



Australian Capital Territory

# **Crimes Act 1900**

**A1900-40**

**Republication No 58**

**Effective: 14 February 2009 – 26 February 2009**

Republication date: 14 February 2009

Last amendment made by A2008-46  
(republication for amendments by A2008-26)

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* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 14 February 2009. It also includes any amendment, repeal or expiry affecting the republished law to 14 February 2009.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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# Crimes Act 1900

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Australian Capital Territory

# Crimes Act 1900

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An Act to consolidate the statutes relating to criminal law

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Crimes Act 1900*.

### 2 Application of Act

The provisions of this Act, 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.

### 4 Dictionary

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

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

For example, the signpost definition '*motor vehicle*—see the *Road Transport (Safety and Traffic Management) Act 1999*, dictionary.' means that the expression 'motor vehicle' is defined in that dictionary and the definition applies to this Act.

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

### 5 Meaning of *loaded arms*

For this Act, a firearm, airgun or air pistol that is unlawfully presented at a person is taken, unless the contrary is proved, to be *loaded arms*.

## 6 Reference to *the jury* read as reference to magistrate

In a provision of this Act relating to an offence, a reference to *the jury* is, if a person charged with the offence is dealt with summarily, a reference to the magistrate.

## 7 Notes

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

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

## 7A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

The Criminal Code, ch 2 applies to the following offences against this Act (see Code, pt 2.1):

- s 49C (Industrial manslaughter—employer offence)
- s 49D (Industrial manslaughter—senior officer offence)
- s 64 (Using child for production of child pornography etc)
- s 64A (Trading in child pornography)
- s 65 (Possessing child pornography)
- s 114B (Money laundering)
- s 114C (Possession etc of property suspected of being proceeds of crime)
- s 114D (1) (Organised fraud)
- s 119 (Defacing premises)
- s 120 (Defacing premises—strict liability)
- s 393A (Urinating in public place)
- s 394 (Noise abatement directions)
- s 439 (Offence of criminal defamation).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

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

**8 Public place etc**

If, 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 2                      Offences against the person

### 10                      **When child born alive**

For 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 that 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) If, on a trial for murder—
  - (a) it appears that the act or omission causing death occurred under provocation; and
  - (b) apart from 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 subsection (1), an act or omission causing death shall be taken to have occurred under provocation if—
- (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) However, conduct of the deceased consisting of a non-violent sexual advance (or advances) towards the accused—
- (a) is taken not to be sufficient, by itself, to be conduct to which subsection (2) (b) applies; but
  - (b) may be taken into account together with other conduct of the deceased in deciding whether there has been an act or omission to which subsection (2) applies.
- (4) For the purpose of determining whether an act or omission causing death occurred under provocation, there is no rule of law that provocation is negated 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.
- (5) If, 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.
- (6) 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, under subsection (1), not liable to be convicted of murder.
- (3) A person who, apart from 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, under 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) If, 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, under 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 when that evidence may be offered.

## 15 Manslaughter

- (1) Except if a law expressly provides otherwise, an unlawful homicide that is not, under 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.
- (3) However, for an aggravated offence against this section, the maximum penalty is imprisonment for 26 years.

*Note* Section 48A (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.

## 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) If—
  - (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 the force that is reasonable to prevent the suicide of another person or any act that the person believes on reasonable grounds would, if committed, result in the suicide of another person.

## **19 Intentionally inflicting grievous bodily harm**

- (1) A person who intentionally inflicts grievous bodily harm on another person is guilty of an offence punishable, on conviction, by imprisonment for 15 years.
- (2) However, for an aggravated offence against this section, the maximum penalty is imprisonment for 20 years.

*Note* Section 48A (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.

## **20 Recklessly inflicting grievous bodily harm**

- (1) A person who recklessly inflicts grievous bodily harm on another person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.
- (2) However, for an aggravated offence against this section, the maximum penalty is imprisonment for 13 years.

*Note* Section 48A (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.

## **21 Wounding**

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

- (2) However, for an aggravated offence against this section, the maximum penalty is imprisonment for 7 years.

*Note* Section 48A (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.

**U 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**

- (1) 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.
- (2) However, for an aggravated offence against this section, the maximum penalty is imprisonment for 7 years.

*Note* Section 48A (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.

**24 Assault occasioning actual bodily harm**

- (1) A person who assaults another person and by the assault occasions actual bodily harm is guilty of an offence punishable, on conviction, by imprisonment for 5 years.
- (2) However, for an aggravated offence against this section, the maximum penalty is imprisonment for 7 years.

*Note* Section 48A (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.

**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.

**U 26A Common assault—summary offence**

- (1) A person commits an offence if the person assaults someone else.  
Maximum penalty: 50 penalty units, imprisonment for 6 months or both
- (2) The Criminal Code, chapter 2 (other than the immediately applied provisions) does not apply to an offence against this section.
- (3) Subsections (2) and (4) and this subsection expire on the default application date.
- (4) In this section:  
*default application date*—see the Criminal Code, section 10.  
*immediately applied provisions*—see the Criminal Code, section 10.

**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 subsection (3) (g), an interference shall be taken to include any act or omission that, 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
  - (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; or

(h) interferes with a prescribed traffic control device (within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*) in circumstances likely to endanger 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 that 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*—see section 27 (1).

*interferes with*—see section 27 (2).

*public utility service*—see section 27 (1).

*transport facility*—see section 27 (1).

(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*—see the *Road Transport (Alcohol and Drugs) Act 1977*, dictionary.
- (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) However, for an aggravated offence against subsection (2), the maximum penalty is imprisonment for 9 years.  
*Note* Section 48A (Aggravated offences—offences against pregnant women) makes provision in relation to aggravated offences against this section.
- (4) 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.

- (5) However, for an aggravated offence against subsection (4), the maximum penalty is imprisonment for 5 years.
- (6) For 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.
- (7) For 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 that a reasonable person would have observed in all the circumstances of the case.
- (8) An information or indictment for an offence against subsection (2) or (4) shall specify the nature of the culpability, within the meaning of subsection (6), that is alleged.
- (9) Nothing in subsection (8) renders inadmissible in proceedings for an offence against subsection (2) or (4) evidence that, apart from that subsection, would be admissible in the proceedings.
- (10) 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.
- Note* Under the *Road Transport (General) Act 1999*, s 62 (Automatic disqualification for culpable driving), if a person is convicted, or found guilty, of an offence against this section, the person is automatically disqualified from holding or obtaining a driver licence.
- (11) A person who has been convicted or acquitted of an offence against subsection (2) or (4) is not liable to be convicted of any other offence against this Act on the same facts or on substantially the same facts.

- (12) Subject to section 49, a person is not liable to be convicted of an offence against subsection (2) or (4) 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**

If—

- (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**

If—

- (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 that 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 that 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.

**35 Stalking**

- (1) A person must not stalk someone with intent—
  - (a) to cause apprehension, or fear of harm, in the person stalked or someone else; or
  - (b) to cause harm to the person stalked or someone else; or
  - (c) to harass the person stalked.

Maximum penalty:

- (a) imprisonment for 5 years if—
  - (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; or
- (b) imprisonment for 2 years in any other case.

- (2) For this section, a person *stalks* someone else (the *stalked person*) if, on at least 2 occasions, the person does 1 or more of the following:
- (a) follows or approaches the stalked person;
  - (b) loiters near, watches, approaches or enters a place where the stalked person resides, works or visits;
  - (c) keeps the stalked person under surveillance;
  - (d) interferes with property in the possession of the stalked person;
  - (e) gives or sends offensive material to the stalked person or leaves offensive material where it is likely to be found by, given to or brought to the attention of, the stalked person;
  - (f) telephones, sends electronic messages to or otherwise contacts the stalked person;
  - (g) sends electronic messages about the stalked person to anybody else;
  - (h) makes electronic messages about the stalked person available to anybody else;
  - (i) acts covertly in a way that could reasonably be expected to arouse apprehension or fear in the stalked person;
  - (j) engages in conduct amounting to intimidation, harassment or molestation of the stalked person.
- (3) However, this section does not apply to reasonable conduct engaged in by a person as part of the person's employment if it is a function of the person's employment to engage in the conduct and the conduct is not otherwise unlawful.
- (4) Without limiting subsection (1), a person is also taken to have the intent mentioned in the subsection if the person knows that, or is reckless about whether, stalking the other person would be likely—

- (a) to cause apprehension or fear of harm in the person stalked or someone else; or
  - (b) to harass the person stalked.
- (5) In a prosecution for an offence against subsection (1), it is not necessary to prove that the person stalked or someone else apprehended or feared harm or that the person stalked was harassed.
- (6) For 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 physical contact that might reasonably be objected to in the circumstances, whether or not there was an awareness of the contact at the time.

### 36 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 that the 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 an 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 the *Human Rights and Equal Opportunity Commission Act 1986* (Cwlth), schedule 2.

- (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.

### **37 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.

### **38 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.

### **U 39 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.

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

- (2) A person is not guilty of an offence referred to in subsection (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.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (4) A police officer, medical practitioner or child officer may act (including by entering any building, place or vehicle, with such force that 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.

*parental responsibility*, for a child, means all the duties, powers, responsibilities and authority parents ordinarily have by law in relation to their children.

#### **40 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.

#### **41 Exposing or abandoning child**

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

#### **42 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.

**43 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.

**47 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.

**48 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);

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

**48A Aggravated offences—offences against pregnant women**

- (1) This section applies to an offence against any of the following provisions:
  - (a) section 15 (Manslaughter);
  - (b) section 19 (Intentionally inflicting grievous bodily harm);



- (c) section 20 (Recklessly inflicting grievous bodily harm);
  - (d) section 21 (Wounding);
  - (e) section 23 (Inflicting actual bodily harm);
  - (f) section 24 (Assault occasioning actual bodily harm);
  - (g) section 29 (2) or (4) (Culpable driving of motor vehicle).
- (2) The offence is an ***aggravated offence*** if—
- (a) the offence was committed against a pregnant woman; and
  - (b) the commission of the offence caused—
    - (i) the loss of, or serious harm to, the pregnancy; or
    - (ii) the death of, or serious harm to, a child born alive as a result of the pregnancy.
- (3) However, the offence is not an ***aggravated offence*** if the defendant proves, on the balance of probabilities, that the defendant did not know, and could not reasonably have known, that the woman was pregnant.
- (4) If the prosecution intends to prove that the offence is an aggravated offence, the relevant factors of aggravation must be stated in the charge.
- (5) To remove any doubt—
- (a) it is not necessary for the prosecution to prove that the defendant had a fault element in relation to any factor of aggravation; and
  - (b) the Criminal Code, chapter 2 (other than the applied provisions) does not apply to an offence to which this section applies, whether or not it is an aggravated offence.
- (6) In this section:
- applied provisions***—see the Criminal Code, section 10 (1).

*cause* loss, serious harm or death—a person’s conduct causes loss, serious harm or death if it substantially contributes to the loss, serious harm or death.

*factor of aggravation* means a matter mentioned in subsection (2) (a) or (b).

*harm* to a child—see the Criminal Code, dictionary, definition of *harm*.

*harm* to a pregnancy includes maternal haemorrhage, rupture of the uterus or membranes, placental abruption, pre-term uterine contractions, fetal haemorrhage and trauma to the fetus.

*loss* of a pregnancy means a miscarriage or stillbirth.

*serious harm* to a child—see the Criminal Code, dictionary, definition of *serious harm*.

*serious harm* to a pregnancy means any harm (including the cumulative effect of more than 1 harm) that—

- (a) is likely to cause loss of the pregnancy; or
- (b) endangers, or is likely to endanger, the natural course of the pregnancy.

**48B Alternative verdicts for aggravated offences—offences against pregnant women**

- (1) If, in a prosecution for an aggravated offence mentioned in column 2 of an item in table 48B, the trier of fact is not satisfied that the defendant committed the aggravated offence, but is satisfied beyond reasonable doubt that the defendant committed an offence mentioned in column 3 of the item (the *alternative offence*), the trier of fact may find the defendant guilty of the alternative offence but only if the defendant has been given procedural fairness in relation to that finding of guilt.

Table 48B

column 1 item	column 2 aggravated offence	column 3 alternative offences
1	section 15 (Manslaughter), aggravated offence	1.1 section 15, simple offence 1.2 section 17 (1) (Suicide—aiding etc) 1.3 section 17 (2) 1.4 section 20 (Recklessly inflicting grievous bodily harm), aggravated offence 1.5 section 20, simple offence 1.6 section 25 (Causing grievous bodily harm) 1.7 section 29 (2) (Culpable driving of motor vehicle—causing death), aggravated offence 1.8 section 29 (2), simple offence 1.9 section 42 (Child destruction) 1.10 section 47 (Concealment of birth)
2	section 19 (Intentionally inflicting grievous bodily harm), aggravated offence	2.1 section 19, simple offence 2.2 section 20 (Recklessly inflicting grievous bodily harm), aggravated offence 2.3 section 20, simple offence 2.4 section 21 (Wounding), aggravated offence 2.5 section 21, simple offence

**Part 2** Offences against the person

Section 48B

<b>column 1 item</b>	<b>column 2 aggravated offence</b>	<b>column 3 alternative offences</b>
		<p>2.6 section 23 (Inflicting actual bodily harm), aggravated offence</p> <p>2.7 section 23, simple offence</p> <p>2.8 section 43 (Childbirth—grievous bodily harm)</p>
3	section 20 (Recklessly inflicting grievous bodily harm), aggravated offence	<p>3.1 section 20, simple offence</p> <p>3.2 section 23 (Inflicting actual bodily harm), aggravated offence</p> <p>3.3 section 23, simple offence</p> <p>3.4 section 25 (Causing grievous bodily harm)</p> <p>3.5 section 29 (4) (Culpable driving of motor vehicle—causing grievous bodily harm), aggravated offence</p> <p>3.6 section 29 (4), simple offence</p> <p>3.7 section 43 (Childbirth—grievous bodily harm)</p>
4	section 21 (Wounding), aggravated offence	<p>4.1 section 21, simple offence</p> <p>4.2 section 23 (Inflicting actual bodily harm), aggravated offence</p> <p>4.3 section 23, simple offence</p>

column 1 item	column 2 aggravated offence	column 3 alternative offences
		4.4 section 24 (Assault occasioning actual bodily harm), aggravated offence
		4.5 section 24, simple offence
		4.6 section 26 (Common assault)

(2) In this section:

*aggravated offence*—see section 48A (2).

*simple offence*—a *simple offence*, in relation to a provision, means an offence against the provision that is not an aggravated offence against the provision.

## **U 49 Alternative verdicts for certain other offences against the person**

If, on a trial for an offence against a provision specified in column 2 in an item in table 49, 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:

**Table 49**

column 1 Item	column 2 offence charged	column 3 alternative offences
1	section 12 (2) (Murder)	(a) section 15 (2) (b) section 17 (1) (c) section 17 (2) (d) section 42 (e) section 47 (1)

**Part 2** Offences against the person

Section 49

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<b>column 1 Item</b>	<b>column 2 offence charged</b>	<b>column 3 alternative offences</b>
2	section 15 (1) (Manslaughter)	(a) section 17 (1) (b) section 17 (2) (c) section 20 (d) section 25 (e) section 29 (2) (f) section 42 (g) section 47 (1)
3	section 19 (Intentionally inflicting grievous bodily harm)	(a) section 20 (b) section 21 (c) section 23 (d) section 43
4	section 20 (Recklessly inflicting grievous bodily harm)	(a) section 23 (b) section 25 (c) section 29 (4) (d) section 43
5	section 21 (Wounding)	(a) section 23 (b) section 24 (c) section 26
6	section 22 (2) (Assault with intent to commit indictable offence)	section 26
7	section 24 (Assault occasioning actual bodily harm)	section 26
8	section 27 (3) (b) (Administering drugs etc endangering life etc)	section 28 (2) (a)
9	section 27 (3) (e) (Causing explosions etc endangering life etc)	section 28 (2) (b)
10	section 27 (3) (f) (Setting traps endangering life etc)	section 28 (2) (c)

<b>column 1 Item</b>	<b>column 2 offence charged</b>	<b>column 3 alternative offences</b>
11	section 27 (3) (g) (Interfering with conveyances and endangering life etc)	section 28 (2) (d)

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## Part 2A Industrial manslaughter

### 49A Definitions for pt 2A

In this part:

**agent**, of a person (the *first person*), means—

- (a) a person (the *second person*) engaged by the first person (whether as independent contractor or otherwise) to provide services to the first person in relation to matters over which the first person—
  - (i) has control; or
  - (ii) would have had control apart from an agreement between the first person and second person; or
- (b) a person engaged by another agent of the first person, or by an agent of an agent, (whether as independent contractor or otherwise) to provide services, in relation to the first person, to the other agent in relation to matters over which the other agent—
  - (i) has control; or
  - (ii) would have had control apart from an agreement between the agents.

**causes death**—a person's conduct *causes* death if it substantially contributes to the death.

**conduct**—see the Criminal Code, section 13.

**death**—see the Criminal Code, dictionary.

**employee** means a person engaged under a contract of service.

**employer**, of a worker—a person is an *employer* of a worker if—

- (a) the person engages the worker as a worker of the person; or



- (b) an agent of the person engages the worker as a worker of the agent.

**government**—see the Legislation Act, section 121 (6).

**government entity**—an entity is a **government entity** for a function of the entity if—

- (a) the entity's exercise of the function is subject to the control of a government (including a senior officer of the government); or
- (b) the entity is otherwise an agent of a government in exercising the function.

**independent contractor** means a person engaged under a contract for services.

**officer**, of a corporation—see the Corporations Act, section 9.

*Note* At the commencement of this section, the definition of **officer** in the Corporations Act, section 9 is as follows:

**officer** of a corporation means:

- (a) a director or secretary of the corporation; or
- (b) a person:
- (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or
  - (ii) who has the capacity to affect significantly the corporation's financial standing; or
  - (iii) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation); or
- (c) a receiver, or receiver and manager, of the property of the corporation; or
- (d) an administrator of the corporation; or
- (e) an administrator of a deed of company arrangement executed by the corporation; or
- (f) a liquidator of the corporation; or
- (g) a trustee or other person administering a compromise or arrangement made between the corporation and someone else.

**outworker** means an individual engaged by a person (the **principal**) under a contract for services to treat or manufacture articles or materials, or to perform other services—

- (a) in the outworker's own home; or
- (b) on other premises not under the control or management of the principal.

**provide services** to, or in relation to, a person includes perform work for, or in relation to, the person.

**senior officer**, of an employer, means—

- (a) for an employer that is a government, or an entity so far as it is a government entity—any of the following:
  - (i) a Minister in relation to the government or government entity;
  - (ii) a person occupying a chief executive officer position (however described) in relation to the government or government entity;
  - (iii) a person occupying an executive position (however described) in relation to the government or government entity who makes, or takes part in making, decisions affecting all, or a substantial part, of the functions of the government or government entity; or
- (b) for an employer that is another corporation (including a corporation so far as it is not a government entity)—an officer of the corporation; or
- (c) for an employer that is another entity—any of the following:
  - (i) a person occupying an executive position (however described) in relation to the entity who makes, or takes part in making, decisions affecting all, or a substantial part, of the functions of the entity;

- (ii) a person who would be an officer of the entity if the entity were a corporation.

**Example for par (a) (ii)**

a person employed under the *Public Sector Management Act 1994*, section 28 (Chief executives—engagement) or section 30 (Chief executives—temporary contracts) to perform an office of chief executive

**Example of executive position for par (a) (iii)**

an office created under the *Public Sector Management Act 1994*, section 54A

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

***serious harm***—see the Criminal Code, dictionary.

***volunteer*** means a person who—

- (a) provides services—
- (i) for, or in relation to, the trade or business of someone else; or
- (ii) for an entity for, or in relation to, a religious, educational, charitable or benevolent purpose or otherwise in the public interest; and
- (b) receives no payment for the provision of the services (other than reasonable out-of-pocket expenses).

***worker*** means—

- (a) an employee; or
- (b) an independent contractor; or
- (c) an outworker; or
- (d) an apprentice or trainee; or
- (e) a volunteer.

**49B Omissions of employers and senior officers**

- (1) An employer's omission to act can be conduct for this part if it is an omission to perform the duty to avoid or prevent danger to the life, safety or health of a worker of the employer if the danger arises from—
  - (a) an act of the employer; or
  - (b) anything in the employer's possession or control; or
  - (c) any undertaking of the employer.
- (2) An omission of a senior officer of an employer to act can be conduct for this part if it is an omission to perform the duty to avoid or prevent danger to the life, safety or health of a worker of the employer if the danger arises from—
  - (a) an act of the senior officer; or
  - (b) anything in the senior officer's possession or control; or
  - (c) any undertaking of the senior officer.
- (3) For this section, if, apart from an agreement between a person and someone else, something would have been in the person's control, the agreement must be disregarded and the thing must be taken to be in the person's control.

**49C Industrial manslaughter—employer offence**

An employer commits an offence if—

- (a) a worker of the employer—
  - (i) dies in the course of employment by, or providing services to, or in relation to, the employer; or
  - (ii) is injured in the course of employment by, or providing services to, or in relation to, the employer and later dies; and

- (b) the employer's conduct causes the death of the worker; and
- (c) the employer is—
  - (i) reckless about causing serious harm to the worker, or any other worker of the employer, by the conduct; or
  - (ii) negligent about causing the death of the worker, or any other worker of the employer, by the conduct.

Maximum penalty: 2 000 penalty units, imprisonment for 20 years or both.

#### **49D Industrial manslaughter—senior officer offence**

A senior officer of an employer commits an offence if—

- (a) a worker of the employer—
  - (i) dies in the course of employment by, or providing services to, or in relation to, the employer; or
  - (ii) is injured in the course of employment by, or providing services to, or in relation to, the employer and later dies; and
- (b) the senior officer's conduct causes the death of the worker; and
- (c) the senior officer is—
  - (i) reckless about causing serious harm to the worker, or any other worker of the employer, by the conduct; or
  - (ii) negligent about causing the death of the worker, or any other worker of the employer, by the conduct.

Maximum penalty: 2 000 penalty units, imprisonment for 20 years or both.

*Note* The general offence of manslaughter in s 15 applies to everyone, including workers.

**49E Court may order corporation to take certain actions**

- (1) This section applies if a court finds a corporation guilty of an offence against section 49C.
- (2) In addition to or instead of any other penalty the court may impose on the corporation, the court may order the corporation to do 1 or more of the following:
  - (a) take any action stated by the court to publicise—
    - (i) the offence; and
    - (ii) the deaths or serious injuries or other consequences resulting from or related to the conduct from which the offence arose; and
    - (iii) any penalties imposed, or other orders made, because of the offence;
  - (b) take any action stated by the court to notify 1 or more stated people of the matters mentioned in paragraph (a);
  - (c) do stated things or establish or carry out a stated project for the public benefit even if the project is unrelated to the offence.

**Example for par (a)**

advertise on television or in a daily newspaper

**Example for par (b)**

publish a notice in an annual report or distribute a notice to shareholders of the corporation

**Example for par (c)**

develop and operate a community service

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

- (3) In making the order, the court may state a period within which the action must be taken, the thing must be done or the project must be established or carried out, and may also impose any other

requirement that it considers necessary or desirable for enforcement of the order or to make the order effective.

- (4) The total cost to the corporation of compliance with an order or orders under subsection (2) in relation to a single offence must not be more than \$5 000 000 (including any fine imposed for the offence).
- (5) If the court decides to make an order under subsection (2), it must, in deciding the kind of order, take into account, as far as practicable, the financial circumstances of the corporation and the nature of the burden that compliance with the order will impose.
- (6) The court is not prevented from making an order under subsection (2) only because it has been unable to find out the financial circumstances of the corporation.
- (7) If a corporation fails, without reasonable excuse, to comply with an order under subsection (2) (a) or (b) within the stated period (if any) the court may, on application by the chief executive for the *Occupational Health and Safety Act 1989*, by order authorise the chief executive—
  - (a) to do anything that is necessary or convenient to carry out any action that remains to be done under the order and that it is still practicable to do; and
  - (b) to publicise the failure of the corporation to comply with the order.
- (8) If the court makes an order under subsection (7), the chief executive must comply with the order.
- (9) Subsection (7) does not prevent contempt of court proceedings from being started or continued against a corporation that has failed to comply with an order under this section.
- (10) The reasonable cost of complying with an order under subsection (7) is a debt owing to the Territory by the corporation against which the order was made.

## Part 3 Sexual offences

### 50 Meaning of *sexual intercourse* in pt 3

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 if 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 if 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).

### 51 Sexual assault in the first degree

- (1) A person who inflicts grievous bodily harm on 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 on 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.

## **52 Sexual assault in the second degree**

- (1) A person who inflicts actual bodily harm on 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 on 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.

## **53 Sexual assault in the third degree**

- (1) A person who unlawfully assaults, or threatens to inflict grievous or actual bodily harm on, 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 on, 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.

## **54 Sexual intercourse without consent**

- (1) A person who engages in sexual intercourse with another person without the consent of that other person and 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 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.
- (3) For this section, proof of knowledge or recklessness is sufficient to establish the element of recklessness.

## **55 Sexual intercourse with 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 against subsection (2) if the defendant establishes that—
  - (a) he or she believed on reasonable grounds that the person on 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.

**56 Maintaining a sexual relationship with young person**

- (1) In this section:

*sexual act* means an act that constitutes an offence against this part, but does not include an act referred to in section 55 (2) or 61 (2) if the person who committed the act establishes the matters referred to in section 55 (3) or 61 (3), as the case may be, that would be a defence if the person had been charged with an offence against section 55 (2) or 61 (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 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 against 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 against 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 against this part in relation to the young person (whether or not the person has been convicted of that offence), the offence against 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 against subsection (2) and with another offence

against 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 section 354 (1), where a person convicted of an offence against subsection (2) is sentenced to a term of imprisonment for that offence and a term of imprisonment for another offence against 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 against subsection (2) shall not be commenced except by, or with the consent of, the director of public prosecutions.

**57 Act of indecency in the first degree**

A person who inflicts grievous bodily harm on another person with intent to commit an act of indecency on, 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.

**58 Act of indecency in the second degree**

A person who inflicts actual bodily harm on another person with intent to commit an act of indecency on, 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.

**59 Act of indecency in the third degree**

A person who unlawfully assaults, or threatens to inflict grievous or actual bodily harm on, another person with intent to commit an act of indecency on, 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.

**60 Act of indecency without consent**

- (1) A person who commits an act of indecency on, 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 on, 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.

**61 Acts of indecency with young people**

- (1) A person who commits an act of indecency on, 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 on, 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 against subsection (2) if the defendant establishes that—
  - (a) he or she believed on reasonable grounds that the person on 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.

## **62 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.
- (4) A person shall not be convicted of an offence against 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 the evidence is rebutted by the prosecution.
- (5) A person charged with an offence against 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 way charged.

(6) In this section:

*stepchild*, in relation to a person, means a person in relation to whom the firstmentioned person stands in place of a parent.

### **63 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 ACT or otherwise) is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

### **64 Using child for production of child pornography etc**

- (1) A person commits an offence if—
- (a) the person uses, offers or procures a child—
    - (i) for the production of child pornography; or
    - (ii) for a pornographic performance; and
  - (b) the child is under 12 years old.

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

- (2) Absolute liability applies to subsection (1) (b).
- (3) A person commits an offence if—
- (a) the person uses, offers or procures a child—
    - (i) for the production of child pornography; or
    - (ii) for a pornographic performance; and

(b) the child is 12 years old or older.

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

(4) Strict liability applies to subsection (3) (b).

(5) In this section:

***child pornography*** means anything that represents—

- (a) the sexual parts of a child; or
- (b) a child engaged in an activity of a sexual nature; or
- (c) someone else engaged in an activity of a sexual nature in the presence of a child;

substantially for the sexual arousal or sexual gratification of someone other than the child.

***pornographic performance*** means—

- (a) a performance by a child engaged in an activity of a sexual nature; or
- (b) a performance by someone else engaged in an activity of a sexual nature in the presence of a child;

substantially for the sexual arousal or sexual gratification of someone other than the child.

**Examples of activity of a sexual nature**

- 1 sexual intercourse or other explicit sexual activity (whether real or simulated)
- 2 a striptease

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



*represent* means depict or otherwise represent on or in a film, photograph, drawing, audiotape, videotape, computer game, the internet or anything else.

#### **64A Trading in child pornography**

- (1) A person commits an offence if the person produces, publishes, offers or sells child pornography.

Maximum penalty: 1 200 penalty units, imprisonment for 12 years or both.

- (2) In this section:

*child pornography*—see section 64 (5).

#### **65 Possessing child pornography**

- (1) A person commits an offence if—

- (a) the person intentionally possesses pornography; and  
(b) the pornography is child pornography.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

- (2) Absolute liability applies to subsection (1) (b).

- (3) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant had no reasonable grounds for suspecting that the pornography concerned was child pornography.

- (4) In this section:

*child pornography*—see section 64 (5).

**66 Using the Internet etc to deprave young people**

- (1) A person must not, using electronic means, suggest to a young person that the young person commit or take part in, or watch someone else committing or taking part in, an act of a sexual nature.

Maximum penalty:

- (a) for a 1st offence—imprisonment for 5 years; or
- (b) for a 2nd or subsequent offence—imprisonment for 10 years.

- (2) A person must not, using electronic means, send or make available pornographic material to a young person.

Maximum penalty: 100 penalty units, imprisonment for 5 years or both.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant—

- (a) is an Internet service provider; and
- (b) had no knowledge that the defendant's facilities were used to commit the offence.

- (4) It is not a defence to a prosecution for an offence against this section that the young person had consented to—

- (a) the suggestion being made; or
- (b) the material being sent or made available.

- (5) However, it is a defence to a prosecution for an offence against this section if the defendant proves that the defendant believed on reasonable grounds that the young person to whom the suggestion was made, or the material was sent or made available, was at least 16 years old.

- (6) In this section:

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

*classified*—see the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*, dictionary.

*pornographic material* means material that has been, or is likely to be, classified RC, X or R.

*using electronic means* means using email, Internet chat rooms, SMS messages and real time audio/video.

*young person* means a person under 16 years old.

## 67 Consent

- (1) For sections 54, 55 (3) (b), 60 and 61 (3) (b) and without limiting the grounds on 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) If 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 subsection (1) (a) to (j), 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.

**68 Sexual intercourse—people not to be presumed incapable by reason of age**

- (1) For 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 when a child can be found guilty of an offence.

**69 Marriage no bar to conviction**

The fact that a person is married to a person on whom an offence against section 54 is alleged to have been committed shall be no bar to the conviction of the firstmentioned person for the offence.

**70 Alternative verdicts for certain sexual offences**

- (1) If, on the trial of a person for an offence against section 51 (1) or (2) or 57, 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 against section 52 (1) or (2) or 58, as the case requires.
- (2) If, on the trial of a person for an offence against section 51 (2), 52 (2), 53 (2), 54 (2) or 60 (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 against section 51 (1), 52 (1), 53 (1), 54 (1) or 60 (1), it may find the accused not guilty of the offence charged but guilty of an offence against section 51 (1), 52 (1), 53 (1), 54 (1) or 60 (1), as the case requires.
- (3) If, on the trial of a person for an offence against section 51 (1) or (2) or 57, 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 against section 19, 20 or 25.
- (4) If, on the trial of a person for an offence against section 52 (1) or (2) or 58, 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 against section 24.
- (5) If, on the trial of a person for an offence against section 55 (1), 61 (1) or 62 (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 section 55 (2), 61 (2) or 62 (2), respectively;

the jury may find the accused not guilty of the offence charged but guilty of an offence against section 55 (2), 61 (2) or 62 (2), respectively.

**71 Adding count for act of indecency**

In an indictment for an offence against section 54 a count may be added for an offence against section 60.

**72 Indictment for act of indecency**

In an indictment for an offence against section 60 or 61 it shall not be necessary to describe the act constituting the act of indecency with which the accused is charged.

## Part 4 Female genital mutilation

### 73 Meaning of *female genital mutilation* for pt 4

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.

### 74 Prohibition of female genital mutilation

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

Maximum penalty: imprisonment for 15 years.

- (2) It is not a defence to a prosecution for an offence against 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.

### 75 Removal of child from ACT for genital mutilation

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

Maximum 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 ACT; and
- (b) female genital mutilation was performed on the child while outside the ACT;

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 ACT 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.

**76 Exception—medical procedures for genuine therapeutic purposes**

- (1) It is not an offence against 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 ACT 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 the labour or birth, by a doctor or midwife; or
  - (b) it is necessary for the health of the person on whom it is performed and is performed by a doctor.
- (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.

**77 Exception—sexual reassignment procedures**

- (1) It is not an offence against this part to perform a sexual reassignment procedure or to take, or arrange for a person to be



taken, from the ACT with the intention of having a sexual reassignment 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 5 Sexual servitude

### 78 Meaning of *sexual servitude* and *sexual services* for pt 5

- (1) In this part:

*sexual services* means the commercial use or display of the body of the person providing the service for the sexual gratification of others.

*sexual servitude* is the condition of a person who provides sexual services and who, because of the use of force or a threat, is not free—

- (a) to stop providing sexual services; or
- (b) to leave the place or area where the person provides sexual services.

- (2) For subsection (1), definition of *sexual servitude*, the question whether, because of the use of force or a threat, a person is not free to stop providing sexual services, or to leave the place or area where the person provides sexual services, is to be decided according to whether a reasonable adult would consider, in the circumstances, that the person is not free to stop or leave.

- (3) In this section:

*threat* means—

- (a) a threat of force; or
- (b) a threat to cause a person's deportation; or
- (c) a threat of other detrimental action unless there are reasonable grounds for the threat.

**79 Sexual servitude offences**

- (1) A person commits an offence if—
- (a) the person's conduct causes someone else to enter into or remain in sexual servitude; and
  - (b) the person intends to cause, or is reckless about causing, someone else to enter into or remain in sexual servitude.

Maximum penalty:

- (a) for an aggravated offence—imprisonment for 19 years; or
- (b) in any other case—imprisonment for 15 years.

*Note* Aggravated offence is defined in s 81.

- (2) A person commits an offence if the person—
- (a) conducts a business that involves the sexual servitude of others; and
  - (b) knows that, or is reckless about whether, the business involves the sexual servitude of others.

Maximum penalty:

- (a) for an aggravated offence—imprisonment for 19 years; or
- (b) in any other case—imprisonment for 15 years.

*Note* Aggravated offence is defined in s 81.

- (3) In this section:

***conducts a business*** includes—

- (a) taking part in the management of the business; or
- (b) exercising control or direction over the business; or
- (c) providing finance for the business.

**80 Deceptive recruiting for sexual services**

A person commits an offence if the person, with the intention of inducing someone else to enter into an engagement to provide sexual services, deceives the other person about the fact that the engagement will involve the provision of sexual services.

Maximum penalty:

- (a) for an aggravated offence—imprisonment for 9 years; or
- (b) in any other case—imprisonment for 7 years.

*Note* Aggravated offence is defined in s 81.

**81 Increased penalty for aggravated offences**

- (1) An offence against section 79 or 80 is an aggravated offence if the offence was committed against a person younger than 18 years old.
- (2) If the prosecution intends to prove an aggravated offence, the charge must allege that the offence was committed against a person younger than 18 years old.
- (3) To prove an aggravated offence, the prosecution must prove that the defendant intended to commit, or was reckless about committing, the offence against a person younger than 18 years old.

**82 Alternative verdict if aggravated offence not proven**

If, on trial for an aggravated offence against section 79 or 80, the jury is not satisfied that the defendant is guilty of an aggravated offence, but is otherwise satisfied that the defendant is guilty of an offence against the section, it may find the defendant not guilty of the aggravated offence but guilty of an offence against the section.

## **Part 6**                      **Offences relating to property**

### **Division 6.2A**            **Money laundering and organised fraud**

#### **U** 114A            **Definitions for div 6.2A**

*deal*, with money or other property, means—

- (a) receiving, possessing, concealing or disposing of money or other property; or
- (b) bringing into the ACT money or other property.

*proceeds of crime* means—

- (a) any property derived or realised, directly or indirectly, by anyone from the commission of an indictable offence; or
- (b) any property derived or realised, directly or indirectly, by anyone from acts or omissions that—
  - (i) happened outside the ACT; and
  - (ii) would, if they had happened in the ACT, have been an indictable offence.

*property* includes property located in Australia outside the ACT or outside Australia.

*unlawful activity* means an act or omission that is an offence against the law of the Territory, the Commonwealth, a State, another Territory or a foreign country.

#### **114B**            **Money laundering**

A person commits an offence if—

- (a) the person deals with money or other property; and

- (b) the money or other property is proceeds of crime; and
- (c) the person knows that, or is reckless about the fact that, the money or other property is derived or realised, directly or indirectly, from some form of unlawful activity.

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

**114C Possession etc of property suspected of being proceeds of crime**

- (1) A person commits an offence if—
  - (a) the person deals with money or other property; and
  - (b) the money or other property is proceeds of crime.

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

- (2) An offence against this section is a strict liability offence..

**114D Organised fraud**

- (1) A person who engages in organised fraud commits an offence.

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

- (2) A person is taken to engage in organised fraud only if the person engages in acts or omissions—
  - (a) that constitute 3 or more public fraud offences; and
  - (b) from which the person derives substantial benefit.

- (3) If, on a trial for an offence against subsection (1) (the *offence charged*), the trier of fact is not satisfied that the person is guilty of the offence charged but is satisfied that the person is guilty of 1 or more public fraud offences (the *other offences*), the trier of fact—

- (a) must acquit the person of the offence charged; and
  - (b) may find the person guilty of the other offences.
- (4) In this section:

*public fraud offence* means an offence against the Criminal Code, section 333 (General dishonesty).

## **Division 6.3                      Criminal damage to property**

### **115                      Interpretation for div 6.3**

- (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 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) If any property is subject to a trust, the trustee and any person having a right to enforce the trust shall, for this division, be taken to be the persons to whom the property belongs.
- (4) The property of a corporation sole shall, for this division, be taken to belong to the corporation notwithstanding any vacancy in the corporation.
- (5) For section 116 (Destroying or damaging property) and section 117 (Arson), 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 section 116 (Destroying or damaging property) and section 117 (Arson), 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.

## **116 Destroying or damaging property**

- (1) 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 commits an offence.

Maximum penalty: imprisonment for 20 years.

- (2) 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 commits an offence.

Maximum penalty: 300 penalty units, imprisonment for 15 years or both.



- (3) A person who, intentionally and without lawful excuse, and by means other than fire or explosive, destroys or damages property that—
- (a) belongs to another person, or to himself or herself and another person; and
  - (b) does not exceed \$1 000 in value;
- commits an offence.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**117 Arson**

- (1) 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 commits an offence.

Maximum penalty: imprisonment for 25 years.

- (2) 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 commits an offence.

Maximum penalty: imprisonment for 20 years.

**119 Defacing premises**

- (1) A person commits an offence if the person—
- (a) affixes a placard or paper, or makes a mark with chalk, paint or any other material on private premises; and
  - (b) does not have the consent of—
    - (i) if the premises are occupied—the occupier or person in charge of the premises; or

- (ii) if the premises are not occupied—the owner or person in charge of the premises.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person commits an offence if the person unlawfully affixes a placard or paper, or makes a mark with chalk, paint or any other material, on public property.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) In this section:

***public property*** means—

- (a) a public road; or
- (b) a bus shelter; or
- (c) any other property of the Territory or Commonwealth or of an authority or body under a law of the Territory or the Commonwealth.

***public road***—see the *Roads and Public Places Act 1937*, dictionary.

## **120 Defacing premises—strict liability**

- (1) A person commits an offence if the person—
  - (a) makes a mark with chalk, paint or any other material on private premises; and
  - (b) does not have the consent of—
    - (i) if the premises are occupied—the occupier or person in charge of the premises; or
    - (ii) if the premises are not occupied—the owner or person in charge of the premises.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if the person unlawfully makes a mark with chalk, paint or any other material, on public property.

Maximum penalty: 10 penalty units.

- (3) An offence against this section is a strict liability offence.

- (4) In this section:

*public property*—see section 119 (3).

## **122 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, commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 5 years or both.

## **123 Alternative verdict**

If, on the trial of a person for an offence against 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 against 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 6.6 Contamination of goods and related offences**

### **135 Definitions of *contaminate* and *goods***

In this division:

*contaminate*, for goods, includes—

- (a) interfere with the goods; or
- (b) make it appear that the goods have been contaminated or interfered with.

*goods* includes a substance—

- (a) whether or not for human consumption; and
- (b) whether natural or manufactured; and
- (c) whether or not incorporated or mixed with other goods.

### **136 Meaning of economic loss**

In this part, economic loss caused through public awareness of the contamination of goods, or the possibility of contamination, includes economic loss caused through—

- (a) members of the public not buying or using the goods or similar goods; or
- (b) steps taken to avoid public alarm or anxiety or to avoid harm to members of the public.

### **137 Contaminating goods with intent to cause public alarm or economic loss**

A person must not contaminate goods with the intention of—

- (a) causing public alarm or anxiety; or
- (b) causing economic loss through public awareness of the contamination.

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

**138 Threatening to contaminate goods with intent to cause public alarm or economic loss**

- (1) A person must not threaten that goods will be contaminated with the intention of—
- (a) causing public alarm or anxiety; or
  - (b) causing economic loss through public awareness of the possibility of contamination.

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

- (2) For this section, a threat may be made by any conduct, and may be explicit or implicit and conditional or unconditional.

**139 Making false statements about contamination of goods with intent to cause public alarm or economic loss**

- (1) A person must not make a statement that the person believes to be false with the intention of—
- (a) inducing the person to whom the statement is made or others to believe that goods have been contaminated; and
  - (b) in that way, either—
    - (i) causing public alarm or anxiety; or
    - (ii) causing economic loss through public awareness of the contamination, or the possibility of contamination.

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

- (2) For this section, making a statement includes communicating information by any means.

## **140 Territorial nexus for offences**

It is immaterial that the conduct of a person forming an offence against this division happened outside the jurisdiction if the person intended by the conduct—

- (a) to cause public alarm or anxiety in the ACT; or
- (b) to cause economic loss in the ACT through public awareness of the contamination, or the possibility of contamination.

## **Division 6.7 Offences relating to causing public alarm**

### **140A Acting with intent to cause public alarm**

A person must not, with the intention of causing public alarm or anxiety—

- (a) do something that could endanger someone else's life or health; or
- (b) do something that, in the circumstances in which it is done, a reasonable person would suspect could endanger someone else's life or health (whether or not it could do so).

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

### **140B Threatening to act with intent to cause public alarm**

- (1) A person must not threaten to do something that could endanger someone else's life or health with the intention of causing public alarm or anxiety.

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

- (2) For this section, a threat may be made by any conduct, and may be explicit or implicit and conditional or unconditional.

**140C Making false statements with intent to cause public alarm**

- (1) A person must not make a statement that the person believes to be false with the intention of—
- (a) inducing the person to whom the statement is made or others to believe that something that could endanger someone else's life or health has been done; and
  - (b) in that way, causing public alarm or anxiety.

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

- (2) For this section, making a statement includes communicating information by any means.

**140D Territorial nexus for offences**

It is immaterial that the conduct of a person forming an offence against this division happened outside the ACT if the person intended by the conduct to cause public alarm or anxiety in the ACT.

**Division 6.8 Miscellaneous**

**141 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;

commits an offence.

Maximum penalty: 200 penalty units, imprisonment for 7 years or both.

**142 Removal of sea banks etc**

A person who without lawful authority or excuse removes any article or material fixed in or placed on 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 commits an offence.

Maximum penalty: 200 penalty units, imprisonment for 7 years or both.

**143 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 commits an offence.

Maximum penalty: 200 penalty units, imprisonment for 7 years or both.

**144 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 on 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 on or near a railway;



or who does, or causes to be done, any other thing with that intent, commits an offence.

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

**145 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 commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 3 years or both.

**146 Alternative verdict**

If, on the trial of a person for an offence against section 144, 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 against section 145, the jury may acquit the person of the offence charged and find him or her guilty of an offence against section 145.

**147 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 commits an offence.

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

**148 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 commits an offence.

Maximum penalty: 200 penalty units, imprisonment for 7 years or both.

**151 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 commits an offence.

Maximum penalty: 20 penalty units, imprisonment for 1 year or both.

**152 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 commits an offence.

Maximum penalty: 20 penalty units, imprisonment for 1 year or both.

**153 Disclosure of information by public employees**

- (1) A person who, being an officer of the Territory, publishes or communicates, except to some person to whom he or she is authorised to publish or communicate it, any fact or document which comes to his or her knowledge, or into his or her possession, by virtue of him or her being an officer of the Territory and which it is his or her duty not to disclose, commits an offence.

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.

- (2) A person who, having been an officer of the Territory, publishes or communicates, without lawful authority, any fact or document which came to his or her knowledge, or into his or her possession, by virtue of the person having been an officer of the Territory and which, at the time when he or she ceased to be an officer of the Territory, it was his or her duty not to disclose, commits an offence.

Maximum penalty: 50 penalty units, imprisonment for 2 years or both.

- (3) In this section:

*officer of the Territory* means—

- (a) a public employee; or  
(b) a person who performs services for the Territory or a territory authority.

#### **154 Additional offences on territory premises**

- (1) A person who, without reasonable excuse, trespasses on government premises commits an offence.

Maximum penalty: 1 penalty unit, imprisonment for 1 month or both.

- (2) A person who—
- (a) engages in unreasonable obstruction in relation to the passage of persons or vehicles into, out of, or on government premises, or otherwise in relation to the use of government premises; or
- (b) being in or on government premises, behaves in an offensive or disorderly manner; or

- (c) being in or on government premises, refuses or neglects, without reasonable excuse, to leave those premises on being directed to do so by a police officer or by a person authorised in writing by a Minister or the territory authority occupying the premises to give directions for this section;

commits an offence.

Maximum penalty: 2.5 penalty units, imprisonment for 3 months or both.

- (3) In this section:

**government premises** means any land, building or part of a building occupied by the Territory or a territory authority.

**unreasonable obstruction** means anything done by someone that is, or contributes to, an obstruction of or interference with the exercise or enjoyment by other people of their lawful rights or privileges (including rights of passage on public streets) that is unreasonable in all the circumstances (including the place, time, length and nature of the obstruction or interference).

## Part 7                      Escape provisions

### 157            **Meaning of *lawful custody*—periodic detention**

For this part, an offender serving periodic detention in the offender's periodic detention period of a sentence of imprisonment under the *Crimes (Sentencing) Act 2005* is taken to be in lawful custody only while performing periodic detention.

*Note*        The *Crimes (Sentence Administration) Act 2005*, pt 5.3 provides for the performance of periodic detention.

### 158            **Meaning of *detention during pleasure***

In this part, a reference to *detention during pleasure* is a reference to detention during the pleasure of the Governor-General, the Governor of a State or the Administrator of the Northern Territory, as the case requires.

### 159            **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 against 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) takes anything into a correctional centre, lockup or another place of lawful detention with intent to facilitate the escape from there of someone else who is detained or in custody in relation to an offence against a law of the Territory, the Commonwealth, a State or another Territory;

commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 5 years or both.

**160        Escaping**

A person who has been lawfully arrested, is in lawful custody, or is lawfully detained during pleasure, in respect of an offence against a law of the Territory, a State or another Territory and who escapes from that arrest, custody or detention commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 5 years or both.

**161        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 against 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 at a correctional centre, lockup or another place of lawful detention in relation to an offence against a law of the Territory, the Commonwealth, a State or another Territory from that centre, 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;

commits an offence.

Maximum penalty: imprisonment for 14 years.

## **162 Person unlawfully at large**

A person who—

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

commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 5 years or both.

## **163 Permitting escape**

(1) A person who—

- (a) is an officer of a correctional centre, 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 against 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;

commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 5 years 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 against a law of the Territory, a State or another Territory to escape from that arrest commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 5 years or both.

- (3) In this section:

*Commonwealth officer*—see the *Crimes Act 1914* (Cwlth), section 3.

*constable*—see the *Crimes Act 1914* (Cwlth), section 3.

## 164            **Harbouring 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 against a law of the Territory, a State or another Territory commits an offence.

Maximum penalty: 100 penalty units, imprisonment for 5 years or both.

## 166            **Failure to answer bail etc—offence**

- (1) If—

- (a) in accordance with a law in force in the ACT (other than the *Bail Act 1992*), a person arrested in respect of, or charged with, an offence against a law in force in the ACT 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;

the person commits an offence.

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

- (2) The reference in subsection (1) to *an undertaking* or *a recognisance* includes a reference to an undertaking given or a recognisance entered into (as the case requires) following the instituting of an appeal.

## Part 8 Anabolic steroids

### 170 Meaning of *anabolic steroid*

In this part:

*anabolic steroid* means an anabolic steroidal agent.

### 171 Prescribing and supplying anabolic steroids

- (1) A person commits an offence if the person prescribes an anabolic steroid for someone else for human use.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

- (2) A person commits an offence if the person supplies an anabolic steroid for someone else for human use.

Maximum penalty: 500 penalty units, imprisonment for 5 years or both.

- (3) This section does not apply to an anabolic steroid if the anabolic steroid is—

- (a) registered under the *Therapeutic Goods Act 1989* (Cwlth); or
- (b) prescribed or supplied for the purposes of a clinical trial conducted under that Act.

- (4) In this section:

*prescribe*—see the *Medicines, Poisons and Therapeutic Goods Act 2008*, dictionary.

*supply*—see the *Medicines, Poisons and Therapeutic Goods Act 2008*, section 24.

*Note* **Supply** includes sell and dispense (see *Medicines, Poisons and Therapeutic Goods Act 2008*, s 24).

**172 Possessing anabolic steroids**

- (1) A person commits an offence if the person possesses an anabolic steroid.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) Subsection (1) does not apply to a person who—
- (a) is authorised under the *Medicines, Poisons and Therapeutic Goods Act 2008* to manufacture, possess or supply the anabolic steroid; or
  - (b) obtained the anabolic steroid from someone who is authorised in accordance with paragraph (a) to supply the anabolic steroid to the person.

**173 Administering anabolic steroids**

- (1) A person commits an offence if the person administers an anabolic steroid to himself, herself or someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) This section does not apply to an anabolic steroid if the anabolic steroid is—
- (a) registered under the *Therapeutic Goods Act 1989* (Cwlth); or
  - (b) administered for the purposes of a clinical trial conducted under that Act.

## Part 10 Criminal investigation

*Note for pt 10*

The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

### Division 10.1 Preliminary

#### **U** 185 Definitions for pt 10

In this part:

***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 territory law.

***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.

**tainted property**—see the *Confiscation of Criminal Assets Act 2003*, section 10.

**target material**—see the *Confiscation of Criminal Assets Act 2003*, section 195.

**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 that is suspected, on reasonable grounds, to afford evidence of the commission of an indictable offence; or
- (c) anything that 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 that is suspected, on reasonable grounds, to afford evidence of the commission of a summary offence; or
- (c) anything that 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.

#### **185A Search of transgender or intersex person**

- (1) If a transgender or intersex person is searched under this part, the person may require that the search be conducted by either a male or a female.
- (2) If the transgender or intersex person requires that the search be conducted by a male, the person is taken, for this part, to be male.
- (3) If the transgender or intersex person requires that the search be conducted by a female, the person is taken, for this part, to be female.

#### **186 Application of pt 10**

- (1) This part is not intended to limit or exclude the operation of any other territory law 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 territory law provides power to do 1 or more of the things referred to in

subsection (1), a similar power given by this part may be used despite the existence of the power under the other law.

**U 187 Application of Cwlth Crimes Act, pt 1C**

- (1) The Commonwealth Crimes Act, part 1C (Investigation of Commonwealth offences) and the schedule (Form of explanation under section 23V) apply to summary offences in the same way as they apply to indictable offences.

*Note* The Cwlth Crimes Act provisions apply to indictable offences against ACT laws if the investigating officer is a police officer (see s 23A (6) of that Act).

- (2) However, the provisions of the Commonwealth Crimes Act mentioned in subsection (1) do not apply to—
- (a) an offence against the *Road Transport (Alcohol and Drugs) Act 1977*; or
  - (b) an infringement notice offence for the *Road Transport (General) Act 1999*, if the police officer concerned—
    - (i) intends to serve an infringement notice under that Act for the offence on the offender concerned; or
    - (ii) intends to take no further action against the offender concerned in relation to the offence.
- (3) Also, the following provisions of the Commonwealth Crimes Act only apply under subsection (1) if the person being interviewed or questioned is under arrest (within the meaning of that Act, section 23B (Definitions), as applied by subsection (1)) for a summary offence:
- (a) section 23K (Persons under 18);
  - (b) section 23V (Tape recording of confessions and admissions).



## **Division 10.2          Preventative action**

### **188          Police powers of entry**

A police officer may enter premises, and may take the action that 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) under a warrant issued under section 189; or
- (c) in circumstances of seriousness and urgency, in accordance with section 190.

### **189          Issue of warrant**

- (1) If 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 the assistance that is necessary and reasonable and by the force that 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 the action that 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 give the further information about the grounds on which the warrant is sought, either orally on oath or by affidavit, that the magistrate requires.

### **190 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.

### **U 191 Seizure of firearms—warrants and emergencies**

- (1) If a police officer enters premises under section 188 (Police powers of entry), section 189 (Issue of warrant) or section 190 (Entry in emergencies), 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.
- (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 the force that is reasonably necessary for the purpose.
- (4) A firearm, ammunition or licence seized under subsection (1) must be returned to the licensee at the end of 60 days after the seizure if, before the end of that period—
  - (a) a prosecution for an offence arising out of circumstances in which a police officer has entered premises under section 188 (Police powers of entry), section 189 (Issue of warrant) or section 190 (Entry in emergencies) has not been instituted; or
  - (b) an application for a protection order that is a domestic violence order (other than an emergency order) under the *Domestic Violence and Protection Orders Act 2001* has not been made.
- (5) However, a firearm, ammunition or licence seized under subsection (1) must 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.
- (6) A word or expression used in the *Firearms Act 1996* has the same meaning in this section.

**U** 192 **Seizure of firearms—protection orders**

- (1) In enforcing an order under the *Domestic Violence and Protection Orders Act 2001*, section 38 (5) (Firearms and final orders), section 57 (5) (Firearms and interim orders) or section 73 (2) (Firearms and emergency orders), a police officer may—
  - (a) enter premises where the respondent named in the order is reasonably believed to be living or staying; and
  - (b) seize any firearm, any ammunition and any licence to possess or use a firearm—
    - (i) in or on the premises; or
    - (ii) in or on a motor vehicle under the control of someone who ordinarily lives on the 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 the force that 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 to prevent the concealment, loss or destruction of the firearm, ammunition or licence.
- (5) If—
- (a) a firearm, ammunition or licence has been seized under subsection (1) for the purpose of enforcing an order mentioned in that subsection; and
  - (b) the licence has not been cancelled or suspended under the *Domestic Violence and Protection Orders Act 2001*, section 38, section 57 or section 73;
- 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) If a firearm is seized under subsection (1) and is not returned to the licensee in accordance with subsection (5), for the *Firearms Act 1996*, section 116, 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.

**193 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 10.3 Search warrants**

**U 194 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, that the warrant remains in force;
  - (f) subject to subsection (9), the times when the search is authorised.
- (6) For 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 subsection (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; or

(iii) target material or tainted property;

*Note* Target material and tainted property are relevant to the *Confiscation of Criminal Assets Act 2003*.

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) For 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 subsection (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; or

(iii) target material or tainted property;

*Note* Target material and tainted property are relevant to the *Confiscation of Criminal Assets Act 2003*.

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) Subsection (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 to prevent the concealment, loss or destruction of evidence relating to the offence.
- (10) If the application for the warrant is made under section 205, this section applies as if—
  - (a) subsections (1) and (2) referred to 48 hours rather than 72 hours; and
  - (b) subsection (5) (e) referred to 48 hours rather than 7 days.

**U** 195      **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; or
  - (iii) target material or tainted property;

*Note* Target material and tainted property are relevant to the *Confiscation of Criminal Assets Act 2003*.

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; or
    - (ii) record fingerprints from things; or

- (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; or
    - (iii) target material or tainted property;
- Note* Target material and tainted property are relevant to the *Confiscation of Criminal Assets Act 2003*.
- 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.

**196 Availability of assistance and use of force in executing warrant**

In executing a warrant—

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

**197 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.
- (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.

**198 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.

**199 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, 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 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 when 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 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.

## **200 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 subsection (2) (a) if—
- (a) it is not practicable to put the material in documentary form under subsection (2) (b) or to copy the material under subsection (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.



## **201 Compensation for damage to electronic equipment**

- (1) If—
- (a) damage is caused to equipment as a result of it being operated under section 199 or 200; 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.

## **202 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 section 200 (2) (b) or (c); or

- (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

**203 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 the Commonwealth Crimes Act, part 1C 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.

**204 Receipts for things seized under warrant**

- (1) If a thing is seized under a warrant or moved under section 199 (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.

**205 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, fax 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 the further information (if any) that 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 194.
- (5) If the issuing officer decides to issue the warrant, the issuing officer is to inform the applicant, by telephone, telex, fax or other electronic means, of the terms of the warrant, the day and the time when 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, the day and the time when 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 when 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.

## 206 Restrictions on personal searches

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

## Division 10.4 Powers to stop and search

### **U** 207 Stopping, searching and detaining people

- (1) This section applies if a police officer suspects, on reasonable grounds, that—
  - (a) a person is carrying, or otherwise has in his or her possession, a thing (the *relevant thing*) relevant to an indictable offence or a thing stolen or otherwise unlawfully obtained; and
  - (b) it is necessary to exercise a power under subsection (2) 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) If this section applies, the police officer may—
  - (a) stop and detain the person; and
  - (b) conduct a frisk search or ordinary search of the person for the relevant thing; and

- (c) seize the thing if the officer finds it.
- (3) If, in the course of searching for the relevant thing, the police officer finds any evidential material, the officer may seize the material if the officer suspects, on reasonable grounds, that—
- (a) it is necessary to seize it 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) A frisk search under this section may only be carried out by a person of the same sex as the person being searched.
- (5) As soon as possible after exercising a power under subsection (2), the police officer must make a written record of—
- (a) the date, time and place of exercising the power; and
- (b) details of its exercise; and
- (c) any details of the person known to the police officer; and
- (d) the grounds for suspecting the relevant matter mentioned in subsection (1).
- (6) The police officer must exercise his or her powers under this section subject to section 208.

## **208 How a police officer exercises a power under s 207**

In exercising a power under section 207 in relation to a person, a police officer must not detain the person for longer than is necessary and reasonable to conduct a frisk search or ordinary search of the person.

## **U 209 Stopping, searching and detaining conveyances**

- (1) This section applies if a police officer suspects, on reasonable grounds, that—

- (a) a thing relevant to an indictable offence or a thing stolen or otherwise unlawfully obtained, is in or on a conveyance; and
  - (b) it is necessary to exercise a power under subsection (2) 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) If 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 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 210.

## **210 How a police officer exercises a power under s 209**

In exercising a power under section 209 in relation to a conveyance, a police officer—

- (a) may use the assistance that is necessary; and
- (b) shall search the conveyance in a public place or in some other place where 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 the force that 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 10.5            Arrest and related matters**

### **211            Requirement to provide name etc**

- (1) If—
  - (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—
  - (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) 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) 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.

Maximum penalty: \$500.

## **U** 212 **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 suspects 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.
- (2) A police officer may, without warrant, arrest a person for a domestic violence offence if the police officer suspects on reasonable grounds that the person has committed or is committing the offence.
- (3) If—
- (a) a person has been arrested under subsection (1) or (2) 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 suspect that—
    - (i) the person committed the offence; or
    - (ii) for a person arrested under subsection (1)—holding the person in custody is necessary to achieve any of the purposes referred to in subsection (1) (b);
- the person shall forthwith be released from custody in respect of the offence.

- (4) A police officer may, without warrant, arrest a person whom he or she suspects on reasonable grounds has escaped from lawful custody to which the person is still liable in respect of an offence.
- (5) In this section:  
*domestic violence offence*—an offence that a person is suspected of committing is a *domestic violence offence* if the conduct making up the offence is domestic violence under the *Domestic Violence and Protection Orders Act 2001*.

### 213 Arrest without warrant in possession

- (1) This section applies if—
- (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) If this section applies, the police officer may—
- (a) arrest the person; and
  - (b) for 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.

**214 Arrest of prisoner unlawfully at large**

- (1) A police officer may, without warrant, arrest a person whom the police officer suspects 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 corrections officer to take the person to a correctional centre or other place of detention stated 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.

**U 217 Arrest without warrant for offences committed outside ACT**

- (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 ACT, 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 suspects on reasonable grounds to have committed an offence to which this section applies.

- (3) If 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) If 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 territory law.
- (6) If 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) If—
  - (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) If—
- (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.

- (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.

## **218 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.

## **219 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 section 212 (1) (b);
  - (c) if the issuing officer has requested further information about 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) Subsection (1) (b) does not apply if 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.
- (4) This section does not apply to the issue of a warrant under the *Bail Act 1992*, section 49 (1) (Failure to answer bail).

**U 220 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 the force that 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 212 to arrest the person without warrant for an offence; and
  - (b) the offence is an indictable offence or relevant summary offence; and
  - (c) the police officer believes on reasonable grounds that the person is on any premises;

the police officer may enter the premises, using the force that 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 to prevent the concealment, loss or destruction of evidence relating to the offence.

- (4) In this section:

***dwelling house*** includes a conveyance, and a room in a hotel, motel, boarding house or club, where people ordinarily sleep at night.

***relevant summary offence*** means an offence against—

- (a) section 380 (Possession of offensive weapons and disabling substances); or
- (b) section 381 (Possession of offensive weapons and disabling substances with intent); or
- (c) the Criminal Code, section 321 (Minor theft); or

- (d) the *Road Transport (Alcohol and Drugs) Act 1977*, section 19 (Prescribed blood alcohol concentration exceeded).

## **221 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 way.

## **222 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.

### **223 Power to conduct frisk search of arrested person**

- (1) 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 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.
- (2) The police officer may arrange for another police officer to conduct the frisk search if, having regard to section 240 (Conduct of ordinary searches and frisk searches), the officer considers that it would be more appropriate for the other officer to conduct the frisk search.
- (3) The other police officer is authorised—
  - (a) to conduct the frisk search; and
  - (b) to seize any seizable items found as a result of the search.

### **224 Power to conduct ordinary search of arrested person**

- (1) 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.

- (2) The police officer may arrange for another police officer to conduct the ordinary search if, having regard to section 240 (Conduct of ordinary searches and frisk searches), the officer considers that it would be more appropriate for the other officer to conduct the frisk search.
- (3) The other police officer is authorised—
  - (a) to conduct the ordinary search; and
  - (b) to seize anything mentioned in subsection (1) found as a result of the search.

**225 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.

**226 Power to conduct search at police station**

- (1) If—
  - (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) If—
  - (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 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) If 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) If 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.

## **227 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 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 228, a strip search may also be conducted if the person consents in writing.
  - (4) Subject to section 228, 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, fax or other electronic means.
  - (6) A police officer who gives or refuses to give an approval under subsection (2) (d) shall make a record of the decision and of the reasons for the decision.
  - (7) The force that 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 subsection (2) (a) that is found during a strip search may be seized.

## **228 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 subsection (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) any other matters 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) Subsection (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) If 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 under a request under subsection (6) in respect of a strip search that would have been lawful if conducted by a police officer.

## **229 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 when 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) If 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 subsection (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.

### **230 Taking fingerprints, recordings, samples of handwriting or photographs**

- (1) In this section and in sections 231 and 232:  
*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 under the Commonwealth Crimes Act, section 23U or 23V.
- (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 for an offence, a police officer of the rank of sergeant or higher, or 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 any 1 or more of the following paragraphs apply:
  - (a) the identification material is prints of the person's fingers or photographs of the person;
  - (b) the person consents in writing;
  - (c) the police officer believes on reasonable grounds that it is necessary to do so to—
    - (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;
  - (d) 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 the force that 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) any 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 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 the *Children and Young People Act 1999*, section 84 (Identifying material).

### **231 Destruction of identification material**

- (1) If—
- (a) identification material is taken under section 230; 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 230 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.

**232 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 where 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, fail to allow impressions or a photograph to be taken under an order under subsection (1).

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

**233 Identification parades—general**

- (1) This section applies to identification parades held in relation to offences.
- (2) Subject to subsection (3) and to section 234, 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 234, 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 way 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 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 that way 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 the 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 way that is fair to the suspect.

**234 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) any 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.

### **235 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, on 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, on 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 about 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.

### **236 Identification procedures if 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.

### **237 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.

## 238 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 if—

- (a) the person consents; or
  - (b) an order is made under subsection (3).
- (3) If a person (the *person charged*) is in lawful custody on 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 an examination of the person.
- (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) If 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) for an examination which includes the external examination of the genital or anal area, the buttocks, or, for 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 the *Children and Young People Act 1999*, section 84 (Identifying material) applies.

## **Division 10.6      General**

### **239      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.

### **240      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.

### **241      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 section 192 (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 190.

**242 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.

Maximum penalty: imprisonment for 2 years.

**243 Offences relating to telephone warrants**

A person shall not—

- (a) state in a document that purports to be a form of warrant under section 205 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.

Maximum penalty: imprisonment for 2 years.

**244 Return of seized knife or thing**

- (1) If a knife is seized under section 193, 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 against section 382 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 against section 382 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 248.
- (2) Subject to any contrary order of a court, if a police officer seizes a thing under division 10.2, 10.3 or 10.4, 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 207 (Stopping, searching and detaining people) or section 209 (Stopping, searching and detaining conveyances)—
    - (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.
- (3) If a thing is seized under section 207 (Stopping, searching and detaining people) or section 209 (Stopping, searching and detaining conveyances), 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 245; 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.

#### **245 Magistrates Court may permit thing to be retained**

- (1) If a thing is seized under section 207 (Stopping, searching and detaining people) or section 209 (Stopping, searching and detaining conveyances), 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.

**247      Laws relating to taking forensic samples not affected**

Nothing in this part is intended to limit or exclude the operation of a territory law relating to the taking of forensic samples (excluding identification material as defined in section 230).

**248      Forfeiture of knife**

- (1) A knife seized under section 193 (Power to conduct search of person for knife) is forfeited to the Territory if the person from whom the knife was seized is convicted or found guilty of an offence against section 382 (Possession of knife in public place or school) in relation to the knife.
- (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 the way 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 the way the commissioner of police directs if—
  - (a) 6 months have elapsed since the person was found guilty of an offence against section 382 in relation to the knife; and
  - (b) reasonable attempts have been made to ascertain the whereabouts of the owner of the knife.

## **249 Seizure of forfeited articles**

- (1) A member of the police force may, without warrant, seize any article that is forfeited, or that he or she has reasonable grounds for believing is forfeited, under any law in force in the ACT and take that article before the Magistrates Court.
- (2) If any article is brought before the court under subsection (1), the court may, subject to the giving of the notice (if any) to the person (if any) that the court directs, order that the article be condemned or delivered to the person that the court is satisfied is entitled to the article.
- (3) If 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 250.

## **250 Disposal of forfeited articles by public trustee**

- (1) The public trustee must sell or otherwise dispose of an article transferred to the public trustee under section 249 (4).
- (2) The public trustee must—
  - (a) apply the proceeds of the sale or disposition in payment of the public trustee's remuneration, and other costs, charges and expenses, in relation to the sale or disposition; and
  - (b) pay the remainder of the proceeds to the confiscated assets trust fund under the *Confiscation of Criminal Assets Act 2003*.
- (3) However, the Minister may, in a particular case, direct that the article be dealt with in accordance with the direction (including in accordance with a law stated in the direction).
- (4) The public trustee must comply with the Minister's direction.

- (5) The regulations may make provision in relation to public trustee's remuneration, and other costs, charges and expenses, under subsection (2) (a).

**252**      **When case not to be proceeded with gaoler to discharge prisoner on certificate from Attorney-General etc**

The Attorney-General may, in respect of any person under committal for trial, and in all cases if any person is remanded to prison, and if 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 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 the warrant, and, if the 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.

*Note 1*    If a form is approved under s 443 for a certificate, the form must be used.

*Note 2*    If a form is approved under the *Court Procedures Act 2004* for a warrant, the form must be used.

**U**    **Division 10.7**                      **Particular provisions for children**

## Part 11 Investigation of extraterritorial offences

### **U** 253 Interpretation for pt 11

(1) In this part:

*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 in relation to the Australian Federal Police.

*corresponding law* means a law of a State or another Territory declared under section 254 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 that, if done or occurring in the ACT would attract criminal liability under the law of the ACT).

*owner*, in relation to an object, includes a person entitled to possession of the object.

*premises* means a building, structure or place (whether or not built on and whether enclosed or unenclosed), and includes an aircraft, vessel or vehicle.

*reciprocating State* means a State or another Territory—

- (a) where a corresponding law is in force; and
- (b) in relation to which arrangements are in force under section 258.

*search warrant* means a warrant under this part authorising a search of premises.

*telephone* includes any telecommunication device.

- (2) For 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.

## **254 Declaration of corresponding law**

- (1) The Executive may, in writing, declare a law of a State or another Territory to be a corresponding law.
- (2) A declaration is a notifiable instrument.

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

## **255 Issue of search warrants**

- (1) If, on 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) If 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 given 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 the 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.

## **256 Authority given by search warrant**

- (1) A search warrant authorises any police officer, with the assistants that 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 the force that 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 258.
- (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 under 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 end of 1 month from the date of its issue, shall then expire.

**257 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 imprisonment for a period not exceeding 6 months, a fine not exceeding \$2 000 or both.

**258 Ministerial arrangements for transmission and return of objects seized under pt 11 or 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 territory law—
  - (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 where they were seized.
- (2) The owner of an object returned to the commissioner of police under arrangements under subsection (1) is entitled to the return of the object.
- (3) The right given by subsection (2) is enforceable by action in detinue in any court of competent jurisdiction.

## Part 12 Procedure, evidence, verdict etc

### 260 What defects do not vitiate 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 when the offence was committed, nor for stating the time wrongly, if 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 if such value, or price, or amount, is not of the essence of the offence.

### 261 Formal objections—when to be taken

Every objection to an indictment, for any formal defect apparent on the face of it, shall be taken by demurrer or motion to quash the 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.

### 262 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.

**263 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) If the judge is of opinion that the accused ought to be allowed time, either to prepare for his or her defence, or otherwise, the judge shall postpone the trial on the terms that the judge considers appropriate, and may respite the recognisances of the prosecutor and witnesses accordingly.

**264 Orders for amendment of indictment, separate trial and postponement of trial**

- (1) If, before trial, or at any stage of a trial, it appears to the court that the indictment is defective, the court shall make the order for the amendment of the indictment that 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) If, 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 because 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 the indictment.
- (3) If, 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 any order that appears necessary.
- (4) If an order of the court is made under this section for a separate trial, or for the postponement of a trial—
  - (a) if the 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 the order as to admitting the accused person to bail and as to the variation of bail arrangements and otherwise that 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.

**265 Amended indictment**

If 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 relation to, or consequent on, the trial.

**266 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 the amendment.

**267 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, the record may be drawn up in the words and form of the amended indictment, without noticing the fact of amendment.

**268 Respite undertakings on postponement**

If 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.

**269 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.

**270 Accessories may be charged together in 1 indictment**

For any offence, any number of accessories to the offence, 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 the indictment, or is not in custody or amenable to justice.

**271 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 the previous offence.

**272 Property of partners or joint owners**

- (1) If, 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 them, 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.

**273 Description of written instruments**

If 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 the instrument by any name or designation by which the instrument is usually known, or by the purport of it, without setting out any copy of it, or otherwise describing it, and without stating its value.

**274 General averment of intent to defraud or injure**

- (1) If it is necessary to allege an intent to defraud, or injure, it shall be sufficient to allege that the accused did the act with the 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.

**275 Indictment for murder or manslaughter**

In an indictment for murder, or manslaughter, it shall not be necessary to set out the way 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.



**276 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 way specified, and then to charge the accused as an accessory.

**277 Addition of count for assault**

In an indictment for an offence against the person, if the offence includes an assault, a count may be added for the assault.

**279 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 or not 2 or more defendants are included in the same indictment, 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 on 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 the particulars to be given, that to the court shall seem meet, and that if 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.

**280 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 in the indictment.
- (2) On conviction he or she shall forthwith be arraigned, and the jury shall be charged as to the previous conviction, or convictions, and the trial shall proceed in relation to them.

**280A Treason trials**

A person charged with treason shall be arraigned and tried in like manner, and according to the like course and order of trial, in every respect as if the person were charged with murder.

**281 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 on the country for trial, and the court shall, in the usual way, order a jury for his or her trial accordingly.

**282 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 the person, and the plea so entered shall have the same effect as if he or she had actually pleaded not guilty.

**283 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 the previous conviction or acquittal.

**284 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 the judge shall see fit.

**285 Accused may be defended by lawyer**

- (1) An accused person has the right in any court to—

- (a) make a full answer and defence to a charge by a lawyer; and
  - (b) reserve the person's address until after the close of the evidence for the defence.
- (2) If the accused person reserves the person's address until after the close of the evidence for the defence, all evidence in reply for the prosecution must be given before the person's address.

**286 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 that shall be in, the court before which he or she is under trial.

**287 Power of judge to record verdict of acquittal**

- (1) If, on the trial of a person for an offence against this Act or any other territory law, 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.

**288 Notice of alibi**

- (1) If 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 given to the defendant.

- (2) On a trial on indictment the defendant must not, without the court's leave, present evidence in support of an alibi unless, within 14 days after the day the defendant is committed for trial, the defendant 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 that 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 that 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 told by or on behalf of the prosecution that the person has not been found by the name, or at the address, given by the defendant—
    - (i) the defendant immediately gives notice of any information in the defendant's possession that might be of material assistance in finding the person; or
    - (ii) if the defendant later receives any such information—the defendant immediately gives the prosecution notice of the information.

- (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.

### **289 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.

### **290 Incriminating statements admissible though on oath**

No incriminating statement by the accused, offered in evidence in any case, if the statement was made voluntarily, and before any charge preferred against him or her, shall be rejected, because of the statement having been on oath.

### **291 Evidence of previous conviction charged in 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 the indictment.

**292 Proof of lawful authority or excuse**

If, 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 lawful authority or excuse shall lie on the accused.

**294 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) If, in the closing address for the defence in a trial on indictment, relevant facts are asserted that 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.

**295 Witnesses in mitigation**

- (1) This section applies before a court passes sentence on a convicted person.
- (2) The court may, at its own initiative or at the request of the prosecution or the convicted person, summon witnesses and examine them on oath in relation to any matter in extenuation of the person's offence.

**296 Conviction for alternative offence**

If, 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 on the trial, and direct the person to be indicted for the secondmentioned offence.

**297 After trial for offence, if 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 of the offence but be found guilty of some other offence, shall be liable to prosecution on the same facts for the other offence.

**298 On trial for any offence—verdict of attempt**

If 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 the attempt, or assault, and he or she shall be liable to punishment accordingly.

**299 Multiple alternative verdicts**

If—

- (a) a person is on trial for an offence against this Act; and
- (b) under 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.

## Part 13 Unfitness to plead and mental impairment

### Division 13.1 Preliminary

#### **U** 300 Definitions for pt 13

In this part:

*ACAT* means the ACAT exercising its jurisdiction under the *Mental Health (Treatment and Care) Act 1994*.

*accused*, for a person before the Magistrates Court, means the defendant.

*alternative offence*, for an offence, means an offence available as an alternative to the offence.

*conduct*—see the Criminal Code, section 13.

*defendant*—see the *Magistrates Court Act 1930*, section 18A.

*engage in conduct*—see the Criminal Code, section 13.

*mental health order*—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.

*serious offence* means—

- (a) an indictable offence involving actual or threatened violence;  
or
- (b) an offence against section 27 (3) or (4).

*special hearing* means a hearing conducted in accordance with section 316.



**301 Limitation on orders and detention—non-acquittals**

- (1) If, under section 318 (2) or 319 (2), the Supreme Court makes an order that the accused be detained in custody until the ACAT 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 Supreme 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.

**302 Limitation on orders and detention—acquittals**

- (1) If, under section 323 or 324, the Supreme Court makes an order that the accused be detained in custody until the ACAT 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 Supreme 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.

**303 Limitation on Supreme Court orders**

The Supreme Court shall not order that an accused be detained for a period greater than the term nominated by it under section 301 or 302, as the case may be.

**304 Limitation on orders and detention—dismissal of charge**

- (1) If under section 328 or 329, the Magistrates Court makes an order that the accused be detained in custody until the ACAT 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.

**305 Limitation on orders and detention—Magistrates Court**

- (1) If under section 335, the Magistrates Court makes an order that the accused be detained in custody until the ACAT 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.

**306 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 section 304 (2) or 305 (2).

**307 How relevant court may inform itself**

For sections 301, 302, 304 and 305, in determining the sentence it would have imposed, the relevant court may inform itself and consider the evidence and submissions that it would were the court determining the sentence to be imposed in normal criminal proceedings.

**308 Criteria for detention**

For this part, other than division 13.5 (except section 335), in making a decision which could include an order for detention, the Supreme Court or Magistrates Court shall consider the following criteria:

- (a) the nature and extent of the accused's mental impairment, 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 a correctional centre unless no other reasonable option is available;
- (e) any recommendation made by the ACAT about how the accused should be dealt with.

**309 Assessment whether emergency detention required**

- (1) If, in a proceeding in the Magistrates Court, the court has reasonable grounds for believing that an accused needs immediate treatment or

care because of mental impairment, the court may, without requiring the accused to submit to the jurisdiction of the ACAT, order that—

- (a) the accused be taken by a police officer or corrections officer to an approved health facility for clinical examination for the purpose of deciding whether the accused needs immediate treatment or care because of mental impairment; 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 need detention and care because of mental impairment—by the person who is in charge of an approved health facility or approved mental health facility where 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 subsection (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*—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.

*approved mental health facility*—see the *Mental Health (Treatment and Care) Act 1994*, dictionary.

*authorised officer*—see the *Bail Act*, dictionary.

*Bail Act* means the *Bail Act 1992*.

## **Division 13.2      Unfitness to plead**

### **310      Application of div 13.2**

This division applies to a criminal proceeding in the Supreme Court or the Magistrates Court.

### **311      When a person is unfit to plead**

(1) A person is unfit to plead to a charge if the person's mental processes are disordered or impaired to the extent that the person cannot—

(a) understand the nature of the charge; or

(b) enter a plea to the charge and exercise the right to challenge jurors or the jury; or

- (c) understand that the proceeding is an inquiry about whether the person committed the offence; or
  - (d) follow the course of the proceeding; or
  - (e) understand the substantial effect of any evidence that may be given in support of the prosecution; or
  - (f) give instructions to the person's lawyer.
- (2) A person is not unfit to plead only because the person is suffering from memory loss.

**312 Presumption of fitness to plead, standard of proof etc**

- (1) A person is presumed to be fit to plead.
- (2) The presumption is rebutted only if it is established, on an investigation under this division, that the person is unfit to plead.
- (3) The question of a person's fitness to plead—
  - (a) is a question of fact; and
  - (b) is to be decided on the balance of probabilities.
- (4) No party bears a burden of proof in relation to the question.

**313 Who can raise question of unfitness to plead**

The question of a defendant's fitness to plead to a charge may be raised by a party to a proceeding in relation to the charge or by the court.

**314 Procedure if question raised**

- (1) If the question is raised in the Magistrates Court (other than at a committal hearing) and the court is satisfied that there is a real and substantial question about the defendant's fitness to plead, the court must reserve the question for investigation under this division.
- (2) If the question is raised at a committal hearing—

- (a) the committal hearing must be completed; and
  - (b) the defendant must not be discharged only because the question has been raised; and
  - (c) if the person is committed for trial—the question must be reserved for consideration by the Supreme Court.
- (3) If the question has been reserved under subsection (2) (c) or is otherwise raised in the Supreme Court and the court is satisfied that there is a real and substantial question about the defendant's fitness to plead, the court must reserve the question for investigation under this division.

### **315 Procedure if question reserved for investigation**

- (1) If a court reserves the question for investigation, the court must adjourn the hearing or trial in which the question was raised and proceed with an investigation under this division.
- (2) The court may make 1 or more of the following orders:
  - (a) an order granting bail;
  - (b) an order remanding the defendant in custody in an appropriate place for a stated period;
  - (c) an order requiring the defendant to be examined by a psychiatrist or other health professional;
  - (d) if the question arose in a trial for which a jury had been empanelled—an order discharging the jury;
  - (e) any other order the court considers appropriate.
- (3) The court must not make an order under subsection (2) (b) remanding the defendant in custody at a place other than a correctional centre unless satisfied that the facilities or services necessary for the order are available at the place.

- (4) If the court considers that, because of the trivial nature of the charge or the nature of the defendant's mental impairment, it would be inappropriate to inflict any punishment on the defendant in relation to the offence, the court may decide not to carry out or continue the investigation and may dismiss the charge and order that the person be released.

**315A Investigation into fitness to plead**

- (1) On an investigation into a defendant's fitness to plead—
- (a) the court must hear any relevant evidence and submissions put to the court by the prosecution or the defence; and
  - (b) if the court considers that it is in the interests of justice to do so, the court may—
    - (i) call evidence on its own initiative; or
    - (ii) require the defendant to be examined by a psychiatrist or other health professional; or
    - (iii) require the results of the examination to be put before the court.
- (2) Before hearing any evidence or submissions, the court must consider whether, for the protection of the defendant's privacy, the court should be closed to the public while all or part of the evidence or submissions are heard.
- (3) The court must decide whether the defendant is unfit to plead.
- (4) If the court finds that the defendant is unfit to plead, the court must also decide whether the defendant is likely to become fit to plead within the next 12 months.



**315B Person found fit to plead**

If the court decides that the defendant is fit to plead, the proceeding brought against the defendant must be continued in accordance with ordinary criminal procedure.

**315C Person found unfit to plead and unlikely to become fit to plead**

If the court decides that the defendant is unfit to plead and is unlikely to become fit to plead within the next 12 months, the court must—

- (a) for a proceeding in the Supreme Court—
  - (i) discharge any jury empanelled for the proceeding; and
  - (ii) hold a special hearing under section 316; and
- (b) for a proceeding in the Magistrates Court—conduct a hearing under section 335.

**315D Person found temporarily unfit to plead**

- (1) If the court decides that the defendant is unfit to plead but is likely to become fit to plead within the next 12 months, the court must adjourn the proceeding and—
  - (a) if the defendant is charged with a serious offence—remand the defendant in custody or release the defendant on bail; and
  - (b) if the defendant is charged with an offence other than a serious offence—make the orders it considers appropriate.
- (2) The orders the court may make under subsection (1) (b) include—
  - (a) an order remanding the defendant in custody; and
  - (b) an order requiring the defendant to submit to the jurisdiction of the ACAT to allow the ACAT to make a mental health order.

- (3) The court may (on application or its own initiative) reinvestigate the defendant's fitness to plead at any time before the end of the 12-month period.
- (4) However, if the court has not reinvestigated the defendant's fitness to plead within 6 months after the day the initial decision was made, the court must reinvestigate it as soon as practicable (but within 30 days) after the end of that period.
- (5) If, before the end of the 12-month period, the defendant has not been found fit to plead, the court must reinvestigate the defendant's fitness to plead as soon as practicable (but within 3 months) after the end of that period.
- (6) On a reinvestigation—
  - (a) the court must hear any relevant evidence and submissions put to the court by the prosecution or the defence; and
  - (b) if the court considers that it is in the interests of justice to do so, the court may—
    - (i) call evidence on its own initiative; or
    - (ii) require the defendant to be examined by a psychiatrist or other health professional; or
    - (iii) require the results of the examination to be put before the court.
- (7) The court must decide whether the defendant is unfit to plead.
- (8) If the court decides that the defendant is fit to plead, the proceeding brought against the defendant must be continued in accordance with ordinary criminal procedure.
- (9) If, on a reinvestigation mentioned in subsection (5), the court decides that the defendant is unfit to plead, the court must—
  - (a) for a proceeding in the Supreme Court—
    - (i) discharge any jury empanelled for the proceeding; and

- (ii) hold a special hearing under section 316; and
- (b) for a proceeding in the Magistrates Court—conduct a hearing under section 335.

### **316 Special hearing**

- (1) Subject to this section, the Supreme 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 Supreme 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 Supreme Court is satisfied that the accused is incapable of making the election mentioned in paragraph (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.
- (3) The Supreme Court must direct the ACAT to appoint a guardian with power to make an election under subsection (2) (a) (i) if satisfied that—
  - (a) the accused is incapable of making the election; and

- (b) a guardian who has power to make an election of that kind has not been appointed by the ACAT under the *Guardianship and Management of Property Act 1991*.
- (4) If—
- (a) the accused makes an election under subsection (2) (a) (ii); or
  - (b) a guardian notifies the Supreme Court under subsection (2) (b) (ii);
- the special hearing shall be by single judge without a jury.
- (5) Despite subsection (2) (b), if before the date fixed by the Supreme Court for the hearing—
- (a) the court is satisfied that the accused is capable of making the election mentioned in subsection (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.
- (6) Unless the Supreme Court otherwise orders, the accused shall have legal representation at a special hearing.
- (7) A decision 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.
- (8) At a special hearing, the accused is to be taken to have pleaded not guilty in respect of the offence charged.
- (9) If a special hearing is a trial by jury, the Supreme 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 engaged in the conduct required for the offence charged (or an alternative offence); and
- (d) the actions that are available to the jury under section 317; and
- (e) the legal and practical consequences of those actions.

**317 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 engaged in the conduct required for the offence charged (or an alternative offence, if not satisfied in relation to 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.
- (3) If, at a special hearing by a single judge without a jury, the judge is not satisfied beyond reasonable doubt that the accused engaged in the conduct required for the offence charged (or an alternative offence, if not satisfied in relation to 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.

- (4) If, at a special hearing, the jury (or, if the special hearing is by a single judge without a jury, the judge) is satisfied beyond reasonable doubt that the accused engaged in the conduct required for the offence charged (or an alternative offence, if not satisfied in relation to the offence charged), the finding—
- (a) is not a basis in law for recording a conviction for the offence charged (or an alternative offence); and
  - (b) except as provided in section 319A (Action if accused becomes fit to plead after special hearing), bars further prosecution of the accused for any offence in relation to the conduct.

**318 Non-acquittal at special hearing—non-serious offence**

- (1) This section applies if—
- (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 engaged in the conduct required for the offence charged (or an alternative offence, if not satisfied in relation to the offence charged); or
    - (ii) by jury—the jury advises the court under section 317 (1).
- (2) If this section applies, the Supreme Court may make the orders that it considers appropriate, including the following:
- (a) that the accused be detained in custody until the ACAT orders otherwise;
  - (b) that the accused submit to the jurisdiction of the ACAT to allow the ACAT to make a mental health order.

**319 Non-acquittal at special hearing—serious offence**

- (1) This section applies if—
  - (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 engaged in the conduct required for the offence charged (or an alternative offence, if not satisfied in relation to the offence charged); or
    - (ii) by jury—the jury advises the court under section 317 (1).
- (2) If this section applies, the Supreme Court shall order that the accused be detained in custody until the ACAT orders otherwise unless, in consideration of the criteria for detention in section 308, it is satisfied that it is more appropriate to order that the accused submit to the jurisdiction of the ACAT to enable the ACAT to make a mental health order.
- (3) If the Supreme Court is satisfied under subsection (2), it shall make an order accordingly.

**319A Action if accused becomes fit to plead after special hearing**

- (1) This section applies if—
  - (a) the Supreme Court makes an order under section 318 or section 319 in relation to an accused; and
  - (b) the offence in relation to which the order is made is punishable by imprisonment for 5 years or longer; and
  - (c) the ACAT later decides the accused is fit to plead in relation to the offence.

*Note* For the relevant review of fitness to plead provisions, see the *Mental Health (Treatment and Care) Act 1994*, s 68.

- (2) The director of public prosecutions must consider whether to take further proceedings against the accused in relation to the offence.
- (3) If further proceedings are taken and the accused is found guilty of the offence charged (or an alternative offence), the court must, in deciding the sentence for the offence, take into account any time the accused has spent in custody or detention in relation to the offence.

### **Division 13.3                      Supreme Court—special verdict of not guilty because of mental impairment**

#### **321                      Supreme Court—plea of not guilty because of mental impairment**

- (1) This section applies if an accused pleads not guilty because of mental impairment to an indictable offence before the Supreme Court.
- (2) The Supreme Court must enter a special verdict that the person is not guilty of the offence because of mental impairment if—
  - (a) the court considers the verdict appropriate; and
  - (b) the prosecution agrees to the entering of the verdict.

#### **322                      Explanation to jury**

If, on the trial by jury of an accused charged with an indictable offence, evidence is adduced that tends to establish that the accused is entitled to a special verdict of not guilty because of mental impairment, the court shall explain to the jury the verdicts that may be returned at the trial and the legal and practical consequences of those verdicts.



**323 Supreme Court orders following special verdict of not guilty because of mental impairment—non-serious offence**

- (1) If an accused has been charged with an indictable offence other than a serious offence and a special verdict of not guilty because of mental impairment is returned or entered, the Supreme Court may—
  - (a) make an order requiring the accused to submit to the jurisdiction of the ACAT to enable the ACAT to make recommendations as to how he or she should be dealt with; or
  - (b) make any other orders it considers appropriate.
- (2) If—
  - (a) the Supreme Court makes an order under subsection (1) (a); and
  - (b) the ACAT notifies the court of its recommendations;the court shall, in consideration of the ACAT's recommendations, make any further orders it considers appropriate.
- (3) The orders the Supreme Court may make under subsections (1) and (2) include the following:
  - (a) that the accused be detained in custody until the ACAT orders otherwise;
  - (b) that the accused submit to the jurisdiction of the ACAT to enable the ACAT to make a mental health order.

**324 Supreme Court orders following special verdict of not guilty because of mental impairment—serious offence**

- (1) If an accused is charged with a serious offence and a special verdict of not guilty because of mental impairment is returned or entered, the Supreme Court shall order that the accused be detained in custody until the ACAT orders otherwise unless, in consideration of the criteria for detention in section 308, it is satisfied that it is more

appropriate to order that the accused submit to the jurisdiction of the ACAT to enable the ACAT to make a mental health order.

- (2) If the Supreme Court is satisfied under subsection (1), it shall make an order accordingly.

### **Division 13.4 Magistrates Court—finding of not guilty because of mental impairment**

#### **325 Meaning of *serious offence* in div 13.4**

In this division:

*serious offence* means—

- (a) an offence involving actual or threatened violence; or
- (b) an offence against section 27 (3) or (4).

#### **327 Magistrates Court—plea of not guilty because of mental impairment**

- (1) This section applies if an accused pleads not guilty because of mental impairment to a charge before the Magistrates Court.
- (2) The Magistrates Court must find that the person is not guilty because of mental impairment if—
  - (a) the court considers the finding appropriate; and
  - (b) the prosecution agrees to the finding.

#### **328 Magistrates Court orders following finding of not guilty because of mental impairment—non-serious offence**

- (1) If an accused has been charged with an offence other than a serious offence and is found not guilty because of mental impairment, the Magistrates Court may—

- (a) make an order requiring the accused to submit to the jurisdiction of the ACAT to enable the ACAT to make recommendations as to how he or she should be dealt with; or
  - (b) make any other orders it considers appropriate.
- (2) If—
- (a) the Magistrates Court makes an order under subsection (1) (a); and
  - (b) the ACAT notifies the Magistrates Court of its recommendations;
- the Magistrates Court shall, in consideration of the ACAT's recommendations, make any further orders 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 ACAT orders otherwise;
  - (b) that the accused submit to the jurisdiction of the ACAT to enable the ACAT to make a mental health order.

**329 Magistrates Court orders following finding of not guilty because of mental impairment—serious offence**

- (1) If an accused is charged with a serious offence and is found not guilty because of mental impairment, the Magistrates Court shall order that the accused be detained in custody until the ACAT orders otherwise unless, in consideration of the criteria for detention in section 308, it is satisfied that it is more appropriate to order that the accused submit to the jurisdiction of the ACAT to enable the ACAT 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 13.5 Referring people with mental impairment to ACAT after conviction**

### **330 Application of div 13.5**

This division applies if—

- (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 has a mental impairment.

### **331 Referral to ACAT**

- (1) If this division applies, the relevant court may, before sentencing the convicted person, order him or her to submit to the jurisdiction of the ACAT to enable the ACAT—
  - (a) to determine whether or not the person has a mental impairment; and
  - (b) if the ACAT determines that the person has a mental impairment—to make recommendations as to how the person should be dealt with.
- (2) If the ACAT notifies the relevant court that a convicted person has a mental impairment, the court shall, in consideration of the ACAT's recommendations, make any order 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 ACAT to enable the ACAT to make a mental health order.

- (4) If the relevant court orders a person who is found by the ACAT to have a mental impairment 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, apart from that finding.

## **Division 13.6                      Summary proceedings against mentally impaired people**

### **332                      Application of div 13.6**

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.

### **333                      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, because of mental impairment, to elect to have the case heard summarily; and
- (b) the prosecution agrees to the offence being heard and determined summarily.

### **334                      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 impaired; and
  - (b) on an outline of the facts to be alleged in the proceedings, or any other evidence the Magistrates Court considers relevant, it

would be appropriate to deal with the person under this division.

- (2) If this section applies, the Magistrates Court may by order—
  - (a) dismiss the charge and require the accused to submit to the jurisdiction of the ACAT to enable the ACAT to make a mental health order; or
  - (b) dismiss the charge unconditionally.
- (3) In determining whether to make an order under subsection (2) (a) or (b), the Magistrates Court shall have regard to—
  - (a) the nature and seriousness of the mental impairment; and
  - (b) the period for which the mental impairment is likely to continue; and
  - (c) the extent to which by reason of the accused's mental impairment the accused is likely to do serious harm to himself or herself or others; and
  - (d) whether the ACAT could make an order under the *Mental Health (Treatment and Care) Act 1994*, section 26 (What ACAT must take into account) or section 27 (ACAT may not order particular drugs etc); 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 subsection (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 impairment; 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.

- (4) 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.
- (5) If the Magistrates Court makes an order under subsection (2) (a), the order operates as a stay of proceedings, or of further proceedings, against the accused in relation to the offence.
- (6) If the Magistrates Court makes an order under subsection (2), it must not make an order under any of the following provisions of the *Crimes (Sentencing) Act 2005* for the offence:
  - (a) section 13 (Good behaviour orders);
  - (b) section 17 (Non-conviction orders—general);
  - (c) section 19 (Reparation orders—losses and expenses generally);
  - (d) section 20 (Reparation orders—stolen property).
- (7) An order under subsection (2) does not constitute a finding that an offence has or has not been committed.
- (8) In proceedings to which this section applies, to determine whether an accused has a mental impairment, the Magistrates Court may make any orders it considers appropriate, including the following:
  - (a) that the accused submit to the jurisdiction of the ACAT;
  - (b) that the proceedings be adjourned;
  - (c) that the person be released on bail.
- (9) If the Magistrates Court makes an order under subsection (8) (a), the ACAT shall notify the Magistrates Court about each of the matters referred to in subsection (3) (a) to (d).

**335 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 that 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 Magistrates Court decides as mentioned in section 315C or section 315D (9) 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 engaged in the conduct required for the offence charged;

the Magistrates Court shall order that the accused be detained in custody until the ACAT orders otherwise unless, in consideration of the criteria for detention in section 308, it is satisfied that it is more appropriate to order that the accused submit to the jurisdiction of the ACAT to enable the ACAT 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 ACAT to enable the ACAT to make a mental health order, it shall make an order to that effect.



- (4) If this section applies and—
- (a) the Magistrates Court decides as mentioned in section 315C or section 315D (9) 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 engaged in the conduct required for the offence charged;
- the Magistrates Court may make any orders it considers appropriate, including the following:
- (c) that the accused be detained in custody until the ACAT orders otherwise;
  - (d) that the accused submit to the jurisdiction of the ACAT to enable the ACAT 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 engaged in the conduct required for the offence charged, the finding—
- (a) is not a basis in law for recording a conviction for the offence charged; and
  - (b) except as provided in section 335A, bars further prosecution of the accused for any offence in relation to the conduct.

(8) In this section:

*serious offence* means—

- (a) an offence involving actual or threatened violence; or
- (b) an offence against section 27 (3) or (4).

### **335A Action if accused becomes fit to plead after hearing**

(1) This section applies if—

- (a) the Magistrates Court makes an order under section 335 (2), (3) or (4) in relation to an accused; and
- (b) the offence in relation to which the order is made is punishable by imprisonment for 5 years or longer; and
- (c) the ACAT later decides the accused is fit to plead in relation to the offence.

*Note* For the relevant review of fitness to plead provisions, see the *Mental Health (Treatment and Care) Act 1994*, s 68.

- (2) The director of public prosecutions must consider whether to take further proceedings against the accused in relation to the offence.
- (3) If further proceedings are taken and the accused is found guilty of the offence charged, the court must, in deciding the sentence for the offence, take into account any time the accused has spent in custody or detention in relation to the offence.

### **336 How Magistrates Court may be informed**

For this division, the Magistrates Court may inform itself as it considers appropriate.

*Note* The *Legislation Act 2001*, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

## Part 16 Proceedings after sentence

### 367 Procedure on forfeiture

- (1) If, under a provision of this Act or the Criminal Code, a court may order the forfeiture of an article, the court shall—
  - (a) if 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 the persons that the court directs; or
  - (b) in any other case—order that the article be forfeited to the Territory.
- (2) After hearing such of the persons to whom notice under subsection (1) was given as appear, the court shall—
  - (a) if it is satisfied that the article should be forfeited—order that the article be forfeited to the Territory; or
  - (b) in any other case—order that the article be delivered to the person that the court is satisfied is entitled to the article.
- (3) If 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 the custody that the court directs.

**371 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 because 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 on 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 offence charged.
- (3) If 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.

**372 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 the judgment and sentence that is authorised by law, or to remit the record to the other court, in order that the court may pronounce the judgment and sentence that is authorised by law.

**373 New trials regulated**

A new trial may be granted for 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 if 2 or more are included in the same indictment, although all are not present, nor are parties to the motion, nor have been tried.

## Part 17

# Offences punishable summarily and summary procedure generally

### **U** 374 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.

### **U** 375 Summary disposal of certain cases

- (1) This section applies in relation to any offence against a territory law, 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) If—
  - (a) a person (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) for 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 subsections (3) to (12).

- (3) The court may invite the defendant to plead guilty or not guilty to the charge.
- (4) If the defendant pleads guilty to the charge, the court may accept or reject the plea.
- (5) If—
- (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) If—
- (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) If—
- (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, under 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 that appear to the court to make it more appropriate for the case to be dealt with on indictment rather than summarily.
- (9) If 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;
- the *Magistrates Court Act 1930*, section 90A (5) to (11) applies in relation to the defendant as if the court had accepted a plea of guilty to the charge under that section.
- (10) If the court disposes of a case summarily under this section and convicts the defendant of the offence, then, subject to subsections (11) and (12), but notwithstanding any other territory law, the court may not impose a sentence of imprisonment exceeding 2 years nor impose a fine exceeding \$5 000.
- (11) If, under 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 territory law, the court may not impose a sentence of imprisonment exceeding 6 months nor impose a fine exceeding \$1 000.

(12) If—

- (a) the court disposes of a case summarily under this section and convicts the defendant of an offence; and
- (b) the maximum penalty prescribed for the offence by the law creating that offence (the *prescribed penalty*) is less than the maximum penalty that the court, under 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.

**U 375A Withdrawal of consent to summary disposal of case**

**376 Saving of other summary jurisdiction**

Nothing in this part affects the operation of any other law in force in the ACT by which jurisdiction is given to the Magistrates Court.

**377 Certificate of dismissal**

If the Magistrates Court has heard and determined a charge under section 375 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 signed by the magistrate or registrar stating the fact of the dismissal.

**378 Summary conviction or dismissal bar to indictment**

- (1) A conviction on a charge disposed of summarily under section 375 has the same effect as a conviction on 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 under section 375 has the same effect as an acquittal of the person charged in a trial on indictment.

**379 Misbehaviour at public meetings**

- (1) A person shall not, in any premises where a public meeting is being held, behave in a manner that disrupts, or is likely to disrupt, the meeting.

Maximum penalty: \$1 000, imprisonment for 6 months or both.

- (2) If a person presiding at any public meeting reasonably believes that another person in the premises where 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 police officer who is present to remove the other person and the police officer may remove that other person accordingly.

**380 Possession of offensive weapons and disabling substances**

- (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, imprisonment for 6 months or both.

- (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.

**381 Possession of offensive weapons and disabling substances 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, imprisonment for 1 year or both.

- (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.

### **382 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.

Maximum penalty: 10 penalty units, imprisonment for 6 months or both.

- (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.

**383 Sale of knife to person under 16**

- (1) A person shall not sell a knife to a person under 16 years old.  
Maximum penalty: 10 penalty units, imprisonment for 6 months or both.
- (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.

**384 Retail supplier of knives to display sign**

- (1) A person who sells knives by retail must ensure that a sign complying with subsections (2), (3) and (4) is clearly visible to a person at the place, or each place, where such a sale is made.  
Maximum penalty: 5 penalty units.
- (2) The sign must display at least the following words in the following sequence:  
‘It is an offence to sell a knife to a person under the age of 16.  
Proof of age may be required.’.

- (3) The lettering of the words stated in subsection (2) must be at least 8mm in height.
- (4) The dimensions of the sign must not be less than 210mm x 145mm.
- (5) Subsection (1) does not apply to a person, or a knife, of a kind specified in, or ascertained in accordance with, the regulations.

**385 Laying of poison**

A person shall not lay any poison that endangers, or is likely to endanger, the life of any domestic animal or bird.

Maximum penalty: \$1 000, imprisonment for 6 months or both.

**387 Making 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, imprisonment for 3 months or both.

**388 Application of compensation**

For private property, the compensation for the damage or injury done shall be paid to the party aggrieved, and for property of a public nature, or if any public right is concerned, shall be applied as the magistrate thinks fit.

**389 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.

Maximum penalty: \$1 000, imprisonment for 6 months or both.

**390 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, on 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.

Maximum penalty: \$1 000, imprisonment for 6 months or both.

**391 Fighting**

A person shall not fight with another person in a public place.

Maximum penalty: \$1 000.

**392 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.

Maximum penalty: \$1 000.

**393 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, commits an offence.

Maximum penalty: 20 penalty units, imprisonment for 1 year or both.

**393A Urinating in public place**

- (1) A person commits an offence if the person urinates in a public place (other than in a toilet).

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

*Note* Circumstances of sudden and extraordinary emergency is a defence in relation to the offence. See the *Criminal Code 2002*, s 41.

**394 Noise abatement directions**

- (1) If it appears to a police officer that offensive noise is being, or has at any time during the previous 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 commits an offence if the person—

- (a) is given a direction under subsection (1) (a); and  
(b) fails to comply with the direction.

Maximum penalty: 10 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.

- (4) A person commits an offence if the person—

- (a) is given a direction under subsection (1) (a); and

(b) causes or allows any offensive noise to be emitted from the premises within the 6-hour period after the direction was given.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(5) A person commits an offence if the person—

(a) is given a direction under subsection (1) (b); and

(b) the person—

(i) fails to comply with the direction; or

(ii) makes, or contributes to the making of, any offensive noise emitted from the premises within the 6-hour period after the direction was given.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(6) A person shall not be convicted of an offence against this section unless the prosecution establishes that the noise to which the alleged offence relates was an offensive noise.

(7) If a police officer believes on reasonable grounds that a person has committed an offence against subsection (2), (4) or (5), the officer may seize anything (other than an animal) that the officer suspects on reasonable grounds was used in, or in connection with, committing the offence.

(8) However, the police officer may seize the thing under subsection (7) only if the police officer has told the person, before the offence against subsection (2), (4) or (5) was committed, that failure to comply with the direction, or resumption of conduct contrary to the direction within 6 hours after the direction was given, may lead to the thing being seized.

(9) If a police officer seizes anything under subsection (7), the officer must give the occupier of the premises, or the person from whom the thing was seized, a written notice that—

- (a) describes the thing seized; and
  - (b) states the police station where the thing will be taken; and
  - (c) states that the thing may be claimed from that police station not earlier than 48 hours after the seizure.
- (10) If a police officer seizes anything under subsection (7), then, not earlier than 48 hours after the seizure, the occupier of the premises from which the thing was seized, or the owner of the thing, is entitled to its return from the police station where the thing has been taken if the person produces the notice under subsection (9) or anything else that provides satisfactory proof that the person is entitled to its possession.

- (11) However, if—

- (a) a person is charged with an offence against this section; and
- (b) the chief police officer or director of public prosecutions believes, on reasonable grounds, that something seized by a police officer under subsection (7) may provide evidence of the offence;

no-one is entitled to its return until the prosecution for the offence has been finally decided.

- (12) In this section:

*offensive noise* means noise that, because of its level or nature, or the time when 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) if the noise is made in premises other than a public place—outside the premises; or
- (b) if the noise is made in premises that are a public place—within or outside the premises.

*premises* include any place, vehicle or vessel.



**395 Bogus advertisements**

- (1) A person shall not publish nor cause to be published a bogus advertisement, knowing the advertisement to be bogus.

Maximum penalty: \$1 000, imprisonment for 6 months or both.

- (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, civil partnership or employment; or
- (b) any matter concerning a person or the property of a person, other than the person who published the advertisement or caused it to be published.

**396 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 member of the emergency services is, if the representation, circumstance or act comes to the knowledge of a police officer or member of the emergency services, guilty of an offence punishable, on conviction, by a fine of \$2 000, imprisonment for 1 year or both.

- (2) In this section:

*member of the emergency services* means a member of—

- (a) the ambulance service; or
- (b) the fire brigade; or
- (c) the rural fire service; or
- (d) the SES.

**397      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 domestic partner or child, or of apprehended injury to his or her property, a magistrate may on the complaint of the person apprehending the violence or injury, issue a summons or warrant as in any case of apprehended violence to the person, if 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 magistrate may order that the defendant 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.

**398      Alternative methods of proceeding before magistrate**

If by this Act a person is made liable to imprisonment, or to pay a sum of money, on conviction before a magistrate, the 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 ACT regulating proceedings on summary convictions, and every

provision contained in any such law shall be applicable to the proceedings as if it were incorporated in this Act.

**399      General averment of intent to defraud or injure**

In any proceeding before a magistrate if 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.

## Part 20                    Inquiries into convictions

### Division 20.1           Preliminary

#### 421           Definitions for pt 20

In this part:

*Full Court* means the Supreme Court constituted by a Full Court.

*inquiry* means an inquiry under this part into a person's conviction for an offence (whether summarily or on indictment).

*registrar* means the registrar of the Supreme Court.

*relevant proceeding*, in relation to an offence, means a prosecution or other proceeding in relation to the offence, including an appeal in relation to the finding of a court in relation to the offence.

### Division 20.2           How to start inquiry

#### 422           Grounds for ordering inquiry

- (1) An inquiry may be ordered under this part into the conviction of a person for an offence only if—
  - (a) there is a doubt or question about whether the person is guilty of the offence; and
  - (b) the doubt or question relates to—
    - (i) any evidence admitted in a relevant proceeding; or
    - (ii) any material fact that was not admitted in evidence in a relevant proceeding; and
  - (c) the doubt or question could not have been properly addressed in a relevant proceeding; and

- (d) there is a significant risk that the conviction is unsafe because of the doubt or question; and
- (e) the doubt or question cannot now be properly addressed in an appeal against the conviction; and
- (f) if an application is made to the Supreme Court for an inquiry in relation to the conviction—an application has not previously been made to the court for an inquiry in relation to the doubt or question; and
- (g) it is in the interests of justice for the doubt or question to be considered at an inquiry.

**Example for par (a) to (e)**

John has been convicted of murder. Expert evidence that blood found on John's jacket shortly after the murder was almost certain to be the victim's blood was the main evidence connecting John with the murder.

Later DNA testing, by a method developed after all proceedings in relation to the conviction had been finalised (and the time for making any appeal had lapsed), shows that the blood is almost certainly *not* the victim's blood. This gives rise to a doubt or question about the blood evidence that could not have been (and cannot now be) properly addressed in any relevant proceeding in relation to the murder, and a significant risk that the conviction is unsafe.

- (2) The inquiry is limited to matters stated in the order for the inquiry.
- (3) If the inquiry is ordered by the Supreme Court, the court may set limits on the inquiry under subsection (2) despite anything in the application for the inquiry.

**423 Executive order for inquiry**

The Executive may order an inquiry on its own initiative.

**424 Supreme Court order for inquiry**

- (1) The Supreme Court may order an inquiry on application by the convicted person, or by someone else on the convicted person's behalf.

- (2) The registrar must give a copy of an application for an inquiry to the Attorney-General.
- (3) The Supreme Court may consider a written submission by the Attorney-General or the director of public prosecutions (or both) in relation to the application.
- (4) Proceedings on an application are not judicial proceedings.
- (5) If the Supreme Court orders an inquiry, the registrar must give a copy of the order to the Attorney-General.

**425 Rights and duties in relation to orders for inquiry**

- (1) This division does not create a right to the order of an inquiry, and does not create a duty to order an inquiry.
- (2) Without limiting subsection (1), there is no right of appeal in relation to a decision whether to order an inquiry.

**Division 20.3 Inquiry procedure**

**426 Application of Inquiries Act**

The *Inquiries Act 1991* applies to an inquiry, subject to this division.

**427 Appointment of board of inquiry**

- (1) If an inquiry is ordered, the Executive must appoint a board of inquiry under the *Inquiries Act 1991*.
- (2) The inquiry must be stated in the appointment to be in relation to the matter stated in the order, and in relation to no other matter.
- (3) The board of inquiry must be constituted by a judge of the Supreme Court or a magistrate.
- (4) A judge or magistrate who has been involved in any way (whether as judge or magistrate, or in another capacity) in a relevant proceeding in relation to the offence, or in any investigation in

relation to the acts or omissions alleged to constitute the offence, must not be appointed to constitute the board of inquiry.

#### **428 Report by board**

- (1) After finishing an inquiry, the board must give a copy of a written report of the inquiry to the registrar.
- (2) Together with the report, the board must give to the registrar, for safe-keeping, any documents or things held by the board for the purpose of the inquiry.
- (3) Even if the board does not comply with subsection (2), the Supreme Court may exercise its powers under division 20.4 in relation to the report.
- (4) The *Inquiries Act 1991*, sections 14 (Reports of boards) and 14A (Tabling of reports) do not apply to the inquiry.

### **Division 20.4 Supreme Court orders following inquiry report**

#### **429 Publication of report**

- (1) The registrar must give a copy of the report of a board of inquiry appointed under division 20.3 to the Attorney-General and the convicted person, together with a copy of any order under this section.
- (2) The Supreme Court may make an order that the report, or particular parts of the report—
  - (a) must not be disclosed to anyone else by—
    - (i) the Territory; or
    - (ii) the convicted person (except to obtain legal advice or representation); or
    - (iii) someone else who obtains a copy of the report; or

- (b) may be disclosed only to particular people or on stated conditions (for example, a condition requiring the consent of the court).
- (3) The Supreme Court may make an order under this section only if it considers that it is in the interests of justice, having regard to the public interest and the interests of the convicted person.
- (4) An order under this section may be enforced in the same way as any other order of the Supreme Court.

#### **430 Action on report by Supreme Court**

- (1) The Full Court must consider the report of a board into an inquiry.
- (2) Having regard to the report, the Full Court must, by order—
  - (a) confirm the conviction; or
  - (b) confirm the conviction and recommend that the Executive act under either of the following sections of the *Crimes (Sentence Administration) Act 2005* in relation to the convicted person:
    - (i) section 313 (Remission of penalties);
    - (ii) section 314 (Grant of pardons); or
  - (c) quash the conviction; or
  - (d) quash the conviction and order a new trial.
- (3) The registrar must give a copy of the order, together with any reasons given for the order, to the Attorney-General and the convicted person.
- (4) This section does not give the convicted person a right to an order of the Full Court mentioned in subsection (2) (b) or (d), or to an Executive pardon or remission.



**431 Nature of Supreme Court proceedings**

- (1) In considering whether to make an order under this part about a report, the Supreme Court—
  - (a) may have regard only to matters stated in the report, or to documents or things given to the registrar with the report; and
  - (b) must not hear submissions from anyone.
- (2) The consideration of whether to make an order under this part is not a judicial proceeding.

**Division 20.5 Application to earlier convictions**

**432 Inquiries about earlier convictions**

This part applies in relation to a conviction for an offence even if the conviction happened before the commencement of this part.

## Part 22                            Miscellaneous

### 434A            **Application of certain sections of Commonwealth Crimes Act to territory laws**

The provisions of the *Crimes Act 1914* (Cwlth), sections 13, 15, 17, 19A, 21B and 21C, so far as they are applicable, apply in relation to all territory laws as if a territory law were a law of the Commonwealth.

### 434B            **Joinder of charges**

- (1) Charges against the same person for any number of offences against the same provision of a territory law may be joined in the same information or summons if the charges are founded on the same facts or form, or are part of, a series of offences of the same or a similar character.
- (2) If a person is convicted of 2 or more offences mentioned in subsection (1), and the offences relate to doing or failing to do the same act, the court may impose 1 penalty in relation to both or all the offences, but the penalty must not exceed the total of the maximum penalties that could be imposed if a separate penalty were imposed in relation to each offence.

### 435            **Protection of persons acting under Act**

- (1) All actions against any person, for anything done, or reasonably supposed to have been done under this Act, shall be commenced within 6 months after the fact committed, and written notice of any such action, and of the cause of it, 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 on demurrer, or otherwise, judgment is given against the plaintiff, the defendant shall recover costs as between solicitor and client.

**437 Power of courts to bring detainees before them**

For a trial or prosecution, a court may order the person in charge of a correctional centre or other place where a person is detained in lawful custody to bring the person before the court and to return the person to the centre or other place in accordance with the order.

**438 Witnesses neglecting to attend trial and captured under warrant may be admitted to bail**

If 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 the trial, or on the day appointed for the trial, has been captured under a warrant issued by the court, bail may be taken before any magistrate for his or her appearance at the trial.

**439 Offence of criminal defamation**

- (1) A person must not publish matter defamatory of another living person (the *victim*)—
  - (a) knowing the matter to be false; and
  - (b) with intent to cause serious harm to the victim or any other person or being reckless as to whether such harm is caused.

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

- (2) Subsection (1) does not apply to the publication of defamatory matter about the victim if, and only if, the defendant would, having regard only to the circumstances happening before or at the time of the publication, have had a defence for the publication if the victim had brought civil proceedings for defamation against the defendant.

*Note* Under the Criminal Code, s 58 (3) a defendant who wishes to rely on this exception has an evidential burden in relation to the matter.

- (3) On a trial before a jury for an offence against this section—
- (a) the question of whether the matter complained of is capable of bearing a defamatory meaning is a question for determination by the judicial officer presiding; and
  - (b) the question of whether the matter complained of does bear a defamatory meaning is a question for the jury; and
  - (c) the jury may give a general verdict of guilty or not guilty on the issues as a whole.
- (4) A proceeding for an offence against this section must not be begun without the written consent of the director of public prosecutions.
- (5) However, a person may be arrested for, charged with, or remanded in custody or on bail in relation to, an offence against this section before the consent has been given.
- (6) In a proceeding for an offence against this section a consent purporting to have been signed by the director of public prosecutions is, without proof of the signature, evidence of that consent.
- (7) The commencement of criminal proceedings for an offence against this section does not prevent—
- (a) the commencement of civil proceedings for defamation against the defendant in the criminal proceedings; or
  - (b) the determination of the civil proceedings pending the determination of the criminal proceedings.

- (8) In this section, *publish* and *defamatory* have the meanings that they have in the law of tort (as modified by the *Civil Law (Wrongs) Act 2002*) relating to defamation.
- (9) In this section:
- harm*—see the *Civil Law (Wrongs) Act 2002*, section 40.

#### **440 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, if the publication is by way of argument, or statement, and not for the purpose of scoffing or reviling, nor of violating public decency, nor in any way tending to a breach of the peace.

#### **442 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 the other district, or at the particular place, that the court thinks fit, and may for that purpose make all the orders that justice appears to require.

#### **443 Approved forms**

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

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

**444 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

**U Part 30 Transitional—Crimes Legislation  
Amendment Act 2008**

## **U** Dictionary

(see s 4)

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

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

- ACAT
- Act
- adult
- ambulance service
- chief police officer
- civil partnership
- commissioner of police
- contravene
- correctional centre
- director of public prosecutions
- doctor
- domestic partner (see s 169)
- fail
- fire brigade
- indictable offence (see also s 190)
- intersex person (see s 169B)
- judge
- lawyer
- magistrate
- medical practitioner
- midwife
- penalty unit (see also s 133)
- police officer
- rural fire service
- SES
- summary offence (see also s 190)
- the Territory
- transgender person (see s169A).

**ACAT**, for part 13 (Unfitness to please and mental impairment)—see section 300.

**actual bodily harm** to a pregnant woman includes harm to the pregnancy other than in the course of a medical procedure (whether or not the woman suffers any other harm).

**agent**, for part 2A (Industrial manslaughter)—see section 49A.

**aggravated offence**, for part 5 (Sexual servitude)—see section 81.

**causes death**, for part 2A (Industrial manslaughter)—see section 49A.

**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.

**commissioner for OH&S**, for part 2A (Industrial manslaughter)—see section 49A.

**conduct**, for part 2A (Industrial manslaughter)—see the Criminal Code, section 13.

**death**, for part 2A (Industrial manslaughter)—see the Criminal Code, section 13.

**director of public prosecutions** means—

- (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* (Cwlth);

as the case requires.

**domestic partner** includes former domestic partner.



**employee**, for part 2A (Industrial manslaughter)—see section 49A.

**employer**, for part 2A (Industrial manslaughter)—see section 49A.

**government**, for part 2A (Industrial manslaughter)—see the Legislation Act, section 121 (6).

**government entity**, for part 2A (Industrial manslaughter)—see section 49A.

**grievous bodily harm** to a person includes—

- (a) any permanent or serious disfiguring of the person; and
- (b) for a pregnant woman—loss of or serious harm to the pregnancy other than in the course of a medical procedure (whether or not the woman suffers any other harm).

**harm** to a pregnancy—see section 48A (6).

**independent contractor**, for part 2A (Industrial manslaughter)—see section 49A.

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

**knife** includes—

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

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

**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.

**mental impairment**—see the Criminal Code, section 27.

**motor vehicle**—see the *Road Transport (Safety and Traffic Management) Act 1999*, dictionary.

**offensive weapon** means—

- (a) anything made or adapted for use, or capable of being used, for causing injury to or incapacitating a person; or
- (b) anything intended for that use by the person who is carrying it or otherwise has it in his or her possession;

and includes an imitation or replica of an offensive weapon.

**officer**—

- (a) of a corporation, for part 2A (Industrial manslaughter)—see the Corporations Act, section 9; and
- (b) in relation to a body corporate or public company, for the Act—includes a person who has been appointed or who acts as an auditor of the body corporate or public company.

**outworker**, for part 2A (Industrial manslaughter)—see section 49A.

**provide services**, for part 2A (Industrial manslaughter)—see section 49A.

**school** means—

- (a) a government or non-government school under the *Education Act 2004*; or
- (b) an educational institution conducted by the Canberra Institute of Technology;

and includes any land or premises that belong to, are occupied by, or are used in relation to, a school.

**senior officer**, for part 2A (Industrial manslaughter)—see section 49A.

**serious harm**—

- (a) to a pregnancy—see section 48A (6); and

(b) for part 2A (Industrial manslaughter)—see the Criminal Code, dictionary.

*sexual services*, for part 5 (Sexual servitude)—see section 78.

*sexual servitude*, for part 5 (Sexual servitude)—see section 78.

*tainted property*, for part 10 (Criminal investigation)—see the *Confiscation of Criminal Assets Act 2003*, section 10.

*target material*, for part 10 (Criminal investigation)—see the *Confiscation of Criminal Assets Act 2003*, section 195.

*trustee* means a trustee on some express trust howsoever created, and includes the heir or personal representative of such trustee, and every other person on 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.

*vessel* means any ship or vessel used in or intended for navigation, other than an undecked boat.

*volunteer*, for part 2A (Industrial manslaughter)—see section 49A.

*worker*, for part 2A (Industrial manslaughter)—see section 49A.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

This Act was originally a NSW Act—the *Crimes Act 1900* No 40 (NSW).

The Act was in force in NSW immediately before 1 January 1911 (the date of establishment of the ACT) and was continued in force by the *Seat of Government Acceptance Act 1909* (Cwlth), s 6.

Under the *Seat of Government (Administration) Act 1910* (Cwlth), s 4, the Act had effect in the ACT as if it were an ACT law (subject to ordinances made under the *Seat of Government (Administration) Act 1910*).

The *Australian Capital Territory (Self Government) Act 1988* (Cwlth) converted certain former NSW laws in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on self-government (11 May 1989).

Under the *Crimes Legislation (Status and Citation) Act 1992*, this Act became, for all purposes, a law made by the ACT Legislative Assembly. This completed the process of making the former NSW law fully into an ACT law.

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

After 11 May 1989 and before 10 November 1999, Acts commenced on their notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 25).

#### NSW legislation

##### **Crimes Act 1900 No 40**

notified 31 October 1900

commenced 31 October 1900

as amended by

#### Commonwealth legislation

##### **Crimes Ordinance 1942 No 12**

notified 28 May 1942

commenced 28 May 1942

##### **Crimes Ordinance 1944 No 1**

notified 20 January 1944

commenced 20 January 1944

## Endnotes

3 Legislation history

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**Crimes Ordinance 1951 No 14**

notified 14 December 1951  
commenced 14 December 1951

**Crimes Ordinance 1963 No 11**

notified 23 May 1963  
commenced 23 May 1963

**Crimes Ordinance 1968 No 4**

notified 14 March 1968  
commenced 15 March 1968

**Crimes Ordinance 1970 No 40**

notified 22 October 1970  
commenced 22 October 1970

**Crimes Ordinance 1971 No 2**

notified 25 February 1971  
s 8 commenced 29 March 1971  
remainder commenced 1 March 1971

**Crimes Ordinance 1974 No 17**

notified 17 April 1974  
commenced 17 April 1974

**Crimes (Amendment) Ordinance 1978 No 45**

notified 21 December 1978  
commenced 21 December 1978

**Crimes (Amendment) Ordinance 1979 No 1**

notified 31 January 1979  
commenced 31 January 1979

**Crimes (Amendment) Ordinance 1983 No 27 (as am by Crimes (Amendment) Ordinance (No 2) 1983 No 45; Crimes (Amendment) Ordinance (No 2) 1985 No 16)**

notified 22 September 1983  
commenced 22 September 1983

**Crimes (Amendment) Ordinance (No 3) 1983 No 55**

notified 18 November 1983  
commenced 18 November 1983

**Crimes (Amendment) Ordinance 1984 No 32**

notified 29 June 1985  
commenced 29 June 1985

**Crimes (Amendment) Ordinance (No 2) 1984 No 78**

notified 19 December 1984  
commenced 19 December 1984

**Crimes (Amendment) Ordinance 1985 No 11**

notified 8 March 1985  
commenced 12 August 1985 (Cwlth Gaz 1985 No S313)

**Crimes (Amendment) Ordinance (No 2) 1985 No 16**

notified 17 April 1985  
s 6 (1) commenced 22 September 1983  
remainder commenced 17 April 1985

**Crimes (Amendment) Ordinance (No 3) 1985 No 40**

notified 5 September 1985  
commenced 5 September 1985

**Crimes (Amendment) Ordinance (No 4) 1985 No 44**

notified 13 September 1985  
ss 1-4, 5 (2), 12 (1) commenced 13 September 1985  
remainder commenced 1 January 1986

**Crimes (Amendment) Ordinance (No 5) 1985 No 62**

notified 28 November 1985  
commenced 28 November 1985

**Magistrates Court Ordinance 1985 No 67 sch pt 1**

notified 19 December 1985  
commenced 1 February 1986 (Cwlth Gaz 1986 No G3)

**Crimes (Amendment) Ordinance (No 6) 1985 No 75**

notified 20 December 1985  
commenced 20 December 1985

**Children's Services (Miscellaneous Amendments) Ordinance 1986 No 14**

notified 4 June 1986  
commenced 26 Apr 1988 (Cwlth Gaz 1988 No S116)

## Endnotes

3 Legislation history

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**Crimes (Amendment) Ordinance 1986 No 15**

notified 6 June 1986  
commenced 1 July 1986

**Crimes (Amendment) Ordinance (No 2) 1986 No 27 (as am by Crimes (Amendment) Ordinance (No 3) 1986 No 37)**

notified 31 July 1986  
commenced 31 July 1986

**Domestic Violence (Miscellaneous Amendments) Ordinance 1986 No 53 s 3**

notified 4 September 1986  
commenced 1 October 1986 (Cwlth Gaz 1986 No S484)

**Crimes (Amendment) Ordinance (No 4) 1986 No 57 (as am by Ord 1987 No 3)**

notified 3 October 1986  
commenced 3 October 1986

**Magistrates Court (Amendment) Ordinance (No 3) 1986 No 74**

notified 14 November 1986  
commenced 14 November 1986

**Crimes (Amendment) Ordinance 1987 No 3**

notified 11 February 1987  
commenced 11 February 1987

**Crimes (Amendment) Ordinance 1988 No 44**

notified 27 July 1988  
commenced 27 July 1988

**Crimes (Amendment) Ordinance (No 2) 1988 No 75**

notified 19 October 1988  
ss 1-3, 7-9 commenced 19 October 1988  
remainder commenced 19 December 1988 (Gaz 1988 No S384)

**Crimes (Amendment) Ordinance 1990 No 1**

notified 23 May 1990  
commenced 23 May 1990

**Crimes (Amendment) Ordinance (No 2) 1990 No 2**

notified 23 May 1990  
commenced 15 June 1990



**Evidence (Amendment) Ordinance 1990 No 4**

notified 27 June 1990  
commenced 27 June 1990

**Self-Government (Consequential Amendments) Ordinance 1990 No 5**

notified 27 June 1990  
s 1, s 2 commenced 27 June 1990  
remainder commenced 1 July 1990

**Legislation after becoming Territory enactment****Crimes (Amendment) Act (No 3) 1990 No 66**

notified 24 December 1990 (Gaz 1990 No S98)  
s 1, s 3 commenced 24 December 1990 (s 3 (1))  
remainder commenced 6 February 1991 (s 3 (2) and Gaz 1991 No S5)

**Weapons (Consequential Amendments) Act 1991 No 9 sch**

notified 3 April 1991 (Gaz 1991 No S19)  
s 1, s 2 commenced 3 April 1991 (s 2 (1))  
sch commenced 3 October 1991 (s 2 (2))

**Crimes (Amendment) Act 1991 No 18**

notified 10 May 1991 (Gaz 1991 No S36)  
commenced 10 May 1991

**Magistrates and Coroner's Courts (Registrar) Act 1991 No 44 s 9**

notified 20 September 1991 (Gaz 1991 No S95)  
s 1, s 2 commenced 20 September 1991 (s 2 (1))  
s 9 commenced 25 September 1991 (s 2 (2) and Gaz 1991 No S103)

**Crimes (Amendment) Act (No 2) 1991 No 78**

notified 11 December 1991 (Gaz 1991 No S139)  
ss 1-3 commenced 11 December 1991 (s 2 (1))  
remainder commenced 11 June 1992 (s 2 (3))

**Crimes (Amendment) Act (No 3) 1991 No 90**

notified 24 December 1991 (Gaz 1991 No S155)  
commenced 24 December 1991

## Endnotes

3 Legislation history

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**Proceeds of Crime (Consequential Amendments) Act 1991 No 104**

notified 10 January 1992 (Gaz 1992 No S162)  
s 1, s 2 commenced 10 January 1992 (s 2 (1))  
remainder commenced 10 February 1992 (s 2 (2) and see Gaz 1992 No S21)

**Crimes (Amendment) Act (No 4) 1991 No 120**

notified 10 January 1992 (Gaz 1992 No S162)  
commenced 10 January 1992

**Crimes (Amendment) Act (No 5) 1991 No 122**

notified 10 January 1992 (Gaz 1992 No S162)  
commenced 10 January 1992

**Crimes Legislation (Status and Citation) Act 1992 No 6**

notified 28 May 1992 (Gaz 1992 No S59)  
commenced 28 May 1992

**Bail (Consequential Amendments) Act 1992 No 9 pt 2**

notified 28 May 1992 (Gaz 1992 No S59)  
s 1, s 2 commenced 28 May 1992 (s 2 (1))  
pt 2 commenced 28 November 1992 (s 2 (3))

**Statute Law Revision (Miscellaneous Provisions) Act 1992 No 23  
sch 1**

notified 4 June 1992 (Gaz 1992 No S71)  
commenced 4 June 1992

**Crimes (Amendment) Act 1992 No 35**

notified 8 July 1992 (Gaz 1992 No S103)  
commenced 8 July 1992

**Prostitution (Consequential Amendments) Act 1992 No 65 s 4**

notified 1 December 1992 (Gaz 1992 No S208)  
s 1, s 2 commenced 1 December 1992 (s 2 (1))  
s 4 commenced 1 June 1993 (s 2 (3))

**Crimes (Amendment) Act (No 2) 1992 No 76**

notified 24 December 1992 (Gaz 1992 No S236)  
commenced 24 December 1992

**Crimes (Amendment) Act 1993 No 3**

notified 1 March 1993 (Gaz 1993 No S23)  
commenced 1 March 1993

**Crimes (Amendment) Act (No 2) 1993 No 73**

notified 22 October 1993 (Gaz 1993 No S215)  
ss 1-3 commenced 22 October 1993 (s 3 (1))  
remainder commenced 15 November 1993 (s 3 (2) and Gaz 1993  
No S230)

**Supreme Court (Amendment) Act (No 2) 1993 No 91 sch 3**

notified 17 December 1993 (Gaz 1993 No S258)  
commenced 17 December 1993 (s 2)

**Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 21**

notified 30 June 1994 (Gaz 1994 No S121)  
s 1, s 2 commenced 30 June 1994 (s 2 (1))  
sch 1 pt 21 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

**Crimes (Amendment) Act 1994 No 46**

notified 7 September 1994 (Gaz 1994 No S177)  
ss 1-3 commenced 7 September 1994 (s 2 (1))  
remainder commenced 6 February 1995 (s 2 (2) and Gaz 1995 No  
S33)

**Crimes (Amendment) Act (No 2) 1994 No 75**

notified 23 November 1994 (Gaz 1994 No S247)  
ss 1-3 commenced 23 November 1994 (s 2 (1))  
remainder commenced 1 December 1994 (s 2 (2) and Gaz 1994  
No S270)

**Acts Revision (Victims of Crime) Act 1994 No 84 pt 3**

notified 15 December 1994 (Gaz 1994 No S280)  
s 1, s 2 commenced 15 December 1994 (s 2 (1))  
pt 3 commenced 15 June 1995 (s 2 (3))

**Intoxicated Persons (Consequential Amendments) Act 1994 No 86 s 4**

notified 15 December 1994 (Gaz 1994 No S280)  
s 1, s 2 commenced 15 December 1994 (s 2 (1))  
s 4 commenced 15 June 1995 (s 2 (2))

## Endnotes

3 Legislation history

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**Statutory Offices (Miscellaneous Provisions) Act 1994 No 97 sch pt 1**

notified 15 December 1994 (Gaz 1994 No S280)  
s 1, s 2 commenced 15 December 1994 (s 2 (1))  
sch pt 1 commenced 15 December 1994 (s 2 (2) and Gaz 1994  
No S293)

**Evidence (Amendment) Act 1994 No 98 s 7**

notified 15 December 1994 (Gaz 1994 No S280)  
commenced 15 December 1994 (s 2)

**Crimes (Amendment) Act 1995 No 2**

notified 19 June 1995 (Gaz 1995 No S115)  
commenced 19 June 1995 (s 2)

**Periodic Detention Act 1995 No 3 pt 5 div 2**

notified 19 June 1995 (Gaz 1995 No S115)  
s 1, s 2 commenced 19 June 1995 (s 2 (1))  
pt 5 div 2 commenced 1 September 1995 (s 2 (2) and Gaz 1995  
No S222)

**Crimes (Amendment) Act (No 2) 1995 No 49**

notified 18 December 1995 (Gaz 1995 No S306)  
ss 1-3 commenced 18 December 1995 (s 2 (1))  
remainder commenced 18 June 1996 (s 2 (3))

**Crimes (Amendment) Act (No 3) 1995 No 50**

notified 18 December 1995 (Gaz 1995 No S306)  
ss 1-3 commenced 18 December 1995 (s 2 (1))  
remainder commenced 1 December 1997 (s 2 (2) and Gaz 1997  
No S385)

**Crimes (Amendment) Act 1996 No 31**

notified 1 July 1996 (Gaz 1996 No S130)  
commenced 1 July 1996 (s 2)

**Crimes (Amendment) Act (No 2) 1996 No 36**

notified 10 July 1996 (Gaz 1996 No S160)  
commenced 10 July 1996 (s 2)

**Firearms Act 1996 No 74 sch 3**

notified 20 December 1996 (Gaz 1996 No S328)  
s 1, s 2 commenced 20 December 1996 (s 2 (1))  
sch 3 commenced 17 May 1997 (s 2 (2) and Gaz 1997 No S135)

**Crimes (Amendment) Act 1997 No 10**

notified 16 May 1997 (Gaz 1997 No S131)  
commenced 16 May 1997 (s 2)

**Crimes (Amendment) Act (No 2) 1997 No 23**

notified 29 May 1997 (Gaz 1997 No S136)  
ss 1-3 commenced 29 May 1997 (s 2 (1))  
remainder commenced 30 May 1997 (s 2 (2) and Gaz 1997 No S149)

**Motor Traffic (Amendment) Act (No 2) 1997 No 52 pt 4**

notified 19 September 1997 (Gaz 1997 No S264)  
ss 1-3 commenced 19 September 1997 (s 2 (1))  
pt 4 commenced 2 March 1998 (s 2 (2) and see Gaz 1997 No S427)

**Crimes (Amendment) Act (No 3) 1997 No 86**

notified 21 November 1997 (Gaz 1997 No S359)  
ss 1-3 commenced 21 November 1997 (s 2 (1))  
remainder commenced 11 December 1997 (s 2 (2) and Gaz 1997  
No S410)

**Legal Practitioners (Consequential Amendments) Act 1997 No 96  
sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

**Crimes (Amendment) Act (No 4) 1997 No 117**

notified 24 December 1997 (Gaz 1997 No S420)  
commenced 24 December 1997 (s 2)

**Crimes (Amendment) Act 1998 No 9**

notified 10 June 1998 (Gaz 1998 No S160)  
commenced 10 June 1998 (s 2)

**Crimes (Amendment) Act (No 2) 1998 No 22**

notified 10 July 1998 (Gaz 1998 No S190)  
commenced 10 July 1998 (s 2)

## Endnotes

3 Legislation history

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**Crimes (Amendment) Act (No 3) 1998 No 29**

notified 10 July 1998 (Gaz 1998 No S190)  
s 1, s 2 commenced 10 July 1998 (s 2 (1))  
remainder commenced 1 January 1999 (s 2 (2) and see Gaz 1998 No 50)

**Crimes (Amendment) Act (No 4) 1998 No 57**

notified 27 November 1998 (Gaz 1998 No S207)  
commenced 27 November 1998

**Custodial Escorts (Consequential Provisions) Act 1998 No 67 pt 4**

notified 23 December 1998 (Gaz 1998 No S212)  
s 1, s 2 commenced 23 December 1998 (s 2 (1))  
pt 4 commenced 23 December 1998 (s 2 (2) and Gaz 1998 No 51)

**Crimes (Amendment) Act (No 5) 1998 No 71**

notified 23 December 1998 (Gaz 1998 No S212)  
commenced 23 December 1998 (s 2)

**Crimes (Amendment) Act 1999 No 32**

notified 25 June 1999 (Gaz 1999 No S34)  
ss 1-4 commenced 25 June 1999 (s 2 (1))  
remainder commenced 1 October 1999 (s 2 (2))

**Motor Traffic (Amendment) Act (No 2) 1999 No 50 sch**

notified 17 September 1999 (Gaz 1999 No S54)  
ss 1-3 commenced 17 September 1999 (s 2 (1))  
sch commenced 6 October 1999 (s 2 (2) and Gaz 1999 No S58)

**Children and Young People (Consequential Amendments) Act 1999 No 64 sch 2**

notified 10 November 1999 (Gaz 1999 No 45)  
s 1, s 2 commenced 10 November 1999 (s 2 (1))  
sch 2 commenced 10 May 2000 (s 2 (2))

**Crimes Amendment Act (No 2) 1999 No 71**

notified 15 December 1999 (Gaz 1999 No 50)  
commenced 15 December 1999 (s 2)

**Road Transport Legislation Amendment Act 1999 No 79 sch 3**

notified 23 December 1999 (Gaz 1999 No S65)  
s 1, s 2 commenced 23 December 1999 (IA s 10B)  
sch 3 commenced 1 March 2000 (s 2 and see Gaz 2000 No S5)

**Victims of Crime (Financial Assistance) (Amendment) Act 1999 No 91 sch 2**

notified 23 December 1999 (Gaz 1999 No S65)  
s 1, s 2 commenced 23 December 1999 (IA s 10B)  
sch 2 commenced 24 December 1999 (s 2 (2) and Gaz 1999 No S69)

**Crimes Amendment Act 2000 No 3**

notified 9 March 2000 (Gaz 2000 No 10)  
commenced 9 March 2000 (s 2)

**Crimes Amendment Act 2000 (No 2) No 56**

notified 5 October 2000 (Gaz 2000 No 40)  
s 1, s 2 commenced 5 October 2000 (IA s 10B)  
remainder (ss 3-4) commenced 5 April 2001 (IA s 10E)

**Crimes Amendment Act 2000 (No 3) No 58**

notified 5 October 2000 (Gaz 2000 No 40)  
commenced 5 October 2000 (s 2)

**Utilities (Consequential Provisions) Act 2000 No 66 sch 1 pt 3**

notified 20 December 2000 (Gaz 2000 No S68)  
s 1, s 2 commenced 20 December 2000 (IA s 10B)  
sch 1 pt 3 commenced 1 January 2001 (Gaz 2000 No S69)

**Crimes Amendment Act 2000 (No 4) No 85**

notified 21 December 2000 (Gaz 2000 No S69)  
commenced 21 December 2000 (s 2)

**Crimes Amendment Act 2001 No 8**

notified 8 March 2001 (Gaz 2001 No 10)  
commenced 8 March 2001 (s 2)

**Bail Amendment Act 2001 No 25 pt 3**

notified 24 May 2001 (Gaz 2001 No 21)  
pt 3 commenced 24 May 2001 (s 2)

## Endnotes

3 Legislation history

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**Legislation (Consequential Amendments) Act 2001 No 44 pt 90**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 90 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Statute Law Amendment Act 2001 (No 2) No 56 pt 3.12**

notified 5 September 2001 (Gaz 2001 No S65)  
amdt 3.239 commenced 12 September 2001 (s 2 (2))  
pt 3.12 commenced 5 September 2001 (s 2 (1))

**Crimes Legislation Amendment Act 2001 No 63 pt 4**

notified 10 September 2001 (Gaz 2001 No S66)  
s 1, s 2 commenced 10 September 2001 (IA s 10B)  
pt 4 commenced 27 September 2001 (s 2 (2) and CN 2001 No 3)

**Justice and Community Safety Legislation Amendment Act 2001  
No 70 sch 1**

notified LR 14 September 2001  
amdt commenced 14 September 2001 (s 2 (5))

**Crimes Amendment Act 2001 (No 2) No 75**

notified LR 14 September 2001  
commenced 14 September 2001 (s 2)

**Protection Orders (Consequential Amendments) Act 2001 No 90  
sch 1 pt 3**

notified LR 27 September 2001  
s 1, s 2 commenced 27 September 2001 (LA s 75)  
sch 1 pt 3 commenced 27 March 2002 (s 2, see Protection Orders Act  
2001 s 3 and LA s 79)

**Crimes Amendment Act 2002 No 3**

notified LR 14 March 2002  
commenced 14 March 2002 (s 2)

**Crimes (Bushfires) Amendment Act 2002 No 9**

notified LR 13 May 2002  
s 1, s 2 commenced 13 May 2002 (LA s 75)  
remainder commenced 14 May 2002 (s 2)



**Legislation Amendment Act 2002 No 11 pt 2.12**

notified LR 27 May 2002  
s 1, s 2 commenced 27 May 2002 (LA s 75)  
pt 2.12 commenced 28 May 2002 (s 2 (1))

**Crimes (Abolition of Offence of Abortion) Act 2002 No 24**

notified LR 9 September 2002  
commenced 9 September 2002 (s 2)

**Statute Law Amendment Act 2002 (No 2) No 49 pt 3.4**

notified LR 20 December 2002  
s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))  
pt 3.4 commenced 17 January 2003 (s 2 (1))

**Rehabilitation of Offenders (Interim) Amendment Act 2002 (No 2)  
No 50 ss 21-23**

notified LR 20 December 2002  
s 1, s 2 commenced 20 December 2002 (LA s 75 (1))  
s 21, s 22 commenced 21 December 2002 (s 2 (1))  
s 23 commenced 20 March 2003 (s 2 (2))

**Criminal Code 2002 No 51 pt 1.6**

notified LR 20 December 2002  
s 1, s 2 commenced 20 December 2002 (LA s 75 (1))  
pt 1.6 commenced 1 January 2003 (s 2 (1))

**Confiscation of Criminal Assets Act 2003 A2003-8 sch 1 pt 1.2**

notified LR 27 March 2003  
s 1, s 2 commenced 27 March 2003 (LA s 75 (1))  
sch 1 pt 1.2 commenced 15 August 2003 (s 2 and CN2003-7)

**Legislation (Gay, Lesbian and Transgender) Amendment Act 2003  
A2003-14 sch 1 pt 1.9**

notified LR 27 March 2003  
s 1, s 2 commenced 27 March 2003 (s 75 (1))  
sch 1 pt 1.9 commenced 28 March 2003 (s 2)

**Crimes (Industrial Manslaughter) Amendment Act 2003 A2003-55**

notified LR 4 December 2003  
s 1, s 2 commenced 4 December 2003 (LA s 75 (1))  
remainder commenced 1 March 2004 (s 2)

## Endnotes

3 Legislation history

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**Sexuality Discrimination Legislation Amendment Act 2004 A2004-2 sch 2 pt 2.1**

notified LR 18 February 2004  
s 1, s 2 commenced 18 February 2004 (LA s 75 (1))  
sch 2 pt 2.1 commenced 22 March 2004 (s 2 and CN2004-4)

**Bail Amendment Act 2004 A2004-14 sch 2 pt 2.1**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
sch 2 pt 2.1 commenced 26 June 2004 (s 2 (1))

**Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 3 pt 3.2**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
sch 3 pt 3.2 commenced 9 April 2004 (s 2 (1))

**Crimes Amendment Act 2004 A2004-16 pt 2**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
pt 2 commenced 17 March 2004 (s 2)

**Education Act 2004 A2004-17 sch 2 pt 2.3**

notified LR 8 April 2004  
s 1, s 2 commenced 8 April 2004 (LA s 75 (1))  
sch 2 pt 2.3 commenced 1 January 2005 (s 2)

**Emergencies Act 2004 A2004-28 sch 3 pt 3.6**

notified LR 29 June 2004  
s 1, s 2 commenced 29 June 2004 (LA s 75 (1))  
sch 3 pt 3.6 commenced 1 July 2004 (s 2 (1) and CN2004-11)

**Crimes Legislation Amendment Act 2004 A2004-30 pt 2**

notified LR 7 July 2004  
s 1, s 2 commenced 7 July 2004 (LA s 75 (1))  
pt 2 commenced 8 July 2004 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2004 (No 2) A2004-32 pt 8**

notified LR 29 June 2004  
s 1, s 2 commenced 29 June 2004 (LA s 75 (1))  
pt 8 commenced 13 July 2004 (s 2 (3))

**Health Professionals Legislation Amendment Act 2004 A2004-39 sch 6 pt 6.3**

notified LR 8 July 2004  
s 1, s 2 commenced 8 July 2004 (LA s 75 (1))  
sch 6 pt 6.3 commenced 17 January 2006 (s 2 and see Health Professionals Act 2004 A2004-38, s 2 (as am by A2005-28 amdt 1.1) and CN2006-2)

**Court Procedures (Consequential Amendments) Act 2004 A2004-60 sch 1 pt 1.17**

notified LR 2 September 2004  
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))  
sch 1 pt 1.17 commenced 10 January 2005 (s 2 and see Court Procedures Act 2004 A2004-59, s 2 and CN2004-29)

**Corrections Reform Amendment Act 2004 A2004-61 (as am by A2005-43 amdt 1.12)**

notified LR 6 September 2004  
s 1, s 2 commenced 6 September 2004 (LA s 75 (1))  
remainder never commenced

*Note* This Act was repealed on 2 June 2006 by the Sentencing Legislation Amendment Act 2006 A2006-23 before it commenced (see A2006-23 s 6 (1)).

**Crimes (Restorative Justice) Act 2004 A2004-65 ss 77-79**

notified LR 6 September 2004  
s 1, s 2 commenced 6 September 2004 (LA s 75 (1))  
ss 77-79 commenced 31 January 2005 (s 2 and CN2004-28)

**Crimes Amendment Act 2005 A2005-7 pt 3**

notified LR 23 February 2005  
s 1, s 2 commenced 23 February 2005 (LA s 75 (1))  
pt 3 commenced 24 February 2005 (s 2)

**Domestic Violence and Protection Orders Amendment Act 2005 A2005-13 sch 1 pt 1.4**

notified LR 24 March 2005  
s 1, s 2 commenced 24 March 2005 (LA s 75 (1))  
sch 1 pt 1.4 commenced 25 March 2005 (s 2)

## Endnotes

3 Legislation history

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### **Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.12**

notified LR 12 May 2005

s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))

sch 3 pt 3.12 commenced 2 June 2005 (s 2 (1))

### **Justice and Community Safety Legislation Amendment Act 2005 A2005-43 pt 1.5**

notified LR 30 August 2005

s 1, s 2 commenced 30 August 2005 (LA s 75 (1))

pt 1.5 commenced 1 September 2005 (s 2 (3) and CN2005-14)

*Note* This Act only amends the Corrections Reform Amendment Act 2004 A2004-61.

### **Public Sector Management Amendment Act 2005 (No 2) A2005-44 sch 1 pt 1.2**

notified LR 30 August 2005

s 1, s 2 commenced 30 August 2005 (LA s 75 (1))

sch 1 pt 1.2 commenced 8 September 2005 (s 2 and CN2005-19)

### **Mental Health (Treatment and Care) Amendment Act 2005 A2005-48 sch 1 pt 1.2**

notified LR 6 September 2005

s 1, s 2 commenced 6 September 2005 (LA s 75 (1))

sch 1 pt 1.2 commenced 7 September 2005 (s 2)

### **Criminal Code (Administration of Justice Offences) Amendment Act 2005 A2005-53 sch 1 pt 1.6, sch 2 pt 2.1**

notified LR 26 October 2005

s 1, s 2 commenced 26 October 2005 (LA s 75 (1))

sch 1 pt 1.6, sch 2 pt 2.1 commenced 23 November 2005 (s 2)

### **Civil Law (Wrongs) Amendment Act 2006 A2006-1 sch 1 pt 1.1**

notified LR 22 February 2006

s 1, s 2 commenced 22 February 2006 (LA s 75 (1))

sch 1 pt 1.1 commenced 23 February 2006 (s 2)

### **Crimes (Offences Against Pregnant Women) Amendment Act 2006 A2006-5**

notified LR 15 March 2006

s 1, s 2 commenced 15 March 2006 (LA s 75 (1))

remainder commenced 16 March 2006 (s 2)

**Criminal Code (Mental Impairment) Amendment Act 2006 A2006-14 sch 1 pt 1.2**

notified LR 6 April 2006  
s 1, s 2 commenced 6 April 2006 (LA s 75 (1))  
sch 1 pt 1.2 commenced 7 April 2006 (s 2)

**Civil Unions Act 2006 A2006-22 sch 1 pt 1.7**

notified LR 19 May 2006  
s 1, s 2 commenced 19 May 2006 (LA s 75 (1))  
sch 1 pt 1.7 never commenced

*Note* Act repealed by disallowance 14 June 2006 (see Cwlth Gaz 2006 No S93)

**Sentencing Legislation Amendment Act 2006 A2006-23 sch 1 pt 1.7, sch 2**

notified LR 18 May 2006  
s 1, s 2 commenced 18 May 2006 (LA s 75 (1))  
sch 1 pt 1.7, sch 2 commenced 2 June 2006 (s 2 (1) and see Crimes (Sentence Administration) Act 2005 A2005-59 s 2, Crimes (Sentencing) Act 2005 A2005-58, s 2 and LA s 79)

**Civil Law (Property) Act 2006 A2006-38 amdt 1.6**

notified LR 28 September 2006  
s 1, s 2 commenced 28 September 2006 (LA s 75 (1))  
amdt 1.6 commenced 28 March 2007 (s 2 and LA s 79)

**Health Legislation Amendment Act 2006 (No 2) A2006-46 sch 2 pt 2.3**

notified LR 17 November 2006  
s 1, s 2 commenced 17 November 2006 (LA s 75 (1))  
sch 2 pt 2.3 commenced 18 November 2006 (s 2 (1))

**Corrections Management Act 2007 A2007-15 sch 1 pt 1.1**

notified LR 18 June 2007  
s 1, s 2 commenced 18 June 2007 (LA s 75 (1))  
sch 1 pt 1.1 commenced 18 December 2007 (s 2 and LA s 79)

**Justice and Community Safety Legislation Amendment Act 2007 A2007-22 sch 1 pt 1.5**

notified LR 5 September 2007  
s 1, s 2 commenced 5 September 2007 (LA s 75 (1))  
sch 1 pt 1.5 commenced 6 September 2007 (s 2)

**Occupational Health and Safety (Regulatory Services) Legislation Amendment Act 2007 A2007-37 sch 2 pt 2.1**

notified LR 22 November 2007

s 1, s 2 commenced 22 November 2007 (LA s 75 (1))

sch 2 pt 2.1 commenced 23 November 2007 (s 2)

**Crimes Amendment Act 2008 A2008-6 pt 3**

notified LR 15 April 2008

s 1, s 2 commenced 15 April 2008 (LA s 75 (1))

pt 3 commenced 16 April 2008 (s 2)

**Civil Partnerships Act 2008 A2008-14 sch 1 pt 1.7**

notified LR 15 May 2008

s 1, s 2 commenced 15 May 2008 (LA s 75 (1))

sch 1 pt 1.7 commenced 19 May 2008 (s 2 and CN2008-8)

**Children and Young People Act 2008 A2008-19 sch 1 pt 1.3**

notified LR 17 July 2008

s 1, s 2 commenced 17 July 2008 (LA s 75 (1))

sch 1 pt 1.3 commences 27 February 2009 (s 2 and CN2008-13)

**Children and Young People (Consequential Amendments) Act 2008 A2008-20 sch 4 pt 4.7**

notified LR 17 July 2008

s 1, s 2 commenced 17 July 2008 (LA s 75 (1))

s 3 commenced 18 July 2008 (s 2 (1))

sch 4 pt 4.7 commences 27 February 2009 (s 2 (5) and see Children and Young People Act 2008 A2008-19, s 2 and CN2008-13)

**Medicines, Poisons and Therapeutic Goods Act 2008 A2008-26 sch 2 pt 2.4**

notified LR 14 August 2008

s 1, s 2 commenced 14 August 2008 (LA s 75 (1))

sch 2 pt 2.4 commenced 14 February 2009 (s 2 and LA s 79)

**Justice and Community Safety Legislation Amendment Act 2008 (No 3) A2008-29 sch 1 pt 1.5**

notified LR 13 August 2008

s 1, s 2 commenced 13 August 2008 (LA s 75 (1))

sch 1 pt 1.5 commenced 27 August 2008 (s 2)

**ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 A2008-36 sch 1 pt 1.18**

notified LR 4 September 2008  
 s 1, s 2 commenced 4 September 2008 (LA s 75 (1))  
 sch 1 pt 1.18 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

**Crimes Legislation Amendment Act 2008 A2008-44 sch 1 pt 1.3**

notified LR 9 September 2008  
 s 1, s 2 commenced 9 September 2008 (LA s 75 (1))  
sch 1 pt 1.3 commences 30 May 2009 (s 2 and CN2009-4)

**Domestic Violence and Protection Orders Act 2008 A2008-46 sch 3 pt 3.4**

notified LR 10 September 2008  
 s 1, s 2 commenced 10 September 2008 (LA s 75 (1))  
sch 3 pt 3.4 commences 30 March 2009 (s 2)

## 4 Amendment history

### Preliminary

pt 1 hdg am 2001 No 8 amdt 1.1

hdg before s 1 om 1983 No 27 (as am by 1985 No 16)

### Name of Act

s 1 am 1951 No 14; 1968 No 4; 1971 No 2; 1974 No 17  
 sub 1983 No 27  
 am 1992 No 6  
 sub 2001 No 8 amdt 1.2

### Application of Act

s 2 orig s 2 am 1983 No 27  
 om 2001 No 8 amdt 1.2  
 pres s 2 (prev s 3) am 1985 No 44  
 renum R9 LA (see 2001 No 63 s 43)

### Territorial application of Territory criminal law

s 3 orig s 3 renum as s 2  
 pres s 3 (prev s 3A) ins 1995 No 2  
 renum R9 LA (see 2001 No 63 s 43)  
 om 2002 No 51 amdt 1.8

hdg before s 4 om 1983 No 27 (as am by 1985 No 16)

## Endnotes

### 4 Amendment history

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#### Dictionary

s 4 orig s 4 am 1971 No 2; 1983 No 27 (as am by 1983 No 45); 1983 No 55; 1984 No 78; 1985 No 40; 1985 No 44; 1990 No 5; 1991 No 104; 1991 No 120; 1992 No 9; 1992 No 23; 1995 No 2; 1995 No 50; 1997 No 23; 1997 No 96; 1998 No 22; 1999 No 79 sch 3; 2000 No 85 s 4; 2001 No 8 amdt 1.3, amdt 1.4  
defs reloc to dict 2001 No 8 amdt 1.4  
om 2001 No 8 amdt 1.5  
ins 2001 No 8 amdt 1.6

#### Meaning of *loaded arms*

s 5 om 1990 No 2  
ins 2001 No 8 amdt 1.6

#### Reference to *the jury read as reference to magistrate*

s 6 om 1985 No 44  
ins 2001 No 8 amdt 1.6

#### Notes

s 7 am 1983 No 27  
om 1985 No 44  
ins 2001 No 8 amdt 1.6

#### Offences against Act—application of Criminal Code etc

s 7A ins A2003-8 amdt 1.2  
am A2003-55 s 4; A2004-15 amdt 3.6; A2004-30 s 4; A2006-1 amdt 1.1; A2008-6 s 7

#### Abolition of distinctions between felony and misdemeanour

s 9 am 1968 No 4  
sub 1978 No 45; 1983 No 27

#### Offences against the person

pt 2 hdg orig pt 2 hdg om 1968 No 4  
pres pt 2 hdg (prev pt 3 hdg) sub 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)

#### When child born alive

s 10 am 1968 No 4; 1978 No 45  
om 1983 No 27  
ins 1990 No 2

#### No time limit on criminal responsibility for homicide

s 11 om 1968 No 4  
ins 1990 No 2  
sub 1995 No 2

#### Murder

s 12 om 1968 No 4  
ins 1990 No 2



**Trial for murder—provocation**

s 13 om 1968 No 4  
ins 1990 No 2  
am A2004-2 amdt 2.1; ss renum R26 LA (see A2004-2  
amdt 2.2)

**Trial for murder—diminished responsibility**

s 14 om 1968 No 4  
ins 1990 No 2

**Manslaughter**

s 15 om 1968 No 4  
ins 1990 No 2  
am A2006-5 s 4

**Suicide etc—not an offence**

s 16 om 1968 No 4  
ins 1990 No 2

hdg before s 17 om 1983 No 27 (as am by 1985 No 16)

**Suicide—aiding etc**

s 17 om 1983 No 27  
ins 1990 No 2

**Prevention of suicide**

s 18 am 1983 No 27  
sub 1990 No 2

**Intentionally inflicting grievous bodily harm**

s 19 am 1983 No 27  
sub 1990 No 2  
am A2006-5 s 5, s 6

**Recklessly inflicting grievous bodily harm**

s 20 sub 1990 No 2  
am A2006-5 s 7, s 8

**Wounding**

s 21 am 1983 No 27  
sub 1990 No 2  
am A2006-5 s 9, s 10

**Assault with intent to commit other offence**

s 22 hdg sub A2008-44 amdt 1.15  
s 22 sub 1990 No 2

**Inflicting actual bodily harm**

s 23 sub 1990 No 2  
am A2006-5 s 11, s 12

## Endnotes

4 Amendment history

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### **Assault occasioning actual bodily harm**

s 24 am 1983 No 27  
sub 1990 No 2  
am 2002 No 49 amdt 3.5; A2006-5 s 13, s 14

### **Causing grievous bodily harm**

s 25 am 1983 No 27  
sub 1990 No 2

hdg before s 26 om 1983 No 27 (as am by 1985 No 16)

### **Common assault**

s 26 am 1983 No 27  
om 1988 No 75  
ins 1990 No 2

### **Common assault-summary offence**

s 26A ins A2004-32 s 72  
(2)-(4) exp default application date (s 26A (3) and see Criminal  
Code s 10))  
om A2008-44 amdt 1.16

hdg before s 27 om 1983 No 27 (as am by 1985 No 16)

### **Acts endangering life etc**

s 27 am 1968 No 4  
sub 1990 No 2  
am 1999 No 79 s 5 sch 3; 2002 No 49 amdt 3.6

### **Acts endangering health etc**

s 28 am 1968 No 4  
sub 1990 No 2  
am 2002 No 49 amdt 3.7

### **Culpable driving of motor vehicle**

s 29 am 1983 No 27  
sub 1990 No 2  
am 1990 No 5; 1999 No 79 s 5 sch 3; A2006-5 s 15, s 16;  
ss renum A2006-5 s 17

### **Threat to kill**

s 30 am 1983 No 27  
om 1988 No 75  
ins 1990 No 2

hdg before s 31 om 1983 No 27 (as am by 1985 No 16)

**Threat to inflict grievous bodily harm**

s 31 am 1983 No 27  
sub 1990 No 2

hdg before s 32 om 1983 No 27 (as am by 1985 No 16)

**Demands accompanied by threats**

s 32 am 1983 No 27  
sub 1990 No 2

**Possession of object with intent to kill etc**

s 33 am 1983 No 27  
sub 1990 No 2

**Discharging loaded arms with intent**

s 33A ins 1983 No 27  
om 1990 No 2

**Use of weapon to resist arrest etc**

s 33B ins 1983 No 27  
om 1990 No 2

**Forcible confinement**

s 34 am 1983 No 55  
sub 1990 No 2

**Stalking**

s 35 orig s 35 renum as s 36  
pres s 35 (prev s 34A) ins 1996 No 36  
sub 2000 No 85 s 5  
am 2001 No 75 s 4; LA R8 (see 2001 No 75 s 5)  
renum R9 LA (see 2001 No 63 s 43)

**Torture**

s 36 orig s 36 renum as s 37  
pres s 36 (prev s 35) am 1983 No 27  
sub 1990 No 2  
am 1994 No 38  
renum R9 LA (see 2001 No 63 s 43)

**Abduction of young person**

s 37 orig s 37 renum as s 38  
pres s 37 (prev s 36) om 1983 No 55  
ins 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Kidnapping**

s 38 orig s 38 renum as s 40  
pres s 38 (prev s 37) am 1983 No 27  
sub 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)

#### **Neglect etc of children**

s 39 orig s 39 renum as s 41  
pres s 39 (prev s 37A) ins 1999 No 64 s 4 sch 2  
renum R9 LA (see 2001 No 63 s 43)  
am A2008-20 amdts 4.18-4.20

#### **Unlawfully taking child etc**

s 40 orig s 40 renum as s 42  
pres s 40 (prev s 38) am 1983 No 27  
sub 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)

#### **Exposing or abandoning child**

s 41 orig s 41 renum as s 43  
pres s 41 (prev s 39) am 1983 No 27  
sub 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.8

#### **Child destruction**

s 42 orig s 42 renum as s 44  
pres s 42 (prev s 40) sub 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)

#### **Childbirth—grievous bodily harm**

s 43 orig s 43 renum as s 45  
pres s 43 (prev s 41) am 1983 No 27  
sub 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)

#### **Abortion—abolition of common law offence**

s 44 orig s 44 renum as s 46  
pres s 44 (prev s 42) am 1983 No 27  
sub 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)  
sub 2002 No 24 s 3  
exp 9 December 2002 (s 44 (2))

#### **Procuring another's miscarriage**

s 45 orig s 45 renum as s 47  
pres s 45 (prev s 43) am 1983 No 27  
sub 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)  
om 2002 No 24 s 3

**Procuring drugs etc to procure miscarriage**

s 46 orig s 46 renum as s 48  
 pres s 46 (prev s 44) am 1983 No 27  
 om 1988 No 44  
 ins 1990 No 2  
 renum R9 LA (see 2001 No 63 s 43)  
 om 2002 No 24 s 3

**Concealment of birth**

s 47 orig s 47 renum as s 49  
 pres s 47 (prev s 45) om 1988 No 44  
 ins 1990 No 2  
 renum R9 LA (see 2001 No 63 s 43)

**Misconduct with regard to corpses**

s 48 orig s 48 am 1983 No 27  
 om 1990 No 2  
 pres s 48 (prev s 46) am 1983 No 27  
 sub 1990 No 2  
 renum R9 LA (see 2001 No 63 s 43)

**Aggravated offences—offences against pregnant women**

s 48A ins A2006-5 s 18

**Alternative verdicts for aggravated offences—offences against pregnant women**

s 48B ins A2006-5 s 18

**Alternative verdicts for certain other offences against the person**

s 49 hdg sub 2002 No 49 amdt 3.9; A2006-5 s 19  
 s 49 orig s 49 om 1990 No 2  
 pres s 49 (prev s 47) am 1983 No 27  
 sub 1990 No 2  
 am 1992 No 23  
 renum R9 LA (see 2001 No 63 s 43)  
 table renum R24 LA  
 am A2008-44 amdt 1.17

**Industrial manslaughter**

pt 2A hdg ins A2003-55 s 5

**Definitions for pt 2A**

s 49A ins A2003-55 s 5  
 def **agent** ins A2003-55 s 5  
 def **causes** ins A2003-55 s 5  
 def **commissioner for OH&S** ins A2003-55 s 5  
 om A2007-37 amdt 2.1  
 def **conduct** ins A2003-55 s 5  
 def **death** ins A2003-55 s 5  
 def **employee** ins A2003-55 s 5

## Endnotes

4 Amendment history

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def **employer** ins A2003-55 s 5  
def **government** ins A2003-55 s 5  
def **government entity** ins A2003-55 s 5  
def **independent contractor** ins A2003-55 s 5  
def **officer** ins A2003-55 s 5  
def **outworker** ins A2003-55 s 5  
def **provide services** ins A2003-55 s 5  
def **senior officer** ins A2003-55 s 5  
am A2005-44 amdt 1.2  
def **serious harm** ins A2003-55 s 5  
def **volunteer** ins A2003-55 s 5  
def **worker** ins A2003-55 s 5

### **Omissions of employers and senior officers**

s 49B ins A2003-55 s 5

### **Industrial manslaughter—employer offence**

s 49C ins A2003-55 s 5

### **Industrial manslaughter—senior officer offence**

s 49D ins A2003-55 s 5

### **Court may order corporation to take certain actions**

s 49E ins A2003-55 s 5  
am A2007-37 amdt 2.2, amdt 2.3

### **Sexual offences**

pt 3 hdg orig pt 3 hdg renum as pt 2 hdg  
pres pt 3 hdg (prev pt 3A hdg) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

### **Meaning of *sexual intercourse* in pt 3**

s 50 orig s 50 am 1983 No 27  
om 1990 No 2  
pres s 50 (prev s 92) om 1971 No 2  
ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

### **Sexual assault in the first degree**

s 51 orig s 51 am 1983 No 27  
om 1990 No 2  
pres s 51 (prev s 92A) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

### **Sexual assault in the second degree**

s 52 orig s 52 om 1990 No 2  
pres s 52 (prev s 92B) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

**Culpable driving**

s 52A ins 1963 No 11  
sub 1979 No 1  
om 1990 No 2

**Sexual assault in the third degree**

s 53 orig s 53 om 1990 No 2  
pres s 53 (prev s 92C) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

**Sexual intercourse without consent**

s 54 orig s 54 om 1990 No 2  
pres s 54 (prev s 92D) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)  
am A2008-29 amdts 1.11-1.13

hdg before s 55 om 1983 No 27 (as am by 1985 No 16)

**Sexual intercourse with young person**

s 55 orig s 55 am 1983 No 27  
om 1990 No 2  
pres s 55 (prev s 92E) ins 1985 No 62  
am 1995 No 2  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 56 om 1983 No 27 (as am by 1985 No 16)

**Maintaining a sexual relationship with young person**

s 56 orig s 56 om 1990 No 2  
pres s 56 (prev s 92EA) ins 1991 No 90  
am 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.10

**Act of indecency in the first degree**

s 57 orig s 57 am 1983 No 27  
om 1990 No 2  
pres s 57 (prev s 92F) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

**Act of indecency in the second degree**

s 58 orig s 58 am 1983 No 27  
om 1990 No 2  
pres s 58 (prev s 92G) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Act of indecency in the third degree**

s 59 orig s 59 am 1983 No 27  
om 1990 No 2  
pres s 59 (prev s 92H) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

#### **Act of indecency without consent**

s 60 orig s 60 om 1983 No 27  
pres s 60 (prev s 92J) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 61 om 1983 No 27 (as am by 1985 No 16)

#### **Acts of indecency with young people**

s 61 orig s 61 am 1974 No 17  
om 1990 No 2  
pres s 61 (prev s 92K) ins 1985 No 62  
am 1995 No 2  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 62 om 1983 No 27 (as am by 1985 No 16)

#### **Incest and similar offences**

s 62 orig s 62 om 1985 No 62  
pres s 62 (prev s 92L) ins 1985 No 62  
am 1986 No 27 (as am by 1986 No 37); 1990 No 5; 1995 No  
2; 2001 No 63 s 43  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.11, amdt 3.12

#### **Abduction**

s 63 orig s 63 am 1968 No 4  
om 1985 No 62  
pres s 63 (prev s 92M) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

#### **Using child for production of child pornography etc**

s 64 orig s 64 sub 1951 No 14  
om 1985 No 62  
pres s 64 (prev s 92NA) ins 1987 No 3  
renum R9 LA (see 2001 No 63 s 43)  
sub A2004-30 s 5

#### **Trading in child pornography**

s 64A ins A2004-30 s 5



**Possessing child pornography**

s 65 orig s 65 am 1983 No 27  
om 1985 No 62  
pres s 65 (prev s 92NB) ins 1991 No 120  
renum R9 LA (see 2001 No 63 s 43)  
sub A2004-30 s 5

**Using the Internet etc to deprave young people**

s 66 orig s 66 am 1983 No 27  
om 1985 No 62  
pres s 66 (prev s 92NC) ins 2001 No 75 s 6  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.13

**Consent**

s 67 orig s 67 am 1968 No 4  
om 1985 No 62  
pres s 67 (prev s 92P) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

**Sexual intercourse—people not to be presumed incapable by reason of age**

s 68 orig s 68 am 1983 No 27  
om 1985 No 62  
pres s 68 (prev s 92Q) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

**Marriage no bar to conviction**

s 69 orig s 69 sub 1951 No 14  
om 1985 No 62  
pres s 69 (prev s 92R) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

**Alternative verdicts for certain sexual offences**

s 70 hdg sub 2002 No 49 amdt 3.14  
s 70 orig s 70 sub 1951 No 14  
am 1984 No 78  
om 1985 No 62  
pres s 70 (prev s 92S) ins 1985 No 62  
am 1990 No 2; 1995 No 2  
renum R9 LA (see 2001 No 63 s 43)

**Adding count for act of indecency**

s 71 orig s 71 sub 1951 No 14  
am 1983 No 27  
om 1985 No 62  
pres s 71 (prev s 92T) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

4 Amendment history

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### **Indictment for act of indecency**

s 72 orig s 72 sub 1951 No 14  
am 1983 No 27  
om 1985 No 62  
pres s 72 (prev s 92U) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

### **Carnal knowledge of idiot or imbecile**

s 72A ins 1951 No 14  
am 1983 No 27  
om 1985 No 62

### **Female genital mutilation**

pt 4 hdg orig pt 4 hdg renum as pt 6 hdg  
pres pt 4 hdg (prev pt 3B hdg) ins 1995 No 50  
renum R9 LA (see 2001 No 63 s 43)

### **Meaning of *female genital mutilation* for pt 4**

s 73 orig s 73 sub 1951 No 14  
am 1983 No 27  
om 1985 No 62  
pres s 73 (prev s 92V) ins 1995 No 50  
renum R9 LA (see 2001 No 63 s 43)

### **Prohibition of female genital mutilation**

s 74 orig s 74 sub 1951 No 14  
am 1983 No 27  
om 1985 No 62  
pres s 74 (prev s 92W) ins 1995 No 50  
renum R9 LA (see 2001 No 63 s 43)

### **Removal of child from ACT for genital mutilation**

s 75 orig s 75 sub 1951 No 14  
om 1985 No 62  
pres s 75 (prev s 92X) ins 1995 No 50  
renum R9 LA (see 2001 No 63 s 43)

### **Exception—medical procedures for genuine therapeutic purposes**

s 76 orig s 76 sub 1951 No 14  
am 1983 No 27  
om 1985 No 62  
pres s 76 (prev s 92Y) ins 1995 No 50  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.15, amdt 3.16; A2004-39 amdt 6.3;  
A2006-46 amdt 2.4

**Exception—sexual reassignment procedures**

s 77 orig s 77 sub 1951 No 14  
om 1985 No 62  
pres s 77 (prev s 92Z) ins 1995 No 50  
renum R9 LA (see 2001 No 63 s 43)

**Consent no defence in certain cases**

s 77A ins 1951 No 14  
om 1985 No 62

**Sexual servitude**

pt 5 hdg orig pt 5 hdg om 1986 No 15  
ins 1991 No 78  
renum as pt 7 hdg  
pres pt 5 hdg (prev pt 3C hdg) ins 2001 No 8 s 4  
renum R9 LA (see 2001 No 63 s 43)

**Meaning of *sexual servitude* and *sexual services* for pt 5**

s 78 hdg sub 2002 No 49 amdt 3.17  
s 78 orig s 78 sub 1951 No 14  
om 1985 No 62  
pres s 78 (prev s 92ZA) ins 2001 No 8 s 4  
renum R9 LA (see 2001 No 63 s 43)

**Incest by male**

s 78A ins 1951 No 14  
am 1983 No 27  
om 1985 No 62

**Incest by male, attempts**

s 78B ins 1951 No 14  
om 1985 No 62

**Incest by female**

s 78C ins 1951 No 14  
am 1983 No 27  
om 1985 No 62

**Defences**

s 78D ins 1951 No 14  
om 1985 No 62

**Removal from guardianship etc**

s 78E ins 1951 No 14  
om 1985 No 62

**Rape or attempt—verdict of incest or attempt**

s 78F ins 1951 No 14  
om 1985 No 62

## Endnotes

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### **Sanction of Attorney-General**

s 78G ins 1951 No 14  
om 1985 No 62

hdg before s 79 om 1983 No 27 (as am by 1985 No 16)

### **Sexual servitude offences**

s 79 orig s 79 am 1983 No 27  
om 1985 No 62  
pres s 79 (prev s 92ZB) ins 2001 No 8 s 4  
renum R9 LA (see 2001 No 63 s 43)

### **Deceptive recruiting for sexual services**

s 80 orig s 80 am 1983 No 27  
om 1985 No 62  
pres s 80 (prev s 92ZC) ins 2001 No 8 s 4  
renum R9 LA (see 2001 No 63 s 43)

### **Increased penalty for aggravated offences**

s 81 orig s 81 am 1983 No 27  
om 1985 No 62  
pres s 80 (prev s 92ZD) ins 2001 No 8 s 4  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 82 om 1983 No 27 (as am by 1985 No 16)

### **Alternative verdict if aggravated offence not proven**

s 82 orig s 82 am 1983 No 27  
om 1990 No 2  
pres s 82 (prev s 92ZE) ins 2001 No 8 s 4  
renum R9 LA (see 2001 No 63 s 43)

### **Offences relating to property**

pt 6 hdg orig pt 6 hdg om 1983 No 27  
pres pt 6 hdg (prev pt 4 hdg) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

### **Interpretation for part 6**

div 6.1 hdg (prev pt 4 div 1 hdg) renum R9 LA (see 2001 No 63 s 43 and  
2001 No 90 amdt 1.40)  
om A2004-15 amdt 3.7

**Definitions for pt 6**

s 83 orig s 83 am 1983 No 27  
om 1990 No 2  
pres s 83 (prev s 93) om 1971 No 2  
ins 1983 No 27  
sub 1985 No 44  
am 1986 No 15; 2001 No 8 amdt 1.7  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

**Stealing—interpretation**

s 84 orig s 84 am 1983 No 27  
om 1990 No 2  
pres s 84 (prev s 94) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

hdg before s 85 om 1983 No 27 (as am by 1985 No 16)

**Property belonging to another—interpretation**

s 85 orig s 85 sub 1951 No 14  
om 1990 No 2  
pres s 85 (prev s 95) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

hdg before s 86 om 1983 No 27 (as am by 1985 No 16)

**Appropriation and dishonest appropriation—interpretation**

s 86 orig s 86 am 1983 No 27  
om 1985 No 62  
pres s 86 (prev s 96) am 1983 No 27; 1983 No 55  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

**Intention to deprive permanently—interpretation**

s 87 orig s 87 am 1983 No 27  
om 1985 No 62  
pres s 87 (prev s 97) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

## Endnotes

4 Amendment history

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### **Stolen property—interpretation**

s 88 orig s 88 om 1985 No 62  
pres s 88 (prev s 98) am 1983 No 27  
sub 1985 No 44  
am 1986 No 27; 1987 No 3  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

### **Theft and related offences**

div 6.2 hdg (prev pt 4 div 2 hdg) renum R9 LA (see 2001 No 63 s 43 and  
2001 No 90 amdt 1.40)  
om A2004-15 amdt 3.7

### **Theft**

s 89 orig s 89 am 1983 No 27  
om 1985 No 62  
pres s 89 (prev s 99) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

### **Minor theft**

s 90 orig s 90 sub 1985 No 62  
om 1990 No 2  
pres s 90 (prev s 99A) ins 1995 No 49  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

### **Kidnapping**

s 90A ins 1963 No 11  
om 1990 No 2

### **Robbery**

s 91 orig s 91 am 1983 No 27  
om 1990 No 2  
pres s 91 (prev s 100) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

### **Procuring etc female under 21**

s 91A ins 1951 No 14  
am 1970 No 40; 1983 No 27  
om 1985 No 62

### **Procuring female by drugs**

s 91B ins 1951 No 14  
am 1970 No 40; 1983 No 27  
om 1985 No 62

**Male living on earnings of prostitution**

s 91C ins 1951 No 14  
om 1985 No 62

**Employment etc in brothel of girl under 18**

s 91D ins 1951 No 14  
am 1983 No 27  
om 1985 No 62

hdg before s 92 om 1983 No 27 (as am by 1985 No 16)

**Armed robbery**

s 92 orig s 92 renum as s 50  
pres s 92 (prev s 101) am 1983 No 27; 1983 No 55  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

**Employment of young person for prostitution**

s 92N ins 1985 No 62  
om 1992 No 65

**Burglary**

s 93 orig s 93 om 1971 No 2  
prev s 93 renum as s 83  
pres s 93 (prev s 102) am 1983 No 27; 1983 No 55  
sub 1985 No 44; 2001 No 63 s 12  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

**Delivery of stolen goods held by dealers**

s 93A ins 1983 No 55  
om 1985 No 44

**Disposal of stolen goods etc**

s 93B ins 1983 No 55  
om 1985 No 44

hdgs before s 94 om 1983 No 27 (as am by 1985 No 16)

**Aggravated burglary**

s 94 orig s 94 renum as s 84  
pres s 94 (prev s 103) am 1983 No 27; 1983 No 55  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

## Endnotes

4 Amendment history

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### **Obtaining financial advantage by deception**

s 95 orig s 95 renum as s 85  
pres s 95 (prev s 104) om 1983 No 55  
ins 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

### **Robbery—threat of violence to third person**

s 95A ins 1983 No 55  
om 1985 No 44

### **Obtaining service by deception**

s 96 orig s 96 renum as s 86  
pres s 96 (prev s 105) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

### **Evasion of liability by deception**

s 97 orig s 97 renum as s 87  
pres s 97 (prev s 106) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

### **Making off without payment**

s 98 orig s 98 renum as s 88  
pres s 98 (prev s 107) am 1983 No 27  
sub 1985 No 44  
am 1995 No 49; R9 LA (see 2001 No 63 s 43)  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

hdg before s 99 om 1983 No 27 (as am by 1985 No 16)

### **Valueless cheques**

s 99 orig s 99 renum as s 89  
pres s 99 (prev s 107A) ins 2001 No 63 s 13  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

### **False accounting**

s 100 orig s 100 renum as s 91  
pres s 100 (prev s 108) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7



**Liability of company officers**

s 101 orig s 101 renum as s 92  
pres s 101 (prev s 109) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

**False statements by officers of associations**

s 102 orig s 102 renum as s 93  
pres s 102 (prev s 110) am 1968 No 4  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

**Suppression etc of documents**

s 103 orig s 103 renum as s 94  
pres s 103 (prev s 111) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

**Blackmail**

s 104 orig s 104 om 1983 No 55  
prev s 104 renum as s 95  
pres s 104 (prev s 112) sub 1944 No 1; 1963 No 11  
am 1978 No 45; 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

**Handling stolen property**

s 105 orig s 105 renum as s 96  
pres s 105 (prev s 113) sub 1963 No 11  
am 1978 No 45; 1983 No 27  
sub 1985 No 44  
am 1986 No 27  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

hdg before s 106 om 1983 No 27 (as am by 1985 No 16)

## Endnotes

### 4 Amendment history

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#### **Dishonest abstraction**

s 106 hdg orig s 106 hdg renum as s 97 hdg  
pres s 106 hdg (prev s 114 hdg) sub 2000 No 66 sch 1 pt 3  
s 106 orig s 106 renum as s 97  
pres s 106 (prev s 114) am 1983 No 27; 1983 No 55  
sub 1985 No 44  
am 2000 No 66 sch 1 pt 3  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

#### **Possession of housebreaking implements etc**

s 107 orig s 107 renum as s 98  
pres s 107 (prev s 116) sub 1985 No 44  
am 1990 No 5; LA 8A (see 2001 No 63 s 43)  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

#### **Advertising for return of stolen property**

s 108 orig s 108 renum as s 100  
pres s 108 (prev s 117) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

#### **Delivery of stolen property held by dealers**

s 109 orig s 109 renum as s 101  
pres s 109 (prev s 118) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.18  
om A2004-15 amdt 3.7

#### **Disposal of stolen property**

s 110 orig s 110 renum as s 102  
pres s 110 (prev s 119) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

#### **Taking vehicle without authority**

s 111 orig s 111 renum as s 103  
pres s 111 (prev s 120) am 1963 No 11; 1984 No 78  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

#### **Proof of general deficiency in a case**

s 112 orig s 112 renum as s 104  
pres s 112 (prev s 124) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

**Procedure and evidence**

s 113 orig s 113 renum as s 105  
pres s 113 (prev s 125) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

**Verdict of 'theft or handling'**

s 114 orig s 114 renum as s 106  
pres s 114 (prev s 126) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

**Money laundering and organised fraud**

div 6.2A hdg ins A2003-8 amdt 1.3

**Definitions for div 6.2A**

s 114A ins A2003-8 amdt 1.3  
am A2008-44 amdt 1.18

**Money laundering**

s 114B ins A2003-8 amdt 1.3

**Possession etc of property suspected of being proceeds of crime**

s 114C ins A2003-8 amdt 1.3

**Organised fraud**

s 114D ins A2003-8 amdt 1.3  
am A2005-53 amdt 2.1

**Criminal damage to property**

div 6.3 hdg (prev pt 4 div 3 hdg) renum R9 LA (see 2001 No 63 s 43 and  
2001 No 90 amdt 1.40)

**Interpretation for div 6.3**

s 115 orig s 115 renum as s 155  
pres s 115 (prev s 127) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 9 s 4

hdg before s 116 om 1983 No 27 (as am by 1985 No 16)

**Destroying or damaging property**

s 116 orig s 116 renum as s 107  
pres s 116 (prev s 128) sub 1985 No 44  
am 1995 No 49  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 51 amdt 1.9; ss renum R19 LA (see 2002 No 51  
amdt 1.10); A2006-23 amdts 2.1-2.3

## Endnotes

### 4 Amendment history

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hdg before s 117 om 1983 No 27 (as am by 1985 No 16)

#### **Arson**

s 117 orig s 117 renum as s 108  
pres s 117 (prev s 129) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 51 amdt 1.9; ss renum R19 LA (see 2002 No 51  
amdt 1.10); A2006-23 amdt 2.4, amdt 2.5

#### **Lawful excuse**

s 118 orig s 118 renum as s 109  
pres s 118 (prev s 130) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om 2002 No 51 amdt 1.9

#### **Causing bushfires**

s 118A ins 2002 No 9 s 5  
om 2002 No 51 amdt 1.9

#### **Defacing premises**

s 119 orig s 119 renum as s 110  
pres s 119 (prev s 131) sub 1985 No 44  
am 1986 No 57; 1990 No 5  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 2.6, amdt 2.7  
sub A2008-6 s 8

#### **Defacing premises—strict liability**

s 120 orig s 120 renum as s 111  
pres s 120 (prev s 132) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om 2002 No 51 amdt 1.9  
ins A2008-6 s 8

#### **Possession of article with intent to destroy property**

s 121 orig s 121 am 1983 No 27  
sub 1985 No 44  
om 1986 No 57  
pres s 121 (prev s 133) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om 2002 No 51 amdt 1.9

**Untrue representations**

s 122 orig s 122 am 1983 No 27  
sub 1985 No 44  
om 1986 No 57  
pres s 122 (prev s 134) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 2.8

**Alternative verdict**

s 123 orig s 123 om 1983 No 27  
ins 1985 No 44  
om 1986 No 57  
pres s 123 (prev s 135) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Forgery and use of forged instruments**

div 6.4 hdg (prev pt 4 div 3A hdg) ins 1986 No 15  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt  
1.40)  
om A2004-15 amdt 3.7

**Making of false instrument**

s 124 orig s 124 renum as s 112  
pres s 124 (prev s 135A) ins 1986 No 15  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

hdg before s 125 om 1983 No 27 (as am by 1985 No 16)

**Act or omission to a person's prejudice**

s 125 orig s 125 renum as s 113  
pres s 125 (prev s 135B) ins 1986 No 15  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

hdg before s 126 om 1983 No 27 (as am by 1985 No 16)

**Forgery and use of forged instruments**

s 126 orig s 126 renum as s 114  
pres s 126 (prev s 135C) ins 1986 No 15  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

## Endnotes

### 4 Amendment history

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#### **Possession of false instrument**

s 127 orig s 127 renum as s 115  
pres s 127 (prev s 135D) ins 1986 No 15  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

#### **Possession of machine etc**

s 128 orig s 128 renum as s 116  
pres s 128 (prev s 135E) ins 1986 No 15  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

#### **Forfeiture**

s 129 orig s 129 renum as s 117  
pres s 129 (prev s 135F) ins 1986 No 15  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

#### **General allegation of intent sufficient**

s 130 orig s 130 renum as s 118  
pres s 130 (prev s 135G) ins 1986 No 15  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

#### **Offences relating to computers**

div 6.5 hdg (prev pt 4 div 3B hdg) ins 1992 No 23  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt  
1.40)  
om 2002 No 51 amdt 1.11

#### **Interpretation for div 6.5**

s 131 orig s 131 renum as s 119  
pres s 131 (prev s 152 and s 135H) ins as s 152 1990 No 66  
renum as s 135H 1992 No 23; renum as s 131 R9 LA (see  
2001 No 63 s 43)  
om 2002 No 51 amdt 1.11

#### **Unlawful access to data in computer**

s 132 orig s 132 renum as s 120  
pres s 132 (prev s 153 and s 135J) ins as s 153 1990 No 66  
renum as s 135J 1992 No 23; renum as s 132 R9 LA (see  
2001 No 63 s 43)  
om 2002 No 51 amdt 1.11

#### **Damaging data in computers**

s 133 orig s 133 renum as s 121  
pres s 133 (prev s 154 and s 135K) ins as s 154 1990 No 66  
renum as s 135K 1992 No 23; renum as s 133 R9 LA (see  
2001 No 63 s 43)  
om 2002 No 51 amdt 1.11

hdg before s 134 om 1983 No 27 (as am by 1985 No 16)

**Dishonest use of computers**

s 134 orig s 134 renum as s 122  
pres s 134 (prev s 115, s 155 and s 135L) am 1983 No 27  
sub 1985 No 44  
renum as s 155 1991 No 90; renum as s 135L 1992 No 23;  
renum as s 134 R9 LA (see 2001 No 63 s 43)  
om 2002 No 51 amdt 1.11

**Contamination of goods and related offences**

div 6.6 hdg (prev pt 4 div 3C hdg) ins 2000 No 3 s 4  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt  
1.40)

**Definitions of *contaminate* and *goods***

s 135 orig s 135 renum as s 123  
pres s 135 (prev s 135M) ins 2000 No 3 s 4  
renum R9 LA (see 2001 No 63 s 43)

**Meaning of economic loss**

s 136 orig s 136 renum as s 141  
pres s 136 (prev s 135N) ins 2000 No 3 s 4  
renum R9 LA (see 2001 No 63 s 43)

**Contaminating goods with intent to cause public alarm or economic loss**

s 137 orig s 137 renum as s 142  
pres s 137 (prev s 135O) ins 2000 No 3 s 4  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 2.9

**Threatening to contaminate goods with intent to cause public alarm or economic loss**

s 138 orig s 138 renum as s 143  
pres s 138 (prev s 135P) ins 2000 No 3 s 4  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 2.10

hdg before s 139 om 1983 No 27 (as am by 1985 No 16)

**Making false statements about contamination of goods with intent to cause public alarm or economic loss**

s 139 orig s 139 renum as s 144  
pres s 139 (prev s 135Q) ins 2000 No 3 s 4  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 2.11

## Endnotes

### 4 Amendment history

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#### **Territorial nexus for offences**

s 140 orig s 140 renum as s 145  
pres s 140 (prev s 135R) ins 2000 No 3 s 4  
renum R9 LA (see 2001 No 63 s 43)

#### **Offences relating to causing public alarm**

div 6.7 hdg (prev div 6.6A hdg) ins 2002 No 3 s 4  
renum R11 LA (see 2001 No 90 amdt 1.40)

#### **Acting with intent to cause public alarm**

s 140A ins 2002 No 3 s 4  
am A2006-23 amdt 2.12

#### **Threatening to act with intent to cause public alarm**

s 140B ins 2002 No 3 s 4  
am A2006-23 amdt 2.13

#### **Making false statements with intent to cause public alarm**

s 140C ins 2002 No 3 s 4  
am A2006-23 amdt 2.14

#### **Territorial nexus for offences**

s 140D ins 2002 No 3 s 4

#### **Miscellaneous**

div 6.8 hdg (prev pt 4 div 4 hdg) renum R9 LA (see 2001 No 63 s 43 and  
2001 No 90 amdt 1.40)  
(prev div 6.7 hdg) renum R11 LA (see 2001 No 90 amdt 1.40)

#### **Hindering working of mines**

s 141 orig s 141 om 1983 No 27  
prev s 141 renum as s 146  
pres s 141 (prev s 136) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 2.15

#### **Removal of sea banks etc**

s 142 orig s 142 om 1983 No 27  
prev s 142 renum as s 147  
pres s 142 (prev s 137) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 2.16

#### **Obstructing navigation of rivers**

s 143 orig s 143 om 1983 No 27  
prev s 143 renum as s 148  
pres s 143 (prev s 138) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 2.17



hdg before s 144 om 1983 No 27 (as am by 1985 No 16)

**Offences in relation to railways**

s 144 orig s 144 renum as s 149  
pres s 144 (prev s 139) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 2.18

**Obstructing railway engines**

s 145 orig s 145 renum as s 150  
pres s 145 (prev s 140) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 2.19

**Alternative verdict**

s 146 orig s 146 renum as s 151  
pres s 146 (prev s 141) om 1983 No 27  
ins 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Displaying false signals**

s 147 orig s 147 renum as s 152  
pres s 147 (prev s 142) om 1983 No 27  
ins 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 2.20

hdg before s 148 om 1983 No 27 (as am by 1985 No 16)

**Removing or concealing buoys etc**

s 148 orig s 148 renum as s 153  
pres s 148 (prev s 143) om 1983 No 27  
ins 1985 No 44  
am 1996 No 51  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 2.21

**Removal of articles on public exhibition**

s 149 orig s 149 renum as s 154  
pres s 149 (prev s 144) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

hdg before s 150 om 1983 No 27 (as am by 1985 No 16)

## Endnotes

### 4 Amendment history

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#### **Being found with intent to commit offence**

s 150 orig s 150 renum as s 155  
pres s 150 (prev s 145) sub 1985 No 44  
am 1990 No 5; 2001 No 8 amdt 1.8  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

#### **Forcible entry on land**

s 151 orig s 151 renum as s 156  
pres s 151 (prev s 146) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 2.22

#### **Offences relating to computers**

pt 4 div 5 hdg ins 1990 No 66  
om 1992 No 23

hdg before s 152 om 1983 No 27 (as am by 1985 No 16)

#### **Forcible detainer of land**

s 152 orig s 152 am 1983 No 27  
om 1985 No 44  
ins 1990 No 66  
renum and reloc as s 135H 1992 No 23  
(prev s 358AA) ins 1988 No 75  
renum and reloc as s 152 1991 No 78  
renum as s 158 R9 LA (see 2001 No 63 s 43)  
pres s 152 (prev s 147) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 2.23

#### **Disclosure of information by public employees**

s 153 orig s 153 am 1983 No 27  
om 1985 No 44  
ins 1990 No 66  
renum and reloc as s 135J 1992 No 23  
(prev s 358AB) ins 1988 No 75  
renum and reloc as s 153 1991 No 78  
renum as s 159 R9 LA (see 2001 No 63 s 43)  
pres s 153 (prev s 148) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7  
reloc from Crimes (Offences against the Government) Act  
1989 s 10 by A2004-15 amdt 3.16  
am A2006-23 amdt 2.24, amdt 2.25

hdg before s 154 om 1983 No 27 (as am by 1985 No 16)

**Additional offences on territory premises**

s 154 orig s 154 am 1983 No 27  
om 1985 No 44  
ins 1990 No 66  
renum and reloc as s 135K 1992 No 23  
(prev s 358AC) ins 1988 No 75  
renum and reloc as s 154 1991 No 78  
renum as s 160 R9 LA (see 2001 No 63 s 43)  
pres s 154 (prev s 149) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7  
reloc from Crimes (Offences against the Government) Act  
1989 s 19 by A2004-15 amdt 3.18  
am A2006-23 amdt 2.26, amdt 2.27

**Unlawfully using another's vehicle or boat**

s 154A ins 1963 No 11  
am 1983 No 27  
om 1985 No 44

**Fraudulent abstraction, waste etc of electricity**

s 154B ins 1984 No 78  
om 1985 No 44

hdgs before s 155 om 1983 No 27 (as am by 1985 No 16)

**Indictment for theft etc of deeds**

s 155 orig s 155 om 1985 No 44  
ins 1990 No 66  
renum and reloc as s 135L 1992 No 23  
(prev s 358AD) ins 1988 No 75  
renum and reloc as s 155 1991 No 78  
renum as s 161 R9 LA (see 2001 No 63 s 43)  
pres s 155 (prev s 150) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.19, amdt 3.20  
om A2004-15 amdt 3.7

## Endnotes

4 Amendment history

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### **Allegations in indictment about stolen money or securities**

s 156 orig s 156 am 1983 No 27  
om 1985 No 44  
(prev s 358AE) ins 1988 No 75  
renum and reloc as s 156 1991 No 78  
renum as s 162  
pres s 156 (prev s 151) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.7

### **Escape provisions**

pt 7 hdg (prev pt 5 hdg) renum R9 LA (see 2001 No 63 s 43)

### **Meaning of *lawful custody*—periodic detention**

s 157 orig s 157 am 1983 No 27  
om 1985 No 44  
(prev s 358AF) ins 1988 No 75  
renum and reloc as s 157 1991 No 78  
renum as s 163  
pres s 157 (prev s 151A) ins 1995 No 3  
renum R9 LA (see 2001 No 63 s 43)  
sub A2006-23 amdt 1.54

### **Meaning of *detention during pleasure***

s 158 orig s 158 am 1983 No 27  
om 1985 No 44  
(prev s 358AG) ins 1988 No 75  
renum and reloc as s 158 1991 No 78  
renum as s 164  
pres s 158 (prev s 358AG and s 152) ins as s 358AG 1988  
No 78;  
renum as s 152 1991 No 78; renum as s 158 R9 LA (see 2001  
No 63 s 43)

hdg before s 159 om 1983 No 27 (as am by 1985 No 16)

### **Aiding prisoner to escape**

s 159 orig s 159 am 1983 No 27  
om 1985 No 44  
(prev s 358AH) ins 1988 No 75  
renum and reloc as s 159 1991 No 78  
renum as s 165  
pres s 159 (prev s 153) ins 1990 No 66  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 1.55, amdt 2.28

**Escaping**

s 160 orig s 160 am 1983 No 27  
om 1985 No 44  
(prev s 358AI) ins 1988 No 75  
renum and reloc as s 160 1991 No 78  
renum as s 166  
pres s 160 (prev s 154) ins 1990 No 66  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 2.29

hdg before s 161 om 1983 No 27 (as am by 1985 No 16)

**Rescuing a prisoner from custody etc**

s 161 orig s 161 om 1985 No 44  
pres s 161 (prev s 115 and prev s 155) am 1983 No 27  
sub 1985 No 44  
renum as s 155 1991 No 90  
renum as s 161 R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 1.56, amdt 2 30

hdg before s 162 om 1983 No 27 (as am by 1985 No 16)

**Person unlawfully at large**

s 162 orig s 162 om 1985 No 44  
pres s 162 (prev s 358AE and prev s 156) ins as s 358AE  
1988 No 75  
renum as s 156 1991 No 78  
renum as s 162 R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.21; A2006-23 amdt 1.57, amdt 1.58,  
amdt 2.31

hdg before s 163 om 1983 No 27 (as am by 1985 No 16)

**Permitting escape**

s 163 orig s 163 am 1983 No 27  
om 1985 No 44  
pres s 163 (prev s 358AF and prev s 157) ins as s 358AF  
1988 No 75  
renum as s 157 1991 No 78  
renum as s 163 R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.22; A2006-23 amdt 1.58, amdt 2.32

hdg before s 164 om 1983 No 27 (as am by 1985 No 16)

## Endnotes

### 4 Amendment history

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#### **Harbouring etc escapee**

s 164 orig s 164 om 1985 No 44  
pres s 164 (prev s 358AG and prev s 158) ins as s 358AG  
1988 No 75  
renum as s 158 1991 No 78  
renum as s 164 R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 2.33

#### **Escaped prisoner—current sentence**

s 165 orig s 165 am 1983 No 27  
om 1985 No 44  
pres s 165 (prev s 358AH and prev s 159) ins as s 358AH  
1988 No 75  
renum as s 159 1991 No 78  
renum as s 165 R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.59

#### **Failure to answer bail etc—offence**

s 166 orig s 166 am 1983 No 27  
om 1985 No 44  
pres s 166 (prev s 358AI and prev s 160) ins as s 358AI 1988  
No 75  
renum as s 160 1991 No 78  
renum as s 166 R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 2.34

#### **Perjury**

s 167 orig s 167 om 1985 No 44  
pres s 167 (prev s 327) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.23  
om A2005-53 amdt 1.39

#### **Perjury with intent to procure conviction etc**

s 168 orig s 168 am 1983 No 27  
om 1985 No 44  
pres s 168 (prev s 328) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.23  
om A2005-53 amdt 1.39

#### **Conviction for false swearing on indictment for perjury**

s 169 orig s 169 am 1983 No 27  
om 1985 No 44  
pres s 169 (prev s 329) renum R9 LA (see 2001 No 63 s 43)  
om A2005-53 amdt 1.39

**Anabolic steroids**

pt 8 hdg orig pt 8 hdg renum as pt 9 hdg  
pres pt 8 hdg (prev pt 7 hdg) renum R9 LA (see 2001 No 63 s 43)  
om A2005-53 amdt 1.39  
ins A2008-26 amdt 2.7

**Meaning of *anabolic steroid***

s 170 orig s 170 am 1983 No 27  
om 1985 No 44  
pres s 170 (prev s 330) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.23  
om A2005-53 amdt 1.39  
ins A2008-26 amdt 2.7

**Prescribing and supplying anabolic steroids**

s 171 orig s 171 om 1985 No 44  
pres s 171 (prev s 331) renum R9 LA (see 2001 No 63 s 43)  
om A2005-53 amdt 1.39  
ins A2008-26 amdt 2.7

**Possessing anabolic steroids**

s 172 orig s 172 am 1983 No 27  
om 1985 No 44  
pres s 172 (prev s 332) am 1983 No 55  
renum R9 LA (see 2001 No 63 s 43)  
om A2005-53 amdt 1.39  
ins A2008-26 amdt 2.7

**Administering anabolic steroids**

s 173 orig s 173 am 1983 No 27  
om 1985 No 44  
pres s 173 (prev s 333) am 1983 No 27; 1983 No 55  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.23  
om A2005-53 amdt 1.39  
ins A2008-26 amdt 2.7

**False statement in evidence on commission**

s 174 orig s 174 am 1983 No 27  
om 1985 No 44  
pres s 174 (prev s 334) om 1983 No 27  
ins 1990 No 4  
renum R9 LA (see 2001 No 63 s 43)  
om A2005-53 amdt 1.39

## Endnotes

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### **Directing prosecution for perjury**

s 175 orig s 175 am 1983 No 27  
om 1985 No 44  
pres s 175 (prev s 340) am 1983 No 27; 1992 No 9  
renum R9 LA (see 2001 No 63 s 43)  
om A2005-53 amdt 1.39

### **For restraining vexatious prosecutions**

s 176 orig s 176 am 1983 No 27  
om 1985 No 44  
pres s 176 (prev s 341) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)  
om A2005-53 amdt 1.39

### **Directors etc cheating or defrauding**

s 176A ins 1984 No 78  
om 1985 No 44

### **Application of laws**

s 177 orig s 177 om 1985 No 44  
pres s 177 (prev s 342) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)  
om A2005-53 amdt 1.39

### **Saving of other punishments**

s 178 orig s 178 om 1985 No 44  
pres s 178 (prev s 343) renum R9 LA (see 2001 No 63 s 43)  
om A2005-53 amdt 1.39

### **Fraudulent misappropriation of moneys collected or received**

s 178A ins 1963 No 11  
om 1985 No 44

### **Valueless cheques**

s 178B ins 1983 No 55  
om 1985 No 44

### **Obtaining money etc by deception**

s 178C ins 1983 No 55  
om 1985 No 44

### **Obtaining money etc by false or misleading statements**

s 178D ins 1983 No 55  
om 1985 No 44

### **Obtaining credit by fraud**

s 178E ins 1983 No 55  
om 1985 No 44

hdg before s 179 om 1983 No 27 (as am by 1985 No 16)



**False accusation**

s 179 orig s 179 am 1963 No 11; 1983 No 27  
om 1985 No 44  
pres s 179 (prev s 344) am 1983 No 27  
sub 1988 No 75  
renum R9 LA (see 2001 No 63 s 43)  
om A2005-53 amdt 1.39

**Accessories**

pt 9 hdg orig pt 9 hdg om 1988 No 75  
pres pt 9 hdg (prev pt 8 hdg) sub 1988 No 75  
renum R9 LA (see 2001 No 63 s 43)  
sub 2002 No 51 amdt 1.12  
om A2005-53 amdt 1.39

**Aiding and abetting**

s 180 orig s 180 am 1963 No 11  
om 1985 No 44  
pres s 180 (prev s 345) om 1983 No 27  
ins 1988 No 75  
renum R9 LA (see 2001 No 63 s 43)  
om 2002 No 51 amdt 1.13

**Accessory after the fact**

s 181 orig s 181 om 1985 No 44  
pres s 181 (prev s 346) om 1983 No 27  
ins 1988 No 75  
renum R9 LA (see 2001 No 63 s 43)  
am A2004-15 amdt 3.8  
om A2005-53 amdt 1.39

**Attempts**

s 182 orig s 182 am 1963 No 11  
om 1985 No 44  
pres s 182 (prev s 347) om 1983 No 27  
ins 1988 No 75  
renum R9 LA (see 2001 No 63 s 43)  
om 2002 No 51 amdt 1.14

**Incitement**

s 183 orig s 183 sub 1963 No 11  
am 1983 No 27  
om 1985 No 44  
pres s 183 (prev s 348) om 1983 No 27  
ins 1988 No 75  
renum R9 LA (see 2001 No 63 s 43)  
pars renum R11 LA  
om 2002 No 51 amdt 1.14

## Endnotes

### 4 Amendment history

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#### **Conspiracy**

s 184 orig s 184 am 1983 No 27  
om 1985 No 44  
pres s 184 (prev s 349) am 1983 No 27  
sub 1988 No 75  
renum R9 LA (see 2001 No 63 s 43)  
om 2002 No 51 amdt 1.14

#### **Criminal investigation**

pt 10 hdg sub 1983 No 55; 1988 No 75; 1991 No 78  
pt 10 hdg note ins 2002 No 11 amdt 2.21

#### **Preliminary**

div 10.1 hdg (prev pt 10 div 1 hdg) ins 1984 No 32  
sub 1991 No 78; 1994 No 75  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt  
1.40)

#### **Definitions for pt 10**

s 185 orig s 185 am 1983 No 27  
om 1985 No 44  
pres s 185 (prev s 349AA) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)  
def **evidential material** sub A2008-44 amdt 1.19  
def **medical practitioner** om 1995 No 50 s 6  
def **ordinary search** am 1997 No 10 s 4  
def **serious offence** ins A2008-44 amdt 1.20  
def **summary offence** am 2001 No 56 amdt 3.239  
om 2002 No 11 amdt 2.22  
def **tainted property** ins A2003-8 amdt 1.4  
def **target material** ins A2003-8 amdt 1.4  
def **thing relevant to** ins A2008-44 amdt 1.21  
def **thing relevant to an indictable offence** om A2008-44  
amdt 1.21  
def **thing relevant to a summary offence** om A2008-44  
amdt 1.21

#### **Search of transgender or intersex person**

s 185A ins A2003-14 amdt 1.31

hdg before s 186 om 1983 No 27 (as am by 1985 No 16)

#### **Application of pt 10**

s 186 orig s 186 am 1983 No 27; 1984 No 78  
om 1985 No 44  
pres s 186 (prev s 349AB) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 187 om 1983 No 27 (as am by 1985 No 16)

**Application of Cwlth Crimes Act, pt 1C**

s 187 orig s 187 om 1985 No 44  
pres s 187 (prev s 349AC) ins 2001 No 63 s 14  
renum R9 LA (see 2001 No 63 s 43)  
am A2008-44 amdt 1.22, amdt 1.23

**Preventative action**

div 10.2 hdg (prev pt 10 div 1A hdg) ins 1988 No 75  
om 1991 No 78  
ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt  
1.40)

**Police powers of entry**

s 188 orig s 188 am 1983 No 27; 1984 No 78  
om 1985 No 44  
pres s 188 (prev s 349A) ins 1986 No 53  
am 1987 No 3  
renum R9 LA (see 2001 No 63 s 43)

**Issue of warrant**

s 189 orig s 198 am 1983 No 27; 1984 No 78  
om 1985 No 44  
pres s 189 (prev s 349B) ins 1986 No 53  
am 1987 No 3  
renum R9 LA (see 2001 No 63 s 43)

**Receiving etc goods stolen out of New South Wales**

s 189A ins 1951 No 14  
am 1983 No 27; 1984 No 78  
om 1985 No 44

**Prosecution under section 188 or 189 where property stolen in course of transmission**

s 189B ins 1984 No 78  
om 1985 No 44

**Entry in emergencies**

s 190 orig s 190 am 1983 No 27; 1984 No 78  
om 1985 No 44  
pres s 190 (prev s 349C) ins 1986 No 53  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

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### **Seizure of firearms—warrants and emergencies**

s 191 orig s 191 om 1985 No 44  
pres s 191 (prev s 349D) ins 1991 No 9  
am 1992 No 35; 1996 No 74; 1997 No 23; R9 LA (see 2001  
No 63 s 43)  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90  
amdt 1.31)  
am 2001 No 90 amdt 1.30; A2005-13 amdt 1.22; A2008-46  
amdt 3.10

### **Seizure of firearms—protection orders**

s 192 hdg sub 2001 No 90 amdt 1.32  
s 192 orig s 192 om 1985 No 44  
pres s 192 (prev s 349DA) ins 1997 No 23  
renum R9 LA (see 2001 No 63 s 43)  
am 2001 No 90 amdt 1.33; A2004-60 amdts 1.103-1.105;  
A2005-13 amdt 1.23; A2008-46 amdt 3.11, amdt 3.12

### **Power to conduct search of person for knife**

s 193 orig s 193 om 1985 No 44  
pres s 193 (prev s 349DB) ins 1998 No 22  
renum R9 LA (see 2001 No 63 s 43)

### **Search warrants**

div 10.3 hdg (prev pt 10 div 2 hdg) ins 1984 No 32  
sub 1994 No 75  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt  
1.40)

hdgs before s 194 om 1983 No 27 (as am by 1985 No 16)

### **When search warrants can be issued**

s 194 orig s 194 om 1985 No 44  
pres s 194 (prev s 349E) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)  
am A2003-8 amdt 1.5; A2008-44 amdt 1.24

### **The things that are authorised by search warrant**

s 195 orig s 195 om 1985 No 44  
pres s 195 (prev s 349F) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.24; A2003-8 amdt 1.6, amdt 1.7;  
A2008-44 amdt 1.25

hdg before s 196 om 1983 No 27 (as am by 1985 No 16)

**Availability of assistance and use of force in executing warrant**

s 196 orig s 196 am 1963 No 11  
om 1968 No 4  
pres s 196 (prev s 349G) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Details of warrant to be given to occupier etc**

s 197 orig s 197 am 1963 No 11; 1983 No 27  
om 1985 No 44  
pres s 197 (prev s 349H) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Specific powers available to police officers executing warrant**

s 198 am 1963 No 11; 1983 No 27  
om 1985 No 44  
pres s 198 (prev s 349J) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Use of equipment to examine or process things**

s 199 orig s 199 am 1983 No 27  
om 1985 No 44  
pres s 199 (prev s 349K) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Use of electronic equipment at premises**

s 200 orig s 200 am 1963 No 11; 1983 No 27  
om 1985 No 44  
pres s 200 (prev s 349L) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Compensation for damage to electronic equipment**

s 201 orig s 201 am 1963 No 11; 1983 No 27  
om 1985 No 44  
pres s 201 (prev s 349M) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Copies of seized things to be provided**

s 202 orig s 202 am 1963 No 11; 1983 No 27  
om 1985 No 44  
pres s 202 (prev s 349N) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 203 om 1983 No 27 (as am by 1985 No 16)

**Occupier entitled to be present during search**

s 203 orig s 203 am 1963 No 11; 1983 No 27  
om 1985 No 44  
pres s 203 (prev s 349P) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Receipts for things seized under warrant**

s 204 orig s 204 am 1963 No 11; 1983 No 27  
om 1985 No 44  
pres s 204 (prev s 349Q) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 205 om 1983 No 27 (as am by 1985 No 16)

#### **Warrants by telephone or other electronic means**

s 205 orig s 205 om 1971 No 26  
pres s 205 (prev s 349R) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

#### **Restrictions on personal searches**

s 206 orig s 206 om 1971 No 26  
pres s 206 (prev s 349S) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

#### **Powers to stop and search**

div 10.4 hdg (prev pt 10 div 3 hdg) ins 1994 No 75  
sub 2001 No 63 s 15  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90  
amdt 1.40)

#### **Stopping, searching and detaining people**

s 207 orig s 207 om 1971 No 26  
pres s 207 (prev s 349SA) ins 2001 No 63 s 16  
renum R9 LA (see 2001 No 63 s 43)  
am A2008-44 amdt 1.26

hdg before s 208 om 1983 No 27 (as am by 1985 No 16)

#### **How a police officer exercises a power under s 207**

s 208 orig s 208 om 1985 No 44  
pres s 208 (prev s 349SB) ins 2001 No 63 s 16  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 209 om 1983 No 27 (as am by 1985 No 16)

#### **Stopping, searching and detaining conveyances**

s 209 hdg (prev s 349T hdg) sub 2001 No 63 s 17  
s 209 orig s 209 am 1983 No 27  
om 1985 No 44  
pres s 209 (prev s 349T) ins 1994 No 75  
am 2001 No 63 s 18  
renum R9 LA (see 2001 No 63 s 43)  
am A2008-44 amdt 1.27

**How a police officer exercises a power under s 209**

s 210 orig s 210 am 1983 No 27  
om 1985 No 44  
pres s 210 (prev s 349U) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Arrest and related matters**

div 10.5 hdg (prev pt 10 div 4 hdg) ins 1994 No 75  
sub 2001 No 63 s 15  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt  
1.40)

hdg before s 211 om 1983 No 27 (as am by 1985 No 16)

**Requirement to provide name etc**

s 211 orig s 211 am 1983 No 27  
om 1985 No 44  
pres s 211 (prev s 349V) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.25

**Power of arrest without warrant by police officers**

s 212 orig s 212 am 1983 No 27  
om 1985 No 44  
pres s 212 (prev s 349W) ins 1994 No 75  
am 1997 No 23; 2001 No 63 ss 19-23  
renum R9 LA (see 2001 No 63 s 43)  
am A2005-13 amdt 1.24; A2008-46 amdt 3.13

**Arrest without warrant in possession**

s 213 orig s 213 am 1983 No 27  
om 1985 No 44  
pres s 213 (prev s 349X) ins 1994 No 75  
am 1998 No 67  
renum R9 LA (see 2001 No 63 s 43)

**Arrest of prisoner unlawfully at large**

s 214 orig s 214 am 1983 No 27  
om 1985 No 44  
pres s 214 (prev s 349Y) ins 1994 No 75  
am 1998 No 67; 2001 No 63 s 24  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 1.60

## Endnotes

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### **Power of arrest without warrant of person on bail**

s 215 orig s 215 am 1983 No 27  
om 1985 No 44  
pres s 215 (prev s 349Z) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-14 amdt 2.1

### **Arrest for breach of bail conditions by person outside ACT**

s 216 orig s 216 am 1983 No 27  
om 1985 No 44  
pres s 216 (prev s 349ZA) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-14 amdt 2.1

### **Arrest without warrant for offences committed outside ACT**

s 217 orig s 217 am 1983 No 27  
om 1985 No 44  
pres s 217 (prev s 349ZB) ins 1994 No 75  
am 2001 No 63 s 25  
renum R9 LA (see 2001 No 63 s 43)  
am A2008-44 amdt 1.28

### **Power of arrest without warrant by other persons**

s 218 orig s 218 am 1983 No 27  
om 1985 No 44  
pres s 218 (prev s 349ZC) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

### **Warrants for arrest**

s 219 orig s 219 am 1983 No 55  
om 1985 No 44  
pres s 219 (prev s 349ZD) ins 1994 No 75  
am 2001 No 25 s 18  
renum R9 LA (see 2001 No 63 s 43)

### **Power to enter premises to arrest offender**

s 220 orig s 220 om 1985 No 44  
pres s 220 (prev s 349ZE) ins 1994 No 75  
am 2001 No 63 s 26, s 27  
renum R9 LA (see 2001 No 63 s 43)  
am A2004-15 amdt 3.9; A2008-44 amdt 1.29, amdt 1.30

hdg before s 221 om 1983 No 27 (as am by 1985 No 16)

### **Use of force in making arrest**

s 221 orig s 221 am 1983 No 27  
om 1985 No 44  
pres s 221 (prev s 349ZF) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)



**Persons to be informed of grounds of arrest**

s 222 orig s 222 am 1983 No 27  
om 1985 No 44  
pres s 222 (prev s 349ZG) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Power to conduct frisk search of arrested person**

s 223 orig s 223 am 1983 No 27  
om 1985 No 44  
pres s 223 (prev s 349ZH) ins 1994 No 75  
am 2001 No 63 s 28, s 29  
renum R9 LA (see 2001 No 63 s 43)

**Power to conduct ordinary search of arrested person**

s 224 orig s 224 am 1983 No 27  
om 1985 No 44  
pres s 224 (prev s 349ZJ) ins 1994 No 75  
am 1997 No 10; 2001 No 63 s 30, s 31  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 225 om 1983 No 27 (as am by 1985 No 16)

**Power to conduct search of arrested person's premises**

s 225 orig s 225 am 1983 No 27  
om 1985 No 44  
pres s 225 (prev s 349ZK) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Power to conduct search at police station**

s 226 orig s 226 am 1983 No 27  
om 1985 No 44  
pres s 226 (prev s 349ZL) ins 1994 No 75  
am 1997 No 10  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 227 om 1983 No 27 (as am by 1985 No 16)

**Power to conduct strip search**

s 227 orig s 227 om 1985 No 44  
pres s 227 (prev s 349ZM) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 228 om 1983 No 27 (as am by 1985 No 16)

## Endnotes

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### **Rules for conduct of strip search**

s 228 orig s 228 am 1983 No 27  
om 1985 No 44  
pres s 228 (prev s 349ZN) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

### **Safekeeping of things seized**

s 229 orig s 229 om 1985 No 44  
pres s 229 (prev s 349ZO) ins 1997 No 10  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 230 om 1983 No 27 (as am by 1985 No 16)

### **Taking fingerprints, recordings, samples of handwriting or photographs**

s 230 orig s 230 am 1983 No 27  
om 1985 No 44  
pres s 230 (prev s 349ZP) ins 1994 No 75  
am 1999 No 64 s 4 sch 2; 2001 No 63 s 32  
renum R9 LA (see 2001 No 63 s 43)

### **Destruction of identification material**

s 231 orig s 231 om 1985 No 44  
pres s 231 (prev s 349ZQ) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

### **Offence of refusing to allow identification material to be taken**

s 232 orig s 232 om 1985 No 44  
pres s 232 (prev s 349ZR) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.25

### **Identification parades—general**

s 233 orig s 233 om 1985 No 44  
pres s 233 (prev s 349ZS) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

### **Identification parades for suspects under 18 etc**

s 234 orig s 234 om 1985 No 44  
pres s 234 (prev s 349ZT) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 235 om 1983 No 27 (as am by 1985 No 16)

### **Identification by means of photographs**

s 235 orig s 235 om 1968 No 4  
pres s 235 (prev s 349ZU) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Identification procedures if more than 1 suspect**

s 236 orig s 236 am 1983 No 27  
om 1985 No 44  
pres s 236 (prev s 349ZV) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Descriptions**

s 237 orig s 237 am 1983 No 27  
om 1985 No 44  
pres s 237 (prev s 349ZW) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Examination**

s 238 orig s 238 am 1983 No 27  
om 1985 No 44  
pres s 238 (prev s 349ZX) ins 1994 No 75  
sub 1996 No 31  
am 1999 No 64 s 4 sch 2; 2001 No 56 amdt 3.240  
renum R9 LA (see 2001 No 63 s 43)

**General**

div 10.6 hdg (prev pt 10 div 5 hdg) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt  
1.40)

**Assisting officers—search and arrest of persons**

s 239 orig s 239 am 1983 No 27  
om 1985 No 44  
pres s 239 (prev s 349ZY) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Conduct of ordinary searches and frisk searches**

s 240 orig s 240 am 1968 No 4  
om 1985 No 44  
pres s 240 (prev s 349ZZ) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Announcement before entry**

s 241 orig s 241 am 1983 No 27  
om 1985 No 44  
pres s 241 (prev s 349ZZA) ins 1994 No 75  
am 1997 No 23  
renum R9 LA (see 2001 No 63 s 43)

**Offence of making false statements in warrants**

s 242 orig s 242 am 1983 No 27  
om 1985 No 44  
pres s 242 (prev s 349ZZB) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

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#### **Offences relating to telephone warrants**

s 243 orig s 243 am 1983 No 27  
om 1985 No 44  
pres s 243 (prev s 349ZZC) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 244 om 1983 No 27 (as am by 1985 No 16)

#### **Return of seized knife or thing**

s 244 orig s 244 am 1983 No 27  
om 1985 No 44  
pres s 244 (prev s 349ZZD) ins 1994 No 75  
am 1998 No 22; 2001 No 63 s 33, s 34  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 245 om 1983 No 27 (as am by 1985 No 16)

#### **Magistrates Court may permit thing to be retained**

s 245 orig s 245 am 1983 No 27; 1984 No 78  
om 1985 No 44  
pres s 245 (prev s 349ZZE) ins 1994 No 75  
am 2001 No 63 s 35  
renum R9 LA (see 2001 No 63 s 43)

#### **Law relating to legal professional privilege not affected**

s 246 orig s 246 am 1983 No 27  
om 1985 No 44  
pres s 246 (prev s 349ZZF) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)  
om 2002 No 11 amdt 2.23

hdg before s 247 om 1983 No 27 (as am by 1985 No 16)

#### **Laws relating to taking forensic samples not affected**

s 247 orig s 247 am 1983 No 27  
om 1985 No 44  
pres s 247 (prev s 349ZZG) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 248 om 1983 No 27 (as am by 1985 No 16)

#### **Forfeiture of knife**

s 248 orig s 248 am 1983 No 27  
om 1985 No 44  
pres s 248 (prev s 349ZZH) ins 1998 No 22  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 1.61

**False statement that person or property in danger**

s 248A ins 1984 No 78  
om 1985 No 44

hdg before s 249 om 1983 No 27 (as am by 1985 No 16)

**Seizure of forfeited articles**

s 249 orig s 249 om 1985 No 44  
pres s 249 (prev s 350) om 1983 No 27  
ins 1983 No 55  
am 1985 No 67; 1986 No 15; 1991 No 104  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 250 om 1983 No 27 (as am by 1985 No 16)

**Disposal of forfeited articles by public trustee**

s 250 orig s 250 om 1986 No 15  
pres s 250 (prev s 350A) ins 1991 No 104  
renum R9 LA (see 2001 No 63 s 43)  
sub A2003-8 amdt 1.8

**Costs etc payable to public trustee**

s 251 orig s 251 am 1983 No 27  
om 1986 No 15  
pres s 251 (prev s 350B) ins 1991 No 104  
renum R9 LA (see 2001 No 63 s 43)  
om A2003-8 amdt 1.8

hdg before s 252 om 1983 No 27 (as am by 1985 No 16)

**When case not to be proceeded with gaoler to discharge prisoner on certificate from Attorney-General etc**

s 252 orig s 252 om 1986 No 15  
pres s 252 (prev s 358) am 2001 No 44 amdts 1.993-1.995  
renum R9 LA (see 2001 No 63 s 43)  
am A2004-60 amdt 1.106

**Particular provisions for children**

div 10.7 hdg ins A2008-19 amdt 1.17

**Arrest of children under 10 years old**

sdiv 10.7.1 hdg ins A2008-19 amdt 1.17

**Warrant for arrest of child under 10 years old**

s 252A ins A2008-19 amdt 1.17

**Arrest of child under 10 years old—without warrant**

s 252B ins A2008-19 amdt 1.17

## Endnotes

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### **Police action after arresting child under 10 years old**

s 252C ins A2008-19 amdt 1.17

### **Preliminary procedures in relation to children and young people**

sdiv 10.7.2 hdg ins A2008-19 amdt 1.17

### **Definitions—subdiv 10.7.2**

s 252D ins A2008-19 amdt 1.17

def ***child*** ins A2008-19 amdt 1.17

def ***committed*** ins A2008-19 amdt 1.17

def ***under restraint*** ins A2008-19 amdt 1.17

def ***young person*** ins A2008-19 amdt 1.17

### **Meaning of *under restraint***

s 252E ins A2008-19 amdt 1.17

### **Meaning of *in the company of a police officer***

s 252F ins A2008-19 amdt 1.17

### **Interviewing children and young people about offences**

s 252G ins A2008-19 amdt 1.17

### **Interviewing children and young people about offences—urgent circumstances**

s 252H ins A2008-19 amdt 1.17

### **Parents etc to be told if children and young people under restraint**

s 252I ins A2008-19 amdt 1.17

### **Police to summons children and young people unless ineffective**

s 252J ins A2008-19 amdt 1.17

### **Parents etc to be told if children and young people charged**

s 252K ins A2008-19 amdt 1.17

### **Investigation of extraterritorial offences**

pt 11 hdg (prev pt 10A hdg) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 253 om 1983 No 27 (as am by 1985 No 16)

### **Interpretation for pt 11**

s 253 orig s 253 om 1983 No 27  
pres s 253 (prev s 358A) ins 1984 No 32  
am 1990 No 5; 1994 No 75; 2001 No 44 amdt 1.996, amdt  
1.997  
renum R9 LA (see 2001 No 63 s 43)  
am A2008-44 amdt 1.31

**Declaration of corresponding law**

s 254 orig s 254 om 1983 No 27  
pres s 254 (prev s 358AA) ins 2001 No 44 amdt 1.998  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 255 om 1983 No 27 (as am by 1985 No 16)

**Issue of search warrants**

s 255 orig s 255 am 1983 No 27; 1983 No 55  
om 1986 No 15  
pres s 255 (prev s 358B) ins 1984 No 32  
am 1985 No 67  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 256 om 1983 No 27 (as am by 1985 No 16)

**Authority given by search warrant**

s 256 orig s 256 am 1983 No 27  
om 1986 No 15  
pres s 256 (prev s 358C) ins 1984 No 32  
renum R9 LA (see 2001 No 63 s 43)

**Offence of hindering execution of search warrant**

s 257 orig s 257 am 1983 No 27  
om 1986 No 15  
pres s 257 (prev s 358D) ins 1984 No 32  
renum R9 LA (see 2001 No 63 s 43)

**Ministerial arrangements for transmission and return of objects seized under pt 11 or corresponding law**

s 258 orig s 258 am 1983 No 27  
om 1986 No 15  
pres s 258 (prev s 358E) ins 1984 No 32  
am 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.26

**Procedure, evidence, verdict etc**

pt 12 hdg (prev pt 11 hdg) renum R9 LA (see 2001 No 63 s 43)

**Meaning of *statute* and *Act* in indictments etc**

s 259 orig s 259 om 1983 No 27  
pres s 259 (prev s 359) renum R9 LA (see 2001 No 63 s 43)  
om 2002 No 49 amdt 3.27

hdg before s 260 om 1983 No 27 (as am by 1985 No 16)

## Endnotes

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### **What defects do not vitiate indictment**

s 260 orig s 260 om 1983 No 27  
pres s 260 (prev s 360) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

### **Formal objections—when to be taken**

s 261 orig s 261 om 1983 No 27  
pres s 261 (prev s 362) renum R9 LA (see 2001 No 63 s 43)

### **Judgment on demurrer to indictment**

s 262 orig s 262 om 1983 No 27  
pres s 262 (prev s 363) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

### **Traversing indictment**

s 263 orig s 263 om 1983 No 27  
pres s 263 (prev s 364) renum R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 1.62

hdg before s 264 om 1983 No 27 (as am by 1985 No 16)

### **Orders for amendment of indictment, separate trial and postponement of trial**

s 264 orig s 264 om 1983 No 27  
pres s 264 (prev s 365) sub 1963 No 11  
am 1992 No 9  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 265 om 1983 No 27 (as am by 1985 No 16)

### **Amended indictment**

s 265 orig s 265 am 1983 No 27  
om 1986 No 15  
pres s 265 (prev s 366) sub 1963 No 11  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.28

### **Verdict and judgment valid after amendment**

s 266 orig s 266 am 1983 No 27  
om 1986 No 15  
pres s 266 (prev s 367) renum R9 LA (see 2001 No 63 s 43)

### **Form of record after amendment**

s 267 orig s 267 am 1983 No 27  
om 1986 No 15  
pres s 267 (prev s 368) renum R9 LA (see 2001 No 63 s 43)



**Respite undertakings on postponement**

s 268 orig s 268 om 1986 No 15  
pres s 268 (prev s 369) am 1990 No 5; 1992 No 9  
renum R9 LA (see 2001 No 63 s 43)

**Separate offences—when can be joined**

s 269 orig s 269 am 1983 No 27  
om 1986 No 15  
pres s 269 (prev s 370) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

**Accessories may be charged together in 1 indictment**

s 270 orig s 270 am 1983 No 27  
om 1986 No 15  
pres s 270 (prev s 371) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 271 om 1983 No 27 (as am by 1985 No 16)

**Indictment charging previous offence also**

s 271 orig s 271 am 1983 No 27  
om 1986 No 15  
pres s 271 (prev s 372) renum R9 LA (see 2001 No 63 s 43)

**Property of partners or joint owners**

s 272 orig s 272 am 1983 No 27  
om 1986 No 15  
pres s 272 (prev s 373) am 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Description of written instruments**

s 273 orig s 273 am 1983 No 27  
om 1986 No 15  
pres s 273 (prev s 374) renum R9 LA (see 2001 No 63 s 43)

**General averment of intent to defraud or injure**

s 274 orig s 274 am 1983 No 27  
om 1986 No 15  
pres s 274 (prev s 375) renum R9 LA (see 2001 No 63 s 43)

**Indictment for murder or manslaughter**

s 275 orig s 275 am 1983 No 27  
om 1986 No 15  
pres s 275 (prev s 376) am 1983 No 55; 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

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#### **Form of indictment against accessories to murder**

s 276 orig s 276 am 1983 No 27  
om 1986 No 15  
pres s 276 (prev s 378) am 1983 No 27; 1983 No 55  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 277 om 1983 No 27 (as am by 1985 No 16)

#### **Addition of count for assault**

s 277 orig s 277 am 1983 No 27  
om 1986 No 15  
pres s 277 (prev s 380) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

#### **Indictment for perjury**

s 278 orig s 278 am 1983 No 27  
om 1986 No 15  
pres s 278 (prev s 392) renum R9 LA (see 2001 No 63 s 43)  
om A2005-53 amdt 1.40

hdg before s 279 om 1983 No 27 (as am by 1985 No 16)

#### **Indictments for conspiracy**

s 279 orig s 279 om 1983 No 27  
pres s 279 (prev s 393) renum R9 LA (see 2001 No 63 s 43)

#### **Arraignment etc on charge of previous conviction**

s 280 orig s 280 am 1983 No 27; 1983 No 55  
om 1986 No 15  
pres s 280 (prev s 394) renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.29, amdt 3.30

#### **Treason trials**

s 280A reloc from Law Reform (Miscellaneous Provisions) Act 1955  
s 61 by A2006-38 amdt 1.6

#### **Plea of not guilty**

s 281 orig s 281 am 1983 No 27  
om 1986 No 15  
pres s 281 (prev s 395) renum R9 LA (see 2001 No 63 s 43)

#### **Refusal to plead**

s 282 orig s 282 am 1983 No 27  
om 1986 No 15  
pres s 282 (prev s 396) renum R9 LA (see 2001 No 63 s 43)

**Plea of autrefois convict etc**

s 283 orig s 283 am 1983 No 27  
om 1986 No 15  
pres s 283 (prev s 399) renum R9 LA (see 2001 No 63 s 43)

hdg before s 284 om 1983 No 27 (as am by 1985 No 16)

**Practice as to entering the dock**

s 284 orig s 284 am 1983 No 27  
om 1986 No 15  
pres s 284 (prev s 400) am 1983 No 27; 1987 No 3  
renum R9 LA (see 2001 No 63 s 43)

**Accused may be defended by lawyer**

s 285 orig s 285 am 1983 No 27  
om 1986 No 15  
pres s 285 (prev s 402) am 1997 No 96  
renum R9 LA (see 2001 No 63 s 43)  
sub 2002 No 49 amdt 3.31

**Right to inspect depositions on trial**

s 286 orig s 286 am 1983 No 27  
om 1986 No 15  
pres s 286 (prev s 403) renum R9 LA (see 2001 No 63 s 43)

**Power of judge to record verdict of acquittal**

s 287 orig s 287 am 1983 No 55  
om 1986 No 15  
pres s 287 (prev s 404) om 1971 No 2  
ins 1984 No 78  
renum R9 LA (see 2001 No 63 s 43)

**Notice of alibi**

s 288 orig s 288 am 1983 No 27  
om 1986 No 15  
pres s 288 (prev s 406) om 1971 No 2  
ins 1984 No 78  
am 1997 No 96  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.32; A2006-23 amdt 1.63

**Abolition of presumption of marital coercion**

s 289 orig s 289 am 1983 No 27; 1983 No 55  
om 1986 No 15  
pres s 289 (prev s 407) om 1971 No 2  
ins 1999 No 71 s 4  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

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### **Incriminating statements admissible though on oath**

s 290 orig s 290 am 1983 No 27  
om 1986 No 15  
pres s 290 (prev s 411) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

### **Evidence of previous conviction charged in indictment**

s 291 orig s 291 am 1983 No 27  
om 1986 No 15  
pres s 291 (prev s 414) renum R9 LA (see 2001 No 63 s 43)

### **Proof of lawful authority or excuse**

s 292 orig s 292 am 1983 No 27  
om 1986 No 15  
pres s 292 (prev s 417) renum R9 LA (see 2001 No 63 s 43)

hdg before s 293 om 1983 No 27 (as am by 1985 No 16)

### **On trial for perjury presumption of authority to administer oath etc**

s 293 orig s 293 am 1983 No 27  
om 1986 No 15  
pres s 293 (prev s 423) renum R9 LA (see 2001 No 63 s 43)  
om A2005-53 amdt 1.40

hdg before s 294 om 1983 No 27 (as am by 1985 No 16)

### **Order of closing addresses**

s 294 orig s 294 am 1983 No 27; 1984 No 78  
om 1986 No 15  
pres s 294 (prev s 423A) ins 1998 No 57  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 295 om 1983 No 27 (as am by 1985 No 16)

### **Witnesses in mitigation**

s 295 orig s 295 om 1983 No 27  
pres s 295 (prev s 424) renum R9 LA (see 2001 No 63 s 43)  
sub 2002 No 49 amdt 3.33

hdg before s 296 om 1983 No 27 (as am by 1985 No 16)

### **Conviction for alternative offence**

s 296 orig s 296 om 1983 No 27  
pres s 296 (prev s 425) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

**After trial for offence, if alternative verdict possible, no further prosecution**

s 297 orig s 297 om 1983 No 27  
 pres s 297 (prev s 426) am 1983 No 27  
 renum R9 LA (see 2001 No 63 s 43)

hdg before s 298 om 1983 No 27 (as am by 1985 No 16)

**On trial for any offence—verdict of attempt**

s 298 orig s 298 am 1983 No 27  
 om 1986 No 15  
 pres s 298 (prev s 427) am 1983 No 27  
 renum R9 LA (see 2001 No 63 s 43)

hdg before s 299 om 1983 No 27 (as am by 1985 No 16)

**Multiple alternative verdicts**

s 299 orig s 299 om 1983 No 27  
 pres s 299 (prev s 427A) ins 1990 No 2  
 renum R9 LA (see 2001 No 63 s 43)

**Unfitness to plead and mental impairment**

pt 13 hdg (prev pt 11A hdg) ins 1994 No 46  
 renum R9 LA (see 2001 No 63 s 43)  
 sub A2006-14 amdt 1.10

**Preliminary**

div 13.1 hdg (prev pt 11A div 1 hdg) ins 1994 No 46  
 renum R9 LA (see 2001 No 63 s 43 and 2001 No 90  
 amdt 1.40)

**Definitions for pt 13**

s 300 orig s 300 om 1983 No 27  
 pres s 300 (prev s 428B) ins 1994 No 46  
 renum R9 LA (see 2001 No 63 s 43)  
 am A2008-19 amdt 1.18  
 def **ACAT** ins A2008-36 amdt 1.235  
 def **accused** ins 1999 No 32 s 5  
 def **alternative offence** ins A2004-16 s 4  
 def **conduct** ins A2004-16 s 4  
 def **court** om 2002 No 49 amdt 3.34  
 def **defendant** ins 1999 No 32 s 5  
 sub A2004-60 amdt 1.107  
 def **engage in conduct** ins A2004-16 s 4  
 def **mental dysfunction** om A2006-14 amdt 1.11  
 def **mental health order** sub A2005-48 amdt 1.2  
 def **mental illness** ins 1999 No 32 s 5  
 am A2005-48 amdt 1.3  
 om A2006-14 amdt 1.11

## Endnotes

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def **serious offence** am A2008-44 amdt 1.32

def **special hearing** am A2005-7 s 6

def **tribunal** om A2008-36 amdt 1.236

### **Limitation on orders and detention—non-acquittals**

s 301 orig s 301 om 1983 No 27  
pres s 301 (prev s 428C) ins 1994 No 46  
sub 1999 No 32 s 6  
renum R9 LA (see 2001 No 63 s 43)  
am A2008-36 amdt 1.246

### **Limitation on orders and detention—acquittals**

s 302 orig s 302 om 1983 No 27  
pres s 302 (prev s 428CA) ins 1999 No 32 s 6  
renum R9 LA (see 2001 No 63 s 43)  
am A2008-36 amdt 1.246

### **Limitation on Supreme Court orders**

s 303 orig s 303 om 1983 No 27  
pres s 303 (prev s 428CB) ins 1999 No 32 s 6  
renum R9 LA (see 2001 No 63 s 43)

### **Limitation on orders and detention—dismissal of charge**

s 304 orig s 304 om 1983 No 27  
pres s 304 (prev s 428CC) ins 1999 No 32 s 6  
renum R9 LA (see 2001 No 63 s 43)  
am A2008-36 amdt 1.246

### **Limitation on orders and detention—Magistrates Court**

s 305 orig s 305 om 1983 No 27  
pres s 305 (prev s 428CD) ins 1999 No 32 s 6  
renum R9 LA (see 2001 No 63 s 43)  
am A2008-36 amdt 1.246

### **Limitation on Magistrates Court orders**

s 306 orig s 306 om 1983 No 27  
pres s 306 (prev s 428CE) ins 1999 No 32 s 6  
renum R9 LA (see 2001 No 63 s 43)

### **How relevant court may inform itself**

s 307 orig s 307 om 1983 No 27  
pres s 307 (prev s 428CF) ins 1999 No 32 s 6  
renum R9 LA (see 2001 No 63 s 43)

### **Criteria for detention**

s 308 orig s 308 om 1983 No 27  
pres s 308 (prev s 428D) ins 1994 No 46  
am 1999 No 32 s 7  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-14 amdt 1.12; A2006-23 amdt 1.64; A2008-36  
amdt 1.237

**Assessment whether emergency detention required**

s 309 orig s 309 om 1983 No 27  
pres s 309 (prev s 428DA) ins 1999 No 32 s 8  
renum R9 LA (see 2001 No 63 s 43)  
am A2004-14 amdt 2.2; A2005-48 amdt 1.4; A2006-14  
amdt 1.13, amdt 1.14; A2006-23 amdt 1.65; A2008-36  
amdt 1.246

**Unfitness to plead**

div 13.2 hdg (prev pt 11A div 2 hdg) ins 1994 No 46  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90  
amdt 1.40)

**Application of div 13.2**

s 310 orig s 310 om 1983 No 27  
pres s 310 (prev s 428E) ins 1994 No 46  
am 1999 No 32 s 9  
renum R9 LA (see 2001 No 63 s 43)  
sub A2005-7 s 7

**When a person is unfit to plead**

s 311 orig s 311 om 1983 No 27  
pres s 311 (prev s 428F) ins 1994 No 46  
renum R9 LA (see 2001 No 63 s 43)  
sub A2005-7 s 7

**Presumption of fitness to plead, standard of proof etc**

s 312 orig s 312 om 1983 No 27  
pres s 312 (prev s 428FA) ins 1999 No 32 s 10  
renum R9 LA (see 2001 No 63 s 43)  
sub A2005-7 s 7

**Who can raise question of unfitness to plead**

s 313 orig s 313 om 1983 No 27  
pres s 313 (prev s 428G) ins 1994 No 46  
am 1999 No 32 s 11  
renum R9 LA (see 2001 No 63 s 43)  
sub A2005-7 s 7

**Procedure if question raised**

s 314 orig s 314 om 1983 No 27  
pres s 314 (prev s 428H) ins 1994 No 46  
am 1999 No 32 s 12  
renum R9 LA (see 2001 No 63 s 43)  
sub A2005-7 s 7

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### **Procedure if question reserved for investigation**

s 315 orig s 315 om 1983 No 27  
pres s 315 (prev s 428I) ins 1994 No 46  
am 1999 No 32 s 13  
renum R9 LA (see 2001 No 63 s 43)  
sub A2005-7 s 7  
am A2006-14 amdt 1.15; A2006-23 amdt 1.66

### **Investigation into fitness to plead**

s 315A ins A2005-7 s 7

### **Person found fit to plead**

s 315B ins A2005-7 s 7

### **Person found unfit to plead and unlikely to become fit to plead**

s 315C ins A2005-7 s 7

### **Person found temporarily unfit to plead**

s 315D ins A2005-7 s 7  
am A2008-36 amdt 1.238

### **Special hearing**

s 316 hdg sub A2005-7 s 8  
s 316 orig s 316 om 1983 No 27  
pres s 316 (prev s 428J) ins 1994 No 46  
am 1999 No 32 s 14; R9 LA (see 2001 No 63 s 43)  
renum R9 LA (see 2001 No 63 s 43)  
am A2004-16 s 5; A2005-7 s 9, s 10; A2008-36 amdt 1.239

### **Verdicts available at special hearing**

s 317 orig s 317 om 1983 No 27  
pres s 317 (prev s 428K) ins 1994 No 46  
am 1999 No 32 s 15; R9 LA (see 2001 No 63 s 43)  
renum R9 LA (see 2001 No 63 s 43)  
am A2004-16 ss 6-8

### **Non-acquittal at special hearing—non-serious offence**

s 318 orig s 318 om 1983 No 27  
pres s 318 (prev s 428L) ins 1994 No 46  
am 1999 No 32 s 16  
renum R9 LA (see 2001 No 63 s 43)  
am A2004-16 s 9; A2008-36 amdt 1.240

### **Non-acquittal at special hearing—serious offence**

s 319 orig s 319 om 1983 No 27  
pres s 319 (prev s 428M) ins 1994 No 46  
am 1999 No 32 s 17  
renum R9 LA (see 2001 No 63 s 43)  
am A2004-16 s 10; A2008-36 amdt 1.246



**Action if accused becomes fit to plead after special hearing**

s 319A ins A2004-16 s 11  
am A2005-7 s 11; A2008-36 amdt 1.241

**Supreme Court—special verdict of not guilty because of mental impairment**

div 13.3 hdg (prev pt 11A div 3 hdg) ins 1994 No 46  
am 1999 No 32 s 18  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90  
amdt 1.40)  
sub A2006-14 amdt 1.16

**Acquittal on grounds of mental impairment**

s 320 orig s 320 om 1983 No 27  
pres s 320 (prev s 428N) ins 1994 No 46  
am 1999 No 32 s 19  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-14 amdt 1.17

**Supreme Court—plea of not guilty because of mental impairment**

s 321 orig s 321 om 1983 No 27  
pres s 321 (prev s 428O) ins 1994 No 46  
am 1999 No 32 s 20  
renum R9 LA (see 2001 No 63 s 43)  
sub A2006-14 amdt 1.18

**Explanation to jury**

s 322 orig s 322 om 1983 No 27  
pres s 322 (prev s 428P) ins 1994 No 46  
am 1999 No 32 s 21  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-14 amdt 1.19

**Supreme Court orders following special verdict of not guilty because of mental impairment—non-serious offence**

s 323 hdg sub A2006-14 amdt 1.20  
s 323 orig s 323 om 1983 No 27  
pres s 323 (prev s 428Q) ins 1994 No 46  
am 1999 No 32 s 22  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-14 amdt 1.21; A2008-36 amdt 1.246

**Supreme Court orders following special verdict of not guilty because of mental impairment—serious offence**

s 324 hdg sub A2006-14 amdt 1.22  
s 324 orig s 324 om 1983 No 27  
pres s 324 (prev s 428R) ins 1994 No 46  
am 1999 No 32 s 23  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-14 amdt 1.23; A2008-36 amdt 1.246

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**Magistrates Court—finding of not guilty because of mental impairment**

div 13.4 hdg (prev pt 11A div 3A hdg) ins 1999 No 32 s 24  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90  
amdt 1.40)  
sub A2006-14 amdt 1.24

**Meaning of *serious offence* in div 13.4**

s 325 orig s 325 om 1983 No 27  
pres s 325 (prev s 428RA) ins 1999 No 32 s 24  
renum R9 LA (see 2001 No 63 s 43)

**Dismissal on grounds of mental impairment**

s 326 orig s 326 om 1983 No 27  
pres s 326 (prev s 428RB) ins 1999 No 32 s 24  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-14 amdt 1.25

**Magistrates Court—plea of not guilty because of mental impairment**

s 327 orig s 327 renum as s 167  
pres s 327 (prev s 428RC) ins 1999 No 32 s 24  
renum R9 LA (see 2001 No 63 s 43)  
sub A2006-14 amdt 1.26

**Magistrates Court orders following finding of not guilty because of mental impairment—non-serious offence**

s 328 hdg sub A2006-14 amdt 1.27  
s 328 orig s 328 renum as s 168  
pres s 328 (prev s 428RD) ins 1999 No 32 s 24  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-14 amdt 1.28; A2008-36 amdt 1.246

**Magistrates Court orders following finding of not guilty because of mental impairment—serious offence**

s 329 hdg sub A2006-14 amdt 1.29  
s 329 orig s 329 renum as s 169  
pres s 329 (prev s 428RE) ins 1999 No 32 s 24  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-14 amdt 1.30; A2008-36 amdt 1.246

**Referring people with mental impairment to ACAT after conviction**

div 13.5 hdg (prev pt 11A div 4 hdg) ins 1994 No 46  
am 1999 No 32 s 25  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90  
amdt 1.40)  
sub A2006-14 amdt 1.31; A2008-36 amdt 1.242

**Application of div 13.5**

s 330 orig s 330 renum as s 170  
pres s 330 (prev s 428S) ins 1994 No 46  
am 1999 No 32 s 26  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-14 amdt 1.32

**Referral to ACAT**

s 331 hdg am A2008-36 amdt 1.246  
s 331 orig s 331 renum as s 171  
pres s 331 (prev s 428T) ins 1994 No 46  
am 1999 No 32 s 27  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-14 amdt 1.33, amdt 1.34; A2008-36 amdt 1.246

**Summary proceedings against mentally impaired people**

div 13.6 hdg (prev pt 11A div 5 hdg) ins 1994 No 46  
am 1999 No 32 s 28  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90  
amdt 1.40)  
sub A2006-14 amdt 1.35

**Application of div 13.6**

s 332 orig s 332 renum as s 172  
pres s 332 (prev s 428U) ins 1994 No 46  
renum R9 LA (see 2001 No 63 s 43)

**Indictable offences heard and determined summarily**

s 333 orig s 333 renum as s 173  
pres s 333 (prev s 428V) ins 1994 No 46  
am 1999 No 32 s 29  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-14 amdt 1.36

**Powers of Magistrates Court**

s 334 orig s 334 renum as s 174  
pres s 334 (prev s 428W) ins 1994 No 46  
am 1999 No 32 s 30; R9 LA (see 2001 No 63 s 43)  
renum R9 LA (see 2001 No 63 s 43)  
am A2005-48 amdt 1.5; A2006-14 amdts 1.37-1.39; A2006-23  
amdt 1.67; A2008-36 amdt 1.246

**Fitness to plead—Magistrates Court**

s 335 orig s 335 om 1983 No 27  
pres s 335 (prev s 428WA) ins 1999 No 32 s 31  
renum R9 LA (see 2001 No 63 s 43)  
am A2004-16 ss 12-14; A2005-7 s 12, s 13; A2008-36  
amdt 1.246

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### **Action if accused becomes fit to plead after hearing**

s 335A ins A2004-16 s 15  
am A2005-7 s 14; A2008-36 amdt 1.243

### **How Magistrates Court may be informed**

s 336 orig s 336 om 1983 No 27  
pres s 336 (prev s 428X) ins 1994 No 46  
renum R9 LA (see 2001 No 63 s 43)  
sub 2002 No 11 amdt 2.24

### **Intoxication**

pt 14 hdg (prev pt 11B hdg) ins 2000 No 58 s 4  
renum R9 LA (see 2001 No 63 s 43)  
om 2002 No 51 amdt 1.15  
pt 14 ch 1 hdg sub 1951 No 14  
om 1983 No 27 (as am by 1985 No 16)  
pt 14 ch 2 hdg om 1974 No 17

### **Transitional**

div 13.7 hdg ins A2004-16 s 16  
exp 17 June 2004 (s 338)

### **Application of amendments made by Crimes Amendment Act 2004**

s 337 orig s 337 om 1983 No 27  
prev s 337 (prev s 428XA) ins 2000 No 58 s 4  
renum R9 LA (see 2001 No 63 s 43)  
om 2002 No 51 amdt 1.15  
ins A2004-16 s 16  
exp 17 June 2004 (s 338)

### **Expiry of div 13.7**

s 338 orig s 338 om 1983 No 27  
prev s 338 (prev s 428XB) ins 2000 No 58 s 4  
renum R9 LA (see 2001 No 63 s 43)  
om 2002 No 51 amdt 1.15  
ins A2004-16 s 16  
exp 17 June 2004 (s 338)

### **Intoxication in relation to offences**

s 339 orig s 339 om 1983 No 27  
pres s 339 (prev s 428XC) ins 2000 No 58 s 4  
renum R9 LA (see 2001 No 63 s 43)  
om 2002 No 51 amdt 1.15

### **Sentences**

pt 15 hdg (prev pt 12 hdg) renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.68

### **Objects of corrections legislation**

div 15.1A hdg ins A2004-61 s 4 (A2004-61 rep before commenced by  
A2006-23 s 6 (1))

**Objects**

s 337 ins A2004-61 s 4 (A2004-61 rep before commenced by A2006-23 s 6 (1))

**Achieving the objects**

s 338 ins A2004-61 s 4 (A2004-61 rep before commenced by A2006-23 s 6 (1))

**What is corrections legislation?**

s 339 ins A2004-61 s 4 (A2004-61 rep before commenced by A2006-23 s 6 (1))

**General principles and procedures**

div 15.1 hdg (prev pt 12 div 1 hdg) ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90  
amdt 1.40)  
om A2006-23 amdt 1.68

**Meaning of *victim* in pt 12**

s 340 orig s 340 renum as s 175  
pres s 340 (prev s 428Y) ins 1994 No 84  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.68

**Purposes for which sentence imposed**

s 341 orig s 341 renum as s 176  
pres s 341 (prev s 429) sub 1951 No 14  
om 1986 No 14  
ins 1993 No 73  
sub 1998 No 9  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.68

**Matters to which court to have regard**

s 342 orig s 342 renum as s 177  
pres s 342 (prev s 429A) ins 1993 No 73  
am 1997 No 10; 1997 No 117; 1998 No 9; R9 LA (see 2001  
No 63 s 43)  
renum R9 LA (see 2001 No 63 s 43)  
am A2004-65 s 77; A2006-5 s 20  
om A2006-23 amdt 1.68

**Victim impact statements**

s 343 orig s 343 renum as s 178  
pres s 343 (prev s 429AB) ins 1994 No 84  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.68

## Endnotes

4 Amendment history

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### **Matters not to be taken into account**

s 344 orig s 344 renum as s 179  
pres s 344 (prev s 429B) ins 1993 No 73  
am 1998 No 9; R9 LA (see 2001 No 63 s 43)  
renum R9 LA (see 2001 No 63 s 43)  
am A2003-8 amdt 1.9, amdt 1.10; A2004-65 s 78  
om A2006-23 amdt 1.68

### **Restriction on imposing sentences of imprisonment**

s 345 orig s 345 renum as s 180  
pres s 345 (prev s 429C) ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.68

### **Sentences—imprisonment and fines**

s 346 orig s 346 renum as s 181  
pres s 346 (prev s 430) am 1968 No 4  
om 1983 No 27  
ins 1983 No 55  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.68

### **Fine instead of imprisonment**

s 347 orig s 347 renum as s 182  
pres s 347 (prev s 431) om 1968 No 4  
ins 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.68

### **Fines**

s 348 orig s 348 renum as s 183  
pres s 348 (prev s 431A) ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.68

### **Theft of motor vehicle—cancellation of licence**

s 349 orig s 349 renum as s 184  
pres s 349 (prev s 432) om 1983 No 27  
ins 1986 No 57  
am 1997 No 52; 1999 No 79 s 5 sch 3  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-15 amdt 3.10

**Reparation orders**

s 350 orig s 350 om 1983 No 27  
ins 1983 No 55  
renum as s 249  
pres s 350 (prev s 437) am 1983 No 27; 1985 No 44  
sub 1986 No 57  
am 1990 No 1; 1991 No 18; 1999 No 91 s 12; 2001 No 44  
amdt 1.999, amdt 1.1000; R9 LA (see 2001 No 63 s 43)  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.35, amdt 3.36; ss renum R20 LA (see  
2002 No 49 amdt 3.37); A2003-8 amdt 1.11; ss renum R23  
LA (see A2003-8 amdt 1.12); A2004-15 amdt 3.11,  
amdt 3.12; A2004-60 amdt 1.108  
om A2006-23 amdt 1.68

**Judgment after sentence deferred**

s 351 orig s 351 om 1983 No 27  
ins 1983 No 55  
om 1994 No 86  
pres s 351 (prev s 441) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.68

hdg before s 352 om 1983 No 27 (as am by 1985 No 16)

**When sentence takes effect**

s 352 orig s 352 am 1983 No. 27; 1984 No 78; 1986 No 53  
om 1994 No 75  
pres s 352 (prev s 441A) ins 1983 No 27  
am 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 50 s 22  
om A2006-23 amdt 1.68

**Offences committed outside Territory—power of arrest**

s 352A ins 1984 No 78  
om 1994 No 75

**Provision for passing sentences of less duration than those fixed**

s 353 orig s 353 am 1983 No 27  
om 1994 No 75  
pres s 353 (prev s 442) sub 1963 No 11  
am 1974 No 17; 1986 No 57  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.68

## Endnotes

### 4 Amendment history

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#### **Power to search and medically examine a person and take fingerprints etc**

s 353A            ins 1944 No 1  
                    am 1984 No 78; 1991 No 122  
                    om 1994 No 75

hdg before s 354    om 1983 No 27 (as am by 1985 No 16 )

#### **Concurrent and cumulative sentences**

s 354            orig 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; 1999 No 79 s 5 sch 3  
                    om 2001 No 63 s 36  
                    pres s 354 (prev s 443) am 1983 No 27  
                    sub 1986 No 57; 1993 No 73  
                    am 1998 No 29; 1999 No 64 s 4 sch 2  
                    renum R9 LA (see 2001 No 63 s 43)  
                    om A2006-23 amdt 1.68

#### **Sentences of imprisonment and uncompleted juvenile detention orders**

s 355            orig s 355 om 1983 No 27  
                    pres s 355 (prev s 444) am 1983 No 27  
                    om 1986 No 57  
                    ins 1997 No 86  
                    sub 1999 No 64 s 4 sch 2  
                    renum R9 LA (see 2001 No 63 s 43)  
                    om A2006-23 amdt 1.68

#### **Previous sentences to be noted in new sentence**

s 356            orig s 356 om 1983 No 27  
                    pres s 356 (prev s 446) renum R9 LA (see 2001 No 63 s 43)  
                    am 2002 No 49 amdt 3.38  
                    om A2006-23 amdt 1.68

#### **Outstanding charges may be taken into account when passing sentence**

s 357            orig s 357 om 1983 No 27  
                    pres s 357 (prev s 448) sub 1983 No 27  
                    am 1985 No 16; 2001 No 44 amdt 1.1001  
                    renum R9 LA (see 2001 No 63 s 43)  
                    am A2004-60 amdt 1.109  
                    om A2006-23 amdt 1.68

hdg before s 358    om 1983 No 27 (as am by 1985 No 16)



**Appeal if promised cooperation not forthcoming**

s 358 orig s 358 renum as s 252  
pres s 358 (prev s 449) om 1983 No 27  
ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.68

hdg before s 359 om 1983 No 27 (as am by 1985 No 16)

**Court to explain sentence**

s 359 orig s 359 renum as s 259  
pres s 359 (prev s 450) om 1983 No 27  
ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.68

**Time held in custody to count**

s 360 orig s 360 renum as s 260  
pres s 360 (prev s 451) om 1983 No 27  
ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 50 s 23  
om A2006-23 amdt 1.68

**Sentence to be adjusted if no remission laws apply**

s 361 orig s 361 om 1983 No 27  
pres s 361 (prev s 452) om 1983 No 27  
ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.68

**Pre-sentence reports**

div 15.2 hdg (prev pt 12 div 2 hdg) ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90  
amdt 1.40)  
om A2006-23 amdt 1.68

**Meaning of *authorised officer* in div 15.2**

s 362 orig s 362 renum as s 261  
pres s 362 (prev s 453) om 1974 No 17  
ins 1993 No 73  
am 1994 No 38  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.68

## Endnotes

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### **Court may order pre-sentence reports**

s 363 orig s 363 renum as s 262  
pres s 363 (prev s 454) om 1974 No 17  
ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.68

### **Contents of pre-sentence report**

s 364 orig s 364 renum as s 263  
pres s 364 (prev s 455) om 1974 No 17  
ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)  
am A2004-65 s 79  
om A2006-23 amdt 1.68

### **Circulation of pre-sentence report**

s 365 orig s 365 renum as s 264  
pres s 365 (prev s 456) om 1974 No 17  
ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.68

### **Right of cross-examination on pre-sentence report**

s 366 orig s 366 renum as s 265  
pres s 366 (prev s 457) am 1983 No 27  
om 1990 No 1  
ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.68

### **Proceedings after sentence**

pt 16 hdg (prev pt 13 hdg) renum R9 LA (see 2001 No 63 s 43)

### **Procedure on forfeiture**

s 367 orig s 367 renum as s 266  
pres s 367 (prev s 464) om 1983 No 27  
ins 1986 No 15  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.39, amdt 3.40; A2004-15 amdt 3.13

### **Common law forfeiture in offences abolished**

s 368 orig s 368 renum as s 267  
pres s 368 (prev s 465) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.69

### **Disabilities of offence**

s 369 orig s 369 renum as s 268  
pres s 369 (prev s 466) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

om A2006-23 amdt 1.69

**Effect of reversing judgment**

s 370 orig s 370 renum as s 269  
pres s 370 (prev s 468) am 1990 No 5  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.69

**What not sufficient to stay or reverse judgment**

s 371 orig s 371 renum as s 270  
pres s 371 (prev s 472) renum R9 LA (see 2001 No 63 s 43)

**Pronouncing proper judgment**

s 372 orig s 372 renum as s 271  
pres s 372 (prev s 473) renum R9 LA (see 2001 No 63 s 43)

**New trials regulated**

s 373 orig s 373 renum as s 272  
pres s 373 (prev s 474) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

**Offences punishable summarily and summary procedure generally**

pt 17 hdg (prev pt 14 hdg) sub 1983 No 55  
renum R9 LA (see 2001 No 63 s 43)

**Summary offences**

s 374 orig s 374 renum as s 273  
pres s 374 (prev s 476) am 1942 No 12  
sub 1951 No 14; 1974 No 17  
am 1983 No 27  
sub 1985 No 40  
renum R9 LA (see 2001 No 63 s 43)  
om A2008-44 amdt 1.33

**Summary disposal of certain cases**

s 375 orig s 375 renum as s 274  
pres s 375 (prev s 477) sub 1951 No 14  
am 1963 No 11  
sub 1974 No 17  
am 1983 No 27  
sub 1985 No 40  
am 1985 No 67; 1985 No 75  
renum R9 LA (see 2001 No 63 s 43)  
sub A2008-19 amdt 1.19  
am A2008-44 amdts 1.34-1.41

**Withdrawal of consent to summary disposal of case**

s 375A ins A2008-44 amdt 1.42

## Endnotes

### 4 Amendment history

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#### **Saving of other summary jurisdiction**

s 376 orig s 376 renum as s 275  
pres s 376 (prev s 479) om 1951 No 14  
ins 1974 No 17  
am 1985 No 40; 1985 No 67  
renum R9 LA (see 2001 No 63 s 43)

#### **Certificate of dismissal**

s 377 orig s 377 om 1983 No 27  
pres s 377 (prev s 480) sub 1951 No 14; 1974 No 17  
am 1983 No 27; 1985 No 40; 1985 No 67; 1991 No 44  
renum R9 LA (see 2001 No 63 s 43)

#### **Summary conviction or dismissal bar to indictment**

s 378 orig s 378 renum as s 276  
pres s 378 (prev s 481) sub 1951 No 14; 1974 No 17  
am 1983 No 27; 1985 No 40; 1985 No 67  
renum R9 LA (see 2001 No 63 s 43)

#### **Misbehaviour at public meetings**

s 379 orig s 379 om 1985 No 62  
pres s 379 (prev s 482) om 1974 No 17  
ins 1983 No 55  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.41

#### **Possession of offensive weapons and disabling substances**

s 380 hdg (prev s 493 hdg) sub 2001 No 8 amdt 1.9  
s 380 orig s 380 renum as s 277  
pres s 380 (prev s 493) am 1983 No 27  
sub 1987 No 3  
am 2001 No 8 amdt 1.10  
renum R9 LA (see 2001 No 63 s 43)

#### **Possession of offensive weapons and disabling substances with intent**

s 381 (prev s 494 hdg) sub 2001 No 8 amdt 1.11  
orig s 381 om 1985 No 62  
pres s 381 (prev s 494) am 1983 No 27; 1984 No 78  
sub 1987 No 3  
am 2001 No 8 amdt 1.12  
renum R9 LA (see 2001 No 63 s 43)

#### **Possession of knife in public place or school**

s 382 orig s 382 om 1985 No 44  
pres s 382 (prev s 495) am 1983 No 27  
om 1987 No 3  
ins 1998 No 22  
renum R9 LA (see 2001 No 63 s 43)

**Sale of knife to person under 16**

s 383 orig s 383 om 1985 No 44  
pres s 383 (prev s 496) am 1983 No 27  
om 1987 No 3  
ins 1998 No 22  
renum R9 LA (see 2001 No 63 s 43)

**Retail supplier of knives to display sign**

s 384 orig s 384 am 1983 No 27  
om 1985 No 44  
pres s 384 (prev s 497) am 1983 No 27; 1983 No 55  
om 1985 No 40  
ins 2000 No 56 s 4  
renum R9 LA (see 2001 No 63 s 43)

**Laying of poison**

s 385 orig s 385 am 1983 No 27  
om 1985 No 44  
pres s 385 (prev s 510A) ins 1983 No 55  
renum R9 LA (see 2001 No 63 s 43)

**Unlawful possession of money or goods**

s 386 orig s 386 om 1985 No 44  
pres s 386 (prev s 527A) ins 1983 No 55  
am 1987 No 3; 1990 No 5  
renum R9 LA (see 2001 No 63 s 43)  
sub A2003-8 amdt 1.13  
om A2004-15 amdt 3.14

**Forfeiture of unlawfully obtained money or goods**

s 386A ins A2003-8 amdt 1.13  
om A2004-15 amdt 3.14

**Disposal of forfeited money or goods by public trustee**

s 386B ins A2003-8 amdt 1.13  
om A2004-15 amdt 3.14

**Return or compensation for forfeited money or goods**

s 386C ins A2003-8 amdt 1.13  
om A2004-15 amdt 3.14

**Making false invoice**

s 387 orig s 387 om 1985 No 44  
pres s 387 (prev s 527B) ins 1984 No 78  
renum R9 LA (see 2001 No 63 s 43)

**Application of compensation**

s 388 orig s 388 om 1985 No 44  
pres s 388 (prev s 543) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Obstruction of stream etc**

s 389 orig s 389 om 1985 No 44  
pres s 389 (prev s 544) om 1983 No 27  
ins 1983 No 55  
renum R9 LA (see 2001 No 63 s 43)

#### **Entrance to cellars etc**

s 390 orig s 390 om 1986 No 15  
pres s 390 (prev s 545) om 1983 No 27  
ins 1983 No 55  
renum R9 LA (see 2001 No 63 s 43)

#### **Fighting**

s 391 orig s 391 om 1983 No 27  
pres s 391 (prev s 545A) ins 1992 No 76  
renum R9 LA (see 2001 No 63 s 43)

#### **Offensive behaviour**

s 392 orig s 392 renum as s 278  
pres s 392 (prev s 546A) ins 1983 No 55  
renum R9 LA (see 2001 No 63 s 43)

#### **Indecent exposure**

s 393 orig s 393 renum as s 279  
pres s 393 (prev s 546B) ins 1983 No 55  
am 2001 No 63 s 38  
renum R9 LA (see 2001 No 63 s 43)

#### **Urinating in public place**

s 393A ins A2008-6 s 9

hdg before s 394 om 1983 No 27 (as am by 1985 No 16)

#### **Noise abatement directions**

s 394 orig s 394 renum as s 280  
pres s 394 (prev s 546C) ins 1983 No 55  
am 2001 No 63 ss 39-41  
renum R9 LA (see 2001 No 63 s 43)  
am A2008-6 s 10, s 11; ss renum R54 LA

#### **Bogus advertisements**

s 395 orig s 395 renum as s 281  
pres s 395 (prev s 546D) ins 1987 No 3  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-22 amdt 1.25 (A2006-22 rep before commenced by  
disallowance (see Cwlth Gaz 2006 No S93)); A2008-14  
amdt 1.19

**Public mischief**

s 396 orig s 396 renum as s 282  
pres s 396 (prev s 546E) ins 1987 No 3  
renum R9 LA (see 2001 No 63 s 43)  
am A2004-28 amdt 3.10, amdt 3.11

**Apprehended violence or injury—recognisance to keep the peace etc**

s 397 orig s 397 om 1983 No 27  
pres s 397 (prev s 547) am 1983 No 27; 1988 No 44  
renum R9 LA (see 2001 No 63 s 43)  
am A2003-14 amdt 1.32; A2006-23 amdt 1.70

**Alternative methods of proceeding before magistrate**

s 398 orig s 398 om 1983 No 27  
pres s 398 (prev s 548) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

**General averment of intent to defraud or injure**

s 399 orig s 399 renum as s 283  
pres s 399 (prev s 551) am 1983 No 2  
renum R9 LA (see 2001 No 63 s 43)

**Sentence may be for less term or fine of less amount than that fixed**

s 400 orig s 400 renum as s 284  
pres s 400 (prev s 553) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.71

**Application of forfeitures and penalties**

s 401 orig s 401 om 1983 No 27  
pres s 401 (prev s 555) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.71

**Conditional release of offenders**

pt 18 hdg (prev pt 15 hdg) sub 1971 No 2  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.72

**Conditional release of offenders without proceeding to conviction**

s 402 orig s 402 renum as s 285  
pres s 402 (prev s 556A) ins 1942 No 12  
sub 1971 No 2  
am 1985 No 67; 1986 No 57 (as am by 1987 No 3); 1995 No 2  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.72

## Endnotes

### 4 Amendment history

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#### **Conditional release of offenders**

s 403 orig s 403 renum as s 286  
pres s 403 (prev s 556B) ins 1971 No 2  
am 1985 No 67; 1986 No 57; 1990 No 5; 1993 No 73; R9 LA  
(see 2001 No 63 s 43)  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.42; ss renum R20 LA (see 2002 No 49  
amdt 3.43)  
om A2006-23 amdt 1.72

#### **Failure to comply with condition of recognisance or release**

s 404 orig s 404 om 1971 No 2  
ins 1984 No 78  
renum as s 287  
pres s 404 (prev s 556C) ins 1971 No 2  
am 1985 No 67; 1992 No 9  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.72

#### **Power to discharge or vary conditions of recognisance**

s 405 orig s 405 om 1994 No 98  
pres s 405 (prev s 556D) ins 1971 No 2  
am 1985 No 16; 1993 No 91; 1995 No 2  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.44, amdt 3.45  
om A2006-23 amdt 1.72

hdg before s 406 om 1983 No 27 (as am by 1985 No 16)

#### **Recovery of amounts if recognisances estreated**

s 406 orig s 406 om 1971 No 2  
ins 1984 No 78  
renum as s 288  
pres s 406 (prev s 556E) ins 1971 No 2  
am 1985 No 67; 1986 No 74; 1990 No 5; 1991 No 44; 1995  
No 2  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.72

#### **Community service orders**

pt 19 hdg (prev pt 15A hdg) ins 1985 No 11  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.72



**Definitions for pt 19**

s 407 orig s 407 om 1971 No 2  
ins 1999 No 71 s 4  
renum as s 289  
pres s 407 (prev s 556F) ins 1985 No 11  
am 1985 No 67; 1991 No 44; 1994 No 97  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.72

**Directions to perform work**

s 408 orig s 408 om 1971 No 2  
pres s 408 (prev s 556G) ins 1985 No 11  
am 1985 No 67; 1986 No 57; 1994 No 97; 1998 No 29; 1999  
No 79 s 5 sch 3; 2001 No 44 amdt 1.1002, amdt 1.1003  
renum R9 LA (see 2001 No 63 s 43)  
am A2004-60 amdt 1.110  
om A2006-23 amdt 1.72

**Circumstances in which a community service order may be made**

s 409 orig s 409 om 1971 No 2  
pres s 409 (prev s 556J) ins 1985 No 11  
am 1994 No 97  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.72

**Obligations of offender and consequences of failure to comply**

s 410 orig s 410 om 1971 No 2  
pres s 410 (prev s 556K) ins 1985 No 11  
am 1986 No 57; 1994 No 97  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 49 amdt 3.46  
om A2006-23 amdt 1.72

**Community service order to cease to have effect after 12 months except if period extended**

s 411 orig s 411 renum as s 290  
pres s 411 (prev s 556L) ins 1985 No 11  
am 1994 No 97  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.72

**Revocation and variation of community service order and variation of nature of work**

s 412 orig s 412 om 1971 No 2  
pres s 412 (prev s 556M) ins 1985 No 11  
am 1994 No 97; 1998 No 29  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.72

## Endnotes

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### **Power of court if offender convicted of further offence**

s 413 orig s 413 om 1971 No 2  
pres s 413 (prev s 556N) ins 1985 No 11  
am 1985 No 67; 1992 No 9  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.72

### **Apprehension of offender about to leave ACT**

s 414 orig s 414 renum as s 291  
pres s 414 (prev s 556P) ins 1985 No 11  
am 1985 No 67  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.72

### **Power of court in relation to offender about to leave ACT**

s 415 orig s 415 om 1971 No 2  
pres s 415 (prev s 556Q) ins 1985 No 11  
am 1985 No 67  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.72

### **Service of documents**

s 416 orig s 416 om 1983 No 27  
pres s 416 (prev s 556S) ins 1985 No 11  
renum R9 LA (see 2001 No 63 s 43)  
sub 2002 No 49 amdt 3.47  
om A2006-23 amdt 1.72

### **Power of court if offender apprehended under pt 19**

s 417 orig s 417 renum as s 292  
pres s 417 (prev s 556T) ins 1985 No 11  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.72

### **Power of court in certain circumstances on revoking community service order**

s 418 orig s 418 om 1971 No 2  
pres s 418 (prev s 556U) ins 1985 No 11  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.72

### **Discharge of community service order**

s 419 orig s 419 om 1971 No 2  
pres s 419 (prev s 556V) ins 1985 No 11  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.72

**Jurisdiction of Supreme Court**

s 420 orig s 420 am 1983 No 27; 1983 No 55  
om 1985 No 44  
pres s 420 (prev s 556W) ins 1985 No 11  
renum R9 LA (see 2001 No 63 s 43)  
om 2002 No 49 amdt 3.48

**Inquiries into convictions**

pt 20 hdg (prev pt 17 hdg) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

**Preliminary**

div 20.1 hdg (prev div 17.1 hdg) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt  
1.40)

**Definitions for pt 20**

s 421 orig s 421 om 1983 No 55  
pres s 421 (prev s 557A) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

**How to start inquiry**

div 20.2 hdg (prev div 17.2 hdg) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt  
1.40)

**Grounds for ordering inquiry**

s 422 orig s 422 om 1983 No 27  
pres s 422 (prev s 557B) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

**Executive order for inquiry**

s 423 orig s 423 renum as s 293  
pres s 423 (prev s 557C) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

**Supreme Court order for inquiry**

s 424 orig s 424 renum as s 295  
pres s 424 (prev s 557D) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 425 om 1983 No 27 (as am by 1985 No 16)

**Rights and duties in relation to orders for inquiry**

s 425 orig s 425 renum as s 296  
pres s 425 (prev s 557E) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Inquiry procedure**

div 20.3 hdg (prev div 17.3 hdg) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt  
1.40)

#### **Application of Inquiries Act**

s 426 orig s 426 renum as s 297  
pres s 426 (prev s 557F) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

#### **Appointment of board of inquiry**

s 427 orig s 427 renum as s 298  
pres s 427 (prev s 557G) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 428 om 1983 No 27 (as am by 1985 No 16)

#### **Report by board**

s 428 orig s 428 am 1992 No 9; 1997 No 96  
om 2001 No 70 amdt 1.6  
pres s 428 (prev s 557H) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

#### **Supreme Court orders following inquiry report**

div 20.4 hdg (prev div 17.4 hdg) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt  
1.40)

#### **Application**

s 428A ins 1994 No 46  
sub 1998 No 71  
om 1999 No 32 s 4

hdg before s 429 om 1983 No 27 (as am by 1985 No 16)

#### **Publication of report**

s 429 orig s 429 renum as s 341  
pres s 429 (prev s 557I) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 430 om 1983 No 27 (as am by 1985 No 16)

#### **Action on report by Supreme Court**

s 430 orig s 430 renum as s 346  
pres s 430 (prev s 557J) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)  
am A2006-23 amdt 1.73

**Nature of Supreme Court proceedings**

s 431 orig s 431 renum as s 347  
pres s 431 (prev s 557K) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

**Application to earlier convictions**

div 20.5 hdg (prev div 17.5 hdg) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt  
1.40)

hdg before s 432 om 1983 No 27 (as am by 1985 No 16)

**Inquiries about earlier convictions**

s 432 orig s 432 renum as s 349  
pres s 432 (prev s 557L) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

**Grant of pardon and remission of penalties**

pt 21 hdg (prev pt 15B hdg) ins 1991 No 90  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.74

**Grant of pardon**

s 433 orig s 433 om 1983 No 27  
pres s 433 (prev s 557) ins 1991 No 90  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.74

hdg before s 434 om 1974 No 17

**Remission of penalties**

s 434 orig s 434 om 1974 No 17  
pres s 434 (prev s 558) ins 1991 No 90  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.74

**Miscellaneous**

pt 22 hdg (prev pt 16 hdg) renum R9 LA (see 2001 No 63 s 43)

**Application of certain sections of Commonwealth Crimes Act to territory laws**

s 434A ins 2002 No 11 amdt 2.25

**Joinder of charges**

s 434B ins 2002 No 11 amdt 2.25

**Protection of persons acting under Act**

s 435 orig s 435 om 1974 No 17  
pres s 435 (prev s 563) am 1997 No 96  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

4 Amendment history

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### **No court fees to be taken in criminal cases**

s 436 orig s 436 om 1974 No 17  
pres s 436 (prev s 564) am 1983 No 55; 1992 No 9  
renum R9 LA (see 2001 No 63 s 43)  
om A2006-23 amdt 1.75

hdg before s 437 om 1983 No 27 (as am by 1985 No 16)

### **Power of courts to bring detainees before them**

s 437 orig s 437 renum as s 350  
pres s 437 (prev s 565) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)  
sub A2006-23 amdt 1.76

hdg before s 438 om 1983 No 27 (as am by 1985 No 16)

### **Witnesses neglecting to attend trial and captured under warrant may be admitted to bail**

s 438 orig s 438 om 1985 No 44  
pres s 438 (prev s 566) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

hdg before ss 439 om 1983 No 27 (as am by 1985 No 16)

### **Offence of criminal defamation**

s 439 orig s 439 om 1994 No 46  
pres s 439 (prev s 567) am 1983 No 27; 2001 No 44  
amdt 1.1004, amdt 1.1005  
renum R9 LA (see 2001 No 63 s 43)  
om A2004-60 amdt 1.111  
ins A2006-1 amdt 1.2

hdg before ss 440 om 1983 No 27 (as am by 1985 No 16)

### **Prosecutions for blasphemy**

s 440 orig s 440 om 1983 No 27  
pres s 440 (prev s 574) renum R9 LA (see 2001 No 63 s 43)

hdg before s 441 om 1983 No 27 (as am by 1985 No 16)

### **Offence notices**

s 441 orig s 441 renum as s 351  
pres s 441 (prev s 575) am 1983 No 27  
om 1985 No 44  
ins 1997 No 117  
renum R9 LA (see 2001 No 63 s 43)

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	am A2005-20 amdt 3.105; A2006-23 amdt 1.77; A2007-22 amdt 1.22 om A2008-6 s 12
hdg before s 442	om 1983 No 27 (as am by 1985 No 16)
<b>Change of venue</b>	
s 442	orig s 442 renum as s 353 pres s 442 (prev s 577) renum R9 LA (see 2001 No 63 s 43)
hdg before s 443	om 1983 No 27 (as am by 1985 No 16)
<b>Approved forms</b>	
s 443	orig s 443 renum as s 354 pres s 442 (prev s 578) ins 1991 No 90 sub 2001 No 44 amdt 1.1006 renum R9 LA (see 2001 No 63 s 43) (4)-(7) exp 12 September 2002 (s 443 (7))
<b>Regulation-making power</b>	
s 444	orig s 444 renum as s 355 pres s 444 (prev s 579) ins 2001 No 44 amdt 1.1006 renum R9 LA (see 2001 No 63 s 43)
<b>Transitional</b>	
pt 23 hdg	ins 2002 No 11 amdt 2.26 om R16 LA
<b>Operation and meaning of s 434A</b>	
s 445	om 1971 No 2 ins 2002 No 11 amdt 2.26 exp 27 November 2002 (s 445 (2))
s 446	renum (see endnote 6)
s 447	om 1986 No 57
hdgs before s 448	om 1983 No 27 (as am by 1985 No 16)
ss 448-452	renum (see endnote 6)
hdg before s 453	om 1983 No 27 (as am by 1985 No 16)
s 453, s 454	renum (see endnote 6)

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## Endnotes

### 4 Amendment history

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hdg before s 455	om 1974 No 17
s 455, s 456	renum (see endnote 6)
hdg before s 457	om 1983 No 27 (as am by 1985 No 16)
s 457	renum (see endnote 6)
hdg before s 458	om 1983 No 27 (as am by 1985 No 16)
s 458	om 1983 No 27
hdg before 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
s 461	om 1983 No 27
s 462	om 1983 No 27
s 463	om 1983 No 27
s 464	renum (see endnote 6)
hdg before s 465	om 1983 No 27 (as am by 1985 No 16)
s 465, s 466	renum (see endnote 6)
s 467	om 1983 No 27
s 468	renum (see endnote 6)
s 469	om 1983 No 27



hdg before s 470 om 1983 No 27 (as am by 1985 No 16)

**Proceedings when question reserved**

s 470 am 1992 No 9; 1997 No 96  
om 2001 No 70 amdt 1.6

hdg before s 471 om 1983 No 27 (as am by 1985 No 16)

s 471 om 1983 No 27

hdg before s 472 om 1983 No 27 (as am by 1985 No 16)

s 472, s 473 renum (see endnote 6)

hdg before s 474 om 1983 No 27 (as am by 1985 No 16)

s 474 renum (see endnote 6)

hdg before s 475 om 1983 No 27 (as am by 1985 No 16)

**Executive or judge may direct inquiry**

s 475 am 1983 No 27; 1990 No 5  
om 2001 No 63 s 37

s 476, s 477 renum (see endnote 6)

**Common law offences may be dealt with summarily by consent**

s 477A ins 1983 No 27  
om 1985 No 40

**Certain offences not to be dealt with summarily**

s 478 sub 1951 No 14; 1974 No 17  
om 1985 No 40

ss 479-482 renum (see endnote 6)

s 483 om 1974 No 17

s 484 om 1974 No 17

s 485 om 1974 No 17

s 486 om 1974 No 17

## Endnotes

### 4 Amendment history

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- s 487 om 1974 No 17
- s 488 om 1974 No 17
- s 489 om 1974 No 17
- s 490 om 1974 No 17
- s 491 om 1974 No 17
- s 492 om 1974 No 17
- hdg before s 493 om 1983 No 27 (as am by 1985 No 16)
- ss 493-497 renum (see endnote 6)
- s 498 am 1983 No 27  
om 1987 No 3
- Certificate or conviction a bar to other proceedings**
- s 499 sub 1963 No 11  
om 1987 No 3
- s 500 am 1983 No 27  
om 1987 No 3
- hdg before s 501 om 1983 No 27 (as am by 1985 No 16)
- Unlawfully driving, using, marking or possessing cattle**
- s 501 am 1983 No 27  
sub 1983 No 55  
om 1985 No 44
- s 502 am 1983 No 27  
om 1985 No 44
- s 503 am 1983 No 27  
om 1985 No 44

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s 504	am 1983 No 27 om 1985 No 44
s 505	am 1983 No 27 om 1985 No 44
s 506	am 1983 No 27 om 1985 No 44
s 507	am 1983 No 27 om 1985 No 44
s 508	am 1983 No 27 om 1985 No 44
s 509	am 1983 No 27 om 1985 No 44
s 510	am 1983 No 27 om 1985 No 44
s 511	am 1983 No 27 om 1985 No 44
s 512	am 1983 No 27 om 1985 No 44
hdg before s 513	om 1983 No 27 (as am by 1985 No 16)
s 513	am 1983 No 27; 1983 No 55 om 1985 No 44
s 514	am 1983 No 27 om 1985 No 44
s 515	am 1983 No 27; 1983 No 55 om 1985 No 44

## Endnotes

### 4 Amendment history

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s 516	am 1983 No 55 om 1985 No 44
s 517	am 1983 No 27; 1983 No 55 om 1985 No 44
s 518	am 1983 No 27; 1983 No 55 om 1985 No 44
s 519	am 1983 No 27 om 1985 No 44
s 520	am 1983 No 27 om 1985 No 44
s 521	am 1983 No 27 om 1985 No 44
hdg before s 522	om 1983 No 27 (as am by 1985 No 16)
s 522	am 1983 No 27; 1983 No 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 before 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
<b>Unlawfully using vehicle or boat</b>	
s 526A	ins 1963 No 11 am 1983 No 27 om 1985 No 44

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hdg before s 527	om 1983 No 27 (as am by 1985 No 16)
s 527	am 1983 No 27 om 1985 No 44
hdg before s 528	om 1983 No 27 (as am by 1985 No 16)
s 528	am 1983 No 27 om 1985 No 44
hdg before s 529	om 1983 No 27 (as am by 1985 No 16)
s 529	am 1983 No 27 om 1985 No 44
hdgs before 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 before s 532	om 1983 No 27 (as am by 1985 No 16)
s 532	am 1983 No 27; 1983 No 55 om 1985 No 44
s 533	am 1983 No 27 om 1985 No 44
s 534	am 1983 No 27 om 1985 No 44
s 535	am 1983 No 27 om 1985 No 44
s 536	am 1983 No 27 om 1985 No 44

## Endnotes

### 4 Amendment history

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- s 537                    am 1983 No 27  
                             om 1985 No 44
- s 538                    am 1983 No 27  
                             om 1985 No 44
- hdg before s 539      om 1983 No 27 (as am by 1985 No 16)
- s 539                    am 1983 No 27  
                             om 1985 No 44
- s 540                    am 1983 No 27  
                             om 1985 No 44
- hdg before s 541      om 1983 No 27 (as am by 1985 No 16)
- s 541                    am 1983 No 27  
                             om 1985 No 44
- s 542                    am 1983 No 27  
                             om 1985 No 44
- hdg before s 543      om 1983 No. 27 (as am by 1985 No 16 )
- s 543                    renum (see endnote 6)
- hdg before s 544      om 1983 No 27 (as am by 1985 No 16)
- s 544, s 545            renum (see endnote 6)
- hdg before s 546      om 1983 No 27 (as am by 1985 No 16)
- Defacing premises**
- s 546                    om 1983 No 27  
                             ins 1983 No 55  
                             om 1985 No 44
- hdg before s 547      om 1983 No 27 (as am by 1985 No 16)
- s 547                    renum (see endnote 6)

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hdg before s 548	om 1983 No 27 (as am by 1985 No 16)
s 548	renum (see endnote 6)
hdg before s 549	om 1983 No 27 (as am by 1985 No 16)
s 549	om 1983 No 27
hdg before s 550	om 1983 No 27 (as am by 1985 No 16)
s 550	am 1983 No 27 om 1985 No 44
s 551	renum (see endnote 6)
hdg before s 552	om 1983 No 27 (as am by 1985 No 16)
s 552	am 1983 No 27 om 1991 No 18
hdg before s 553	om 1983 No 27 (as am by 1985 No 16)
s 553	renum (see endnote 6)
hdg before s 554	om 1983 No 27 (as am by 1985 No 16)
<b>Hard or light labour</b>	
s 554	sub 1951 No 14 am 1963 No 11; 1983 No 27; 1985 No 67 om 1986 No 57
hdg before s 555	om 1983 No 27 (as am by 1985 No 16)
s 555	renum (see endnote 6)
hdg before 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

## Endnotes

### 4 Amendment history

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#### **Effect of payment of fine etc where community service order made**

s 556H           ins 1985 No 11  
                  am 1985 No 67  
                  om 1998 No 29

#### **Effect of compliance with, or revocation of, certain community service orders**

s 556R           ins 1985 No 11  
                  am 1985 No 67  
                  om 1998 No 29

s 557           om 1971 No 2

s 558           om 1971 No 2

s 559           am 1951 No 14  
                  om 1971 No 2

s 560           om 1971 No 2

#### **Forfeiture of recognizance etc**

s 561           sub 1951 No 14  
                  om 1971 No 2

s 562           om 1971 No 2

ss 563-567     renum (see endnote 6)

s 568           om 1983 No 27

s 569           om 1983 No 27

s 570           om 1983 No 27

s 571           om 1983 No 27

s 572           om 1983 No 27

s 573           om 1983 No 27

s 574, s 575   renum (see endnote 6)



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s 576	om 1983 No 55
ss 577-579	renum (see endnote 6)
<b>Transitional</b>	
pt 17 hdg	ins 1999 No 79 s 5 sch 3 om R9 LA ins 2001 No 90 amdt 1.34 om R11 LA
<b>Expiry—Motor Traffic Act</b>	
s 580	(prev s 578) ins 1999 No 79 s 5 sch 3 renum 2001 No 44 amdt 1.1007 sub 2001 No 90 amdt 1.34 exp 27 March 2002 (see s 580)
<b>Transitional—Crimes Legislation Amendment Act 2008</b>	
pt 30 hdg	ins A2008-44 amdt 1.43 <u>exp 1 year after the day it commences (s 602)</u>
<b>Application of amendments</b>	
s 600	ins A2008-44 amdt 1.43 <u>exp 1 year after the day it commences (s 602)</u>
<b>Transitional regulations</b>	
s 601	ins A2008-44 amdt 1.43 <u>exp 1 year after the day it commences (s 602)</u>
<b>Expiry—pt 30</b>	
s 602	ins A2008-44 amdt 1.43 <u>exp 1 year after the day it commences (s 602)</u>
<b>Domestic violence offences</b>	
sch 1	orig sch 1 om 2001 No 8 amdt 1.13 pres sch 1 (prev sch 2) om 1985 No 44 ins 1997 No 23 sub 2001 No 90 amdt 1.35 renum R9 LA (see 2001 No 63 s 43) am 2002 No 51 amdt 1.16 om A2005-13 amdt 1.25
<b>Domestic violence offences under Crimes Act 1900</b>	
sch 2	renum as sch 1
sch 3	am 1990 No 5 om 2001 No 44 amdt 1.1008
sch 4	om 1985 No 44

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## Endnotes

### 4 Amendment history

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#### Forms

sch 5 om 1983 No 55  
ins 1985 No 11  
am 1985 No 67; 1990 No 5; 1995 No 2; 1998 No 29  
om 2001 No 44 amdt 1.1008

#### Form of list of other offences charged

sch 6 om 1974 No 17  
ins 1983 No 27  
am 1985 Nos 16 and 67  
om 2001 No 44 amdt 1.1008

sch 7 om 1983 No 27

#### Dictionary

dict ins 2001 No 8 amdt 1.14  
defs reloc from s 4 2001 No 8 amdt 1.4  
am 2002 No 49 amdt 3.49; A2003-14 amdt 1.33; A2004-28  
amdt 3.12; A2006-23 amdt 1.78; A2006-22 amdt 1.26  
(A2006-22 rep before commenced by disallowance (see  
Cwlth Gaz 2006 No S93)); A2006-46 amdt 2.5; A2008-14  
amdt 1.20; A2008-36 amdt 1.244  
def **ACAT** ins A2008-36 amdt 1.245  
def **actual bodily harm** ins A2006-5 s 21  
def **agent** ins A2003-55 s 6  
def **aggravated offence** ins 2001 No 8 amdt 1.14  
def **bail undertaking** ins 1992 No 9 s 5  
reloc from s 4 2001 No 8 amdt 1.4  
om A2004-14 amdt 2.3  
def **banker** reloc from s 4 2001 No 8 amdt 1.4  
def **burglary** ins 1983 No 27 s 5 (as am 1983 No 45 s 3)  
om 1985 No 44 s 5  
def **cattle** am 1983 No 5 s 3; 1983 No 55 s 3  
om 1985 No 44 s 5  
def **causes** ins A2003-55 s 6  
def **child** ins 1997 No 23 s 4  
reloc from s 4 2001 No 8 amdt 1.4  
def **child**, for sdiv 10.7.2 ins A2008-19 amdt 1.20  
def **commissioner for OH&S** ins A2003-55 s 6  
def **committed** ins A2008-19 amdt 1.20  
def **conduct** ins A2003-55 s 6  
def **corrections officer** ins A2006-23 amdt 1.79  
om A2007-15 amdt 1.1

- def **counsel** om 1997 No 96 sch 1
- def **court** and **judge** om 2001 No 8 amdt 1.3
- def **daily care responsibility** ins A2008-19 amdt 1.20
- def **death** ins A2003-55 s 6
- def **de facto spouse** ins 1997 No 23 s 4  
reloc from s 4 2001 No 8 amdt 1.4  
om A2003-14 amdt 1.34
- def **Director of Public Prosecutions** ins 1990 No 5 sch 2  
reloc from s 4 2001 No 8 amdt 1.4
- def **document of title of land** om 2002 No 49 amdt 3.50
- def **document of title to goods** reloc from s 4 2001 No 8  
amdt 1.4
- def **domestic partner** ins A2003-14 amdt 1.35
- def **domestic violence offence** ins 1997 No 23 s 4  
am 1999 No 79 sch 3  
reloc from s 4 2001 No 8 amdt 1.4  
am 2001 No 70 amdt 1.5  
par (ca) exp 1 January 2002 (s 580)  
pars renum R9 LA  
sub 2001 No 90 amdt 1.36  
par (e) exp 27 March 2002 (see s 580 and 2001 No 90  
amdt 1.34)  
am 2002 No 51 amdt 1.17  
om A2005-13 amdt 1.26
- def **drug** am 1990 No 5 sch 2  
reloc from s 4 2001 No 8 amdt 1.4
- def **dwelling-house** sub 1983 No 27 s 5  
om 1985 No 44 s 5
- def **employee** ins A2003-55 s 6
- def **employer** ins A2003-55 s 6
- def **government** ins A2003-55 s 6
- def **government entity** ins A2003-55 s 6
- def **governor** om 1983 No 55 s 3
- def **grievous bodily harm** ins 1983 No 55 s 3  
reloc from s 4 2001 No 8 amdt 1.4  
sub A2006-5 s 22
- def **harm** ins A2006-5 s 22
- def **household member** ins 1997 No 23 s 4  
reloc from s 4 2001 No 8 amdt 1.4  
om 2001 No 90 amdt 1.37
- def **independent contractor** ins A2003-55 s 6
- def **indictment** reloc from s 4 2001 No 8 amdt 1.4
- def **judge** om 2001 No 8 amdt 1.3
- def **Justice** om 1983 No 27 s 5
- def **knife** ins 1998 No 22 s 4  
reloc from s 4 2001 No 8 amdt 1.4

## Endnotes

### 4 Amendment history

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- def **law of the Territory** ins 1971 No 2 s 5  
om 2001 No 8 amdt 1.3
- def **loaded arms** ins 1983 No 55 s 3  
reloc from s 4 2001 No 8 amdt 1.4
- def **long-term care responsibility** ins A2008-19 amdt 1.20
- def **Magistrates Court** ins A2008-19 amdt 1.20
- def **medical practitioner** ins 1995 No 50 s 4  
reloc from s 4 2001 No 8 amdt 1.4  
om 2002 No 49 amdt 3.51
- def **mental impairment** ins A2006-14 amdt 1.40
- def **money** om 1984 No 44 s 5
- def **motor vehicle** ins 1985 No 40  
am 1990 No 5 sch 2  
sub 1999 No 79 sch 3  
reloc from s 4 2001 No 8 amdt 1.4
- def **night** om 1984 No 44 s 5
- def **offensive weapon** ins 1983 No 55 s 3  
sub 2000 No 85 s 4  
reloc from s 4 2001 No 8 amdt 1.4
- def **officer** orig def ins 1984 No 78 s 3  
reloc from s 4 2001 No 8 amdt 1.4  
new def ins A2003-55 s 6  
am R24 LA
- def **outworker** ins A2003-55 s 6
- def **person, master and employer** om 2001 No 8 amdt 1.3
- def **place of divine worship** om 1984 No 44 s 5
- def **property** om 1984 No 44 s 5
- def **property belonging to a vessel** om 1984 No 44 s 5
- def **provide services** ins A2003-55 s 6
- def **railway** om 1983 No 55 s 3
- def **relative** ins 1997 No 23 s 4  
reloc from s 4 2001 No 8 amdt 1.4  
sub 2001 No 90 amdt 1.38; sub A2003-14 amdt 1.36  
om A2006-22 amdt 1.27 (A2006-22 rep before  
commenced by disallowance (see Cwlth Gaz 2006  
No S93))  
om A2008-14 amdt 1.21
- def **relevant person** ins 2001 No 90 amdt 1.39  
am A2003-14 amdt 1.37, amdt 1.38  
om A2005-13 amdt 1.27
- def **school** ins 1998 No 22 s 4  
reloc from s 4 2001 No 8 amdt 1.4  
sub A2004-17 amdt 2.8
- def **senior officer** ins A2003-55 s 6
- def **serious harm** ins A2003-55 s 6  
sub A2006-5 s 23

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- def **sexual services** ins 2001 No 8 amdt 1.14  
def **sexual servitude** ins 2001 No 8 amdt 1.14  
def **spouse** ins 1997 No 23 s 4  
reloc from s 4 2001 No 8 amdt 1.4  
om A2003-14 amdt 1.39  
def **tainted property** ins A2003-8 amdt 1.14  
def **target material** ins A2003-8 amdt 1.14  
def **telegraph** reloc from s 4 2001 No 8 amdt 1.4  
def **the Crimes Act** ins 1971 No 2 s 5  
am 1990 No 5 sch 2  
om 1995 No 2 s 5  
def **trustee** reloc from s 4 2001 No 8 amdt 1.4  
def **trust fund** ins 1991 No 104 s 4  
reloc from s 4 2001 No 8 amdt 1.4  
om A2003-8 amdt 1.15  
def **under restraint** ins A2008-19 amdt 1.20  
def **valuable security** ins 1983 No 55 s 3  
reloc from s 4 2001 No 8 amdt 1.4  
def **vessel** reloc from s 4 2001 No 8 amdt 1.4  
def **volunteer** ins A2003-55 s 6  
def **weapon** and **weapon or instrument** ins 1983 No 55 s 3  
om 2001 No 8 amdt 1.3  
def **worker** ins A2003-55 s 6  
def **young person** ins A2008-19 amdt 1.20  
def **X-film** ins 1991 No 120 s 3  
om 1992 No 23 sch 1`

## Endnotes

### 5 Earlier republications

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#### 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R1 8 July 1992	8 July 1992– 27 Nov 1992	A1992-35	first republication after self-government
R1 (RI) 18 June 2003	8 July 1992– 27 Nov 1992	A1992-35	reissue of printed version
R1A 18 June 2003	28 Nov 1992– 23 Dec 1992	A1992-35	amendments by A1992-9
R1B 18 June 2003	24 Dec 1992– 28 Feb 1993	A1992-35	amendments by A1992-76
R1C 18 June 2003	1 Mar 1993– 1 June 1993	A1993-3	amendments by A1993-3
R1D 18 Mar 2003	1 June 1993– 14 Nov 1993	A1993-3	amendments by A1992-65
R1E 18 Mar 2003	15 Nov 1993– 16 Dec 1993	A1993-73	amendments by A1993-73
R2 31 Jan 1994	17 Dec 1993– 30 June 1994	A1993-91	amendments by A1993-91
R2 (RI) 18 Mar 2003	17 Dec 1993– 30 June 1994	A1993-91	reissue of printed version
R2A 18 Feb 2003	1 July 1994– 30 Nov 1994	A1994-38	amendments by A1994-38
R2B 17 Feb 2003	1 Dec 1994– 14 Dec 1994	A1994-75	amendments by A1994-75

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R2C 12 Dec 2002	15 June 1995– 18 June 1995	A1994-98	amendments by A1994-84 and A1994-86
R2D 2 Dec 2002	19 June 1995– 31 Aug 1995	A1995-3	amendments by A1995-2
R2E 2 Dec 2002	1 Sept 1995– 17 June 1996	A1995-3	amendments by A1995-3
R2F 28 Nov 2002	18 June 1996– 30 June 1996	A1995-50	amendments by A1995-49
R2G 27 Nov 2002	1 July 1996– 9 July 1996	A1996-31	amendments by A1996-31
R3 30 Nov 1996	10 July 1996– 15 May 1997	A1996-36	amendments by A1996-36
R3 (RI) 21 Nov 2002	10 July 1996– 15 May 1997	A1996-36	reissue of printed version
R3A 21 Nov 2002	17 May 1997– 29 May 1997	A1997-10	amendments by A1997-10
R3B 21 Nov 2002	30 May 1997– 30 Nov 1997	A1997-86	amendments by A1997-23
R3C 20 Nov 2002	1 Dec 1997– 10 Dec 1997	A1997-96	amendments by A1995-50
R3D 19 Nov 2002	11 Dec 1997– 23 Dec 1997	A1997-96	amendments by A1997-86
R4 1 June 1998	1 June 1998– 9 June 1998	A1997-117	amendments by A1997-96
R4 (RI) 19 Nov 2002	1 June 1998– 9 June 1998	A1997-117	reissue of printed version
R5 28 Feb 1999	1 Jan 1999– 24 June 1999	A1998-71	amendments by A1998-29, A1998-67 and A1998-71
R5 (RI) 19 Nov 2002	1 Jan 1999– 24 June 1999	A1998-71	reissue of printed version

## Endnotes

### 5 Earlier republications

Republication No and date	Effective	Last amendment made by	Republication for
R6 10 Nov 1999	6 Oct 1999– 14 Dec 1999	A1999-64	amendments by A1999-60
R6 (RI) 19 Nov 2002	6 Oct 1999– 14 Dec 1999	A1999-64	reissue of printed version
R6A 19 Nov 2002	15 Dec 1999– 23 Dec 1999	A1999-71	amendments by A1999-71
R6B 19 Nov 2002	1 Mar 2000– 8 Mar 2000	A1999-91	amendments by A1999-79
R6C 15 Nov 2002	10 May 2000– 4 Oct 2000	A2000-3	amendments by A1999-64 and A2000-3
R6D 15 Nov 2002	5 Oct 2000– 20 Dec 2000	A2000-58	amendments by A2000-58
R6E 15 Nov 2002	1 Jan 2001– 7 Mar 2001	A2000-85	amendments by A2000-66 and A2000-85
R7 (RI) 23 June 2003	12 Sept 2001– 13 Sept 2001	A2002-9	amendments by A2001-44 and A2001-56 reissue for textual correction in s 448
R8 (RI) 23 June 2003	14 Sept 2001– 26 Sept 2002	A2002-9	amendments by A2001-70 and A2001-75 reissue for textual correction in s 448
R9* 7 Jan 2002	7 Jan 2002– 13 Mar 2002	<u>A2001-90</u>	commenced expiry and general renumbering



<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R9 (RI) 23 June 2003	7 Jan 2002– 13 Mar 2002	A2001-90	reissue for textual correction in s 357
R10 (RI) 23 June 2003	14 Mar 2002– 26 Mar 2002	A2002-9	amendments by A2002-3 reissue for textual correction in s 357
R11 (RI) 23 June 2003	27 Mar 2002– 13 May 2002	A2002-9	amendments by A2001-90 and commenced expiry reissue for textual correction in s 357
R12 (RI) 23 June 2003	14 May 2002– 27 May 2002	A2002-9	amendments by A2002-9 reissued for textual correction in s 357
R13 (RI) 23 June 2003	28 May 2002– 8 Sept 2002	A2002-11	amendments by A2002-11 reissued for textual correction in s 357
R14 (RI) 23 June 2003	9 Sept 2002– 12 Sept 2002	A2002-24	amendments by A2002-24 reissued for textual correction in s 357

## Endnotes

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<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R15 (RI) 23 June 2003	13 Sept 2002– 27 Nov 2002	A2002-24	commenced expiry reissue for textual correction in s 357
R16 (RI) 23 June 2003	28 Nov 2002– 9 Dec 2002	A2002-24	commenced expiry reissue for textual correction in s 357
R17 (RI) 23 June 2003	10 Dec 2002– 20 Dec 2002	A2002-24	commenced expiry reissue for textual correction in s 357
R18 (RI) 23 June 2003	21 Dec 2002– 31 Dec 2002	A2002-51	amendments by A2002-50 reissue for textual correction in s 357
R19 (RI) 23 June 2003	1 Jan 2003– 16 Jan 2003	A2002-51	amendments by A2002-51 reissue for textual correction in s 357
R20 (RI) 23 June 2003	17 Jan 2003– 19 Mar 2003	A2002-51	amendments by A2002-49 reissue for textual correction in s 357
R21 20 Mar 2003	20 Mar 2003– 27 Mar 2003	A2002-51	amendments by A2002-50

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Republication No and date	Effective	Last amendment made by	Republication for
R22* 28 Mar 2003	28 Mar 2003– 14 Aug 2003	A2003-14	amendments by A2003-14
R23 15 Aug 2003	15 Aug 2003– 29 Feb 2004	A2003-14	amendments by A2003-8
R24 1 Mar 2004	1 Mar 2004– 16 Mar 2004	<u>A2004-2</u>	amendments by A2003-55
R25 17 Mar 2004	17 Mar 2004– 21 Mar 2004	A2004-16	amendments by A2004-16
R26 22 Mar 2004	22 Mar 2004– 8 Apr 2004	A2004-16	amendments by A2004-2
R27 9 Apr 2004	9 Apr 2004– 17 June 2004	A2004-16	amendments by A2004-15
R28 18 June 2004	18 June 2004– 25 June 2004	<u>A2004-17</u>	commenced expiry
R29 26 June 2004	26 June 2004– 30 June 2004	<u>A2004-17</u>	amendments by A2004-14
R30 1 July 2004	1 July 2004– 7 July 2004	A2004-28	amendments by A2004-28
R31 8 July 2004	8 July 2004– 12 July 2004	<u>A2004-32</u>	amendments by A2004-30
R32* 13 July 2004	13 July 2004– 31 Dec 2004	A2004-32	amendments by A2004-32
R33 1 Jan 2005	1 Jan 2005– 9 Jan 2005	<u>A2004-65</u>	amendments by A2004-17
R34 10 Jan 2005	10 Jan 2005– 30 Jan 2005	<u>A2004-65</u>	amendments by A2004-60
R35 31 Jan 2005	31 Jan 2005– 23 Feb 2005	A2004-65	amendments by A2004-65
R36 24 Feb 2005	24 Feb 2005– 24 Mar 2005	A2005-7	amendments by A2005-7
R37 25 Mar 2005	25 Mar 2005– 1 June 2005	A2005-13	amendments by A2005-13

## Endnotes

5 Earlier republications

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<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R38 2 June 2005	2 June 2005– 6 July 2005	A2005-20	amendments by A2005-20
R39 7 July 2005	7 July 2005– 31 Aug 2005	A2005-20	updated endnotes
R40 1 Sept 2005	1 Sept 2005– 6 Sept 2005	A2005-20	amendment to commencement of A2004-61 by A2005-43
R41 7 Sept 2005	7 Sept 2005– 7 Sept 2005	A2005-48	amendments by A2005-48
R42 8 Sept 2005	8 Sept 2005– 22 Nov 2005	A2005-48	amendments by A2005-44
R43 23 Nov 2005	23 Nov 2005– 16 Jan 2006	A2005-53	amendments by A2005-53
R44 17 Jan 2006	17 Jan 2006– 22 Feb 2006	A2005-53	amendments by A2004-39
R45 23 Feb 2006	23 Feb 2006– 15 Mar 2006	A2006-1	amendments by A2006-1
R46 16 Mar 2006	16 Mar 2006– 6 Apr 2006	A2006-5	amendments by A2006-5
R47* 7 Apr 2006	7 Apr 2006– 1 June 2006	A2006-14	amendments by A2006-14
R48 2 June 2006	2 June 2006– 17 Nov 2006	A2006-23	amendments by A2006-23
R49 18 Nov 2006	18 Nov 2006– 27 Mar 2007	A2006-46	amendments by A2006-46
R50 28 Mar 2007	28 Mar 2007– 5 Sept 2007	A2006-46	amendments by A2006-38
R51 6 Sept 2007	6 Sept 2007– 22 Nov 2007	A2007-22	amendments by A2007-22
R52 23 Nov 2007	23 Nov 2007– 17 Dec 2007	A2007-37	amendments by A2007-37

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Republication No and date	Effective	Last amendment made by	Republication for
R53 18 Dec 2007	18 Dec 2007– 15 Apr 2008	A2007-37	amendments by A2007-15
R54 16 Apr 2008	16 Apr 2008– 18 May 2008	A2008-6	amendments by A2008-6
R55 19 May 2008	19 May 2008– 26 Aug 2008	A2008-14	amendments by A2008-14
R56 27 Aug 2008	27 Aug 2008– 1 Feb 2009	A2008-29	amendments by A2008-29
R57 2 Feb 2009	2 Feb 2009– 13 Feb 2009	<u>A2008-46</u>	amendments by A2008-36

## 6 Renumbered provisions

This Act was renumbered under the *Legislation Act 2001*, in R9 (see *Crimes Legislation Amendment Act 2001* A2001-63 pt 4). Details of renumbered provisions are shown in endnote 4 (Amendment history). For a table showing the renumbered provisions, see R9.

## 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 Act 2008 A2008-19 sch 1  
pt 1.3**

## Part 1.3 Crimes Act 1900

### [1.17] New division 10.7

*insert*

## **Division 10.7 Particular provisions for children**

### **Subdivision 10.7.1 Arrest of children under 10 years old**

#### **252A Warrant for arrest of child under 10 years old**

- (1) An issuing officer may issue a warrant for the arrest of a child under 10 years old only if the issuing officer believes on reasonable grounds that the child has carried out, or is carrying out, conduct that—
  - (a) makes up the physical elements of an offence; or
  - (b) poses a risk to community safety or the child.
- (2) However, the issuing officer must not issue a warrant unless a police officer has given the issuing officer an affidavit setting out—
  - (a) the reasons why the warrant is sought; and
  - (b) any evidence the police officer believes supports the warrant's issue.
- (3) If the issuing officer issues a warrant, the issuing officer must write on the warrant which of the reasons stated in the affidavit, and any other reasons, the officer has relied on as justifying the issue of the warrant.

#### **252B Arrest of child under 10 years old—without warrant**

- (1) A police officer may, without a warrant, arrest a child under 10 years old if the police officer believes on reasonable grounds—
  - (a) that—
    - (i) conduct that makes up the physical elements of an offence or a breach of the peace is being or is likely to be carried out by the child; or
    - (ii) a person has suffered physical injury because of the child's conduct; or

- (iii) there is imminent danger of injury to a person or serious damage to property because of the child's conduct; and
- (b) that it is necessary to arrest the child immediately—
  - (i) to prevent the conduct or a repetition of the conduct; or
  - (ii) to protect life or property.
- (2) If the police officer believes on reasonable grounds that the child is on premises, the police officer may, with reasonable and necessary force, enter the premises to arrest the child.

### **252C Police action after arresting child under 10 years old**

- (1) If a police officer arrests a child under 10 years old (whether under a warrant or under section 252B), the police officer must—
  - (a) do the minimum necessary to prevent or stop the conduct for which the warrant was issued or the arrest was made; and
  - (b) take the child to—
    - (i) a parent of the child; or
    - (ii) someone else who has daily care responsibility, or long-term care responsibility, for the child; or
    - (iii) if it is not practicable or appropriate to take the child to someone mentioned in subparagraph (i) or (ii)—another appropriate person or agency.
- (2) Before deciding whether another person or agency is appropriate, the police officer must consult with the chief executive responsible for the *Children and Young People Act 2008*.

## **Subdivision 10.7.2 Preliminary procedures in relation to children and young people**

### **252D Definitions—subdiv 10.7.2**

In this subdivision:

*child*—see the *Children and Young People Act 2008*, section 11.

*committed* an offence, for a child or young person, includes committed an offence with someone else or other people.

*under restraint*—see section 252E.

*young person*—see the *Children and Young People Act 2008*, section 12.

### **252E Meaning of *under restraint***

For this subdivision, a child or young person is *under restraint* if—

- (a) the child or young person is under restraint as a result of having been lawfully arrested or detained; or
- (b) the child or young person is under restraint in relation to an offence and a police officer suspects on reasonable grounds that—
  - (i) the child or young person committed the offence; or
  - (ii) the police officer would be authorised under a law in force in the Territory to arrest the child or young person for the offence; or
- (c) the child or young person is in the company of a police officer in connection with the investigation of an offence or possible offence.



**252F Meaning of *in the company of a police officer***

- (1) For section 252E (c), a child or young person is *in the company of a police officer* in connection with the investigation of an offence or possible offence if—
  - (a) the police officer would not allow the child or young person to leave if the child or young person wished to do so; or
  - (b) the child or young person is waiting at a place at the request of a police officer in connection with the investigation of the offence or possible offence.
- (2) For subsection (1), it does not matter whether or not—
  - (a) the police officer believes on reasonable grounds that the child or young person has committed the offence; or
  - (b) the child or young person is in lawful custody in relation to the offence.
- (3) However, for section 252E (c), a child or young person is not in the company of a police officer in connection with the investigation of an offence or possible offence—
  - (a) if—
    - (i) the child or young person is with a police officer by a roadside (whether or not the child or young person is in a motor vehicle); and
    - (ii) the police officer is investigating an offence or possible offence, other than an indictable offence or possible indictable offence, arising out of the use of a motor vehicle; or
  - (b) if the child or young person is with a police officer for breath analysis under the *Road Transport (Alcohol and Drugs) Act 1977*; or
  - (c) if—

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- (i) the child or young person is with an inspector under the *Liquor Act 1975*; and
  - (ii) the inspector is investigating an offence or possible offence against that Act that the inspector believes on reasonable grounds was not committed by the child or young person.
- (4) In this section:
- motor vehicle*—see the *Road Transport (General) Act 1999*, dictionary.

### **252G Interviewing children and young people about offences**

- (1) This section applies if a police officer—
- (a) suspects on reasonable grounds that a child or young person may have committed, or be implicated in the commission of, an offence; or
  - (b) is holding a child or young person under restraint.
- (2) A police officer must not interview the child or young person about an offence, or cause the child or young person to do anything in relation to the investigation of an offence, unless—
- (a) one of the following people (who is an adult and who the police officer does not believe on reasonable grounds to be an accomplice of the child or young person in relation to the offence) is present:
    - (i) a parent of the child or young person;
    - (ii) someone else who has daily care responsibility, or long-term care responsibility, for the child or young person;
    - (iii) a family member of the child or young person who is acceptable to the child or young person;

- (iv) a lawyer acting for the child or young person;
  - (v) another suitable person who is acceptable to the child or young person; or
- (b) if the police officer has taken reasonable steps to have a person mentioned in paragraph (a) present but it was not practicable for such a person to be present within 2 hours after being asked to be present—someone else who is not a police officer and has not been involved with the investigation of the offence.

**Example—suitable person—par (a) (v)**

a person trained by the public advocate to attend interviews of children and young people

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

- (3) In this section:

***accomplice***, in relation to an offence, includes a person who a police officer believes on reasonable grounds to be likely to secrete, lose, destroy or fabricate evidence relating to the offence.

**252H Interviewing children and young people about offences—urgent circumstances**

A police officer may interview a child or young person if—

- (a) the police officer—
  - (i) suspects on reasonable grounds that the child or young person may have committed, or be implicated in the commission of, an offence; or
  - (ii) is holding the child or young person under restraint; and
- (b) the police officer believes on reasonable grounds that it is necessary to interview the child or young person without delay to avoid—

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- (i) a risk of death or serious injury of a person; or
- (ii) serious damage to property.

### **252I Parents etc to be told if children and young people under restraint**

- (1) If a police officer takes a child or young person under restraint, the police officer must promptly take all reasonable steps to tell a responsible person about the restraint (whether or not the person lives in the ACT).
- (2) In this section:

*responsible person* means—

- (a) a parent of the child or young person; or
- (b) if no parent of the child or young person has parental responsibility for the child or young person—someone else who has daily care responsibility, or long-term care responsibility, for the child or young person.

### **252J Police to summons children and young people unless ineffective**

A police officer must not charge a child or young person with an offence at a police station unless satisfied that proceeding by summons would not achieve 1 or more of the purposes mentioned in section 212 (1) (b) (Power of arrest without warrant by police officers).

**252K Parents etc to be told if children and young people charged**

- (1) If a child or young person is charged with an offence at a police station, the person who charged the child or young person must promptly take all reasonable steps to tell 1 of the following people the relevant information in relation to the charge (whether or not the person lives in the ACT):
  - (a) a parent of the child or young person;
  - (b) if no parent of the child or young person has parental responsibility for the child or young person—someone else who has daily care responsibility, or long-term care responsibility, for the child or young person.
- (2) In this section:  
*relevant information*, for a charge, means—
  - (a) the terms of the charge; and
  - (b) where the child or young person is; and
  - (c) when the child or young person will be brought before the Childrens Court.

**[1.18] New section 300 (2)**

*insert*

- (2) To remove any doubt, a reference in this part to the Magistrates Court includes a reference to the Childrens Court.

**[1.19] Section 375**

*substitute*

**375 Summary disposal of certain cases**

- (1) This section applies if a person is before the Magistrates Court charged with—

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- (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) This section also applies if a person is before the Childrens Court charged with any offence (other than an offence punishable by imprisonment for life).
- (3) The court may proceed in accordance with subsections (4) to (12) if—
  - (a) the court considers that it has no jurisdiction, apart from this section, to hear and determine the charge summarily; and
  - (b) for a charge that relates to money, or to property other than a motor vehicle, and is being heard in the Magistrates Court—the court considers that the amount of the money or the value of the property does not exceed \$10 000.
- (4) The court may invite the person (the *defendant*) to plead guilty or not guilty to the charge.
- (5) If the defendant pleads guilty to the charge, the court may accept or reject the plea.
- (6) The defendant is taken to have pleaded not guilty to the charge if—
  - (a) the defendant does not plead to the charge when invited to do so under subsection (4); or
  - (b) the court rejects a plea of guilty to the charge under subsection (5);

- (7) The court may hear and determine the charge summarily, and may sentence or otherwise deal with the defendant according to law, if—
- (a) the defendant pleads or is to be taken to have pleaded not guilty to the charge; and
  - (b) the court considers that the case can properly be disposed of summarily; and
  - (c) the defendant consents to the case being disposed of summarily.
- (8) The court may sentence or otherwise deal with the defendant if—
- (a) the court accepts a plea of guilty to a charge; and
  - (b) the court considers that the case can properly be disposed of summarily; and
  - (c) the defendant consents to the case being disposed of summarily.
- (9) Before the Magistrates Court decides whether a case can properly be disposed of summarily, the court must consider the following:
- (a) any relevant representations made by the defendant;
  - (b) any relevant representations made by the prosecutor in the defendant's presence;
  - (c) whether, if the defendant were found guilty or the defendant's plea of guilty has been accepted by the court, the court is, under this section, empowered to impose an adequate penalty, having regard to the circumstances and the degree of seriousness of the case;
  - (d) any other circumstances that appear to the court to make it more appropriate for the case to be dealt with on indictment rather than summarily.

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- (10) Before the Childrens Court decides whether a case can properly be disposed of summarily, the court must consider the following:
- (a) relevant representations made by the defendant;
  - (b) relevant representations made by the prosecutor in the defendant's presence;
  - (c) the facts of the case;
  - (d) the seriousness of the alleged offence;
  - (e) the circumstances in which the offence is alleged to have been committed;
  - (f) the defendant's age;
  - (g) the defendant's apparent maturity;
  - (h) the defendant's apparent mental capacity;
  - (i) the suitability of the penalties that the court is empowered to impose;
  - (j) the difficulty of any question of law that is likely to arise.
- (11) If the court accepts a plea of guilty to a charge under this section, and—
- (a) the court considers that the case cannot properly be disposed of summarily; or
  - (b) the defendant has not consented to the case being disposed of summarily;

the *Magistrates Court Act 1930*, section 90A (7) to (13) applies in relation to the defendant as if the court had accepted a plea of guilty to the charge under that section.



- (12) If the court disposes of a case summarily under this section and convicts the defendant of the offence, the court must not impose a penalty that exceeds—
- (a) a fine of \$5 000, imprisonment for 2 years or both; or
  - (b) if the maximum penalty provided for the offence by the law creating it is less than the penalty mentioned in paragraph (a)—the maximum penalty.
- (13) In this section:
- Magistrates Court* does not include the Childrens Court.

#### [1.20] Dictionary, new definitions

*insert*

*child*, for subdivision 10.7.2 (Preliminary procedures in relation to children and young people)—see section 252D.

*committed* an offence, for subdivision 10.7.2 (Preliminary procedures in relation to children and young people)—see section 252D.

*daily care responsibility*—see the *Children and Young People Act 2008*, section 19.

*long-term care responsibility*—see the *Children and Young People Act 2008*, section 20.

*Magistrates Court*, for part 13—see section 300.

*under restraint*, for subdivision 10.7.2 (Preliminary procedures in relation to children and young people)—see section 252D.

*young person*, for subdivision 10.7.2 (Preliminary procedures in relation to children and young people)—see section 252D.

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<b>Children and Young People (Consequential Amendments) Act 2008 A2008-20 sch 4 pt 4.7</b>
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### **Part 4.7 Crimes Act 1900**

**[4.18] Section 39 (4)**

*omit 1st mention of*

child officer

*substitute*

chief executive responsible for the *Children and Young People Act 2008*

**[4.19] Section 39 (4)**

*omit last mention of*

child officer

*substitute*

chief executive

**[4.20] Section 39 (6), definition of *child officer***

*omit*

<b>Crimes Legislation Amendment Act 2008 A2008-44 sch 1 pt 1.3</b>
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### **Part 1.3 Crimes Act 1900**

**[1.15] Section 22 heading**

*substitute*

**22 Assault with intent to commit other offence****[1.16] Section 26A**

*omit*

**[1.17] Section 49, table 49, item 6, column 2**

*omit*

(Assault with intent to commit indictable offence)

*substitute*

(Assault with intent to commit other offence)

**[1.18] Section 114A, definition of *proceeds of crime*, paragraphs (a) and (b) (ii)**

*omit*

an indictable offence

*substitute*

an offence punishable by imprisonment for longer than 12 months

**[1.19] Section 185, definition of *evidential material***

*substitute*

*evidential material* means a thing relevant to an offence, including a thing in electronic form.

**[1.20] Section 185, new definition of *serious offence***

*insert*

*serious offence* means an offence punishable by imprisonment for longer than 12 months.

**[1.21] Section 185, definitions of thing relevant to an indictable offence and thing relevant to a summary offence**

*substitute*

**thing relevant to** an offence means—

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

**[1.22] Section 187 (1) and note**

*substitute*

- (1) The Commonwealth Crimes Act, part 1C (Investigation of Commonwealth offences) and the schedule (Form of explanation under section 23V) apply to offences not punishable by imprisonment, or punishable by imprisonment for 12 months or less, in the same way as they apply to offences punishable by imprisonment for longer than 12 months.

*Note* The Cwlth Crimes Act provisions apply to offences against ACT laws that are punishable by imprisonment for longer than 12 months if the investigating officer is a police officer (see that Act, s 23A (6)).

**[1.23] Section 187 (3)**

*omit*

a summary offence:

*substitute*

---

an offence not punishable by imprisonment, or punishable by imprisonment for 12 months or less:

**[1.24] Section 194 (6) (ii) and (7) (ii)**

*omit*

an indictable offence

*substitute*

a serious offence

**[1.25] Section 195 (1) (d) (ii) and (2) (c) (ii)**

*omit*

indictable offence

*substitute*

serious offence

**[1.26] Section 207 (1) (a)**

*omit*

an indictable offence

*substitute*

a serious offence

**[1.27] Section 209 (1) (a)**

*omit*

an indictable offence

*substitute*

a serious offence

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### [1.28] Section 217 (1)

*omit*

an indictable offence

*substitute*

a serious offence

### [1.29] Section 220 (2) (b)

*substitute*

(b) the offence is a relevant offence; and

### [1.30] Section 220 (4), definition of *relevant summary offence*

*substitute*

*relevant offence* means—

- (a) a serious offence; or
- (b) an offence against any of the following:
  - (i) section 380 (Possession of offensive weapons and disabling substances);
  - (ii) section 381 (Possession of offensive weapons and disabling substances with intent);
  - (iii) the Criminal Code, section 321 (Minor theft);
  - (iv) the *Road Transport (Alcohol and Drugs) Act 1977*, section 19 (Prescribed blood alcohol concentration exceeded).

### [1.31] Section 253 (1), definition of *offence to which this Act applies*

*omit*

indictable offence

*substitute*

offence punishable by imprisonment for longer than 12 months

**[1.32] Section 300, definition of *serious offence*, paragraph (a)**

*substitute*

(a) an offence involving actual or threatened violence and punishable by imprisonment for longer than 12 months; or

**[1.33] Section 374**

*omit*

**[1.34] New section 375 (1) (c)**

*insert*

(c) an offence against the Criminal Code, section 310 (Aggravated robbery) or section 312 (Aggravated burglary).

**[1.35] Section 375 (3) (b)**

*omit*

\$10 000

*substitute*

\$30 000

**[1.36] New section 375 (6A)**

*insert*

(6A) When the court is satisfied the case is ready to be listed for hearing, the court must ask the defendant whether the defendant consents to the case being disposed of summarily.

**[1.37] Section 375 (7) (c)**

*substitute*

- (c) the defendant consented to the case being disposed of summarily and the consent has not been withdrawn under section 375A; and
- (d) if the charge is for an offence against the Criminal Code, section 310 or section 312—the prosecutor also consents to the case being disposed of summarily.

**[1.38] Section 375 (8) (c)**

*substitute*

- (c) the defendant consents to the case being disposed of summarily and the consent is not withdrawn under section 375A; and
- (d) if the charge is for an offence against the Criminal Code, section 310 or section 312—the prosecutor also consents to the case being disposed of summarily.

**[1.39] Section 375 (11) (b)**

*substitute*

- (b) the defendant's consent to the case being disposed of summarily has been withdrawn under section 375A;

**[1.40] New section 375 (11A)**

*insert*

- (11A) If the Magistrates Court disposes of a case summarily under this section and convicts the defendant of the offence, the court must not impose a penalty that exceeds—
  - (a) a fine of \$15 000, imprisonment for 5 years or both; or



- (b) if the maximum penalty provided for the offence by the law creating it is less than the penalty mentioned in paragraph (a)—the maximum penalty.

**[1.41] Section 375 (12)**

*omit*

If the court

*substitute*

If the Childrens Court

**[1.42] New section 375A**

*insert*

**375A Withdrawal of consent to summary disposal of case**

- (1) A consent given by a defendant under section 375 (6A) to summary disposal of a case can be withdrawn only if the court grants leave under this section.
- (2) The defendant may apply to the court for leave to withdraw the consent.
- (3) However, an application may not be made if a prosecution witness has given evidence in person at the hearing.
- (4) The court may grant leave only if satisfied on reasonable grounds that—
  - (a) a significant change in relation to the defendant or the case happened after the consent was given; and
  - (b) granting the leave is justified in all the circumstances.

**Examples—par (a)**

- 1 the defendant changed his or her legal representative before the start of the hearing

## Endnotes

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2 the prosecution provided new evidence before the start of the hearing.

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

### [1.43] New part 30

*insert*

## Part 30 Transitional—Crimes Legislation Amendment Act 2008

### 600 Application of amendments

The amendments of part 17 (Offences punishable summarily and summary procedure generally) made by the *Crimes Legislation Amendment Act 2008* do not apply to a proceeding for an offence if the hearing in the proceeding has started before the amendments commence.

### 601 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *Crimes Legislation Amendment Act 2008*.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything else in this Act or another territory law.

### 602 Expiry—pt 30

This part expires 1 year after the day it commences.

**Domestic Violence and Protection Orders Act 2008**  
**A2008-46 sch 3 pt 3.4**

## **Part 3.4                      Crimes Act 1900**

### **[3.10]      Section 191 (4) (b)**

*omit*

*Domestic Violence and Protection Orders Act 2001*

*substitute*

*Domestic Violence and Protection Orders Act 2008*

### **[3.11]      Section 192 (1)**

*omit everything before paragraph (a), insert*

- (1) In enforcing an order under the *Domestic Violence and Protection Orders Act 2008*, section 40 (5) (Firearms and interim orders), section 57 (5) (Firearms and final orders) or section 80 (2) (Firearms and emergency orders), a police officer may—

### **[3.12]      Section 192 (5) (b)**

*omit*

*Domestic Violence and Protection Orders Act 2001*, section 38, section 57 or section 73

*insert*

*Domestic Violence and Protection Orders Act 2008*, section 40, section 57 or section 80

## Endnotes

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### **[3.13] Section 212 (5), definition of *domestic violence offence***

*omit*

*Domestic Violence and Protection Orders Act 2001*

*substitute*

*Domestic Violence and Protection Orders Act 2008*

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