before the trial, be reserved for consideration at the trial.
- (7) A power or authority exercisable on reasonable suspicion that an offence has been committed may be exercised in the Territory if the person in whom the power or authority is vested suspects on reasonable grounds that the elements necessary to constitute the offence exist (whether or not that person suspects or has any ground to suspect that the necessary territorial nexus with the Territory exists).
- (8) This section applies to offences committed before or after the commencement of this section but does not apply to an offence if—
- (a) the law under which the offence is created makes the place of commission (explicitly or by necessary implication) an element of the offence; or
 - (b) the law under which the offence is created is a law of extraterritorial operation and explicitly or by necessary

implication excludes the requirement for a territorial nexus between the Territory and an element of the offence; or

- (c) proceedings are pending at the commencement of this section in relation to the offence.

(9) This section is in addition to and does not derogate from any other basis on which the courts of the Territory may exercise criminal jurisdiction.

(10) If a person charged with a particular offence could be found guilty on that charge of some other offence or offences, that person is, for the purposes of this section, to be taken to be charged with each offence.

(11) In this section—

event means any act, omission, occurrence, circumstance or state of affairs (not including intention, knowledge or any other state of mind).

trial includes a special hearing conducted in accordance with section 428I.

4 Interpretation

(1) In this Act, unless the context or subject matter otherwise indicates or requires—

bail undertaking means an undertaking given by a person charged with an offence in order to obtain bail in relation to the offence.

child—

- (a) means a person who has not attained the age of 18 years; and
- (b) in relation to a person, includes a child—
- (i) who normally or regularly resides with the person; or
 - (ii) of whom the person is a guardian.

court and *judge* respectively shall be equally taken to mean the court in which or the judge before whom the trial or proceeding is had in respect of which either word is used.

de facto spouse, in relation to a person, means a person of the opposite sex to the firstmentioned person who is living with the firstmentioned person as that person's husband or wife although not legally married to the firstmentioned person.

director of public prosecutions means—

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- (a) the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1990*; or
- (b) the Director of Public Prosecutions appointed under the *Director of Public Prosecutions Act 1983* of the Commonwealth;

as the case requires.

document of title to land includes every deed, certificate of title, map, paper, or parchment, written or printed, or partly written and partly printed, being or containing evidence of the title, or part of the title, to any real estate or to any interest in or out of real estate.

domestic violence offence means—

- (a) an offence against a provision of this Act specified in column 1 of Schedule 2 or an attempt to commit such an offence; or
- (b) an offence against section 27 of the *Domestic Violence Act 1986*; or
- (c) an offence against section 129 of the *Motor Traffic Act 1936*;

committed by a person so as to cause physical or emotional harm to—

- (d) a spouse of the person; or
- (e) a child of the person or of a spouse of the person; or
- (f) a relative; or
- (g) a household member.

grievous bodily harm includes any permanent or serious disfiguring of the person.

household member, in relation to a person, means a person who normally resides, or was normally resident, in the same household as the firstmentioned person (other than as a tenant or boarder).

indictment includes any information presented or filed as provided by law for the prosecution of offences.

judge—see *court*.

knife includes—

- (a) a knife blade; and
- (b) a razor blade; and
- (c) any other blade;

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but does not include a knife of a class or description excluded from this definition by the regulations.

law of the Territory includes a continued State law but does not include an Act of the Parliament of the Commonwealth or regulations under such an Act.

loaded arms means any firearm, airgun or air pistol that is loaded with any projectile or missile, whether or not the firearm, airgun or air pistol is capable of being discharged.

medical practitioner means a person—

- (a) who is registered under the *Medical Practitioners Act 1930*; or
- (b) who is to be deemed to be registered under that Act by virtue of section 25 of the *Mutual Recognition Act 1992* of the Commonwealth.

motor vehicle means a vehicle that runs on wheels (not being an aircraft or a vehicle used on a railway) and that uses or is designed to use any power other than human or animal power as its principal means of propulsion.

offensive weapon includes an imitation or replica of an offensive weapon, or of an offensive weapon or an instrument, as the case may be.

officer, in relation to a body corporate or public company, includes a person who has been appointed or who acts as an auditor of the body corporate or public company.

person includes any society, company, or corporation.

relative, in relation to a person—

- (a) means—
 - (i) the father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law or mother-in-law of the person; or
 - (ii) the son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law or daughter-in-law of the person; or
 - (iii) the brother, sister, half-brother, half-sister, stepbrother, stepsister, brother-in-law or sister-in-law of the person; or

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- (iv) the uncle, aunt, uncle-in-law or aunt-in-law of the person; or
 - (v) the nephew or niece of the person; or
 - (vi) the cousin of the person; and
- (b) includes a person who would have been a relative of a kind referred to in paragraph (a) if the firstmentioned person had been legally married to his or her de facto spouse; and
- (c) includes a former relative of a kind referred to in paragraph (a) or (b).

school means—

- (a) a school or college established or maintained by or on behalf of the Territory; or
- (b) a school or college registered or provisionally registered under the *Education Act 1937*.

spouse includes former spouse, de facto spouse and former de facto spouse.

trustee means a trustee on some express trust howsoever created, and includes the heir or personal representative of such trustee, and every other person upon whom the duty of such trust shall have devolved, and also any official manager, assignee, liquidator, or other like officer, acting under any Act relating to joint stock companies or to bankruptcy or insolvency.

trust fund means the Confiscated Assets Trust Fund established by section 33 of the *Proceeds of Crime Act 1991*.

vessel means any ship or vessel used in or intended for navigation, not being an undecked boat.

weapon and ***weapon or instrument*** includes an imitation or replica of a weapon, or of a weapon or an instrument, as the case may be.

(2) For the purposes of this Act, a firearm, airgun or air pistol that is unlawfully presented at a person shall, unless the contrary is proved, be deemed to be loaded arms.

(3) In any provision of this Act relating to an offence, a reference to the jury shall, where a person charged with that offence is dealt with summarily, be read as a reference to the magistrate.

8 Public place etc

Where, by this or any other Act, any offence, conduct, or language, in a public place, or open and public place, or place of public resort, is made punishable, or a person guilty thereof is made liable by apprehension, the place shall be deemed public for the purposes of the enactment or taken to be otherwise within its meaning if the same, although a vessel or vehicle only, or a room, or field, or place, ordinarily private, was at the time used for a public purpose, or as a place of common resort, or was open to the public on the payment of money or otherwise.

9 Abolition of distinctions between felony and misdemeanour

All distinctions between felony and misdemeanour are abolished.

PART 3—OFFENCES AGAINST THE PERSON

10 When child born alive

For the purposes of this Part, a child shall be taken to have been born alive if he or she has breathed and has been wholly born, whether or not he or she has had an independent circulation.

11 No time limit on criminal responsibility for homicide

(1) Any rule of law that a death which occurs more than a year and a day after the injury which caused it is to be conclusively presumed not to have been caused by the injury, is abolished.

(2) This section does not apply in respect of an injury received before the commencement of this section.

12 Murder

(1) A person commits murder if he or she causes the death of another person—

- (a) intending to cause the death of any person; or
- (b) with reckless indifference to the probability of causing the death of any person.

(2) A person who commits murder is guilty of an offence punishable, on conviction, by imprisonment for life.

13 Trial for murder—provocation

(1) Where, on a trial for murder—

- (a) it appears that the act or omission causing death occurred under provocation; and
- (b) but for this subsection and the provocation, the jury would have found the accused guilty of murder;

the jury shall acquit the accused of murder and find him or her guilty of manslaughter.

(2) For the purposes of subsection (1), an act or omission causing death shall be taken to have occurred under provocation where—

- (a) the act or omission was the result of the accused's loss of self-control induced by any conduct of the deceased (including grossly insulting words or gestures) towards or affecting the accused; and

- (b) the conduct of the deceased was such as could have induced an ordinary person in the position of the accused to have so far lost self-control—
 - (i) as to have formed an intent to kill the deceased; or
 - (ii) as to be recklessly indifferent to the probability of causing the deceased's death;

whether that conduct of the deceased occurred immediately before the act or omission causing death or at any previous time.

(3) For the purpose of determining whether an act or omission causing death occurred under provocation, there is no rule of law that provocation is negatived if—

- (a) there was not a reasonable proportion between the act or omission causing death and the conduct of the deceased that induced the act or omission; or
- (b) the act or omission causing death did not occur suddenly; or
- (c) the act or omission causing death occurred with any intent to take life or inflict grievous bodily harm.

(4) Where, on a trial for murder, there is evidence that the act or omission causing death occurred under provocation, the onus of proving beyond reasonable doubt that the act or omission did not occur under provocation lies on the prosecution.

(5) This section does not exclude or limit any defence to a charge of murder.

14 Trial for murder—diminished responsibility

(1) A person on trial for murder shall not be convicted of murder if, when the act or omission causing death occurred, the accused was suffering from an abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent cause or whether it was induced by disease or injury) that substantially impaired his or her mental responsibility for the act or omission.

(2) An accused has the onus of proving that he or she is, by virtue of subsection (1), not liable to be convicted of murder.

(3) A person who, but for subsection (1), would be liable (whether as principal or accessory) to be convicted of murder is liable to be convicted of manslaughter.

(4) The fact that a person is, by virtue of subsection (1), not liable to be convicted of murder does not affect the question whether any other person is liable to be convicted of murder in respect of the same death.

(5) Where, on a trial for murder, the accused contends—

- (a) that he or she is entitled to be acquitted on the ground that he or she was mentally ill at the time of the act or omission causing the death; or
- (b) that he or she is, by virtue of subsection (1), not liable to be convicted of murder;

the prosecution may offer evidence tending to prove the other of those contentions and the court may give directions as to the stage of the proceedings at which that evidence may be offered.

15 Manslaughter

(1) Except where a law expressly provides otherwise, an unlawful homicide that is not, by virtue of section 12, murder shall be taken to be manslaughter.

(2) A person who commits manslaughter is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

16 Suicide etc—not an offence

The rule of law that it is an offence for a person to commit, or to attempt to commit, suicide is abolished.

17 Suicide—aiding etc

(1) A person who aids or abets the suicide or attempted suicide of another person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

(2) Where—

- (a) a person incites or counsels another person to commit suicide; and
- (b) the other person commits, or attempts to commit, suicide as a consequence of that incitement or counselling;

the firstmentioned person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

18 Prevention of suicide

It is lawful for a person to use such force as is reasonable to prevent the suicide of another person or any act which the person believes on reasonable grounds would, if committed, result in the suicide of another person.

19 Intentionally inflicting grievous bodily harm

A person who intentionally inflicts grievous bodily harm on another person is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

20 Recklessly inflicting grievous bodily harm

A person who recklessly inflicts grievous bodily harm on another person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

21 Wounding

A person who intentionally wounds another person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

22 Assault with intent to commit certain indictable offences

A person who assaults another person with intent to commit another offence against this Part punishable by imprisonment for a maximum period of 5 years or longer is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

23 Inflicting actual bodily harm

A person who intentionally or recklessly inflicts actual bodily harm on another person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

24 Assault occasioning actual bodily harm

A person who assaults another person and thereby occasions actual bodily harm is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

25 Causing grievous bodily harm

A person who, by any unlawful or negligent act or omission, causes grievous bodily harm to another person is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

26 Common assault

A person who assaults another person is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

27 Acts endangering life etc

(1) In this section—

conveyance means a vehicle (including an aircraft) or vessel of a kind used for transporting persons, animals or goods.

public utility service means—

- (a) the supply of electricity, gas or water; or
- (b) the supply of fuel; or
- (c) the collection and disposal of sewerage and other waste; as a service to the public.

transport facility means a facility provided to permit the transportation of persons, animals or goods, whether by air or over land or water, or provided in connection with such transportation.

(2) For the purposes of paragraph (3) (g), an interference shall be taken to include any act or omission which, whether temporarily or permanently, damages, renders inoperative, obstructs, causes to malfunction or puts to an improper purpose.

(3) A person who intentionally and unlawfully—

- (a) chokes, suffocates or strangles another person so as to render that person insensible or unconscious or, by any other means, renders another person insensible or unconscious; or
- (b) administers to, or causes to be taken by, another person any stupefying or overpowering drug or poison or any other injurious substance likely to endanger human life or cause a person grievous bodily harm; or
- (c) uses against another person any offensive weapon likely to endanger human life or cause a person grievous bodily harm; or
- (d) discharges any loaded arms at another person or so as to cause another person reasonable apprehension for his or her safety; or
- (e) causes an explosion or throws, places, sends or otherwise uses any explosive device or any explosive, corrosive or inflammable substance in circumstances likely to endanger human life or cause a person grievous bodily harm; or

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- (f) sets a trap or device for the purpose of creating circumstances likely to endanger human life or cause a person (including a trespasser) grievous bodily harm; or
- (g) interferes with any conveyance or transport facility or any public utility service in circumstances likely to endanger human life or cause a person grievous bodily harm;

is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

- (4) A person who does an act referred to in subsection (3)—
- (a) intending to commit an indictable offence against this Part punishable by imprisonment for a maximum period exceeding 10 years; or
 - (b) intending to prevent or hinder his or her lawful apprehension or detention or that of another person; or
 - (c) intending to prevent or hinder a police officer from lawfully investigating an act or matter which reasonably calls for investigation by the officer;

is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

28 Acts endangering health etc

- (1) In this section—

conveyance, *interferes with*, *public utility service* and *transport facility* have the same meanings as in section 27.

- (2) A person who intentionally and unlawfully—
- (a) administers to, or causes to be taken by, another person any poison or other injurious substance with intent to injure or cause pain or discomfort to that person; or
 - (b) causes an explosion or throws, places, sends or otherwise uses any explosive device or any explosive, corrosive or inflammable substance in circumstances dangerous to the health, safety or physical wellbeing of another person; or
 - (c) sets a trap or device for the purpose of creating circumstances dangerous to the health, safety or physical wellbeing of another person (including a trespasser); or

- (d) interferes with any conveyance or transport facility or any public utility service in circumstances dangerous to the health, safety or physical wellbeing of another person;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

29 Culpable driving of motor vehicle

- (1) In this section—

drug has the same meaning as in the *Motor Traffic (Alcohol and Drugs) Act 1977*.

motor vehicle has the same meaning as in the *Motor Traffic Act 1936*.

- (2) A person who, by the culpable driving of a motor vehicle, causes the death of another person is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

- (3) A person who, by the culpable driving of a motor vehicle, causes grievous bodily harm to another person is guilty of an offence punishable, on conviction, by imprisonment for 4 years.

- (4) For the purposes of this section, a person shall be taken to drive a motor vehicle culpably if the person drives the vehicle—

- (a) negligently; or
- (b) while under the influence of alcohol, or a drug, to such an extent as to be incapable of having proper control of the vehicle.

- (5) For the purposes of this section, a person shall be taken to drive a motor vehicle negligently if the person fails unjustifiably and to a gross degree to observe the standard of care which a reasonable person would have observed in all the circumstances of the case.

- (6) An information or indictment for an offence against subsection (2) or (3) shall specify the nature of the culpability, within the meaning of subsection (4), that is alleged.

- (7) Nothing in subsection (6) renders inadmissible in proceedings for an offence against subsection (2) or (3) evidence that, apart from that subsection, would be admissible in the proceedings.

- (8) Nothing in this section affects—

- (a) the liability of a person to be convicted of murder or manslaughter or any other offence; or
- (b) the punishment that may be imposed for such an offence.

(9) A person who has been convicted or acquitted of an offence against subsection (2) or (3) is not liable to be convicted of any other offence against this Act on the same facts or on substantially the same facts.

(10) Subject to section 47, a person is not liable to be convicted of an offence against subsection (2) or (3) if the person has been convicted or acquitted of any other offence on the same facts or on substantially the same facts.

30 Threat to kill

Where—

- (a) a person makes a threat to another person to kill that other person or any third person—
 - (i) intending that other person to fear that the threat would be carried out; or
 - (ii) being reckless whether or not that other person would fear that the threat would be carried out; and
- (b) the threat is made—
 - (i) without lawful excuse; and
 - (ii) in circumstances in which a reasonable person would fear that the threat would be carried out;

the firstmentioned person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

31 Threat to inflict grievous bodily harm

Where—

- (a) a person makes a threat to another person to inflict grievous bodily harm on that other person or any third person—
 - (i) intending that other person to fear that the threat would be carried out; or
 - (ii) being reckless whether or not that other person would fear that the threat would be carried out; and
- (b) the threat is made—
 - (i) without lawful excuse; and
 - (ii) in circumstances in which a reasonable person would fear that the threat would be carried out;

the firstmentioned person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

32 Demands accompanied by threats

- (1) A person who—
- (a) makes a demand of another person; or
 - (b) resists, prevents or hinders his or her lawful apprehension or detention, or that of another person; or
 - (c) prevents or hinders a police officer from lawfully investigating any act or matter which reasonably calls for investigation by the officer;

with a threat to kill or inflict grievous bodily harm on a person (other than the offender or an accomplice of the offender) is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

- (2) A person who—
- (a) makes a demand of another person; or
 - (b) resists, prevents or hinders his or her lawful apprehension or detention, or that of another person; or
 - (c) prevents or hinders a police officer from lawfully investigating any act or matter which reasonably calls for investigation by the officer;

with a threat to endanger the health, safety or physical wellbeing of a person (other than the offender or an accomplice of the offender) is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

33 Possession of object with intent to kill etc

A person who—

- (a) has possession of an object capable of causing harm to another person; and
- (b) intends to use the object, or to cause or permit another person to use the object, unlawfully to kill another person or cause grievous bodily harm to another person;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

34 Forcible confinement

A person who unlawfully confines or imprisons another person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

34A Stalking etc

- (1) A person shall not stalk another person with intent to cause—
- (a) apprehension or fear of serious harm in the other person or a third person; or
 - (b) serious harm to the other person or a third person.

Penalty:

- (a) where—
 - (i) the offence involved a contravention of an injunction or other order made by a court; or
 - (ii) the offender was in possession of an offensive weapon;imprisonment for 5 years; and
 - (b) in any other case—imprisonment for 2 years.
- (2) For the purposes of subsection (1), a person shall be taken to stalk another person if, on at least 2 occasions, he or she—
- (a) follows or approaches the other person; or
 - (b) loiters near, watches, approaches or enters a place where the other person resides, works or visits; or
 - (c) keeps the other person under surveillance; or
 - (d) interferes with property in the possession of the other person; or
 - (e) gives or sends offensive material to the other person or leaves offensive material where it is likely to be found by, given to or brought to the attention of, the other person; or
 - (f) telephones or otherwise contacts the other person; or
 - (g) acts covertly in a manner that could reasonably be expected to arouse apprehension or fear in the other person; or
 - (h) engages in conduct amounting to intimidation, harassment or molestation of the other person.
- (3) In a prosecution for an offence under subsection (1), it is not necessary to prove that the person stalked or a third person, as the case may be, apprehended or feared serious harm.
- (4) In this section—

harm means physical harm, harm to mental health, or disease, whether permanent or temporary.

harm to mental health includes psychological harm.

physical harm includes unconsciousness, pain, disfigurement and any physical contact that might reasonably be objected to in the circumstances, whether or not there was an awareness of that contact at the time.

35 Torture

(1) In this section—

act of torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person—

(a) for such purposes as—

- (i) obtaining from the person or from a third person information or a confession; or
- (ii) punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (iii) intimidating or coercing the person or a third person; or

(b) for any reason based on discrimination of any kind;

but does not include any such act arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the articles of the International Covenant on Civil and Political Rights (being the covenant a copy of the English text of which is set out in Schedule 2 to the *Human Rights and Equal Opportunity Commission Act 1986* of the Commonwealth).

(2) A person who—

- (a) is a public employee or acting in an official capacity; or
- (b) is acting at the instigation, or with the consent or acquiescence, of a public employee or a person acting in an official capacity;

and who commits an act of torture is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

36 Abduction of young person

A person who unlawfully takes, or causes to be taken, an unmarried person under the age of 16 years out of the lawful control and against the will of a person having lawful control of the unmarried person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

37 Kidnapping

A person who leads, takes or entices away or detains a person with intent to hold that person for ransom or for any other advantage to any person is guilty of an offence punishable, on conviction, by—

- (a) if that other person suffers any grievous bodily harm while being so led, taken or enticed away, or detained—imprisonment for 20 years; or
- (b) in any other case—imprisonment for 15 years.

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38 Unlawfully taking child etc

A person who, by force or deception, leads, takes or entices away or detains a child under the age of 12 years—

- (a) intending unlawfully to deprive another person of the lawful control of the child; or
- (b) intending to steal any article on or about the person of the child;

is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

39 Exposing or abandoning child

A person who unlawfully abandons or exposes a child under the age of 2 years and thereby endangers the life or health of the child is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

40 Child destruction

A person who unlawfully and, either intentionally or recklessly, by any act or omission occurring in relation to a childbirth and before the child is born alive—

- (a) prevents the child from being born alive; or
- (b) contributes to the child's death;

is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

41 Childbirth—grievous bodily harm

A person who unlawfully and, either intentionally or recklessly, by any act or omission occurring in relation to a childbirth and before the child is born alive, inflicts grievous bodily harm on the child, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

42 Procuring own miscarriage

A pregnant woman who unlawfully—

- (a) administers to herself any drug or noxious thing; or
- (b) uses any instrument or other means;

intending to procure her own miscarriage is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

43 Procuring another's miscarriage

A person who, unlawfully and with intent to procure a woman's miscarriage (whether or not she is pregnant)—

- (a) administers a drug to the woman or causes a drug to be taken by the woman; or
- (b) uses any instrument or other means;

is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

44 Procuring drugs etc to procure miscarriage

A person who supplies or procures any drug or noxious thing or any instrument or other thing, knowing that it is intended to be used unlawfully with intent to procure the miscarriage of a woman (whether pregnant or not) is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

45 Concealment of birth

(1) A person who disposes of the dead body of a child (whether or not the child was born alive) with intent to conceal the child's birth is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

(2) It is a defence to a charge for an offence against subsection (1) if the accused satisfies the court or jury that the body disposed of had issued from the mother's body before the end of the 28th week of pregnancy.

46 Misconduct with regard to corpses

A person who—

- (a) indecently interferes with any dead human body; or
- (b) improperly interferes with, or offers any indignity to, any dead human body or human remains (whether buried or not);

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is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

47 Alternative verdicts

Where, on a trial for an offence against a provision specified in column 2 in an item in the following table, the jury is not satisfied that the accused is guilty of that offence but is satisfied that the accused is guilty of an offence against a provision specified in column 3 in that item, it may find the accused not guilty of the offence charged but guilty of the offence against the provision specified in column 3:

| column 1 Item | column 2 Offence charged | column 3 Alternative offences |
|------------------|-------------------------------|--|
| 1 | subsection 12 (2) (Murder) | (a) subsection 15 (2) (b) subsection 17 (1) (c) subsection 17 (2) (d) section 40 (e) subsection 45 (1) |

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| Column 1 Item | Column 2 Offence charged | Column 3 Alternative offences |
|------------------|--|--|
| 2 | subsection 15 (1) (Manslaughter) | (a) subsection 17 (1) (b) subsection 17 (2) (c) section 20 (d) section 25 (e) subsection 29 (2) (f) section 40 (g) subsection 45 (1) |
| 3 | section 19 (Intentionally inflicting grievous bodily harm) | (a) section 20 (b) section 21 (c) section 23 (d) section 41 |
| 4 | section 20 (Recklessly inflicting grievous bodily harm) | (a) section 23 (b) section 25 (c) subsection 29 (3) (d) section 41 |
| 5 | section 21 (Wounding) | (a) section 23 (b) section 24 (c) section 26 |
| 6 | subsection 22 (2) (Assault with intent to commit indictable offence) | section 26 |
| 7 | section 24 (Assault occasioning actual bodily harm) | section 26 |
| 8 | paragraph 27 (3) (b) (Administering drugs etc endangering life etc) | paragraph 28 (2) (a) |
| 9 | paragraph 27 (3) (e) (Causing explosions etc endangering life etc) | paragraph 28 (2) (b) |
| 10 | paragraph 27 (3) (f) (Setting traps endangering life etc) | paragraph 28 (2) (c) |
| 11 | paragraph 27 (3) (g) (Interfering with conveyances and endangering life etc) | paragraph 28 (2) (d) |

PART 3A—SEXUAL OFFENCES

92 Interpretation

In this Part—

sexual intercourse means—

- (a) the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person, except where that penetration is carried out for a proper medical purpose or is otherwise authorised by law; or
- (b) the penetration, to any extent, of the vagina or anus of a person by an object, being penetration carried out by another person, except where that penetration is carried out for a proper medical purpose or is otherwise authorised by law; or
- (c) the introduction of any part of the penis of a person into the mouth of another person; or
- (d) cunnilingus; or
- (e) the continuation of sexual intercourse as defined in paragraph (a), (b), (c) or (d).

92A Sexual assault in the first degree

(1) A person who inflicts grievous bodily harm upon another person with intent to engage in sexual intercourse with that other person, or with a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 17 years.

(2) A person who, acting in company with any other person, inflicts, or assists in inflicting, grievous bodily harm upon a third person with the intent that the firstmentioned person, or any person with whom he or she is in company, should engage in sexual intercourse with that third person, or with any other person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

92B Sexual assault in the second degree

(1) A person who inflicts actual bodily harm upon another person with intent to engage in sexual intercourse with that other person, or with a third

person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

(2) A person who, acting in company with any other person, inflicts, or assists in inflicting, actual bodily harm upon a third person with the intent that the firstmentioned person, or any person with whom he or she is in company, should engage in sexual intercourse with that third person, or with any other person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 17 years.

92C Sexual assault in the third degree

(1) A person who unlawfully assaults, or threatens to inflict grievous or actual bodily harm upon, another person with intent to engage in sexual intercourse with that other person, or with a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 12 years.

(2) A person who, acting in company with any other person, unlawfully assaults, or threatens to inflict grievous or actual bodily harm upon, a third person with the intent that the firstmentioned person, or any person with whom he or she is in company, should engage in sexual intercourse with that third person, or with any other person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

92D Sexual intercourse without consent

(1) A person who engages in sexual intercourse with another person without the consent of that other person and who knows that that other person does not consent, or who is reckless as to whether that other person consents, to the sexual intercourse is guilty of an offence punishable, on conviction, by imprisonment for 12 years.

(2) A person who, acting in company with any other person, engages in sexual intercourse with another person without the consent of that other person and who knows that that other person does not consent, or who is reckless as to whether that other person consents, to the sexual intercourse is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

92E Sexual intercourse with a young person

(1) A person who engages in sexual intercourse with another person who is under the age of 10 years is guilty of an offence punishable, on conviction, by imprisonment for 17 years.

(2) A person who engages in sexual intercourse with another person who is under the age of 16 years is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

(3) It is a defence to a prosecution for an offence under subsection (2) if the defendant establishes that—

- (a) he or she believed on reasonable grounds that the person upon whom the offence is alleged to have been committed was of or above the age of 16 years; or
- (b) at the time of the alleged offence—
 - (i) the person on whom the offence is alleged to have been committed was of or above the age of 10 years; and
 - (ii) the defendant was not more than 2 years older;

and that that person consented to the sexual intercourse.

92EA Maintaining a sexual relationship with a young person

(1) In this section—

adult means a person who has attained the age of 18 years.

sexual act means an act that constitutes an offence under this Part but does not include an act referred to in subsection 92E (2) or 92K (2) if the person who committed the act establishes the matters referred to in subsection 92E (3) or 92K (3), as the case may be, that would be a defence if the person had been charged with an offence against subsection 92E (2) or 92K (2), as the case may be.

young person means a person who is under the age of 16 years.

(2) A person who, being an adult, maintains a sexual relationship with a young person is guilty of an offence.

(3) For the purposes of subsection (2), an adult shall be taken to have maintained a sexual relationship with a young person if the adult has engaged in a sexual act in relation to the young person on 3 or more occasions.

(4) In proceedings for an offence under subsection (2), evidence of a sexual act is not inadmissible by reason only that it does not disclose the date or the exact circumstances in which the act occurred.

(5) Subject to subsection (6), a person who is convicted of an offence under subsection (2) is liable to imprisonment for 7 years.

(6) If a person convicted under subsection (2) is found, during the course of the relationship, to have committed another offence under this Part in relation to the young person (whether or not the person has been convicted of that offence), the offence under subsection (2) is punishable by imprisonment—

- (a) if the other offence is punishable by imprisonment for less than 14 years—for 14 years; or
- (b) if the other offence is punishable by imprisonment for a period of 14 years or more—for life.

(7) Subject to subsection (8), a person may be charged in 1 indictment with an offence under subsection (2) and with another offence under this Part alleged to have been committed by the person during the course of the alleged relationship and may be convicted of and punished for any or all of the offences so charged.

(8) Notwithstanding subsection 443 (1), where a person convicted of an offence under subsection (2) is sentenced to a term of imprisonment for that offence and a term of imprisonment for another offence under this Part committed during the course of the relationship, the court shall not direct that those sentences be cumulative.

(9) A prosecution for an offence under subsection (2) shall not be commenced except by, or with the consent of, the director of public prosecutions.

92F Act of indecency in the first degree

A person who inflicts grievous bodily harm upon another person with intent to commit an act of indecency upon, or in the presence of, that other person, or a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

92G Act of indecency in the second degree

A person who inflicts actual bodily harm upon another person with intent to commit an act of indecency upon, or in the presence of, that other person, or a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 12 years.

92H Act of indecency in the third degree

A person who unlawfully assaults, or threatens to inflict grievous or actual bodily harm upon, another person with intent to commit an act of indecency upon, or in the presence of, that other person, or a third person

who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

92J Act of indecency without consent

(1) A person who commits an act of indecency upon, or in the presence of, another person without the consent of that person and who knows that that other person does not consent, or who is reckless as to whether that other person consents, to the committing of the act of indecency is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

(2) A person who, acting in company with any other person, commits an act of indecency upon, or in the presence of, another person without the consent of that other person and who knows that that other person does not consent, or who is reckless as to whether that other person consents, to the committing of the act of indecency is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

92K Acts of indecency with young persons

(1) A person who commits an act of indecency upon, or in the presence of, another person who is under the age of 10 years is guilty of an offence punishable, on conviction, by imprisonment for 12 years.

(2) A person who commits an act of indecency upon, or in the presence of, another person who is under the age of 16 years is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

(3) It is a defence to a prosecution for an offence under subsection (2) if the defendant establishes that—

- (a) he or she believed on reasonable grounds that the person upon whom the offence is alleged to have been committed was of or above the age of 16 years; or
- (b) at the time of the alleged offence—
 - (i) the person on whom the offence is alleged to have been committed was of or above the age of 10 years; and
 - (ii) the defendant was not more than 2 years older;

and that that person consented to the committing of the act of indecency.

92L Incest and similar offences

(1) A person who engages in sexual intercourse with another person, being a person who is under the age of 10 years and who is, to the knowledge of the firstmentioned person, his or her lineal descendant, sister,

half-sister, brother, half-brother or stepchild, is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

(2) A person who engages in sexual intercourse with another person, being a person who is under the age of 16 years and who is, to the knowledge of the firstmentioned person, his or her lineal descendant, sister, half-sister, brother, half-brother or stepchild, is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

(3) A person who engages in sexual intercourse with another person, being a person who is of or above the age of 16 years and who is, to the knowledge of the firstmentioned person, his or her lineal ancestor, lineal descendant, sister, half-sister, brother or half-brother, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

(5) A person shall not be convicted of an offence under subsection (2) or (3) if there is evidence that he or she engaged in the act alleged to constitute the offence under the coercion of the person with whom the offence is alleged to have been committed unless that evidence is rebutted by the Crown.

(6) A person charged with an offence under this section shall, unless there is evidence to the contrary, be presumed to have known at the time of the alleged offence that he or she and the person with whom the offence is alleged to have been committed were related in the manner charged.

(7) In this section—

stepchild, in relation to a person, means a person in relation to whom the firstmentioned person stands in loco parentis.

92M Abduction

A person who abducts another person by force or by any other means or who unlawfully detains another person with the intent that the other person should engage in sexual intercourse with the firstmentioned person or with a third person (whether within the Territory or otherwise) is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

92NA Employment of young persons for pornographic purposes

(1) A person who employs or permits the employment, whether for reward or not, of a person who is under the age of 16 years (in this section referred to as the *young person*)—

- (a) to engage in an act of a sexual nature, or to be in the presence of another person who is engaged in an act of a sexual nature, being an act that would, in the circumstances, offend a reasonable adult person; or
- (b) for the purpose of depicting or otherwise representing, by means of a film, photograph, drawing, audiotape, videotape or any other means, the young person as being engaged in, or as being in the presence of another person engaged in, an act of a sexual nature where the depiction or other representation of the young person in those circumstances would offend a reasonable adult person;

is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

- (2) In subsection (1)—

an act of a sexual nature means sexual intercourse or an act of indecency.

92NB Possession of child pornography

(1) A person who knowingly has in his or her possession a film, photograph, drawing, audiotape, videotape or any other thing depicting or otherwise representing a young person engaged in, or in the presence of another person engaged in, an act of a sexual nature, being a depiction or representation that would offend a reasonable adult person, is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

(2) It is a defence to a prosecution for an offence against subsection (1) that the defendant reasonably believed that the person depicted or otherwise represented as a young person was not under the age of 16 years.

- (3) In this section—

young person means a person who is under the age of 16 years.

92P Consent

(1) For the purposes of section 92D, paragraph 92E (3) (b), section 92J and paragraph 92K (3) (b) and without limiting the grounds upon which it may be established that consent is negated, the consent of a person to sexual intercourse with another person, or to the committing of an act of indecency by or with another person, is negated if that consent is caused—

- (a) by the infliction of violence or force on the person, or on a third person who is present or nearby; or

- (b) by a threat to inflict violence or force on the person, or on a third person who is present or nearby; or
- (c) by a threat to inflict violence or force on, or to use extortion against, the person or another person; or
- (d) by a threat to publicly humiliate or disgrace, or to physically or mentally harass, the person or another person; or
- (e) by the effect of intoxicating liquor, a drug or an anaesthetic; or
- (f) by a mistaken belief as to the identity of that other person; or
- (g) by a fraudulent misrepresentation of any fact made by the other person, or by a third person to the knowledge of the other person; or
- (h) by the abuse by the other person of his or her position of authority over, or professional or other trust in relation to, the person; or
- (i) by the person's physical helplessness or mental incapacity to understand the nature of the act in relation to which the consent is given; or
- (j) by the unlawful detention of the person.

(2) A person who does not offer actual physical resistance to sexual intercourse shall not, by reason only of that fact, be regarded as consenting to the sexual intercourse.

(3) Where it is established that a person who knows the consent of another person to sexual intercourse or the committing of an act of indecency has been caused by any of the means set out in paragraphs (1) (a) to (j) (inclusive), the person shall be deemed to know that the other person does not consent to the sexual intercourse or the act of indecency, as the case may be.

92Q Sexual intercourse—persons not to be presumed incapable by reason of age

(1) For the purposes of this Part, a person shall not, by reason only of his or her age, be presumed to be incapable of engaging in sexual intercourse with another person.

(2) Subsection (1) shall not be construed so as to affect the operation of any law relating to the age at which a child can be found guilty of an offence.

92R Marriage no bar to conviction

The fact that a person is married to a person upon whom an offence under section 92D is alleged to have been committed shall be no bar to the conviction of the firstmentioned person for the offence.

92S Alternative verdicts

(1) Where, on the trial of a person for an offence under subsection 92A (1) or (2) or section 92F, the jury is satisfied that the accused inflicted actual bodily harm with the intent charged but is not satisfied that the harm was grievous bodily harm, it may find the accused not guilty of the offence charged but guilty of an offence under subsection 92B (1) or (2) or section 92G, as the case requires.

(2) Where, on the trial of a person for an offence under subsection 92A (2), 92B (2), 92C (2), 92D (2) or 92J (2), the jury is not satisfied that the accused is guilty of that offence but is satisfied that the accused is guilty of an offence under section 92A (1), 92B (1), 92C (1), 92D (1) or 92J (1), it may find the accused not guilty of the offence charged but guilty of an offence under subsection 92A (1), 92B (1), 92C (1), 92D (1) or 92J (1), as the case requires.

(3) Where, on the trial of a person for an offence under subsection 92A (1) or (2) or section 92F, the jury is satisfied that the accused inflicted grievous bodily harm but is not satisfied that he or she did so with the intent charged, it may find the accused not guilty of the offence charged but guilty of an offence under section 19, 20 or 25.

(4) Where, on the trial of a person for an offence under subsection 92B (1) or (2) or section 92G, the jury is satisfied that the accused inflicted actual bodily harm but is not satisfied that he or she did so with the intent charged, it may find the accused not guilty of the offence charged but guilty of an offence under section 24.

(5) Where, on the trial of a person for an offence against subsection 92E (1), 92K (1) or 92L (1), the jury—

- (a) is not satisfied that the person in relation to whom the offence is alleged to have been committed was under 10 years of age when the offence is alleged to have been committed; but
- (b) is satisfied that the accused is guilty of an offence against subsection 92E (2), 92K (2) or 92L (2), respectively;

the jury may find the accused not guilty of the offence charged but guilty of an offence against subsection 92E (2), 92K (2) or 92L (2), respectively.

92T Adding count for act of indecency

In an indictment for an offence under section 92D a count may be added for an offence under section 92J.

92U Indictment for act of indecency

In an indictment for an offence under section 92J or 92K it shall not be necessary to describe the act constituting the act of indecency with which the accused is charged.

PART 3B—FEMALE GENITAL MUTILATION

92V Interpretation

In this Part—

female genital mutilation means—

- (a) clitoridectomy or the excision of any other part of the female genital organs; or
- (b) infibulation or similar procedure; or
- (c) any other mutilation of the female genital organs.

92W Prohibition of female genital mutilation

(1) A person shall not intentionally perform female genital mutilation on another person.

Penalty: Imprisonment for 15 years.

(2) It is not a defence to a prosecution for an offence under this section that the person on whom the female genital mutilation was performed, or a parent or guardian of that person, consented to the mutilation.

92X Removal of child from Territory for genital mutilation

(1) A person shall not take a child from the Territory, or arrange for a child to be taken from the Territory, with the intention of having female genital mutilation performed on the child.

Penalty: Imprisonment for 7 years.

(2) In proceedings for an offence against subsection (1), if it is proved that—

- (a) the defendant took a child, or arranged for a child to be taken, from the Territory; and
- (b) female genital mutilation was performed on the child while outside the Territory;

it will be presumed, in the absence of proof to the contrary, that the defendant took the child, or arranged for the child to be taken, from the Territory with the intention of having female genital mutilation performed on the child.

(3) In this section—

child means a person under the age of 18 years.

92Y Exception—medical procedures for genuine therapeutic purposes

(1) It is not an offence under this Part to perform a medical procedure that has a genuine therapeutic purpose or to take a person, or arrange for a person to be taken, from the Territory with the intention of having such a procedure performed on the person.

(2) A medical procedure has a genuine therapeutic purpose only if—
(a) performed on a person in labour, or who has just given birth, and for medical purposes connected with that labour or birth, by a medical practitioner or midwife; or
(b) necessary for the health of the person on whom it is performed and it is performed by a medical practitioner.

(3) A medical procedure that is performed as, or as part of, a cultural, religious or other social custom is not of itself to be regarded as being performed for a genuine therapeutic purpose.

(4) In paragraph (2) (a)—

midwife means a person—

- (a) registered as a midwife under the *Nurses Act 1988*; or
- (b) deemed to be registered as a midwife under that Act by virtue of section 25 of the *Mutual Recognition Act 1992* of the Commonwealth.

92Z Exception—sexual reassignment procedures

(1) It is not an offence under this Part to perform a sexual reassignment procedure or to take, or arrange for a person to be taken, from the Territory with the intention of having such a procedure performed on the person.

(2) In subsection (1)—

sexual reassignment procedure means a surgical procedure performed by a medical practitioner to give a female person, or a person whose sex is ambivalent, the genital appearance of a person of the opposite sex or of a particular sex (whether male or female).

PART 4—OFFENCES RELATING TO PROPERTY

Division 1—Interpretation

93 Interpretation

In this Part, unless the contrary intention appears—

blackmail means an offence under section 112.

burglary means an offence under section 102.

deception means any deception (whether deliberate or reckless) by words or conduct as to any matter of fact or law, and includes a deception as to the intentions of any person.

explosive means a substance or an article that is manufactured for the purpose of producing an explosion or that is intended by any person having it with him or her to be used for that purpose.

firearm includes an airgun and an airpistol.

gain means a gain of any property, whether temporary or permanent, and includes the keeping by a person of any property that he or she already has.

handling, in relation to stolen property, means an offence against section 113.

imitation explosive means an article, not being an explosive, which has the appearance of being or containing, or which may reasonably be taken to be or to contain, an explosive.

imitation firearm means an article, not being a firearm, which has the appearance of being a firearm, or which may reasonably be taken to be a firearm.

instrument means—

- (a) a document, whether of a formal or informal character; and
- (b) a card by means of which property or credit can be obtained; and
- (c) a disc, tape, soundtrack or other device on or in which information is recorded or stored by mechanical, electronic or other means.

loss means a loss of any property, whether temporary or permanent, and includes the failure by a person to receive any property he or she might otherwise have received.

offensive weapon means an article made or adapted for use for the purpose of causing injury to or incapacitating a person or which any person having it with him or her intends to use for that purpose.

property means any real or personal property and includes—

- (a) a chose in action and any other intangible property, other than an incorporeal hereditament; and
- (b) a wild animal that is tamed or ordinarily kept in captivity; and
- (c) a wild animal that is not tamed nor ordinarily kept in captivity but that is—
 - (i) reduced into the possession of a person who has not lost or abandoned that possession; or
 - (ii) in the course of being reduced into the possession of a person.

robbery means an offence under section 100.

theft means an offence under section 99.

94 Stealing—interpretation

For the purposes of this Part, a person shall be taken to steal if he or she dishonestly appropriates property belonging to another person with the intention of permanently depriving that other person of that property.

95 Property belonging to another—interpretation

(1) For the purposes of this Part, property shall be taken as belonging to any person who has possession or control of it or who has any proprietary right or interest in it (other than an equitable interest arising only from any agreement to transfer or grant an interest).

(2) Where any property is subject to a trust, a person having a right to enforce the trust shall be taken, for the purposes of this Part, to be a person to whom the property belongs and an intention to defeat the trust shall be treated as an intention to deprive any person having that right to the property.

(3) Where a person receives any property from or on account of another person and is under a legal obligation to that other person to retain and deal with that property or its proceeds in a particular way, the property or proceeds shall, for the purposes of this Part, be taken (as against the firstmentioned person) to be property belonging to that other person.

(4) Where a person obtains any property by the mistake of another person and is under a legal obligation to make restoration, in whole or in part, of the property or of the value of the property, the property or its proceeds shall, for the purposes of this Part, be taken (to the extent of that obligation and as against the firstmentioned person) to belong to the person entitled to the restoration and an intention not to make restoration shall be treated as an intention to deprive that person of that property.

(5) The property of a corporation sole shall, for the purposes of this Part, be taken to belong to the corporation notwithstanding any vacancy in the corporation.

96 Appropriation and dishonest appropriation—interpretation

(1) For the purposes of this Part, a person shall be taken to have appropriated property if—

- (a) he or she obtains by deception the ownership, possession or control of the property for himself or herself or for any other person; or
- (b) he or she adversely interferes with or usurps any of the rights of an owner of the property.

(2) A person who has come by any property (whether innocently or not) without stealing it shall be taken to have adversely interfered with or usurped the rights of an owner of the property for the purpose of paragraph (1) (b) if he or she later keeps or deals with it as the owner.

(3) For the purposes of this Part, a person may be taken to dishonestly appropriate property belonging to another person notwithstanding that the firstmentioned person is willing to pay for the property.

(4) For the purposes of this Part, the appropriation by a person of property belonging to another person shall not be regarded as dishonest if—

- (a) he or she appropriates the property in the belief that he or she has a lawful right to deprive the other person of the property on behalf of himself or herself or of a third person; or

- (b) he or she appropriates the property in the belief that the appropriation will not cause any significant practical detriment to the interests of the person to whom the property belongs in relation to that property; or
- (c) he or she appropriates the property in the belief that the other person would consent to the appropriation if the other person knew of it and of the circumstances in which it was done; or
- (d) in the case of property other than property held by the person as trustee or personal representative—he or she appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

(5) Where a person acting in good faith believes himself or herself to be acquiring a right or interest in property that is or purports to be transferred for value to him or her, no later adverse interference with or usurpation of the rights in the property by the person shall, by reason of any defect in the title of the transferor, be taken to be a dishonest appropriation of the property.

97 Intention to deprive permanently—interpretation

(1) A person who appropriates property belonging to another person shall be taken, for the purposes of this Part, as having the intention to

deprive the other person of that property permanently if his or her intention is to treat the property as his or her own to dispose of regardless of the rights of the other person.

(2) For the purposes of subsection (1), a person shall be taken to have an intention to treat property as his or her own to dispose of regardless of the rights of any other person to whom the property belongs if he or she borrows or lends the property for such a period and in such circumstances as to make the borrowing or lending equivalent to treating the property as his or her own.

(3) Without limiting the generality of subsection (1), where a person who has possession or control (whether lawfully or not) of any property belonging to another person parts with that property for his or her own purposes and without the authority of the other person under a condition as to its return, being a condition that the firstmentioned person may not be able to perform, the firstmentioned person shall, for the purposes of this Part, be taken to have treated the property as his or her own to dispose of regardless of the rights of the other person.

(4) Notwithstanding anything in this section, a person who appropriates a sum of money belonging to another person shall not be taken to have intended to deprive the other person of the money permanently by reason only of the fact that he or she did not, at the time of the appropriation, intend to return the money *in specie*.

98 Stolen property—interpretation

(1) In this Part, a reference to stolen property shall be read as a reference to—

- (a) any property that, before or after the commencement of the *Crimes (Amendment) Act (No. 2) 1986*, was—
 - (i) stolen, or obtained by blackmail, in the Territory; or
 - (ii) unlawfully taken or obtained in any place outside the Territory under such circumstances that if the taking or obtaining had occurred in the Territory it would, at the time it occurred, have constituted an offence under the law of the Territory;
whether or not the property is in the state it was in when it was so stolen, taken or obtained; and
- (b) any part of any property of the kind referred to in paragraph (a); and
- (c) any other property in the hands of the thief or of a handler of the stolen property (or any part of it), being the proceeds of any disposal or realisation—
 - (i) of the whole or part of the stolen property; or
 - (ii) of any other proceeds of any earlier disposal or realisation of that property.

(2) In this Part, a reference to *a thief*, in relation to stolen property, shall be read as including a reference to a person who obtained the property by blackmail.

(3) For the purposes of this Part, where—

- (a) stolen property is restored to the person from whom it was stolen or to any other person entitled to lawful possession or custody; or
- (b) the person from whom stolen property was stolen and any other person claiming from that person have otherwise ceased to have any right to restitution in respect of that property;

the property shall cease to be taken to be stolen property within the meaning of this Part.

Division 2—Theft and related offences

99 Theft

A person who steals is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

99A Minor theft

A person who steals property the value of which does not exceed \$1,000 is guilty of an offence punishable, on conviction, by imprisonment for 6 months or a fine not exceeding 50 penalty units, or both.

100 Robbery

(1) A person who steals and, immediately before or at the time of doing so, and in order to do so, uses force on another person, or puts or seeks to put another person in fear that he or she or any other person will be then and there subjected to force, is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

(2) A person who assaults another person with intent to rob is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

101 Armed robbery

A person who commits robbery and at the time of doing so has with him or her a firearm, an imitation firearm, an offensive weapon, an explosive or an imitation explosive is guilty of an offence punishable, on conviction, by imprisonment for 25 years.

102 Burglary

(1) A person who enters or remains in any building as a trespasser with intent—

- (a) to steal anything in the building; or
- (b) to commit an offence involving an assault on a person in the building or involving any damage to the building or to property in the building, being an offence punishable by imprisonment for 5 years or more;

is guilty of an offence punishable on conviction, by imprisonment for 14 years.

(2) In this section, a reference to ***a building*** shall be read as including a reference to a part of a building and any vehicle or vessel in or on which a person resides, whether or not the vehicle or vessel is, at any particular time, occupied.

103 Aggravated burglary

A person who commits burglary and at the time of doing so has with him or her a firearm, an imitation firearm, an offensive weapon, an explosive or an imitation explosive is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

104 Obtaining financial advantage by deception

(1) A person who by deception dishonestly obtains for himself or herself or another person a financial advantage is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

(2) For the purpose of this section, a reference to ***a person who obtains a financial advantage*** shall be read as a reference to a person who—

- (a) is allowed to borrow by way of overdraft or otherwise, or to take out any policy of insurance or annuity contract or obtains an improvement in the terms on which he or she is allowed to do so; or
- (b) is given the opportunity to earn remuneration or greater remuneration in an office or employment.

105 Obtaining service by deception

A person who by deception dishonestly obtains from another person the provision of a service for himself or herself or for any other person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

106 Evasion of liability by deception

(1) A person who by deception—

- (a) dishonestly secures the remission of the whole or part of an existing liability of the person or of another person to make a payment; or
- (b) dishonestly induces, with intent to make permanent default in whole or in part on any existing liability to make a payment, or with intent to enable another person to do so, the creditor or any person claiming payment on behalf of the creditor to defer the due

date for a payment or otherwise to wait for payment or to forgo payment; or

- (c) dishonestly obtains for himself or herself or for another person, or enables another person to obtain, any exemption from, or abatement of, liability to make a payment;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

(2) For the purpose of paragraph (1) (b), a person who is induced to take in payment a cheque or other security for money by way of conditional satisfaction of a pre-existing liability shall be taken to have been induced to wait for payment.

(3) In this section—

liability means a legally enforceable liability.

(4) Subsection (1) does not apply in relation to a liability to pay compensation for a wrongful act or omission, being a liability that has not been accepted or established.

107 Making off without payment

(1) A person who, knowing that immediate payment for any goods supplied or services provided is required or expected from him or her, dishonestly makes off without having paid and with intent to avoid payment of the amount due, is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

(1A) A person who dishonestly makes off without paying for goods supplied, or services provided, the value of which does not exceed \$1,000—

- (a) knowing that he or she is required or expected to pay immediately; and
- (b) intending to avoid payment of the amount due;

is guilty of an offence punishable, on conviction, by imprisonment for 6 months or a fine not exceeding 50 penalty units, or both.

(2) Subsections (1) and (1A) do not apply to or in relation to—

- (a) the supply of goods or the provision of a service where that supply or provision is contrary to law; or
- (b) payment for the provision of a service where that payment is not legally enforceable.

(3) In this section, a reference to *immediate payment* shall be read as including a reference to payment at the time of collecting goods in respect of which a service has been provided.

108 False accounting

(1) A person who, with a view to gain for himself or herself or another person, or with intent to cause loss to another person, dishonestly—

- (a) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose; or
- (b) in furnishing information for any purpose produces or makes use of any account, or any record or document of the kind referred to in paragraph (a), which to his or her knowledge is misleading or false in a material particular;

is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

(2) For the purposes of this section, a person who makes or concurs in making in an account or other document an entry which is misleading or false in a material particular, or who omits or concurs in omitting a material particular from an account or other document, shall be taken to have falsified the account or document.

109 Liability of company officers

(1) Where an offence committed by a body corporate under this Division is proved to have been committed with the consent or connivance of any director or officer of the body corporate, the director or officer, as the case may be, is guilty of that offence as well as the body corporate and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, this section applies in relation to the acts of a member of the body corporate in connection with his or her functions of management as if he or she were a director of the body corporate.

110 False statements by officers of associations

(1) An officer of an unincorporated association who, with intent to gain for himself or herself or another person or to cause loss to another person, dishonestly publishes or concurs in publishing a written statement or account that to his or her knowledge is misleading or false in a material particular is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

(2) Where the affairs of an association are managed by its members, this section applies in relation to any statement which a member publishes or concurs in publishing in connection with his or her functions of management as if he or she were an officer of the association.

(3) For the purposes of this section, a person who has entered into a security for the benefit of an association shall be taken to be a creditor of the association.

111 Suppression etc of documents

(1) A person who dishonestly, with a view to gain for himself or herself or another person, or with intent to cause loss to another person, by deception procures the execution of a valuable security is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

(2) For the purpose of subsection (1), the making, acceptance, endorsement, alteration, cancellation or destruction in whole or in part of a valuable security, and the signing or sealing of any paper or other material in order that it may be made or converted into, or used or dealt with as, a valuable security shall be taken to be the execution of a valuable security.

(3) In this section—

valuable security means any document—

- (a) creating, transferring, surrendering or releasing any right to, in or over property; or
- (b) authorising the payment of money or delivery of any property; or
- (c) evidencing the creation, transfer, surrender or release of any right to, in or over property, or the payment of money or delivery of any property, or the satisfaction of any obligation.

112 Blackmail

(1) A person who, with a view to gain for himself or herself or another person, or with intent to cause loss to another person, makes any unwarranted demand with menaces is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

(2) For the purposes of this section, a demand with a menace shall be taken to be unwarranted unless the person making the demand does so in

the belief that he or she has reasonable grounds for making the demand and that the use of the menace is a proper means of enforcing the demand.

113 Handling stolen property

- (1) A person who, dishonestly—
- (a) receives stolen property; or
 - (b) has stolen property in his or her possession; or
 - (c) undertakes the reception, retention, removal, disposal or realisation of stolen property for the benefit of another person;

and who knows or believes that property to be stolen property, is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

- (2) Subsection (1) does not apply to or in relation to the handling of stolen property in the course of stealing that property.

114 Dishonest abstraction of electricity

A person who dishonestly abstracts, causes to be wasted or diverted, or uses any electricity with intent to cause loss to another person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

116 Possession of housebreaking implements etc

- (1) A person who, in any place other than his or her place of abode, has with him or her any article for use in the course of, or in connection with, any theft or burglary is guilty of an offence punishable, on conviction, by imprisonment for 3 years.

- (2) Where a person is charged with an offence under this section, proof that he or she had with him or her an article made or adapted for use in committing a theft or burglary shall be evidence that he or she had it with him or her for that use.

- (3) Where a person is convicted of an offence under subsection (1), any article of the kind referred to in that subsection that is in the custody or possession of the person shall be forfeited to the Territory.

117 Advertising for return of stolen property

Where any advertisement for the return of any property which has been stolen or lost is published and the advertisement uses any words to the effect that the person producing the property or any other person will be safe from prosecution or inquiry, the person who advertised for the return of the property and any person who printed or published the advertisement

is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000.

118 Delivery of stolen property held by dealers

(1) Where the owner of any stolen property makes a complaint to a magistrate that the property is in the possession of a dealer in second-hand goods or of any person who has advanced money upon the security of the property, the magistrate may—

- (a) issue a summons for the appearance of the dealer or person and for the production of the property; and
- (b) order the dealer or person to deliver the property to the owner upon payment by the owner of such sum (if any) as the magistrate thinks fit.

(2) A dealer or person who refuses or fails to comply with an order made under paragraph (1) (b), or who disposes of any property after he or she has been notified by the owner of the property that it is stolen, is liable to pay to the owner of the property the full value of the property as determined by a magistrate.

119 Disposal of stolen property

(1) Where—

- (a) any property is lawfully held in the custody of a police officer; and
- (b) a person is charged with having stolen the property; and
- (c) the person so charged—
 - (i) cannot be found; or
 - (ii) is convicted, discharged or acquitted in relation to that charge;

a magistrate may make an order for the delivery of the property to the person who appears to be the owner of the property or, where the owner cannot be ascertained, may make such order with respect to the property as the magistrate thinks just.

(2) Any order under subsection (1) shall not bar a person from recovering possession of the property in respect of which the order is made from the person to whom the property is delivered in pursuance of the order by proceedings in a court of competent jurisdiction, being proceedings commenced within 6 months after the date on which the order is made.

120 Taking vehicle without authority

(1) Subject to this section, a person who, without lawful authority or excuse, takes any vehicle for use by himself or herself or another person, or who drives or rides in or on a vehicle, knowing that vehicle to have been taken without lawful authority or excuse, is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

(2) A person does not commit an offence under subsection (1) if he or she acted in the belief that—

- (a) he or she had lawful authority or excuse to do the act alleged to constitute the offence; or
- (b) the owner of the vehicle would have consented to the doing of the act alleged to constitute the offence if the owner knew of it and of the circumstances in which it was done.

(3) If, on the trial of a person for theft, the jury is not satisfied that the accused committed theft but is satisfied that the accused committed an offence under subsection (1), the jury may acquit him or her of theft and convict him or her of an offence under that subsection.

(4) In this section—

owner includes a person in possession of a vehicle that is the subject of a hiring agreement or hire-purchase agreement.

vehicle means a motor vehicle, bicycle, aircraft or boat.

124 Proof of general deficiency in a case

On the trial of a person for theft of money, it shall not be necessary to prove the theft by the person of any specific sum of money if there is proof of a general deficiency on the examination of the books of account or entries kept or made by him or her, or otherwise, and the jury is satisfied that he or she stole the deficient money, or any part thereof.

125 Procedure and evidence

(1) Any number of persons may be charged in 1 indictment with reference to the same stolen property, with having stolen or with having at different times or at the same time handled all or any of the stolen property, and the persons so charged may be tried together.

(2) On the trial of 2 or more persons for jointly handling stolen property, the jury may find any of the accused guilty if it is satisfied that he or she handled all or any of the stolen property, whether or not he or she did so jointly with the other accused or with any of them.

(3) In any proceedings for the theft of any property in the course of transmission (whether by post or otherwise), or for handling stolen property from such a theft, a statutory declaration made by any person that he or she despatched or received or failed to receive any goods or postal packet, or that any goods or postal packet when despatched or received by him or her were or was in a particular state or condition, shall be admissible as evidence of the facts stated in the declaration—

- (a) where and to the extent to which oral evidence to the like effect would have been admissible in the proceedings; and
- (b) if, at least 7 days before the hearing or trial, a copy of the declaration is given to the person charged, and that person has not, at least 3 days before the hearing or trial, or within such further time as the court may in special circumstances allow, given to the informant or the director of public prosecutions, as the case requires, written notice requiring the attendance at the hearing or trial of the person making the declaration.

126 Verdict of ‘theft or handling’

(1) Where, on the trial of a person charged with theft, or with any offence that involves stealing, and also with handling the property alleged to have been stolen, the jury find that the person either stole or handled that property but are unable to decide which of those offences was committed by him or her, the person shall not be entitled to acquittal but shall be convicted of theft.

(2) On the trial of any 2 or more persons charged with theft and also with having handled stolen property, the jury may find all or any of those persons guilty of theft or of handling the property or part of the property, or may find any of those persons guilty of theft and the other or any of the others guilty of handling the property or part of the property.

Division 3—Criminal damage to property

127 Interpretation

(1) In this Division—

property means any real or personal property (other than intangible property) and includes—

- (a) a wild animal that is tamed or ordinarily kept in captivity; and

- (b) a wild animal that is not tamed or ordinarily kept in captivity but that is—
 - (i) reduced into the possession of a person who has not lost or abandoned that possession; or
 - (ii) in the course of being reduced into the possession of a person.
- (2) For the purposes of this Division, property shall be taken to belong to any person who—
 - (a) has possession or control of it; or
 - (b) has any proprietary right or interest in it, other than an equitable interest arising only from an agreement to transfer or grant an interest; or
 - (c) has a charge on it.
- (3) Where any property is subject to a trust, the trustee and any person having a right to enforce the trust shall, for the purposes of this Division, be taken to be the persons to whom the property belongs.
- (4) The property of a corporation sole shall, for the purposes of this Division, be taken to belong to the corporation notwithstanding any vacancy in the corporation.
- (5) For the purposes of this Division, a person who destroys or damages property shall be taken to have done so intentionally if he or she acted—
 - (a) with intent to destroy or damage any property; or
 - (b) in the knowledge or belief that his or her actions were likely to result in destruction of or damage to property.
- (6) For the purposes of this Division, a person who destroys or damages property shall be taken to have intended to endanger the life of another person by that destruction or damage if he or she acted—
 - (a) with intent to endanger the life of any other person; or
 - (b) in the knowledge or belief that his or her actions were likely to endanger the life of another person.

128 Destroying or damaging property

- (1) A person who intentionally and without lawful excuse destroys or damages (otherwise than by means of fire or explosive) any property belonging to another person or to himself or herself and another person is

guilty of an offence punishable, on conviction, by imprisonment for 10 years.

(2) A person who destroys or damages (otherwise than by means of fire or explosive) any property with intent to endanger the life of another person by that destruction or damage is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

(3) A person who dishonestly, with a view to gain for himself or herself or another person, destroys or damages (otherwise than by means of fire or explosive) any property is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

(4) A person who, intentionally and without lawful excuse, and by means other than fire or explosive, destroys or damages property which—

- (a) belongs to another person, or to himself or herself and another person; and
- (b) does not exceed \$1,000 in value;

is guilty of an offence punishable, on conviction, by imprisonment for 6 months or a fine not exceeding 50 penalty units, or both.

129 Arson

(1) A person who intentionally and without lawful excuse destroys or damages by means of fire or explosive any property belonging to another person or to himself or herself and another person is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

(2) A person who destroys or damages by means of fire or explosive any property with intent to endanger the life of another person by that destruction or damage is guilty of an offence punishable, on conviction, by imprisonment for 25 years.

(3) A person who dishonestly, with a view to gain for himself or herself or another person, destroys or damages by means of fire or explosive any property is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

130 Lawful excuse

(1) Without limiting the generality of the expression ‘lawful excuse’ in subsection 128 (1) and 129 (1), a person charged with an offence against either of those provisions shall be taken as having a lawful excuse if, at the

time he or she engaged in the conduct constituting the alleged offence, he or she believed that—

- (a) the property in relation to which the offence is alleged to have been committed belonged solely to himself or herself; or
- (b) he or she held a right or interest in that property that authorised him or her to engage in that conduct; or
- (c) the person he or she believed was entitled to consent to the destruction of or damage to that property had consented to that destruction or damage or would have consented if that person had known the circumstances of that destruction or damage;

or if he or she engaged in that conduct in order to protect any other property or a right or interest in any other property which he or she believed to be vested in himself or herself or any other person and, at the time he or she engaged in that conduct, he or she believed that—

- (d) the property, right or interest which he or she sought to protect was in immediate need of protection; and
- (e) the means of protection adopted or proposed to be adopted by him or her were reasonable in all the circumstances.

(2) For the purposes of this section, a reference to *a right or interest in property* shall be read as including any right or privilege in or over land, whether created by grant, licence or otherwise.

131 Defacing premises

(1) A person shall not—

- (a) affix a placard or paper upon any private premises; or
- (b) wilfully mark, by means of chalk, paint or any other material, any private premises;

unless the person has first obtained the consent—

- (c) where the premises are occupied—of the occupier or person in charge of the premises; or
- (d) where the premises are not occupied—of the owner or person in charge of the premises.

Penalty: \$1,000 or imprisonment for 6 months.

(2) A person shall not, without lawful authority, affix a placard or paper upon, or wilfully mark, by means of chalk, paint or any other material, any public street, road, footpath, bus shelter or other property of

the Territory or the Commonwealth or of an authority or body constituted by or under a law of the Territory, the Commonwealth or another Territory.

Penalty: \$1,000 or imprisonment for 6 months.

132 Threats to destroy or damage property

A person who, without lawful authority or excuse and in any manner, threatens—

- (a) to destroy or damage any property belonging to another person or to himself or herself and another person; or
- (b) to destroy or damage his or her own property in a manner that he or she knows or believes is likely to endanger the life of another person;

is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

133 Possession of article with intent to destroy property

A person who has in his or her possession or control any substance or article that he or she intends to use, or that he or she intends to be used by another person, in committing an offence against section 128 or 129 is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

134 Untrue representations

A person who knowingly makes in any manner an untrue representation to any other person, being a representation that tends to give rise to apprehension for the safety of any person (including the person making the representation and the person to whom it is made) or property, or both, is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

135 Alternative verdict

Where, on the trial of a person for an offence under this Division, the jury is not satisfied that the person is guilty of that offence but is satisfied that the person is guilty of another offence under this Division carrying a lesser penalty than the offence charged, the jury may acquit the person of the offence charged and find him or her guilty of that other offence.

Division 3A—Forgery and the use of forged instruments

135A Making of false instrument

(1) For the purpose of this Division, an instrument is false if it purports—

- (a) to have been made in the form in which it is made by a person who did not in fact make it in that form; or
- (b) to have been made in the form in which it is made on the authority of a person who did not in fact authorise its making in that form; or
- (c) to have been made in the terms in which it is made by a person who did not in fact make it in those terms; or
- (d) to have been made in the terms in which it is made on the authority of a person who did not in fact authorise its making in those terms; or
- (e) to have been altered in any respect by a person who did not in fact alter it in that respect; or
- (f) to have been altered in any respect on the authority of a person who did not in fact authorise the alteration in that respect; or
- (g) to have been made or altered on a date on which, or at a place at which, or otherwise in circumstances in which, it was not in fact made or altered; or
- (h) to have been made or altered by an existing person who did not in fact exist.

(2) For the purposes of this Division, a person is to be treated as making a false instrument if the person alters an instrument so as to make it false in any respect (whether or not it is false in some other respect apart from that alteration).

135B Act or omission to a person's prejudice

(1) For the purposes of this Division, an act or omission is to a person's prejudice if, and only if, it is one that, if it occurs—

- (a) will result—
 - (i) in the person's temporary or permanent loss of property; or
 - (ii) in the person's being deprived of an opportunity to earn remuneration or greater remuneration; or
 - (iii) in the person's being deprived of an opportunity to obtain a financial advantage otherwise than by way of remuneration; or

- (b) will result in any person being given an opportunity—
 - (i) to earn remuneration or greater remuneration from the firstmentioned person; or
 - (ii) to obtain a financial advantage from the firstmentioned person otherwise than by way of remuneration; or
 - (c) will be the result of the person's having accepted a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, in connection with the person's performance of a duty.
- (2) In this Division—
- (a) a reference to inducing a person to accept a false instrument as genuine, or a copy of a false instrument as a copy of a genuine instrument, shall be read as including a reference to causing a machine to respond to the instrument or copy as if it were a genuine instrument or a copy of a genuine instrument; as the case may be; and
 - (b) where—
 - (i) a machine so responds to an instrument or copy; and
 - (ii) the act or omission intended to be caused by the machine's so responding is an act or omission that, if it were an act or omission of a person, would be to a person's prejudice within the meaning of subsection (1);the act or omission intended to be caused by the machine's so responding shall be deemed to be an act or omission to a person's prejudice.

135C Forgery and the use of forged instruments

- (1) A person shall not make a false instrument with the intention that he or she, or another person, shall use it to induce another person to accept it as genuine, and by reason of so accepting it to do or not to do some act to that other person's, or to another person's, prejudice.
- (2) A person shall not use an instrument which is, and which he or she knows to be, false, with the intention of inducing another person to accept it as genuine, and by reason of so accepting it to do or not to do some act to that other person's, or to another person's, prejudice.
- (3) A person shall not make a copy of an instrument which is, and which he or she knows to be, a false instrument, with the intention that he or she, or another person, shall use it to induce another person to accept it

as a copy of a genuine instrument and by reason of so accepting it to do or not to do some act to that other person's, or to another person's, prejudice.

(4) A person shall not use a copy of an instrument which is, and which he or she knows to be, a false instrument, with the intention of inducing another person to accept it as a copy of a genuine instrument and by reason of so accepting it to do or not to do some act to that other person's, or to another person's, prejudice.

Penalty: Imprisonment for 10 years.

135D Possession of false instrument

A person shall not have in his or her custody, or under his or her control, an instrument which is, and which he or she knows to be, false, with intention that the person or another shall use it to induce another person to accept it as genuine, and by reason of so accepting it to do or not to do some act to that other person's, or to another person's, prejudice.

Penalty: Imprisonment for 10 years.

135E Possession of machine etc

(1) A person shall not make, or have in his or her custody, or under his or her control, a machine or implement, or paper or other material, which is, and which he or she knows to be, designed or adapted for the making of a false instrument, with the intention that that person or another person shall make an instrument which is false and that that person or another person shall use the instrument to induce another person to accept it as genuine, and by reason of so accepting it to do or not to do an act to that other person's, or to another person's, prejudice.

Penalty: Imprisonment for 10 years.

(2) A person shall not, without lawful excuse, make or have in his or her custody, or under his or her control, a machine or implement, or paper or other material, which is and which the person knows to be designed or adapted for the making of a false instrument.

Penalty: Imprisonment for 2 years.

135F Forfeiture

Where—

- (a) a person is convicted of an offence against this Division; or

- (b) a person is charged with an offence against this Division and, pursuant to subsection 556A (1), the charge is dismissed or an order is made in respect of the person; or
- (c) pursuant to section 448, an offence against this Division has been taken into account in passing sentence upon a person;

the court may, in accordance with section 464, order that any articles used in relation to the offence be forfeited.

135G General allegation of intent sufficient

In any proceedings for an offence against this Division, where it is necessary to allege an intent to induce a person to accept a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, it is not necessary to allege that the accused intended so to induce a particular person.

Division 3B—Offences relating to computers

135H Interpretation

(1) In this Division, unless the contrary intention appears—

data includes information, a computer program or part of a computer program.

(2) A reference in this Division to *data stored in a computer* includes a reference to data entered or copied into the computer, whether temporarily or permanently.

135J Unlawful access to data in computer

A person who, intentionally and without lawful authority or excuse, obtains access to data stored in a computer is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

135K Damaging data in computers

A person who intentionally or recklessly, and without lawful authority or excuse—

- (a) destroys, erases or alters data stored in, or inserts data into, a computer; or
- (b) interferes with, or interrupts or obstructs the lawful use of, a computer;

is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

135L Dishonest use of computers

(1) A person who, by any means, dishonestly uses, or causes to be used, a computer or other machine, or part of a computer or other machine, with intent to obtain by that use a gain for himself or herself or another person, or to cause by that use a loss to another person, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

(2) In this section—

machine means a machine designed to be operated by means of a coin, banknote, token, disc, tape or any identifying card or article.

Division 4—Miscellaneous

136 Hindering working of mines

A person who, with intent to hinder the working of a mine—

- (a) causes water to be conveyed or permitted to enter the mine or any subterranean passage communicating with the mine; or
- (b) obstructs, or otherwise interferes with any airway, waterway, drain, pit, level or shaft of the mine;

is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

137 Removal of sea banks etc

A person who without lawful authority or excuse removes any article or material fixed in or placed upon the ground and used for securing a sea bank or seawall, or the bank, dam or wall of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, harbour, dock, quay, wharf, jetty or lock is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

138 Obstructing navigation of rivers

A person who opens or draws up any floodgate or sluice or who in any way damages any navigable river or canal with intent to obstruct or prevent the navigation of the river or canal is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

139 Offences in relation to railways

A person who, with intent to obstruct, damage or destroy any railway engine, tender, carriage or truck—

- (a) deposits any article or material upon or across a railway; or
- (b) removes or displaces any rail, sleeper or other thing belonging to a railway; or
- (c) moves or diverts, or fails to move or divert, any point or other machinery belonging to a railway; or
- (d) displays, masks or removes any signal or light upon or near a railway;

or who does, or causes to be done, any other thing with that intent, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

140 Obstructing railway engines

A person who, by any unlawful act, omission or neglect, obstructs, or causes to be obstructed, the passage or working of a railway engine or carriage on any railway is guilty of an offence punishable, on conviction, by imprisonment for 3 years.

141 Alternative verdict

Where, on the trial of a person for an offence under section 139, the jury is not satisfied that the person is guilty of that offence but is satisfied that he or she is guilty of an offence under section 140, the jury may acquit the person of the offence charged and find him or her guilty of an offence under section 140.

142 Displaying false signals

A person who, with intent to endanger any vessel, masks, alters or removes any light or signal or displays any false light or signal is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

143 Removing or concealing buoys etc

A person who does any act with intent to cut away, cast adrift, remove, alter, deface, sink, destroy, damage or conceal any vessel, buoy, buoy-rope, perch or mark used or intended for the guidance of sailors or for the purposes of navigation is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

144 Removal of articles on public exhibition

(1) A person who without lawful authority or excuse removes from premises that are at any time open to the public any article that is publicly exhibited, or kept for public exhibition, in or upon those premises is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

(2) Subsection (1) does not apply in relation to an article that is publicly exhibited, or kept for public exhibition, for the purpose of effecting a sale of, or any other commercial dealing with, the article or articles of that kind.

(3) A person who removes an article from any premises in the belief that he or she has lawful authority or excuse to do so does not commit an offence under subsection (1).

(4) In this section, a reference to premises shall be read as including a reference to any building or part of a building.

145 Being found with an intent to commit an offence

(1) A person who—

- (a) is armed with any weapon or instrument, with intent to enter a building and to commit an offence therein; or
- (b) has his or her face disguised, with intent to commit an offence; or
- (c) enters, or is in or near, a building with intent to commit an offence;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

(2) Where a person is convicted of an offence under subsection (1), any weapon or any instrument or implement of housebreaking in the custody or possession of the person shall be forfeited to the Territory.

146 Forcible entry on land

A person who enters on land that is in the actual and peaceable possession of another person in a manner likely to cause a breach of the peace is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000 or by imprisonment for 12 months.

147 Forcible detainer of land

A person who, being in actual possession of land without any legal right to possession, holds possession of the land against any person legally entitled to possession of the land in a manner likely to cause a breach of the

peace is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000 or by imprisonment for 12 months.

148 Property of spouses

(1) The provisions of Divisions 2 and 3 apply in relation to the parties to a marriage and to property belonging to either of those parties or to both of them jointly (whether or not by reason of an interest derived from the marriage) in the same manner as they would apply if the parties were not married and any such interest subsisted independently of the marriage.

(2) Subject to this section, a party to a marriage shall have the same right to bring proceedings against the other party in relation to any offence against a provision of Division 2 or 3 as if the parties were not married and a person bringing any such proceedings shall be competent to give evidence for the prosecution at every stage of the proceedings.

(3) Subject to this section, proceedings shall not be instituted against a person in respect of an offence relating to property which, at the time of the alleged offence, belonged to the spouse of that person, or for any attempt, incitement or conspiracy to commit such an offence, without the written consent of the Attorney-General, the director of public prosecutions or a person authorised by the director of public prosecutions to give consent.

(4) Subsection (3) does not apply to or in relation to proceedings against a person for an offence—

- (a) if that person is charged with committing the offence jointly with his or her spouse; or
- (b) if that person and his or her spouse were, at the time of the alleged offence, living separately and apart.

(5) Nothing in subsection (3) shall be taken to prevent the arrest, or the issue for a warrant for the arrest, of a person charged with an offence against a provision of Division 2 or 3, or the remand in custody or on bail of a person charged with such an offence, where the arrest, if made without a warrant, is made, or the warrant is issued on any information laid, by a person other than the spouse of the firstmentioned person.

149 Property of partners or joint owners

(1) Where, in an indictment for an offence under this Part, it is necessary to allege the ownership of property belonging to more than 1 person, whether as partners in trade, joint tenants or tenants in common, or to allege that property is in the possession or control of more than 1 person, it is sufficient to name 1 of those persons and to allege that the property

belongs to, or is in the possession or control of, the person named and another, or others, as the case may be.

(2) In subsection (1), a reference to *a person* shall be read as including a reference to a joint-stock company, an executor, an administrator or a trustee.

150 Indictment for theft etc of deeds

In an indictment for an offence under a provision of this Part in relation to any document of title to land, or any part of such a document, it shall be sufficient to allege that the document or the part of the document is or contains evidence of the title to the land, and to mention the person, or any of the persons, having an interest in the land, or in any part of the land.

151 Allegations in indictment as to stolen money or securities

In an indictment for an offence under a provision of this Part in relation to any property, being money or any valuable security, it shall be sufficient to describe the property as a certain amount of money, or as a certain valuable security, as the case may be, without specifying any particular kind of money or security, and the description shall be sustained by proof of the offence in relation to any money or valuable security even where it is agreed that part of the value of that money or security has been returned, or such part was in fact returned.

PART 5—ESCAPE PROVISIONS

151A Interpretation

For the purposes of this Part, a person who is serving a sentence by way of periodic detention shall not be deemed by reason only of that fact to be in lawful custody.

152 Meaning of *detention during pleasure*

In this Division, a reference to detention during pleasure shall be read as a reference to detention during the pleasure of the Governor-General, the Governor of a State or the Administrator of the Northern Territory of Australia, as the case requires.

153 Aiding prisoner to escape

A person who—

- (a) aids another person to escape, or to attempt to escape, from lawful custody in respect of an offence under a law of the Territory, a State or another Territory; or
- (b) aids another person who has been lawfully arrested in respect of such an offence to escape, or to attempt to escape, from that arrest; or
- (c) aids another person who is lawfully detained during pleasure in respect of such an offence to escape, or to attempt to escape, from that detention; or
- (d) conveys anything into a prison, lockup or other place of lawful detention with intent to facilitate the escape from there of another person who is in custody in respect of such an offence;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years or a fine of \$10,000, or both.

154 Escaping

A person who has been lawfully arrested, is in lawful custody, or is lawfully detained during pleasure, in respect of an offence under a law of the Territory, a State or another Territory and who escapes from that arrest, custody or detention is guilty of an offence punishable, on conviction, by imprisonment for 5 years or a fine of \$10,000, or both.

155 Rescuing a prisoner from custody etc

A person who—

- (a) rescues by force a person (other than a person referred to in paragraph (c) or (d)) from lawful custody in respect of an offence under a law of the Territory, a State or another Territory with which the person has been charged; or
- (b) rescues by force a person who has been lawfully arrested in respect of such an offence with which the person has not been charged from that arrest; or
- (c) rescues by force a person who is in lawful custody in any prison, lockup or other place of lawful detention in respect of such an offence from that prison, lockup or place; or
- (d) rescues by force a person who is lawfully detained during pleasure in respect of such an offence from that detention;

is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

156 Person unlawfully at large

A person who—

- (a) in accordance with a permission given under a law of the Territory, a State or another Territory, leaves a prison, lockup or other place of lawful detention where the person is in custody, or is detained during pleasure, in respect of an offence under a law of the Territory, a State or another Territory; and
- (b) refuses or fails, without reasonable excuse, to return to that prison, lockup or place in accordance with that permission;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years or a fine of \$10,000, or both.

157 Permitting escape

(1) A person who—

- (a) is an officer of a prison, lockup or other place of lawful detention, a constable or a Commonwealth officer; and
- (b) is charged for the time being with the custody or detention of another person (including a person detained during pleasure) in respect of an offence under a law of the Territory, a State or another Territory; and

- (c) wilfully or negligently permits that other person to escape from that custody or detention;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years or a fine of \$10,000, or both.

(2) A constable or a Commonwealth officer who wilfully or negligently permits a person who has been lawfully arrested in respect of an offence under a law of the Territory, a State or another Territory to escape from that arrest is guilty of an offence punishable, on conviction, by imprisonment for 5 years or a fine of \$10,000, or both.

(3) In this section—

constable and *Commonwealth officer* have the same respective meanings as in the *Crimes Act 1914* of the Commonwealth.

158 Harboursing etc escapee

A person who harbours, maintains or employs another person knowing that other person to have escaped from lawful custody or detention in respect of an offence under a law of the Territory, a State or another Territory is guilty of an offence punishable, on conviction, by imprisonment for 5 years or a fine of \$10,000, or both.

159 Escaped prisoner—current sentence

A person who commits an offence under section 154 or 156 shall, upon being returned to lawful custody, undergo, in addition to any punishment imposed for that offence, the punishment that the person would have undergone if the person had not committed that offence.

160 Failure to answer bail etc—offence

(1) Where—

- (a) in accordance with a law in force in the Territory (other than the *Bail Act 1992*), a person arrested in respect of, or charged with, an offence under a law in force in the Territory has been—
- (i) admitted to bail on an undertaking; or
 - (ii) released or discharged on entering into a recognisance, with or without a surety or sureties, on condition;

that he or she will attend, or appear before, a court at a specified time and place or at a time and place to be determined and of which he or she is to be notified; and

- (b) he or she fails, without reasonable excuse, to so attend or appear;

Crimes Act 1900

the person is guilty of an offence punishable, on conviction, by imprisonment for a period not exceeding 2 years or a fine not exceeding \$20,000, or both.

(2) The reference in subsection (1) to *an undertaking* or *a recognisance* shall not be read as including a reference to an undertaking given or a recognisance entered into (as the case requires) following the instituting of an appeal.

PART 7—PERJURY AND LIKE OFFENCES

327 Perjury

Whosoever commits the crime of perjury shall be liable to imprisonment for 7 years.

328 Perjury with intent to procure conviction etc

Whosoever commits perjury with intent to procure the conviction, or acquittal, of any person for, or of, any offence punishable by imprisonment shall be liable to imprisonment for 14 years.

329 Conviction for false swearing on indictment for perjury

Where, on the trial of any person for perjury, it appears that the offence does not amount in law to perjury, but is an offence within section 330, the jury may acquit him or her of the offence charged, and find him or her guilty of an offence under section 328, and he or she shall be liable to punishment accordingly.

330 False swearing not being perjury

Whosoever, before any person authorised to administer an oath, wilfully makes on oath any false statement, knowing the same to be false, shall, where such offence does not amount in law to perjury, be liable to imprisonment for 5 years.

331 Contradictory statements on oath

Where, on the trial of a person for perjury, or for wilfully making a false statement on oath not amounting to perjury, it appears that the accused has made 2 statements on oath, of which 1 is irreconcilably in conflict with the other, and the jury are of opinion that 1 of such statements was wilfully false, but they cannot say which of them was so, they may specially so find and that the accused is guilty of perjury, or of wilful false swearing as the case may be, and he or she shall be liable to punishment accordingly.

332 Certain technical defects provided for

Where, on the trial of a person for perjury, or for wilfully making a false statement on oath not amounting to perjury, any affidavit, deposition, examination, or solemn declaration, offered in evidence, is wrongly intitled, or otherwise informal or defective, or the jurat to any such

instrument is informal or defective, or any such deposition, where taken before a magistrate or coroner has no caption, or no proper caption, the accused shall not be entitled to an acquittal by reason of such omission, defect, or informality, but every such instrument, if otherwise admissible, may be given in evidence and used for all purposes of the trial.

333 False evidence by child not on oath

(1) Whosoever, being a child of tender years admitted to give evidence, though not on oath, under the provisions of this Act, gives any false evidence shall be guilty of an offence.

(2) No prosecution shall be instituted under, or by virtue of, this section, without the leave of the court, or magistrate, before whom such evidence was given.

334 False statement in evidence on commission

A person who, in giving any testimony (either orally or in writing) otherwise than on oath, where required to do so pursuant to an order under subsection 85K (1) of the *Evidence Act 1971*, makes a statement—

- (a) which the person knows to be false in a material particular; or
- (b) which is false in a material particular and which the person does not believe to be true;

is guilty of an offence punishable, on conviction, by imprisonment for 3 years.

340 Directing prosecution for perjury

Where any statement on oath has been made by any person in any suit, proceeding, or matter, pending in the Supreme Court, or before any judge of that court, the judge before whom the same was so made, may, if reasonable cause appears for so doing, direct such person to be prosecuted for perjury in respect thereof and may thereupon require him or her forthwith to enter into an undertaking, with 1 or more surety or sureties, to take his or her trial for that offence at the next, or nearest practicable, sitting of the Supreme Court, and may also require any persons then present to enter into undertakings to prosecute, and give evidence, respectively, against the accused, and may commit any person in default of his or her entering into any such undertaking.

341 For restraining vexatious prosecutions

(1) No prosecution in respect of any such statement on oath, referred to in section 340, shall be instituted without such direction as in that section provided, or without the leave of the court, or that judge.

(2) No prosecution in respect of any statement on oath made before any registrar, or district registrar in bankruptcy shall be instituted without the leave of a judge of the Supreme Court.

342 Application of laws

The provisions of this Act shall apply to every false oath, declaration, or affirmation, declared by any law in force in the Territory to be perjury or made punishable as perjury and shall extend to every declaration made, or purporting, or intended to have been made, under any Act directing, or authorising the making of a solemn declaration, before any public or other functionary in lieu of an oath, or otherwise, although such declaration may not be in the form prescribed by such law.

343 Saving of other punishments

Nothing in this Part shall prevent, or affect, any other punishment, or any forfeiture, provided under any Act.

344 False accusation

A person who charges another person falsely, or causes another person to be charged falsely, with an offence under a law of the Territory is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

**PART 8—AIDING AND ABETTING, ACCESSORIES, ATTEMPTS,
INCITEMENT AND CONSPIRACY**

345 Aiding and abetting

A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly knowingly concerned in, or party to, the commission of an offence under a law of the Territory shall be deemed to have committed that offence and shall be punishable, on conviction, accordingly.

346 Accessory after the fact

A person who receives or assists another person who is, to the knowledge of the firstmentioned person, guilty of an offence under a law of the Territory in order to enable that other person to escape punishment or to dispose of the proceeds of the offence is guilty of an offence punishable, on conviction, by—

- (a) if the firstmentioned offence is the crime of murder—imprisonment for life; or
- (b) if the firstmentioned offence is an offence referred to in section 101 or 103—imprisonment for 14 years; or
- (c) in any other case—imprisonment for 2 years.

347 Attempts

A person who attempts to commit an offence under a law of the Territory is guilty of an offence punishable, on conviction, as if the attempted offence had been committed.

348 Incitement

A person who—

- (a) incites to, urges, aids or encourages; or
- (b) prints or publishes any writing which incites to, urges, aids or encourages;

the commission of, or the carrying on of any operation for or by the commission of, an offence under a law of the Territory is guilty of an offence punishable, on conviction, by—

- (a) if the firstmentioned offence is the crime of murder—imprisonment for life; or

- (b) in any other case—imprisonment for 12 months or a fine of \$2,000, or both.

349 Conspiracy

- (1) A person who conspires with another person—
 - (a) to commit—
 - (i) an offence under a law of the Territory; or
 - (ii) an offence under a law of a place outside the Territory, being an offence consisting of, or including, elements that, if present or occurring in the Territory, would constitute an offence under a law of the Territory; or
 - (b) to prevent or defeat the execution or enforcement of a law of the Territory; or
 - (c) to effect a purpose that is unlawful under a law of the Territory; or
 - (d) to effect a lawful purpose by means that are unlawful under a law of the Territory;

is guilty of an offence punishable, on conviction, by imprisonment for 3 years.

- (2) Notwithstanding subsection (1), where a person is convicted of conspiring with another person to commit—
 - (a) a serious Territory offence; or
 - (b) an offence under a law of a place outside the Territory, being an offence consisting of, or including, elements that, if present or occurring in the Territory, would constitute a serious Territory offence;

the firstmentioned person is punishable as if he or she had committed that offence.

- (3) Subparagraph (1) (a) (ii) does not apply unless at least 1 of the parties is in the Territory at some time while the conspiracy subsists.

- (4) Subject to subsection (3), for the purpose of a prosecution for an offence under paragraph (1) (a), it is immaterial whether the person charged or any other person with whom he or she is alleged to have conspired was in the Territory or elsewhere at the time of the alleged offence.

- (5) In subsection (2)—

serious Territory offence means an offence under a law of the Territory punishable by imprisonment for a period exceeding 3 years.

PART 10—CRIMINAL INVESTIGATION

Division 1—Preliminary

349AA Interpretation

In this Part, unless the contrary intention appears—

assisting officer, in relation to a warrant, means—

- (a) a police officer assisting in executing the warrant; or
- (b) a person who is not a police officer, but who has been authorised by the relevant executing officer to assist in executing the warrant.

Commonwealth Crimes Act means the *Crimes Act 1914* (Cwlth).

conveyance includes an aircraft, vehicle or vessel.

evidential material means a thing relevant to an indictable offence or a thing relevant to a summary offence, including such a thing in electronic form.

executing officer, in relation to a warrant, means—

- (a) the police officer named in the warrant by the issuing officer as being responsible for executing the warrant; or
- (b) if that police officer does not intend to be present at the execution of the warrant—another police officer whose name has been written in the warrant by the police officer named under paragraph (a); or
- (c) another police officer whose name has been written in the warrant by the police officer named in the warrant under paragraph (b).

frisk search means—

- (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

issuing officer, in relation to a warrant to search premises or a person or a warrant for arrest under this Part, means—

- (a) a judge, the registrar or a deputy registrar of the Supreme Court; or
- (b) a magistrate; or

- (c) if authorised by the Chief Magistrate to issue such search warrants or arrest warrants (as the case may be)—the registrar or a deputy registrar of the Magistrates Court.

offence means an offence against a law of the Territory.

ordinary search means a search of a person or of articles in the possession of a person that may include—

- (a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes, socks and hat; and
- (b) an examination of those items.

police station includes—

- (a) a police station of the Territory; and
- (b) a building occupied by the Australian Federal Police.

premises includes a place and a conveyance.

recently used conveyance, in relation to a search of a person, means a conveyance that the person had operated or occupied at any time within 24 hours before the search commenced.

seizable item means anything that would present a danger to a person or that could be used to assist a person to escape from lawful custody.

strip search means a search of a person or of articles in the possession of a person that may include—

- (a) requiring the person to remove all of his or her garments; and
- (b) an examination of the person's body (but not of the person's body cavities) and of those garments.

summary offence means an offence that is punishable on summary conviction as provided by section 33E of the *Interpretation Act 1967*.

thing relevant to an indictable offence means—

- (a) anything with respect to which an indictable offence has been committed or is suspected, on reasonable grounds, to have been committed; or
- (b) anything which is suspected, on reasonable grounds, to afford evidence of the commission of an indictable offence; or

- (c) anything which is suspected, on reasonable grounds, to be intended to be used for the purpose of committing an indictable offence.

thing relevant to a summary offence means—

- (a) anything with respect to which a summary offence has been committed or is suspected, on reasonable grounds, to have been committed; or
- (b) anything which is suspected, on reasonable grounds, to afford evidence of the commission of a summary offence; or
- (c) anything which is suspected, on reasonable grounds, to be intended to be used for the purpose of committing a summary offence.

warrant means a warrant under this Part.

warrant premises means premises in relation to which a warrant is in force.

349AB Application of Part

(1) This Part is not intended to limit or exclude the operation of any other law of the Territory relating to—

- (a) the search of persons or premises; or
- (b) arrest and related matters; or
- (c) the stopping, detaining or searching of conveyances; or
- (d) the seizure of things.

(2) To avoid any doubt, it is declared that even though another law of the Territory provides power to do 1 or more of the things referred to in subsection (1), a similar power conferred by this Part may be used despite the existence of the power under the other law.

Division 1A—Preventative action

349A Police powers of entry

A police officer may enter premises, and may take such action as is necessary and reasonable to prevent the commission or repetition of an offence or of a breach of the peace or to protect life or property—

- (a) when invited onto the premises by a person who is or is reasonably believed to be a resident of the premises for the purpose of giving assistance to a person on the premises who has

suffered, or is in imminent danger of suffering, physical injury at the hands of some other person; or

- (b) in pursuance of a warrant issued under section 349B; or
- (c) in circumstances of seriousness and urgency, in accordance with section 349C.

349B Issue of warrant

- (1) Where a magistrate is satisfied, by information on oath, that—
 - (a) there are reasonable grounds to suspect that a person on premises has suffered, or is in imminent danger of, physical injury at the hands of another person and needs assistance to prevent, or deal with, the injury; and
 - (b) a police officer has been refused permission to enter the premises for the purpose of giving assistance to the firstmentioned person;

the magistrate may issue a warrant in writing authorising a police officer, with such assistance as is necessary and reasonable and by such force as is necessary and reasonable—

- (c) to enter the premises specified in the warrant at any time within 24 hours after the issue of the warrant; and
 - (d) subject to any conditions specified in the warrant, to take such action as is necessary to prevent the commission or repetition of an offence or of a breach of the peace or to protect life or property.
- (2) The police officer applying for a warrant shall furnish such further information concerning the grounds on which the warrant is sought, either orally on oath or by affidavit, as the magistrate requires.

349C Entry in emergencies

A police officer may enter premises where the officer believes on reasonable grounds that—

- (a) an offence or a breach of the peace is being or is likely to be committed, or a person has suffered physical injury or there is imminent danger of injury to a person or damage to property; and
- (b) it is necessary to enter the premises immediately for the purpose of preventing the commission or repetition of an offence or a breach of the peace or to protect life or property.

349D Seizure of firearms—warrants and emergencies

(1) Where a police officer enters premises pursuant to section 349A, 349B or 349C, the police officer may seize any firearm, any ammunition for a firearm and any licence to possess or use a firearm—

- (a) in or on those premises; or
- (b) in or on a motor vehicle under the control of a person who ordinarily lives on those premises or is apparently connected with the circumstances giving rise to the entry of the police officer onto the premises;

if the police officer has reasonable grounds for believing that the seizure is necessary to prevent the commission or repetition of an offence or of a breach of the peace or to protect life or property.

(2) A firearm, ammunition or licence may be seized by a police officer under subsection (1)—

- (a) despite the fact that the owner of the firearm, ammunition or licence is unknown; or
- (b) irrespective of whether the owner of the firearm, ammunition or licence is connected with the circumstances giving rise to the entry of the police officer onto the premises.

(2A) A police officer who is authorised under subsection (1) to seize a firearm, ammunition or licence in or on premises or in or on a motor vehicle may search the premises or the motor vehicle for any firearm, ammunition or licence and use such force as is reasonably necessary for the purpose.

(2B) Subject to subsection (2C), where before the expiration of 60 days after the date of seizure of a firearm, ammunition or licence under subsection (1)—

- (a) a prosecution for an offence arising out of circumstances in which a police officer has entered premises under section 349A, 349B or 349C has not been instituted; or
- (b) an application for a protection order or an interim protection order under the *Domestic Violence Act 1986* has not been made;

the firearm, ammunition or licence shall be returned to the licensee.

(2C) A firearm, ammunition or licence seized under subsection (1) shall not be returned if the registrar would otherwise be entitled under the *Firearms Act 1996* to be in possession of the firearm, ammunition or licence.

(3) An expression that is used in this section and in the *Firearms Act 1996* has, in this section, the same meaning as in that Act.

349DA Seizure of firearms—protection and restraining orders

(1) For the purpose of executing an order under subsection 14A (2) or (3) of the *Domestic Violence Act 1986* or subsection 206D (2) or (4) of the *Magistrates Court Act 1930*, a police officer may—

- (a) enter premises at which the respondent named in the order is reasonably believed to be a resident or temporarily accommodated; and
- (b) seize any firearm, any ammunition for a firearm and any licence to possess or use a firearm—
 - (i) in or on those premises; or
 - (ii) in or on a motor vehicle under the control of a person who ordinarily lives on those premises or is apparently connected with the circumstances giving rise to the entry of the police officer onto the premises.

(2) A firearm, ammunition or licence may be seized by a police officer under subsection (1)—

- (a) despite the fact that the owner of the firearm, ammunition or licence is unknown; or
- (b) irrespective of whether the owner of the firearm, ammunition or licence is connected with the circumstances giving rise to the entry of the police officer onto the premises.

(3) A police officer who is authorised under subsection (1) to seize a firearm, ammunition or licence in or on premises or in or on a motor vehicle may search the premises or the motor vehicle for any firearm, ammunition or licence and use such force as is reasonably necessary for the purpose.

(4) Subsection (3) does not authorise a search at any time during the period commencing at 9 pm on a day and ending at 6 am on the following day unless the police officer is satisfied that—

- (a) it would not be practicable to conduct the search at another time; or
- (b) it is necessary to do so in order to prevent the concealment, loss or destruction of the firearm, ammunition or licence.

- (5) Where—
- (a) a firearm, ammunition or licence has been seized under subsection (1) for the purpose of executing an order under subsection 206D (2) or (4) of the *Magistrates Court Act 1930*; and
 - (b) the licence has not been cancelled under subsection 206D (1) or suspended under subsection 206D (3) of that Act;

the firearm, ammunition or licence shall be returned to the licensee if—

- (c) the licensee produces to the registrar of firearms a certificate of the registrar of the Magistrates Court to the effect that the order is no longer in force; and
 - (d) the registrar of firearms is not aware of any other court orders in force requiring the seizure of the firearm, ammunition or licence; and
 - (e) the registrar of firearms is not otherwise entitled under the *Firearms Act 1996* to be in possession of the firearm, ammunition or licence.
- (6) Where a firearm is seized under subsection (1) and is not returned to the licensee in accordance with subsection (5), for the purposes of section 116 of the *Firearms Act 1996*, the firearm shall be taken to have been seized by a police officer in accordance with that Act.
- (7) An expression that is used in this section and in the *Firearms Act 1996* has, in this section, the same meaning as in that Act.

349DB Power to conduct search of person for knife

(1) Subject to subsection (2), if a police officer suspects on reasonable grounds that a person who is in a public place or school has a knife in his or her possession, the police officer may—

- (a) conduct a frisk search or an ordinary search of the person; and
- (b) seize any knife found as a result of the search.

(2) A police officer may conduct a search of a person under subsection (1) only if the police officer—

- (a) provides evidence to the person that he or she is a police officer, unless the police officer is in uniform; and
- (b) informs the person of the reason for the search.

(3) As soon as practicable after a search has been conducted under subsection (1), the police officer who conducted the search shall record the time, location and nature of the search.

Division 2—Search warrants

349E When search warrants can be issued

- (1) An issuing officer may issue a warrant to search premises if the officer is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or there will be within the next 72 hours, any evidential material at the premises.
- (2) An issuing officer may issue a warrant authorising an ordinary search or a frisk search of a person if the officer is satisfied by information on oath that there are reasonable grounds for suspecting that the person possesses, or will within the next 72 hours possess, any evidential material.
- (3) If the person applying for the warrant suspects that, in executing the warrant, it will be necessary to use firearms, the person shall state that suspicion, and the grounds for that suspicion, in the information.
- (4) If the person applying for the warrant is a police officer and has, at any time previously, applied for a warrant relating to the same person or premises, the person shall state in the information particulars of those applications and their outcome.
- (5) A warrant shall include statements of the following matters:

 - (a) the offence to which the warrant relates;
 - (b) a description of the warrant premises, or the name or description of the person to whom it relates;
 - (c) the kinds of evidential material that are to be searched for under the warrant;
 - (d) the name of the police officer who is to be responsible for executing the warrant (unless he or she inserts in the warrant the name of another police officer);
 - (e) the period, not exceeding 7 days, for which the warrant remains in force;
 - (f) subject to subsection (9), the times during which the search is authorised.
- (6) In the case of a warrant in relation to premises, the warrant shall state—

 - (a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (5) (c)) found at the premises in the course of the search that the executing

officer or an assisting officer believes on reasonable grounds to be—

- (i) evidential material in relation to an offence to which the warrant relates; or
- (ii) a thing relevant to another offence that is an indictable offence; and

if the executing officer or an assisting officer believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence; and

- (b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed if the executing officer or an assisting officer suspects on reasonable grounds that the person has any evidential material or seizable items in his or her possession.

(7) In the case of a warrant to search a person, the warrant shall state—

- (a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (5) (c)) found, in the course of the search, on or in the possession of the person or in a recently used conveyance, being a thing that the executing officer or an assisting officer believes on reasonable grounds to be—
 - (i) evidential material in relation to an offence to which the warrant relates; or
 - (ii) a thing relevant to another offence that is an indictable offence;

if the executing officer or an assisting officer believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence; and

- (b) the kind of search of a person that the warrant authorises.

(8) Paragraph (5) (e) does not prevent the issue of successive warrants in relation to the same premises or person.

(9) A warrant shall not be expressed to authorise a search at any time during the period commencing at 9 pm on a day and ending at 6 am on the following day unless the issuing officer is satisfied that—

- (a) it would not be practicable to conduct the search at another time; or

- (b) it is necessary to do so in order to prevent the concealment, loss or destruction of evidence relating to the offence.

(10) If the application for the warrant is made under section 349R, this section applies as if—

- (a) subsections (1) and (2) referred to 48 hours rather than 72 hours; and
- (b) paragraph (5) (e) referred to 48 hours rather than 7 days.

349F The things that are authorised by search warrant

(1) A warrant in force for the search of premises authorises the executing officer or an assisting officer—

- (a) to enter the warrant premises and, if the premises are a conveyance, to enter the conveyance, wherever it is; and
- (b) to search for and record fingerprints found at the premises and to take samples of things found at the premises for forensic purposes; and
- (c) to search the premises for the kinds of evidential material specified in the warrant, and to seize things of that kind found at the premises; and
- (d) to seize other things found at the premises in the course of the search that the executing officer or an assisting officer believes on reasonable grounds to be—
 - (i) evidential material in relation to an offence to which the warrant relates; or
 - (ii) evidential material in relation to any indictable offence; if the executing officer or an assisting officer believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence; and
- (e) to seize other things found at the premises in the course of the search that the executing officer or an assisting officer believes on reasonable grounds to be seizable items; and
- (f) if the warrant so allows—to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or an assisting officer suspects on reasonable grounds that the person has any evidential material or seizable items in his or her possession.

(2) A warrant in force for the search of a person authorises the executing officer or an assisting officer—

- (a) to search the person as specified in the warrant, things found in the possession of the person and any recently used conveyance for things of the kind specified in the warrant; and
- (b) to—
 - (i) seize things of that kind;
 - (ii) record fingerprints from things;
 - (iii) to take forensic samples from things;found in the course of the search; and
- (c) to seize other things found in the course of the search on, or in the possession of, the person or in the conveyance that the executing officer or an assisting officer believes on reasonable grounds to be—
 - (i) evidential material in relation to an offence to which the warrant relates; or
 - (ii) a thing relevant to any indictable offence;if the executing officer or an assisting officer believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence; and
- (d) to seize other things found in the course of the search that the executing officer or an assisting officer believes on reasonable grounds to be seizable items.

(3) If the warrant states that it may be executed only during particular hours, the warrant shall not be executed outside those hours.

(4) If the warrant authorises an ordinary search or a frisk search of a person, a search of the person different to that so authorised shall not be done under the warrant.

(5) If things are seized under a warrant, the warrant authorises the executing officer to make the things available to officers of other agencies if it is necessary to do so for the purpose of investigating or prosecuting an offence to which the things relate.

349G Availability of assistance and use of force in executing warrant

In executing a warrant—

- (a) the executing officer may obtain such assistance as is necessary and reasonable in the circumstances; and
- (b) the executing officer, or a police officer assisting in executing the warrant, may use such force against persons and things as is necessary and reasonable in the circumstances; and
- (c) an assisting officer may use such force against things as is necessary and reasonable in the circumstances.

349H Details of warrant to be given to occupier etc

- (1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the executing officer or an assisting officer shall make available to that person a copy of the warrant.
- (2) If a warrant in relation to a person is being executed, the executing officer or an assisting officer shall make available to that person a copy of the warrant.
- (3) If a person is searched under a warrant in relation to premises, the executing officer or an assisting officer shall show the person a copy of the warrant.
- (4) The executing officer shall identify himself or herself to the person at the premises or the person being searched, as the case may be.
- (5) The copy of the warrant referred to in subsections (1) and (2) need not include the signature of the issuing officer or the seal of the relevant court.

349J Specific powers available to police officers executing warrant

- (1) In executing a warrant in relation to premises, the executing officer or an assisting officer may—
 - (a) for a purpose incidental to the execution of the warrant; or
 - (b) if the occupier of the premises consents in writing;

take photographs (including video recordings) of the premises or of things at the premises.

- (2) If a warrant in relation to premises is being executed, the executing officer and the assisting officers may, if the warrant is still in force, complete the execution of the warrant after all of them temporarily cease its execution and leave the premises—

- (a) for not more than 1 hour; or
- (b) for a longer period if the occupier of the premises consents in writing.

(3) If—

- (a) the execution of a warrant is stopped by an order of a court; and
- (b) the order is later revoked or reversed on appeal; and
- (c) the warrant is still in force;

the execution of the warrant may be completed.

349K Use of equipment to examine or process things

(1) The executing officer or an assisting officer may bring to warrant premises any equipment reasonably necessary for the examination or processing of things found at the premises, in order to determine whether they are things that may be seized under the warrant.

(2) If—

- (a) it is not practicable to examine or process them at the warrant premises; or
- (b) the occupier of the premises (or his or her representative) consents in writing;

the things may be moved to another place for examination or processing in order to determine whether they are things that may be seized under a warrant.

(3) If things are moved to another place for the purpose of examination or processing under subsection (2), the executing officer shall, if practicable—

- (a) inform the occupier of the address of the place and the time at which the examination or processing will be carried out; and
- (b) allow the occupier (or his or her representative) to be present during the examination or processing.

(4) The executing officer or an assisting officer may operate equipment already at warrant premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized under the warrant if the officer believes on reasonable grounds that—

- (a) the equipment is suitable for the examination or processing; and

- (b) the examination or processing can be carried out without damage to the equipment or the thing.

349L Use of electronic equipment at premises

(1) The executing officer or an assisting officer may operate electronic equipment at warrant premises to see whether evidential material is accessible by doing so if the officer believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

(2) If the executing officer or an assisting officer, after operating the equipment, finds that evidential material is accessible by doing so, the officer may—

- (a) seize the equipment and any disk, tape or other associated device; or
- (b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced; or
- (c) if the material can be transferred to a disk, tape or other storage device that—
 - (i) is brought to the premises; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.

(3) Equipment may only be seized under paragraph (2) (a) if—

- (a) it is not practicable to put the material in documentary form under paragraph (2) (b) or to copy the material under paragraph (2) (c); or
- (b) possession by the occupier of the equipment could constitute an offence.

(4) If the executing officer or an assisting officer believes on reasonable grounds that—

- (a) evidential material may be accessible by operating electronic equipment at the premises; and
- (b) expert assistance is required to operate the equipment; and
- (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

(5) The executing officer or an assisting officer shall give notice to the occupier of the premises of his or her intention to secure the equipment and of the fact that the equipment may be secured for up to 24 hours.

(6) The equipment may be secured—

- (a) for a period not exceeding 24 hours; or
- (b) until the equipment has been operated by the expert;

whichever happens first.

(7) If the executing officer or assisting officer believes on reasonable grounds that expert assistance will not be available within 24 hours, he or she may apply to the issuing officer for an extension of that period.

(8) The executing officer or assisting officer shall give notice to the occupier of the premises—

- (a) that the executing officer or assisting officer intends to apply for an extension under subsection (7); and
- (b) that the occupier is entitled to be heard in relation to the application.

(9) The occupier is entitled to be heard in relation to an application under subsection (7).

(10) This Division applies to the issuing of an extension on an application under subsection (7) in the same way as it applies to the issue of a warrant, with necessary changes.

349M Compensation for damage to electronic equipment

(1) If—

- (a) damage is caused to equipment as a result of it being operated under section 349K or 349L; and
- (b) the damage resulted from—
 - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care being exercised by the person operating the equipment;

compensation for the damage is payable to the owner of the equipment.

(2) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises or the occupier's employees or agents, if they were available at the time, had provided any warning or guidance as to the appropriate operation of the equipment in the circumstances.

349N Copies of seized things to be provided

(1) If a police officer seizes from warrant premises—

- (a) a document, film, computer file or other thing that can be readily copied; or
- (b) a storage device the information in which can be readily copied;

the officer shall, if requested to do so by the occupier of the premises (or another person apparently representing the occupier), give a copy of the thing or the information to the occupier or that person as soon as practicable after the seizure.

(2) Subsection (1) does not apply if—

- (a) the seized item was seized under paragraph 349L (2) (b) or (c); or
- (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

349P Occupier entitled to be present during search

(1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the person is, subject to Part 1C of the Commonwealth Crimes Act, entitled to observe the search being conducted.

(2) The right to observe the search being conducted ceases if the person impedes the search.

(3) This section does not prevent 2 or more areas of the premises being searched at the same time.

349Q Receipts for things seized under warrant

(1) If a thing is seized under a warrant or moved under subsection 349K (2), the executing officer or an assisting officer shall provide a receipt for the thing.

(2) If 2 or more things are seized or moved, they may be covered by a single receipt.

349R Warrants by telephone or other electronic means

(1) A police officer may make an application to an issuing officer for a warrant by telephone, telex, facsimile or other electronic means—

- (a) in an urgent case; or
- (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.

(2) The issuing officer may require communication by voice to the extent that is practicable in the circumstances.

(3) An application under this section shall include all information required to be provided in an ordinary application for a warrant, but the application may, if necessary, be made before the information is sworn.

(4) If an application is made to an issuing officer under this section and the issuing officer, after considering the information and having received and considered such further information (if any) as the issuing officer required, is satisfied that—

- (a) a warrant in the terms of the application should be issued urgently; or
- (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;

the issuing officer may complete and sign the same form of warrant that would be issued under section 349E.

(5) If the issuing officer decides to issue the warrant, the issuing officer is to inform the applicant, by telephone, telex, facsimile or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.

(6) The applicant shall then complete a form of warrant in terms substantially corresponding to those given by the issuing officer, stating on the form the name of the issuing officer and the day on which and the time at which the warrant was signed.

(7) The applicant shall, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier, give or transmit to the issuing officer the form of warrant completed by the applicant and, if the information referred to in subsection (3) was not sworn, that information duly sworn.

(8) The issuing officer is to attach to the documents provided under subsection (7) the form of warrant completed by the issuing officer.

- (9) If—
- (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and
 - (b) the form of warrant signed by the issuing officer is not produced in evidence;

the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

349S Restrictions on personal searches

A warrant may not authorise a strip search or a search of a person's body cavities.

Division 3—Stopping and searching conveyances

349T Searches without warrant in emergency situations

- (1) This section applies if a police officer suspects, on reasonable grounds, that—
- (a) a thing relevant to an indictable offence is in or on a conveyance; and
 - (b) it is necessary to exercise a power under subsection (2) in order to prevent the thing from being concealed, lost or destroyed; and
 - (c) it is necessary to exercise the power without the authority of a search warrant because the circumstances are serious and urgent.
- (2) Where this section applies, the police officer may—
- (a) stop and detain the conveyance; and
 - (b) search the conveyance and any container in or on the conveyance, for the relevant thing; and
 - (c) seize the thing if he or she finds it there.
- (3) If, in the course of searching for the relevant thing, the police officer finds any evidential material, the police officer may seize the material if he or she suspects, on reasonable grounds, that—
- (a) it is necessary to seize it in order to prevent its concealment, loss or destruction; and
 - (b) it is necessary to seize it without the authority of a search warrant because the circumstances are serious and urgent.

(4) The police officer shall exercise his or her powers under this section subject to section 349U.

349U How a police officer exercises a power under section 349T

In exercising a power under section 349T in relation to a conveyance, a police officer—

- (a) may use such assistance as is necessary; and
- (b) shall search the conveyance in a public place or in some other place to which members of the public have ready access; and
- (c) shall not detain the conveyance for longer than is necessary and reasonable to search it and any container found in or on the conveyance; and
- (d) may use such force as is necessary and reasonable in the circumstances, but shall not damage the conveyance or any container found in or on the conveyance by forcing open a part of the conveyance or container unless—
 - (i) any person apparently in charge of the conveyance has been given a reasonable opportunity to open that part or container; or
 - (ii) it is not possible to give any such person that opportunity.

Division 4—Arrest and related matters

349V Requirement to furnish name etc

(1) Where—

- (a) a police officer has reason to believe that an offence has been or may have been committed; and
- (b) believes on reasonable grounds that a person may be able to assist him or her in inquiries in relation to that offence; and
- (c) the name or address (or both) of that person is unknown to the officer;

the officer—

- (d) may request the person to provide his or her name or address (or both) to the officer; and
- (e) if making such a request—shall inform the person of the reason for the request.

(2) If a police officer—

Crimes Act 1900

- (a) makes a request of a person under subsection (1); and
- (b) informs the person of the reason for the request; and
- (c) complies with subsection (3) if the person makes a request under that subsection;

the person shall not, without reasonable excuse—

- (d) refuse or fail to comply with the request; or
- (e) give a name or address that is false in a material particular.

(3) If a police officer who makes a request of a person under subsection (1) is requested by the person to provide to the person—

- (a) his or her name or the address of his or her place of duty; or
- (b) his or her name and that address; or
- (c) if he or she is not in uniform and it is practicable for the police officer to provide the evidence—evidence that he or she is a police officer;

the police officer shall not—

- (d) refuse or fail to comply with the request; or
- (e) give a name or address that is false in a material particular.

(4) As soon as possible after making such a request, the police officer shall make a written record of the grounds for his or her belief.

Penalty: \$500.

349W Power of arrest without warrant by police officers

(1) A police officer may, without warrant, arrest a person for an offence if the police officer believes on reasonable grounds that—

- (a) the person has committed or is committing the offence; and
- (b) proceedings by summons against the person would not achieve 1 or more of the following purposes:
 - (i) ensuring the appearance of the person before a court in respect of the offence;
 - (ii) preventing a repetition or continuation of the offence or the commission of another offence;
 - (iii) preventing the concealment, loss or destruction of evidence relating to the offence;

- (iv) preventing harassment of, or interference with, a person who may be required to give evidence in proceedings in respect of the offence;
- (v) preventing the fabrication of evidence in respect of the offence;
- (vi) preserving the safety or welfare of the person.

(1A) A police officer may, without warrant, arrest a person for a domestic violence offence if the police officer believes on reasonable grounds that the person has committed or is committing the offence.

(2) Where—

- (a) a person has been arrested under subsection (1) or (1A) in connection with an offence; and
- (b) before the person is charged with the offence, the police officer in charge of the investigation into the offence does not have, or ceases to have, reasonable grounds to believe that—
 - (i) the person committed the offence; or
 - (ii) in the case of a person arrested under subsection (1)—holding the person in custody is necessary to achieve any of the purposes referred to in paragraph (1) (b);

the person shall forthwith be released from custody in respect of the offence.

(3) A police officer may, without warrant, arrest a person whom he or she believes on reasonable grounds has escaped from lawful custody to which the person is still liable in respect of an offence.

349X Arrest without warrant in possession

(1) This section applies where—

- (a) a warrant has been issued for the arrest of a person; and
- (b) a police officer encounters the person or is otherwise in a position to arrest the person but is not carrying the warrant at the time.

(2) Where this section applies, the police officer may—

- (a) arrest the person; and
- (b) in the case of a warrant for the arrest of a person for the commission of an offence—cause the person (and any property

found in the person's possession) to be brought before a magistrate to be dealt with according to law.

(3) In this section—

warrant means an arrest warrant or a warrant of commitment issued under a law of the Territory, the Commonwealth, a State or another Territory.

349Y Arrest of prisoner unlawfully at large

(1) A police officer may, without warrant, arrest a person whom the police officer believes on reasonable grounds to be a prisoner unlawfully at large.

(2) The police officer shall, as soon as practicable after the arrest, cause the person to be brought before a magistrate.

(3) If the magistrate is satisfied that the person is a prisoner unlawfully at large, the magistrate may issue a warrant—

- (a) authorising a police officer or an escort under the *Custodial Escorts Act 1998* to convey the person to a prison or other place of detention specified in the warrant; and
- (b) directing that the person, having been conveyed to that place in accordance with the warrant, be detained there to undergo the term of imprisonment or other detention that the person is required by law to undergo.

(4) In this section—

prisoner unlawfully at large means a person who is at large (otherwise than because the person has escaped from lawful custody) at a time when the person is required by law to be detained under a law of the Territory, a State, or another Territory.

349Z Power of arrest without warrant of person on bail

(1) A police officer may, without warrant, arrest a person who has been admitted to bail in the Territory, a State or another Territory, subject to conditions, if the officer believes on reasonable grounds that the person—

- (a) has failed to comply with a bail condition; or
- (b) will not comply with a bail condition.

- (2) Where a police officer arrests a person under subsection (1), the officer shall cause the person to be brought before a court as soon as is practicable.
- (3) Where a person is brought before a court under subsection (2), the court may—
- (a) in the case of a person originally admitted to bail in the Territory—exercise the same powers in relation to the person in relation to bail (or dispensing with bail) as it has in relation to other accused persons in custody; or
 - (b) in the case of a person originally admitted to bail in a State or another Territory—
 - (i) release the person unconditionally; or
 - (ii) admit the person to bail subject to such conditions as the court thinks fit; or
 - (iii) remand the person in custody for a reasonable time pending the obtaining of a warrant for the arrest of the person from the State or Territory in which the person was admitted to bail.
- (4) A release referred to in subparagraph (3) (b) (i) does not affect the operation of the bail order or the conditions of the bail imposed in the other State or Territory.

349ZA Arrest for breach of bail conditions by person outside the Territory

- (1) This section applies where a police officer believes on reasonable grounds that—
- (a) a person who has been admitted to bail in the Territory subject to conditions has breached those conditions; and
 - (b) the person is in a State or another Territory.
- (2) Where this section applies, an issuing officer may, upon the information of the police officer—
- (a) issue a warrant to arrest the person in that State or other Territory and bring him or her before a court in the Territory; or
 - (b) issue a summons for the person's appearance before a court in the Territory.

349ZB Arrest without warrant for offences committed outside the Territory

(1) This section applies to an offence against the law of a State or another Territory consisting of an act or omission which, if it occurred in the Territory, would constitute an indictable offence.

(2) A police officer may, without warrant, at any hour of the day or night, arrest a person whom he or she believes on reasonable grounds to have committed an offence to which this section applies.

(3) Where a police officer arrests a person under subsection (2), the officer shall cause the person to be brought before a magistrate as soon as is practicable.

(4) Where a person is brought before a magistrate under subsection (3), the magistrate may—

- (a) discharge the person; or
- (b) commit the person to custody, or admit the person to bail, pending—
 - (i) the execution under a law of the Commonwealth of a warrant for the person's arrest; or
 - (ii) the person's discharge or release under subsection (7).

(5) A police officer may exercise any power under this Division in relation to a person arrested under this section as if the person had been arrested and was being held in custody in relation to the commission of an offence against a law of the Territory.

(6) Where a person is committed to custody under this section and a warrant for the person's apprehension is subsequently presented for execution, he or she shall be delivered in accordance with the terms of the warrant to the custody of the person executing it.

(7) Where—

- (a) a person is admitted to bail under this section; and
- (b) before the person has complied with conditions of that bail, a warrant for his or her arrest is executed under a law of the Commonwealth;

the person is to be taken, at the time the warrant is executed, to be released from that bail and to have complied with the bail conditions, other than any condition with which the person had (before that time) failed to comply without reasonable excuse.

- (8) Where—
- (a) a person has been committed to custody or admitted to bail under this section; and
 - (b) a warrant for the arrest of the person is not executed within 7 days after the person is committed to custody or admitted to bail;

a magistrate may, by order, discharge the person from custody or release the person from bail, as the case requires.

- (9) In this section—

warrant means a warrant issued under a law of the Territory, the Commonwealth, a State or another Territory and includes a provisional warrant.

349ZC Power of arrest without warrant by other persons

(1) A person who is not a police officer may, without warrant, arrest another person if he or she believes on reasonable grounds that the other person is committing or has just committed an offence.

(2) A person who arrests another person under subsection (1) shall, as soon as practicable after the arrest, arrange for the other person, and any property found on the other person, to be delivered into the custody of a police officer.

349ZD Warrants for arrest

(1) An issuing officer shall not issue a warrant for the arrest of a person for an offence as a result of an information laid before the officer unless—

- (a) the information is on oath; and
- (b) subject to subsection (3), the informant has given the issuing officer an affidavit setting out the reasons why the warrant is sought, including the following reasons:
 - (i) the reasons why it is believed that the person committed the offence;
 - (ii) the reasons why it is claimed that proceedings by summons would not achieve 1 or more of the purposes set out in paragraph 349W (1) (b);
- (c) if the issuing officer has requested further information concerning the reasons for which the issue of the warrant is sought—that information has been provided to the officer; and

(d) the issuing officer is satisfied that there are reasonable grounds for the issue of the warrant.

(2) If the issuing officer issues a warrant, he or she shall write on the affidavit which of the reasons specified in the affidavit, and any other reasons, the officer has relied on as justifying the issue of the warrant.

(3) Paragraph (1) (b) does not apply where the issuing officer is informed that the warrant is sought for the purpose of making a request for the extradition of a person from a foreign country.

349ZE Power to enter premises to arrest offender

(1) Subject to subsection (3), if—

- (a) an officer has, under a warrant, power to arrest the person for an offence; and
- (b) the officer believes on reasonable grounds that the person is on any premises;

the police officer may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the person or arresting the person.

(2) Subject to subsection (3), if—

- (a) an officer has the power under section 349W to arrest the person without warrant for an offence; and
- (b) the offence is indictable; and
- (c) the police officer believes on reasonable grounds that the person is on any premises;

the police officer may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the person or arresting the person.

(3) A police officer shall not enter a dwelling house under subsection (1) or (2) at any time during the period commencing at 9 pm on a day and ending at 6 am on the following day unless the executing officer believes on reasonable grounds that—

- (a) it would not be practicable to arrest the person, either at the dwelling house or elsewhere, at another time; or
- (b) it is necessary to do so in order to prevent the concealment, loss or destruction of evidence relating to the offence.

(4) In subsection (3)—

dwelling house includes a conveyance, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

349ZF Use of force in making arrest

(1) A person shall not, in the course of arresting another person for an offence, use more force, or subject the other person to greater indignity, than is necessary and reasonable to make the arrest or to prevent the escape of the other person after the arrest.

(2) Without limiting the operation of subsection (1), a police officer shall not, in the course of arresting a person for an offence do anything that is likely to cause the death of, or grievous bodily harm to, the person, unless—

- (a) the officer believes on reasonable grounds that it is necessary to do so to protect life or to prevent serious injury to the officer or another person; and
- (b) if the person is attempting to escape arrest by fleeing—the person has, if practicable, been called on to surrender and the officer believes on reasonable grounds that the person cannot be apprehended in any other manner.

349ZG Persons to be informed of grounds of arrest

(1) A person who arrests another person for an offence shall inform the other person, at the time of the arrest, of the offence for which the other person is being arrested.

(2) It is sufficient if the other person is informed of the substance of the offence, and it is not necessary that this be done in language of a precise or technical nature.

(3) Subsection (1) does not apply to the arrest of the other person if—

- (a) the other person should, in the circumstances, know the substance of the offence for which he or she is being arrested; or
- (b) the other person's actions make it impracticable for the person making the arrest to inform the other person of the offence for which he or she is being arrested.

349ZH Power to conduct frisk search of arrested person

A police officer who arrests a person for an offence, or who is present at such an arrest, may, if the police officer suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying any seizable items—

- (a) conduct a frisk search of the person at or soon after the time of arrest; and
- (b) seize any seizable items found as a result of the search.

349ZJ Power to conduct ordinary search of arrested person

If a police officer suspects on reasonable grounds that a person who has been arrested is carrying—

- (a) evidential material in relation to any offence; or
- (b) a seizable item;

the police officer may conduct an ordinary search of the person at or soon after the time of arrest, and seize any such thing found as a result of the search.

349ZK Power to conduct search of arrested person's premises

A police officer who arrests a person at premises for an offence, or who is present at such an arrest, may seize things in plain view at those premises that the police officer believes on reasonable grounds to be—

- (a) evidential material in relation to any offence; or
- (b) seizable items.

349ZL Power to conduct search at police station

(1) Where—

- (a) a person has been brought to a police station following arrest for an offence; and
- (b) an ordinary search of the person has not been conducted;

a police officer may conduct an ordinary search of the person.

(2) Where—

- (a) a person is in lawful custody in a police station; and
- (b) a police officer—
 - (i) of the rank of sergeant or higher; or
 - (ii) who is for the time being in charge of the police station;

suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying any evidential material in relation to any offence or seizable items;

the police officer may cause a frisk search or an ordinary search of the person to be conducted.

(3) Where a person is searched under this section and as a result of the search is found to be carrying—

- (a) evidential material in relation to any offence; or
- (b) a seizable item;

the police officer conducting the search may seize that thing.

(4) Where a person is searched under this section, the police officer who conducts or causes the search to be conducted shall make a record of the reasons for the search and of the type of search.

349ZM Power to conduct strip search

(1) Subject to this section, if a person arrested for an offence is brought to a police station, a police officer may conduct a strip search of the person.

(2) A strip search may be conducted if—

- (a) a police officer suspects on reasonable grounds that the person has in his or her possession—
 - (i) evidential material in relation to that or another offence; or
 - (ii) a seizable item; or
- (b) the police officer suspects on reasonable grounds that a visual inspection of the person's body will provide evidence of the person's involvement in an offence;

and—

- (c) the police officer suspects on reasonable grounds that it is necessary to conduct a strip search of the person in order to recover that thing or to discover that evidence; and
- (d) a police officer of the rank of superintendent or higher has approved the conduct of the search.

(3) Subject to section 349ZN, a strip search may also be conducted if the person consents in writing.

(4) Subject to section 349ZN, a strip search may be conducted in the presence of a medical practitioner who may assist in the search.

- (5) The approval may be obtained by telephone, telex, facsimile or other electronic means.
- (6) A police officer who gives or refuses to give an approval for the purposes of paragraph (2) (d) shall make a record of the decision and of the reasons for the decision.
- (7) Such force as is necessary and reasonable in the circumstances may be used to conduct a strip search under subsection (2).
- (8) Any item of a kind referred to in paragraph (2) (a) that is found during a strip search may be seized.

349ZN Rules for conduct of strip search

- (1) A strip search—
 - (a) shall be conducted in a private area; and
 - (b) subject to subsection (6), shall be conducted by a police officer who is of the same sex as the person being searched; and
 - (c) subject to subsections (3) and (4), shall not be conducted in the presence or view of a person who is of the opposite sex to the person being searched; and
 - (d) shall not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search; and
 - (e) shall not be conducted on a person who is under 10; and
 - (f) if the person being searched is at least 10 but under 18, or is incapable of managing his or her affairs—
 - (i) may only be conducted if the person has been arrested and charged or if a court orders that it be conducted; and
 - (ii) shall be conducted in the presence of a parent or guardian of the person being searched or, if that is not acceptable to the person, in the presence of another person (other than a police officer) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person; and
 - (g) shall not involve a search of a person's body cavities; and
 - (h) shall not involve the removal of more garments than the police officer conducting the search believes on reasonable grounds to be necessary to determine whether the person has in his or her possession the item searched for or to establish the person's involvement in the offence; and

- (i) shall not involve more visual inspection than the police officer believes on reasonable grounds to be necessary to establish the person's involvement in the offence.
- (2) In deciding whether to make an order referred to in paragraph (1) (f), the court shall have regard to—
 - (a) the seriousness of the offence; and
 - (b) the age or any disability of the person; and
 - (c) such other matters as the court thinks fit.
- (3) A strip search may be conducted in the presence of a medical practitioner of the opposite sex to the person searched if a medical practitioner of the same sex as the person being searched is not available within a reasonable time.
- (4) Paragraph (1) (c) does not apply to a parent, guardian or personal representative of the person being searched if the person being searched has no objection to the person being present.
- (5) If any of a person's garments are seized as a result of a strip search, the person shall be provided with adequate clothing.
- (6) Where a strip search of a person is to be conducted and no police officer of the same sex as that person is available to conduct the search, any other person—
 - (a) of the same sex as the person to be searched; and
 - (b) who has been requested to conduct the search by a police officer;may conduct the search.
- (7) No action or proceeding, civil or criminal, lies against a person who conducts a strip search in pursuance of a request under subsection (6) in respect of a strip search that would have been lawful if conducted by a police officer.

349ZO Safekeeping of things seized

- (1) A police officer who seizes a thing as a result of searching a person in lawful custody under this Division shall—
 - (a) make a record of the thing seized, including a description of it and the date on which it was seized; and
 - (b) give the thing seized and the record of it to the police officer for the time being in charge of the police station where the person was searched.

(2) A police officer for the time being in charge of a police station is responsible for the safekeeping of any thing seized as a result of a search of a person in lawful custody under this Part conducted at that place.

(3) A police officer who has responsibility for the safekeeping of a thing under subsection (2) shall, on release of the person from whom it was seized, take reasonable steps to return the thing to that person or to the owner of the thing if that person is not entitled to possession, unless the thing affords evidence in relation to an offence.

(4) Where a thing is not returned to the person from whom it was seized or the owner under subsection (3), the police officer responsible for the safekeeping of the thing shall—

- (a) make a note on the record made under paragraph (1) (a) indicating the thing has been retained; and
- (b) take reasonable steps to give a copy of that record to the person from whom the thing was seized.

349ZP⁷ Taking fingerprints, recordings, samples of handwriting or photographs

(1) In this section and in sections 349ZQ and 349ZR—

identification material, in relation to a person, means prints of the person's hands, fingers, feet or toes, recordings of the person's voice, samples of the person's handwriting or photographs (including video recordings) of the person, but does not include tape recordings made for the purposes of section 23U or 23V of the Commonwealth Crimes Act.

(2) A police officer shall not—

- (a) take identification material from a person who is in lawful custody in respect of an offence except in accordance with this section; or
- (b) require any other person to submit to the taking of identification material, but nothing in this paragraph prevents such a person consenting to the taking of identification material.

(3) If a person is in lawful custody in respect of an offence, a police officer who is of the rank of sergeant or higher or who is for the time being in charge of a police station may take identification material from the person, or cause identification material from the person to be taken, if—

- (a) the person consents in writing; or
- (b) the police officer believes on reasonable grounds that it is necessary to do so to—

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- (i) establish who the person is; or
 - (ii) identify the person as the person who committed the offence; or
 - (iii) provide evidence of, or relating to, the offence; or
 - (c) the police officer suspects on reasonable grounds that the person has committed another offence and the identification material is to be taken for the purpose of identifying the person as the person who committed the other offence or of providing evidence of, or relating to, the other offence.
- (4)** A police officer may use such force as is necessary and reasonable in the circumstances to take identification material from a person under this section.
- (5)** Subject to this section, a police officer shall not take identification material from a suspect who—
- (a) is incapable of managing his or her affairs; and
 - (b) has not been arrested and charged;
- unless a court orders that the material be taken.
- (6)** In deciding whether to make such an order, the court shall have regard to—
- (a) the seriousness of the offence; and
 - (b) the age or any disability of the person; and
 - (c) such other matters as the court thinks fit.
- (7)** The taking of identification material from a person who is incapable of managing his or her affairs shall be done in the presence of—
- (a) a parent or guardian of the person; or
 - (b) if the parent or guardian of the person is not acceptable to the person—another person (other than a police officer) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person.
- (8)** Despite this section, identification material may be taken from a person who—
- (a) is not a suspect; and
 - (b) is incapable of managing his or her affairs;
- if a court orders that the material be taken.

(9) In deciding whether to make such an order, the court shall have regard to the matters set out in subsection (6).

(10) Despite this section, identification material may be taken from a person who—

- (a) is at least 18; and
- (b) is capable of managing his or her affairs; and
- (c) is not a suspect;

if the person consents in writing.

(11) A police officer may only take identification material from a person under 18 in accordance with section 36 of the *Children's Services Act 1986*.

349ZQ Destruction of identification material

(1) If—

- (a) identification material is taken under section 349ZP; and
- (b) a period of 12 months has elapsed since the material was taken; and
- (c) proceedings in respect of an offence to which the identification material relates have not been instituted or have been discontinued;

the material shall be destroyed as soon as practicable.

(2) If identification material has been taken from a person under section 349ZP and—

- (a) the person is found to have committed an offence to which the identification material relates, but no conviction is recorded; or
- (b) the person is acquitted of such an offence and—
 - (i) no appeal is lodged against the acquittal; or
 - (ii) an appeal is lodged against the acquittal and the acquittal is confirmed or the appeal is withdrawn;

the identification material shall be destroyed as soon as practicable, unless an investigation or proceedings in relation to another offence to which the identification material relates is pending.

(3) On application by a police officer, a magistrate may, if satisfied that there are special reasons for doing so in relation to particular identification material, extend—

- (a) the period of 12 months referred to in subsection (1); or

- (b) that period as previously extended under this subsection.

349ZR Offence of refusing to allow identification material to be taken

(1) If a person is convicted of an offence, the judge or magistrate presiding at the proceedings at which the person was convicted may order—

- (a) the person to attend a police station; or
- (b) that a police officer be permitted to attend on the person in a place of detention;

within 1 month after the conviction to allow impressions of the person's fingerprints or a photograph of the person to be taken in accordance with the order.

(2) A person shall not, without reasonable excuse, refuse or fail to allow impressions or a photograph to be taken pursuant to an order under subsection (1).

Penalty: \$10, 000 or imprisonment for 12 months, or both.

349ZS Identification parades—general

(1) This section applies to identification parades held in relation to offences.

(2) Subject to subsection (3) and to section 349ZT, an identification parade—

- (a) may be held if the suspect agrees; or
- (b) shall be held if—
 - (i) the suspect has requested that an identification parade be held; and
 - (ii) it is reasonable in the circumstances to do so.

(3) An identification parade shall not be held unless the suspect has been informed that—

- (a) he or she is entitled to refuse to take part in the parade; and
- (b) if he or she refuses to take part in the parade without reasonable excuse, evidence of that refusal and of any identification of the suspect by a witness as a result of having seen a photograph or of having seen the suspect otherwise than during an identification parade may be given in any subsequent proceedings in relation to an offence; and

- (c) in addition to any requirement under section 349ZT, a legal representative or other person of the suspect's choice may be present while the person is deciding whether to take part in the parade, and during the holding of the parade, if arrangements for that person to be present can be made within a reasonable time.
- (4) The giving of the information referred to in subsection (3) shall be recorded by a video recording or an audio recording.
- (5) An identification parade shall be arranged and conducted in a manner that will not unfairly prejudice the suspect.
- (6) Without limiting the intent of subsection (5), an identification parade shall be arranged and conducted in accordance with the following rules:
 - (a) the parade shall consist of at least 9 persons;
 - (b) each of the persons who is not the suspect shall—
 - (i) resemble the suspect in age, height and general appearance; and
 - (ii) not have features that will be visible during the parade that are markedly different from those of the suspect as described by the witness before viewing the parade;
 - (c) unless it is impracticable for another police officer to arrange or conduct the parade, no police officer who has taken part in the investigation relating to the offence may take part in the arrangements for, or the conduct of, the parade;
 - (d) no person in the parade is to be dressed in a way that would obviously distinguish him or her from the other participants;
 - (e) if it is practicable to do so, numbers should be placed next to each participant in order to allow the witness to make an identification by indicating the number of the person identified;
 - (f) the parade may take place so that the witness can view the parade without being seen if the witness requests that it take place in such a manner and—
 - (i) a legal representative or other person of the suspect's choice is present with the witness; or
 - (ii) the parade is recorded by a video recording;
 - (g) nothing is to be done that suggests or is likely to suggest to a witness which member of the parade is the suspect;

- (h) if the witness so requests—members of the parade may be required to speak, move or adopt a specified posture but, if this happens, the witness shall be reminded that the members of the parade have been chosen on the basis of physical appearance only;
 - (i) the suspect may select where he or she wishes to stand in the parade;
 - (j) if more than 1 witness is to view the parade—
 - (i) each witness shall view the parade alone; and
 - (ii) the witnesses are not to communicate with each other at a time after arrangements for the parade have commenced and before each of them has viewed the parade; and
 - (iii) the suspect may change places in the parade after each viewing;
 - (k) each witness shall be told that—
 - (i) the suspect may not be in the parade; and
 - (ii) if he or she is unable to identify the suspect with reasonable certainty he or she shall say so;
 - (l) the parade shall be recorded by a video recording if it is practicable to do so and, if that is done, a copy of the video recording shall be made available to the suspect or his or her legal representative as soon as it is practicable to do so;
 - (m) if the parade is not recorded by a video recording—
 - (i) the parade shall be photographed in colour; and
 - (ii) a print of a photograph of the parade that is at least 250mm X 200mm in size shall be made available to the suspect or his or her legal representative; and
 - (iii) the police officer in charge of the parade shall take all reasonable steps to record everything said and done at the parade and shall make a copy of the record available to the suspect or his or her legal representative;
 - (n) the suspect may have present during the holding of the parade a legal representative or other person of his or her choice if arrangements for that person to be present can be made within a reasonable time.
- (7) The following questions are to be decided according to the common law:
- (a) whether or not evidence of a suspect having refused to take part in an identification parade is admissible;

- (b) if evidence of such a refusal is admissible—what inferences (if any) may be drawn by a court or jury from the refusal;
- (c) whether, after such a refusal, evidence of alternative methods of identification is admissible.

(8) If a witness is, under the supervision of a police officer, to attempt to identify a suspect otherwise than during an identification parade, the police officer shall ensure that the attempted identification is done in a manner that is fair to the suspect.

349ZT Identification parades for suspects under 18 etc

(1) An identification parade shall not be held for a suspect who is under 10.

(2) An identification parade must not be held for a suspect who is incapable of managing his or her affairs unless a court orders that it be held.

(3) An identification parade must not be held for a suspect who—

- (a) is at least 10 but under 18; and
- (b) is capable of managing his or her affairs;

unless 1 of the following paragraphs applies:

(c) the suspect agrees to or requests in writing the holding of the parade and a parent or guardian of the suspect agrees in writing to the holding of the parade or, if the parent or guardian is not acceptable to the suspect, another person (other than a police officer) who is capable of representing the interests of the suspect and who, as far as is practicable in the circumstances, is acceptable to the suspect agrees in writing to the holding of the parade;

(d) if—

- (i) 1 of those persons agrees in writing to the holding of the parade but the other does not; and
- (ii) a court orders that the parade be held.

(4) In deciding whether to make an order under subsection (2) or (3), the court shall have regard to—

- (a) the seriousness of the offence; and
- (b) the age or any disability of the person; and
- (c) such other matters as the court thinks fit.

- (5) An identification parade for a suspect who is under 18 or who is incapable of managing his or her affairs shall be held in the presence of—
- (a) a parent or guardian of the suspect; or
 - (b) if the parent or guardian is not acceptable to the suspect—another person (other than a police officer) who is capable of representing the interests of the suspect and who, as far as is practicable in the circumstances, is acceptable to the suspect.

349ZU Identification by means of photographs

- (1) If a suspect is in custody in respect of an offence or is otherwise available to take part in an identification parade, a police officer investigating the offence shall not show photographs, or composite pictures or pictures of a similar kind, to a witness for the purpose of establishing, or obtaining evidence of, the identity of the suspect unless—
- (a) the suspect has refused to take part in an identification parade; or
 - (b) the holding of an identification parade would be—
 - (i) unfair to the suspect; or
 - (ii) unreasonable in the circumstances.
- (2) If a police officer investigating an offence shows photographs or pictures to a witness for the purpose of establishing, or obtaining evidence of, the identity of a suspect, whether or not the suspect is in custody, the following rules apply:
- (a) the police officer shall show to the witness photographs or pictures of at least 9 different persons;
 - (b) each photograph or picture of a person who is not the suspect shall be of a person who—
 - (i) resembles the suspect in age and general appearance; and
 - (ii) does not have features visible in the photograph or picture that are markedly different from those of the suspect as described by the witness before viewing the photographs or pictures;
 - (c) the police officer shall not, in doing so, act unfairly towards the suspect or suggest to the witness that a particular photograph or picture is the photograph or picture of the suspect or of a person who is being sought by the police in respect of an offence;
 - (d) if practicable, the photograph or picture of the suspect shall have been taken or made after he or she was arrested or was considered as a suspect;

- (e) the witness shall be told that a photograph or picture of the suspect may not be amongst those being seen by the witness;
- (f) the police officer shall keep, or cause to be kept, a record identifying each photograph or picture that is shown to the witness;
- (g) the police officer shall notify the suspect or his or her legal representative in writing that a copy of the record is available for the suspect;
- (h) the police officer shall retain the photographs or pictures shown, and shall allow the suspect or his or her legal representative, upon application, an opportunity to inspect the photographs or pictures.

(3) If—

- (a) a photograph or picture of a person who is suspected in relation to the commission of an offence is shown to a witness; and
- (b) the photograph was taken or the picture made after the suspect was arrested or was considered to be a suspect; and
- (c) proceedings in relation to the offence referred to in paragraph (a) or another offence arising out of the same course of conduct for which the photograph was taken or picture made are brought against the suspect before a jury; and
- (d) the photograph or picture is admitted into evidence;

the jury shall be informed that the photograph was taken or the picture made after the suspect was arrested or was considered as a suspect.

(4) If a suspect is in custody in respect of an offence, a police officer investigating the offence shall not show a composite picture or a picture of a similar kind to a witness for the purpose of assisting the witness to describe the features of the suspect.

(5) If, after a police officer investigating an offence has shown to a witness a composite picture or a picture of a similar kind for the purpose referred to in subsection (4)—

- (a) a suspect comes into custody in respect of the offence; and
- (b) an identification parade is to be held in relation to the suspect;

the police officer in charge of the investigation of the offence may, unless doing so would be unfair to the suspect or be unreasonable in the circumstances, request the witness to attend the identification parade and make the necessary arrangements for the witness to attend.

(6) If, after the witness has been shown a composite picture or a picture of a similar kind for the purpose referred to in subsection (4), a person is charged with the offence, the police officer in charge of investigating the offence shall, upon application by that person or his or her legal representative, provide him or her with particulars of any such picture shown to the witness and the comments (if any) of the witness concerning the picture.

(7) If a suspect is in custody in respect of an offence and a police officer investigating the offence wishes to investigate the possibility that a person other than the suspect committed the offence, subsection (4) does not prevent a police officer from taking action referred to in that subsection for the purpose of assisting a witness to describe the features of a person other than the suspect.

349ZV Identification procedures where there is more than 1 suspect

A police officer shall undertake a separate identification process for each of 2 or more suspects if—

- (a) the officer is attempting to ascertain—
 - (i) which of the suspects committed an offence; or
 - (ii) if the suspects may have been jointly involved in the offence—the identities of the suspects; and
- (b) for that purpose, the officer intends to conduct an identification parade or to identify a person by showing a photograph or a picture of a suspect to a person.

349ZW Descriptions

(1) If a description of a suspect is given to a police officer in relation to an offence, the police officer shall ensure that a record of the description is made and that the record is retained until any proceedings in respect of the offence are completed.

(2) Subject to subsection (4), a police officer shall, if requested to do so by a person who has been charged with an offence, provide the person with the name of every person who, to the knowledge of the police officer, claims to have seen, at or about the time of the commission of the offence, a person who is suspected of being involved in its commission.

- (3) If—
- (a) a record of a description of a person is made under subsection (1); and

- (b) the person is charged with an offence to which the description relates;

a police officer must notify the person or his or her legal representative in writing that a copy of the record, and of any other record of a description that the police officer knows about of a person who is suspected of being involved in the commission of the offence, is available for the person.

- (4) If the police officer suspects on reasonable grounds that providing the name of a person under subsection (2) could—
 - (a) place the person in danger; or
 - (b) expose the person to harassment or unreasonable interference;

the police officer is not required to provide the name of the person.

349ZX⁷ Examination

- (1) In this section—

examination means an examination of the body of the person charged and includes the taking of samples of the person's blood, saliva or hair.

- (2) An examination of a person under this section may be conducted where—
 - (a) the person consents; or
 - (b) an order is made under subsection (3).

- (3) Where a person (in this section called the *person charged*) is in lawful custody upon a charge of committing an offence and a magistrate is satisfied, on the balance of probabilities, that the offence—
 - (a) is of such a nature; and
 - (b) has been committed under such circumstances;

that there are reasonable grounds for believing that an examination of the person charged will afford evidence as to the commission of the offence, the magistrate may order such an examination.

- (4) If the person charged is not present at the time that the order is made, a copy of the order shall be given to the person.
- (5) Where an order is made under subsection (3) or a person charged consents to an examination, a police officer may request a medical practitioner to carry out the examination and, if the medical practitioner agrees to carry it out, shall give the medical practitioner a copy of the order.

- (6)** A medical practitioner carrying out an examination may be assisted by 1 or more persons acting under the direction of the medical practitioner.
- (7)** An examination of the person charged—
- (a)** shall be carried out in circumstances affording reasonable privacy to the person; and
 - (b)** in the case of an examination which includes the external examination of the genital or anal area, the buttocks, or, in the case of a female, the breasts—shall not be carried out in the presence or in view of a person of the opposite sex to the person being examined; and
 - (c)** shall not be carried out in the presence or view of a person whose presence is not necessary for the purposes of the examination; and
 - (d)** shall not involve the removal of more clothing than is necessary for carrying out the examination; and
 - (e)** shall not involve more visual inspection than is necessary for carrying out the examination.
- (8)** Subsection (7) does not prevent an examination being carried out by a medical practitioner of the opposite sex to the person being examined.
- (9)** A medical practitioner carrying out an examination under this section, an assistant of the medical practitioner or a police officer, may use reasonable force to enable the examination to be carried out including the prevention of loss, destruction or contamination of a sample.
- (10)** Samples taken from a person charged with an offence shall be destroyed as soon as practicable after the conclusion of the proceedings relating to the offence and the exhaustion of any right of appeal.
- (11)** No action or proceeding, civil or criminal, lies against—
- (a)** a person who conducts, or assists in conducting, an examination under this section (including such a person who uses reasonable force as provided in subsection (9)); or
 - (b)** a police officer who uses reasonable force as provided in that subsection.
- (12)** This section does not apply to a person to whom section 36 of the *Children's Services Act 1986* applies.

Division 5—General

349ZY Assisting officers—search and arrest of persons

An assisting officer who is not a police officer is not authorised by this Part to assist in searching or arresting a person.

349ZZ Conduct of ordinary searches and frisk searches

An ordinary search or a frisk search of a person under this Part shall, if practicable, be conducted by a person of the same sex as the person being searched.

349ZZA Announcement before entry

(1) Subject to subsection (3), a police officer shall, before any person enters premises under a warrant, for the purpose of executing an order mentioned in subsection 349DA (1) or to arrest a person—

- (a) announce that he or she is authorised to enter the premises; and
- (b) give any person at the premises an opportunity to allow entry to the premises.

(2) A police officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure—

- (a) the safety of a person (including a police officer); or
- (b) that the effective execution of the warrant, order or arrest is not frustrated.

(3) This section does not apply to an entry made under section 349C.

349ZZB Offence of making false statements in warrants

A person shall not make, in an application for a warrant, a statement that the person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 2 years.

349ZZC Offences relating to telephone warrants

A person shall not—

- (a) state in a document that purports to be a form of warrant under section 349R the name of an issuing officer unless that officer issued the warrant; or

- (b) state on a form of warrant under that section a matter that, to the person's knowledge, departs in a material particular from the form authorised by the issuing officer; or
- (c) purport to execute, or present to a person, a document that purports to be a form of warrant under that section that the person knows—
 - (i) has not been approved by an issuing officer under that section; or
 - (ii) to depart in a material particular from the terms authorised by an issuing officer under that section; or
- (d) give to an issuing officer a form of warrant under that section that is not the form of warrant that the person purported to execute.

Penalty: Imprisonment for 2 years.

349ZZD Return of knife or thing which is seized

(1A) If a knife is seized under section 349DB, the person from whom it was seized or, if that person is under 16 years of age, his or her parent or guardian is entitled to have the knife returned if—

- (a) a prosecution for an offence under section 495 in respect of that knife has not been commenced before the end of 60 days after the seizure; or
- (b) a prosecution for an offence under section 495 in respect of that knife has been commenced before the end of 60 days after the seizure and the prosecution (and any appeal to a court in relation to that prosecution) has been completed without the knife having been forfeited under section 349ZZH.

(1) Subject to any contrary order of a court, if a police officer seizes a thing under Division 2, 3 or 4, the police officer shall return it if—

- (a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
- (b) if the thing was seized under section 349T—
 - (i) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
 - (ii) the period of 60 days after its seizure ends;whichever first occurs;

unless the thing is forfeited or forfeitable to the Territory or is the subject of a dispute as to ownership.

(2) If a thing is seized under section 349T, at the end of the 60 days specified in subsection (1) the police officer shall take reasonable steps to return the thing to the person from whom it was seized or to the owner if that person is not entitled to possess it unless—

- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
- (b) the police officer may retain the thing because of an order under section 349ZZE; or
- (c) the police officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of the Territory) to retain, destroy or dispose of the thing.

349ZZE Magistrates Court may permit a thing to be retained

(1) If a thing is seized under section 349T, and—

- (a) before the end of 60 days after the seizure; or
- (b) before the end of a period previously specified in an order of a court under this section;

proceedings in respect of which the thing may afford evidence have not commenced, the police officer may apply to the Magistrates Court for an order that he or she may retain the thing for a further period.

(2) If the court is satisfied that it is necessary for the police officer to continue to retain the thing—

- (a) for the purposes of an investigation as to whether an offence has been committed; or
- (b) to enable evidence of an offence to be secured for the purposes of a prosecution;

the court may order that the police officer may retain the thing for a period specified in the order.

(3) Before making the application, the police officer shall—

- (a) take reasonable steps to discover who has an interest in the retention of the thing; and
- (b) if it is practicable to do so, notify each person who the police officer believes to have such an interest of the proposed application.

349ZZF Law relating to legal professional privilege not affected

This Part does not affect the law relating to legal professional privilege.

349ZZG Laws relating to taking forensic samples not affected

Nothing in this Part is intended to limit or exclude the operation of a law of the Territory relating to the taking of forensic samples (excluding identification material as defined in section 349ZP).

349ZZH. Forfeiture of knife

(1) A knife that has been seized under section 349DB shall be forfeited to the Territory where the person from whom the knife was seized—

- (a) was convicted of an offence under section 495 in respect of that knife; or
- (b) was charged with an offence under section 495 in respect of that knife that was dealt with under section 556A.

(2) If there are reasonable grounds for believing that the person who was in possession of a knife forfeited under subsection (1) was the owner of the knife, it may be destroyed or disposed of in such manner as the commissioner of police directs.

(3) If there are reasonable grounds for believing that the person who was in possession of a knife forfeited under subsection (1) was not the owner of the knife, it may be destroyed or disposed of in such manner as the commissioner of police directs if—

- (a) 6 months have elapsed since the person was found guilty of an offence under section 495 in relation to the knife; and
- (b) reasonable attempts have been made to ascertain the whereabouts of the owner of the knife.

350 Seizure of forfeited articles

(1) A member of the police force may, without warrant, seize any article which is forfeited, or which he or she has reasonable grounds for believing is forfeited, under any law in force in the Territory and take that article before the Magistrates Court.

(2) Where any article is brought before the court under subsection (1), the court may, subject to the giving of such notice (if any) to such person (if any) as the court directs, order that the article be condemned or delivered to such person as the court is satisfied is entitled to the article.

(3) Where a prosecution is pending in relation to an article, the court shall not make an order under subsection (2) in relation to the article until the prosecution is determined.

(4) All articles condemned under subsection (2) as forfeited shall be transferred to the public trustee to be dealt with under section 350A.

350A Forfeited articles to be dealt with by public trustee

Where articles are transferred to the public trustee under subsection 350 (4), the public trustee shall, subject to any direction by the Minister given in a particular case—

- (a) sell or otherwise dispose of the articles; and
- (b) apply the proceeds of the sale or disposition in payment of the public trustee's remuneration and other costs, charges and expenses of the kind referred to in section 350B payable to or incurred by him or her in connection with the sale or disposition; and
- (c) pay the remainder of those proceeds to the trust fund as required by section 34 of the *Proceeds of Crime Act 1991*.

350B Costs etc payable to public trustee

(1) The regulations may make provision in relation to—

- (a) the costs, charges and expenses incurred in connection with; and
- (b) the public trustee's remuneration in respect of;

the performance or exercise by the public trustee of functions, duties or powers under section 350.

(2) Where there are no regulations in relation to a matter referred to in subsection (1)—

- (a) the regulations referred to in section 59 of the *Proceeds of Crime Act 1991* apply, so far as they are applicable, and with appropriate changes, in relation to the matter; and
- (b) a reference in subsection (1) to regulations shall be taken to be a reference to the regulations referred to in section 59 of the *Proceeds of Crime Act 1991*.

354 Provision of interpreters in the investigation of summary offences

(1) Sections 23A, 23B and 23N and sections 23S to 23W (inclusive) of the Commonwealth Crimes Act, and the Schedule to that Act, apply to

summary offences in the same way as they apply to indictable offences, subject to this section.

- (2) The applied provisions apply only in relation to—
 - (a) the provision of interpreters in the course of the questioning of persons about summary offences; and
 - (b) tape recordings of the questioning of persons about summary offences where an interpreter is present during the questioning.
- (3) Subsections 23B (4) and (5) and 23V (3) of the Commonwealth Crimes Act do not apply to summary offences.
- (4) The applied provisions do not apply to an offence—
 - (a) against the *Motor Traffic (Alcohol and Drugs) Act 1977*; or
 - (b) to which section 180D (Service of infringement notices generally) or 180E (Service of infringement notices on vehicle owners) of the *Motor Traffic Act 1936* applies, where the police officer questioning the relevant person—
 - (i) intends to issue an infringement notice for the offence; or
 - (ii) intends to take no further action against the person in relation to the offence.
- (5) In this section—

applied provisions means the provisions of the Commonwealth Crimes Act referred to in subsection (1).

358 When case not to be proceeded with gaoler to discharge prisoner on certificate from Attorney-General etc

- (1) The Attorney-General may, in respect of any person under committal for trial, and in all cases in which any person is remanded to prison, and in which he or she may in his or her discretion think fit not further to proceed, transmit at any time a certificate to the judges of the Supreme Court, any one of whom may thereupon by warrant direct the gaoler in whose custody the prisoner, or person under remand, may be to discharge him or her from custody in respect of the offence mentioned in such warrant, and, if such gaoler neglects so to do, he or she shall be liable to a fine of \$100, to be recovered by action of debt in the name of the Attorney-General.
- (2) In the case of a person under committal for trial, the certificate shall be in form 1 in the Schedule 3, and the warrant in form 2 in that Schedule.

Crimes Act 1900

(3) In the case of a person under remand, the certificate shall be in form 3, and the warrant in form 4 in that Schedule.

**PART 10A—INVESTIGATION OF EXTRATERRITORIAL
OFFENCES**

358A Interpretation

(1) In this Part, unless the contrary intention appears—

appropriate authority, in relation to a State or another Territory, means an authority exercising in relation to the police force of that State or Territory functions corresponding to those of the commissioner of police of the Australian Federal Police in relation to the Australian Federal Police.

corresponding law means a law of a State or of another Territory declared by proclamation to be a corresponding law.

night means the period commencing at 7 pm in each evening and ending at 7 am in the following morning.

offence to which this Act applies means an indictable offence against the law of a reciprocating State (being an offence arising from an act, omission or state of affairs which, if done or occurring in the Territory would attract criminal liability under the law of the Territory).

owner in relation to an object, includes a person entitled to possession of the object.

premises means a building, structure or place (whether built upon or not and whether enclosed or unenclosed) and includes an aircraft, vessel or vehicle.

reciprocating State means a State or another Territory—

- (a) in which a corresponding law is in force; and
- (b) in relation to which arrangements are in force under section 358E.

search warrant means a warrant under this Part authorising a search of premises.

telephone includes any telecommunication device.

(2) For the purposes of this Part—

- (a) anything obtained by the commission of an offence, used for the purpose of committing an offence, or in respect of which an offence has been committed; or

- (b) anything that may afford evidence of the commission of an offence; or
- (c) anything intended to be used for the purpose of committing an offence;

is an object relevant to the investigation of the offence.

(3) The Executive may, by notification in the Gazette, declare a law of a State or of another Territory to be a corresponding law and may, by subsequent notification, vary or revoke any such declaration.

358B Issue of search warrants

(1) Where, upon the application of a police officer, a magistrate is satisfied that there are reasonable grounds to believe—

- (a) that an offence to which this Act applies has been, or is intended to be, committed; and
- (b) that there is in any premises an object relevant to the investigation of that offence;

the magistrate may issue a search warrant in respect of those premises.

(2) An application for the issue of a search warrant may be made either personally or by telephone.

(3) The grounds of an application for a search warrant shall be verified by affidavit.

(4) An application for the issue of a search warrant shall not be made by telephone unless in the opinion of the applicant a search warrant is urgently required and there is insufficient time to make the application personally.

(5) Where an application for the issue of a search warrant is made by telephone—

- (a) the applicant shall inform the magistrate of his or her name and of his or her rank and number in the police force, and the magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant is a police officer; and
- (b) the applicant shall inform the magistrate of the grounds on which he or she seeks the issue of the search warrant; and
- (c) if it appears to the magistrate from the information furnished by the applicant that there are proper grounds for the issue of a search warrant—he or she shall inform the applicant of the facts

on which he or she relies as grounds for the issue of the warrant, and shall not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts; and

- (d) if the applicant gives such an undertaking—the magistrate may then make out, and sign, a search warrant, noting on the warrant the facts on which he or she relies as grounds for the issue of the warrant; and
- (e) the search warrant shall be deemed to have been issued, and shall come into force, when signed by the magistrate; and
- (f) the magistrate shall inform the applicant of the terms of the warrant; and
- (g) the applicant shall, as soon as practicable after the issue of the warrant, forward to the magistrate an affidavit verifying the facts referred to in paragraph (c).

(6) A magistrate by whom a search warrant is issued shall file the warrant, or a copy of the warrant, and the affidavit verifying the grounds on which the application for the warrant was made, in the Magistrates Court.

358C Authority conferred by search warrant

(1) A search warrant authorises any police officer, with such assistants as he or she thinks necessary, to enter and search the premises in respect of which the warrant was issued and anything in those premises.

(2) Subject to any direction by a magistrate authorising execution of a search warrant at night, or during specified hours of the night, it shall not be executed at night.

(3) A police officer, or a person assisting him or her, may use such force as is reasonably necessary for the execution of a search warrant.

(4) A police officer executing a search warrant may seize and remove any object that he or she believes on reasonable grounds to be relevant to the investigation of the offence in relation to which the warrant was issued.

(5) An object seized and removed under subsection (4) shall be dealt with in accordance with arrangements in force under section 358E.

(6) A police officer who executes a search warrant—

- (a) shall prepare a notice containing—
 - (i) his or her own name and rank; and
 - (ii) the name of the magistrate who issued the warrant and the date and time of its issue; and

- (iii) a description of any objects seized and removed in pursuance of the warrant; and
 - (b) shall, as soon as practicable after execution of the warrant, give the notice to the occupier of the premises in respect of which the warrant was issued or leave it for him or her in a prominent position on those premises.
- (7) A search warrant, if not executed at the expiration of 1 month from the date of its issue, shall then expire.

358D Offence of hindering execution of search warrant

A person who, without lawful excuse, hinders a police officer, or a person assisting him or her, in the execution of a search warrant shall be guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000 or by imprisonment for a period not exceeding 6 months.

358E Ministerial arrangements for transmission and return of objects seized under this Part or under a corresponding law

- (1) The Attorney-General may enter into arrangements with a Minister of State of a State or another Territory to whom the administration of a corresponding law is committed under which—
- (a) objects seized under this Part that may be relevant to the investigation of an offence against the law of the State or Territory in which the corresponding law is in force—
 - (i) are to be transmitted to the appropriate authority of that State or Territory for the purposes of investigation of, or proceedings in respect of, that offence; and
 - (ii) when no longer required for the purposes of any such investigation or proceedings, are (unless disposed of by order or direction of a court) to be returned to the commissioner of police; and
 - (b) objects seized under the corresponding law that may be relevant to the investigation of an offence against the law of the Territory—
 - (i) are to be transmitted to the commissioner of police; and
 - (ii) when no longer required for the purposes of investigation of an offence or proceedings in respect of an offence, are (unless disposed of by order or direction of a court) to be returned to the appropriate authority of the State or Territory in which they were seized.

Crimes Act 1900

(2) The owner of an object returned to the commissioner of police in pursuance of arrangements under subsection (1) is entitled to the return of the object.

(3) The right conferred by subsection (2) is enforceable by action in detinue in any court of competent jurisdiction.

(4) In this section—

commissioner of police means the Commissioner of Police of the Australian Federal Police.

PART 11—PROCEDURE, EVIDENCE, VERDICT ETC

359 Meaning of ‘Statute’ and ‘Act’ in indictments etc

In all indictments and informations, and all criminal pleadings and proceedings, the word ‘Statute’, and the word ‘Act’, used to indicate an enactment shall each include an Imperial Act as well as an Act.

360 What defects shall not vitiate an indictment

No indictment shall be held bad or insufficient for want of an averment of any matter unnecessary to be proved, or necessarily implied, nor for the omission of the words ‘as appears by the record’, or ‘with force and arms’, or ‘against the peace’, nor for the insertion or omission of the words ‘against the form of the statute’, nor for designating any person by a name of office, or other descriptive appellation, instead of his or her proper name, nor for omitting to state the time at which the offence was committed, nor for stating the time wrongly, in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or a day that never happened, nor for want of a proper or perfect venue, or a proper or formal conclusion, nor for want of or imperfection in any addition of the accused, nor for want of any statement of the value or price of any matter or thing, or the amount of damage, or injury, in any case where such value, or price, or amount, is not of the essence of the offence.

362 Formal objections when to be taken

Every objection to an indictment, for any formal defect apparent on the face thereof, shall be taken by demurrer or motion to quash such indictment before the jury are sworn, and every court before which any such objection is taken may thereupon cause the indictment to be forthwith amended, and afterwards the trial shall proceed as if no such defect had appeared.

363 Judgment on demurrer to indictment

In all cases the judgment against the accused on demurrer shall be that he or she ‘answer over’ to the charge.

364 Traversing indictment

(1) No traverse shall in any case be allowed, or trial postponed, or time to plead to the indictment given, unless the court shall so order.

(2) Where the judge is of opinion that the accused ought to be allowed time, either to prepare for his or her defence, or otherwise, such judge shall postpone the trial upon such terms as to him or her seems meet, and may respite the recognisances of the prosecutor and witnesses accordingly.

365 Orders for amendment of indictment, separate trial and postponement of trial

(1) Where, before trial, or at any stage of a trial, it appears to the court that the indictment is defective, the court shall make such order for the amendment of the indictment as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice.

(2) Where, before trial, or at any stage of a trial, the court is of opinion that a person accused may be prejudiced or embarrassed in his or her defence by reason of being charged with more than 1 offence in the same indictment, or that for any other reason it is desirable to direct that the person should be tried separately for 1 or more offences charged in an indictment, the court may order a separate trial of a count or counts of such indictment.

(3) Where, before trial, or at any stage of a trial, the court is of opinion that the postponement of the trial of a person accused is expedient as a consequence of the exercise of a power of the court under this Act to amend an indictment or to order a separate trial of a count, the court shall make such order as appears necessary.

(4) Where an order of the court is made under this section for a separate trial, or for the postponement of a trial—

- (a) if such an order is made during a trial—the court may order that the jury are to be discharged from giving a verdict on the count or counts the trial of which is postponed, or on the indictment, as the case may be; and
- (b) the procedure on the separate trial of a count and the procedure on the postponed trial shall be the same in all respects (if the jury has been discharged), as if the trial had not commenced; and
- (c) the court may make such order as to admitting the accused person to bail and as to the variation of bail arrangements and otherwise as the court thinks fit.

(5) A power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

366 Amended indictment

Where an indictment is amended, a note of the order for amendment shall be endorsed on the indictment, and the indictment in its amended form shall be treated as the indictment for the purposes of the trial and for the purposes of all proceedings in connection therewith or consequent thereon.

367 Verdict and judgment valid after amendment

Every verdict, and judgment, given after the making of any amendment under this Act, shall be of the same force and effect, as if the indictment had originally been in the words, and form, in which it is after such amendment.

368 Form of record after amendment

If it is necessary at any time to draw up a formal record, in any case where an amendment has been made, such record may be drawn up in the words and form of the amended indictment, without noticing the fact of amendment.

369 Respite undertakings on postponement

In all cases where the trial is postponed the court may respite the undertakings of the prosecutor and witnesses requiring them severally to appear and prosecute, or give evidence, at the time and place to which the trial is so postponed.

370 Separate offences when can be joined

In every case counts may be inserted in the same indictment, against the same person, for any number of distinct offences of the same kind, not exceeding 3, committed against the same person if no more than 6 months have elapsed between the first and last of those offences.

371 Accessories may be charged together in 1 indictment

In the case of any offence, any number of accessories thereto, whether before or after the fact, may be charged with substantive offences in the same indictment, and be tried together, although the principal offender is not included in such indictment, or is not in custody or amenable to justice.

372 Indictment charging previous offence also

In an indictment for an offence committed after a previous conviction for an offence, whether indictable or punishable on summary conviction, it shall be sufficient, after charging the subsequent offence, to

state that the accused was at a certain time and place convicted of an indictable offence, or an offence punishable on summary conviction, as the case may be, without particularly describing such previous offence.

373 Property of partners or joint owners

(1) Whenever, in any indictment, it is necessary to mention, for any purpose, any partners, joint tenants or tenants in common, it shall be sufficient to describe them by naming 1 of such persons, and referring to the rest as ‘another’, or ‘others’, as the case may be.

(2) This section shall extend to all joint stock companies, executors, administrators, and trustees.

374 Description of written instruments

In every case where a written, or printed, instrument, or instrument partly written and partly printed, is the subject of an indictment, or it is necessary to make an averment in an indictment respecting such instrument, it shall be sufficient to describe such instrument by any name or designation by which the same is usually known, or by the purport thereof, without setting out any copy thereof, or otherwise describing the same, and without stating the value thereof.

375 General averment of intent to defraud or injure

(1) In every case where it is necessary to allege an intent to defraud, or injure, it shall be sufficient to allege that the accused did the act with such intent, without alleging an intent to defraud, or injure, any particular person.

(2) In an indictment for doing an act fraudulently, or for a fraudulent purpose, it shall not be necessary to state what was the fraudulent intent, or purpose.

376 Indictment for murder or manslaughter

In an indictment for murder, or manslaughter, it shall not be necessary to set forth the manner in which, or the means by which, the death alleged was caused, but it shall be sufficient in an indictment for murder to charge that the accused did murder the deceased, and in an indictment for manslaughter to charge that the accused did kill the deceased.

378 Form of indictment against accessories to murder

In an indictment against an accessory to murder, or manslaughter, it shall be sufficient to charge the offence of the principal in the manner specified, and then to charge the accused as an accessory.

380 Addition of count for assault

In an indictment for an offence against the person, where such offence includes an assault, a count may be added for such assault.

392 Indictment for perjury

In an indictment for perjury it shall be sufficient to allege that the accused on a certain day and at a certain place, before a person named, falsely swore, or falsely declared, or affirmed, the matter charged as false, stating the substance only of such matter, and averring that the same was so sworn, declared or affirmed, on an occasion when the truth of such matter was material, without specifying the occasion, or showing how the matter was material, or what was the cause or trial or inquiry (if any) pending, or the judicial, or official, character of the person administering the oath, or taking the declaration, or affirmation, charged as false.

393 Indictments for conspiracy

(1) In an indictment for conspiracy it shall not be necessary to state any overt act, and each defendant in any case of conspiracy, whether 2 or more defendants are included in the same indictment or not, may be charged separately, in any count, as having conspired with divers persons, of whom it shall be sufficient to name 1 only, or as having conspired with 1 other named person only, and may be convicted on such count upon proof of his or her having unlawfully conspired for the purpose alleged with any 1 such person.

(2) No more than 3 counts against the same defendant shall be inserted in any such indictment, and that the court may, in any case before plea pleaded, order such particulars to be given, as to such court shall seem meet, and that where conspiracies substantially different are charged in the same indictment, the prosecutor may be put to his or her election as to the one on which he or she will proceed.

394 Arraignment etc on charge of previous conviction

(1) No person shall be arraigned, in respect of any previous conviction charged in any indictment, unless he or she is convicted of the subsequent offence charged therein.

(2) Upon such conviction he or she shall forthwith be arraigned, and the jury shall be charged as to such previous conviction, or convictions, and the trial shall proceed in respect thereof.

395 Plea of ‘not guilty’

If any person arraigned on an indictment pleads ‘not guilty’, he or she shall, without further form, be deemed to have put himself or herself upon the country for trial, and the court shall, in the usual manner, order a jury for his or her trial accordingly.

396 Refusal to plead

If any person being so arraigned stands mute, or will not answer directly to the indictment, the court may order a plea of ‘not guilty’ to be entered on behalf of such person, and the plea so entered shall have the same effect as if he or she had actually pleaded the same.

399 Plea of autrefois convict etc

In any plea of autrefois convict, or of autrefois acquit, it shall be sufficient for the accused to allege that he or she has been lawfully convicted, or acquitted, as the case may be, of the offence charged in the indictment, without specifying the time or place of such previous conviction or acquittal.

400 Practice as to entering the dock

In every case the presiding judge shall have power to order the accused to enter the dock, or usual place of arraignment, or to allow him or her to remain on the floor of the court, and in either case to sit down, as such judge shall see fit.

402 Accused may be defended by a legal practitioner

Every accused person shall, in all courts, be admitted to make full answer and defence by a legal practitioner, and in every case may reserve his or her address until the close of the evidence for the defence, and in the latter case, all evidence in reply for the Crown shall be given before such address.

403 Right to inspect depositions on trial

Every accused person shall be entitled on his or her trial to inspect, without fee or reward, all depositions taken against him or her and returned into, or which shall be in, the court before which he or she is under trial.

404 Power of judge to record verdict of acquittal

(1) Where, on the trial of a person for an offence against this Act or any other law of the Territory, the judge would have power to direct the jury to return a verdict of acquittal in respect of that offence, the judge may, instead of giving such a direction, make an order—

- (a) discharging the jury from returning a verdict in respect of that offence; and
- (b) recording a verdict of acquittal in respect of that offence.

(2) An order under subsection (1) shall, for all purposes, have the same effect as a verdict of acquittal returned by a jury.

406 Notice of alibi

(1) Where a defendant is committed for trial for an indictable offence, the committing magistrate shall—

- (a) inform the defendant of the requirements of subsections (2), (3), (4) and (6); and
- (b) cause a copy of this section to be furnished to the defendant.

(2) On a trial on indictment the defendant shall not, without the leave of the court, adduce evidence in support of an alibi or assert in any statement made by him or her under section 405 that he or she has an alibi unless, before the expiration of the period of 14 days commencing on the date of the committal of the defendant for trial, he or she gives notice of particulars of the alibi.

(3) On a trial on indictment the defendant shall not, without the leave of the court, call any other person to give evidence in support of an alibi unless—

- (a) the notice given under subsection (2) includes the name and address of the person or, if the name or address is not known to the defendant at the time he or she gives the notice, any information in his or her possession which might be of material assistance in finding the person; and
- (b) if the name or the address is not included in the notice—the court is satisfied that the defendant before giving the notice took, and after giving the notice continued to take, all reasonable steps to ascertain the name or address; and
- (c) if the name or the address is not included in the notice, but the defendant subsequently ascertains the name or address or receives information which might be of material assistance in finding the

person—the defendant forthwith gives notice of the name, address or other information, as the case may be; and

- (d) if the defendant is notified by or on behalf of the Crown that the person has not been found by the name or at the address given by the defendant—the defendant forthwith gives notice of any information which might be of material assistance in finding the person and which is then in his or her possession, or on subsequently receiving any such information, forthwith gives notice of it.

(4) A notice purporting to be given under this section on behalf of the defendant by his or her legal practitioner shall, unless the contrary is proved, be deemed to be given with the authority of the defendant.

(5) Any evidence tendered to disprove an alibi may, subject to any direction by the court, be given before or after evidence is given in support of the alibi.

(6) A notice under this section shall be given in writing addressed to the director of public prosecutions.

(7) In this section—

evidence in support of an alibi means evidence tending to show that by reason only of the presence of the defendant at a particular place or in a particular area at a particular time he or she was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.

407 Abolition of presumption of marital coercion

Any presumption of law that an offence committed by a wife in the presence of her husband is committed under the coercion of the husband is abolished.

411 Criminating statements admissible though on oath

No criminating statement by the accused, offered in evidence in any case, if the same was made voluntarily, and before any charge preferred against him or her, shall be rejected, because of the statement having been on oath.

414 Evidence of previous conviction charged in an indictment

No evidence of any previous conviction, charged in an indictment, shall be offered, except in reply to evidence of character, unless the accused is convicted of the subsequent offence charged in such indictment.

417 Proof of lawful authority or excuse

Wherever, by this Act, doing a particular act or having a specified article or thing in possession without lawful authority or excuse, is made or expressed to be an offence, the proof of such authority or excuse shall lie on the accused.

423 On trial for perjury presumption of authority to administer oath etc

On any trial for perjury the person before whom the perjury is alleged to have been committed shall be presumed to have had authority to administer the oath, or take the declaration, or affirmation, unless the contrary is shown.

423A Order of closing addresses

(1) In a trial on indictment, the closing address for the defence may be given after the closing address for the prosecution.

(2) Where, in the closing address for the defence in a trial on indictment, relevant facts are asserted which are not supported by any evidence that is before the jury, the prosecution may, with the leave of the court, address the jury further in reply to any such assertion.

424 Witnesses in mitigation

After the conviction of an accused person in any case, and before sentence passed, the court may if it sees fit, as well on application by the Crown as by or on behalf of the accused, summon witnesses and examine them on oath, in respect of any matter in extenuation of his or her offence.

425 Conviction for alternative offence

Where, on the trial of a person for an offence, it appears that the facts in evidence amount in law to another offence, he or she may notwithstanding be found guilty of and sentenced for the firstmentioned offence, and in that case shall not be liable to be prosecuted for the secondmentioned offence on the same facts but the court may discharge the jury from giving any verdict upon such trial, and direct the person to be indicted for the secondmentioned offence.

426 After trial for an offence, where alternative verdict possible, no further prosecution

No person tried for an offence, in any case where under this Act he or she may be acquitted thereof but be found guilty of some other offence, shall be liable to prosecution on the same facts for any such other offence.

427 On trial for any offence—verdict of attempt

Where on the trial of a person for any offence the jury are not satisfied that he or she is guilty, but are satisfied that he or she is guilty of an attempt to commit, or of an assault with intent to commit, the same, they may acquit him or her of the offence charged, and find him or her guilty of such attempt, or assault, and he or she shall be liable to punishment accordingly.

427A Multiple alternative verdicts

Where—

- (a) a person is on trial for an offence against this Act; and
- (b) by virtue of this Act, the jury may find the accused not guilty of the offence charged but guilty of another offence against this Act; and
- (c) there is more than 1 other offence of which the accused may be found guilty;

then, notwithstanding any other provision of this Act, the accused is not liable to be convicted of more than 1 such other offence.

428 Reserving questions of law at trial

(1) Where any question of law arises on the trial of any person, or is submitted before sentence passed on him or her, the court shall, on the application of his or her legal practitioner then made, and may in its discretion, without any application, reserve every such question for the consideration of the judges of the Supreme Court.

(2) Upon reserving any such question the court shall either admit the person to bail in accordance with the provisions of the *Bail Act 1992* or commit him or her to prison.

(3) The like proceedings may be taken, so far as they are applicable, where any question of law arises on the arraignment of any person, or as to the verdict, or judgment given, or to be given.

**PART 11A—UNFITNESS TO PLEAD, MENTAL ILLNESS AND
MENTAL DYSFUNCTION**

Division 1—Preliminary

428B Definitions

In this Part, unless the contrary intention appears—

accused, for a person before the Magistrates Court, means the defendant.

court means the Supreme Court.

defendant has the meaning given by the *Magistrates Court Act 1930*, subsection 5 (1).

mental dysfunction means a disturbance or defect, to a substantially disabling degree, of perceptual interpretation, comprehension, reasoning, learning, judgment, memory, motivation or emotion.

mental health order means a mental health order under the *Mental Health (Treatment and Care) Act 1994*.

mental illness has the same meaning as in the *Mental Health (Treatment and Care) Act 1994*, section 4.

serious offence means—

- (a) an indictable offence involving actual or threatened violence; or
- (b) an offence against subsection 27 (3) or (4).

special hearing means a hearing conducted in accordance with section 428I.

tribunal means the Mental Health Tribunal established under the *Mental Health (Treatment and Care) Act 1994*.

428C Limitation on orders and detention—non-acquittals

(1) If, under subsection 428L (2) or 428M (2), the court makes an order that the accused be detained in custody until the tribunal orders otherwise, the court shall indicate whether, if the special hearing had been normal criminal proceedings against a person who was fit to be tried for and convicted of the offence with which the accused is charged, it would have imposed a sentence of imprisonment.

(2) If, under subsection (1), the court indicates that it would have imposed a sentence of imprisonment, it shall nominate a term in respect of that offence, that is the best estimate of the sentence it would have considered appropriate if the special hearing had been normal criminal proceedings against a person who was fit to be tried for that offence and the person had been found guilty of that offence.

428CA Limitation on orders and detention—acquittals

(1) If, under section 428Q or 428R, the court makes an order that the accused be detained in custody until the tribunal orders otherwise, the court shall indicate whether, if the accused had not been acquitted, it would have imposed a sentence of imprisonment.

(2) If, under subsection (1), the court indicates that it would have imposed a sentence of imprisonment, it shall nominate a term in respect of that offence, that is the best estimate of the sentence it would have considered appropriate if the accused were a person who had been found guilty of that offence.

428CB Limitation on Supreme Court orders

The court shall not order that an accused be detained for a period greater than the term nominated by it under section 428C or 428CA, as the case may be.

428CC Limitation on orders and detention—dismissal of charge

(1) If under section 428RD or 428RE, the Magistrates Court makes an order that the accused be detained in custody until the tribunal orders otherwise, the Magistrates Court shall indicate whether, if the charges against the accused had not been dismissed and the accused were a person who had been found guilty of the offence, it would have imposed a sentence of imprisonment.

(2) If, under subsection (1), the Magistrates Court indicates that it would have imposed a sentence of imprisonment, it shall nominate a term in respect of that offence, that is the best estimate of the sentence it would have considered appropriate if the accused were a person who had been found guilty of that offence.

428CD Limitation on orders and detention—Magistrates Court

(1) If under section 428WA, the Magistrates Court makes an order that the accused be detained in custody until the tribunal orders otherwise, the Magistrates Court shall indicate whether, if the hearing had been a normal criminal hearing against a person who was fit to be tried for and convicted

of the offence with which the accused is charged, it would have imposed a sentence of imprisonment.

(2) If, under subsection (1), the Magistrates Court indicates that it would have imposed a sentence of imprisonment, it shall nominate a term in respect of that offence, that is the best estimate of the sentence it would have considered appropriate if the hearing had been a normal criminal hearing against a person who was fit to be tried for that offence and the person had been found guilty of that offence.

428CE Limitation on Magistrates Court orders

The Magistrates Court shall not order that an accused be detained for a period greater than the term nominated by it under subsection 428CC (2) or 428CD (2).

428CF Manner in which relevant court to inform itself

For sections 428C, 428CA, 428CC and 428CD, in determining the sentence it would have imposed, the relevant court may inform itself and consider such evidence and submissions as it would were the court determining the sentence to be imposed in normal criminal proceedings.

428D Criteria for detention

For the purposes of this Part, other than Division 5 (except section 428WA), in making a decision which could include an order for detention, the Supreme Court or the Magistrates Court shall consider the following criteria:

- (a) the nature and extent of the accused's mental dysfunction or mental illness, including the effect it is likely to have on the person's behaviour in the future;
- (b) whether or not, if released—
 - (i) the accused's health and safety is likely to be substantially impaired; or
 - (ii) the accused is likely to be a danger to the community;
- (c) the nature and circumstances of the offence with which the accused is charged;
- (d) the principle that a person should not be detained in prison unless no other reasonable option is available;
- (e) any recommendation made by the tribunal as to how the accused should be dealt with.

428DA Assessment whether emergency detention required

(1) If, in proceedings before the Magistrates Court, it has reasonable grounds for believing that an accused requires immediate treatment or care by reason of his or her being mentally dysfunctional or mentally ill, the Magistrates Court may, without requiring the accused to submit to the jurisdiction of the tribunal, order that—

- (a) the accused be taken by a police officer, or an escort under the *Custodial Escorts Act 1998*, to an approved health facility for examination by a medical practitioner for the purpose of determining whether the accused is mentally dysfunctional or mentally ill; and
- (b) the accused may only be released into the custody of a police officer—
 - (i) by the person in charge of the approved health facility; or
 - (ii) if the accused is found to be mentally dysfunctional or mentally ill requiring detention and care—by the person in charge of an approved health facility or approved mental health facility at which the accused is detained for care; and
- (c) on being so released, the accused be dealt with in 1 of the following ways:
 - (i) subject to subsection (2) and despite the Bail Act, be admitted to bail by an authorised officer;
 - (ii) despite the Bail Act, be held in the custody of a police officer who shall cause the accused to be brought before a court as soon as practicable for the purpose of the court determining whether or not to grant bail;
 - (iii) be dealt with by an authorised officer in accordance with the Bail Act.

(2) If, when making an order under subparagraph (1) (c) (i), the Magistrates Court specifies terms and conditions on which bail is to be granted, an authorised officer may only grant bail subject to those terms and conditions.

(3) If, under this section, an accused who is taken to an approved health facility—

- (a) is released or discharged from the approved health facility or, if detained for care, an approved mental health facility, otherwise than into the custody of a police officer; or
- (b) leaves the approved health facility or approved mental health facility, otherwise than in the custody of a police officer;

a police officer may arrest the accused without warrant for the purposes of the terms of the order being satisfied.

(4) In this section—

approved health facility has the meaning given by the *Mental Health (Treatment and Care) Act 1994*, section 4.

approved mental health facility has the meaning given by the *Mental Health (Treatment and Care) Act 1994*, section 4.

authorised officer has the meaning given by the Bail Act, subsection 3 (1).

Bail Act means the *Bail Act 1992*.

Division 2—Unfitness to plead

428E Referral to tribunal

(1) If—

- (a) a person has been committed for trial for an indictable offence;
and
- (b) the issue of fitness to plead to the charge is raised by a party to the proceedings or by the court; and
- (c) the court is satisfied that there is a question as to the person's fitness to plead to the charge;

the court shall order the person to submit to the jurisdiction of the tribunal to enable the tribunal to determine whether or not the person is fit to plead to the charge.

(2) Where the court makes an order under subsection (1), it shall adjourn the proceedings to which the order relates and shall make such orders as it considers appropriate, including the granting of bail to the person who is the subject of the order.

(3) If, on the hearing of an information laid before the Magistrates Court—

- (a) the issue of fitness to plead is raised by a party to the proceedings or by the Magistrates Court; and
- (b) the Magistrates Court is satisfied that there is a question as to the person's fitness to plead;

the Magistrates Court shall order the person to submit to the jurisdiction of the tribunal to enable the tribunal to determine whether or not the person is fit to plead.

428F Person found fit to plead

Where the tribunal notifies the court that it has determined that a person who is the subject of an order under subsection 428E (1) is fit to plead to a charge—

- (a) the proceedings brought against the person in respect of the offence charged shall continue in accordance with ordinary criminal procedures; or
- (b) if the court considers it appropriate—
 - (i) the court shall discharge the jury originally empanelled for the proceedings and empanel a new jury; and
 - (ii) the proceedings shall recommence in accordance with ordinary criminal procedures.

428FA Action pending determination by tribunal

If—

- (a) an accused is charged with a serious offence or a non-serious offence; and
- (b) the court has made an order under subsection 428E (1); and
- (c) a jury has been empanelled for the proceedings;

the court may, having regard to the time that is likely to be taken by the tribunal before it makes its determination, discharge the jury.

428G Temporary unfitness to plead—non-serious offence

- (1) This section applies where—
 - (a) an accused is charged with an offence other than a serious offence; and
 - (b) the court has made an order under subsection 428E (1) in relation to the accused; and
 - (c) the tribunal notifies the court that it has determined that the accused is unfit to plead to a charge but is likely to become fit within 12 months after the determination.
- (2) Where this section applies, the court shall—
 - (a) if a jury has been empanelled—discharge the jury; and
 - (b) make such orders as it considers appropriate in relation to the accused; and
 - (c) adjourn the proceedings.
- (3) The orders the court may make under paragraph (2) (b) include the following:

- (a) an order requiring the accused to be detained in custody;
- (b) an order requiring the accused to submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order.

428H Temporary unfitness to plead—serious offence

- (1) This section applies where—
 - (a) an accused is charged with a serious offence; and
 - (b) the court has made an order under subsection 428E (1) in relation to the accused; and
 - (c) the tribunal notifies the court that it has determined that the accused is unfit to plead to the charge but is likely to become fit within 12 months after the determination.
- (2) Where this section applies, the court shall—
 - (a) if a jury has been empanelled—discharge the jury; and
 - (b) order that the accused be detained in custody or released on bail; and
 - (c) adjourn the proceedings.

428I Special hearings

- (1) The court shall conduct a special hearing in relation to an accused who is the subject of an order under subsection 428E (1), where the tribunal notifies the court that—
 - (a) it has determined that the accused is unfit to plead to a charge and is unlikely to become fit within 12 months after the determination; or
 - (b) having determined that the accused was unfit to plead to a charge but was likely to become fit within 12 months after the determination, it has determined that, the period of 12 months having elapsed, the accused remains unfit to plead.
- (2) Where paragraph (1) (a) applies, the court shall, if a jury has been empanelled, discharge the jury.

428J Nature and conduct of a special hearing

- (1) Subject to this section, the court shall conduct a special hearing as nearly as possible as if it were an ordinary criminal proceeding.
- (2) A special hearing shall be a trial by jury—
 - (a) unless—

- (i) the court is satisfied that the accused is capable of making an election to have a special hearing to be a trial by a single judge without a jury before the court first fixes a date for the hearing; and
 - (ii) the accused makes the election before that date; or
- (b) unless—
- (i) the court is satisfied that the accused is incapable of making the election mentioned in subparagraph (a) (i); and
 - (ii) before the court first fixes a date for the hearing, any guardian of the accused notifies the court that, in his or her opinion, it is in the best interests of the accused for the special hearing to be a trial by a single judge without a jury.

(2A) If subsection 428I (1) applies, the court shall—

- (a) unless satisfied that the accused is capable of making an election under subparagraph (2) (a) (i); or
- (b) if satisfied that—
 - (i) the accused is incapable of making an election under subparagraph (2) (a) (i); and
 - (ii) a guardian has not been appointed by the Guardianship and Management of Property Tribunal under the *Guardianship and Management of Property Act 1991*, who has power to make an election of that kind;

direct that tribunal to appoint a guardian with power to make an election of that kind.

(2B) If—

- (a) the accused makes an election under subparagraph (2) (a) (ii); or
- (b) a guardian notifies the court under subparagraph (2) (b) (ii);

the special hearing shall be by single judge without a jury.

(2C) Despite paragraph (2) (b), if before the date fixed by the court for the hearing—

- (a) the court is satisfied that the accused is capable of making the election mentioned in subparagraph (2) (a) (i); and
- (b) the accused notifies the court that he or she objects to the special hearing being a trial by a single judge without a jury;

the special hearing shall be a trial by jury.

(3) Unless the court otherwise orders, the accused shall have legal representation at a special hearing.

(4) A determination by the tribunal that the accused is unfit to plead to the charge is not to be taken to be an impediment to his or her being represented at a special hearing.

(5) At a special hearing, the accused is to be taken to have pleaded not guilty in respect of the offence charged.

(6) If a special hearing is a trial by jury, the court shall, at the commencement of the hearing, explain to the jury—

- (a) the meaning of unfitness to plead; and
- (b) that the accused is unfit to plead to the charge in accordance with ordinary criminal procedures; and
- (c) that the purpose of the special hearing is to ensure that, despite the unfitness of the accused to plead in accordance with ordinary criminal procedures, the accused should be acquitted unless it can be proved beyond reasonable doubt that, on the evidence available, the accused committed the acts which constitute the offence; and
- (d) the actions that are available to the jury under section 428K; and
- (e) the legal and practical consequences of those actions.

428K Verdicts available at special hearing

(1) At a special hearing that is a trial by jury, the jury shall, if satisfied beyond reasonable doubt that the accused committed the acts which constitute the offence charged, advise the court accordingly.

(2) If the jury is not satisfied in accordance with subsection (1)—

- (a) the jury shall return a verdict of not guilty in respect of the offence charged; and
- (b) the accused shall be dealt with as though the jury had returned that verdict at an ordinary trial.

(2A) If, at a special hearing by a single judge without a jury, the judge is not satisfied beyond reasonable doubt that the accused committed the acts which constitute the offence charged—

- (a) the judge shall find the accused not guilty of the offence charged; and

- (b) the accused shall be dealt with as if the accused had been found not guilty at an ordinary trial.
- (3) An advice under subsection (1)—
 - (a) does not constitute a basis in law for the recording of any conviction for the offence charged; and
 - (b) constitutes a bar to further prosecution of the accused for any offence in respect of the acts which were alleged to constitute the offence charged.

428L Non-acquittal at special hearing—non-serious offence

- (1) This section applies where—
 - (a) an accused is charged with an offence other than a serious offence; and
 - (b) at a special hearing that is a trial—
 - (i) by a single judge without a jury—the judge is satisfied beyond reasonable doubt that the accused committed the acts which constitute the offence charged; or
 - (ii) by jury—the jury advises the court under subsection 428K (1).
- (2) Where this section applies, the court may make such orders as it considers appropriate, including the following:
 - (a) that the accused be detained in custody until the tribunal orders otherwise;
 - (b) that the accused submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order.

428M Non-acquittal at special hearing—serious offence

- (1) This section applies where—
 - (a) an accused is charged with a serious offence; and
 - (b) at a special hearing that is a trial—
 - (i) by a single judge without a jury—the judge is satisfied beyond reasonable doubt that the accused committed the acts which constitute the offence charged; or
 - (ii) by jury—the jury advises the court under subsection 428K (1).
- (2) Where this section applies, the court shall order that the accused be detained in custody until the tribunal orders otherwise unless, in consideration of the criteria for detention in section 428D, it is satisfied that

it is more appropriate to order that the accused submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order.

(3) Where the court is satisfied under subsection (2), it shall make an order accordingly.

Division 3—Acquittal on grounds of mental impairment

428N Acquittal on grounds of mental impairment

(1) An accused is entitled to be acquitted of an indictable offence on the grounds of mental impairment if it is established on the balance of probabilities that, at the time of the alleged offence, the accused was, as a result of mental dysfunction or mental illness—

- (a) incapable of knowing what he or she was doing; or
- (b) incapable of understanding that what he or she was doing was wrong.

(2) The onus of establishing that an accused is entitled to be acquitted on the ground of mental impairment lies on the party seeking such acquittal.

(3) Evidence adduced by the prosecution to establish that an accused is entitled to be acquitted on the grounds of mental impairment is inadmissible except with the leave of the court.

428O Plea of not guilty by reason of mental impairment

Where an accused pleads not guilty by reason of mental impairment, the court shall enter a verdict of not guilty on that ground with respect to the offence charged if—

- (a) the court considers the verdict appropriate; and
- (b) the prosecution agrees to the entering of the verdict.

428P Explanation to jury

If, on the trial by jury of an accused charged with an indictable offence, evidence is adduced which tends to establish that the accused is entitled to be acquitted on the grounds of mental impairment, the court shall explain to the jury the verdicts which may be returned at the trial and the legal and practical consequences of those verdicts.

428Q Court orders following acquittal—non-serious offence

(1) Where an accused has been charged with an indictable offence other than a serious offence and is acquitted on the grounds of mental impairment, the court may—

- (a) make an order requiring the accused to submit to the jurisdiction of the tribunal to enable the tribunal to make recommendations as to how he or she should be dealt with; or
- (b) make such other orders as it considers appropriate.

(2) Where—

- (a) the court makes an order under paragraph (1) (a); and
- (b) the tribunal notifies the court of its recommendations;

the court shall, in consideration of the tribunal's recommendations, make such further orders as it considers appropriate.

(3) The orders the court may make under subsections (1) and (2) include the following:

- (a) that the accused be detained in custody until the tribunal orders otherwise;
- (b) that the accused submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order.

428R Court orders following acquittal—serious offence

(1) Where an accused is charged with a serious offence and is acquitted on the grounds of mental impairment, the court shall order that the accused be detained in custody until the tribunal orders otherwise unless, in consideration of the criteria for detention in section 428D, it is satisfied that it is more appropriate to order that the accused submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order.

(2) Where the court is satisfied under subsection (2), it shall make an order accordingly.

Division 3A—Dismissal by Magistrates Court on grounds of mental impairment

428RA Definition

In this Division—

serious offence means—

- (a) an offence involving actual or threatened violence; or
- (b) an offence against subsection 27 (3) or (4).

428RB Dismissal on grounds of mental impairment

(1) An accused is entitled to have charges against him or her dismissed on the grounds of mental impairment if it is established on the balance of probabilities that, at the time of the alleged offence, the accused was, as a result of mental dysfunction—

- (a) incapable of knowing what he or she was doing; or
- (b) incapable of understanding that what he or she was doing was wrong.

(2) The onus of establishing that the accused is entitled to have charges against him or her dismissed on the grounds of mental impairment lies on the party seeking the dismissal.

(3) Evidence adduced by the prosecution to establish that the accused is entitled to have charges against him or her dismissed on the grounds of mental impairment is inadmissible except with the leave of the Magistrates Court.

428RC Plea of not guilty by reason of mental impairment

If an accused pleads not guilty by reason of mental impairment, the Magistrates Court shall find the accused not guilty on that ground with respect to the offence charged if—

- (a) the Magistrates Court considers the finding appropriate; and
- (b) the prosecution agrees to the finding.

428RD Magistrates Court orders following dismissal—non-serious offence

(1) If an accused has been charged with an offence other than a serious offence and the charges are dismissed on the ground of mental impairment, the Magistrates Court may—

- (a) make an order requiring the accused to submit to the jurisdiction of the tribunal to enable the tribunal to make recommendations as to how he or she should be dealt with; or
- (b) make such other orders as it considers appropriate.

(2) Where—

- (a) the Magistrates Court makes an order under paragraph (1) (a); and
- (b) the tribunal notifies the Magistrates Court of its recommendations;

the Magistrates Court shall, in consideration of the tribunal's recommendations, make such further orders as it considers appropriate.

(3) The orders the Magistrates Court may make under subsections (1) and (2) include the following:

- (a) that the accused be detained in custody until the tribunal orders otherwise;
- (b) that the accused submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order.

428RE Magistrates Court orders following dismissal—serious offence

(1) If an accused is charged with a serious offence and the charges against him or her are dismissed on the ground of mental impairment, the Magistrates Court shall order that the accused be detained in custody until the tribunal orders otherwise unless, in consideration of the criteria for detention in section 428D, it is satisfied that it is more appropriate to order that the accused submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order.

(2) If the Magistrates Court is satisfied as mentioned in subsection (1), it shall make an order accordingly.

Division 4—Referral of mentally dysfunctional or mentally ill persons to tribunal following conviction

428S Application

This Division applies where—

- (a) a person has been convicted of an offence in the Supreme Court or Magistrates Court; and
- (b) that court is satisfied that the convicted person is mentally dysfunctional or mentally ill.

428T Referral to tribunal

(1) Where this Division applies, the relevant court may, before sentencing the convicted person, order him or her to submit to the jurisdiction of the tribunal to enable the tribunal—

- (a) to determine whether or not the person is mentally dysfunctional or mentally ill; and
- (b) if the tribunal determines that the person is mentally dysfunctional or mentally ill—to make recommendations as to how the person should be dealt with.

(2) If the tribunal notifies the relevant court that a convicted person is mentally dysfunctional or mentally ill, the court shall, in consideration of the tribunal's recommendations, make such order as it considers appropriate.

(3) The orders that the court may make under subsection (2) include an order that the person submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order.

(4) If the relevant court orders a person who is found by the tribunal to be mentally dysfunctional or mentally ill to be sentenced to a period of imprisonment, the court shall not order the person to be imprisoned for a period greater than any period of imprisonment to which the person could have been sentenced, but for that finding.

Division 5—Summary proceedings against mentally dysfunctional or mentally ill persons

428U Application

This Division applies to criminal proceedings (not including committal proceedings) with respect to—

- (a) summary offences; and
- (b) indictable offences that may be heard and determined summarily.

428V Indictable offences heard and determined summarily

Proceedings to which this Division applies with respect to an indictable offence shall be heard and determined summarily if—

- (a) the Magistrates Court is satisfied that the accused is unable, by reason of mental dysfunction or mental illness, to elect to have the case heard summarily; and
- (b) the prosecution agrees to the offence being heard and determined summarily.

428W Powers of Magistrates Court

(1) This section applies where, in proceedings to which this Division applies before the Magistrates Court, that court is satisfied that—

- (a) the accused is mentally dysfunctional or mentally ill; and
- (b) on an outline of the facts to be alleged in the proceedings, or such other evidence as the Magistrates Court considers relevant—it would be appropriate to deal with the person under this Division.

(2) Where this section applies, the Magistrates Court may by order—

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- (a) dismiss the charge and require the accused to submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order; or
 - (b) dismiss the charge unconditionally.
- (2A)** In determining whether to make an order under paragraph (2) (a) or (b), the Magistrates Court shall have regard to—
- (a) the nature and seriousness of the mental dysfunction or mental illness; and
 - (b) the period for which the mental dysfunction or mental illness is likely to continue; and
 - (c) the extent to which by reason of the accused's mental dysfunction or mental illness the accused is likely to do serious harm to himself or herself or others; and
 - (d) whether the tribunal could make an order under section 26 or 27 of the *Mental Health (Treatment and Care) Act 1994*; and
 - (e) the seriousness of the alleged offence; and
 - (f) the antecedents of the accused; and
 - (g) the effectiveness of any order previously made under paragraph (2) (a) or (b), including to the extent to which—
 - (i) the order assisted the accused to obtain appropriate treatment and care for his or her mental dysfunction or mental illness; and
 - (ii) access to that treatment and care has enabled the accused to modify his or her behaviour, being behaviour of a kind that has previously resulted in the accused having been charged with an offence.
- (2B)** Despite subsection (2), the Magistrates Court may only make an order under that subsection in relation to proceedings with respect to an indictable offence that may be heard and determined summarily with the consent of the director of public prosecutions.
- (3)** Where the Magistrates Court makes an order under paragraph (2) (a), the order operates as a stay of proceedings, or of further proceedings, against the accused in relation to the offence.
- (4)** Where the Magistrates Court makes an order under subsection (2), that court shall not make an order under section 437, 556A or 556B or Part 15A in relation to the offence.

(5) An order under subsection (2) does not constitute a finding that an offence has or has not been committed.

(6) In proceedings to which this section applies, in order to determine whether an accused is mentally dysfunctional or mentally ill, the Magistrates Court may make such orders as it considers appropriate, including the following:

- (a) that the accused submit to the jurisdiction of the tribunal;
- (b) that the proceedings be adjourned;
- (c) that the person be released on bail.

(7) If the Magistrates Court makes an order under paragraph (6) (a), the tribunal shall notify the Magistrates Court about each of the matters referred to in paragraphs (2A) (a) to (d), inclusive.

428WA Fitness to plead—Magistrates Court

(1) This section applies to an indictable offence that can be heard and determined summarily if the Magistrates Court is of the opinion that the case can properly be disposed of summarily having regard to—

- (a) any relevant representations made by the accused; and
- (b) any relevant representations made by the prosecutor in the presence of the accused; and
- (c) the circumstances and, in particular, the degree of seriousness of the case; and
- (d) any other circumstances which appear to the Magistrates Court to make it more appropriate for the case to be dealt with on indictment rather than summarily.

(2) If this section applies and—

- (a) the tribunal determines that the accused charged with a serious offence is unfit to plead; and
- (b) after hearing the charge, the Magistrates Court is satisfied beyond reasonable doubt that the accused committed the acts which constitute the offence;

the Magistrates Court shall order that the accused be detained in custody until the tribunal orders otherwise unless, in consideration of the criteria for detention in section 428D, it is satisfied that it is more appropriate to order that the accused submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order.

(3) If, under subsection (2), the Magistrates Court is satisfied that it is more appropriate to order that the accused submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order, it shall make an order to that effect.

(4) If this section applies and—

- (a) the tribunal determines that the accused charged with an offence other than a serious offence is unfit to plead; and
- (b) after hearing the charge, the Magistrates Court is satisfied beyond reasonable doubt that the accused committed the acts which constitute the offence;

the Magistrates Court may make such orders as it considers appropriate, including the following:

- (c) that the accused be detained in custody until the tribunal orders otherwise;
- (d) that the accused submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order.

(5) The Magistrates Court shall conduct a hearing under this section as nearly as possible as if it were a normal criminal proceeding.

(6) In a hearing under this section—

- (a) if legal representation is available to the accused—the accused shall have legal representation unless the Magistrates Court otherwise orders; and
- (b) the accused is to be taken to have pleaded not guilty in respect of the offence charged.

(7) If the Magistrates Court is satisfied beyond reasonable doubt that the accused committed the acts which constitute the offence, its finding—

- (a) does not constitute a basis in law for the recording of any conviction for the offence charged; and
- (b) constitutes a bar to further prosecution of the accused for any offence in respect of the acts which were alleged to constitute the offence charged.

(8) In this section—

serious offence means—

- (a) an offence involving actual or threatened violence; or
- (b) an offence against subsection 27 (3) or (4).

428X Means by which Magistrates Court may be informed

For the purposes of this Division, the Magistrates Court may inform itself as it thinks fit, but not so as to require the accused to incriminate himself or herself.

PART 12—SENTENCES

Division 1—General principles and procedures

428Y Interpretation

In this Part—

victim, in relation to an offence, means—

- (a) a person (in this definition called the *primary victim*) who suffers harm—
 - (i) in the course of, or as the result of, the commission of the offence; or
 - (ii) in the course of assisting a police officer in the exercise of the officer's power to arrest a person in respect of the commission of the offence or to take action to prevent the commission of the offence; or
- (b) where a primary victim dies as a result of the commission of the offence—any person who was financially or psychologically dependent on the primary victim immediately before his or her death.

429 Purposes for which sentence imposed

The only purposes for which a sentence may be imposed are—

- (a) to punish the offender to an extent and in a way that is just and appropriate in all the circumstances; or
- (b) to deter the offender or other persons from committing the same or a similar offence; or
- (c) to rehabilitate the offender; or
- (d) to make it clear that the community, acting through the court, denounces the type of conduct in which the offender engaged; or
- (e) to protect the community from the offender; or
- (f) a combination of 2 or more of the purposes referred to in paragraphs (a) to (e) inclusive.

429A Matters to which court to have regard

(1) In determining the sentence to be imposed on a person, the matters to which a court shall have regard include, but are not limited to, such of the following matters as are relevant and known to the court:

Crimes Act 1900

- (a) the nature and circumstances of the offence;
- (b) other offences (if any) that are required or permitted to be taken into account;
- (c) if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character—that course of conduct;
- (d) where the personal circumstances of any victim of the offence were known to the offender at the time of committing the offence—those circumstances;
- (e) any injury, loss or damage resulting from the offence;
- (f) any action the person may have taken to make reparation for any injury, loss or damage resulting from the offence;
- (g) the degree of responsibility of the person for the commission of the offence;
- (h) the degree to which the person has cooperated, or undertaken to cooperate, with law enforcement agencies in the investigation of the offence or other offences;
- (k) the cultural background, character, antecedents, age, means and physical or mental condition of the person;
- (m) the probable effect that any sentence or order under consideration would have on any of the person's family or dependants;
- (n) whether the person was affected by a drug or alcohol and the circumstances in which the person became so affected;
- (o) the degree to which the offence was the result of provocation, duress or entrapment;
- (p) whether the recording of a conviction or the imposition of a particular sanction would be likely to cause particular hardship to the person;
- (q) a jury recommendation for mercy;
- (r) whether the person is voluntarily seeking treatment for any physical or mental condition which may have contributed to the commission of the offence;
- (s) whether the person was in a position of trust or authority at the time of the commission of the offence;
- (t) current sentencing practice;
- (u) whether the person has pleaded guilty and, if so, the stage of the proceedings at which the person did so or indicated an intention to do so;

- (v) whether the person has demonstrated remorse;
- (w) the reason or reasons why the person committed the offence;
- (x) whether the person has paid the prescribed penalty in accordance with an offence notice served, under section 575, on him or her for an offence.

(2) Without limiting the generality of subsection (1), in determining whether a sentence or order under subsection 556A (1) or 556B (1) is appropriate in respect of an offence against a law of the Territory, the court shall have regard to the nature and severity of the conditions that may be imposed on, or may apply to, the person, under that sentence or order.

429AB Victim impact statements

(1) A court determining the sentence to be imposed in respect of an offence—

- (a) shall have regard to any victim impact statement tendered in respect of the offence; and
- (b) shall not draw any inference about the harm suffered by a victim from the fact that a victim impact statement is not tendered in respect of the offence.

(2) The prosecutor shall not tender a victim impact statement to the court unless—

- (a) the victim has consented in writing; and
- (b) a copy of the statement has been given to the defence.

(3) The defence may cross-examine the victim about the contents of a victim impact statement.

(4) In this section—

court means the Supreme Court or the Magistrates Court.

defence means—

- (a) the legal practitioner representing the offender; or
- (b) if the offender is not so represented—the offender.

harm includes—

- (a) physical injury; and
- (b) mental injury or emotional suffering (including grief); and
- (c) pregnancy; and
- (d) economic loss; and

(e) substantial impairment of rights accorded by law.

offence means an indictable offence for which the maximum penalty is a term of imprisonment for a term of at least 5 years (whether or not any other penalty, including a fine, may be imposed).

victim impact statement means a statement, signed by a victim, containing particulars of any harm suffered by the victim as a result of an offence.

429B Matters not to be taken into account

The court shall not, in determining the sentence to be imposed on a person, increase the severity of the sentence that would otherwise be imposed because of any of the following:

- (a) legislation which has not come into operation;
- (b) any alleged offences which the person has not admitted in accordance with section 448;
- (c) that the person chose not to give evidence on oath;
- (d) that the person may have committed perjury or been guilty of contempt of court during the course of proceedings;
- (f) the person's behaviour in court;
- (g) that the person chose to plead not guilty.

429C Restriction on imposing sentences of imprisonment

(1) A court shall not pass a sentence of imprisonment on any person for an offence against a law of the Territory unless the court, after having considered all other available penalties, is satisfied that no other penalty is appropriate in all the circumstances of the case.

(2) Where a court passes a sentence of imprisonment on a person for an offence against a law of the Territory, the court shall—

- (a) state the reasons for its decision that no other sentence is appropriate; and
- (b) cause those reasons to be entered in the records of the court.

(3) The failure of a court to comply with the provisions of this section does not invalidate any sentence.

(4) This section applies subject to any contrary intention in the law creating the offence.

430 Sentences—imprisonment and fines

Where a person is convicted of an offence against a provision of this Act, the penalty for which is a fine or a term of imprisonment, the court may, if it thinks fit, impose both penalties on the person.

431 Fine instead of imprisonment

(1) Subject to subsection (2), when imposing a penalty on a person in respect of an offence against Part 4, being an offence punishable by imprisonment for a period not exceeding 15 years, the Supreme Court may, if it considers a fine to be an appropriate penalty in all the circumstances of the case, impose a fine on the person in addition to or instead of sentencing the person to imprisonment.

(2) A fine imposed pursuant to subsection (1) in respect of an offence shall not exceed—

- (a) where the offence is punishable by imprisonment for period exceeding 12 months but not exceeding 2 years—
 - (i) if the offender is a natural person—\$5,000; or
 - (ii) in any other case—\$25,000; and
- (b) where the offence is punishable by imprisonment for a period exceeding 2 years but not exceeding 5 years—
 - (i) if the offender is a natural person—\$10,000; or
 - (ii) in any other case—\$50,000; and
- (c) where the offence is punishable by imprisonment for a period exceeding 5 years but not exceeding 10 years—
 - (i) if the offender is a natural person—\$20,000; or
 - (ii) in any other case—\$100,000; and
- (d) where the offence is punishable by imprisonment for a period exceeding 10 years—
 - (i) if the offender is a natural person—\$30,000; or
 - (ii) in any other case—\$150,000.

431A Fines

Before imposing a fine on a person for an offence against a law of the Territory, the court shall take into account the financial circumstances of the person, where those circumstances can be ascertained, in addition to any other matters that the court is required or permitted to take into account.

432 Theft of motor vehicle—cancellation of licence

(1) Where—

- (a) a person is convicted of the offence of stealing or attempting to steal a motor vehicle or of an offence under subsection 120 (1) in relation to a motor vehicle; or
- (b) a person is charged with an offence referred to in paragraph (a) and, pursuant to subsection 556A (1), the charge is dismissed or an order is made in respect of the person; or
- (c) pursuant to section 448, an offence referred to in paragraph (a) has been taken into account when passing sentence upon a person;

the court may, by order—

- (d) if the person holds a driving licence under the *Motor Traffic Act 1936*—cancel that licence and disqualify the person from holding a driving licence for such period as the court thinks fit; or
- (e) if the person does not hold such a driving licence—declare the person to be disqualified from obtaining such a driving licence for such period as the court thinks fit.

(2) Where the court makes an order under this section, the court shall cause particulars of the order to be forwarded to the Registrar of Motor Vehicles.

437 Reparation orders

(1) Where—

- (a) a person is convicted of an offence against a law of the Territory; or
- (b) a person is charged with an offence against a law of the Territory and, pursuant to subsection 556A (1), the charge is dismissed or an order is made in respect of the person; or
- (c) pursuant to section 448, an offence has been taken into account in passing sentence upon a person;

then, in addition to imposing a penalty on, or otherwise dealing according to law with, the person (in this section called the *offender*) the court may order the offender to make reparation to any person, by means of a payment of money or otherwise, in respect of any loss suffered or any expense incurred by that person as a direct result of the commission of the offence.

(2) Without limiting the generality of subsection (1), where an offence referred to in subsection (1) relates to stolen property, the court may, subject to the following subsections, make any of the following orders:

- (a) an order that any person having possession, custody or control of the stolen property restore it to any person entitled to recover it from him or her;
 - (b) on the application of a person entitled to recover from the offender any other property directly or indirectly representing the stolen property (as being the proceeds of any disposal or realisation of the stolen property or of property directly or indirectly representing the stolen property)—an order that the property be delivered or transferred to the applicant;
 - (c) on the application of a person who, if the stolen property were in the possession of the offender, would be entitled to recover it from the offender—an order that an amount not exceeding the value of the stolen property be paid to the applicant by the offender.
- (3)** A person is not entitled to recover, pursuant to orders made under this section in respect of stolen property, amounts that, in the aggregate, exceed the value of the property.
- (4)** Where the court makes an order under paragraph (2) (a) for the restoration of any property and it appears to the court that the offender has sold the property to a purchaser who was acting in good faith, or has borrowed money on the security of the property from a lender so acting, the court may, on the application of the purchaser or lender, order the offender to pay the applicant an amount not exceeding the amount paid for the purchase by the applicant, or the amount owed to the applicant in respect of the loan, as the case requires.
- (5)** Where an offender contravenes an order under this section (not being an order for the payment of money), the person in whose favour the order was made may apply to the court for an order under subsection (5A) to be made against the offender.
- (5A)** On application under subsection (5), the court may make an order for the payment of money against the offender in substitution for the contravened order.
- (5B)** Where the court makes an order under this section for the payment of money, the court may order that—
- (a) the amount be paid by specified instalments; and
 - (b) the offender give security, with or without sureties, to the satisfaction of a specified officer of the court for the payment of the amount or of each instalment of the amount.

(5C) Sections 249 to 253 (inclusive) of the *Magistrates Court Act 1930* apply in relation to a security referred to in paragraph (5B) (b) ordered by the Magistrates Court as if it were a security given under that Act.

(5D) Where—

- (a) the court has ordered under paragraph (5B) (a) that an amount be paid by instalments; and
- (b) default is made in the payment of any one instalment;

subsection (5E) applies in relation to that order as if it were for the payment of the whole amount then remaining unpaid.

(5E) An order under this section may be enforced as if it were a final judgment of the court.

(5F) Notwithstanding any other law of the Territory, a person is not liable to imprisonment for contravening an order under this section unless compliance with the order was a condition of the discharge under section 556A, or release under section 556B, of the offender.

(6) An order shall not be made under this section unless, in the opinion of the court, the relevant facts sufficiently appear from evidence given at the trial or from the available documents, together with submissions made by or on behalf of any person in connection with any proposed order.

(7) In this section—

available documents means any written statements or admissions which were made for use and which would have been admissible as evidence at a trial, the depositions taken at any committal proceedings and any written statements or admissions used as evidence in those proceedings.

(8) Nothing in this section shall be construed as abolishing or affecting any cause of action which any person may have for the recovery of goods or property or to recover damages for, or to be indemnified against, any loss suffered or expense incurred, but in any proceedings in relation to any such loss or expense the court shall have regard to any amount paid in pursuance of an order under this section.

(9) In this section—

loss and *stolen property* have the same respective meanings as in Division 1 of Part 4.

441 Judgment after sentence deferred

Where a person is convicted of an offence and sentence is deferred, the court before which he or she was tried, or the Supreme Court, may pronounce judgment against him or her at any time afterwards.

441A When sentence takes effect

Where a court passes a sentence, the sentence shall, subject to this Part, take effect from the date on which it is passed unless the court otherwise orders.

442 Provision for passing sentences of less duration than those fixed

(1) Where, by this Act, an offender is made liable to imprisonment for life or to imprisonment for a fixed term, the court may nevertheless pass a sentence of imprisonment of less duration.

(2) Subsection (1) does not prevent the directing of the offender to enter into recognisances to keep the peace and be of good behaviour, nor the making of any orders under this Act or under another law of the Territory.

(3) Where, by any section of this Act, an offender is made liable to a fine of any fixed amount, the court may nevertheless inflict a fine of less amount.

443⁷ Concurrent and cumulative sentences

(1) Every term of imprisonment (except a term imposed in default of payment of a fine or sum of money or one imposed on a person in respect of an offence committed while in custody) shall, unless the court otherwise directs, be served concurrently with any uncompleted part of any sentence of imprisonment imposed on that person, whether before or at the same time as that term.

(2) Where a court sentences a person to a term of imprisonment in default of payment of a fine or sum of money, the term shall, unless the court otherwise directs, be served—

(a) cumulatively on any uncompleted sentence or sentences of imprisonment imposed on that person in default of payment of a fine or sum of money; and

(b) concurrently with any other uncompleted part of any sentence of imprisonment imposed on that person.

(3) Where a court sentences a person to a term of imprisonment in respect of an offence committed while in custody, the term shall, unless the court otherwise directs, be served cumulatively on any uncompleted

sentence or sentences of imprisonment imposed on that person, whether before or at the same time as that term.

(4) A court which imposes a term of imprisonment for an offence against the law of the Territory on a person already serving a sentence or sentences of imprisonment for an offence against the law of the Territory, the Commonwealth, a State or another Territory, shall direct when the new term commences which shall be no later than immediately after—

- (a) if a nonparole period or pre-release period (as defined in Part 1B of the *Crimes Act 1914* (Cwlth)) was fixed in respect of the sentence or the last of those sentences—the end of the period so fixed; and
- (b) in any other case—the completion of the sentence or the last of those sentences.

(5) A court may direct that part of a sentence be served concurrently with or cumulatively upon another sentence.

(6) Where a court directs that 2 or more sentences shall be cumulative, they shall take effect one after another as the court directs or, in default of any direction, in accordance with the sequence in which the convictions are recorded.

(7) In this section—

- (a) a reference to a *fine* shall be read as including a reference to a pecuniary penalty, an amount in respect of costs or any other amount ordered to be paid by a person for or in respect of an offence; and
- (b) a reference to any *uncompleted part* of any sentence of imprisonment shall be read as including a reference to the remainder of a period for which a child has been committed to an institution by an order under paragraph 47 (1) (j) or 47 (1) (k) of the *Children's Services Act 1986*; and
- (c) a reference to a term or sentence of imprisonment in default of payment of a fine or sum of money shall be read as including a reference to a period for which a fine defaulter is committed to prison under section 154D of the *Magistrates Court Act 1930*.

444⁷ Sentences of imprisonment and uncompleted juvenile detention orders

(1) In imposing a defined sentence on an adult who is, at the time of sentencing, the subject of a Children's Services Act order, a court shall—

- (a) in determining the duration of the defined sentence, take into account any remaining period during which the Children's Services Act order would remain in force if not discharged under paragraph (b); and
 - (b) discharge the Children's Services Act order accordingly.
- (2) In this section—

adult means a person of the age of 18 years or over.

Children's Services Act order means an order under paragraph 47 (1) (g), (h), (i), (j) or (k) of the *Children's Services Act 1986*.

defined sentence, in relation to an adult, means a sentence that would be likely to bring the adult into contact with other adult offenders, including—

- (a) a sentence of imprisonment; and
- (b) a periodic detention order under section 4 of the *Periodic Detention Act 1995*; and
- (c) a community service order under section 556G.

446 Previous sentences to be noted in new sentence

Whenever an additional, or cumulative, sentence is passed, the fact of the previous sentence, or sentences, specifying the date, or dates, thereof, and of the term, or terms, of sentence shall be entered on the minutes and record of the sentence lastly passed.

448 Outstanding charges may be taken into account when passing sentence

- (1) Where a person is convicted of an offence, not being an offence punishable by imprisonment for life, and the court is satisfied that—
- (a) there has been filed in court a document in, or to the effect of, the form set out in Schedule 6, signed by the director of public prosecutions, or by a person authorised in writing by him or her, and by the person so convicted, containing on the back of the form a list of other offences, not being offences punishable with imprisonment for life, which the person convicted is alleged to have committed; and
 - (b) a copy of that document has been furnished to the person so convicted; and
 - (c) in all the circumstances of the case it is proper to do so;

the court may, with the consent of the prosecutor and before passing sentence on the person for the offence of which he or she is convicted, ask the person whether he or she admits his or her guilt in respect of all or any of the offences specified in the list and wishes those offences to be taken into account in passing sentence upon him or her.

(2) Where a person referred to in subsection (1) asks the court to take into account any offence in passing sentence for the offence of which he or she has been convicted, the court may take that firstmentioned offence into account in passing sentence.

(3) The court shall not take into account under this section any indictable offence that it would not have jurisdiction to try even if the defendant consented to the court hearing and determining proceedings for the offence or the prosecutor requested the court to hear and determine those proceedings.

(4) Where the court decides to take an offence into account under subsection (2), the sentence passed by the court upon the person shall not exceed the maximum sentence that may be passed in respect of the offence of which the person is convicted.

(5) The court shall certify upon the document referred to in subsection (1) the offences (if any) that have been taken into account in passing sentence on the person to whom the document relates for an offence of which that person is convicted, and proceedings or further proceedings shall not be taken against that person in respect of any offence so certified unless his or her conviction is quashed or set aside.

(6) An admission of guilt made by a person under this section in respect of an offence shall not be admissible in evidence in any proceedings or further proceedings taken against that person in respect of that offence.

(7) Where, under this section, an offence is taken into account in passing sentence on a person in respect of another offence of which he or she is convicted, the person shall not, by reason of the firstmentioned offence being so taken into account, be regarded, for any purpose as having been convicted of that firstmentioned offence.

(8) Where, under this section, an offence is taken into account in passing sentence on a person in relation to another offence of which he or she is convicted—

- (a) reference may be made to the fact that the firstmentioned offence was so taken into account in, or in relation to, any criminal

proceedings where reference may lawfully be made to the fact that the person was convicted of the secondmentioned offence; and

- (b) evidence may be given of the fact that the firstmentioned offence was so taken into account in, or in relation to, any criminal proceedings where evidence may lawfully be given of the fact that the person was convicted of the secondmentioned offence.

(9) For the purposes of subsection (8), the fact that an offence was taken into account in passing sentence on a person in respect of another offence of which he or she is convicted may be proved in the same manner as the conviction of the person may be proved.

(10) For the purposes of this section, a reference to passing sentence shall be read as including a reference to—

- (a) deferring the passing of a sentence; and
- (b) making an order under subsection 556A (1); and
- (c) making an order under subsection 19B (1) of the *Crimes Act 1914* (Cwlth); and
- (d) making a decision or an order to remand in custody or to remand and release, upon conditions or otherwise.

449 Appeal where promised cooperation not forthcoming

(1) Where a sentence or a nonparole period is reduced because of the person's promised cooperation, of the kind referred to in paragraph 429A (1) (h), the court shall—

- (a) in relation to the sentence—specify the reason for the reduction and the sentence that would have been imposed but for the reduction; and
- (b) in relation to the nonparole period—specify the reason for the reduction and the period that would have been fixed but for the reduction.

(2) Where—

- (a) a sentence or nonparole period is reduced because the person has undertaken to cooperate with law enforcement agencies; and
- (b) after sentence, the person does not cooperate in accordance with the undertaking;

the director of public prosecutions may, at any time while the person is under sentence, if the director is of the opinion that it is in the interests of

the administration of justice to do so, appeal against the inadequacy of the sentence or of the nonparole period.

- (3) The court hearing the appeal—
- (a) if it is satisfied that the person has failed entirely to cooperate in accordance with the undertaking—shall substitute for the reduced sentence or nonparole period the sentence or nonparole period that would have been imposed on, or fixed in respect of, the person but for the reduction; and
 - (b) if it is satisfied that the person has failed in part to cooperate in accordance with the undertaking—may substitute for the reduced sentence or nonparole period such a sentence or nonparole period as it thinks appropriate.
- (4) The sentence or nonparole period that may be substituted under paragraph (3) (b) shall not exceed that which may be imposed or fixed under paragraph (3) (a).

450 Court to explain sentence

- (1) Where a court passes a sentence of imprisonment on a person for an offence against a law of the Territory and fixes a nonparole period in respect of the sentence, it shall explain or cause to be explained to the person, in language likely to be readily understood by the person, the purpose and consequences of fixing that nonparole period including, in particular, an explanation—
- (a) that service of the sentence will entail a period of imprisonment of not less than the nonparole period and, if a parole order is made, a period of service in the community to complete service of the sentence; and
 - (b) that, if a parole order is made, the order will be subject to conditions; and
 - (c) of the consequences that may follow if the person fails, without reasonable excuse, to fulfil those conditions; and
 - (d) that the parole order may be amended or revoked.
- (2) Where a court passes a sentence of imprisonment on a person for an offence against a law of the Territory but gives a direction under paragraph 556B (1) (b) in respect of that sentence, it shall explain or cause to be explained to the person, in language likely to be readily understood by the person, the purpose and consequences of giving that direction including, in particular, an explanation—

- (a) that service of the sentence will entail a period of imprisonment equal to the prerelease period (if any) specified in that direction and a period of service in the community equal to the balance of the sentence; and
 - (b) of the conditions to which that direction is subject; and
 - (c) of the consequences that may follow if the person fails, without reasonable excuse, to fulfil those conditions; and
 - (d) that any recognisance given in accordance with that direction may be discharged or varied under section 556D.
- (3) Where—
- (a) a court explains or causes to be explained to a person, in accordance with subsection (1) or (2), the matters specified in that subsection; and
 - (b) that person is to serve a term of imprisonment;

the registrar of the court shall provide or cause to be provided to that person, or his or her legal representative, a written record of those matters.

451 Time held in custody to count

(1) If an offender is sentenced to a term of imprisonment in respect of an offence, any period of time during which he or she was held in custody in relation to proceedings for that offence or proceedings arising from those proceedings shall be reckoned as a period of imprisonment already served under the sentence.

(2) Subsection (1) does not apply—

- (a) to a period of custody of less than 1 day; or
- (b) to a sentence of imprisonment of less than 1 day; or
- (c) to a sentence of imprisonment which has been wholly suspended or to the suspended part of a partly suspended sentence of imprisonment.

(3) If a person charged with a series of offences committed on different occasions has been in custody continuously since arrest, the period of custody for the purposes of subsection (1) shall be reckoned from the time of his or her arrest even if he or she is not convicted of the offence with respect to which he or she was first arrested or other offences in the series.

452 Sentence to be adjusted if no remission laws apply

If an offender's sentence is to be served in a prison of a State or another Territory where sentences are not subject to remission or reduction,

the court imposing the sentence shall take that fact into account in determining the length of the sentence and shall adjust the sentence accordingly.

Division 2—Pre-sentence reports

453 Interpretation

In this Division—

authorised officer means a public servant who is authorised in writing by the chief executive for the purposes of this Division.

454 Court may order pre-sentence reports

- (1) If a court finds a person guilty of an offence it may, before passing sentence, order an authorised officer to prepare a pre-sentence report in respect of the offender and adjourn the proceedings to enable the report to be prepared.
- (2) A pre-sentence report may be presented to the court either orally or in written form.
- (3) A court shall not order a pre-sentence report in respect of a person before the court finds that person guilty of an offence unless the person has indicated that he or she proposes to plead guilty to the offence.
- (4) The authorised officer shall conduct any investigation that he or she thinks appropriate or that is directed by the court.

455 Contents of pre-sentence report

- (1) The authorised officer shall, so far as practicable, include in a pre-sentence report particulars of each of the following matters which, on investigation, appear to be relevant to sentence:
 - (a) the age of the offender;
 - (b) the social history and background (including cultural background) of the offender;
 - (c) the medical and psychiatric history of the offender;
 - (d) the offender's educational background;
 - (e) the offender's employment history;
 - (f) the circumstances of any offences of which the offender has been found guilty and in respect of which the offender is to be sentenced;

- (g) the extent to which the offender is complying, or has complied, with any sentence;
- (h) the offender's financial circumstances;
- (i) any special needs of the offender;
- (j) any courses, programs, treatment, therapy or other assistance that is available to the offender and from which he or she may benefit;
- (k) the authorised officer's opinion about—
 - (i) the offender's attitude to the offence; and
 - (ii) the offender's propensity to commit further offences;
- (l) any other facts which the authorised officer considers to be relevant.

(2) The authorised officer shall include in the report any other matter relevant to the sentencing of the offender which the court has directed to be set out in the report.

456 Circulation of the report

The authorised officer shall, before the court passes sentence, provide a copy of any written pre-sentence report to—

- (a) the prosecutor; and
- (b) any legal practitioner representing the offender; and
- (c) where—
 - (i) the court has so directed; or
 - (ii) the offender is not legally represented;the offender.

457 Right of cross-examination

The prosecution and the defence may cross-examine the author of a pre-sentence report on its contents.

PART 13—PROCEEDINGS AFTER SENTENCE

464 Procedure on forfeiture

(1) Where, under a provision of this Act, a court may order the forfeiture of an article, the court shall—

- (a) where the court is of the view that it is desirable to make further inquiries with respect to the article—order that notice of the proposed forfeiture be given to such persons as the court directs; or
- (b) in any other case—order that the article be forfeited to the Crown.

(2) After hearing such of the persons to whom notice under subsection (1) was given as appear, the court shall—

- (a) where it is satisfied that the article should be forfeited—order that the article be forfeited to the Crown; or
- (b) in any other case—order that the article be delivered to such person as the court is satisfied is entitled to the article.

(3) Where a prosecution is pending in relation to an article, the court shall not make an order under subsection (2) in relation to the article until the prosecution is determined.

(4) All articles forfeited under subsection (2) shall be dealt with as directed by the Attorney-General, and pending his or her direction, may be detained in such custody as the court directs.

465 Common law forfeiture in offences abolished

(1) No inquest, conviction, or judgment, in respect of any offence, shall cause any escheat or forfeiture of lands or goods.

(2) There shall be no forfeiture of any chattel which may have moved to, or caused, the death of any human being for or in respect of such death.

466 Disabilities of offence

After the conviction of an offender for any offence, until he or she has endured the punishment to which he or she was sentenced, or the punishment (if any) substituted for the same, or the unremitted portion of such punishment, or has received a free pardon for his or her offence, he or she shall be incapable of holding, or being elected or appointed to any office, or of exercising any electoral or municipal franchise.

468 Effect of reversing judgment in such cases

Upon the avoidance or vacating of the conviction of any such person, or reversal of the judgment against him or her, the provisions of sections 465 and 466, and of section 437, shall, with respect to such person, determine, and every order made for the payment of money out of his or her property shall become of no effect, and he or she shall be restored to all that he or she may have lost thereby.

470 Proceedings when question reserved

(1) The judge by whom any question of law is reserved under the provisions of this Act shall, as soon as practicable, state a case setting forth the same, with the facts and circumstances out of which such question arose, and shall transmit such case to the judges of the Supreme Court who shall determine the question, and may affirm, amend, or reverse the judgment given, or avoid or arrest the same, or may order an entry to be made on the record that the person convicted ought not to have been convicted, or may make such other order as justice requires.

(1A) No conviction, or judgment, shall be reversed, arrested, or avoided, on any case so stated, unless for some substantial wrong, or other miscarriage of justice.

(2) The judges of the Supreme Court may, if they think fit, cause any case so stated to be sent back for amendment, and thereupon the same shall be amended, and judgment delivered accordingly.

(3) Every judgment of the judges on any such case shall be delivered in open court—after hearing the parties or the legal practitioners representing the parties, in case the Attorney-General, or prosecutor, or the person convicted, appears to argue the same—as other judgments of the Supreme Court are delivered.

(4) Every such determination and order shall be certified, under the hand of the prothonotary, to the proper officer of the court in which the conviction took place, who shall enter the same on the record, and if the person convicted is in custody, a certificate shall be transmitted to the gaoler having such custody, which certificate shall be a sufficient warrant for the execution of the judgment, if against the convicted person, or for his or her discharge from imprisonment, if the judgment has been reversed, avoided, or arrested.

(5) Such judgment shall be executed, or the person forthwith discharged, or his or her bail undertaking, if on bail, be vacated accordingly.

472 What not sufficient to stay or reverse judgment

(1) No judgment after verdict, in any case, shall be stayed or reversed for want of a similiter, nor by reason that the jury process was awarded to a wrong officer, nor for any misnomer, or misdescription, of the officer returning such process, or of any juror, nor because any person served upon the jury who was not returned as a juror.

(2) Nor shall any verdict be affected, because of the jury not having been instructed that the accused might, on the evidence, be convicted of a less offence than the one charged.

(3) Where the offence charged is created by statute, or subjected to a greater degree of punishment by any statute, the indictment shall after verdict be sufficient, if it described the offence in the words of the statute.

473 Pronouncing proper judgment

No judgment shall be reversed, or avoided, for any error in law in the sentence imposed, but it shall be competent for the judges of the Supreme Court, in case of any such error, either to pronounce such judgment and sentence as is authorised by law, or to remit the record to the other court, in order that such court may pronounce such judgment and sentence as is authorised by law.

474 New trials regulated

A new trial may be granted in the case of any offence, for any cause for which a new trial may now be granted, in respect of all, or some, or 1 only, of the defendants where 2 or more are included in the same indictment, although all are not present, nor are parties to the motion, nor have been tried.

475 Executive or judge may direct inquiry

(1) Whenever, after the conviction of a prisoner, any doubt or question arises as to his or her guilt, or any mitigating circumstance in the case, or any portion of the evidence therein, the Executive, on the petition of the prisoner, or some person on his or her behalf, representing such doubt or question, or a judge of the Supreme Court of his or her own motion, may direct any magistrate to, and such magistrate may, summon and examine on oath all persons likely to give material information on the matter suggested.

(2) The attendance of every person so summoned may be enforced, and his or her examination compelled, and any false statement wilfully made by him or her shall be punishable in like manner as if he or she had been

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summoned by, or been duly sworn and examined before, the same magistrate, in a case lawfully pending before him or her.

(3) Where on such inquiry the character of any person who was a witness on the trial is affected thereby, the magistrate shall allow such person to be present, and to examine any witness produced before such magistrate.

(4) Every deposition taken under this section shall be stated in the commencement to have been so taken, and in reference to what case, and in pursuance of whose direction, mentioning the date thereof, and shall be transmitted by the magistrate, before whom the same was taken, as soon as shall be practicable, to the Executive if the inquiry was directed by him or her, or to the judge directing the inquiry, and the matter shall be disposed of, as to the Executive, on the report of such judge, or otherwise, shall appear to be just.

**PART 14—OFFENCES PUNISHABLE SUMMARILY AND
SUMMARY PROCEDURE GENERALLY**

476 Summary offences

An offence against this Act that is—

- (a) not punishable by imprisonment; or
- (b) punishable by imprisonment for a term not exceeding 12 months;

is punishable on summary conviction.

477 Summary disposal of certain cases

(1) This section applies in relation to any offence against a law of the Territory, being—

- (a) a common law offence; or
- (b) an offence punishable by imprisonment for a term not exceeding—
 - (i) if the offence relates to money or other property—14 years; or
 - (ii) in any other case—10 years.

(2) Where—

- (a) a person (in this section referred to as the *defendant*) is before the Magistrates Court charged with an offence in relation to which this section applies; and
- (b) the court is of the opinion that it has no jurisdiction, apart from this section, to hear and determine the charge summarily; and
- (c) in the case of a charge relating to money or to property other than a motor vehicle—the amount of the money or the value of the property does not, in the opinion of the court, exceed \$10,000;

the court may proceed in accordance with the succeeding provisions of this section.

(3) The court may invite the defendant to plead guilty or not guilty to the charge.

(4) Where the defendant pleads guilty to the charge, the court may accept or reject the plea.

(5) Where—

- (a) the defendant does not plead to the charge when invited to do so under subsection (3); or

(b) a plea of guilty to the charge is rejected under subsection (4);
the defendant shall be taken to have pleaded not guilty to the charge.

(6) Where—

- (a) the defendant pleads or is to be taken to have pleaded not guilty to a charge; and
- (b) the court is of the opinion that the case can properly be disposed of summarily; and
- (c) the defendant has consented to its being so disposed of;

the court may hear and determine the charge summarily and may sentence or otherwise deal with the defendant according to law.

(7) Where—

- (a) the court accepts a plea of guilty to a charge; and
- (b) the court is of the opinion that the case can properly be disposed of summarily; and
- (c) the defendant has consented to its being so disposed of;

the court may sentence or otherwise deal with the defendant according to law.

(8) Before forming an opinion whether or not a case can properly be disposed of summarily, the court shall have regard to—

- (a) any relevant representations made by the defendant; and
- (b) any relevant representations made by the prosecutor in the presence of the defendant; and
- (c) whether, if the defendant were found guilty or the defendant's plea of guilty has been accepted by the court, the court is, by virtue of this section, empowered to impose an adequate penalty, having regard to the circumstances and, in particular, to the degree of seriousness of the case; and
- (d) any other circumstances which appear to the court to make it more appropriate for the case to be dealt with on indictment rather than summarily.

(9) Where the court accepts a plea of guilty to a charge, and—

- (a) the court is of the opinion that the case cannot properly be disposed of summarily; or
- (b) the defendant has not consented to its being so disposed of;

subsections 90A (5) to (10) (inclusive) of the *Magistrates Court Act 1930* apply in relation to the defendant as if the court had accepted a plea of guilty to the charge under that section.

(10) Where the court disposes of a case summarily pursuant to this section and convicts the defendant of the offence, then, subject to subsections (11) and (12), but notwithstanding any other law of the Territory, the court may not impose a sentence of imprisonment exceeding 2 years nor impose a fine exceeding \$5,000.

(11) Where, pursuant to this section, the court disposes of a case summarily and convicts a defendant who, at the time of the commission of the offence of which he or she was convicted, had not attained the age of 18 years, then, subject to subsection (12), but notwithstanding any other law of the Territory, the court may not impose a sentence of imprisonment exceeding 6 months nor impose a fine exceeding \$1,000.

(12) Where—

- (a) the court disposes of a case summarily pursuant to this section and convicts the defendant of an offence; and
- (b) the maximum penalty prescribed for the offence by the law creating that offence (in this subsection referred to as the prescribed penalty) is less than the maximum penalty that the court, by virtue of subsection (10) or (11), as the case requires, is authorised to impose;

the court shall not impose on the defendant a penalty that exceeds the prescribed penalty.

479 Saving of other summary jurisdiction

Nothing in this Part affects the operation of any other law in force in the Territory by which jurisdiction is conferred on the Magistrates Court.

480 Certificate of dismissal

Where the Magistrates Court has heard and determined a charge in pursuance of section 477 and has dismissed the charge, the magistrate constituting the court or the registrar of the court shall, if so requested by the person charged, give that person a certificate under his or her hand stating the fact of the dismissal.

481 Summary conviction or dismissal a bar to indictment

(1) A conviction upon a charge disposed of summarily in pursuance of section 477 has the same effect as a conviction upon indictment for the

offence would have had and a person who is so convicted is not afterwards liable to prosecution for the same cause.

(2) The dismissal by the Magistrates Court of an information heard and determined by the court in pursuance of section 477 has the same effect as an acquittal of the person charged in a trial on indictment.

482 Misbehaviour at public meetings

(1) A person shall not, in any premises in which a public meeting is being held, behave in a manner that disrupts, or is likely to disrupt, the meeting.

Penalty: \$1,000 or imprisonment for 6 months.

(2) Where a person presiding at any public meeting reasonably believes that another person in the premises in which the meeting is being held is behaving in a manner that is disrupting, or is likely to disrupt, the meeting, the person so presiding may request any member of the police force who is present to remove the other person and the member of the police force may remove that other person accordingly.

493 Possession of offensive weapons

(1) A person who, without reasonable excuse, has in his or her possession, in a public place, in circumstances likely to cause alarm, an offensive weapon or a disabling substance is guilty of an offence punishable, on conviction, by a fine of \$1,000 or by imprisonment for 6 months.

(2) In subsection (1)—

disabling substance means any anaesthetising or other substance made for use for disabling a person, or intended for that use by the person who has it in his or her possession.

offensive weapon means any thing made or adapted for use for causing bodily injury, or intended for that use by the person who has it in his or her possession.

494 Possession of offensive weapon with intent

(1) A person who has on his or her person an offensive weapon or a disabling substance, in circumstances indicating intent to use the weapon or substance to commit an offence involving actual or threatened violence, is guilty of an offence punishable, on conviction, by a fine of \$2,000 or by imprisonment for 12 months.

(2) In subsection (1)—

disabling substance means any anaesthetising or other substance made for use for disabling a person, or intended for that use by the person who has it in his or her possession.

offensive weapon means any thing capable of being used for causing bodily injury.

495 Possession of knife in public place or school

(1) A person shall not, without reasonable excuse, have a knife in his or her possession in a public place or school.

Penalty: 10 penalty units or imprisonment for 6 months.

(2) Without limiting what may constitute a reasonable excuse, it is a reasonable excuse for a person to have a knife in his or her possession in a public place or school if—

- (a) the possession is necessary or reasonable for, or for a purpose incidental to—
 - (i) the lawful pursuit of the person's occupation; or
 - (ii) the preparation or consumption of food; or
 - (iii) participation in a lawful entertainment, recreation or sport; or
 - (iv) the exhibition of knives for retail or other trade purposes; or
 - (v) an organised exhibition by knife collectors; or
 - (vi) the wearing of an official uniform; or
 - (vii) religious purposes; or
- (b) the possession is of a prescribed kind.

(3) It is not a reasonable excuse for a person to have a knife in his or her possession in a public place or school solely for the purpose of self-defence or the defence of another person.

496 Sale of knife to person under 16

(1) A person shall not sell a knife to a person under the age of 16 years.

Penalty: 10 penalty units or imprisonment for 6 months.

(2) In this section—

sell includes—

- (a) barter or exchange; and
- (b) offer or expose for sale, barter or exchange; and
- (c) supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit; and
- (d) supply, or offer to supply, gratuitously but with a view to gaining or maintaining custom, or otherwise with a view to commercial gain.

510A Laying of poison

A person shall not lay any poison which endangers, or is likely to endanger, the life of any domestic animal or bird.

Penalty: \$1,000 or imprisonment for 6 months.

527A Unlawful possession

(1) A person who—

- (a) has any money or goods in his or her custody or in the custody of another person; or
- (b) has any money or goods in or on any premises, whether the money or goods is or are in or on those premises for his or her own use or for the use of another person; or
- (c) gives custody of any money or goods to a person who is not lawfully entitled to possession of the money or goods;

being money or goods that is or are reasonably suspected of having been stolen or otherwise unlawfully obtained, shall be guilty of an offence punishable, on conviction before a magistrate, by a fine not exceeding \$1,000 or by imprisonment for a term not exceeding 6 months.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant satisfies the court that he or she had no reasonable grounds for suspecting that the money or goods in relation to which the offence is alleged to have been committed was or were stolen or otherwise unlawfully obtained.

(3) Where—

- (a) a person convicted of an offence in respect of money or goods under subsection (1) is the owner of that money or those goods; or
- (b) the identity of the owner of any money or goods suspected of having been stolen or otherwise unlawfully obtained without the consent of the owner is not ascertained before the expiration of

the period of 3 months commencing on the date on which a person was convicted of an offence under subsection (1) in respect of that money or those goods;

then—

- (c) in the case of money—the money shall be paid to the Territory; and
- (d) in the case of goods—the goods may be sold by public auction and any proceeds of the sale shall be paid to the Territory.

(4) Where, at any time after the expiration of the period of 3 months referred to in subsection (3), the owner of the money or goods referred to in paragraph (3) (b) claims the money or the goods, an amount equal to the amount of that money shall be paid to him or her by the Territory, or the goods shall be returned to him or her or, if the goods have been sold, an amount equal to the proceeds of the sale shall be paid to him or her by the Territory.

(5) In this section—

premises includes any building, structure, vehicle or vessel, or any place, whether built upon or otherwise, and any part of a building, structure, vehicle, vessel or place.

527B Making a false invoice

A person who fraudulently prepares, causes to be prepared or produces an invoice, receipt or document containing a false statement, with intent to induce the belief that anything was not stolen or otherwise unlawfully obtained or to prevent anything from being seized on suspicion of being stolen or otherwise unlawfully obtained or from being produced in evidence concerning an alleged offence, is guilty of an offence punishable, on conviction, by a fine not exceeding \$200 or by imprisonment for 3 months.

543 Application of compensation

In the case of private property, the compensation for the damage or injury done shall be paid to the party aggrieved, and in the case of property of a public nature, or where any public right is concerned, shall be applied as the magistrate thinks fit.

544 Obstruction of stream etc

A person shall not place any obstruction in any stream, river or lake, being an obstruction that is likely to endanger the safety of any person.

Penalty: \$1,000 or imprisonment for 6 months.

545 Entrance to cellars etc

The owner or occupier of any premises in or on which there is any cellar, manhole or other similar place having an entrance that opens into, upon or near a public place shall have and maintain in good repair a rail, gate, fence or cover effectively enclosing that entrance and shall not permit that entrance to remain open for longer than is reasonably necessary.

Penalty: \$1,000 or imprisonment for 6 months.

545A Fighting

A person shall not fight with another person in a public place.

Penalty: \$1,000.

546A Offensive behaviour

A person shall not in, near, or within the view or hearing of a person in, a public place behave in a riotous, indecent, offensive or insulting manner.

Penalty: \$1,000.

546B Indecent exposure

A person who offends against decency by the exposure of his or her person in a public place, or in any place within the view of a person who is in a public place, is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000.

546C Noise abatement directions

(1) Where it appears to a member of the police force that offensive noise is being, or has at any time during the preceding 30 minutes been, emitted from any premises, he or she may—

- (a) direct the person whom he or she believes to be the occupier of those premises to cause the emission of the noise to cease; or
- (b) direct any person whom he or she believes to be making, or contributing to the making of, the noise to cease making, or contributing to the making of, the noise;

or he or she may give directions under both paragraphs (a) and (b).

(2) A person to whom a direction referred to in paragraph (1) (a) is given shall not, without reasonable excuse—

- (a) fail to cause the emission from the premises of the noise in respect of which the direction was given to cease promptly; or
- (b) at any time within 6 hours after the time when the direction was given, cause, permit or allow any offensive noise to be emitted from the premises.

Penalty: \$1,000 or imprisonment for 6 months.

(3) A person to whom a direction referred to in paragraph (1) (b) is given shall not, without reasonable excuse—

- (a) fail to promptly cease making, or contributing to the making of, the noise in respect of which the direction was given; or
- (b) at any time within 6 hours after the time when the direction was given, make, or contribute to the making of, any offensive noise emitted from the premises.

Penalty: \$1,000 or imprisonment for 6 months.

(4) A person shall not be convicted of an offence under this section unless the prosecution establishes that the noise to which the alleged offence relates was an offensive noise.

(5) In this section—

offensive noise means noise that, by reason of its level or nature, or the time at which it is made, or any other circumstances, is likely to be harmful or offensive to, or to interfere unreasonably with the comfort or repose of, persons who are—

- (a) where the noise is made in premises other than a public place—outside the premises; or
- (b) where the noise is made in premises that are a public place—within or outside the premises.

premises include any place, vehicle or vessel.

546D Bogus advertisements

(1) A person shall not publish nor cause to be published a bogus advertisement, knowing the advertisement to be bogus.

Penalty: \$1,000 or imprisonment for 6 months.

(2) In subsection (1)—

bogus advertisement means an advertisement or notice containing any statement or representation that is false or misleading in a material particular with respect to—

- (a) any matter related to birth, death, engagement to be married, marriage or employment; or
- (b) any matter concerning a person or the property of a person, not being the person who published the advertisement or caused it to be published.

546E Public mischief

(1) A person who, by any means, makes any representation, creates any circumstance or does any other act intended to make it appear falsely that a situation exists, or an event has occurred, that calls for investigation or action by a police officer or emergency services officer is, if the representation, circumstance or act comes to the knowledge of a police officer or emergency services officer, guilty of an offence punishable, on conviction, by a fine of \$2,000 or by imprisonment for 12 months.

(2) In subsection (1)—

emergency services officer means—

- (a) an ambulance officer; or
- (b) a member of the Australian Capital Territory Fire Brigade; or
- (c) a member of the Bush Fire Council; or
- (d) an officer of any other emergency service.

547 Apprehended violence or injury—recognisance to keep the peace etc

(1) In every case of apprehended violence by any person to the person of another, or of his or her spouse or child, or of apprehended injury to his or her property, a magistrate may on the complaint of the person apprehending such violence or injury, issue a summons or warrant as in any case of apprehended violence to the person, where at present security is required to keep the peace—and a magistrate may examine the complainant, and defendant, and their witnesses, as to the truth of the matter alleged, and, if it appears that the apprehension alleged is reasonable, but not otherwise, the magistrate may require the defendant to

enter into a recognisance to keep the peace, with or without sureties, as in any case of a like nature.

(2) If in any such case the defendant has spoken any offensive or defamatory words to or of the complainant, on an occasion when a breach of the peace might have been induced thereby, he or she may be required by the magistrate to enter into a recognisance, with or without sureties, to be of good behaviour for a term not exceeding 6 months, and, in default of its being entered into forthwith, the defendant may be imprisoned for 3 months, unless such recognisance is sooner entered into.

(3) The magistrate, in every such case, may award costs to either complainant or defendant, to be recovered as costs in summary jurisdiction cases are recoverable.

548 Alternative methods of proceeding before a magistrate

Where by this Act a person is made liable to imprisonment, or to pay a sum of money, on conviction before a magistrate, such person may be proceeded against and convicted in a summary way under this Act, so far as it is applicable, or under any law in force in the Territory regulating proceedings on summary convictions, and every provision contained in any such law shall be applicable to such proceedings as if the same were incorporated in this Act.

551 General averment of intent to defraud or injure

In any proceeding before a magistrate where it is necessary to allege an intent to defraud, or to injure, it shall be sufficient to allege that the accused did the act with such intent, without alleging an intent to defraud or to injure any particular person.

553 Sentence may be for less term or fine of less amount than that fixed

Where by any section of this Act an offender is for any offence made liable to imprisonment for a fixed term or to a fine of any fixed amount the magistrate may nevertheless pass a sentence of imprisonment of less duration or inflict a fine of less amount.

555 Application of forfeitures and penalties

(1) Every sum forfeited for the amount of any injury shall be assessed by the convicting magistrate, and paid to the party aggrieved, except where he or she is unknown, in which case such sum shall be applied in the same manner as a penalty.

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(2) Every sum imposed as a penalty by a magistrate, whether in addition to such amount, or otherwise, shall be applied as directed by the Acts in force for the time being providing for the application of penalties.

(3) Where several persons have joined in the commission of the same offence, and on conviction are severally adjudged to forfeit a sum equivalent to the amount of the injury done, no greater sum shall be paid to the party aggrieved than such amount, and the remaining sum or sums forfeited shall be applied in the same manner as any penalty imposed by a magistrate is applied.

PART 15—CONDITIONAL RELEASE OF OFFENDERS

556A Conditional release of offenders without proceeding to conviction

- (1) Where—
- (a) a person is charged before a court of the Territory with an offence against a law of the Territory; and
 - (b) the court is satisfied that the charge is proved but is of opinion, having regard to—
 - (i) the character, antecedents, age, health or mental condition of the person; or
 - (ii) the extent (if any) to which the offence is of a trivial nature; or
 - (iii) the extent (if any) to which the offence was committed under extenuating circumstances;that it is inexpedient to inflict any punishment, or to inflict any punishment other than a nominal punishment, or that it is expedient to release the person on probation;
- the court may dismiss the charge or, without proceeding to conviction, by order, direct that the person be discharged upon his or her giving security, with or without sureties, by recognisance or otherwise, to the satisfaction of the court, that—
- (c) he or she will be of good behaviour for such period, not exceeding 3 years, as the court specifies in the order; and
 - (d) he or she will, during the period so specified, comply with such conditions (if any) as the court thinks fit to specify in the order, which conditions may include—
 - (i) the condition that the offender will, during the period so specified, be subject to the supervision on probation under a person, for the time being, appointed in accordance with the order; and
 - (ii) the condition that the offender will obey all reasonable directions of a person so appointed; and
 - (iii) the condition that the offender will comply with an order made pursuant to section 437.
- (2) Where a person has been discharged in pursuance of an order made under subsection (1) upon the condition that he or she will be of good

behaviour for a period specified in the order (in this section referred to as ***the period of good behaviour***) and information is laid before a magistrate, whether before or after the expiration of the period of good behaviour, alleging that the person has, during the period of good behaviour—

- (a) failed to be of good behaviour; or
- (b) failed to comply with a condition specified in the order in accordance with paragraph (1) (d);

the magistrate may issue a summons directing the person to appear before the court by which the person was discharged at a time specified in the summons and show cause why the person should not be dealt with by that court under this section, or, if the information is laid on oath, may issue a warrant for the arrest of the person and for the person to be brought before that court to be dealt with under this section.

(3) Where a person who has been discharged by an order made under subsection (1) appears before the court by which the person was discharged on summons or warrant issued under subsection (2), the court may, if it is satisfied that the person has, during the period of good behaviour—

- (a) failed to be of good behaviour; or
- (b) failed to comply with a condition specified in that order in accordance with paragraph (1) (d);

impose on the person any penalty which the court would, if the person had then and there been convicted of the offence with which he or she was originally charged, be empowered to impose or make any order (including an order under subsection (1) or an order under subsection 556B (1)) which the court would, if he or she had then and there been convicted of the offence of which he or she was originally charged, be empowered to make.

(4) Where a recognisance that was entered into in accordance with an order made under subsection (1) is varied under section 556D, a corresponding variation shall be deemed to have been made in the terms of that order, and subsections (3) and (4) apply to and in relation to that order—

- (a) in a case where the period specified in the order in accordance with paragraph (1) (c) is to be deemed to have been varied—as if references in subsections (3) and (4) to that period were read as references to that period as it is to be deemed to have been varied; and
- (b) in a case where the conditions specified in the order in accordance with paragraph (1) (d) are to be deemed to have been varied

(whether by the alteration of such a condition or the addition of a further condition)—as if references in subsections (3) and (4) to a condition so specified were read as references to a condition included in those conditions as they are to be deemed to have been varied.

(5) Where a person is dealt with under subsection (3) the court may, in addition to imposing a penalty on the person or making an order against the person, order that any recognisance given by him or her or by a surety for him or her shall be estreated and that any other security given by or in respect of him or her shall be enforced.

556B Conditional release of offenders

(1) Subject to this section, where a person is convicted of an offence against the law of the Territory, the court by which he or she is convicted may, if it thinks fit, by order—

- (a) release the person without passing sentence upon him or her upon his or her giving security, with or without sureties, by recognisance or otherwise, to the satisfaction of the court that—
 - (i) he or she will be of good behaviour for such period as the court specifies in the order; and
 - (ii) he or she will, during the period so specified, comply with such conditions (if any) as the court thinks fit to specify in the order, which conditions may include—
 - (A) the condition that the offender will, during the period so specified, be subject to the supervision on probation under a person, for the time being appointed in accordance with the order; and
 - (B) the condition that the offender will obey all reasonable directions of a person so appointed; and
 - (C) the condition that the offender will comply with an order made pursuant to section 437; and
 - (iii) he or she will pay to the Territory such penalty (if any) as the court specifies in the order on or before a date specified in the order or by specified instalments as provided in the order; or
- (b) sentence the person to a term of imprisonment but direct that the person be released, upon him or her giving a like security to that referred to in paragraph (a), either forthwith or after he or she has served a specified part of the sentence imposed upon him or her.

(1A) A court shall not release a person under subsection (1) on condition that the person perform unpaid community work.

(2) Where a person is convicted of an offence in respect of which a fine might be imposed on the person instead of imprisonment, subsection (1) does not authorise the court by which he or she is convicted, when directing that the person be released as provided in paragraph (1) (a), to require the person to give security for the payment of a penalty exceeding the maximum amount of the fine that might be so imposed.

(3) Subsection (1) does not authorise the Magistrates Court when directing that a person be released as provided in paragraph (a) of that subsection, to require the person to give security for the payment of a penalty where the offence of which the person has been convicted is an offence in respect of which the court is empowered to sentence the person to imprisonment but the maximum term of imprisonment to which the court may sentence the person is less than 6 months.

(5) Where a court releases a person under paragraph (1) (a) upon his or her giving security for the payment of a penalty, the provisions of section 4 of the *Fines and Penalties Act 1901*, of the State of New South Wales, in its application in the Territory, do not apply to or in relation to the penalty so required to be paid.

(6) Where a court makes an order for the release of a person upon his or her giving security for the payment of a penalty, the court shall specify in the order the person to whom and the place at which the penalty, or each instalment of the penalty, as the case may be, is to be paid.

(7) The maximum amount of the penalty that a court may specify in respect of an offence in an order made under subsection (1) in relation to a person is—

- (a) where the offence is punishable by a fine—the amount of the maximum fine that the court is empowered to impose on the person for the offence; or
- (b) where the offence is not punishable by a fine—
 - (i) in the case of the Supreme Court—\$10,000; or
 - (ii) in the case of the Magistrates Court—\$2,000.

556C Failure to comply with condition of recognisance or release

(1) Where a person has been released in pursuance of an order made under section 556B upon the condition that he or she will be of good behaviour for a period specified in the order in accordance with

subparagraph 556B (1) (a) (i) (in this section referred to as *the period of good behaviour*) and information is laid before a magistrate, whether before or after the expiration of the period of good behaviour, alleging that—

- (a) the person has failed during the period of good behaviour to comply with a condition specified in the order in accordance with subparagraph 556B (1) (a) (ii); or
- (b) the person has failed to pay, as provided in the order, the penalty or an instalment of the penalty for the payment of which he or she has given security; or
- (c) the person has been convicted, whether within or outside the Territory, of an offence committed during the period of good behaviour;

the magistrate may issue a summons directing the person to appear before the court by which he or she was so released at a time specified in the summons and show cause why he or she should not be dealt with by that court under this section or, if the information is laid on oath, may issue a warrant for the arrest of the person and for his or her being brought before the court by which he or she was so released to be dealt with under this section.

(2) Sections 28 and 29 of the *Magistrates Court Act 1930* apply to and in relation to a summons or information under subsection (1).

(3) Where a person is arrested by virtue of a warrant under subsection (1) that requires him or her to be brought before the Supreme Court and the Supreme Court is not sitting at the time of his or her arrest, the person shall be brought before a magistrate who may admit the person to bail in accordance with the provisions of the *Bail Act 1992* or direct that he or she be kept in such custody as the magistrate directs until he or she can be brought before the Supreme Court to be dealt with under this section.

(4) Where a person who has been released in pursuance of an order made under section 556B appears before the court on summons or warrant issued under subsection (1) or as a result of having been committed to be dealt with by the court under subsection (3), the court, if it is satisfied that—

- (a) the person has failed during the period of good behaviour to comply with a condition specified in the order in accordance with subparagraph 556B (1) (a) (ii); or

- (b) the person has failed to pay, as provided in the order, the penalty or an instalment of the penalty for the payment of which he or she has given security; or
- (c) the person has been convicted, whether within or outside the Territory, of an offence committed during the period of good behaviour;

may—

- (d) in a case where the person was released without sentence having been passed on him or her—impose on the person any penalty which the court would, if the person had then and there been convicted of the offence with which he or she was originally charged, be empowered to impose or make any order (including an order under subsection 556B (1)) which the court would, if he or she had then and there been convicted of the offence of which he or she was originally charged, be empowered to make; or
- (e) in a case where the person having been sentenced, was released forthwith or after he or she had served a specified part of the sentence imposed on him or her—commit the person to prison to undergo imprisonment for such term, being a term not exceeding the sentence or the balance of that sentence, as the case requires, or make any order (including an order under subsection 556B (1)) which the court would, if he or she had then and there been sentenced for the offence of which he or she was originally charged, be empowered to make.

(5) Where the court commits to prison a person who had served part of his or her sentence, the order for his or her release from prison shall, if the period of good behaviour has not elapsed, be deemed to have been revoked.

(6) Where a person who has been released under subsection 556B (1) is convicted by the Supreme Court of an offence committed during the period of good behaviour, the Supreme Court may, upon convicting the person and in addition to dealing with the person for the offence of which he or she is convicted, deal with the person in like manner as it or the Magistrates Court, as the case may be, could deal with the person if he or she were before whichever of those courts is the appropriate court in pursuance of a summons or warrant issued under subsection (1).

(7) Where a person who has been released under subsection 556B (1) is convicted by the Magistrates Court of an offence committed during the period of good behaviour, the Magistrates Court may, upon convicting the

person and in addition to dealing with the person for the offence of which he or she is convicted—

- (a) if the person had been so released by an order of the Supreme Court—commit him or her to be dealt with by the Supreme Court under this section and then deal with him or her in like manner as a magistrate may deal with a person brought before him or her under subsection (3); or
- (b) if the person had been so released by order of the Magistrates Court—deal with the person in like manner as it could deal with the person if he or she were before the Magistrates Court in pursuance of a summons or warrant issued under subsection (1).

(8) Where a person is dealt with by the court under this section, the court may, in addition to the imposition of a penalty or to so dealing with him or her, but subject to subsection (9), order that any recognisance given by him or her or by a surety for him or her shall be estreated and that any other security given by or in respect of him or her shall be enforced.

(9) Where a person who has been released under subsection 556B (1) upon giving security for the payment of a penalty is dealt with by the court under this section, the person and any surety—

- (a) ceases to be liable to pay any part of the penalty that remains unpaid; and
- (b) is not entitled to recover any part of the penalty that has already been paid.

(10) Where a recognisance that was entered into in accordance with an order made under subsection 556B (1) is varied under section 556D, a corresponding variation shall be deemed to have been made in the terms of that order, and subsections (1) to (9) (inclusive) apply to and in relation to that order—

- (a) in a case where the period specified in the order in accordance with subparagraph 556B (1) (a) (i) is to be deemed to have been varied—as if references in those subsections to that period were read as references to that period as it is to be deemed to have been varied; and
- (b) in a case where the conditions specified in the order in accordance with subparagraph 556B (1) (a) (ii) are to be deemed to have been varied (whether by the alteration of such a condition or the addition of a further condition)—as if references in subsections (1) to (9) (inclusive) to a condition so specified were read as

references to a condition included in those conditions as they are to be deemed to have been varied; and

- (c) in a case where the provisions of the order with respect to the amount of the penalty, or the manner in which the penalty or the instalments of the penalty are to be paid have been varied or the amount of each instalment of the penalty has been varied—as if references in subsections (1) to (9) (inclusive) to failure to pay, as provided in the order, the penalty or an instalment of the penalty were read as references to failure to pay, as provided in the order as it is to be deemed to have been varied, the penalty or an instalment of the penalty.

556D Power to discharge or vary conditions of recognisance

(1) Where a person has given a recognisance under section 556A or 556B, the court before which the person is bound by his or her recognisance may—

- (a) upon application by an authorised person, the person who has given the recognisance or his or her surety; and
- (b) upon being satisfied that the conduct of the person bound by the recognisance has been such as to make it unnecessary that he or she should remain bound by the recognisance;

discharge the recognisance and any surety given in respect of the recognisance.

(2) Where a person has given a recognisance under section 556A or 556B, an authorised person, the person who has given the recognisance or his or her surety may apply to the court before which the person is bound by the recognisance for a variation of the terms of the recognisance including a reduction of the amount of penalty that is to be paid by the person who has given the recognisance or a variation of the manner in which the penalty or the instalments of penalty are to be paid by that person.

(3) Upon application being made to a court under subsection (2), the court may, if satisfied that notice as required by subsection (5) or (6) has been given and upon hearing the applicant and any person to whom notice has been so given, vary, if it thinks fit to do so, the terms of the recognisance in all or any of the following ways, that is to say, by:

- (a) extending or reducing the duration of the recognisance;
- (b) altering the conditions of the recognisance;

- (c) inserting additional conditions in the recognisance;
 - (d) reducing the amount of the penalty that is to be paid by the person;
 - (e) altering the manner in which the penalty or the instalments of penalty are to be paid.
- (4) A court shall not extend the duration of a recognisance given by a person under section 556A beyond the period of 3 years from the date of the order under that section discharging the person.
- (5) Where an application is made under subsection (1) or (2) by an authorised person, the authorised person shall cause notice of the application and of the time and place fixed for the hearing of the application to be served on the person who has given the recognisance and, if that person has a surety in respect of the recognisance, on the surety.
- (6) Where an application is made under subsection (1) or (2) by a person who has given a recognisance or by his or her surety, the person making the application shall cause notice of the application, and of the time and place fixed for the hearing of the application, to be served on the director of public prosecutions or on a person authorised by the director of public prosecutions, and—
- (a) if the application is made by a surety—on the person who has given the recognisance; or
 - (b) if the application is made by the person who has given the recognisance and that person has a surety—on his or her surety.
- (7) Where notice of an application is served on a surety under subsection (5) or (6), the surety may appear on the hearing or further hearing of the application and show cause before the court why he or she should not continue to be bound by the terms of the recognisance.
- (8) Where a court varies the terms of a recognisance, a person who is a surety in respect of the recognisance continues to be bound by the recognisance as so varied except that—
- (a) if the recognisance is varied by extending its duration—he or she is not bound after the expiration of the period for which he or she had agreed to be bound when he or she entered into the recognisance; and
 - (b) if the recognisance is varied by altering a condition—he or she is not bound by that condition as altered; and
 - (c) if the recognisance is altered by the addition of a condition—he or she is not bound by the additional condition;

unless he or she agrees to be bound by the recognisance as so varied.

(9) Where the court varies a recognisance by altering a condition of the recognisance, the court shall direct the extent (if any) to which a surety in respect of the recognisance is to continue to be bound by the condition as it existed before the alteration and the condition as it so existed shall be deemed, after the variation of the recognisance, to bind the surety to that extent but not otherwise.

(10) In this section—

- (a) **authorised person** means the Attorney-General or a person appointed under subsection 68 (1) of the *Supreme Court Act 1933* to prosecute indictable offences triable before the Supreme Court; and
- (b) references to a variation of the manner in which the instalments of penalty are to be paid by a person shall be read as including references to a variation of the amount of any instalments of the penalty.

556E Recovery of amounts where recognisances estreated

(1) Where the Supreme Court has, under subsection 556C (8), made an order that a recognisance given by a person or by a surety for him or her be estreated, the order shall, upon being filed by the registrar of that court, be deemed to have the same effect as if the order were a judgment by the Supreme Court in favour of the Territory against the person who has given the security or his or her surety for the amount for which the person or the surety was bound, and the like proceedings may be taken for the enforcement of the order as if it were such a judgment.

(2) Where the Magistrates Court has under subsection 556A (5) or 556C (8), made an order that a recognisance given by a person or by a surety for him or her be estreated, the order shall, upon being filed by the registrar of the Magistrates Court, be deemed to have the same effect as if it were a judgment entered by the registrar of the Magistrates Court on a claim by the Territory for recovery of the amount for which the person who has given the recognisance or the surety was bound, and the like proceedings may be taken for the enforcement of the order as if it were a judgment entered on such a claim.

PART 15A—COMMUNITY SERVICE ORDERS

556F Interpretation

In this Part, unless the contrary intention appears—

community corrections officer means a community corrections officer under the *Supervision of Offenders (Community Service Orders) Act 1985*.

community service order means an order made by a court pursuant to section 556G.

offender means a person in respect of whom a community service order is in force.

officer of the court means—

- (a) in relation to a community service order made by the Supreme Court—the registrar of the Supreme Court; and
- (b) in relation to a community service order made by the Magistrates Court—the registrar of the Magistrates Court.

supervisor means a supervisor under the *Supervision of Offenders (Community Service Orders) Act 1985*.

556G Directions to perform work

(1) Where a person who has attained the age of 18 years is convicted of an offence against a law of the Territory punishable by imprisonment, the court may, if it thinks fit, instead of sentencing the person to imprisonment, by order—

- (a) direct him or her to perform unpaid work for such number of hours, being a number that is a multiple of 8, not less than 24 and not more than 208, as the court specifies; and
- (b) require him or her to report to a community corrections officer within such time (if any) as the court specifies; and
- (c) direct that he or she be released from custody forthwith.

(2) Nothing in subsection (1) affects the power of a court—

- (a) to order an offender to make restitution of property; or
- (b) to direct an offender to pay compensation to an aggrieved person; or
- (c) to make an order for costs against an offender; or

- (d) to suspend or cancel an offender's licence to drive a motor vehicle or to disqualify an offender from holding such a licence for such period as the court thinks fit; or
- (e) to order the forfeiture of any property; or
- (f) to impose a fine upon an offender; or
- (g) to make an order in respect of an offender pursuant to paragraph 556B (1) (a).

(4) Where a community service order has been made, the officer of the court shall—

- (a) cause the order to be reduced to writing in accordance with form 1 in Schedule 5; and
- (b) cause a copy of the order to be given to the offender and another copy to be given to a community corrections officer.

(5) Where a court—

- (a) makes more than 1 community service order in respect of the same offender; or
- (b) makes a community service order while another community service order is in force in respect of the relevant offender;

the court may direct that the hours specified in the last-made order be worked concurrently with or in addition to any hours to be worked pursuant to any other community service order in force in respect of the offender.

(6) The number of hours for which an offender in respect of whom 2 or more community service orders are in force may, after the date on which the later or last of those orders was made, be required to perform unpaid work pursuant to those orders shall not exceed, in the aggregate, 208.

556J Circumstances in which a community service order may be made

(1) A court shall not make a community service order in respect of a person unless—

- (a) the person consents; and
- (b) the person submits himself or herself to a medical examination by a duly qualified medical practitioner, if so required by the court; and
- (c) the court is satisfied that—
 - (i) the person is a suitable person to perform work under such an order; and

(ii) work of a suitable nature will be provided for the person.

(2) Before making a community service order, the court shall explain to the person in respect of whom the order is to be made—

- (a) the effect that the proposed order would have; and
- (b) the consequences of noncompliance with the order and of the commission of an offence under subsection 556K (1); and
- (c) that the court has the power to review the order upon the application of a community corrections officer or of the offender.

(3) For the purpose of paragraph (1) (c), the court may have regard to—

- (a) the report of a community corrections officer; and
- (b) where a person has submitted to a medical examination by a duly qualified medical practitioner as required by the court—the report of that medical practitioner in respect of that examination.

556K Obligations of offender and consequences of failure to comply

(1) An offender who, without reasonable excuse, refuses or fails to—

- (a) comply with a community service order; or
- (b) inform a community corrections officer of any change in his or her address; or
- (c) comply with the directions of a community corrections officer with regard to the performance of work pursuant to a community service order; or
- (d) perform work pursuant to a community service order in a satisfactory manner; or
- (e) comply with any reasonable request of a supervisor while performing work pursuant to a community service order;

is guilty of an offence and shall be dealt with in accordance with this section.

(2) Where it appears to a community corrections officer that an offender has committed an offence under subsection (1), the officer may lay an information before a magistrate in respect of that offence.

(3) Where an information has been laid before a magistrate under subsection (2), the magistrate may cause a summons to be issued requiring the offender to appear, at a time and place to be fixed, before the court that made the community service order to answer to the information and to be further dealt with according to law.

(4) If the offender fails to appear before a court in answer to a summons issued in accordance with subsection (3), the court shall adjourn the proceedings and may issue a warrant for the apprehension of the offender and for the offender to be brought before that court.

(5) Subject to subsection (6), where an offender appears or is brought before a court pursuant to this section and the court is satisfied that the offender has committed an offence under subsection (1), the court may make 1 or more of the following orders:

- (a) an order extending the period during which the relevant community service order is to remain in force;
- (b) an order varying the relevant community service order by increasing the number of hours for which the offender is required to perform unpaid work pursuant to the community service order;
- (c) an order requiring the offender to perform work pursuant to the relevant community service order other than the work he or she has been performing;
- (d) an order revoking the relevant community service order;
- (e) an order that the offender pay a penalty not exceeding \$1,000.

(6) Where—

- (a) an offender appears or is brought before a court pursuant to this section; and
- (b) the court is satisfied that the offender has committed an offence under subsection (1) but is of the opinion that an order should not be made under subsection (5);

the court may decline to make such an order and may instead admonish the offender in respect of that offence.

(7) Where under subsection (5) a court revokes a community service order that was made in respect of a person pursuant to subsection 556G (1), the court may make such other order in respect of that person as it thinks fit, being an order that the court would, if the person were then before the court for sentence for the offence in respect of which the community service order was made, be empowered to make, and in making such an order the court shall have regard to—

- (a) any work performed by that person pursuant to the community service order; and
- (b) any fine imposed on the person in respect of that offence; and

(c) any other order made in respect of the person in relation to that offence.

(8) A community service order shall not be varied pursuant to paragraph (5) (b) so that the relevant offender would be required to perform, after the time at which the variation took effect, unpaid work pursuant to the order for a total period exceeding 208 hours.

556L Community service order to cease to have effect after 12 months except where period extended

(1) Subject to subsection (2) and subsection 556K (5), a community service order, unless earlier discharged, shall cease to have effect upon the expiration of the period of 12 months commencing on the date on which the order was made.

(2) On the application of a community corrections officer, a court that made a community service order may extend the period during which the order is to have effect if, having regard to circumstances that have arisen since the order was made, it appears to the court to be in the interests of justice to do so.

(3) Where an application is made to a court under subsection (2) by a community corrections officer, the court shall issue a summons to the relevant offender to appear before it on the hearing of the application and, if he or she does not appear in answer to the summons, shall adjourn the hearing of the application and may issue a warrant for the apprehension of the offender and for the offender to be brought before the court.

556M Revocation and variation of community service order and variation of nature of work

(1) On the application of an offender or a community corrections officer, the court that made the relevant community service order may—

- (a) revoke the order; or
- (b) vary the order by substituting a lesser number of hours for that specified in the order;

if, having regard to circumstances that have arisen since the order was made, it appears to the court to be in the interests of justice to do so.

(2) Where, under subsection (1), a court revokes a community service order that was made in respect of a person pursuant to subsection 556G (1), the court may make such other order in respect of that person as it thinks fit, being an order that the court would, if the offender were then before the

court for sentence for the offence in respect of which the community service order was made, be empowered to make, and in making such an order the court shall have regard to any work performed by that person pursuant to the community service order.

(3) On the application of an offender, the court that made the relevant community service order may direct a community corrections officer to arrange for the offender to do work other than the work he or she has been doing pursuant to the community service order.

(4) Where an application is made to a court under subsection (1) by a community corrections officer, the court shall issue a summons to the offender to appear before it on the hearing of the application and, if he or she does not appear in answer to the summons, the court shall adjourn the hearing of the application and may issue a warrant for the apprehension of the offender and for the offender to be brought before the court.

(5) Where an application is made to a court under this section by an offender, the officer of the court shall cause notice of the application and of the time and place fixed for the hearing of the application to be served on a community corrections officer.

556N Power of court where offender convicted of further offence

(1) Where, after a community service order has been made, the relevant offender—

- (a) is convicted by the Supreme Court of an offence; or
- (b) is committed to the Supreme Court pursuant to paragraph (3) (b);

the Supreme Court may deal with him or her in relation to the community service order in like manner as it or the Magistrates Court, as the case may be, could deal with him or her under section 556K if he or she had committed an offence under subsection 556K (1).

(2) The powers of the Supreme Court under subsection (1) with respect to a person who has been convicted by that court of an offence are in addition to its powers to deal with him or her in relation to that offence.

(3) Where, after a community service order has been made, the relevant offender is convicted by the Magistrates Court of an offence, then, in addition to dealing with the offender in relation to that offence, the court—

- (a) may, if the community service order was made by that court, deal with the offender in like manner as it could deal with him or her

under section 556K if he or she had committed an offence under subsection 556K (1) in relation to the community service order; or

- (b) shall, if the community service order was made by the Supreme Court, commit the offender to the Supreme Court to be dealt with in accordance with subsection (1).

(4) Where, pursuant to paragraph (3) (b), the Magistrates Court commits an offender to the Supreme Court, the Magistrates Court may admit him or her to bail in accordance with the provisions of the *Bail Act 1992* or direct that he or she be kept in such custody as the Magistrates Court directs until he or she can be brought before the Supreme Court.

(5) Where a court deals with a person under this section the court shall have regard to any work performed by that person pursuant to the relevant community service order.

556P Apprehension of offender about to leave Territory

(1) Where a magistrate is satisfied by information on oath that there are reasonable grounds for believing that an offender is about to leave the Territory with the intention of avoiding any of the requirements of a community service order, of this Part or of the *Supervision of Offenders (Community Service Orders) Act 1985*, the magistrate may issue a warrant for the apprehension of the offender and for the offender to be brought before the Magistrates Court.

(2) A warrant under subsection (1) shall—

- (a) be in writing signed by the magistrate issuing it; and
- (b) be directed to all police officers or to a named police officer; and
- (c) state shortly the matters of the information on which it is founded.

(3) A warrant under subsection (1) may be issued on a Sunday as on any other day.

(4) A person who has been apprehended pursuant to a warrant issued under this section shall be brought before the Magistrates Court as soon as practicable after he or she is taken into custody.

556Q Power of court re offender about to leave Territory

(1) Where the Magistrates Court is satisfied that an offender brought before it pursuant to section 556P is about to leave the Territory with the intention of avoiding any of the requirements of the relevant community service order, of this Part or the *Supervision of Offenders (Community Service Orders) Act 1985*, the court—

- (a) may, if the community service order was made by that court, deal with the offender in like manner as it could deal with him or her under section 556K if he or she had committed an offence under subsection 556K (1) in relation to the community service order; or
- (b) shall, if the community service order was made by the Supreme Court, remand him or her in custody to be brought before the Supreme Court.

(2) Where an offender has been brought before the Supreme Court pursuant to paragraph (1) (b), the court may deal with the offender in like manner as it could deal with him or her under section 556K if he or she had committed an offence under subsection 556K (1) in relation to the relevant community service order.

556S Service of documents

A document that is required or permitted under this Act to be served on or given to a person may be served or given—

- (a) by delivering a copy of the document to the person; or
- (b) by leaving a copy of the document at the last-known place of residence or business of the person with a person apparently resident or employed at that place and apparently over the age of 16 years.

556T Power of court where offender apprehended under this Part

(1) Where an offender is apprehended and brought before a court in accordance with this Part, otherwise than in accordance with section 556P, the court has the same power to remand the offender in custody, admit the offender to bail or order the discharge of the offender upon recognisance as it has in respect of a defendant.

(2) Where an offender fails to comply with the condition of a recognisance entered into for the purposes of this Part the court has the same powers as it would have if at the time the offender entered into the recognisance he or she had been a defendant.

556U Power of court in certain circumstances upon revoking community service order

Where—

- (a) a court, pursuant to subsection 556K (5) or 556M (1), revokes a community service order that was made in respect of a person under subsection 556G (1); and

- (b) the court proposes to make an order in respect of that person under subsection 556K (7) or 556M (2);

then, pending the making of that order, the court has the same powers in relation to that person as it would have if, at the time of revocation of the community service order, it had made a finding of guilt against him or her of an offence.

556V Discharge of community service order

For the purposes of this Act and the *Supervision of Offenders (Community Service Orders) Act 1985*, an offender shall be taken to have discharged a community service order if he or she has worked or is, pursuant to that Act, to be taken to have worked, pursuant to the order for the number of hours specified in the order.

556W Jurisdiction of Supreme Court

Jurisdiction is vested in the Supreme Court to hear and determine matters under this Part relating to a community service order made by that court.

**PART 15B—GRANT OF PARDON AND REMISSION OF
PENALTIES**

557 Grant of pardon

(1) The Executive may, by instrument, grant to a person a pardon in respect of an offence of which that person has been convicted.

(2) A pardon granted to a person under subsection (1) in respect of an offence discharges the person from any further consequences of the conviction for that offence.

558 Remission of penalties

The Executive may, by instrument, remit, in whole or in part, a sentence of imprisonment imposed on, a fine or other monetary penalty ordered to be paid by, or a forfeiture of property ordered to be forfeited by, a person on conviction for an offence against a law of the Territory.

PART 16—MISCELLANEOUS ENACTMENTS

563 Protection of persons acting under this Act

(1) All actions against any person, for anything done, or reasonably supposed to have been done in pursuance of this Act, shall be commenced within 6 months after the fact committed, and notice in writing of any such action, and of the cause thereof, shall be given to the defendant 1 month at least before commencement of the action, and in any such action the defendant may plead the general issue, and give the special matter in evidence.

(2) No plaintiff shall recover in any such action, if a tender of sufficient amends was made before action brought, or if a sufficient sum is paid into court, on behalf of the defendant, after action brought.

(3) If a verdict passes for the defendant, or the plaintiff becomes nonsuit, or discontinues his or her action after issue joined, or if upon demurrer, or otherwise, judgment is given against the plaintiff, the defendant shall recover costs as between solicitor and client.

564 No court fees to be taken in criminal cases

It shall not be lawful to receive any court fees, for the issuing of process on behalf of a person charged with an offence nor to receive a fee from any such person in relation to bail or for issuing any writ, or recording any appearance, or plea to an indictment, or discharging any recognisance.

565 Power of courts to bring prisoners before them

(1) Every court or judge, for the purposes of any trial or prosecution, shall have power, by order in writing directed to any gaoler, to cause any prisoner to be brought before such court or judge, under secure conduct, in order to be tried, or examined, or to give evidence, before such court or judge, or before any other court, or any magistrate, and immediately after such prisoner's trial, or examination, or his or her having so given evidence, to be returned to his or her former custody.

(2) Nothing in this section shall affect the power of a court of gaol delivery, sitting for the delivery of a gaol, to cause any prisoner to be brought before it for any purpose, without order in writing.

566 Witnesses neglecting to attend trial and captured under warrant may be admitted to bail

Where a person bound by recognisance, or served with a subpoena, to attend as a witness in any court at a trial, who has failed to appear when called in open court, either at such trial, or on the day appointed for such trial, has been captured under a warrant issued by such court, bail may be taken before any magistrate for his or her appearance at the trial.

567 Supreme Court judges may prescribe forms of indictments etc

The judges of the Supreme Court, or any 2 of them, may from time to time frame and prescribe forms of indictments, records, informations, depositions, convictions, warrants, recognisances, and proceedings, in all courts, and before all magistrates, in respect of any of the offences and matters mentioned in this Act, and every such form, so prescribed, shall be sufficient for the purpose, and be deemed sufficiently to state the offence, or matter, for or in respect of which it is framed.

574 Prosecutions for blasphemy

No person shall be liable to prosecution in respect of any publication by him or her, orally or otherwise, of words or matter charged as blasphemous, where the same is by way of argument, or statement, and not for the purpose of scoffing or reviling, nor of violating public decency, nor in any manner tending to a breach of the peace.

575 Offence notices

(1) Where a police officer—

- (a) is satisfied as to the identity of a person who has attained the age of 18 years; and
- (b) reasonably believes that the person has committed a prescribed offence;

he or she may serve an offence notice on the person.

(2) An offence notice shall—

- (a) specify the nature of the alleged prescribed offence; and
- (b) specify the date on which and the time and place at which the prescribed offence is alleged to have been committed; and
- (c) contain a statement to the effect that, if the alleged offender pays the prescribed penalty within 60 days after the date of service of the notice, no further action will be taken in respect of that offence; and

- (d) specify the place at which and the manner in which the prescribed penalty may be paid; and
 - (e) contain such other particulars (if any) as are prescribed.
- (3)** If the prescribed penalty is paid in accordance with the offence notice—
- (a) any liability of the person in respect of the alleged prescribed offence shall be deemed to be discharged; and
 - (b) no further proceedings shall be taken in respect of the alleged offence; and
 - (c) the person shall not be regarded as having been convicted of the alleged offence.
- (4)** Any substance, equipment or object seized under any Act in connection with the alleged offence that would have been liable to forfeiture in the event of a conviction shall, on payment of the prescribed penalty in accordance with the offence notice, be forfeited to the Territory.
- (5)** Subject to subsection (3), nothing in this section shall be construed as affecting the institution or prosecution of proceedings for a prescribed offence.
- (6)** Notwithstanding paragraphs (3) (b) and (c), where—
- (a) a person pays the prescribed penalty in accordance with an offence notice; and
 - (b) a conviction for the relevant prescribed offence would constitute a breach of conditions of—
 - (i) bail; or
 - (ii) a recognisance to be of good behaviour; or
 - (iii) parole;
- the person shall be dealt with as if he or she had breached the relevant conditions.
- (7)** The commissioner of police may extend, by such period as the commissioner thinks fit, the period of 60 days referred to in paragraph (2) (c) upon receipt, before the end of that period, of a written request to do so from a person who has been served with an offence notice.
- (8)** Where a person who has been served with an offence notice fails to pay the prescribed penalty—
- (a) within 60 days after the date of service of the notice; or
 - (b) if an extension of time has been granted under subsection (7), within that period;

the commissioner of police shall cause an information, in writing and on oath, to be laid before a magistrate commencing proceedings against the person in respect of the offence to which the offence notice relates.

(9) Where an information is laid before a magistrate in accordance with subsection (8), the magistrate shall issue his or her warrant in the first instance for the arrest of the person in accordance with subsection 42 (1) of the *Magistrates Court Act 1930*.

(10) In this section—

prescribed offence means an offence against section 546C of this Act or subsection 84 (1) of the *Liquor Act 1975*.

prescribed penalty means 1 penalty unit.

577 Change of venue

In any criminal proceeding, if it is made to appear to the court—

- (a) that a fair or unprejudiced trial cannot otherwise be had; or
- (b) that for any other reason, it is expedient so to do;

the Supreme Court may change the venue, and direct the trial to be had in such other district, or at such particular place, as the court thinks fit, and may for that purpose make all such orders as justice appears to require.

578 Regulations

The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

SCHEDULE 1

(See s 2 (1))

REPEAL OF ACTS

| Reference to Act | Subject or short title | Extent of repeal |
|--|--|---|
| 4 Vic. No. 22 | Administration of Justice | So much of s. 10 as relates to appointment of Crown Prosecutor at Quarter Sessions, s. 12, and so much of s. 15 as relates to criminal proceedings. |
| 7 Vic. No. 16 | Deeds Registration | Section 28. |
| 11 & 12 Vic., c. 42, adopted by 14 Vic. No. 43 | Duties of Justices (Indictable Offences) Act | Section 17. |
| 13 Vic. No. 16 | Law of Evidence | So much of s. 5 as is hitherto unrepealed. |
| 13 Vic. No. 18 | Deodands Abolition | Section 1 and 3. |
| 14 Vic. No. 43 | Imperial Acts Adoption and Application | Section 16. |
| 16 Vic. No. 1 | Acts Shortening Act | Section 13. |
| 16 Vic. No. 14 | Law of Evidence Amendment | Section 10 and so much of s. 11 as is hitherto unrepealed. |
| 17 Vic. No. 39 | “The Justices Act Amendment Act of 1853.” | Section 13. |
| 22 Vic. No. 7 | Law of Evidence Further Amendment | Section 10. |
| 22 Vic. No. 12 | Acts Shortening Act | So much of section 7 as relates to criminal pleadings and proceedings and section 10. |
| 22 Vic. No. 18 | “District Courts Act of 1885” | Section 25. |
| 23 Vic. No. 1 | Quarter Sessions Chairman | The whole. |
| 24 Vic. No. 6 | Common Law Procedure Act Extension | Sections 1 and 2 so far as they relate to criminal trials. |
| 30 Vic. No. 9 | “District Courts Amendment Act of 1866.” | All hitherto unrepealed, except so far as it relates to District Courts. |
| 31 Vic. No. 25 | “Treason Felony Act of 1868” | The whole. |
| 46 Vic. No. 17 | “Criminal Law Amendment Act.” | All hitherto unrepealed, except s. 295, from the words “And every solemn declaration” to the end of the section; ss. 336 to 340 inclusive; the last clause of s. 342; s. 343; ss. 346, 347; so much of s. 359 as relates to the custody of records by the Prothonotary; s. 434; s. 436; ss. 440 to 444 inclusive; the last clause of s. 445; ss. 453, 454, 455; so much of s. 459 as relates to Courts of Petty Sessions; s. 471; and the Seventh Schedule. |

Crimes Act 1900

SCHEDULE 1—continued

| Reference to Act | Subject or short title | Extent of repeal |
|------------------|--|--|
| 52 Vic. No. 6 | “Criminal Law Amendment Act of 1888.” | The whole, except s. 2. |
| 55 Vic. No. 5 | “Criminal Law and Evidence Amendment Act of 1891.” | All hitherto unrepealed, except ss. 17, 23, 24, 26, and 34, and so much of s. 35 as relates to 40 Vic. No. 14. |
| 57 Vic. No. 23 | “First Offenders Probation Act of 1894.” | The whole. |
| No. 11, 1898 | “Evidence Act, 1898” | Sections 7, 27, 31, 37, 38, 39, 40, 41 and 48. |
| No. 12, 1898 | “Evidence (Penalties) Act” | The whole. |
| No. 30, 1898 | “Accused Persons Evidence Act of 1898.” | The whole. |

SCHEDULE 2

(See s 4)

**DOMESTIC VIOLENCE OFFENCES UNDER THE
CRIMES ACT 1900**

| column 1 provision | column 2 description of offence |
|-----------------------|---|
| 12 | murder |
| 15 | manslaughter |
| 19 | intentionally inflicting grievous bodily harm |
| 20 | recklessly inflicting grievous bodily harm |
| 21 | wounding |
| 22 | assault with intent to commit certain indictable offences |
| 23 | intentionally or recklessly inflicting actual bodily harm |
| 24 | assault occasioning actual bodily harm |
| 25 | unlawfully or negligently causing grievous bodily harm |
| 26 | common assault |
| 27 | acts endangering human life |
| 28 | acts endangering the health, safety or physical wellbeing of another person |
| 29 | culpable driving of a motor vehicle |
| 30 | threatening to kill |
| 31 | threatening to inflict grievous bodily harm |
| 32 (1) (a) | making a demand with a threat to kill or inflict grievous bodily harm |

Crimes Act 1900

| | |
|-------------|--|
| 32 (2) (a) | making a demand with a threat to endanger health, safety or physical wellbeing |
| 33 | possession of an object with intent to use it to kill or cause grievous bodily harm |
| 34 | forcible confinement or imprisonment |
| 34A | stalking |
| 36 | abduction of a young person |
| 37 | kidnapping |
| 92A | inflicting grievous bodily harm on a person with intent to engage in sexual intercourse |
| 92B | inflicting actual bodily harm on a person with intent to engage in sexual intercourse |
| 92C | unlawful assault or threatening to inflict grievous or actual bodily harm with intent to engage in sexual intercourse |
| 92D | sexual intercourse without consent |
| 92E | sexual intercourse with a young person |
| 92F | inflicting grievous bodily harm with intent to commit an act of indecency |
| 92G | inflicting actual bodily harm with intent to commit an act of indecency |
| 92H | unlawful assault or threatening to inflict grievous or actual bodily harm with intent to commit an act of indecency |
| 92J | committing an act of indecency without consent |
| 92K | committing an act of indecency upon or in the presence of a young person |
| 92L | incest or similar offences |
| 92M | abducting or detaining a person with intent to engage in sexual intercourse |
| 128 | destroying or damaging property |
| 129 | destroying or damaging property by means of fire or explosive |
| 133 | possession of an article with intent to use it to destroy property |
| 145 (1) (a) | being armed with a weapon or instrument with intent to commit an offence |
| 146 | forcible entry on to land in a manner likely to cause a breach of the peace |
| 493 | possession of an offensive weapon or disabling substance in a public place in circumstances likely to cause alarm |
| 494 | possession of an offensive weapon or disabling substance in circumstances indicating intent to use the weapon or substance |

Crimes Act 1900

SCHEDULE 3

(See s 358)

FORM 1

Discharge of persons committed for trial

Certificate of Attorney-General

This is to certify that I decline to file any information against A.B., a prisoner now in the gaol at _____, under the warrant of R.W., justice of the peace, upon a charge of [*stating same*].

Given under my hand this _____ day of _____, 18 ____ .
To their Honors the Judges of the Supreme Court _____ L. M.,
Attorney-General.

FORM 2

Warrant

Supreme Court of the Australian Capital Territory

Whereas A.B. is detained in your custody under the warrant of R.W., justice of the peace, upon a charge of [*as in certificate*], and it has been certified to the judges of this court by Her Majesty's Attorney-General that he or she declines to file any information against A.B. for the offence, you are therefore required forthwith to discharge A.B. from your custody under the warrant.

Given under my hand this _____ day of _____, 18 ____ .
To the Sheriff and to the keeper of H. M.'s Gaol at _____ S. M.,
A Judge of the Supreme Court.

FORM 3

Discharge of persons under remand

Certificate of Attorney-General

This is to certify that I decline to proceed further upon an indictment filed against A.B., a prisoner now in the gaol at _____, under the order of His or Her Honor _____, a Judge of the Supreme Court, upon a charge of [*stating same*].

Given under my hand this _____ day of _____, 18 ____ .
To their Honors the Judges of the Supreme Court _____ L. M.,
Attorney-General.

Crimes Act 1900

SCHEDULE 3—continued

FORM 4

Warrant

Supreme Court of the Australian Capital Territory

Whereas A.B. is detained in your custody under the order of His or Her Honor _____, a Judge of the Supreme Court, upon a charge of [*as in certificate*], and it has been certified to the judges of this court by Her Majesty's Attorney-General that he or she declines to proceed further upon an indictment filed against A.B. for the offence, you are therefore required forthwith to discharge A.B. from your custody under the order.

Given under my hand this _____ day of _____, 18 ____.

To the Sheriff and to the keeper of
H. M.'s Gaol at _____

S. M.,
A Judge of the Supreme Court.

Crimes Act 1900

SCHEDULE 5

FORM 1

(See s 556G)

*Australian Capital Territory
Crimes Act 1900*

In the (*court*) at Canberra.

The day of 19 .

Whereas—

- the defendant (*name and address of defendant*), being a person who has attained the age of 18 years, on the day of , 19 , was convicted of (*here set out the offence of which the defendant was convicted*); and
- the requirements of section 556J of the *Crimes Act 1900* have, in respect of the defendant, been satisfied,

It is this day ordered that the defendant shall for his or her offence—

- perform unpaid work for hours; and
- report to (*here specify the authorised officer, whether by name or otherwise, to whom the defendant is to report*) (*and, where the court directs the defendant to so report within a particular time, add*) within (*here set out the time within which the defendant is to report to the authorised officer*).

* And it is further ordered that the defendant be released from custody forthwith.

* Judge of the Supreme Court.

* Magistrate.

* delete if inapplicable.

SCHEDULE 6

(See s 448)

LIST OF OTHER ALLEGED OFFENCES

Office of the Director of Public Prosecutions
Canberra, ACT

To

charged with

.....

Memorandum for accused's information

- (1) The list on the back hereof gives particulars of.....other offences which you are alleged to have committed.
(2) If you are convicted of the charge of.....firstmentioned above, you may before sentence is passed, if the presiding judge or magistrate so decides and the prosecutor consents, admit all or any of the other offences set out on the back hereof and ask that any of those offences that you have admitted be taken into account by the presiding judge or magistrate in passing sentence upon you.
(3) If you are convicted and the presiding judge or magistrate does take any of the other offences that you have admitted into account, the maximum sentence that may be imposed upon you will nevertheless be the maximum sentence for the offence of.....firstmentioned above.
(4) No further proceedings may be taken against you in respect of the other offences taken into account unless your conviction for the offence of.....firstmentioned above is set aside or quashed.
(5) If proceedings are taken in the circumstances mentioned in (4) or if the presiding judge or magistrate does not for any reason take any 1 or more of the other offences that you have admitted into account, your admission cannot be used as evidence against you in any proceedings taken in the circumstances mentioned or taken in respect of the offences not taken into account.

Signature of the Director of Public Prosecutions, or of a person authorised in writing by him or her.....

Date.....

Signature of accused acknowledging receipt of copy of this document

Date.....

CERTIFICATE

In sentencing.....for the offence of.....this day, I have taken into account the following offences alleged against and admitted by him or her, that is to say, the offences numbered.....in the list on the back hereof.

Dated this day of 19 .

.....
A Judge of the Supreme Court
or A Magistrate of the Magistrates Court

Crimes Act 1900

SCHEDULE 6—continued

[BACK OF FORM]

| Number | Place where offence was committed | Date of offence | Offence(s) (Brief description) | Whether or not committed for trial? Yes or No |
|--------|---|--------------------|-----------------------------------|--|
|--------|---|--------------------|-----------------------------------|--|

ENDNOTES

1 About this republication

This is a republication of the *Crimes Act 1900* as in force on 15 December 1999. It includes all amendments made to the Act up to Act 1999 No 71.

Amending laws are annotated in the table of legislation and to the extent indicated below in the table of amendments.

The Parliamentary Counsel's Office currently prepares 2 kinds of republications of ACT laws: authorised printed republications to which the *Legislation (Republication) Act 1996* applies and unauthorised electronic republications. The status of this republication appears on the cover.

Section 13 of the *Legislation (Republication) Act 1996* authorises the Parliamentary Counsel, in preparing a law for republication, to make textual amendments of a formal nature which the Parliamentary Counsel considers desirable in accordance with current legislative drafting practice. The amendments do not effect a substantive change in the law.

In preparing this republication, amendments have not been made under section 13.

Not all amendments made under section 13 are annotated in the table of amendments. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

2 About the republished Act

The *Crimes Act 1900* (the **republished Act**) was in force in the Territory immediately before 1 January 1911 and was continued in force by the *Seat of Government Acceptance Act 1909* (Cwth).

Under the *Seat of Government (Administration) Act 1910* (Cwth) the republished Act had effect in the Territory as if it were a law of the Territory. Before self-government, the republished Act continued in effect subject to ordinances made under the *Seat of Government (Administration) Act 1910*.

Under the *Crimes Legislation (Status and Citation) Act 1992* (now repealed), the republished Act was taken to be a law made by the Legislative Assembly.

3 Abbreviation key

Key to abbreviations in tables

| | |
|---|--|
| am = amended | pres = present |
| amdt = amendment | prev = previous |
| ch = chapter | (prev...) = previously |
| cl = clause | prov = provision |
| def = definition | pt = part |
| div = division | r = rule/subrule |
| exp = expires/expired | reg = regulation/subregulation |
| Gaz = Gazette | renum = renumbered |
| hdg = heading | reloc = relocated |
| ins = inserted/added | R[X] = Republication No |
| LR = Legislation (Republication) Act 1996 | s = section/subsection |
| mod = modified | sch = schedule |
| No = number | sdiv = subdivision |
| notfd = notified | sub = substituted |
| o = order | SL = Subordinate Law |
| om = omitted/repealed | sp = spent |
| orig = original | * = SL unless otherwise stated |
| p = page | † = Act or Ordinance unless otherwise stated |
| par = paragraph | |

Crimes Act 1900

4 Table of legislation

| Part 1—New South Wales legislation | | | | |
|--|------------------|----------------------|---|-------------------------|
| Act† | Year and number† | Assent | Commencement | Transitional provisions |
| <i>Crimes Act 1900</i> | 1900 No 40 | 31 Oct 1900 | 31 Oct 1900 | |
| Part 2—Legislation before self-government | | | | |
| Ordinance† | Year and number† | Gazette notification | Commencement | Transitional provisions |
| <i>Crimes Ordinance 1942</i> | 1942 No 12 | 28 May 1942 | 28 May 1942 | |
| <i>Crimes Ordinance 1944</i> | 1944 No 1 | 20 Jan 1944 | 20 Jan 1944 | — |
| <i>Crimes Ordinance 1951</i> | 1951 No 14 | 14 Dec 1951 | 14 Dec 1951 | — |
| <i>Crimes Ordinance 1963</i> | 1963 No 11 | 23 May 1963 | 23 May 1963 | — |
| <i>Crimes Ordinance 1968</i> | 1968 No 4 | 14 Mar 1968 | 15 Mar 1968 | s 20 (1) |
| <i>Crimes Ordinance 1970</i> | 1970 No 40 | 22 Oct 1970 | 22 Oct 1970 | — |
| <i>Crimes Ordinance 1971</i> | 1971 No 2 | 25 Feb 1971 | s 8: 29 Mar 1971 remainder: 1 Mar 1971 | ss 9 and 10 |
| <i>Crimes Ordinance 1974</i> | 1974 No 17 | 17 Apr 1974 | 17 Apr 1974 | s 14 |
| <i>Crimes (Amendment) Ordinance 1978</i> | 1978 No 45 | 21 Dec 1978 | 21 Dec 1978 | — |
| <i>Crimes (Amendment) Ordinance 1979</i> | 1979 No 1 | 31 Jan 1979 | 31 Jan 1979 | — |
| <i>Crimes (Amendment) Ordinance 1983</i> | 1983 No 27 | 22 Sept 1983 | 22 Sept 1983 | s 32 |
| | as amended by | | | |
| | 1983 No 45 | 29 Sept 1983 | 22 Sept 1983 | — |
| | 1985 No 16 | 17 Apr 1983 | s 6 (1): 22 Sept 1983 remainder: 17 Apr 1985 | s 6 (2) |
| <i>Crimes (Amendment) Ordinance (No. 3) 1983</i> | 1983 No 55 | 18 Nov 1983 | 18 Nov 1983 | — |
| <i>Crimes (Amendment) Ordinance 1984</i> | 1984 No 32 | 29 June 1985 | 29 June 1985 | — |
| <i>Crimes (Amendment) Ordinance (No. 2) 1984</i> | 1984 No 78 | 19 Dec 1984 | 19 Dec 1984 | — |
| <i>Crimes (Amendment) Ordinance 1985</i> | 1985 No 11 | 8 Mar 1985 | 12 Aug 1985 (see Gaz 1985 No S313) | — |
| <i>Crimes (Amendment) Ordinance (No. 2) 1985</i> | 1985 No 16 | 17 Apr 1985 | s 6 (1): 22 Sept 1983 remainder: 17 Apr 1985 | s 6 (2) |
| <i>Crimes (Amendment) Ordinance (No. 3) 1985</i> | 1985 No 40 | 5 Sept 1985 | 5 Sept 1985 | s 9 |

Crimes Act 1900

4 Table of legislation—continued

Part 3—Legislation after self-government—continued

| Act† | Year and number† | Gazette notification | Commencement | Transitional provisions |
|--|------------------|----------------------|--|-------------------------|
| <i>Crimes (Amendment) Ordinance (No. 4) 1985</i> | 1985 No 44 | 13 Sept 1985 | ss 1, 3, 4, 5 (2) and 12 (1): 13 Sept 1985 remainder: 1 Jan 1986 | s 10 |
| <i>Crimes (Amendment) Ordinance (No. 5) 1985</i> | 1985 No 62 | 28 Nov 1985 | 28 Nov 1985 | ss 5 and 6 |
| <i>Magistrates Court Ordinance 1985</i> | 1985 No 67 | 19 Dec 1985 | 1 Feb 1986 (see Gaz 1986 No G3 p 265) | — |
| <i>Crimes (Amendment) Ordinance (No. 6) 1985</i> | 1985 No 75 | 20 Dec 1985 | 20 Dec 1985 | — |
| <i>Children's Services (Miscellaneous Amendments) Ordinance 1986</i> | 1986 No 14 | 4 June 1986 | 26 Apr 1988 (see Gaz 1988 No S116) | — |
| <i>Crimes (Amendment) Ordinance 1986</i> | 1986 No 15 | 6 June 1986 | 1 July 1986 | s 10 |
| <i>Crimes (Amendment) Ordinance (No. 2) 1986</i> | 1986 No 27 | 31 July 1986 | 31 July 1986 | — |
| | as amended by | | | |
| | 1986 No 37 | 15 Aug 1986 | 31 July 1986 | — |
| <i>Domestic Violence (Miscellaneous Amendments) Ordinance 1986</i> | 1986 No 53 | 4 Sept 1986 | 1 Oct 1986 (see Gaz 1986 No S484) | — |
| <i>Crimes (Amendment) Ordinance (No. 4) 1986</i> | 1986 No 57 | 3 Oct 1986 | 3 Oct 1986 | s 15 |
| | as amended by | | | |
| | 1987 No 3 | 11 Feb 1987 | 11 Feb 1987 | s 11 (2) |
| <i>Magistrates Court (Amendment) Ordinance (No. 3) 1986</i> | 1986 No 74 | 14 Nov 1986 | 14 Nov 1986 | — |
| <i>Crimes (Amendment) Ordinance 1987</i> | 1987 No 3 | 11 Feb 1987 | 11 Feb 1987 | — |
| <i>Crimes (Amendment) Ordinance 1988</i> | 1988 No 44 | 27 July 1988 | 27 July 1988 | — |
| <i>Crimes (Amendment) Ordinance (No. 2) 1988</i> | 1988 No 75 | 19 Oct 1988 | ss 1-3 and 7-9: 19 Oct 1988 remainder: 19 Dec 1988 (see Gaz 1988 No S384) | — |

Part 3—Legislation after self-government

Crimes Act 1900

4 Table of legislation—continued

Part 3—Legislation after self-government—continued

| Act† | Year and number† | Gazette notification | Commencement | Transitional provisions |
|--|------------------|----------------------|---|-------------------------|
| <i>Crimes (Amendment) Ordinance 1990</i> | 1990 No 1 | 23 May 1990 | 23 May 1990 | s 6 |
| <i>Crimes (Amendment) Ordinance (No. 2) 1990</i> | 1990 No 2 | 23 May 1990 | 15 June 1990 | — |
| <i>Evidence (Amendment) Ordinance 1990</i> | 1990 No 4 | 27 June 1990 | 27 June 1990 | — |
| <i>Self-Government (Consequential Amendments) Ordinance 1990</i> | 1990 No 5 | 27 June 1990 | ss 1 and 2: 27 June 1990 remainder: 1 July 1990 | s 6 (2) |
| <i>Crimes (Amendment) Act (No. 3) 1990</i> | 1990 No 66 | 24 Dec 1990 | ss 1 and 3: 24 Dec 1990 remainder: 6 Feb 1991 (see Gaz 1991 No S5) | — |
| <i>Weapons (Consequential Amendments) Act 1991</i> | 1991 No 9 | 3 Apr 1991 | ss 1 and 2: 3 Apr 1991 remainder: 3 Oct 1991 | — |
| <i>Crimes (Amendment) Act 1991</i> | 1991 No 18 | 10 May 1991 | 10 May 1991 | — |
| <i>Magistrates and Coroner's Courts (Registrar) Act 1991</i> | 1991 No 44 | 20 Sept 1991 | ss 1 and 2: 20 Sept 1991 remainder: 25 Sept 1991 (see Gaz 1991 No S103 p 2) | — |
| <i>Crimes (Amendment) Act (No. 2) 1991</i> | 1991 No 78 | 11 Dec 1991 | ss 1-3: 11 Dec 1991 remainder: 11 June 1992 | — |
| <i>Crimes (Amendment) Act (No. 3) 1991</i> | 1991 No 90 | 24 Dec 1991 | 24 Dec 1991 | s 4 (2) |
| <i>Proceeds of Crime (Consequential Amendments) Act 1991</i> | 1991 No 104 | 10 Jan 1992 | ss 1 and 2: 10 Jan 1992 remainder: 10 Feb 1992 (see s 2 (2) and Gaz 1992 No S21) | — |
| <i>Crimes (Amendment) Act (No. 4) 1991</i> | 1991 No 120 | 10 Jan 1992 | 10 Jan 1992 | — |
| <i>Crimes (Amendment) Act (No. 5) 1991</i> | 1991 No 122 | 10 Jan 1992 | 10 Jan 1992 | — |
| <i>Crimes Legislation (Status and Citation) Act 1992</i> | 1992 No 6 | 28 May 1992 | 28 May 1992 | ss 3 and 5 |
| <i>Bail (Consequential Amendments) Act 1992</i> | 1992 No 9 | 28 May 1992 | ss 1 and 2: 28 May 1992 remainder: 28 Nov 1992 | s 3 |

Crimes Act 1900

4 Table of legislation—continued

Part 3—Legislation after self-government—continued

| Act† | Year and number† | Gazette notification | Commencement | Transitional provisions |
|--|------------------|----------------------|---|-------------------------|
| <i>Statute Law Revision (Miscellaneous Provisions) Act 1992</i> | 1992 No 23 | 4 June 1992 | 4 June 1992 | — |
| <i>Crimes (Amendment) Act 1992</i> | 1992 No 35 | 8 July 1992 | 8 July 1992 | — |
| <i>Prostitution (Consequential Amendments) Act 1992</i> | 1992 No 65 | 1 Dec 1992 | ss 1 and 2: 1 Dec 1992 remainder: 1 June 1993 | s 3 |
| <i>Crimes (Amendment) Act (No. 2) 1992</i> | 1992 No 76 | 24 Dec 1992 | 24 Dec 1992 | — |
| <i>Crimes (Amendment) Act 1993</i> | 1993 No 3 | 1 Mar 1993 | 1 Mar 1993 | — |
| <i>Crimes (Amendment) Act (No. 2) 1993</i> | 1993 No 73 | 22 Oct 1993 | ss 1-3: 22 Oct 1993 remainder: 15 Nov 1993 (see Gaz 1993 No S230) | — |
| <i>Supreme Court (Amendment) Act (No. 2) 1993</i> | 1993 No 91 | 17 Dec 1993 | 17 Dec 1993 | — |
| <i>Public Sector Management (Consequential and Transitional Provisions) Act 1994</i> | 1994 No 38 | 30 June 1994 | ss 1 and 2: 30 June 1994 remainder: 1 July 1994 (see Gaz 1994 No S142 p 2) | ss 3, 5-12, 15 and 19 |
| <i>Crimes (Amendment) Act 1994</i> | 1994 No 46 | 7 Sept 1994 | ss 1-3: 7 Sept 1994 remainder: 6 Feb 1995 (see Gaz 1995 No S33) | — |
| <i>Crimes (Amendment) Act (No. 2) 1994</i> | 1994 No 75 | 23 Nov 1994 | ss 1-3: 23 Nov 1994 remainder: 1 Dec 1994 (see Gaz 1994 No S270) | — |
| <i>Acts Revision (Victims of Crime) Act 1994</i> | 1994 No 84 | 15 Dec 1994 | ss 1 and 2: 15 Dec 1994 remainder: 15 June 1995 | — |
| <i>Intoxicated Persons (Consequential Amendments) Act 1994</i> | 1994 No 86 | 15 Dec 1994 | ss 1 and 2: 15 Dec 1994 remainder: 15 June 1995 (see s 2 (2)) | — |
| <i>Statutory Offices (Miscellaneous Provisions) Act 1994</i> | 1994 No 97 | 15 Dec 1994 | ss 1 and 2: 15 Dec 1994 remainder: 15 Dec 1994 (see Gaz 1994 No S293) | pt III (ss 4-9) |
| <i>Evidence (Amendment) Act 1994</i> | 1994 No 98 | 15 Dec 1994 | 15 Dec 1994 | s 8 |
| <i>Crimes (Amendment) Act 1995</i> | 1995 No 2 | 19 June 1995 | 19 June 1995 | — |

Crimes Act 1900

4 Table of legislation—continued

Part 3—Legislation after self-government—continued

| Act† | Year and number† | Gazette notification | Commencement | Transitional provisions |
|--|------------------|----------------------|---|-------------------------|
| <i>Periodic Detention Act 1995</i> | 1995 No 3 | 19 June 1995 | ss 1 and 2: 19 June 1995 remainder: 1 Sept 1995 (see Gaz 1995 No S222) | — |
| <i>Crimes (Amendment) Act (No. 2) 1995</i> | 1995 No 49 | 18 Dec 1995 | ss 1-3: 18 Dec 1995 remainder: 18 June 1996 | — |
| <i>Crimes (Amendment) Act (No. 3) 1995</i> | 1995 No 50 | 18 Dec 1995 | ss 1-3: 18 Dec 1995 remainder: 1 Dec 1997 (see Gaz 1997 No S385) | — |
| <i>Crimes (Amendment) Act 1996</i> | 1996 No 31 | 1 July 1996 | 1 July 1996 | s 5 |
| <i>Crimes (Amendment) Act (No. 2) 1996</i> | 1996 No 36 | 10 July 1996 | 10 July 1996 | — |
| <i>Firearms Act 1996</i> | 1996 No 74 | 20 Dec 1996 | ss 1 and 2: 20 Dec 1996 remainder: 17 May 1997 (see Gaz 1997 No S135) | — |
| <i>Crimes (Amendment) Act 1997</i> | 1997 No 10 | 16 May 1997 | 16 May 1997 | — |
| <i>Crimes (Amendment) Act (No. 2) 1997</i> | 1997 No 23 | 29 May 1997 | ss 1-3: 29 May 1997 remainder: 30 May 1997 (see Gaz 1997 No S149) | — |
| <i>Motor Traffic (Amendment) Act (No. 2) 1997</i> | 1997 No 52 | 19 Sept 1997 | ss1-3: 19 Sept 1997 remainder: 2 Mar 1998 (see s 2 (2) and Gaz 1997 No S427) | — |
| <i>Crimes (Amendment) Act (No. 3) 1997</i> | 1997 No 86 | 21 Nov 1997 | ss 1-3: 21 Nov 1997 remainder: 11 Dec 1997 (see Gaz 1997 No S410) | — |
| <i>Legal Practitioners (Consequential Amendments) Act 1997</i> | 1997 No 96 | 1 Dec 1997 | ss 1 and 2: 1 Dec 1997 remainder: 1 June 1998 (see s 2 (2)) | — |
| <i>Crimes (Amendment) Act (No. 4) 1997</i> | 1997 No 117 | 24 Dec 1997 | 24 Dec 1997 | — |
| <i>Crimes (Amendment) Act 1998</i> | 1998 No 9 | 10 June 1998 | 10 June 1998 | — |
| <i>Crimes (Amendment) Act (No. 2) 1998</i> | 1998 No 22 | 10 July 1998 | 10 July 1998 | — |

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4 Table of legislation—continued

Part 3—Legislation after self-government—continued

| Act† | Year and number† | Gazette notification | Commencement | Transitional provisions |
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| <i>Crimes (Amendment) Act (No. 3) 1998</i> | 1998 No 29 | 10 July 1998 | ss 1 and 2: 10 July 1998 remainder: 1 Jan 1999 (see s 2 (2) and Gaz 1998 No 50 p 1095) | s 10 |
| <i>Crimes (Amendment) Act (No. 4) 1998</i> | 1998 No 57 | 27 Nov 1998 | 27 Nov 1998 | — |
| <i>Custodial Escorts (Consequential Provisions) Act 1998</i> | 1998 No 67 | 23 Dec 1998 | ss 1 and 2: 23 Dec 1998 remainder: 23 Dec 1998 (see Gaz 1998 No 51 p 1118) | — |
| <i>Crimes (Amendment) Act (No. 5) 1998</i> | 1998 No 71 | 23 Dec 1998 | 23 Dec 1998 | — |
| <i>Crimes (Amendment) Act 1999</i> | 1999 No 32 | 25 June 1999 | ss 1-4: 25 June 1999 remainder (ss 5-31): 1 Oct 1999 | — |
| <i>Motor Traffic (Amendment) Act (No 2) 1999</i> | 1999 No 50 | 17 Sept 1999 | ss 1-3: 17 Sept 1999 remainder: 6 Oct 1999 (see Gaz 1999 No S58 p 2) | — |
| <i>Children and Young People (Consequential Amendments) Act 1999</i> | 1999 No 64 | 10 Nov 1999 | ss 1 and 2: 10 Nov 1999 remainder (ss 3 and 4): see s 2 (2) and endnote 7 | — |
| <i>Crimes Amendment Act (No 2) 1999</i> | 1999 No 71 | 15 Dec 1999 | 15 Dec 1999 | — |

5 Table of amendments

| Provision | How affected† |
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| s 2 | am 1983 No 27 |
| s 3 | am 1985 No 44 |
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| hdg preceding s 4 | om 1983 No 27 (as am by 1985 No 16) |
| s 4 | am 1971 No 2; 1983 No 27 (as am by 1983 No 45); 1983 No 55; 1984 No 78; 1985 Nos 40 and 44; 1990 No 5; 1991 Nos 104 and 120; 1992 Nos 9 and 23; 1995 No 2; 1995 No 50; 1997 Nos 23 and 96; 1998 No 22 |
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| s 6 | om 1985 No 44 |
| s 7 | am 1983 No 27 om 1985 No 44 |
| s 9 | am 1968 No 4 sub 1978 No 45; 1983 No 27 |
| s 10 | am 1968 No 4; 1978 No 45 om 1983 No 27 |
| pt 2 (ss 11-16) | om 1968 No 4 |
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| hdg preceding s 17 | om 1983 No 27 (as am by 1985 No 16) |
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| s 10 | ins 1990 No 2 |
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| ss 18, 19 | am 1983 No 27 sub 1990 No 2 |
| s 20 | sub 1990 No 2 |
| s 21 | am 1983 No 27 sub 1990 No 2 |
| ss 22, 23 | sub 1990 No 2 |
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| hdg preceding s 26 | om 1983 No 27 (as am by 1985 No 16) |
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| s 29 | am 1983 No 27 |
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| S. 30 | am 1983 No 27 |
| | om 1988 No 75 |
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| ss 41-43 | am 1983 No 27 |
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| | sub 1979 No 1 |
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| hdg preceding s 55 | om 1983 No 27 (as am by 1985 No 16) |
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| hdg preceding s 56 | om 1983 No 27 (as am by 1985 No 16) |
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| hdg preceding s 92 | om 1983 No 27 (as am by 1985 No 16) |
| s 92 | om 1971 No 2 |
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| ss 92A-92D | ins 1985 No 62 |
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| ss 92F-92J | ins 1985 No 62 |
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| ss 101-103 | am 1983 Nos 27 and 55 |
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| hdg preceding s 106 | om 1983 No 27 (as am by 1985 No 16) |
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| s 110 | am 1968 No 4 |

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| hdg preceding s 117 | om 1983 No 27 (as am by 1985 No 16) |
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| div 3A of pt 4 (ss 135A-135G) | ins 1986 No 15 |
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| s 135K | orig s 154 am 1983 No 27 |
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| s 135L | orig s 155 om 1985 No 44 |
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| hdg preceding s 139 | om 1983 No 27 (as am by 1985 No 16) |
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| hdg to pt 5 | ins 1991 No 78 |
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| s 159..... | orig s 159 am 1983 No 27 |
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| hdg preceding s 298 | om 1983 No 27 (as am by 1985 No 16) |
| s 298 | am 1983 No 27 |
| | om 1986 No 15 |

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| hdg preceding s 299 | om 1983 No 27 (as am by 1985 No 16) |
| s 299 | om 1983 No 27 |
| pt VI (ss 300-326) | om 1983 No 27 |
| ss 300-326 | om 1983 No 27 |
| ss 327, 328 | am 1983 No 27 |
| s 330 | am 1983 No 27 |
| s 332 | am 1983 No 55 |
| s 333 | am 1983 Nos 27 and 55 |
| s 334 | om 1983 No 27 |
| | ins 1990 No 4 |
| ss 335-339 | om 1983 No 27 |
| s 340 | am 1983 No 27; 1992 No 9 |
| ss 341, 342 | am 1983 No 27 |
| s 344 | sub 1988 No 75 |
| pt VIII (s 344) | om 1988 No 75 |
| s 344 | am 1983 No 27 |
| | om 1988 No 75 |
| pt 8 (ss 345-349)..... | ins 1988 No 75 |
| ss 345-348 | om 1983 No 27 |
| | ins 1988 No 75 |
| s 349 | sub 1988 No 75 |
| pt IX (s 349) | om 1988 No 75 |
| s 349 | am 1983 No 27 |
| | om 1988 No 75 |
| hdg to pt 10 | sub 1983 No 55; 1988 No 75; 1991 No 78 |
| hdg to div 1 of pt 10 | ins 1984 No 32 |
| | sub 1991 No 78; 1994 No 75 |
| div 1 of pt 10 (ss 349AA, 349AB) | ins 1994 No 75 |
| s 349AA | ins 1994 No 75 |
| | am 1995 No 50; 1997 No 10 |
| s 349AB | ins 1994 No 75 |
| hdg to div 1A of pt 10 | ins 1994 No 75 |
| ss 349A, 349B | ins 1986 No 53 |
| | am 1987 No 3 |
| s 349C | ins 1986 No 53 |
| s 349D | ins 1991 No 9 |
| | am 1992 No 35; 1996 No 74; 1997 No 23 |
| s 349DA | ins 1997 No 23 |
| s 349DB | ins 1998 No 22 |
| div 2 of pt 10 (ss 349E -349S) | ins 1994 No 75 |
| ss 349E-349S | ins 1994 No 75 |
| div 3 of pt 10 (ss 349T, 349U) | ins 1994 No 75 |
| ss 349T, 349U | ins 1994 No 75 |
| div 4 of pt 10 (ss 349V -349Z, 349ZA-349ZX) | ins 1994 No 75 |
| s 349V | ins 1994 No 75 |
| s 349W | ins 1994 No 75 |
| | am 1997 No 23 |

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|-----------------------------|--|
| ss 349X, 349Y | ins 1994 No 75 am 1998 No 67 |
| s 349Z | ins 1994 No 75 |
| ss 349ZA-349ZH | ins 1994 No 75 |
| s 349ZJ | ins 1994 No 75 am 1997 No 10 |
| s 349ZK | ins 1994 No 75 |
| s 349ZL | ins 1994 No 75 am 1997 No 10 |
| ss 349ZM, 349ZN | ins 1994 No 75 |
| s 349ZO | ins 1997 No 10 |
| ss 349ZP-349ZW | ins 1994 No 75 |
| s 349ZX | ins 1994 No 75 sub 1996 No 31 |
| hdg to div 5 of pt 10 | ins 1994 No 75 |
| ss 349ZY, 349ZZ | ins 1994 No 75 |
| s 349ZZA | ins 1994 No 75 am 1997 No 23 |
| ss 349ZZB, 349ZZC | ins 1994 No 75 |
| s 349ZZD | ins 1994 No 75 am 1998 No 22 |
| ss 349ZZE-349ZZG | ins 1994 No 75 |
| s 349ZZH | ins 1998 No 22 |
| s 350 | om 1983 No 27 ins 1983 No 55 am 1985 No 67; 1986 No 15; 1991 No 104 |
| ss 350A, 350B | ins 1991 No 104 |
| s 351 | om 1983 No 27 ins 1983 No 55 om 1994 No 86 |
| hdg preceding s 352 | om 1983 No 27 (as am by 1985 No 16) |
| s 352 | am 1983 No. 27; 1984 No 78; 1986 No 53 om 1994 No 75 |
| s 352A | ins 1984 No 78 om 1994 No 75 |
| s 353 | am 1983 No 27 om 1994 No 75 |
| s 353A | ins 1944 No 1 am 1984 No 78; 1991 No 122 om 1994 No 75 |
| hdg preceding s 354 | om 1983 No 27 (as am by 1985 No 16) |
| s 354 | om 1983 No 27 ins 1983 No 55 am 1984 No 78 om 1988 No 75 ins 1991 No 78 sub 1993 No 3 am 1999 No 50 s 20 sch |
| ss 355-357 | om 1983 No 27 |

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hdg preceding s 358om 1983 No 27 (as am by 1985 No 16)
hdg to div 1A of pt Xom 1991 No 78
div 1A of pt 10 (ss 358AA- ins 1988 No 75
358AI)
hdg to div 2 of pt Xom 1994 No 75
hdg to pt 10Ains 1994 No 75
div 2 of pt 10 (ss 358A- ins 1984 No 32
358E)
s 358A.....ins 1984 No 32
am 1990 No 5; 1994 No 75
s 358B.....ins 1984 No 32
am 1985 No 67
ss 358C, 358Dins 1984 No 32
s 358E.....ins 1984 No 32
am 1994 No 75
hdg preceding s 359om 1983 No 27 (as am by 1985 No 16)
s 360am 1983 No 27
s 361om 1983 No 27
s 363am 1983 No 27
s 365sub 1963 No 11
am 1992 No 9
s 366sub 1963 No 11
s 369am 1990 No 5; 1992 No 9
ss 370, 371am 1983 No 27
s 373am 1985 No 44
s 376am 1983 No 55; 1990 No 2
s 377om 1983 No 27
s 378am 1983 Nos 27 and 55
s 379om 1985 No 62
s 380am 1983 No 27
s 381om 1985 No 62
ss 382, 383om 1985 No 44
ss 384, 385am 1983 No 27
om 1985 No 44
ss 386-389om 1985 No 44
s 390om 1986 No 15
s 391om 1983 No 27
hdg preceding s 394om 1983 No 27 (as am by 1985 No 16)
ss 397, 398om 1983 No 27
s 400am 1983 No 27; 1987 No 3
s 401om 1983 No 27
s 402am 1997 No 96
s 404om 1971 No 2
ins 1984 No 78
s 405om 1994 No 98
hdg preceding s 406om 1983 No 27 (as am by 1985 No 16)
s 406om 1971 No 2
ins 1984 No 78
am 1997 No 96
s 407om 1971 No 2
ins 1999 No 71 s 4

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| ss 408-410 | om 1971 No 2 |
| s 411 | am 1983 No 27 |
| ss 412, 413 | om 1971 No 2 |
| s 415 | om 1971 No 2 |
| s 416 | om 1983 No 27 |
| ss 418, 419 | om 1971 No 2 |
| s 420 | am 1983 Nos 27 and 55 om 1985 No 44 |
| s 421 | om 1983 No 55 |
| s 422 | om 1983 No 27 |
| s 423A | ins 1998 No 57 |
| hdg preceding s 425 | om 1983 No 27 (as am by 1985 No 16) |
| ss 425-427 | am 1983 No 27 |
| s 427A | ins 1990 No 2 |
| hdgs preceding ss 428, 429 | om 1983 No 27 (as am by 1985 No 16) |
| s 428 | am 1992 No 9; 1997 No 96 |
| pt 11A (ss 428A-428X) | ins 1994 No 46 |
| s 428A | ins 1994 No 46 sub 1998 No 71 om 1999 No 32 s 4 |
| s 428B | ins 1994 No 46 am 1999 No 32 s 5 |
| s 428C | ins 1994 No 46 sub 1999 No 32 s 6 |
| ss 428CA-428CF | ins 1999 No 32 s 6 |
| s 428D | ins 1994 No 46 am 1999 No 32 s 7 |
| s 428DA | ins 1999 No 32 s 8 |
| s 428E | ins 1994 No 46 am 1999 No 32 s 9 |
| s 428F | ins 1994 No 46 |
| s 428FA | ins 1999 No 32 s 10 |
| s 428G | ins 1994 No 46 am 1999 No 32 s 11 |
| s 428H | ins 1994 No 46 am 1999 No 32 s 12 |
| s 428I | ins 1994 No 46 am 1999 No 32 s 13 |
| s 428J | ins 1994 No 46 am 1999 No 32 s 14 |
| s 428K | ins 1994 No 46 am 1999 No 32 s 15 |
| s 428L | ins 1994 No 46 am 1999 No 32 s 16 |
| s 428M | ins 1994 No 46 am 1999 No 32 s 17 |
| hdg to div 3 of pt 11A | am 1999 No 32 s 18 |
| s 428N | ins 1994 No 46 am 1999 No 32 s 19 |
| s 428O | ins 1994 No 46 |

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| | am 1999 No 32 s 20 |
| s 428P..... | ins 1994 No 46 |
| | am 1999 No 32 s 21 |
| s 428Q..... | ins 1994 No 46 |
| | am 1999 No 32 s 22 |
| s 428R..... | ins 1994 No 46 |
| | am 1999 No 32 s 23 |
| div 3A of pt 11A | ins 1999 No 32 s 24 |
| (ss 428RA-428RE) | |
| ss 428RA-428RE..... | ins 1999 No 32 s 24 |
| hdg to div 4 of pt 11A..... | am 1999 No 32 s 25 |
| s 428S..... | ins 1994 No 46 |
| | am 1999 No 32 s 26 |
| s 428T..... | ins 1994 No 46 |
| | am 1999 No 32 s 27 |
| hdg to div 5 of pt 11A..... | am 1999 No 32 s 28 |
| s 428U..... | ins 1994 No 46 |
| s 428V..... | ins 1994 No 46 |
| | am 1999 No 32 s 29 |
| s 428W..... | ins 1994 No 46 |
| | am 1999 No 32 s 30 |
| s 428WA..... | ins 1999 No 32 s 31 |
| s 428X..... | ins 1994 No 46 |
| s 428Y..... | ins 1994 No 84 |
| s 429..... | sub 1951 No 14 |
| | om 1986 No 14 |
| hdg to div 1 of pt 12..... | ins 1993 No 73 |
| s 429..... | ins 1993 No 73 |
| | sub 1998 No 9 |
| s 429A..... | ins 1993 No 73 |
| | am 1997 No 10; 1997 No 117; 1998 No 9 |
| s 429AB..... | ins 1994 No 84 |
| s 429B..... | ins 1993 No 73 |
| | am 1998 No 9 |
| s 429C..... | ins 1993 No 73 |
| hdg preceding s 430..... | om 1983 No 27 (as am by 1985 No 16) |
| s 430..... | am 1968 No 4 |
| | om 1983 No 27 |
| | ins 1983 No 55 |
| s 431..... | om 1968 No 4 |
| | ins 1985 No 44 |
| s 431A..... | ins 1993 No 73 |
| hdg preceding s 432..... | om 1983 No 27 (as am by 1985 No 16) |
| s 432..... | om 1983 No 27 |
| | ins 1986 No 57 |
| | am 1997 No 52 |
| s 433..... | om 1983 No 27 |
| hdg preceding s 434..... | om 1974 No 17 |
| ss 434-436..... | om 1974 No 17 |
| hdg preceding s 437..... | om 1983 No 27 (as am by 1985 No 16) |
| s 437..... | am 1983 No 27; 1985 No 44 |

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| | sub 1986 No 57 |
| | am 1990 No 1; 1991 No 18 |
| hdgs preceding ss 438-440 | om 1983 No 27 (as am by 1985 No 16) |
| s 438 | om 1985 No 44 |
| s 439 | om 1994 No 46 |
| s 440 | om 1983 No 27 |
| hdg preceding s 441 | om 1983 No 27 (as am by 1985 No 16) |
| s 441 | am 1983 No 27 |
| s 441A | ins 1983 No 27 am 1993 No 73 |
| hdg preceding s 442 | om 1983 No 27 (as am by 1985 No 16) |
| s 442 | sub 1963 No 11 am 1974 No 17; 1986 No 57 |
| hdg preceding s 443 | om 1983 No 27 (as am by 1985 No 16) |
| s 443 | am 1983 No 27 sub 1986 No 57; 1993 No 73 am 1998 No 29 |
| s 444 | am 1983 No 27 om 1986 No 57 ins 1997 No 86 |
| s 445 | om 1971 No 2 |
| s 447 | om 1986 No 57 |
| s 448 | sub 1983 No 27 am 1985 No 16 |
| ss 449-452 | ins 1993 No 73 |
| div 2 of pt 12 (ss 453-457) | ins 1993 No 73 |
| s 453 | ins 1993 No 73 am 1994 No 38 |
| ss 454-457 | ins 1993 No 73 |
| hdgs preceding s 448 in pt XIII | om 1983 No 27 (as am by 1985 No 16) |
| ss 448-452 in pt XIII | om 1983 No 27 |
| hdg preceding s 453 | om 1983 No 27 (as am by 1985 No 16) |
| ss 453, 454 | om 1974 No 17 |
| hdg preceding s 455 | om 1974 No 17 |
| ss 455, 456 | om 1974 No 17 |
| hdg preceding s 457 | om 1983 No 27 (as am by 1985 No 16) |
| s 457 | am 1983 No 27 om 1990 No 1 |
| hdg preceding s 458 | om 1983 No 27 (as am by 1985 No 16) |
| s 458 | om 1983 No 27 |
| hdg preceding s 459 | am 1974 No 17 om 1983 No 27 (as am by 1985 No 16) |
| s 459 | am 1968 No 4 om 1974 No 17 |
| s 460 | om 1974 No 17 |
| ss 461-463 | om 1983 No 27 |
| s 464 | om 1983 No 27 ins 1986 No 15 |

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| hdg preceding s 465 | om 1983 No 27 (as am by 1985 No 16) |
| ss 465, 466 | am 1983 No 27 |
| s 467 | om 1983 No 27 |
| s 468 | am 1990 No 5 |
| s 469 | om 1983 No 27 |
| hdgs preceding | om 1983 No 27 (as am by 1985 No 16) |
| ss 470, 471 | |
| s 470 | am 1992 No 9; 1997 No 96 |
| s 471 | om 1983 No 27 |
| hdg preceding s 472 | om 1983 No 27 (as am by 1985 No 16) |
| hdg preceding s 474 | om 1983 No 27 (as am by 1985 No 16) |
| s 474 | am 1983 No 27 |
| hdg preceding s 475 | om 1983 No 27 (as am by 1985 No 16) |
| s 475 | am 1983 No 27; 1990 No 5 |
| hdg to pt 14 | sub 1983 No 55 |
| chapter 1 of pt XIV | om 1951 No 14 |
| (ss 476-481) | |
| chapter 1 of pt 14 | ins 1951 No 14 |
| (ss 476-478, 480, 481) | |
| hdg preceding s 476 | om 1983 No 27 (as am by 1985 No 16) |
| s 476 | am 1942 No 12 |
| | sub 1951 No 14; 1974 No 17 |
| | am 1983 No 27 |
| | sub 1985 No 40 |
| s 477 | sub 1951 No 14 |
| | am 1963 No 11 |
| | sub 1974 No 17 |
| | am 1983 No 27 |
| | sub 1985 No 40 |
| | am 1985 Nos 67 and 75 |
| s 477A | ins 1983 No 27 |
| | om 1985 No 40 |
| s 478 | sub 1951 No 14; 1974 No 17 |
| | om 1985 No 40 |
| s 479 | om 1951 No 14 |
| | ins 1974 No 17 |
| | am 1985 Nos 40 and 67 |
| s 480 | sub 1951 No 14; 1974 No 17 |
| | am 1983 No 27; 1985 Nos 40 and 67; 1991 No 44 |
| s 481 | sub 1951 No 14; 1974 No 17 |
| | am 1983 No 27; 1985 Nos 40 and 67 |
| chapter 2 of pt XIV | om 1974 No 17 |
| (ss 482-492) | |
| s 482 | om 1974 No 17 |
| | ins 1983 No 55 |
| ss 483-492 | om 1974 No 17 |
| hdgs preceding s 493 | om 1983 No 27 (as am by 1985 No 16) |
| s 493 | am 1983 No 27 |
| | sub 1987 No 3 |
| s 494 | am 1983 No 27; 1984 No 78 |
| | sub 1987 No 3 |

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| ss 495, 496 | am 1983 No 27 |
| | om 1987 No 3 |
| | ins 1998 No 22 |
| s 497 | am 1983 Nos 27 and 55 |
| | om 1985 No 40 |
| s 498 | am 1983 No 27 |
| | om 1987 No 3 |
| s 499 | sub 1963 No 11 |
| | om 1987 No 3 |
| s 500 | am 1983 No 27 |
| | om 1987 No 3 |
| hdgs preceding s 501 | om 1983 No 27 (as am by 1985 No 16) |
| s 501 | am 1983 No 27 |
| | sub 1983 No 55 |
| | om 1985 No 44 |
| ss 502-510 | am 1983 No 27 |
| | om 1985 No 44 |
| s 510A..... | ins 1983 No 55 |
| ss 511, 512 | am 1983 No 27 |
| | om 1985 No 44 |
| hdg preceding s 513 | om 1983 No 27 (as am by 1985 No 16) |
| s 513 | am 1983 Nos 27 and 55 |
| | om 1985 No 44 |
| s 514 | am 1983 No 27 |
| | om 1985 No 44 |
| s 515 | am 1983 Nos 27 and 55 |
| | om 1985 No 44 |
| s 516 | am 1983 No 55 |
| | om 1985 No 44 |
| ss 517, 518 | am 1983 Nos 27 and 55 |
| | om 1985 No 44 |
| ss 519-521 | am 1983 No 27 |
| | om 1985 No 44 |
| hdg preceding s 522 | om 1983 No 27 (as am by 1985 No 16) |
| s 522 | am 1983 Nos 27 and 55 |
| | om 1985 No 44 |
| s 523 | am 1983 No 55 |
| | om 1985 No 44 |
| s 524 | am 1983 No 27 |
| | om 1985 No 44 |
| hdg preceding s 525 | om 1983 No 27 (as am by 1985 No 16) |
| s 525 | am 1983 No 27 |
| | om 1985 No 44 |
| s 526 | om 1985 No 44 |
| s 526A..... | ins 1963 No 11 |
| | am 1983 No 27 |
| | om 1985 No 44 |
| hdg preceding s 527 | om 1983 No 27 (as am by 1985 No 16) |
| s 527 | am 1983 No 27 |
| | om 1985 No 44 |
| s 527A..... | ins 1983 No 55 |

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| | am 1987 No 3; 1990 No 5 |
| s 527B..... | ins 1984 No 78 |
| hdgs preceding ss 528, 529 | om 1983 No 27 (as am by 1985 No 16) |
| ss 528, 529 | am 1983 No 27 om 1985 No 44 |
| hdgs preceding s 530 | om 1983 No 27 (as am by 1985 No 16) |
| s 530 | om 1985 No 44 |
| s 531 | am 1983 No 27 om 1985 No 44 |
| hdg preceding s 532 | om 1983 No 27 (as am by 1985 No 16) |
| s 532 | am 1983 Nos 27 and 55 om 1985 No 44 |
| ss 533-538 | am 1983 No 27 om 1985 No 44 |
| hdg preceding s 539 | om 1983 No 27 (as am by 1985 No 16) |
| ss 539, 540 | am 1983 No. 27 om 1985 No 44 |
| hdg preceding s 541 | om 1983 No 27 (as am by 1985 No 16) |
| ss 541-542 | am 1983 No 27 om 1985 No 44 |
| hdg preceding s 543 | om 1983 No. 27 (as am by 1985 No 16) |
| s 543 | am 1983 No 27 |
| hdg preceding s 544 | om 1983 No 27 (as am by 1985 No 16) |
| ss 544, 545 | om 1983 No 27 ins 1983 No 55 |
| s 545A..... | ins 1992 No 76 |
| hdg preceding s 546 | om 1983 No 27 (as am by 1985 No 16) |
| s 546 | om 1983 No 27 ins 1983 No 55 om 1985 No 44 |
| ss 546A-546C | ins 1983 No 55 |
| ss 546D, 546E | ins 1987 No 3 |
| hdg preceding s 547 | om 1983 No 27 (as am by 1985 No 16) |
| s 547 | am 1983 No 27; 1988 No 44 |
| hdg preceding s 548 | om 1983 No 27 (as am by 1985 No 16) |
| s 548 | am 1983 No 27 |
| hdg preceding s 549 | om 1983 No 27 (as am by 1985 No 16) |
| s 549 | om 1983 No 27 |
| hdg preceding s 550 | om 1983 No 27 (as am by 1985 No 16) |
| s 550 | am 1983 No 27 om 1985 No 44 |
| s 551 | am 1983 No 2 |
| hdgs preceding ss 552, 553 | om 1983 No 27 (as am by 1985 No 16) |
| s 552 | am 1983 No 27 om 1991 No 18 |
| s 553 | am 1983 No 27 |
| hdg preceding s 554 | om 1983 No 27 (as am by 1985 No 16) |
| s 554 | sub 1951 No 14 am 1963 No 11; 1983 No 27; 1985 No 67 |

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|----------------------------|---|
| | om 1986 No 57 |
| hdg preceding s 555 | om 1983 No 27 (as am by 1985 No 16) |
| s 555 | am 1983 No 27 |
| hdg preceding s 556 | om 1983 No 27 (as am by 1985 No 16) |
| s 556 | am 1983 No 27; 1984 No 78 |
| | om 1991 No 18 |
| s 556A..... | ins 1942 No 12 |
| | om 1971 No 2 |
| pt XV (ss 557-562)..... | om 1971 No 2 |
| pt 15 (ss 556A-556E)..... | ins 1971 No 2 |
| s 556A..... | sub 1971 No 2 |
| | am 1985 No 67; 1986 No 57 (as am by 1987 No 3); 1995 No 2 |
| s 556B..... | ins 1971 No 2 |
| | am 1985 No 67; 1986 No 57; 1990 No 5; 1993 No 73 |
| s 556C | ins 1971 No 2 |
| | am 1985 No 67; 1992 No 9 |
| s 556D | ins 1971 No 2 |
| | am 1985 No 16; 1993 No 91; 1995 No 2 |
| s 556E..... | ins 1971 No 2 |
| | am 1985 No 67; 1986 No 74; 1990 No 5; 1991 No 44; 1995 No 2 |
| pt 15A (ss 556F-556W)..... | ins 1985 No 11 |
| s 556F | ins 1985 No 11 |
| | am 1985 No 67; 1991 No 44; 1994 No 97 |
| s 556G | ins 1985 No 11 |
| | am 1985 No 67; 1986 No 57; 1994 No 97; 1998 No 29 |
| s 556H | ins 1985 No 11 |
| | am 1985 No 67 |
| | om 1998 No 29 |
| s 556J | ins 1985 No 11 |
| | am 1994 No 97 |
| s 556K..... | ins 1985 No 11 |
| | am 1986 No 57; 1994 No 97 |
| s 556L | ins 1985 No 11 |
| | am 1994 No 97 |
| s 556M | ins 1985 No 11 |
| | am 1994 No 97; 1998 No 29 |
| s 556N | ins 1985 No 11 |
| | am 1985 No 67; 1992 No 9 |
| ss 556P, 556Q | ins 1985 No 11 |
| | am 1985 No 67 |
| s 556R | ins 1985 No 11 |
| | am 1985 No 67 |
| | om 1998 No 29 |
| ss 556S-556W | ins 1985 No 11 |
| ss 557, 558 | om 1971 No 2 |
| pt 15B (ss 557, 558) | ins 1991 No 90 |
| ss 557, 558 | ins 1991 No 90 |
| s 559 | am 1951 No 14 |
| | om 1971 No 2 |
| s 560 | om 1971 No 2 |
| s 561 | sub 1951 No 14 |

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| | om 1971 No 2 |
| s 562 | om 1971 No 2 |
| s 563 | am 1997 No 96 |
| s 564 | am 1983 No 55; 1992 No 9 |
| ss 565-567 | am 1983 No 27 |
| ss 568-573 | om 1983 No 27 |
| s 575 | am 1983 No 27 |
| | om 1985 No 44 |
| | ins 1997 No 117 |
| s 576 | om 1983 No 55 |
| s 578 | ins 1991 No 90 |
| second sch..... | om 1985 No 44 |
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| sch 3 | am 1990 No 5 |
| fourth sch | om 1985 No 44 |
| fifth sch | om 1983 No 55 |
| sch 5 | ins 1985 No 11 |
| | am 1985 No 67; 1990 No 5; 1995 No 2; 1998 No 29 |
| sch 6 | om 1974 No 17 |
| | ins 1983 No 27 |
| | am 1985 Nos 16 and 67 |
| seventh sch..... | om 1983 No 27 |

6 Table of earlier republication

*underline = this Act or relevant provisions of this Act were uncommenced at time of republication

| Republication No | Amendments to | Republication date |
|------------------|-----------------------|--------------------|
| 1 | Act 1992 No 35 | 8 July 1992 |
| 2 | Act 1993 No 93 | 31 January 1994 |
| 3 | Act 1996 No 36 | 30 November 1996 |
| 4 | Act 1997 No 117 | 1 June 1998 |
| 5 | Act 1998 No 71 | 28 February 1999 |
| 6 | <u>Act 1999 No 64</u> | 10 November 1999 |

7 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date—

Children and Young People (Consequential Amendments) Act 1999, Act 1999 No 64, (s 4 (1) and sch 2)

New section 37A—

After section 37 insert the following section:

“37A. Neglect etc of children

“(1) A person must not—

- (a) ill-treat or abuse a child who is in the person’s care; or
- (b) neglect a child for whom he or she is caring or has parental responsibility.

Penalty: 200 penalty units or imprisonment for 2 years, or both.

“(2) A person is not guilty of an offence referred to in paragraph (1) (b) by reason only of failing to provide a thing for a child if the person did not provide the thing because he or she could not afford to do so.

“(3) A person must not, knowingly or recklessly, leave a child unattended in such circumstances and for such a time that the child could suffer injury or sickness or otherwise be in danger.

Penalty: 100 penalty units or imprisonment for 12 months, or both.

“(4) A police officer, medical practitioner or child officer may act (including by entering any building, place or vehicle, with such force as is necessary and reasonable) if the police officer, medical practitioner or child officer reasonably believes—

- (a) that a child is being or has been ill-treated, abused or neglected as mentioned in subsection (1) or left unattended as mentioned in subsection (3); and
- (b) that it is necessary to act immediately to safeguard the child.

“(5) An action does not lie against a person by reason of the person having acted under subsection (4) in good faith, without negligence and with reasonable care in the circumstances.

“(6) In this section—

child officer means an officer under the *Children and Young People Act 1999*, section 48.

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parental responsibility, for a child, means all the duties, powers, responsibilities and authority parents ordinarily have by law in relation to their children.”.

Subsections 349ZP (11) and 349ZX (12)—

Omit “36 of the *Children’s Services Act 1986*”, substitute “84 (Identifying material) of the *Children and Young People Act 1999*”.

Subsection 443 (7) (b)—

Omit “47 (1) (j) or 47 (1) (k) of the *Children’s Services Act 1986*”, substitute “96 (1) (k) or (l) of the *Children and Young People Act 1999*”.

Section 444—

Repeal the section, substitute the following section:

“444 Sentences of imprisonment and uncompleted juvenile detention orders

“(1) In imposing a defined sentence on an adult who is, at the time of sentencing, the subject of a C&YP Act order, a court must—

- (a) in deciding the length of the defined sentence, take into account any remaining period during which the C&YP Act order would remain in force if not discharged under paragraph (b); and
- (b) discharge the C&YP Act order accordingly.

“(2) In this section—

adult means someone who is 18 years old or older.

C&YP Act order means an order under paragraph 96 (1) (g), (h), (i), (j), (k) or (l) of the *Children and Young People Act 1999*.

defined sentence, in relation to an adult, means a sentence that would be likely to bring the adult into contact with other adult offenders, including—

- (a) a sentence of imprisonment; and
- (b) a periodic detention order under section 4 (Power to order periodic detention) of the *Periodic Detention Act 1995*; and
- (c) a community service order under section 556G (Directions to perform work).”.

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