



Australian Capital Territory

# Criminal Code (Administration of Justice Offences) Amendment Act 2005

A2005-53

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2003 239B

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

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Australian Capital Territory

# **Criminal Code (Administration of Justice Offences) Amendment Act 2005**

**A2005-53**

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An Act to amend the *Criminal Code 2002*, and for other purposes

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

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2003 239B

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## **1 Name of Act**

This Act is the *Criminal Code (Administration of Justice Offences) Amendment Act 2005*.

## **2 Commencement**

This Act commences on the 28th day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

## **3 Legislation amended**

This Act amends the *Criminal Code 2002*.

*Note* This Act also amends other legislation (see sch 1 and sch 2).

## **4 Delayed application of ch 2 to certain offences Section 8 (1) and (3)**

*omit*

immediately applied provisions

*substitute*

applied provisions

## **5 Section 10**

*substitute*

## **10 Definitions—*applied provisions* and *default application date***

(1) In this Act:

*applied provisions* means the following provisions of this chapter:

- section 15 (5) (which deals with evidence of self-induced intoxication)

- division 2.3.1 (Lack of capacity—children)
- division 2.3.3 (Intoxication)
- part 2.4 (Extensions of criminal responsibility)
- part 2.5 (Corporate criminal responsibility)
- part 2.6 (Proof of criminal responsibility)
- part 2.7 (Geographical application) other than section 66 (2) (d).

*Note* Pt 2.5 became an applied provision on 9 April 2004. The other applied provisions have been applied provisions since the commencement of the Code on 1 January 2003.

***default application date*** means 1 July 2007 or, if another date is prescribed by regulation for this definition, that date.

- (2) This section expires on the default application date.

## **6 Establishing guilt of offences**

### **Section 12**

*omit*

A person

*substitute*

- (1) A person

## **7 New section 12 (2)**

*insert*

- (2) However, unless the law creating the offence otherwise expressly provides, a person can be found guilty of committing the offence even though, when carrying out the conduct required for the offence, the person is mistaken about, or ignorant of, the existence or content of a law that creates the offence.

*Note* ***Create***, in relation to an offence, is defined in the dictionary.

**8 Mistake or ignorance of law creating offence  
Section 37**

*omit*

**9 Complicity and common purpose  
New section 45 (8) to (11)**

*insert*

- (8) If the trier of fact is satisfied beyond reasonable doubt that a defendant committed an offence because of this section or otherwise than because of this section but cannot decide which, the trier of fact may nevertheless find the defendant guilty of the offence.
- (9) Subsection (8) applies only to a prosecution started after the commencement of the subsection.
- (10) Subsection (9) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (11) Subsections (9) and (10) and this subsection expire 1 year after they commence.

**10 Obtaining financial advantage from the Territory  
Section 335 (1) (a)**

*substitute*

- (a) the person engages in conduct that results in the person obtaining a financial advantage from someone else; and

**11 Section 335 (3) (a)**

*substitute*

- (a) the person engages in conduct that results in the person obtaining a financial advantage for someone else (**B**) from a third person; and



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**12 New section 336A**

*in part 3.4, insert*

**336A Making false statements on oath or in statutory declarations**

A person commits an offence if—

- (a) the person makes a statement on oath or in a statutory declaration; and
- (b) the statement is false; and
- (c) the person knows the statement is false.

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

*Note* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

**13 New chapter 7**

*insert*

**Chapter 7 Administration of justice offences****Part 7.1 Interpretation for ch 7****700 Definitions for ch 7**

In this chapter:

**aggravated perjury**—see section 702.

**causes** a detriment or another result—a person **causes** a detriment or another result if the person’s conduct substantially contributes to the detriment or other result.

**evidence** includes anything that may be used as evidence.

**interpreter** includes a person who interprets signs or other things made or done by someone who cannot speak adequately for the purpose of giving evidence in a legal proceeding.

**law enforcement officer** means any of the following:

- (a) a police officer;
- (b) a member of the police service or force of a State, another Territory or a foreign country;
- (c) a person exercising a law enforcement function for the Australian Customs Service or the Australian Crime Commission;
- (d) the Attorney-General for the Territory, the Commonwealth, a State or another Territory;
- (e) the director of public prosecutions, or a person performing a similar function under a law of the Commonwealth, a State or another Territory;
- (f) a person employed in the Office of the Director of Public Prosecutions or a similar entity established under a law of the Commonwealth, a State or another Territory;
- (g) any other person responsible for the investigation or prosecution of offences against a territory law, or a law of the Commonwealth, a State or another Territory;
- (h) a lawyer to the extent that the lawyer is engaged to prosecute offences against a territory law, or a law of the Commonwealth, a State or another Territory.

**legal proceeding**—see section 701.

**perjury**—see section 703.

**statement** means a statement made orally, in a document or in any other way.

**sworn statement** means a statement made or verified on oath.

*Note* **Oath** includes affirmation (see Legislation Act, dict, pt 1).

**subpoena** includes a summons or notice (however described) issued by an entity for a legal proceeding before the entity.

**witness**, in a legal proceeding, includes a witness not subpoenaed as a witness in the proceeding.

## **701 Meaning of legal proceeding for ch 7**

- (1) In this chapter:

**legal proceeding** means—

- (a) a proceeding in which evidence may be taken on oath; or
- (b) a proceeding in which judicial power is exercised; or
- (c) a proceeding or anything else that a law declares to be a legal proceeding for this chapter;

but does not include a proceeding or anything else that a law declares not to be a legal proceeding for this chapter.

*Note* A court, tribunal or other entity authorised by law to hear and decide a matter has power to receive evidence and administer oaths (see Legislation Act, s 178)

- (2) A reference to a **legal proceeding** includes a reference to a legal proceeding that has been or may be started.

- (3) In this chapter:  
*in* a legal proceeding includes for the purposes of the legal proceeding.
- (4) A declaration made for subsection (1) about a proceeding or other thing does not imply that, in the absence of a declaration about it, another proceeding is or is not a legal proceeding for this chapter.

## **Part 7.2                    Indictable offences for ch 7**

### **Division 7.2.1            Perjury**

#### **702            Aggravated perjury**

- (1) A person commits an offence (*aggravated perjury*) if—
- (a) the person makes a sworn statement in a legal proceeding with the intention of procuring the person's or someone else's conviction for, or acquittal of, an offence (the *relevant offence*); and
  - (b) the relevant offence is punishable by imprisonment; and
  - (c) the statement is false; and
  - (d) the person is reckless about whether the statement is false.

Maximum penalty: 1 400 penalty units, imprisonment for 14 years or both.

- (2) An interpreter commits an offence (also *aggravated perjury*) if—
- (a) the interpreter, by a sworn statement, gives an interpretation of a statement or other thing in a legal proceeding with the intention of procuring someone else's conviction for, or acquittal of, an offence (the *relevant offence*); and
  - (b) the relevant offence is punishable by imprisonment; and

- (c) the interpreter's statement is false or misleading; and
- (d) the interpreter is reckless about whether the interpreter's statement is false or misleading.

Maximum penalty: 1 400 penalty units, imprisonment for 14 years or both.

*Note* *Sworn statement* is defined in s 700.

### **703 Perjury**

- (1) A person commits an offence (*perjury*) if—
  - (a) the person makes a sworn statement in a legal proceeding; and
  - (b) the statement is false; and
  - (c) the person is reckless about whether the statement is false.

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

- (2) An interpreter commits an offence (also *perjury*) if—
  - (a) the interpreter, by a sworn statement, gives an interpretation of a statement or other thing in a legal proceeding; and
  - (b) the interpreter's statement is false or misleading; and
  - (c) the interpreter is reckless about whether the interpreter's statement is false or misleading.

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

### **704 Additional provisions about perjury or aggravated perjury**

- (1) For the offence of perjury or aggravated perjury, it does not matter whether—

- (a) the sworn statement related to something material to the legal proceeding; or
  - (b) the sworn statement was admitted in evidence in the proceeding; or
  - (c) the court or other entity dealing with the proceeding had jurisdiction, was properly constituted or was sitting in the proper place; or
  - (d) the person who made the sworn statement was competent to give evidence in the proceeding; or
  - (e) there was any formal defect in the sworn statement.
- (2) However, a person does not commit perjury or aggravated perjury if the person is not competent under the *Evidence Act 1995* (Cwlth), section 13 (Competence: lack of capacity) to give sworn evidence.
- (3) If the trier of fact is satisfied beyond reasonable doubt that a person committed perjury or aggravated perjury in relation to 1 of 2 sworn statements made by the person that are irreconcilably in conflict, the trier of fact may find the person guilty of perjury or aggravated perjury even though the trier of fact cannot decide which of the statements is false.
- (4) For subsection (3), it does not matter whether the 2 statements were made in the same proceeding.
- (5) If a sworn statement is about an opinion of the person making the statement, the statement is false for the offence of perjury or aggravated perjury if the opinion is not genuinely held by the person.
- (6) It is not necessary for the conviction of a person for perjury or aggravated perjury that evidence of the perjury be corroborated.
- (7) In this section:  
*formal defect* includes—

- (a) any formal error; and
- (b) any irregularity; and
- (c) any noncompliance with a rule of court, approved form or rule of practice.

## **Division 7.2.2      Falsifying, destroying or concealing evidence**

### **705      Making or using false evidence**

- (1) A person commits an offence if the person makes false evidence with the intention of—
  - (a) influencing a decision about starting a legal proceeding; or
  - (b) influencing the outcome of a legal proceeding.

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

- (2) A person commits an offence if—
  - (a) the person uses false evidence; and
  - (b) the person—
    - (i) knows the evidence is false; or
    - (ii) believes the evidence is false; and
  - (c) the person is reckless about whether the use of the evidence could—
    - (i) influence a decision about starting a legal proceeding; or

- (ii) influence the outcome of a legal proceeding.

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

- (3) Subsection (2) does not apply to—
  - (a) a lawyer or person assisting a lawyer who uses the evidence on instructions from a client and does not know that the evidence is false; or
  - (b) a person who—
    - (i) is, or may be, involved in a legal proceeding as a law enforcement officer, lawyer, or party (or as a person assisting any of them); and
    - (ii) uses the evidence for a legitimate forensic purpose in the proceeding.
- (4) Subsection (2) (b) (i) does not apply to a person who discloses, when or before using the evidence, that the evidence is false.
- (5) Subsection (2) (b) (ii) does not apply to a person who discloses, when or before using the evidence, that the person believes the evidence is false.
- (6) In this section:

*legitimate forensic purpose* includes the purpose of demonstrating that evidence is false or misleading.

*make* evidence includes change evidence, but does not include commit perjury or aggravated perjury.

## **706 Destroying or concealing evidence**

- (1) A person commits an offence if the person destroys or conceals evidence with the intention of—
  - (a) influencing a decision about starting a legal proceeding; or



(b) influencing the outcome of a legal proceeding.

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

(2) In this section:

*destroy* evidence includes—

- (a) mutilate or change evidence; and
- (b) make evidence illegible, indecipherable or otherwise unable to be identified.

### **Division 7.2.3          Protection of people involved in legal proceedings**

#### **707          Corruption in relation to legal proceedings**

(1) A person commits an offence if—

- (a) the person—
  - (i) provides a benefit to someone else; or
  - (ii) causes a benefit to be provided to someone else; or
  - (iii) offers to provide, or promises to provide, a benefit to someone else; or
  - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to someone else; and
- (b) the person does so with the intention that the other person or a third person will—
  - (i) not attend as a witness, interpreter or juror in a legal proceeding; or

- (ii) give false or misleading evidence in a legal proceeding;  
or
- (iii) withhold true evidence in a legal proceeding; or
- (iv) give a false or misleading interpretation as an interpreter  
in a legal proceeding; or
- (v) improperly make a decision as a juror in a legal  
proceeding; or
- (vi) improperly influence a juror in a legal proceeding.

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

- (2) A person commits an offence if—
- (a) the person—
    - (i) asks for a benefit for the person or someone else; or
    - (ii) obtains a benefit for the person or someone else; or
    - (iii) agrees to obtain a benefit for the person or someone else;  
and
  - (b) the person does so with the intention that, or with the intention of inducing, fostering or sustaining a belief that, the person or someone else will—
    - (i) not attend as a witness, interpreter or juror in a legal proceeding; or
    - (ii) give false or misleading evidence in a legal proceeding;  
or
    - (iii) withhold true evidence in a legal proceeding; or
    - (iv) give a false or misleading interpretation as an interpreter  
in a legal proceeding; or

(v) improperly make a decision as a juror in a legal proceeding; or

(vi) improperly influence a juror in a legal proceeding.

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

- (3) For this section, a person (*A*) is taken to obtain a benefit for someone else (*B*) if *A* induces a third person to do something that results in *B* obtaining the benefit.

### **708 Deceiving witness, interpreter or juror**

A person commits an offence if the person deceives someone else with the intention that the other person or a third person will—

(a) not attend as a witness, interpreter or juror in a legal proceeding; or

(b) give false or misleading evidence in a legal proceeding; or

(c) withhold true evidence in a legal proceeding.

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

### **709 Threatening etc witness, interpreter or juror**

A person commits an offence if the person causes or threatens to cause a detriment to someone else with the intention that the other person or a third person will—

(a) not attend as a witness, interpreter or juror in a legal proceeding; or

(b) give false or misleading evidence in a legal proceeding; or

(c) withhold true evidence in a legal proceeding; or

- (d) give a false or misleading interpretation as an interpreter in a legal proceeding; or
- (e) improperly make a decision as a juror in a legal proceeding; or
- (f) improperly influence a juror in a legal proceeding.

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

**710 Preventing attendance etc of witness, interpreter or juror**

A person commits an offence if the person, by his or her conduct, intentionally prevents someone else from—

- (a) attending as a witness, interpreter or juror in a legal proceeding; or
- (b) answering a question the other person is required by law to answer in a legal proceeding.

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

**711 Preventing production of thing in evidence**

A person commits an offence if the person, by his or her conduct, intentionally prevents someone else from producing in evidence in a legal proceeding a document or other thing that is required by law to be produced.

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

**712 Reprisal against person involved in proceeding**

- (1) A person commits an offence if the person causes or threatens to cause a detriment to a person involved in a legal proceeding—
- (a) because of something done by the involved person in the proceeding; and
  - (b) in the belief that the involved person was an involved person who had done that thing.

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

- (2) In this section:

*interpreter* includes a person who attends in the proceeding as an interpreter but is not called as an interpreter.

*involved person*, in relation to a legal proceeding, means—

- (a) a judge, magistrate or member of a tribunal or other entity the proceeding is before; or
- (b) a registrar, deputy registrar or other official of the court, tribunal or other entity the proceeding is before; or
- (c) a witness, interpreter, juror or lawyer involved in the proceeding; or
- (d) for a criminal proceeding—a complainant, informant or party to the proceeding.

*witness* includes a person who attends in the proceeding as a witness but is not called as a witness.

## **Division 7.2.4      Perverting the course of justice and related offences**

### **713      Perverting the course of justice**

- (1) A person commits an offence if the person, by his or her conduct, intentionally perverts the course of justice.

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

- (2) In this section:

*perverts* includes obstructs, prevents and defeats.

### **714      Publication that could cause miscarriage of justice**

- (1) A person commits an offence if—

- (a) the person publishes something that could cause a miscarriage of justice in a legal proceeding; and
- (b) the person does so with the intention of causing a miscarriage of justice in the proceeding.

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

- (2) A person commits an offence if—

- (a) the person publishes something that could cause a miscarriage of justice in a legal proceeding; and
- (b) the person is reckless about whether publishing the thing could cause a miscarriage of justice in the proceeding.

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

**715 False accusation of offence**

- (1) A person commits an offence if the person makes an accusation to a law enforcement officer that someone else has committed an offence—
  - (a) knowing or believing that the other person did not commit the offence; and
  - (b) intending that—
    - (i) the other person will be charged with committing the offence; or
    - (ii) law enforcement officers will be deflected from prosecuting the offender.

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

- (2) Subsection (1) (b) (i) does not apply to a law enforcement officer exercising his or her functions as a law enforcement officer if the officer—
  - (a) does not know that the other person did not commit the offence; and
  - (b) believes that there are reasonable grounds for charging the other person with the offence.
- (3) A law enforcement officer commits an offence if the officer charges someone with an offence knowing that the person did not commit the offence.

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

**716 Compounding of offence**

- (1) A person commits an offence if—
- (a) the person—
    - (i) provides a benefit to someone else; or
    - (ii) causes a benefit to be provided to someone else; or
    - (iii) offers to provide, or promises to provide, a benefit to someone else; or
    - (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to someone else; and
  - (b) the person does so with the intention that the other person or a third person will—
    - (i) conceal the commission of an offence; or
    - (ii) not start, or discontinue or delay, a prosecution for an offence; or
    - (iii) withhold information, or provide false or misleading information, in relation to the commission of an offence; or
    - (iv) obstruct or hinder the investigation of an offence by law enforcement officers.

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

- (2) A person commits an offence if—
- (a) the person—
    - (i) asks for a benefit for the person or someone else; or
    - (ii) obtains a benefit for the person or someone else; or



- 
- (iii) agrees to obtain a benefit for the person or someone else;  
and
  - (b) the person does so with the intention that, or with the intention of inducing, fostering or sustaining a belief that, the person or someone else will—
    - (i) conceal the commission of an offence; or
    - (ii) not start, or discontinue or delay, a prosecution for an offence; or
    - (iii) withhold information, or provide false or misleading information, in relation to the commission of an offence; or
    - (iv) obstruct or hinder the investigation of an offence by law enforcement officers.

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

- (3) For this section, a person (*A*) is taken to obtain a benefit for someone else (*B*) if A induces a third person to do something that results in B obtaining the benefit.

## **717 Accessory after the fact**

- (1) A person (the *accessory*) commits an offence if—
  - (a) someone else (the *principal offender*) has committed an offence; and
  - (b) the accessory assists the principal offender—
    - (i) knowing the principal offender committed the offence; or
    - (ii) believing the principal offender committed the offence or a related offence; and

- (c) the accessory does so with the intention of allowing the principal offender to—
  - (i) escape apprehension or prosecution; or
  - (ii) obtain, keep or dispose of the proceeds of the offence.

Maximum penalty:

- (a) if the offence committed by the principal offender is murder—imprisonment for 20 years, 2 000 penalty units or both; or
  - (b) if the offence committed by the principal offender has a maximum penalty of at least 2 000 penalty units, imprisonment for 20 years or both (but is not murder)—1 500 penalty units, imprisonment for 15 years or both; or
  - (c) if the offence committed by the principal offender has a maximum penalty of at least 1 500 penalty units, imprisonment for 15 years or both but less than 2 000 penalty units, imprisonment for 20 years or both—700 penalty units, imprisonment for 7 years or both; or
  - (d) if the offence committed by the principal offender has a maximum penalty of at least 1 000 penalty units, imprisonment for 10 years or both but less than 1 500 penalty units, imprisonment for 15 years or both—500 penalty units, imprisonment for 5 years or both; or
  - (e) in any other case—the lesser of—
    - (i) 300 penalty units, imprisonment for 3 years or both; and
    - (ii) the maximum penalty for the principal offence.
- (2) However, if the offence the accessory believes the principal offender committed is not the offence the principal offender committed, the maximum penalty is the lesser of—
- (a) the maximum penalty applying under subsection (1); and

- 
- (b) the maximum penalty that would apply under that subsection if the principal offender had committed the offence the accessory believed the principal offender had committed.
  - (3) For this section, an offence the accessory believes the principal offender committed is a *related offence* to the offence the principal offender committed if the circumstances in which the accessory believes the offence to have been committed are the same, or partly the same, as the circumstances in which the actual offence was committed.
  - (4) It is not an offence to attempt to commit an offence against this section.

## Part 7.2 Summary offences for ch 7

### 718 Pleading guilty in another's name

- (1) A person commits an offence if the person pleads guilty to a charge for an offence knowing the charge is in someone else's name.  
Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (2) In a prosecution for an offence against this section it is not necessary to prove the identity or existence of the other person.

### 719 Failing to attend

- (1) A person commits an offence if—
  - (a) the person is served with a subpoena to attend to give evidence or information, or answer questions, in a legal proceeding; and
  - (b) the person—
    - (i) fails to attend as required by the subpoena; or

- (ii) fails to continue to attend until excused from further attendance.

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

- (2) This section does not apply if the person has a reasonable excuse.

## **720 Failing to produce document or other thing**

- (1) A person commits an offence if—
  - (a) the person—
    - (i) is served with a subpoena to produce a document or other thing in a legal proceeding; or
    - (ii) is otherwise required by law to produce a document or other thing in a legal proceeding; and
  - (b) the person fails to produce the document or other thing as required by the subpoena or other requirement.

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

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

- (2) This section does not apply if the person has a reasonable excuse.

## **721 Failing to take oath**

- (1) A person commits an offence if—
  - (a) the person is required by law to take an oath to give evidence in a legal proceeding; and

(b) the person fails to take the oath when required.

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

(2) This section does not apply if the person has a reasonable excuse.

## **722 Failing to answer question or give information**

(1) A person commits an offence if—

(a) the person is required by law to answer a question or give information in a legal proceeding; and

(b) the person fails to answer the question or give the information when required.

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

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

(2) This section does not apply if the person has a reasonable excuse.

## **723 Making etc false or misleading statements in legal proceeding**

(1) A person commits an offence if—

(a) the person makes a sworn or unsworn statement in a legal proceeding before a court; and

(b) the statement is false; and

(c) the person is reckless about whether the statement is false.

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

- (2) A person commits an offence if—
- (a) the person makes a sworn or unsworn statement in a legal proceeding before an entity that is not a court; and
  - (b) the statement is false or misleading; and
  - (c) the person is reckless about whether the statement is false or misleading.

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

- (3) Subsection (2) (b) and (c) does not apply if the statement is not false or misleading in a material particular.
- (4) Subsections (1) and (2) do not apply in relation to an unsworn statement if, before the statement was made, the entity did not take reasonable steps to tell the person making the statement about the existence of the offence against the subsection.
- (5) For subsection (4), it is sufficient if the following form of words is used:

‘Making false or misleading statements is a serious offence’.

- (6) A person commits an offence if—
- (a) the person files or gives a sworn document in a legal proceeding; and
  - (b) the document contains false or misleading information; and
  - (c) the person is reckless about whether the document contains false or misleading information.

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

- 
- (7) Subsection (6) does not apply to—
- (a) a lawyer or person assisting a lawyer who—
    - (i) files or gives the document on instructions from a client; and
    - (ii) does not know the document contains false or misleading information; or
  - (b) a person involved in the legal proceeding as a law enforcement officer, lawyer, or party (or as a person assisting any of them) who files or gives the document for a legitimate forensic purpose; or
  - (c) a person who, when filing or giving the document, discloses that it contains or may contain false or misleading information.
- (8) Also, subsection (6) (b) and (c) does not apply if the information is not false or misleading in a material particular.
- (9) In this section:

*file* includes lodge for filing.

*legitimate forensic purpose*—see section 705 (6).

*unsworn statement* means a statement that is not made or verified on oath.

*Note* *Sworn statement* is defined in s 700.

## 724 Obstructing etc legal proceeding

A person commits an offence if the person—

- (a) intentionally obstructs or hinders a court, tribunal, commission, board or other entity in the exercise of its functions in a legal proceeding; or

- (b) intentionally causes a substantial disruption to a legal proceeding before a court, tribunal, commission, board or other entity.

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

**725      Obstructing or hindering investigation**

A person commits an offence if the person does something with the intention of obstructing or hindering the investigation of an offence by a law enforcement officer.

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

## **Part 7.3                      Procedural matters for ch 7**

**726      Consent required for certain prosecutions**

- (1) A proceeding for an offence against any of the following provisions must not be started without the consent of the Attorney-General or the director of public prosecutions:
  - (a) section 702 (Aggravated perjury);
  - (b) section 703 (Perjury);
  - (c) section 707 (Corruption in relation to legal proceedings);
  - (d) section 708 (Deceiving witness, interpreter or juror);
  - (e) section 709 (Threatening etc witness, interpreter or juror);
  - (f) section 716 (Compounding of offence);
  - (g) section 717 (Accessory after the fact).



- (2) However, a person may be arrested for, charged with, or remanded in custody or granted bail for, an offence mentioned in subsection (1) before the consent has been given.

**727 Alternative verdicts—aggravated perjury and perjury**

- (1) This section applies if, in a prosecution for an offence against section 702, the trier of fact is not satisfied that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed an offence against section 703.
- (2) The trier of fact may find the defendant guilty of the offence against section 703, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

**728 Alternative verdicts—perverting the course of justice and publication that could cause miscarriage of justice**

- (1) This section applies if, in a prosecution for an offence against section 714, the trier of fact is not satisfied that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed an offence against section 713.
- (2) The trier of fact may find the defendant guilty of the offence against section 713, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

**14 Dictionary, note 2, new dot point**

*insert*

- statutory declaration

**15 Dictionary, new definitions**

*insert*

***aggravated perjury***—see section 702.

***applied provisions***—see section 10.

**16 Dictionary, definition of *benefit***

*substitute*

*benefit* includes any advantage and is not limited to property.

**17 Dictionary, definition of *causes*, paragraph (c)**

*substitute*

(c) for part 4.3 (Sabotage)—see section 422; and

(d) for chapter 7 (Administration of justice offences)—see section 700.

**18 Dictionary, definition of *creates***

*substitute*

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

**19 Dictionary, new definitions**

*insert*

*detriment* includes any disadvantage and is not limited to personal injury or to loss of or damage to property.

*evidence*, for chapter 7 (Administration of justice offences)—see section 700.

**20 Dictionary, definition of *immediately applied provisions***

*omit*

**21 Dictionary, new definitions**

*insert*

*in* a legal proceeding, for chapter 7 (Administration of justice offences)—see section 701 (3).

***interpreter***, for chapter 7 (Administration of justice offences)—see section 700.

***law enforcement officer***, for chapter 7 (Administration of justice offences)—see section 700.

***legal proceeding***, for chapter 7 (Administration of justice offences)—see section 701.

***perjury***—see section 703.

***statement***, for chapter 7 (Administration of justice offences)—see section 700.

***sworn statement***, for chapter 7 (Administration of justice offences)—see section 700.

***subpoena***, for chapter 7 (Administration of justice offences)—see section 700.

***threat*** includes a threat made by any conduct, whether explicit or implicit and whether conditional or unconditional.

***witness***, for chapter 7 (Administration of justice offences)—see section 700.

## Schedule 1 Consequential amendments

(see s 3)

### Part 1.1 Administrative Appeals Tribunal Act 1989

#### [1.1] New sections 2 and 2A

*insert*

#### 2 Notes

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

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

#### 2A 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 all offences against this Act (see Code, pt 2.1).

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.

#### [1.2] Section 40 (1) (a)

*omit*

or affirmation

---

**[1.3] Section 40 (2) and (3)**

*substitute*

- (2) The registrar may, by written notice (a *subpoena*) given to a person, require the person to appear before the tribunal at a hearing, at a stated time and place, to do either or both of the following:

- (a) to give evidence;
- (b) to produce a stated document or other thing relevant to the hearing.

*Note* If a form is approved under s 62A for this provision, the form must be used.

- (3) The registrar must issue a subpoena to a person if the president, or the member of the tribunal presiding at the hearing, directs.

**[1.4] Section 40 (4) (a)**

*substitute*

- (a) inspect a document or other thing produced under a subpoena;  
and

**[1.5] Section 40 (5)**

*substitute*

- (5) A person is taken to have complied with a subpoena under subsection (2) (b) if the person gives the document or other thing to the registrar before the date stated in the subpoena for its production.

**[1.6] Section 40 (6)**

*omit*

summons

*substitute*

subpoena

**[1.7] Section 40 (7)**

*substitute*

- (7) The member presiding at the hearing of a proceeding before the tribunal may—
- (a) require a person appearing before the tribunal to give evidence to take an oath; and
  - (b) administer an oath to the person; and
  - (c) if the person participates in a way mentioned in section 34A (Participation by telephone etc)—administer an oath to the person in the way the member considers appropriate.

*Note* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

- (8) The member presiding at the hearing of a proceeding before the tribunal may require a person appearing before the tribunal to give evidence to do either or both of the following:
- (a) to answer a question relevant to the hearing;
  - (b) to produce a stated document or other thing relevant to the hearing.

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

**[1.8] Section 40 (8)**

*omit*

or affirmation

**[1.9] Section 40 (9)**

*omit*

summoned

*substitute*

subpoened

**[1.10] Section 40 (10)**

*omit*

or affirmation

**[1.11] Section 40 (11)**

*omit*

subsection (10)

*substitute*

subsection (11)

**[1.12] Section 40 (11) (a)**

*after*

subsection (7)

*insert*

or (8)

**[1.13] Section 40 (8) to (11) (as amended)**

*renumber as section 40 (9) to (12)*

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**[1.14] Section 51 (4)**

*omit*

summoned

*substitute*

subpoened

**[1.15] Section 51A**

*omit*

summons

*substitute*

subpoena

**[1.16] Sections 52 to 55**

*substitute*

**54 Application of Criminal Code, ch 7**

A proceeding before the tribunal is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to tribunal proceedings.

**55 Contempt of tribunal**

A person commits an offence if the person does something in the face, or within the hearing, of the tribunal that would be contempt of court if the tribunal were a court of record.

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



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**[1.17] Section 56A (3)**

*omit*

summons

*substitute*

subpoena

**[1.18] Section 59 (1) and (2)**

*omit*

summons

*substitute*

subpoena

**[1.19] New section 63A**

*insert*

**63A References to *subpoena***

(1) In this Act:

*subpoena* includes summons.

(2) This section expires 1 year after the day it commences.

**Part 1.2 Children and Young People Act  
1999**

**[1.20] Section 292 (4)**

*omit*

**[1.21] Section 292 (5)**

*renumber as section 292 (4)*

## Part 1.3 Consumer and Trader Tribunal Act 2003

### [1.22] Section 33

*substitute*

#### 33 Powers in relation to witnesses etc

- (1) The member presiding at a hearing of the tribunal, the registrar or a deputy registrar may, by written notice given to a person (a *subpoena*), require the person to appear before the tribunal at a hearing, at a stated time and place, to do either or both of the following:
  - (a) to give evidence;
  - (b) to produce a stated document or other thing relevant to the hearing.
- (2) The tribunal may give a party leave to inspect a document produced under a subpoena.
- (3) A person is taken to have complied with a subpoena under subsection (1) (b) if the person gives the document or other thing to the registrar before the date stated in the subpoena for its production.
- (4) The member presiding at a hearing of the tribunal may require a witness appearing before the tribunal to give evidence to do 1 or more of the following:
  - (a) to take an oath;
  - (b) to answer a question relevant to the hearing;

(c) to produce a stated document or other thing relevant to the hearing.

*Note 1* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

*Note 2* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

(5) In this section:

**subpoena** includes summons.

(6) Subsection (5) and this subsection expire 1 year after the day they commence.

**[1.23] Section 52**

*substitute*

**52 Application of Criminal Code, ch 7**

A proceeding before the tribunal is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to tribunal proceedings.

**[1.24] Section 56 to 58**

*omit*

## Part 1.4 Consumer Credit (Administration) Act 1996

### [1.25] Sections 86 and 87

*substitute*

#### 86 Witness subpoenas

- (1) The registrar may, by written notice given to a person (a *subpoena*), require the person to appear before the tribunal at a hearing, at a stated time and place, to do either or both of the following:
  - (a) to give evidence;
  - (b) to produce a stated document or other thing relevant to the hearing.
- (2) The registrar must issue a subpoena under subsection (1)—
  - (a) if directed to do so by the presidential member; or
  - (b) if asked to do so by a party to the proceeding.
- (3) If a person is required by a subpoena to produce a record that is not in writing, not written in English, or not decipherable on sight, the subpoena is taken to require the person to produce—
  - (d) a statement about the record that is written in English and decipherable on sight; and
  - (e) if the record is in writing—the record.
- (4) A person is taken to have complied with a subpoena under subsection (1) (b) if the person gives the document or other thing to the registrar before the date stated in the subpoena for its production.
- (5) A person who appears at a hearing under a subpoena is entitled to be paid—

- (a) if the subpoena was given at the direction of the presidential member—the fees and allowances payable to a witness before the Supreme Court; or
  - (b) if the subpoena was given at the request of a party—the person’s reasonable costs and expenses of attendance at the hearing.
- (6) A subpoena must be accompanied by a form to be completed by the person required to appear to claim the fees and allowances, or costs and expenses, mentioned in subsection (5).
- (7) A person is not entitled to refuse to comply with a subpoena only because it was not accompanied by that form.
- (8) In this section:  
*subpoena* includes summons.
- (9) Subsection (8) and this subsection expire 1 year after the day they commence.

## **87 Power to require witness to take oath etc**

The member presiding at a hearing of the tribunal may require a witness appearing before the tribunal to give evidence to do 1 or more of the following:

- (a) to take an oath;
- (b) to answer a question relevant to the hearing;
- (c) to produce a stated document or other thing relevant to the hearing.

*Note 1* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

*Note 2* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

**[1.26] Section 97**

*substitute*

**97 Application of Criminal Code, ch 7**

A proceeding before the tribunal is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to tribunal proceedings.

**[1.27] Section 103**

*omit*

## **Part 1.5 Coroners Act 1997**

**[1.28] Section 43 (1) (a)**

*omit*

a document or thing

*substitute*

a relevant document or other thing

**[1.29] New section 43 (3) and (4)**

*insert*

- (3) A person cannot rely on the common law privileges against selfincrimination and exposure to the imposition of a civil penalty to refuse to produce a document or other thing required under a subpoena.

*Note* The Legislation Act, s 171 deals with client legal privilege.

- (4) However, any information, document or other thing obtained, directly or indirectly, because of the producing of the document or

other thing, is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for—

- (a) an offence in relation to the falsity or the misleading nature of the document or thing; or
- (b) an offence against the Criminal Code, chapter 7 (Administration of justice offences).

**[1.30] Section 44 (4)**

*omit*

or affirmation

**[1.31] Section 46 (1)**

*omit*

or affirmation

**[1.32] Section 48 (1)**

*substitute*

- (1) For an inquest or inquiry, a coroner may take evidence on oath and, for that purpose—
  - (a) the coroner may require a witness to take an oath; and
  - (b) the coroner, registrar or other appropriate officer of the court may administer an oath to a witness.

*Note* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

**[1.33] Section 48 (3)**

*substitute*

- (3) A record of evidence made for an inquest or inquiry is not, only because it is such a record, admissible in any court as evidence that a person made the depositions included in the record.

- (4) Subsection (3) does not apply in relation to a prosecution for an offence against part 7 or the Criminal Code, chapter 7 (Administration of justice offences).

**[1.34] New section 76A**

*in part 7, insert*

**76A Application of Criminal Code, ch 7**

- (1) A proceeding before the coroner is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to coronial proceedings.

- (2) To remove any doubt, a decision or action the coroner takes under any of the following provisions is a legal proceeding for that chapter:
- (a) section 14 (Decision not to conduct hearing);
  - (b) section 20 (Dispensing with post-mortem examination);
  - (c) section 27 (Warrant for exhumation of body or recovery of ashes).

**[1.35] Sections 79 to 82**

*omit*

**[1.36] Sections 84 to 87**

*omit*



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**[1.37] Section 88 (1) and (2)**

*substitute*

- (1) A person commits an offence if the person does something in the face, or within the hearing, of the court that is a contempt of court.

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

**[1.38] Section 88**

*renumber subsections when Act next republished under Legislation Act*

## **Part 1.6 Crimes Act 1900**

**[1.39] Parts 8 and 9**

*omit*

**[1.40] Sections 278 and 293**

*omit*

## **Part 1.7 Dangerous Substances Act 2004**

**[1.41] Section 129 (1), note 1**

*substitute*

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

## Part 1.8 Discrimination Act 1991

### [1.42] Section 86 (1)

*substitute*

- (1) The tribunal may, by written notice given to a person (a *subpoena*), require the person to appear before the tribunal at a hearing, at a stated time and place, to do either or both of the following:
  - (a) to give evidence;
  - (b) to produce a stated document or other thing relevant to the hearing.

### [1.43] Section 88

*omit*

### [1.44] Sections 90 to 92

*substitute*

#### 90 Power to require witness to take oath etc

The tribunal may require a witness appearing before the tribunal at a hearing to give evidence to do 1 or more of the following:

- (a) to take an oath;
- (b) to answer a question relevant to the hearing;
- (c) to produce a stated document or other thing relevant to the hearing.

*Note* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

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**[1.45] Section 94 (1) (b)**

*omit*

section 92

*substitute*

section 90

**[1.46] Section 94 (3) (a) and (b)**

*substitute*

- (a) an offence in relation to the falsity or the misleading nature of the document, other thing or answer; or
- (b) an offence against the Criminal Code, chapter 7 (Administration of justice offences).

**[1.47] Section 96**

*substitute*

**96 Contempt of tribunal**

A person commits an offence if the person does something in the face, or within the hearing, of the tribunal that would be contempt of court if the tribunal were a court of record.

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

**96A Application of Criminal Code, ch 7**

A proceeding before the tribunal is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to tribunal proceedings.

## Part 1.9 Domestic Violence and Protection Orders Regulation 2002

### [1.48] Section 31 (2)

*substitute*

- (2) The person must comply with a requirement of the subpoena.

*Note* Failing to comply with a requirement of a subpoena, without a reasonable excuse, is an offence against the Criminal Code, ch 7 (Administration of justice offences).

## Part 1.10 Evidence (Miscellaneous Provisions) Act 1991

### [1.49] Section 4, note 1

*substitute*

*Note 1* *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

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*).

### [1.50] Section 16, definition of *tribunal*

*omit*

or affirmation

### [1.51] Section 28 (1)

*omit*

or affirmation

**[1.52] Section 28 (2)**

*substitute*

- (2) A proceeding in which evidence is given on oath administered under subsection (1) is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to tribunal proceedings.

**[1.53] Section 29 (c)**

*omit*

or affirmation

**[1.54] Section 30**

*omit*

**[1.55] Section 37, note**

*substitute*

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

**[1.56] Section 42**

*omit*

, affirmation

**[1.57] Dictionary, note 2, new dot points**

*insert*

- oath
- take (an oath)

## Part 1.11 Guardianship and Management of Property Act 1991

### [1.58] Section 10 (2)

*omit*

or affirmation

### [1.59] Section 38 (3) and (4)

*substitute*

- (3) The presidential member may require a person appearing before the tribunal at an inquiry to answer questions to do 1 or more of the following:
- (a) to take an oath;
  - (b) to answer a question relevant to the inquiry;
  - (c) to produce to the presidential member a document or other thing relevant to the inquiry.

*Note* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

### [1.60] New section 41A

*insert*

#### **41A Privileges against selfincrimination and exposure to civil penalty**

- (1) This section applies if—
- (a) a person is required under section 38 (3) to answer a question or produce a document; or
  - (b) a person is required under section 41 (1) to give information or produce a document.

- (2) The person cannot rely on the common law privileges against selfincrimination and exposure to the imposition of a civil penalty to refuse to answer the question, produce the document or give the information.

*Note* The Legislation Act, s 171 deals with client legal privilege.

- (3) However, any information, document or other thing obtained, directly or indirectly, because of the answering of the question, producing of the document or giving of the information is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for—
- (a) an offence in relation to the falsity or the misleading nature of the answer, document or information; or
  - (b) an offence against the Criminal Code, chapter 7 (Administration of justice offences).

**[1.61] Section 42**

*omit*

38 (4) or

*substitute*

38 (3) (c) or section

**[1.62] Sections 50 to 55**

*substitute*

**55 Application of Criminal Code, ch 7**

An inquiry by the tribunal is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to tribunal proceedings.

**[1.63] Section 68 (4)**

*omit*

or affirmation

**[1.64] Dictionary, note 2, new dot point**

*insert*

- oath

## **Part 1.12 Health Professionals Act 2004**

**[1.65] Section 59**

*substitute*

### **59 Powers in relation to witnesses etc**

- (1) A presidential member of the tribunal, or a person authorised in writing by a presidential member, may, by written notice given to a person, require the person to appear before the tribunal at a hearing, at a stated time and place, to do either or both of the following:
  - (a) to give evidence;
  - (b) to produce a stated document or other thing relevant to the hearing.
- (2) A presidential member of the tribunal may require a witness appearing before the tribunal at a hearing to give evidence to do 1 or more of the following:
  - (a) to take an oath;
  - (b) to answer a question relevant to the hearing;



(c) to produce a stated document or other thing relevant to the hearing.

*Note 1* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

*Note 2* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

**[1.66] Section 68**

*substitute*

**68 Contempt of health professions tribunal**

A person commits an offence if the person does something in the face, or within the hearing, of the health professions tribunal that would be contempt of court if the health professions tribunal were a court of record.

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

**68A Application of Criminal Code, ch 7**

A proceeding before the health professions tribunal is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to health professions tribunal proceedings.

## Part 1.13 Independent Competition and Regulatory Commission Act 1997

### [1.67] New section 24N (4)

*insert*

- (4) An industry panel review is not a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

### [1.68] New section 33 (7)

*insert*

- (7) However, an arbitration is not a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

### [1.69] Section 33 (7)

*renumber as section 33 (8)*

### [1.70] Sections 49 and 50

*substitute*

#### 49 Requirement to attend hearing and answer questions

For the exercise of its functions the commission—

- (a) may, by written notice given to a person, require the person to attend a hearing of the commission to give evidence; and
- (b) may require a person appearing before the commission to give evidence to answer a question relevant to the hearing.

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

**50 Application of Criminal Code, ch 7**

A hearing before the commission is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to commission hearings.

**50A Witnesses etc protected from civil liability**

A person does not incur civil liability for a statement made, or a document or information given, honestly and without recklessness to the commission.

**Part 1.14 Inquiries Act 1991**

**[1.71] New sections 4 and 4A**

*in part 1, insert*

**4 Notes**

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

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

**4A 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 an offence against this Act, s 36 (see Code, pt 2.1).

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.

**[1.72] Section 16 (3)**

*omit*

summoned

*substitute*

subpoened

**[1.73] Section 19**

*substitute*

**19 Privileges against selfincrimination and exposure to civil penalty**

- (1) This section applies if a person is required under section 26 (1) or (3) to—
  - (a) produce a document or other thing; or
  - (b) answer a question.
- (2) The person cannot rely on the common law privileges against selfincrimination and exposure to the imposition of a civil penalty to refuse to produce the document or other thing or answer the question.

*Note* The Legislation Act, s 171 deals with client legal privilege.

- (3) However, any information, document or other thing obtained, directly or indirectly, because of the producing of the document or other thing, or the answering of the question, is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for—

- (a) an offence in relation to the falsity or the misleading nature of the document, other thing or answer; or
- (b) an offence against the Criminal Code, chapter 7 (Administration of justice offences).

**[1.74] Section 26**

*substitute*

**26 Powers in relation to witnesses etc**

- (1) The chairperson of a board, or a person authorised in writing by the chairperson, may, by written notice given to a person (a **subpoena**), require the person to appear before the board at a hearing, at a stated time and place, to do either or both of the following:
  - (a) to give evidence;
  - (b) to produce a stated document or other thing relevant to the hearing.
- (2) A person is taken to have complied with a subpoena under subsection (1) (b) if the person gives the document or other thing to the board before the date stated in the subpoena for its production.
- (3) The chairperson may require a witness appearing before the board at a hearing to give evidence to do 1 or more of the following:
  - (a) to take an oath;
  - (b) to answer a question relevant to the hearing;
  - (c) to produce a stated document or other thing relevant to the hearing.

*Note* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

- (4) In this section:  
**subpoena** includes summons.

- (5) Subsection (4) and this subsection expire 1 year after the day they commence.

**[1.75] Part 4**

*omit*

**[1.76] New sections 35 and 36**

*in part 5, insert*

**35 Application of Criminal Code, ch 7**

An inquiry is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to board proceedings.

**36 Contempt of board**

A person commits an offence if the person does something in the face, or within the hearing, of a board that would be contempt of court if the board were a court of record.

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

**[1.77] Part 5 (as amended)**

*renumber as part 4*

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## Part 1.15                      Judicial Commissions Act 1994

### [1.78]      **New sections 3A and 3B**

*in part 1, insert*

#### **3A            Notes**

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

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

#### **3B            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 an offence against this Act, pt 6 (see Code, pt 2.1).

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.

### [1.79]      **Section 27 (3)**

*omit*

summoned

*substitute*

subpoened

**[1.80] Section 32**

*substitute*

**32 Privileges against selfincrimination and exposure to civil penalty**

- (1) This section applies if a person is required under section 43 (1) or (3) to—
  - (a) produce a document or other thing; or
  - (b) answer a question.
- (2) The person cannot rely on the common law privileges against selfincrimination and exposure to the imposition of a civil penalty to refuse to produce the document or other thing or answer the question.

*Note* The Legislation Act, s 171 deals with client legal privilege.

- (3) However, any information, document or other thing obtained, directly or indirectly, because of the producing of the document or other thing, or the answering of the question, is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for—
  - (a) an offence in relation to the falsity or the misleading nature of the answer, document or information; or
  - (b) an offence against the Criminal Code, chapter 7 (Administration of justice offences).



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**[1.81] Section 43**

*substitute*

**43 Powers in relation to witnesses etc**

- (1) The presiding member of a commission, or a person authorised in writing by the presiding member, may, by written notice given to a person (a *subpoena*), require the person to appear before the commission at a hearing, at a stated time and place, to do either or both of the following:
  - (a) to give evidence;
  - (b) to produce a stated document or other thing relevant to the hearing.
- (2) A person is taken to have complied with a subpoena under subsection (1) (b) if the person gives the document or other thing to the commission before the date stated in the subpoena for its production.
- (3) The presiding member of a commission may require a witness appearing at a hearing before the commission to give evidence to do 1 or more of the following:
  - (a) to take an oath;
  - (b) to answer a question relevant to the hearing;
  - (c) to produce a stated document or other thing relevant to the hearing.

*Note* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

**[1.82] Section 44 (1) and (5)**

*omit*

summons

*substitute*

subpoena

**[1.83] Part 6**

*omit*

**[1.84] New sections 55 and 56**

*in part 7, insert*

**55 Application of Criminal Code, ch 7**

A proceeding before a commission is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to commission proceedings.

**56 Contempt of commission**

A person commits an offence if the person does something in the face, or within the hearing, of a commission that would be contempt of court if the commission were a court of record.

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

**[1.85] New section 61A**

*insert*

**61A References to *subpoena***

- (1) In this Act:  
*subpoena* includes summons.
- (2) This section expires 1 year after the day it commences.

**[1.86] Part 7 (as amended)**

*renumber as part 6*

**Part 1.16 Juries Act 1967**

**[1.87] Section 44**

*omit*

**Part 1.17 Land (Planning and Environment) Act 1991**

**[1.88] Section 146 (1) (c) and note**

*substitute*

- (c) may take evidence on oath; and

*Note* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1). For the taking of an oath or the making of an affirmation, see the *Oaths and Affirmations Act 1984*.

**[1.89] Section 149**

*substitute*

**149 Powers in relation to witnesses etc**

- (1) The presiding member of a panel, or a person authorised in writing by the presiding member, may, by written notice given to a person, require the person to appear before the panel at a hearing of the inquiry, at a stated time and place, to do either or both of the following:
  - (a) to give evidence;
  - (b) to produce a stated document or other thing relevant to the inquiry.
- (2) A person attending before the panel under a notice under subsection (1) is entitled to be paid by the Territory the allowances prescribed by regulation.
- (3) The presiding member of the panel may require a witness appearing at a hearing before the panel to give evidence to do 1 or more of the following:
  - (a) to take an oath;
  - (b) to answer a question relevant to the hearing;
  - (c) to produce a stated document or other thing relevant to the hearing.

*Note* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

**[1.90] Section 150**

*omit*

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**[1.91] Section 156**

*substitute*

**155 Application of Criminal Code, ch 7**

A proceeding before a panel is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to panel proceedings.

**156 Contempt of panel**

A person commits an offence if the person does something in the face, or within the hearing, of a panel that would be contempt of court if the panel were a court of record.

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

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**Part 1.18 Legislation Act 2001**

**[1.92] Section 178**

*substitute*

**178 Power to decide includes power to take evidence etc**

- (1) A court, tribunal or other entity authorised by law to hear and decide a matter (however expressed) has power—
  - (a) to take evidence, including evidence on oath; and
  - (b) to examine witnesses; and
  - (c) to administer oaths to witnesses.
- (2) The court, tribunal or other entity may authorise a person to administer an oath to a witness.

- (3) This section does not limit any other power of the court, tribunal or other entity.

**[1.93] Section 189**

*omit*

the *Crimes Act 1900*, section 181 (Accessory after the fact)

*substitute*

section 717 (Accessory after the fact)

**[1.94] Section 192 (4), definition of *aiding and abetting offence***

*substitute*

***aiding and abetting offence*** means an offence against the Criminal Code, section 45 (Complicity and common purpose).

**[1.95] Dictionary, part 1, definition of *affidavit***

*omit*

**[1.96] Dictionary, part 1, definition of *oath***

*substitute*

***oath*** includes affirmation.

*Note* The *Evidence Act 1995* (Cwlth), ch 2, pt 2.1, div 2 and the *Oaths and Affirmations Act 1984* make provision in relation to oaths and affirmations.

**[1.97] Dictionary, part 1, definition of *swear***

*substitute*

***swear*** an oath includes make an affirmation.

**[1.98] Dictionary, part 1, new definition of *take***

*insert*

*take* an oath includes make an affirmation.

**Part 1.19 Liquor Act 1975**

**[1.99] Section 166 (4)**

*omit*

**[1.100] Section 166 (5)**

*renumber as section 166 (4)*

**[1.101] Section 170 (1) to (3)**

*substitute*

- (1) The chairperson of the board, or a person authorised in writing by the chairperson, may, by written notice given to a person (a *subpoena*), require the person to appear before the board at a hearing, at a stated time and place, to do either or both of the following:
  - (a) to give evidence;
  - (b) to produce a stated document or other thing relevant to the inquiry.
- (2) The chairperson of the board may require a witness appearing at a hearing before the board to give evidence to do 1 or more of the following:
  - (a) to take an oath;
  - (b) to answer a question relevant to the hearing;

- (c) to produce a stated document or other thing relevant to the hearing.

*Note* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

**[1.102] Section 170 (5) (a)**

*omit*

summons

*substitute*

subpoena

**[1.103] Section 170 (4) and (5) (as amended)**

*renumber as section 170 (3) and (4)*

**[1.104] Section 171**

*substitute*

**171 Application of Criminal Code, ch 7**

An inquiry by the board is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to board inquiries.

**171A Privileges against selfincrimination and exposure to civil penalty**

- (1) This section applies if a person is required under section 170 (1) or (2) to—
- (a) produce a document or other thing; or
  - (b) answer a question.



- (2) The person cannot rely on the common law privileges against selfincrimination and exposure to the imposition of a civil penalty to refuse to produce the document or other thing or answer the question.

*Note* The Legislation Act, s 171 deals with client legal privilege.

- (3) However, any information, document or other thing obtained, directly or indirectly, because of the producing of the document or other thing, or the answering of the question, is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for—
- (a) an offence in relation to the falsity or the misleading nature of the answer, document or information; or
  - (b) an offence against the Criminal Code, chapter 7 (Administration of justice offences).

**[1.105] Section 172 (3)**

*omit*

summonsed

*substitute*

subpoened

**[1.106] New section 172A**

*in part 12, insert*

**172A References to *subpoena***

- (1) In this part:  
*subpoena* includes summons.
- (2) This section expires 1 year after the day it commences.

## Part 1.20 Magistrates Court Act 1930

### [1.107] New section 3A

*in part 1, insert*

#### 3A 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 offence against this Act (see Code, pt 2.1):

- s 290 (1) (Contempt in face of court)

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.

### [1.108] Section 290 (1) and (2)

*substitute*

- (1) A person commits an offence if the person does something in the face, or within the hearing, of the court that is a contempt of court.

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

### [1.109] Section 290

*renumber subsections when Act next republished under Legislation Act*

### [1.110] Section 291

*omit*

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**[1.111] Section 293**

*omit*

**[1.112] Sections 300 and 301**

*omit*

**[1.113] Section 312**

*substitute*

**312 Failure to give evidence—committal**

- (1) This section applies if the court is satisfied—
- (a) that a witness before the court has contravened any of the following provisions of the Criminal Code (the *relevant Code provisions*):
    - (i) section 720 (Failing to produce document or other thing);
    - (ii) section 721 (Failing to take oath);
    - (iii) section 722 (Failing to answer question or give information); or
  - (b) a person has contravened any of the relevant Code provisions in relation to an examination before the registrar under the rules.
- (2) The court may—
- (a) adjourn the proceeding for not longer than 8 days; and
  - (b) issue a warrant committing the person to a gaol, lockup or remand centre until the earlier of the following:
    - (i) the date to which the proceeding is adjourned;
    - (ii) the person consents to comply with the relevant Code provisions.

- (3) If—
- (a) the court has adjourned the proceeding, and committed the person, under subsection (2) or this subsection; and
  - (b) the person is later brought before the court; and
  - (c) the person does not consent to comply with the relevant Code provisions;
- the court may exercise the powers mentioned in subsection (2) in relation to the person.
- (4) The periods for which a person is committed under this section must not total more than 28 days.
- (5) However, the court must not commit a person under subsection (2) or (3) if the person is punished for an offence against any or the relevant Code provisions in relation to the contravention mentioned in subsection (1).

## Part 1.21 Magistrates Court Rules 1932

### [1.114] New section 100

*insert*

#### 100 Witness expenses

- (1) A person is not required to comply with a subpoena served on the person for the Act unless a reasonable amount for expenses that the person would incur in complying with the subpoena on any day when the person's attendance is required is paid or tendered to the person—
- (a) when the subpoena is served; or
  - (b) within a reasonable time before the date for compliance mentioned in the subpoena.

(2) In this section:

*reasonable amount*, for expenses for a person, means the amount that would be payable in relation to the person if the party on whose request the subpoena was issued were entitled to claim witness expenses in relation to the person as costs in the proceeding.

## **Part 1.22                      Mental Health (Treatment and Care) Act 1994**

### **[1.115] Section 97 (4) and (5)**

*substitute*

- (4) The presidential member of the tribunal may require a witness appearing at a hearing before the tribunal to give evidence to do 1 or more of the following:
- (a) to take an oath;
  - (b) to answer a question relevant to the hearing;
  - (c) to produce a stated document or other thing relevant to the hearing.

*Note 1* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

*Note 2* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

**[1.116] Section 98**

*substitute*

**98 Privileges against selfincrimination and exposure to civil penalty**

- (1) This section applies if a person is required under section 97 (4) or section 101 to—
  - (a) produce a document or other thing; or
  - (b) answer a question.
- (2) The person cannot rely on the common law privileges against selfincrimination and exposure to the imposition of a civil penalty to refuse to produce the document or other thing or answer the question.

*Note* The Legislation Act, s 171 deals with client legal privilege.

- (3) However, any information, document or other thing obtained, directly or indirectly, because of the producing of the document or other thing, or the answering of the question, is not admissible in evidence against the person in a civil or criminal proceeding, other than—
  - (a) a proceeding under this Act; or
  - (b) a proceeding under the Crimes Act, part 13 (Unfitness to plead, mental illness and mental dysfunction); or
  - (c) a proceeding in relation to an appeal to the Supreme Court under section 141; or
  - (d) a proceeding for an offence against this Act; or
  - (e) a proceeding for an offence against the Criminal Code, chapter 7 (Administration of justice offences).

**[1.117] Section 101 (4)**

*omit*

**[1.118] Section 102**

*omit*

section 97 (5) (b)

*substitute*

section 97 (4) (c)

**[1.119] Section 111**

*substitute*

**111 Application of Criminal Code, ch 7**

A proceeding before the tribunal is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to tribunal proceedings.

## **Part 1.23 Occupational Health and Safety Act 1989**

**[1.120] Section 175 (1), note 1**

*substitute*

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

**[1.121] Section 195 (1) (a)**

*substitute*

- (a) take evidence on oath and, for that purpose, may require a person attending before the authority to take an oath; and

*Note* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

- (b) require a person attending before the authority to answer a question relevant to the proceeding; and

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

**[1.122] Section 195 (1) (b) and (c)**

*renumber as section 195 (1) (c) and (d)*

**[1.123] Sections 197 and 198**

*substitute*

**197 Application of Criminal Code, ch 7**

A proceeding before the review authority is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to review authority proceedings.



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## **Part 1.24                      Prostitution Act 1992**

### **[1.124]    Section 6 (1), definition of *disqualifying offence*, paragraphs (c) and (e)**

*omit*

the *Crimes Act 1900*, section 181 (Accessory after the fact)

*substitute*

section 717 (Accessory after the fact)

## **Part 1.25                      Public Sector Management Act 1994**

### **[1.125]    Section 22**

*substitute*

#### **22                      Investigative powers of commissioner**

- (1) The commissioner may, for the purpose of carrying out the commissioner's functions—
  - (a) conduct inspections of, or make inquiries or investigations into the operations of, government agencies; and
  - (b) enter premises occupied by a government agency at any time.
- (2) For an inspection, inquiry or investigation, the commissioner, or a person authorised in writing by the commissioner, may, by written notice given to a person, require the person to appear before the commissioner, at a stated time and place, to do either or both of the following:
  - (a) to give evidence;
  - (b) to produce a stated document or other thing relevant to the inspection, inquiry or investigation.

- (3) The commissioner may require a witness appearing before the commissioner to give evidence for an inspection, inquiry or investigation to do 1 or more of the following:
- (a) to take an oath;
  - (b) to answer a question relevant to the inspection, inquiry or investigation;
  - (c) to produce a stated document or other thing relevant to the inspection, inquiry or investigation.

*Note 1* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

*Note 2* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (4) An inspection, inquiry or investigation by the commissioner is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to inspections, inquiries or investigations by the commissioner.

## 22A Witness expenses

A person, other than an officer, is not required to comply with a notice given to the person under section 22 (2) unless a reasonable amount for expenses that the person would incur in complying with the notice on any day when the person's attendance is required is paid or tendered to the person—

- (a) when the notice is given to the person; or
- (b) within a reasonable time before the date for compliance mentioned in the notice.

**[1.126] Schedule 3, modification [3.17], inserted section  
88E (4) (a) and (b)**

*omit*

or affirmation

**[1.127] Schedule 3, modification [3.17], inserted sections 88F to  
88J**

*substitute*

**88F Powers in relation to witnesses etc**

- (1) The council, or a person authorised in writing by the council, may, by written notice given to a person, require the person to appear before the council at an inquiry, at a stated time and place, to do either or both of the following:
  - (a) to give evidence;
  - (b) to produce a stated document or other thing relevant to the inquiry.
- (2) The council may require a witness appearing before the council to give evidence for an inquiry to do 1 or more of the following:
  - (a) to take an oath;
  - (b) to answer a question relevant to the inquiry;
  - (c) to produce a stated document or other thing relevant to the inquiry.

*Note 1* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

*Note 2* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.
- (3) The council may administer, or authorise a person to administer, an oath to a witness appearing before the council.

**[1.128] Schedule 3, modification [3.17], inserted section 88L**

*substitute*

**88L Contempt of council**

A person commits an offence if the person does something in the face, or within the hearing, of the council that would be contempt of court if the council were a court of record.

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

**88LA Application of Criminal Code, ch 7**

An inquiry by the council is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to inquiries by the council.

**[1.129] Schedule 3, modification [3.17], inserted section 88N**

*omit*

summons

*substitute*

notice

**[1.130] Schedule 3, modification [3.17], inserted section 88P**

*omit*

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## Part 1.26 Racing Act 1999

### [1.131] Sections 43 and 44

*substitute*

#### 43 Powers in relation to witnesses etc

- (1) The president, the deputy president or the registrar, may, by written notice given to a person, require the person to appear before the tribunal at a hearing, at a stated time and place, to do either or both of the following:
  - (a) to give evidence;
  - (b) to produce a stated document or other thing relevant to the hearing.
- (2) The member presiding at a hearing of the tribunal may require a witness appearing before the tribunal to give evidence to do 1 or more of the following:
  - (a) to take an oath;
  - (b) to answer a question relevant to the hearing;
  - (c) to produce a stated document or other thing relevant to the hearing.

*Note 1* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

*Note 2* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.
- (3) The tribunal may inspect or make copies of any document or other thing produced before the tribunal and keep it for the reasonable period it considers appropriate.

#### **44 Application of Criminal Code, ch 7**

An appeal before the tribunal is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to tribunal proceedings.

### **Part 1.27 Rehabilitation of Offenders (Interim) Act 2001**

#### **[1.132] Section 85 (1) to (3)**

*substitute*

- (1) A judicial member may, by written notice given to a person, require the person to appear before the board at a hearing, at a stated time and place, to do either or both of the following:
  - (a) to give evidence;
  - (b) to produce a stated document or other thing relevant to the hearing.

#### **[1.133] Section 85 (4) and (5)**

*renumber as section 85 (2) and (3)*

#### **[1.134] Sections 86 to 88**

*substitute*

#### **86 Powers in relation to witnesses etc**

- (1) The judicial member presiding at a hearing of the board may require a witness appearing before the board to give evidence to do 1 or more of the following:
  - (a) to take an oath;

- (b) to answer a question relevant to the hearing;
- (c) to produce a stated document or other thing relevant to the hearing.

*Note 1* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

*Note 2* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (2) The judicial member presiding may disallow a question put to a person if the judicial member considers the question is unfair or unduly prejudicial.

## **87 Privileges against selfincrimination and exposure to civil penalty**

- (1) This section applies if a person is required under section 85 (1) or section 86 (1) to—
  - (a) produce a document or other thing; or
  - (b) answer a question.
- (2) The person cannot rely on the common law privileges against selfincrimination and exposure to the imposition of a civil penalty to refuse to produce the document or other thing or answer the question.

*Note* The Legislation Act, s 171 deals with client legal privilege.

- (3) However, any information, document or other thing obtained, directly or indirectly, because of the producing of the document or other thing, or the answering of the question, is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for—
  - (a) an offence in relation to the falsity or the misleading nature of the answer, document or information; or

- (b) an offence against the Criminal Code, chapter 7 (Administration of justice offences).

**88 Application of Criminal Code, ch 7**

An inquiry by the board is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to inquiries by the board.

## Part 1.28 Residential Tenancies Act 1997

### [1.135] Section 83

*substitute*

**83 Taking evidence at preliminary conference**

The registrar or a referee may—

- (a) take evidence on oath at a preliminary conference and, for that purpose, may require a person attending the conference to take an oath and administer an oath to the person; and

*Note* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

- (b) require a person attending before the conference to do either or both of the following:

- (i) answer a question relevant to the conference;
- (ii) produce a stated document or other thing relevant to the conference.

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



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**[1.136] Section 96**

*substitute*

**96 Subpoena to witnesses**

- (1) The tribunal may, by written notice given to a person (a *subpoena*), require the person to appear before the tribunal at a hearing, at a stated time and place, to do either or both of the following:
  - (a) to give evidence;
  - (b) to produce a stated document or other thing relevant to the hearing.
- (2) The tribunal may give a party leave to inspect a document produced under a subpoena.
- (3) A person is taken to have complied with a subpoena under subsection (1) (b) if the person gives the document or other thing to the registrar before the date stated in the subpoena for its production.
- (4) In this section:  
*subpoena* includes summons.
- (5) Subsection (4) and this subsection expire 1 year after the day they commence.

**[1.137] Section 97**

*substitute*

**97 Powers of tribunal in relation to witnesses**

The tribunal may require a witness appearing before the tribunal at a hearing to give evidence to do 1 or more of the following:

- (a) to take an oath;
- (b) to answer a question relevant to the hearing;

(c) to produce a stated document or other thing relevant to the hearing.

*Note 1* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

*Note 2* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

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**[1.138] Section 122**

*substitute*

**122 Contempt of tribunal**

A person commits an offence if the person does something in the face, or within the hearing, of the tribunal that would be contempt of court if the tribunal were a court of record.

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

**122A Application of Criminal Code, ch 7**

A proceeding before the tribunal, the registrar, a referee or an approved mediator is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to tribunal etc proceedings.

---

**[1.139] Section 129**

*omit*

130

*substitute*

the Criminal Code, chapter 7 (Administration of justice offences)

**[1.140] Section 130**

*omit*

**Part 1.29 Royal Commissions Act 1991**

**[1.141] New sections 4 and 4A**

*in part 1, insert*

**4 Notes**

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

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

**4A 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 an offence against this Act, pt 5 (see Code, pt 2.1).

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.

**[1.142] Section 19 (3)**

*omit*

summoned

*substitute*

subpoened

**[1.143] Section 24**

*substitute*

**24 Privileges against selfincrimination and exposure to civil penalty**

- (1) This section applies if a person is required under section 34 (1) or (3) to—
  - (a) produce a document or other thing; or
  - (b) answer a question.
- (2) The person cannot rely on the common law privileges against selfincrimination and exposure to the imposition of a civil penalty to refuse to produce the document or other thing or answer the question.

*Note* The Legislation Act, s 171 deals with client legal privilege.

- (3) However, any information, document or other thing obtained, directly or indirectly, because of the producing of the document or other thing, or the answering of the question, is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for—
  - (a) an offence in relation to the falsity or the misleading nature of the answer, document or information; or
  - (b) an offence against the Criminal Code, chapter 7 (Administration of justice offences).

**[1.144] Section 31 (1) (a)**

*omit*

summoned

*substitute*

subpoened

**[1.145] Section 34**

*substitute*

**34 Powers in relation to witnesses etc**

- (1) The chairperson, or a person authorised in writing by the chairperson, may, by written notice given to a person (a *subpoena*), require the person to appear before the commission at a hearing, at a stated time and place, to do either or both of the following:
  - (a) to give evidence;
  - (b) to produce a stated document or other thing relevant to the hearing.
- (2) A person is taken to have complied with a subpoena under subsection (1) (b) if the person gives the document or other thing to the commission before the date stated in the subpoena for its production.
- (3) The chairperson may require a witness appearing at a hearing before the commission to give evidence to do 1 or more of the following:
  - (a) to take an oath;
  - (b) to answer a question relevant to the hearing;
  - (c) to produce a stated document or other thing relevant to the hearing.

*Note* **Oath** includes affirmation and **take** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

**[1.146] Section 35 (1) and (5)**

*omit*

summons

*substitute*

subpoena

**[1.147] Part 5**

*omit*

**[1.148] New sections 45 and 46**

*in part 6, insert*

**45 Application of Criminal Code, ch 7**

A proceeding of a commission is a legal proceeding for the Criminal Code, chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to commission proceedings.

**46 Contempt of commission**

A person commits an offence if the person does something in the face, or within the hearing, of a commission that would be contempt of court if the commission were a court of record.

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

**[1.149] New section 50A**

*insert*

**50A References to *subpoena***

- (1) In this Act:  
*subpoena* includes summons.
- (2) This section expires 1 year after the day it commences.

**[1.150] Part 6 (as amended)**

*renumber as part 5*

## **Part 1.30**                      **Victims of Crime (Financial Assistance) Act 1983**

### **[1.151] Section 2, definition of *serious crime*, paragraph (e)**

*omit*

the *Crimes Act 1900*, section 181 (Accessory after the fact)

*substitute*

section 717 (Accessory after the fact)

### **[1.152] Section 2, definition of *sexual crime*, paragraph (c)**

*omit*

the *Crimes Act 1900*, section 181 (Accessory after the fact)

*substitute*

section 717 (Accessory after the fact)

## Schedule 2            Technical amendments

(see s 3)

### Part 2.1                Crimes Act 1900

#### [2.1]            Section 114D (4)

*substitute*

(4) In this section:

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

#### Explanatory note

This amendment remakes the definition to update a cross-reference to the *Crimes (Offences against the Government) Act 1989*, section 8. That Act has been repealed and the offence that was in section 8 is now covered by the Criminal Code, section 333. The definition is also amended to remove the reference to the Criminal Code, section 48 (Conspiracy). That reference is not necessary because the Legislation Act, s 189 provides that a reference to an offence includes a reference to a related ancillary offence (including conspiracy).

### Part 2.2                Criminal Code 2002

#### [2.2]            Section 28 (7)

*omit*

tribunal of fact

*substitute*

trier of fact

#### Explanatory note

This amendment changes a term for consistency throughout the Code.



**[2.3] Section 29 (2)**

*omit*

tribunal of fact

*substitute*

trier of fact

**Explanatory note**

This amendment changes a term for consistency throughout the Code.

**[2.4] Section 35 (2)**

*omit*

tribunal of fact

*substitute*

trier of fact

**Explanatory note**

This amendment changes a term for consistency throughout the Code.

**[2.5] Section 46 heading**

*substitute*

**46 Agency**

**Explanatory note**

This amendment changes the heading to more accurately describe the operation of the section.

**[2.6]        Section 65 (2) (b)**

*omit*

tribunal of fact

*substitute*

trier of fact

**Explanatory note**

This amendment changes a term for consistency throughout the Code.

**[2.7]        Section 66 (2), (3) and (4)**

*omit*

tribunal of fact

*substitute*

trier of fact

**Explanatory note**

This amendment changes a term for consistency throughout the Code.

**[2.8]        Section 336 (3)**

*omit*

**Explanatory note**

This amendment is consequential on the insertion of a definition of *benefit* in the dictionary by another amendment.

**[2.9] Section 337 (6)**

*before*

misleading

*insert*

false or

**Explanatory note**

This amendment makes the language of the subsection consistent with section 337 (5).

**[2.10] Section 337 (7), definition of *benefit***

*omit*

**Explanatory note**

This amendment is consequential on the insertion of a definition of *benefit* in the dictionary by another amendment.

**[2.11] Section 338 (4)**

*before*

misleading

*insert*

false or

**Explanatory note**

This amendment makes the language of the subsection consistent with the section 337 (4).

**[2.12]      Section 338 (6)**

*omit*

(1) (c) (ii)

*substitute*

(1) (d) (ii)

**Explanatory note**

This amendment corrects a cross-reference.

**[2.13]      Section 352, definition of benefit**

*omit*

**Explanatory note**

This amendment is consequential on the insertion of a definition of *benefit* in the dictionary by another amendment.

**[2.14]      Section 356 (2) (a) (i), (ii) and (iii)**

*omit*

himself, herself

*substitute*

the agent

**Explanatory note**

This amendment improves language.

**[2.15] Section 356 (2) (b) (i) and (ii)**

*omit*

he or she

*substitute*

the agent

**Explanatory note**

This amendment improves language.

**[2.16] Section 357 (2) (a) (i), (ii) and (iii)**

*omit*

himself, herself

*substitute*

the agent

**Explanatory note**

This amendment improves language.

**[2.17] Section 358 (a)**

*omit*

himself or herself

*substitute*

the person

**Explanatory note**

This amendment improves language.

**[2.18]    Section 358 (b)**

*omit*

himself, herself

*substitute*

the person

**Explanatory note**

This amendment improves language.

**[2.19]    Section 359 (1) (b) (i)**

*omit*

himself, herself

*substitute*

the official

**Explanatory note**

This amendment improves language.

**[2.20]    Section 359 (2) (c) (i)**

*omit*

himself, herself

*substitute*

the person

**Explanatory note**

This amendment improves language.

**[2.21] Section 360 (2) (a)**

*omit*

himself or herself

*substitute*

the person

**Explanatory note**

This amendment improves language.

**[2.22] Section 402**

*substitute*

**402 Meaning of *threat* for pt 4.1**

For this part—

- (a) a threat to a person includes a threat to a group of people; and
- (b) fear that a threat will be carried out includes apprehension that it will be carried out.

*Note* For further definition of *threat*, see the dictionary.

**Explanatory note**

This amendment remakes the section consequent on the insertion of a definition of *threat* in the dictionary by another amendment.

**[2.23] Section 424 (4)**

*substitute*

(4) For this section—

- (a) a threat to a person includes a threat to a group of people; and
- (b) fear that a threat will be carried out includes apprehension that it will be carried out.

*Note* For further definition of *threat*, see the dictionary.

**Explanatory note**

This amendment remakes the subsection consequent on the insertion of a definition of *threat* in the dictionary by another amendment.

## Part 2.3                            Legislative Assembly Precincts Act 2001

### [2.24]    Section 11

*substitute*

#### 11            Application of Crimes Act, s 154

The *Crimes Act 1900*, section 154 (Additional offences on territory premises) applies to the Assembly precincts as if they were government premises within the meaning of that section.

**Explanatory note**

This amendment remakes a provision to update a cross-reference to the *Crimes (Offences against the Government) Act 1989*. That Act has now been repealed and the relevant provision is now found in the *Crimes Act 1900*, section 154.

## Part 2.4                            Rehabilitation of Offenders (Interim) Act 2001

### [2.25]    Section 9 (2) (f) and (g)

*substitute*

- (f) an offence against the Criminal Code, section 310 (Aggravated robbery);
- (g) an offence against the Criminal Code, section 312 (Aggravated burglary);

**Explanatory note**

This amendment updates cross-references.



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## Part 2.5 Spent Convictions Act 2000

### [2.26] Dictionary, definition of *sexual offence*, paragraph (b)

*omit*

section 102 (Burglary)

*substitute*

the Criminal Code, section 311 (Burglary)

#### Explanatory note

This amendment updates a cross-reference.

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### Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 23 June 2005.

**2 Notification**

Notified under the Legislation Act on 26 October 2005.

**3 Republications of amended laws**

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

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I certify that the above is a true copy of the Criminal Code (Administration of Justice Offences) Amendment Bill 2005, which was passed by the Legislative Assembly on 20 October 2005.

Clerk of the Legislative Assembly

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