

# EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

## **Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Bill 2003**

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## **EXPOSURE DRAFT**

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(Prepared by Parliamentary Counsel's Office)

## **Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Bill 2003**

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### **A Bill for**

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 007B

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 (Theft, Fraud, Bribery and Related Offences) Amendment Act 2003*.

## **2 Commencement**

This Act commences on the day after its notification day.

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

## **3 Acts amended**

- (1) This Act (other than schedules 1, 2 and 3) amends the *Criminal Code 2002*.
- (2) Schedules 1, 2 and 3 amend the Acts and regulations mentioned in them.

## **4 Definitions—*default application date and immediately applied provisions*, definition of *immediately applied provisions*** **Section 10**

*insert*

- part 2.5 (Corporate criminal responsibility)

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**5 New chapter 3**

*insert*

**Chapter 3 Theft, fraud, bribery and related offences**

**Part 3.1 Interpretation for chapter 3**

**300 Definitions for ch 3**

In this chapter:

*belongs*, in relation to property—see section 301.

*cause* a loss means cause a loss to someone else.

*dishonest* means—

- (a) dishonest according to the standards of ordinary people; and
- (b) known by the defendant to be dishonest according to the standards of ordinary people.

*Note 1* The following provisions affect the meaning of *dishonest*:

- s 303 (Dishonesty for pt 3.2)
- s 326 (Obtaining property by deception)
- s 354 (Dishonesty for pt 3.8)

*Note 2* In a prosecution, dishonesty is a matter for the trier of fact (see s 302).

*duty*, of a person who is a public official, means a function that—

- (a) is given to the person as a public official; or

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- (b) the person holds himself or herself out as having as a public official.

**gain** means—

- (a) a gain in property, whether temporary or permanent; or  
(b) a gain by way of the supply of services;  
and includes keeping what one has.

**loss** means a loss in property, whether temporary or permanent, and includes not getting what one might get.

**obtain** includes—

- (a) obtain for someone else; and  
(b) induce a third person to do something that results in someone else obtaining.

*Note* The following provisions affect the meaning of **obtain**:

- s 314 (a) (Receiving—meaning of **stolen property**)
- s 328 (Obtains for subdiv 3.3.2.1)
- s 335 (6) (Obtaining financial advantage from the Territory)
- s 355 (Meaning of **obtain** for pt 3.7)

**public duty** means a duty of a public official.

**public official** means a person having public official functions, or acting in a public official capacity, and includes the following:

- (a) a Territory public official;  
(b) a member of the legislature of the Commonwealth, a State or another Territory;

- (c) a member of the executive of the Commonwealth, a State or another Territory;
- (d) a member of the judiciary, the magistracy or a tribunal of the Commonwealth, a State or another Territory;
- (e) a registrar or other officer of a court or tribunal of the Commonwealth, a State or another Territory;
- (f) an individual who occupies an office under a law of the Commonwealth, a State, another Territory or a local government;
- (g) an officer or employee of the Commonwealth, a State, another Territory or a local government;
- (h) an officer or employee of an authority or instrumentality of the Commonwealth, a State, another Territory or a local government;
- (i) an individual who is otherwise in the service of the Commonwealth, a State, Territory or a local government (including service as a member of a military or police force or service);
- (j) a contractor who exercises a function or performs work for the Commonwealth, a State, another Territory or a local government.

*services* includes any rights (including rights in relation to, and interests in, property), benefits, privileges or facilities, but does not include rights or benefits that are the supply of goods.

*supply* includes—

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- (a) in relation to goods—supply (or re-supply) by way of sale, exchange, lease, hire or hire-purchase; and
- (b) in relation to services—provide, grant and confer.

***Territory public official*** means a person having public official functions for the Territory, or acting in a public official capacity for the Territory, and includes the following:

- (a) a member of the Legislative Assembly;
- (b) a Minister;
- (c) a judge, magistrate or tribunal member;
- (d) the master of the Supreme Court;
- (e) the registrar of a court or tribunal;
- (f) a public servant;
- (g) an officer or employee of a Territory authority or instrumentality;
- (h) a statutory office-holder or an officer or employee of a statutory office-holder;
- (i) a police officer;
- (j) a contractor who exercises a function or performs work for the Territory, a Territory authority or instrumentality or a statutory office-holder.

### **301 Person to whom property belongs for ch 3**

- (1) Property ***belongs*** to anyone having possession or control of it, or having any proprietary right or interest in it (other than an equitable

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interest arising only from an agreement to transfer or grant an interest, or from a constructive trust).

- (2) This section is subject to section 330 (Money transfers).

*Note* Section 305 (Person to whom property belongs for pt 3.2) affects the meaning of *belongs*.

### **302 Dishonesty a matter for trier of fact**

In a prosecution for an offence against this chapter, dishonesty is a matter for the trier of fact.

## **Part 3.2 Theft and related offences**

### **Division 3.2.1 Interpretation for part 3.2**

#### **303 Dishonesty for pt 3.2**

- (1) A person's appropriation of property belonging to someone else is not dishonest if the person appropriates the property in the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.
- (2) However, subsection (1) does not apply if the person appropriating the property held it as trustee or personal representative.
- (3) A person's appropriation of property belonging to someone else can be dishonest even if the person or another person is willing to pay for it.

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**304 Appropriation of property for pt 3.2**

- (1) Any assumption of the rights of an owner to ownership, possession or control of property, without the consent of a person to whom the property belongs, is an appropriation of the property.
- (2) If a person has come by property (innocently or not) without committing theft, subsection (1) applies to any later assumption of those rights without consent by keeping or dealing with it as owner.
- (3) If property is, or purports to be, transferred or given to a person acting in good faith, a later assumption by the person of rights the person believed the person was acquiring is not an appropriation of property because of any defect in the transferor's title.

**305 Person to whom property belongs for pt 3.2**

- (1) If property belongs to 2 or more people, the property is taken to belong to all of them.
- (2) If property is subject to a trust—
  - (a) the person to whom the property belongs includes anyone who has a right to enforce the trust; and
  - (b) an intention to defeat the trust is an intention to deprive any such person of the property.
- (3) Property of a corporation sole belongs to the corporation despite a vacancy in the corporation.
- (4) If a person (*A*) receives property from or on account of someone else (*B*) and is under a legal obligation to *B* to retain and deal with the property or its proceeds in a particular way, the property or proceeds belong to *B*, as against *A*.

- (5) If a person (*A*) gets property by someone else's fundamental mistake and is under a legal obligation to make restoration (in whole or part) of the property, its proceeds or its value—
- (a) the property or its proceeds belong (to the extent of the obligation and as against *A*) to the person entitled to restoration (*B*); and
  - (b) an intention not to make restoration is—
    - (i) an intention to permanently deprive *B* of the property or proceeds; and
    - (ii) an appropriation of the property or proceeds without *B*'s consent.

- (6) In this section:

*fundamental mistake*, in relation to property, means—

- (a) a mistake about the identity of the person getting the property; or
- (b) a mistake about the essential nature of the property; or
- (c) a mistake about the amount of any money, if the person getting the money is aware of the mistake when getting the money.

*money* includes anything that is equivalent to money.

**Examples of things equivalent to money**

- 1 a cheque or other negotiable instrument
- 2 an electronic funds transfer

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

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**306 Intention of permanently depriving for pt 3.2**

- (1) A person (*A*) has the intention of permanently depriving someone else (*B*) of property belonging to B if—
  - (a) A appropriates property belonging to B without meaning B to permanently lose the property; and
  - (b) A intends to treat the property as A's own to dispose of regardless of B's rights.
- (2) For subsection (1), if A borrows or lends property belonging to B, the borrowing or lending may amount to treating the property as A's own to dispose of regardless of B's rights if, but only if, the borrowing or lending is for a period, and in circumstances, making it equivalent to an outright taking or disposal.
- (3) Without limiting this section, if—
  - (a) A has possession or control (lawfully or not) of property belonging to B; and
  - (b) A parts with the property under a condition about its return that A may not be able to carry out; and
  - (c) the parting is done for A's own purposes and without B's authority;the parting amounts to treating the property as A's own to dispose of regardless of B's rights.
- (4) This section does not limit the circumstances in which a person can be taken to have the intention of permanently depriving someone else of property.

### **307 General deficiency**

A person can be found guilty of theft of all or any part of a general deficiency in money or other property even though the deficiency is made up of a number of particular amounts of money or items of other property that were appropriated over a period.

## **Division 3.2.2 Indictable offences for part 3.2**

### **308 Theft**

A person commits an offence (*theft*) if the person dishonestly appropriates property belonging to someone else with the intention of permanently depriving the other person of the property.

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

*Note* For alternative verdict provisions applying to this offence, see s 370, s 371 and s 372.

### **309 Robbery**

A person commits an offence (*robbery*) if—

- (a) the person commits theft; and
- (b) when committing the theft, or immediately before or immediately after committing the theft, the person—
  - (i) uses force on someone else; or
  - (ii) threatens to use force then and there on someone else;

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with intent to commit theft or to escape from the scene.

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

*Note* **Theft** means an offence against s 308 or s 321.

### **310 Aggravated robbery**

A person commits an offence (*aggravated robbery*) if the person—

- (a) commits robbery in company with 1 or more people; or
- (b) commits robbery and, at the time of the robbery, has an offensive weapon with him or her.

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

*Note* **Robbery** means an offence against section 309.

### **311 Burglary**

- (1) A person commits an offence (*burglary*) if the person enters or remains in a building as a trespasser with intent—

- (a) to commit theft of any property in the building; or
- (b) to commit an offence in the building that—
  - (i) involves causing harm to a person or damage to property; and
  - (ii) is punishable by imprisonment for 5 years or longer.

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

- (2) In subsection (1) (b), *offence* includes an offence against a Commonwealth law.
- (3) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the offence mentioned in subsection (1) (b) is punishable by imprisonment for 5 years or longer.
- (4) For this section, a person is not a trespasser only because the person is permitted to enter or remain in the building—
  - (a) for a purpose that is not the person’s intended purpose; or
  - (b) because of fraud, misrepresentation or someone else’s mistake.
- (5) In this section:  
*building* includes the following:
  - (a) a part of any building;
  - (b) a mobile home or caravan;
  - (c) a structure (whether or not moveable), vehicle, or vessel, that is used, designed or adapted for residential purposes.

### **312 Aggravated burglary**

- (1) A person commits an offence (*aggravated burglary*) if the person—
  - (a) commits burglary in company with 1 or more people; or
  - (b) commits burglary and, at the time of the burglary, has an offensive weapon with him or her.

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

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- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that a relevant offence mentioned in section 311 (1) (b) is punishable by imprisonment for 5 years or longer.

### **313 Receiving**

- (1) A person commits an offence (*receiving*) if the person dishonestly receives stolen property, knowing or believing the property to be stolen.

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

*Note* For an alternative verdict provision applying to receiving, see s 371.

- (2) A person cannot be found guilty of both theft (or a related offence) and receiving in relation to the same property if the person retains custody or possession of the property.
- (3) For this section—
- (a) it is to be assumed that sections 308 to 312 and section 326 had been in force at all times before the commencement of this section; and
- (b) property that was appropriated or obtained before the commencement of this section, does not become original stolen property unless the property was appropriated or obtained in circumstances that (apart from paragraph (a)) amounted to an offence against a Territory law in force at that time.
- (4) In this section:

*related offence* means any of the following:



- (a) robbery;
- (b) aggravated robbery;
- (c) burglary;
- (d) aggravated burglary;
- (e) obtaining property by deception.

**314 Receiving—meaning of *stolen property***

- (1) For section 313, property is *stolen property* if it is—
    - (a) original stolen property; or
    - (b) previously received property; or
    - (c) tainted property.
  - (2) *Stolen property* does not include land appropriated or obtained in the course of theft or obtaining property by deception.
  - (3) Property is *original stolen property* if it is—
    - (a) property, or a part of property, that—
      - (i) was appropriated—
        - (A) in the ACT in the course of theft or a related offence; or
        - (B) in a place outside the ACT in the course of an offence in that place that would have been theft or a related offence if it had happened in the ACT;
- whether or not the property, or the part of the property, is in the state it was in when it was appropriated; and

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- (ii) is in the custody or possession of the person who appropriated it; or
- (b) property, or a part of property, that—
  - (i) was obtained—
    - (A) in the ACT in the course of obtaining property by deception; or
    - (B) in a place outside the ACT in the course of an offence in that place that would have been obtaining property by deception if it had happened in the ACT;
  - whether or not the property, or the part of the property, is in the state it was in when it was obtained; and
  - (ii) is in the custody or possession of the person who obtained it or for whom it was obtained.
- (4) Property is *previously received property* if it is property that—
  - (a) was received—
    - (i) in the ACT in the course of an offence of receiving; or
    - (ii) in a place outside the ACT in the course of an offence in that place that would have been receiving if it had happened in the ACT; and
  - (b) is in the custody or possession of the person who received it in the course of that offence.
- (5) For subsections (3) and (4), property ceases to be original stolen property or previously received property—

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- (a) when it is restored to the person from whom it was appropriated or obtained, or to other lawful custody or possession; or
  - (b) when the person from whom it was appropriated or obtained, or anyone claiming through that person, ceases to have any right to restitution in relation to it.
- (6) Property is *tainted property* if it—
- (a) is, in whole or part, the proceeds of sale of, or property exchanged for—
    - (i) original stolen property; or
    - (ii) previously received property; and
  - (b) if paragraph (a) (i) applies—is in the custody or possession of—
    - (i) for original stolen property appropriated as mentioned in subsection (3) (a) (i)—the person who appropriated it; or
    - (ii) for original stolen property obtained as mentioned in subsection (3) (b) (i)—the person who obtained it or for whom it was obtained; and
  - (c) if paragraph (a) (ii) applies—is in the custody or possession of the person who received the previously received property in the course of an offence mentioned in subsection (5) (a).
- (7) If, because of the application of section 330 (Money transfers), an amount credited to an account held by a person is property obtained in the ACT in the course of obtaining property by deception (or

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outside the ACT in the course of an offence that would have been obtaining property by deception if it had happened in the ACT)—

- (a) the property is taken to be in the possession of the person while all or any part of the amount remains credited to the account; and
  - (b) the person is taken to have received the property if the person fails to take the steps that are reasonable in the circumstances to ensure that the credit is cancelled; and
  - (c) subsection (5) of this section does not apply to the property.
- (8) The definition of **obtain** in section 300 does not apply to this section.

*Note* See s 328 for the meaning of **obtain** for the application of this section to div 3.3.3 (Obtaining property by deception).

- (9) In this section:

**account**—see section 325 (Definitions for pt 3.3).

**related offence** means any of the following:

- (a) robbery;
- (b) aggravated robbery;
- (c) burglary;
- (d) aggravated burglary.

**315 Going equipped for theft etc [CA s 107, MCC 16.7]**

- (1) A person commits an offence if the person, in any place other than the person's home, has with him or her an article with intent to use it in the course of or in relation to theft or a related offence.

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

- (2) In a prosecution for an offence against this section in relation to an offence of burglary or aggravated burglary, it is not necessary to prove that the defendant knew that a relevant offence mentioned in section 311 (1) (b) is punishable by imprisonment for 5 years or longer.

- (3) In this section:

*related offence* means any of the following:

- (a) robbery;
- (b) aggravated robbery;
- (c) burglary;
- (d) aggravated burglary;
- (e) an offence against section 318 (Taking etc motor vehicle without consent);
- (f) obtaining property by deception.

**316 Going equipped with offensive weapon for theft etc [CA s 150]**

- (1) A person commits an offence if the person, in any place other than the person's home, has with him or her an offensive weapon with

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intent to use it in the course of or in relation to theft or a related offence.

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

(2) In a prosecution for an offence against this section in relation to an offence of burglary or aggravated burglary, it is not necessary to prove that the defendant knew that a relevant offence mentioned in section 311 (1) (b) is punishable by imprisonment for 5 years or longer.

(3) In this section:

*related offence* means any of the following:

- (a) robbery;
- (b) aggravated robbery;
- (c) burglary;
- (d) aggravated burglary.

### **317 Making off without payment [CA s 98 (1)]**

- (1) A person commits an offence if the person—
- (a) knows the person is required or expected to make immediate payment for goods or services supplied by someone else; and
  - (b) dishonestly makes off—
    - (i) without having paid the amount owing; and

(ii) with intent to avoid payment of the amount owing.

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

- (2) This section does not apply in relation to a supply of goods or services that is contrary to law.
- (3) In this section:

*immediate payment* includes payment when collecting goods in relation to which a service has been supplied.

**318 Taking etc motor vehicle without consent [MCC 16.5, CA s 111]**

- (1) A person commits an offence if the person—
- (a) dishonestly takes a motor vehicle belonging to someone else; and
- (b) does not have consent to take the vehicle from a person to whom it belongs.

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

*Note 1* Part 2.3 (Circumstances where there is no criminal responsibility) provides for defences that apply to offences under the Code. These include the defence of lawful authority (see s 43).

*Note 2* For the meaning of *dishonest*, see s 300.

- (2) A person commits an offence if the person—
- (a) dishonestly drives or rides in or on a motor vehicle belonging to someone else; and

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- (b) knows, or is reckless about whether, the vehicle was dishonestly taken by someone without the consent of a person to whom it belongs.

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

*Note* For alternative verdict provisions applying to an offence against this section, see s 370.

- (3) In this section:

*car*—see the *Road Transport (Vehicle Registration) Regulations 2000*, dictionary.

*car derivative*—see the *Road Transport (Vehicle Registration) Regulations 2000*, dictionary.

*motorbike*—see the *Road Transport (Vehicle Registration) Regulations 2000*, dictionary.

*motor vehicle* means a car, car derivative or motorbike.

### **319 Dishonestly taking Territory property**

- (1) A person commits an offence if the person—
- (a) on a particular occasion, dishonestly takes 1 or more items of property belonging to the Territory; and
  - (b) does not have consent to take the item or any of the items from a person who has the authority to consent; and
  - (c) either—
    - (i) the property has a value or total value of more than \$500;
    - or



- (ii) the absence of the item or any of the items from the custody, possession or control of the person who would otherwise have had custody, possession or control would be likely to cause substantial disruption to activities carried on by or for the Territory.

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

- (2) In this section:

*Territory* includes the following:

- (a) a Territory authority;
- (b) a Territory owned corporation;
- (c) a Territory instrumentality that is not a Territory authority or a Territory owned corporation.

### **320 Dishonestly retaining Territory property**

- (1) A person commits an offence if the person—
  - (a) on a particular occasion, takes 1 or more items of property belonging to the Territory; and
  - (b) dishonestly retains any or all of the items; and
  - (c) does not have consent to retain the item or any of the items dishonestly retained from a person who has the authority to consent; and
  - (d) either—
    - (i) the property dishonestly retained had a value or total value of more than \$500 when it was taken; or

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- (ii) the absence of the item, or any of the items, dishonestly retained from the custody, possession or control of the person who would otherwise have had custody, possession or control is likely to cause substantial disruption to activities carried on by or for the Territory.

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

- (2) In this section:

*Territory*—see section 319.

### **Division 3.2.3          Summary offences for part 3.2**

#### **321    Minor theft**

- (1) A person commits an offence (also *theft*) if the person dishonestly appropriates property belonging to someone else with the intention of permanently depriving the other person of the property.

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

- (2) In this section:

*property* does not include property with a value of more than \$2 000.

#### **322    Removal of articles on public exhibition [CA s 149]**

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

- (a) dishonestly removes from premises that are at any time open to the public an article that is publicly exhibited, or kept for public exhibition, at the premises; and
- (b) does not have the consent to remove the article from a person entitled to give the consent.

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

- (2) This section does not apply in relation to an article that is publicly exhibited, or kept for public exhibition, for the purpose of selling, or any other commercial dealing with, the article or articles of that kind.
- (3) In this section:

*premises* includes any building or part of a building.

### **323 Making off without payment [CA s 98 (2)]**

- (1) A person commits an offence if the person—
  - (a) knows the person is required or expected to make immediate payment for goods or services supplied by someone else; and
  - (b) dishonestly makes off—
    - (i) without having paid the amount owing; and
    - (ii) with intent to avoid payment of the amount owing.

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

- (2) This section does not apply in relation to a supply of goods or services—

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- (a) that is contrary to law; or
  - (b) the value of which is more than \$2 000.
- (3) In this section:

*immediate payment* includes payment when collecting goods in relation to which a service has been supplied.

**324 Unlawful possession of stolen property [CA s 386]**

- (1) A person commits an offence if—
- (a) the person—
    - (i) has property in the person’s possession; or
    - (ii) has property in someone else’s possession; or
    - (iii) has property in or on any premises (whether or not the premises belong to or are occupied by the person or the property is there for the person’s own use); or
    - (iv) gives possession of property to someone who is not lawfully entitled to possession of it; and
  - (b) the property is reasonably suspected of being stolen property.

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 that the defendant knew or suspected that the property was stolen property.
- (3) However, it is a defence to a prosecution for an offence against this section if the defendant proves that—

- (a) the defendant had no reasonable grounds for suspecting that the property concerned was stolen property; or
  - (b) the property concerned was not stolen property.
- (4) In this section:

*premises* includes any aircraft, building, structure, vehicle or vessel, or any place (whether built on or not), and any part of an aircraft, building, structure, vehicle, vessel or place.

*stolen property*—see section 314.

## **Part 3.3                      Fraudulent conduct**

### **Division 3.3.1              Interpretation for part 3.3**

#### **325    Definitions for pt 3.3**

In this part:

*account* means an account (including a loan account, credit card account or similar account) with a bank or other financial institution.

*deception* means an intentional or reckless deception, whether by words or other conduct, and whether as to fact or law, and includes—

- (a) a deception about the intention of the person using the deception or anyone else; and
- (b) conduct by a person that causes a computer, a machine or an electronic device to make a response that the person is not authorised to cause it to do.

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## **Division 3.3.2      Obtaining property by deception**

### **326    Obtaining property by deception**

A person commits an offence (*obtaining property by deception*) if the person, by deception, dishonestly obtains property belonging to someone else with the intention of permanently depriving the other person of the property.

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

*Note*      For alternative verdict provisions applying to obtaining property by deception, see s 371 and s 372.

### **327    Meaning of *dishonesty*—div 3.3.2**

A person's obtaining of property belonging to someone else can be dishonest even if the person or another person is willing to pay for it.

### **328    Meaning of *obtains*—div 3.3.2**

- (1) For this division, and for the application of section 313 (Receiving) to this division, a person *obtains* property if—
  - (a) the person obtains ownership, possession or control of it for the person or someone else; or
  - (b) the person enables ownership, possession or control of it to be retained by the person or someone else; or
  - (c) the person induces a third person to pass ownership, possession or control of it to someone else; or

- (d) the person induces a third person to enable someone else to retain ownership, possession or control of it; or
  - (e) section 330 (2) or (3) (Money transfers) applies.
- (2) The definition of *obtain* in section 300 does not apply to this division, or for the application of section 313 (Receiving) to this division.

**329 Intention of permanently depriving—div 3.3.3**

- (1) A person (*A*) has the intention of permanently depriving someone else (*B*) of property belonging to B if—
- (a) A obtains property belonging to B without meaning B to permanently lose the property; and
  - (b) A intends to treat the property as A's own to dispose of regardless of B's rights.
- (2) For subsection (1), if A borrows or lends property belonging to B, the borrowing or lending may amount to treating the property as A's own to dispose of regardless of B's rights if, but only if, the borrowing or lending is for a period, and in circumstances, making it equivalent to an outright taking or disposal.
- (3) Without limiting this section, if—
- (a) A has possession or control (lawfully or not) of property belonging to B; and
  - (b) A parts with the property under a condition about its return that A may not be able to carry out; and
  - (c) the parting is done for A's own purposes and without B's authority;

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the parting amounts to treating the property as A's own to dispose of regardless of B's rights.

- (4) This section does not limit the circumstances in which a person can be taken to have the intention of permanently depriving someone else of property.

### **330 Money transfers**

- (1) This section applies for this division and for the application of section 313 (Receiving) to this division.
- (2) If a person (*A*) causes an amount to be transferred from an account held by someone else (*B*) to an account held by A—
  - (a) the amount is taken to have been property that belonged to B; and
  - (b) A is taken to have obtained the property for A with the intention of permanently depriving B of the property.
- (3) If a person (*A*) causes an amount to be transferred from an account held by someone else (*B*) to an account held by a third person (*C*)—
  - (a) the amount is taken to have been property that belonged to B; and
  - (b) A is taken to have obtained the property for C with the intention of permanently depriving B of the property.
- (4) An amount of credit is transferred from an account (*account 1*) to another account (*account 2*) if—
  - (a) a credit is made to account 2; and
  - (b) a debit is made to account 1; and

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- (c) the credit results from the debit or the debit results from the credit.
- (5) A person causes an amount to be transferred from an account if the person induces someone else to transfer the amount from the account (whether or not the other person is the account holder).

**331 General deficiency for div 3.3.2**

A person can be found guilty of an offence of obtaining property by deception involving all or any part of a general deficiency in money or other property even though the deficiency is made up of a number of particular amounts of money or items of other property that were obtained over a period.

**Division 3.3.3 Other indictable offences for part 3.3**

**332 Obtaining financial advantage by deception**

A person commits an offence if the person, by deception, dishonestly obtains a financial advantage from someone else.

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

**333 General dishonesty**

- (1) A person commits an offence if—
  - (a) the person does something with the intention of dishonestly obtaining a gain from someone else; and

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(b) the other person is the Territory.

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

(2) A person commits an offence if—

(a) the person does something with the intention of dishonestly causing a loss to someone else; and

(b) the other person is the Territory.

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

(3) In a prosecution for an offence against subsection (1) or (2), it is not necessary to prove that the defendant knew that the other person was the Territory.

(4) A person commits an offence if—

(a) the person—

(i) dishonestly causes a loss, or a risk of loss, to someone else; and

(ii) knows or believes that the loss will happen or that there is a substantial risk of the loss happening; and

(b) the other person is the Territory.

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

(5) Absolute liability applies to subsection (4) (b) .

(6) A person commits an offence if—

- (a) the person does something with the intention of dishonestly influencing a public official in the exercise of the official's duty as a public official; and
- (b) the public official is a Territory public official; and
- (c) the duty is a duty as a Territory public official.

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

- (7) In a prosecution for an offence against subsection (6), it is not necessary to prove that the defendant knew that—
  - (a) the official was a Territory public official; or
  - (b) the duty was a duty as a Territory public official.

- (8) In this section:

*Territory*—see section 319.

### **334 Conspiracy to defraud**

- (1) A person commits an offence if the person conspires with someone else with the intention of dishonestly obtaining a gain from a third person.

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

- (2) A person commits an offence if the person conspires with someone else with the intention of dishonestly causing a loss to a third person.

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

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- (3) A person commits an offence if the person—
- (a) conspires with someone else to dishonestly cause a loss, or a risk of loss, to a third person; and
  - (b) knows or believes that the loss will happen, or that there is a substantial risk of the loss happening.

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

- (4) A person commits an offence if the person conspires with someone else with the intention of dishonestly influencing a public official in the exercise of the official's duty as a public official.

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

- (5) A person commits an offence against this section (*conspiracy to defraud*) only if—

- (a) the person enters into an agreement with at least 1 other person; and
- (b) the person and at least 1 other party to the agreement intend to do the thing under the agreement; and
- (c) the person or at least 1 other party to the agreement commits an overt act under the agreement.

- (6) A person may be found guilty of conspiracy to defraud even if—

- (a) it was impossible to obtain the gain, cause the loss or risk of loss, or influence the public official; or

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- (b) the person and each other party to the agreement is a corporation; or
  - (c) each other party to the agreement is—
    - (i) a person who is not criminally responsible; or
    - (ii) for an agreement to commit an offence—a person for whose benefit or protection the offence exists; or
  - (d) all other parties to the agreement are acquitted of the offence (unless to find the person guilty would be inconsistent with their acquittal).
- (7) A person must not be found guilty of conspiracy to defraud if, before the commission of an overt act under the agreement, the person—
- (a) withdrew from the agreement; and
  - (b) took all reasonable steps to prevent the doing of the thing.
- (8) A person must not be found guilty of an offence of conspiracy to defraud in relation to an agreement to commit an offence (an ***agreed offence***) if the person is someone for whose benefit or protection the agreed offence exists.
- (9) Any defence, procedure, limitation or qualifying provision applying to an agreed offence applies also to an offence of conspiracy to defraud in relation to the agreed offence.
- (10) A court may dismiss a charge of conspiracy to defraud if it considers that the interests of justice require it to dismiss the charge.

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- (11) A proceeding for an offence of conspiracy to defraud must not be begun without the consent of the Attorney-General or the director of public prosecutions.
- (12) However, a person may be arrested for, charged with or remanded in custody or released on bail in relation to an offence of conspiracy to defraud before the consent is given.

### **Division 3.3.4          Summary offences for part 3.3**

#### **335    Obtaining financial advantage from the Territory**

- (1) A person commits an offence if—
  - (a) the person obtains a financial advantage for the person from someone else; and
  - (b) the person knows or believes that the person is not eligible to receive the financial advantage; and
  - (c) the other person is the Territory.

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

- (2) Absolute liability applies to subsection (1) (c).
- (3) A person commits an offence if—
  - (a) the person obtains a financial advantage for someone else (**B**) from a third person; and
  - (b) the person knows or believes that B is not eligible to receive the financial advantage; and

(c) the third person is the Territory.

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

- (4) Absolute liability applies to subsection (3) (c).
- (5) For subsection (3), a person (A) is taken to have obtained a financial advantage for someone else from the Territory if A induces the Territory to do something that results in the other person obtaining the financial advantage.
- (6) The definition of *obtain* in section 300 does not apply to this section.
- (7) In this section:  
*Territory*—see section 319.

### **336 Passing valueless cheques**

- (1) A person commits an offence if—
  - (a) the person obtains property, a financial advantage or other benefit from someone else by passing a cheque; and
  - (b) the person—
    - (i) does not have reasonable grounds for believing that the cheque will be paid in full on presentation; or
    - (ii) intends to dishonestly obtain the property, financial advantage or benefit from someone else.

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

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- (2) A person may be found guilty of an offence against this section even though, when the cheque was passed, there were some funds to the credit of the account on which the cheque was drawn.
- (3) In this section:  
*benefit* includes any advantage and is not limited to property.

## **Part 3.4                      False or misleading statements, information and documents**

### **337 Making false or misleading statements**

- (1) A person commits an offence if—
  - (a) the person makes a statement (whether orally, in a document or in any other way); and
  - (b) the person does so knowing that the statement—
    - (i) is false or misleading; or
    - (ii) omits anything without which the statement is misleading; and
  - (c) the statement is made in or in relation to an application or claim for a statutory entitlement or a benefit; and
  - (d) any of the following applies:
    - (i) the statement is made to the Territory;
    - (ii) the statement is made to a person who is exercising a function under a Territory law;



- (iii) the statement is made in compliance or purported compliance with a Territory law.

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

- (2) Absolute liability applies to subsection (1) (d) (i), (ii) and (iii).
- (3) A person commits an offence if—
  - (a) the person makes a statement (whether orally, in a document or in any other way); and
  - (b) the person is reckless about whether the statement—
    - (i) is false or misleading; or
    - (ii) omits anything without which the statement is misleading; and
  - (c) the statement is made in or in relation to an application or claim for a statutory entitlement or a benefit; and
  - (d) any of the following applies:
    - (i) the statement is made to the Territory;
    - (ii) the statement is made to a person who is exercising a function under a Territory law;
    - (iii) the statement is made in compliance or purported compliance with a Territory law.

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

- (4) Absolute liability applies to subsection (3) (d) (i), (ii) and (iii).

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- (5) Subsections (1) (b) (i) and (3) (b) (i) do not apply if the statement is not false or misleading in a material particular.
- (6) Subsections (1) (b) (ii) and (3) (b) (ii) do not apply if the omission does not make the statement misleading in a material particular.

*Note* The defendant bears an evidential burden in relation to the matters mentioned in subsections (5) and (6) (see s 58 (3)).

- (7) In this section:

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

***statutory entitlement*** includes an accreditation, approval, assessment, authority, certificate, condition, decision, determination, exemption, licence, permission, permit, registration or other prescribed thing giving a status, privilege or benefit under a law (whether or not required under the law for doing anything).

***Territory***—see section 319.

*Note* For an alternative verdict provision applying to this offence, see s 374.

### **338 Giving false or misleading information**

- (1) A person commits an offence if—
  - (a) the person gives information to someone else; and
  - (b) the person does so knowing that the information—
    - (i) is false or misleading; or
    - (ii) omits anything without which the information is misleading; and
  - (c) any of the following applies:

- (i) the person to whom the information is given is the Territory;
- (ii) the person to whom the information is given is a person who is exercising a function under a Territory law;
- (iii) the information is given in compliance or purported compliance with a Territory law.

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

- (2) Absolute liability applies to subsection (1) (c) (i), (ii) and (iii).
- (3) Subsection (1) (b) (i) does not apply if the information is not false or misleading in a material particular.
- (4) Subsection (1) (b) (ii) does not apply if the omission does not make the information misleading in a material particular.
- (5) Subsection (1) (c) (i) does not apply if, before the information was given by the person to the Territory, the Territory did not take reasonable steps to tell the person about the existence of the offence against subsection (1).
- (6) Subsection (1) (c) (ii) does not apply if, before the information was given by a person (*A*) to the person mentioned in that subparagraph (*B*), *B* did not take reasonable steps to tell *A* about the existence of the offence against subsection (1).
- (7) For subsections (5) and (6), it is sufficient if the following form of words is used:  

‘Giving false or misleading information is a serious offence’.
- (8) In this section:

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*Territory*—see section 319.

### **339 Producing false or misleading documents**

- (1) A person commits an offence if—
- (a) the person produces a document to someone else; and
  - (b) the person does so knowing that the document is false or misleading; and
  - (c) the document is produced in compliance or purported compliance with a Territory law.

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

- (2) Subsection (1) (b) does not apply if the document is not false or misleading in a material particular.
- (3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a signed statement—
- (a) stating that the document is, to the signing person's knowledge, false or misleading in a material particular; and
  - (b) setting out, or referring to, the material particular in which the document is, to the signing person's knowledge, false or misleading.
- (4) The statement under subsection (3) must be signed by—
- (a) the person; or
  - (b) if the person who produces the document is a corporation—a competent officer of the corporation.

## Part 3.5                      Blackmail

### 340    Meaning of *menace* for pt 3.5

- (1) A *menace* includes—
  - (a) an express or implied threat of action that is detrimental or unpleasant to someone else; or
  - (b) a general threat of detrimental or unpleasant action that is implied because the person making the demand is a public official.
- (2) A threat against an individual is a *menace* only if—
  - (a) the threat would be likely to cause an individual of normal stability and courage to act unwillingly; or
  - (b) the threat would be likely to cause the individual to act unwillingly because of a particular vulnerability of which the maker of the threat is aware.
- (3) A threat against an entity other than an individual is a *menace* only if—
  - (a) the threat would ordinarily cause an unwilling response; or
  - (b) the threat would be likely to cause an unwilling response because of a particular vulnerability of which the maker of the threat is aware.

### 341    Meaning of *unwarranted demand with a menace* for pt 3.5

- (1) A person makes an *unwarranted demand with a menace* of someone else only if the person—

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- (a) makes a demand with a menace of the other person; and
  - (b) does not believe that he or she has reasonable grounds for making the demand; and
  - (c) does not reasonably believe that the use of the menace is a proper means of reinforcing the demand.
- (2) The demand need not be a demand for money or other property.
- (3) It does not matter whether the menace relates to action to be taken by the person making the demand.

#### **342 Blackmail**

A person commits an offence if the person makes an unwarranted demand with a menace of someone else with the intention of—

- (a) obtaining a gain; or
- (b) causing a loss; or
- (c) influencing the exercise of a public duty.

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

## **Part 3.6 Forgery and related offences**

### **Division 3.6.1 Interpretation for part 3.6**

#### **343 Definitions for pt 3.6**

In this part:

*document* includes any of the following:

- (a) anything on which there are figures, marks, numbers, perforations, symbols or anything else that can be responded to by a computer, machine or electronic device;
- (b) a credit card or debit card;
- (c) a formal or informal document.

*Note* For further definition of *document*, see the Legislation Act, dict, pt 1.

*false document*—see section 344.

### **344 Meaning of *false document* etc for pt 3.6**

- (1) A document is *false* only if the document, or any part of the document, purports—
  - (a) to have been made in the form in which it is made by a person who did not make it in that form; or
  - (b) to have been made in the form in which it is made on the authority of a person who did not authorise its making in that form; or
  - (c) to have been made in the terms in which it is made by a person who did not make it in those terms; or
  - (d) to have been made in the terms in which it is made on the authority of a person who did not authorise its making in those terms; or
  - (e) to have been changed in any way by a person who did not change it in that way; or

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- (f) to have been changed in any way on the authority of a person who did not authorise it to be changed in that way; or
  - (g) to have been made or changed by an existing person who did not exist; or
  - (h) to have been made or changed on the authority of an existing person who did not exist; or
  - (i) to have been made or changed on a date on which, at a time or place at which, or otherwise in circumstances in which it was not made or changed.
- (2) For this part, **making** a false document includes changing the document so as to make it a false document under subsection (1) (whether or not it already was false in some other way).
- (3) For this section, a document that purports to be a true copy of another document is to be treated as if it were the original document.

### **345 Inducing acceptance that document genuine**

For sections 346, 347 and 348—

- (a) a reference to inducing a person to accept a document as genuine includes a reference to causing a computer, machine or electronic device to respond to the document as if it were genuine; and
- (b) it is not necessary to prove an intention to induce a particular person to accept the false document as genuine.



## **Division 3.6.2      Offences for part 3.6**

### **346    Forgery** [CA s 126 (1) and (3), MCC 19.3]

A person commits an offence (*forgery*) if the person makes a false document with the intention that the person or someone else will use it—

- (a) to dishonestly induce another person (*C*) to accept it as genuine; and
- (b) because *C* accepts it as genuine, to dishonestly—
  - (i) obtain a gain; or
  - (ii) cause a loss; or
  - (iii) influence the exercise of a public duty.

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

### **347    Using false document** [CA s 126 (2) and (4), MCC 19.4]

A person commits an offence if the person uses a false document, knowing that it is false, with the intention of—

- (a) dishonestly inducing someone else to accept it as genuine; and
- (b) because the other person accepts it as genuine, dishonestly—
  - (i) obtaining a gain; or
  - (ii) causing a loss; or

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- (iii) influencing the exercise of a public duty.

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

**348 Possessing false document [CA s 127, MCC 19.5]**

A person commits an offence if the person has in the person's possession a false document, knowing that it is false, with the intention that the person or someone else will use it—

- (a) to dishonestly induce another person (C) to accept it as genuine; and
- (b) because C accepts it as genuine, to dishonestly—
  - (i) obtain a gain; or
  - (ii) cause a loss; or
  - (iii) influence the exercise of a public duty.

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

**349 Making or possessing device etc for making false document [CA s 128, MCC 19.6]**

- (1) A person commits an offence if the person makes or adapts a device, material or other thing—
  - (a) knowing that the thing is designed or adapted for making a false document (whether or not it is designed or adapted for another purpose); and

- (b) with the intention that the person or someone else will use the thing to commit forgery.

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

- (2) A person commits an offence if—

- (a) the person knows that a device, material or other thing is designed or adapted for making a false document (whether or not it is designed or adapted for another purpose); and
- (b) the person has the device, material or other thing in the person's possession with the intention that the person or someone else will use it to commit forgery.

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

- (3) A person commits an offence if the person makes or adapts a device, material or other thing knowing that it is designed or adapted for making a false document (whether or not it is designed or adapted for another purpose).

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

- (4) A person commits an offence if the person has in the person's possession a device, material or other thing knowing that it is designed or adapted for making a false document (whether or not it is designed or adapted for another purpose).

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

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- (5) Subsection (4) does not apply if the person has a reasonable excuse.

*Note* Part 2.3 (Circumstances where there is no criminal responsibility) provides for defences that apply to offences under the Code. These include the defence of lawful authority (see s 43).

### **350 False accounting**

- (1) A person commits an offence if—
- (a) the person dishonestly damages, destroys, changes, conceals or falsifies an accounting document; and
  - (b) the person does so with the intention of obtaining a gain or causing a loss.

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

- (2) For subsection (1), a person is taken to falsify an accounting document if the person—
- (a) makes, or concurs in making, in the document an entry that is false or misleading in a material particular; or
  - (b) omits, or concurs in omitting, a material particular from the document.
- (3) A person commits an offence if, in giving information for any purpose—
- (a) the person dishonestly produces to someone, or makes use of, an accounting document that the person knows is or may be false, misleading or deceptive in a material particular; and

- (b) the person does so with the intention of obtaining a gain or causing a loss.

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

- (4) In this section:

*accounting document* means any account, record or other document made or required for an accounting purpose.

### **351 False statement by officer of body**

- (1) An officer of a body commits an offence if—

- (a) the officer dishonestly publishes or agrees to the publishing of a document containing a statement or account that the officer knows is or may be false, misleading or deceptive in a material particular; and
- (b) the officer does so with the intention of deceiving members or creditors of the body about its affairs.

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

- (2) In this section:

*creditor*, of a body, includes a person who has entered into a security for the benefit of the body.

*officer*, of a body, includes—

- (a) any member of the body who is concerned in its management; and
- (b) any person purporting to act as an officer of the body.

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## **Part 3.7                      Bribery and related offences**

### **Division 3.7.1              Interpretation for part 3.7**

#### **352    Definitions for pt 3.7**

In this part:

*agent*—see section 353.

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

*favour*—an agent provides a *favour* if the agent—

- (a) is influenced or affected in the exercise of his or her function as agent; or
- (b) does or does not do something as agent, or because of his or her position as agent; or
- (c) causes or influences his or her principal, or another agent of the principal, to do or not do something.

*function*, of an agent, includes a function the agent holds himself or herself out as having as agent.

*principal*—see section 353.

**353 Meaning of *agent* and *principal* for pt 3.7**

- (1) An *agent* (and the *principal* of the agent) includes the following:

item	agent	principal of the agent
1	a person acting for someone else with that other person's actual or implied authority	that other person
2	a public official	the government or other body for which the official acts
3	an employee	the employer
4	a lawyer acting for a client	the client
5	a partner	the partnership
6	an officer of a corporation (whether or not employed by it)	the corporation
7	an officer of another body (whether or not employed by it)	the body
8	a consultant to a person	that person

- (2) A person is an agent or principal if the person is, or has been or intends to be, an agent or principal.

**354 Dishonesty for pt 3.7**

The provision of a benefit can be dishonest even if the provision of the benefit is customary in a trade, business, profession or calling.

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**355 Meaning of *obtain* for pt 3.7**

- (1) For this part, 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.
- (2) The definition of *obtain* in section 300 does not apply to this part.

**Division 3.7.2 Offences for part 3.7**

**356 Bribery [MCC 20.2, CCC s 141.1]**

- (1) A person commits an offence if—
  - (a) the person dishonestly—
    - (i) provides a benefit to an agent or someone else; or
    - (ii) causes a benefit to be provided to an agent or someone else; or
    - (iii) offers to provide, or promises to provide, a benefit to an agent or 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 an agent or someone else; and
  - (b) the person does so with the intention that the agent will provide a favour.

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

- (2) An agent commits an offence if—



- (a) the agent dishonestly—
  - (i) asks for a benefit for himself, herself or someone else; or
  - (ii) obtains a benefit for himself, herself or someone else; or
  - (iii) agrees to obtain a benefit for himself, herself or someone else; and
- (b) the agent does so with the intention—
  - (i) that he or she will provide a favour; or
  - (ii) of inducing, fostering or sustaining a belief that he or she will provide a favour.

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

**357 Other corrupting benefits** [MCC 20.3, CCC s 142.1]

- (1) A person commits an offence if—
  - (a) the person dishonestly—
    - (i) provides a benefit to an agent or someone else; or
    - (ii) causes a benefit to be provided to an agent or someone else; or
    - (iii) offers to provide, or promises to provide, a benefit to an agent or 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 an agent or someone else; and

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- (b) obtaining, or expecting to obtain, the benefit would tend to influence the agent to provide a favour.

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

- (2) An agent commits an offence if—

- (a) the agent dishonestly—

- (i) asks for a benefit for himself, herself or someone else; or
- (ii) obtains a benefit for himself, herself or someone else; or
- (iii) agrees to obtain a benefit for himself, herself or someone else; and

- (b) obtaining, or expecting to obtain, the benefit would tend to influence the agent to provide a favour.

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

- (3) For this section, it does not matter whether the benefit is in the nature of a reward.

### **358 Payola [MCC 20.4]**

A person commits an offence if—

- (a) the person holds himself or herself out to the public as being engaged in a business or activity of—
  - (i) making disinterested selections or examinations; or
  - (ii) expressing disinterested opinions in relation to property or services; and

- (b) the person dishonestly asks for or obtains, or agrees to obtain, a benefit for himself, herself or someone else in order to influence the selection, examination or opinion.

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

**359 Abuse of public office [MCC 20.5, CCC s 142.2]**

- (1) A public official commits an offence if—
  - (a) the official—
    - (i) exercises any function or influence that the official has as a public official; or
    - (ii) fails to exercise any function the official has as a public official; or
    - (iii) engages in any conduct in the exercise of the official's duties as a public official; or
    - (iv) uses any information that the official has gained as a public official; and
  - (b) the official does so with the intention of—
    - (i) dishonestly obtaining a benefit for himself, herself or someone else; or
    - (ii) dishonestly causing a detriment to someone else.

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

- (2) A person commits an offence if—

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- (a) the person has ceased to be a public official in a particular capacity; and
- (b) the person uses any information the person gained in that capacity; and
- (c) the person does so with the intention of—
  - (i) dishonestly obtaining a benefit for himself, herself or someone else; or
  - (ii) dishonestly causing a detriment to someone else.

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

- (3) Subsection (2) (a) applies to a person—
  - (a) whether the person ceased to be a public official as mentioned in the paragraph before, at or after the commencement of this section; and
  - (b) whether or not the person continues to be a public official in another capacity.

## **Part 3.8                      Impersonation or obstruction of Territory public officials**

### **Division 3.8.1              Indictable offences for part 3.8**

#### **360    Impersonating Territory public official [OAGA s 17, CCC 148.1, 148.2]**

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

- (a) on a particular occasion, impersonates someone else in the other person's capacity as a Territory public official; and
- (b) does so—
  - (i) knowing it to be in circumstances when the official is likely to be on duty; and
  - (ii) with intent to deceive.

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

- (2) A person commits an offence if the person—
  - (a) falsely represents himself or herself to be a Territory public official in a particular capacity (whether or not that capacity exists or is fictitious); and
  - (b) does so in the course of doing an act, or attending a place, in the assumed capacity of such an official.

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

- (3) A person commits an offence if the person—
  - (a) either—
    - (i) impersonates someone else in the other person's capacity as a Territory public official; or
    - (ii) falsely represents himself or herself to be a Territory public official in a particular capacity (whether or not that capacity exists or is fictitious); and
  - (b) does so—

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(i) with the intention of obtaining a gain, causing a loss or influencing the exercise of a public duty; and

(ii) if paragraph (a) (i) applies—also with intent to deceive.

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

(4) To remove any doubt, in this section:

*false representation* does not include conduct engaged in solely for entertainment.

*impersonation* does not include conduct engaged in solely for entertainment.

**361 Obstructing Territory public official** [OAGA s 18, CCC149.1]

(1) A person commits an offence if—

(a) the person—

(i) knows that another person is a public official; and

(ii) obstructs, hinders, intimidates or resists the public official in the exercise of his or her functions as a public official; and

(b) the public official is a Territory public official; and

(c) the functions are functions as a Territory public official.

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

- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that—
  - (a) the official was a Territory public official; or
  - (b) the functions were functions as a Territory public official.
- (3) For this section, it does not matter whether the defendant was aware that the public official was exercising the official's functions.
- (4) In this section:
  - function*—
    - (a) in relation to a person who is a public official—means a function that is given to the person as a public official; and
    - (b) in relation to a person who is a Territory public official—means a function given to the person as a Territory public official.

### **Division 3.8.2          Summary offences for part 3.8**

#### **362    Impersonating a police officer [OAGA s 17A (1)]**

- (1) A person who is not a police officer commits an offence if the person—
  - (a) represents himself or herself to be a police officer; or
  - (b) wears a uniform or badge of a police officer.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (2) An offence against subsection (1) is a strict liability offence.

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- (3) A person who is not a police officer commits an offence if the person wears clothing or a badge reckless about whether the clothing or badge would cause someone to believe that the person is a police officer.

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

**363 Impersonating a detective [OAGA s 17A (2)]**

- (1) A person who is not a police officer with the designation of detective commits an offence if the person—
- (a) represents himself or herself to be a detective; or
  - (b) carries on, or assists in, a business described as a detective business or agency.

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

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

**Part 3.9                      Procedural matters for  
chapter 3**

**Division 3.9.1              General**

**364 Stolen property held by dealers etc—owners rights [CA  
s 109]**

- (1) If the owner of stolen property makes a complaint to a magistrate that the property is in the possession of a dealer in second-hand



goods or a person (the *lender*) who has advanced money on the security of the property, the magistrate may—

- (a) issue a summons for the appearance of the dealer or lender and for the production of the property; and
  - (b) order the dealer or lender to give the property to the owner on payment by the owner of the amount (if any) that the magistrate considers appropriate.
- (2) A dealer or lender who contravenes an order under subsection (1) (b), or who disposes of any property after being told by the owner of the property that it is stolen, is liable to pay to the owner of the property the full value of the property as decided by a magistrate.

- (3) In this section:

*related offence* means any of the following:

- (a) robbery;
- (b) aggravated robbery;
- (c) burglary;
- (d) aggravated burglary;
- (e) obtaining property by deception.

*stolen property* means property appropriated or obtained in the course of theft or a related offence.

### **365 Stolen property held by police—disposal [CA s 110]**

- (1) This section applies if—

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- (a) property is lawfully in the custody of a police officer; and
  - (b) a person is charged with theft or a related offence in relation to the property; and
  - (c) the person charged—
    - (i) cannot be found; or
    - (ii) is convicted, discharged or acquitted in relation to the charge.
- (2) A magistrate may—
- (a) make an order for the property to be given to the person who appears to be the owner of the property; or
  - (b) if there is no-one who appears to be the owner—make any order in relation to the property that the magistrate considers just.
- (3) An order under this section does not prevent anyone from recovering the property from the person to whom the property is given under the order if a proceeding for the recovery is begun within 6 months after the day the order is made.
- (4) In this section:  
*related offence*—see section 364.

**366 Procedure and evidence—theft, receiving etc [CA s 113, s 114 (2)]**

- (1) Any number of people may be charged in a single indictment with theft or receiving in relation to the same property and the people charged may be tried together.

- (2) Any number of people may be charged in a single indictment with obtaining property by deception or receiving in relation to the same property and the people charged may be tried together.
- (3) On the trial of 2 or more people for jointly receiving stolen property, the trier of fact may find a defendant guilty if satisfied that the defendant received all or any of the stolen property, whether or not the defendant received it jointly with 1 or more of the other defendants.
- (4) On the trial of 2 or more people for theft and receiving, the trier of fact may find 1 or more of the defendants guilty of theft or receiving, or may find any of them guilty of theft and any other or others guilty of receiving.
- (5) On the trial of 2 or more people for obtaining property by deception and receiving, the trier of fact may find 1 or more of the defendants guilty of obtaining property by deception or receiving, or may find any of them guilty of obtaining property by deception and any other or others guilty of receiving.
- (6) Subsection (7) applies to a proceeding for the theft of property in the course of transmission (whether by post or otherwise), or for receiving stolen property from such a theft.
- (7) A statutory declaration by a person that he or she sent, received or failed to receive goods or a postal packet, or that goods or a postal packet when sent or received by him or her were or was in a particular state or condition, is admissible as evidence of the facts stated in the declaration—
  - (a) if and to the extent to which oral evidence to the same effect would have been admissible in the proceeding; and

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- (b) if, at least 7 days before the day of the beginning of the hearing or trial, a copy of the declaration is given to the defendant, and the defendant has not, at least 3 days before the day of the beginning of the hearing or trial, or within any further time that the court in special circumstances allows, given to the prosecution written notice requiring the attendance at the hearing or trial of the person making the declaration.

**367 Certain proceedings not to be heard together**

If a person is charged with an offence against section 324 (Unlawful possession of stolen property) and an offence of receiving in relation to the same property, proceedings for the offences must not be heard together.

**368 Indictment for offence relating to deeds, money etc [CA ss 155, 156]**

- (1) In an indictment for an offence against this chapter in relation to a document of title to land, or a part of a document of title to land, it is sufficient to state that the document or the part of the document is or contains evidence of the title to the land, and to mention the person, or any of the people, with an interest in the land, or in any part of the land.
- (2) In an indictment for an offence against this chapter in relation to money or a valuable security, it is sufficient to describe it as a certain amount of money, or a certain valuable security, without specifying a particular kind of money or security, and the description will be sustained by proof of the offence in relation to any money or valuable security even if it is agreed that part of the

value of the money or security has been returned, or part was in fact returned.

(3) In this section:

***document of title to land*** includes any document that is or contains evidence of title to the land or an interest in the land.

*Note* For definition of ***interest***, in relation to land, see the Legislation Act, dict, pt 1.

**369 Theft of motor vehicle—cancellation of licence [CA s 349]**

(1) This section applies if a person is found guilty of any of the following offences:

- (a) theft of a motor vehicle;
- (b) an offence against section 318 (Taking etc motor vehicle without consent).

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

(2) The court may, by order—

- (a) if the person holds a driver licence—disqualify the person from holding or obtaining a driver licence for the period the court considers appropriate; or
- (b) if the person does not hold a driver licence—disqualify the person from obtaining a driver licence for the period the court considers appropriate.

*Note* The effect of disqualification is set out in the *Road Transport (General) Act 1999*, s 66.

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- (3) If the court makes an order under this section, the court must give particulars of the order to the road transport authority.
- (4) In this section:  
*motor vehicle*—see the *Road Transport (Safety and Traffic Management) Act 1999*, dictionary.

## **Division 3.9.2          Alternative verdicts**

### **370    Alternative verdicts—theft and taking motor vehicle without consent [CA s 111 (3)]**

- (1) This section applies if, in a prosecution for theft, the trier of fact is not satisfied that the defendant committed theft but is satisfied beyond reasonable doubt that the defendant committed an offence against section 318 (Taking etc motor vehicle without consent).
- (2) The trier of fact may find the defendant guilty of the offence against section 318, but only if the defendant has been given procedural fairness in relation to that finding of guilt.
- (3) In this section:  
*theft* does not include an offence against section 321 (Minor theft).

### **371    Alternative verdicts—theft or obtaining property by deception and receiving**

- (1) If, in a prosecution for theft or obtaining property by deception, 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 of receiving, the trier of fact may find the

defendant guilty of receiving, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

- (2) If, in a prosecution for an offence of receiving, the trier of fact is not satisfied that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed theft or obtaining property by deception, the trier of fact may find the defendant guilty of theft or obtaining property by deception, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

**372 Alternative verdicts—~~theft and obtaining property by deception~~**

- (1) If, in a prosecution for an offence of theft, 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 of obtaining property by deception, the trier of fact may find the defendant guilty of obtaining property by deception, but only if the defendant has been given procedural fairness in relation to that finding of guilt.
- (2) If, in a prosecution for an offence of obtaining property by deception, 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 of theft, the trier of fact may find the defendant guilty of theft, but only if the defendant has been given procedural fairness in relation to that finding of guilt.
- (3) In this section:  
*theft* does not include an offence against section 321 (Minor theft).

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**373 Verdict of ‘theft or receiving’ etc [CA s 114 (1)]**

- (1) If, on the trial of a defendant charged with theft and receiving in relation to the same property, the trier of fact is satisfied beyond reasonable doubt that the defendant committed theft or receiving but cannot decide which of the offences the defendant committed, the trier of fact must find the defendant guilty of—
  - (a) the offence that is more probable; or
  - (b) if the trier of fact cannot decide which of the offences is more probable—theft.
- (2) If, on the trial of a defendant charged with obtaining property by deception and receiving in relation to the same property, the trier of fact is satisfied beyond reasonable doubt that the defendant committed obtaining property by deception or receiving but cannot decide which of the offences the defendant committed, the trier of fact must find the defendant guilty of—
  - (a) the offence that is more probable; or
  - (b) if the trier of fact cannot decide which of the offences is more probable—obtaining property by deception.
- (3) In this section:  
*theft* does not include an offence against section 321 (Minor theft).

**374 Alternative verdicts—making false or misleading statements**

- (1) This section applies if, in a prosecution for an offence against section 337 (1) (Making false or misleading statements), 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 337 (3).

- (2) The trier of fact may find the defendant guilty of the offence against section 337 (3), but only if the defendant has been given procedural fairness in relation to that finding of guilt.

### **Division 3.9.3            Forfeiture**

#### **375    Going equipped offences—~~forfeiture~~ [CA ss 107 (3), 150 (2)]**

- (1) If a person is found guilty of an offence against section 315 (Going equipped for theft etc) in relation to an article, the person must forfeit to the Territory the article and any other article of the kind mentioned in that section that is in the person's custody or possession.
- (2) If a person is found guilty of an offence against section 316 (Going equipped with offensive weapon for theft etc) in relation to an offensive weapon, the person must forfeit to the Territory the weapon and any other offensive weapon of the kind mentioned in that section that is in the person's custody or possession.

#### **376    Unlawful possession offence—~~forfeiture~~ [CA s 386A]**

- (1) If a person is found guilty of an offence against section 324 (Unlawful possession of stolen property), the property to which the offence relates is forfeited to the Territory—
  - (a) if the person found guilty is the owner of the property—when the person is found guilty; or

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- (b) in any other case—at the end of 90 days after the day the person is found guilty of the offence unless the owner of the property is known.
- (2) The forfeited property must be transferred to the public trustee.

**377 Unlawful possession offence—disposal of forfeited property by public trustee [CA s 386B]**

- (1) The public trustee must pay any forfeited money transferred to the public trustee under section 376 to the confiscated assets trust fund under the *Confiscation of Criminal Assets Act 2003*.
- (2) The public trustee must sell or otherwise dispose of other property transferred to the public trustee under section 376.
- (3) The public trustee must—
  - (a) apply the proceeds of the sale or disposition in payment of the public trustee’s remuneration, and other costs, charges and expenses, in relation to the sale or disposition; and
  - (b) pay the remainder of the proceeds to the confiscated assets trust fund under the *Confiscation of Criminal Assets Act 2003*.
- (4) However, the Minister may, in a particular case, direct that forfeited goods be dealt with in accordance with the direction (including in accordance with a law stated in the direction).
- (5) The public trustee must comply with the Minister’s direction.
- (6) The regulations may make provision in relation to public trustee’s remuneration, and other costs, charges and expenses, under subsection (3) (a).

**378 Unlawful possession offence—return of or compensation for forfeited property [CA s 386C]**

- (1) If, after the end of the 90day period mentioned in section 376 (1) (b), the owner of the property claims the property, the public trustee must, if satisfied that the person is the owner—
  - (a) if the property is money—pay the money to the person; or
  - (b) in any other case—return the property to the person or pay the person reasonable compensation for the property.
- (2) This section does not apply if the property is subject to forfeiture, or has been forfeited, under the *Confiscation of Criminal Assets Act 2003*.

*Note* The *Confiscation of Criminal Assets Act 2003* provides for compensation or the return of forfeited property in certain circumstances.

**379 Forgery offences—forfeiture [CA s 129]**

- (1) This section applies if a person is found guilty of an offence against any of the following sections:
  - (a) section 346 (Forgery);
  - (b) section 347 (Using false document);
  - (c) section 348 (Possessing false document);
  - (d) section 349 (Making or possessing device etc for making false document).
- (2) The court may order, under the *Crimes Act 1900*, section 367 (Procedure on forfeiture), that any article used in relation to the offence be forfeited to the Territory.

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**6 Definitions for pt 4.1**  
**Section 100, definition of *property***

*substitute*

***property*** means any property of a tangible nature.

*Note* For further definition of ***property***, see the dictionary and the Legislation Act, dict, pt 1.

**7 Sections 100 to 125**

*renumber as sections 400 to 425*

**8 Dictionary, new definitions**

*insert*

***account***, for part 3.3 (Fraudulent conduct)—see section 325.

***agent***, for part 3.7 (Bribery and related offences)—see section 353.

***aggravated burglary***—see section 312.

***aggravated robbery***—see section 310.

***belongs***, in relation to property, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

***benefit***, for part 3.7 (Bribery and related offences)—see section 352.

***burglary***—see section 311.

***cause***, a loss, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

***deception*** for part 3.3 (Fraudulent conduct)—see section 325.

***dishonest***, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

***duty***, of a person who is a public official, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

***explosive*** means a substance or article that—

- (a) is manufactured for the purpose of producing an explosion; or
- (b) a person has with the intention of using it to produce an explosion.

***favour***, for part 3.7 (Bribery and related offences)—see section 352.

***firearm*** includes an airgun and an airpistol.

***forgery***—see section 346.

***gain***, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

***loss***, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

***irreversible*** means irreversible by natural or artificial means.

***knife*** includes—

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

***obtaining property by deception***—see section 326.

***offensive weapon*** includes the following:

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- (a) anything made or adapted for use for causing injury to or incapacitating a person;
- (b) anything that a person has with the intention of using, or threatening to use, to cause injury to or incapacitate someone else;
- (c) a firearm, or anything that may reasonably be taken in the circumstances to be a firearm;
- (d) a knife, or anything that may reasonably be taken in the circumstances to be a knife;
- (e) an explosive, or anything that may reasonably be taken in the circumstances to be or contain an explosive.

*principal*, for part 3.7 (Bribery and related offences)—see section 353.

## **9 Dictionary, definition of *property***

*substitute*

*property* includes the following:

- (a) electricity;
- (b) gas;
- (c) water;
- (d) a wild creature that is tamed or ordinarily kept in captivity or that is, or is being taken into, someone's possession;

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- (e) any organ or part of a human body and any blood, ova, semen or other substance extracted from a human body.

*Note* For further definition of *property*, see the Legislation Act, dict, pt 1.

## 10 Dictionary, new definitions

*insert*

*public duty*, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

*public official*, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

*receiving*—see section 313.

*robbery*—see section 309.

*services*, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

*supply*, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

*Territory public official*, for chapter 3 (Theft, fraud, bribery and related offences)—see section 300.

*theft*—see section 308 (Theft) and section 321 (Minor theft).

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**Schedule 1** Consequential removal of redundant provisions about corporate criminal responsibility

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**Schedule 1** **Consequential removal of  
redundant provisions about  
corporate criminal  
responsibility**

(see s 3 (2))

*[amendments to be inserted]*

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## **Schedule 2      Consequential removal of redundant offences**

(see s 3 (2))

*[amendments to be inserted]*

**EXPOSURE DRAFT**

## **Schedule 3**      **Other consequential amendments**

(see s 3 (2))

### **Part 3.1**                      **Crimes Act 1900**

#### **[3.1] Divisions 6.1 and 6.2 etc**

*omit*

- divisions 6.1 and 6.2
- division 6.4
- sections 149 and 150
- sections 153 to 156
- section 349

#### **[3.2] Section 367 (1)**

*after*

this Act

*insert*

or the Criminal Code

#### **[3.3] Sections 386 to 386C**

*omit*

## **Part 3.2**                      **Crimes (Offences against the Government) Act 1989**

### **[3.4] Sections 3A to 9 etc**

*omit*

- sections 3A to 9
- sections 11 to 18
- sections 20 to 22.

## **Part 3.3**                      **Magistrates Court Act 1930**

### **[3.5] Section 59**

*omit*

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### **Endnotes**

#### **Republications of amended laws**

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

#### **Penalty units**

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

**EXPOSURE DRAFT**