

**CRIMES AND OTHER ACTS (AMENDMENT)
ACT.**

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 50, 1974.

An Act to make provision for certain new offences; to amend the law relating to certain existing offences; to make provision for a defence of diminished responsibility in a trial for murder; to re-enact with modifications and additions certain provisions relating to the cross-examination of an accused person, the payment of compensation to a person aggrieved by a misdemeanour or felony, the summary trial of indictable offences, deferring sentence and the separation of juries; to repeal certain obsolete provisions of the Crimes

Act

Crimes and Other Acts (Amendment).

No. 50, 1974 — Act 1900; to alter the penalties which may be imposed for certain offences; for these and other purposes to amend the Crimes Act 1900, the Justices Act, 1902, the Jury Act, 1912, the Criminal Appeal Act, 1912, and the Criminal Injuries Compensation Act, 1967; and for purposes connected therewith. [Assented to, 6th May, 1974.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Crimes and Other Acts (Amendment) Act, 1974".

Commencement.

2. This Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Savings.

3. (1) Subject to this section, in so far as it affects any matter of procedure or evidence or the jurisdiction or powers of any Court in relation to an offence, this Act shall have effect in relation to proceedings on—

- (a) a trial on indictment for the offence if, but only if, the indictment is filed after the day appointed for the commencement of this Act; or
- (b) a summary trial for the offence if, but only if, the hearing is commenced after the day so appointed.

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(2) Section 5 (b) shall have effect in relation to an offence if, but only if, an indictment for that offence is filed after the day appointed for the commencement of this Act. No. 50, 1974

(3) Section 5 (r) shall have effect in relation to proceedings notwithstanding that they have been commenced before the day appointed for the commencement of this Act.

(4) Section 8 (b) shall have effect in a trial on indictment if, but only if, the committal proceedings in relation to the trial have been commenced on or after the day appointed for the commencement of this Act.

(5) Section 9 (c) and (d) shall have effect for the purpose of giving, on or after the day appointed for the commencement of this Act, a direction for the payment of compensation, and in relation to a direction so given.

(6) Section 15 (a) shall have effect with respect to a jury in the trial of a person for a felony, notwithstanding that the trial has been commenced before the day appointed for the commencement of this Act.

(7) Section 15 (b) shall have effect with respect to a jury in a criminal trial, notwithstanding that the trial has been commenced before the day appointed for the commencement of this Act.

(8) Section 17 shall have effect for the purpose of making any payment, and in respect of any payment made, under the Criminal Injuries Compensation Act, 1967, if, but only if—

(a) the payment is made under that Act after the day appointed for the commencement of this Act; and

(b) the payment so made follows on a direction for the payment of compensation given under section 437 of the Crimes Act 1900 on or after the day so appointed.

(9)

Crimes and Other Acts (Amendment).

No. 50, 1974 (9) The Criminal Injuries Compensation Act, 1967
 (as in force immediately before the day appointed for the
 commencement of this Act) shall—

- (a) continue to apply to and in respect of any payment made under that first-mentioned Act before the day so appointed; and
- (b) have effect for the purpose of making any payment, and in respect of any payment made, if section 17 does not (pursuant to subsection (8)) have effect for that purpose and in that respect.

(10) Nothing in this Act shall affect any term of imprisonment or the amount of any fine which may be imposed on conviction for an offence committed before the day appointed for the commencement of this Act.

Amend-
 ment of
 Act No. 40,
 1900.

Sec. 1.
 (Short
 title and
 contents
 of Act.)

4. The Crimes Act 1900 is amended—

- (a) (i) by inserting in the matter relating to Part III in section 1 after the matter "81B." the words "(10A) *Misconduct with regard to corpses.*—s. 81C.";
- (ii) by inserting in the matter relating to Part IV in the same section after the word "*offences.*" the matter "(aa) *GENERAL.*—s. 93J.";
- (iii) by omitting from the same matter the word ", BURGLARY,";
- (iv) by omitting from the same matter the words "*Simple larceny and general*" and by inserting instead the word "*General*";
- (v) by omitting from the same matter the words "*and telegraphs.*—ss. 230-234" and by inserting instead the matter ".—ss. 230-232";

(vi)

Crimes and Other Acts (Amendment).

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- (vi) by omitting from the same matter the matter No. 50, 1974 "ss. 245, 246" and by inserting instead the matter "s. 245";
- (vii) by inserting in the same matter after the matter "s. 248" the words "(17A) *False statement that person or property in danger.*—s. 248A.";
- (viii) by inserting after the matter relating to Part VIII in the same section the following matter :—

PART VIII A.—ATTEMPTS.—s. 344A.

- (ix) by omitting from the matter relating to Part XI in the same section the matter "405" and by inserting instead the matter "405A";
- (x) by omitting from the matter relating to Part XII in the same section the words "(4) *Sentences of whipping or irons.*—ss. 434-436.";
- (xi) by omitting from the same matter the matter "s. 437" and by inserting instead the matter "ss. 437, 437A";
- (xii) by omitting from the matter relating to Part XIII in the same section the words "(3) *Whipping sentences.*—ss. 455, 456.";
- (xiii) by omitting from the matter relating to Part XIV in the same section the words "(2) *Offences and punishment.*—ss. 477, 478.";
- (xiv) by omitting from the same matter the matter "ss. 479-481" and by inserting instead the matter "ss. 480, 481";

(xv)

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- (xv) by omitting from the same matter the words
 “CHAPTER II.—OFFENCES PUNISHABLE
 SUMMARILY IN CERTAIN CASES BY WHIPPING.
 —ss. 482-492.”;
- (xvi) by omitting from the same matter the following
 words :—
- (C) MALICIOUS INJURIES TO PROPERTY—
- (1) *Declaratory clauses.*—ss. 530, 531.
 - (2) *Injuries to trees, shrubs, vegetable produce, fences, &c.*—ss. 532-538.
 - (3) *Injuries to certain animals.*—ss. 539, 540.
 - (4) *Injuries not otherwise provided for.*—ss. 541, 542.
 - (5) *Application of compensation.*—s. 543.
- (D) COINAGE OFFENCES.—ss. 544, 545.
- (xvii) by inserting in the same matter after the matter
 “s. 547A.” the words “(H) PUBLIC MISCHIEF.
 —s. 547B.”;
- (xviii) by omitting from the same matter the words
 “(1A) *Power to commit.*—s. 548A.”;
- (xix) by omitting from the same matter the words
 “(9) *Conditional release of offenders.*—ss. 556A, 556B.”;
- (xx) by omitting from the matter relating to Part
 XV in the same section the words “FIRST
 OFFENDERS.—ss. 557-562” and by inserting
 instead the words “CONDITIONAL RELEASE OF
 OFFENDERS.—ss. 556A-560A”.

(b)

Crimes and Other Acts (Amendment).

- (b) (i) by omitting the definition of "*Dwelling-house*" in section 4 and by inserting instead the following definition :—

No. 50, 1974
Sec. 4.
(Interpretation.)

"*Dwelling-house*" includes—

- (a) any building or other structure intended for occupation as a dwelling and capable of being so occupied, although it has never been so occupied;
 - (b) a boat or vehicle in or on which any person resides; and
 - (c) any building or other structure within the same curtilage as a dwelling-house, and occupied therewith or whose use is ancillary to the occupation of the dwelling-house.
- (ii) by inserting in section 4 after the definition of "*Night*" the following definition :—
- "*Offensive weapon*" and "*Offensive weapon, or instrument*" include an imitation or replica of an offensive weapon or of an offensive weapon, or an instrument, as the case may require.

- (iii) by inserting in section 4 after the definition of "*Vessel*" the following definition :—

"*Weapon*" and "*Weapon, or instrument*" include an imitation or replica of a weapon or of a weapon, or an instrument, as the case may require.

- (iv) by inserting at the end of section 4 the following subsection :—

(2) A dwelling-house does not cease to be a dwelling-house by reason only of being temporarily unoccupied.

(c)

Crimes and Other Acts (Amendment).

No. 50, 1974 (c) by omitting from section 10 the words "or whipping,".

Sec. 10.
(What offences misdemeanours.)

Further amendment of Act No. 40, 1900.

5. The Crimes Act 1900 is further amended—

Sec. 18. (a) by omitting from section 18 (1) (a) the words "of an act obviously dangerous to life, or";
(Murder defined.)

Sec. 23A. (b) by inserting after section 23 the following section :—

Diminished responsibility.

23A. (1) Where, on the trial of a person for murder, it appears that at the time of the acts or omissions causing the death charged the person was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for the acts or omissions, he shall not be convicted of murder.

(2) It shall be upon the person accused to prove that he is by virtue of subsection (1) not liable to be convicted of murder.

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

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

(5)

Crimes and Other Acts (Amendment).

(5) Where, on the trial of a person for No. 50, 1974 murder, the person contends—

(a) that he is entitled to be acquitted on the ground that he was mentally ill at the time of the acts or omissions causing the death charged; or

(b) that he is by virtue of subsection (1) not liable to be convicted of murder,

evidence may be offered by the Crown tending to prove the other of those contentions, and the Court may give directions as to the stage of the proceedings at which that evidence may be offered.

(c) by omitting from section 24 the words “, or for any term not less than three years, or to imprisonment for any term not exceeding three years”; Sec. 24.
(Man-
slaughter—
punish-
ment.)

(d) by inserting after section 32B the following Sec. 32c. section :—

32c. (1) Any person who makes a demand of any person with a threat to destroy or endanger the safety of an aircraft, vessel, motor vehicle, engine or carriage used upon a railway, or building, or to kill or injure all or any of the persons in or on any such aircraft, vessel, motor vehicle, engine, carriage or building, shall be liable to penal servitude for life. Threats
to destroy
aircraft
or other
con-
veyances.

(2) Any person who makes a demand of any person with any threat mentioned in subsection (1) and while that threat subsists discharges any firearm, or causes any explosion, or wounds or inflicts grievous bodily harm on any person, shall be liable to penal servitude for life.

(3) The provisions of section 442 shall not be in force with respect to the sentence to be passed under subsection (2).

(4)

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(4) For the purposes of subsection (1), "building" includes any bridge, mine or structure in the nature of a building.

Secs. 33A and 33B.

(e) by inserting after section 33 the following sections :—

Discharging loaded arms with intent.

33A. Any person who maliciously discharges, or in any manner attempts to discharge, any kind of loaded arms with intent to do grievous bodily harm to any person, or with intent to resist, or prevent, the lawful apprehension or detention either of himself or any other person, shall be liable to penal servitude for fourteen years.

Use of weapon to resist arrest, &c.

33B. Any person who—

(a) uses, attempts to use or threatens to use an offensive weapon or instrument; or

(b) threatens injury to any person or property, with intent to prevent or hinder the lawful apprehension or detention either of himself or any other person or to prevent or hinder a member of the police force from investigating any act or circumstance which reasonably calls for investigation by the member shall be liable to penal servitude for ten years.

Sec. 35. (Maliciously wounding or inflicting grievous bodily harm.)

(f) by omitting from section 35 the word "five" and by inserting instead the word "seven";

Sec. 45. (Wife or child desertion.)

(g) by omitting section 45;

(h)

Crimes and Other Acts (Amendment).

- (h) by omitting section 49 and by inserting instead the No. 50, 1974 following section :—

Sec. 49.

49. (1) Any person who—

Setting trap, &c.

- (a) places or sets, or causes to be placed or set, any trap, device or thing (whether its nature be electronic, electric, mechanical, chemical or otherwise) capable of destroying human life or inflicting grievous bodily harm on any person; or

- (b) knowingly permits any such trap, device or thing to continue to be placed or set,

with intent to inflict grievous bodily harm shall be liable to imprisonment for five years.

(2) Nothing in subsection (1) shall extend to any gin or trap, placed with the intention of destroying vermin, or to any trap, device or thing placed in a dwelling-house for the protection thereof.

- (i) by omitting from section 51 the word “life” and by inserting instead the words “ten years”; Sec. 51.
(Casting stone, &c., on a railway carriage.)
- (j) (i) by omitting section 52A (1) and (2) and by inserting instead the following subsections :— Sec. 52A.
(Culpable driving.)

(1) Where the death of, or grievous bodily harm to, any person is occasioned through—

- (a) the impact with any object of a motor vehicle in which that person was a passenger;

- (b) a motor vehicle in which that person was a passenger overturning or leaving the highways;

(c)

Crimes and Other Acts (Amendment).

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(c) impact with a motor vehicle; or

(d) the impact of a motor vehicle with any vehicle or other object in, on or near which that person was at the time of the impact,

and the motor vehicle was at the time of the impact, or at the time of overturning or leaving the highway, being driven by another person—

(e) under the influence of intoxicating liquor or of a drug; or

(f) at a speed or in a manner dangerous to the public,

the person who was so driving the motor vehicle shall be guilty of the misdemeanour of culpable driving.

(2) A person convicted of the misdemeanour of culpable driving is—

(a) if the death of any person was occasioned, liable to imprisonment for five years; or

(b) if grievous bodily harm to any person was occasioned, liable to imprisonment for three years.

(ii) by omitting from section 52A (7) the words “and structure” and by inserting instead the words “, structure, earthwork, embankment, gutter, stormwater channel, drain, bridge, culvert, median strip, post and tree”;

Sec. 61.
(Common
assault
prosecuted
by indictment.)

(k) by omitting from section 61 the words “, and if the person assaulted is a female, shall, in addition, be liable to be once privately whipped”;

(1)

Crimes and Other Acts (Amendment).

- (l) by omitting from section 64 the words “but with her consent” and by inserting instead the words “, but are not satisfied that carnal knowledge was had without her consent”; No. 50, 1974
Sec. 64.
(Trial for rape—
verdict of carnal know-
ledge.)
- (m) by omitting from section 70 the words “and that the accused had not carnal knowledge of such girl, but” and by inserting instead the words “but are not satisfied that the accused had carnal knowledge of the girl, and are satisfied that he”; Sec. 70.
(Trial for carnal know-
ledge—
verdict of assault with
intent.)
- (n) by inserting in section 72 after the words “any girl” the words “of or”; Sec. 72.
(Attempts.)
- (o) (i) by omitting from section 76 the word “three” and by inserting instead the word “four”; Sec. 76.
(Indecent assault.)
- (ii) by omitting from section 76 the word “five” and by inserting instead the word “six”;
- (p) by inserting after section 76 the following section :—
- 76A. Any person who commits any act of indecency with or towards any girl under the age of sixteen years, or incites a girl under that age to any act of indecency with him or another, shall be liable to imprisonment for two years. Act of indecency.
- (q) (i) by omitting from section 77 the words “or seventy-four” and by inserting instead the matter “74 or 76A”; Sec. 77.
(Consent no defence in certain cases.)
- (ii) by omitting from section 77 the words “or seventy-two” and by inserting instead the matter “, 72 or 76A”;

(r)

Crimes and Other Acts (Amendment).

- No. 50, 1974
Sec. 77A.
Pro-
ceedings
in camera
in certain
cases.
- (r) by inserting after section 77 the following section :—
- 77A. Any proceedings or any part of any proceedings in respect of an offence under section 63, 65, 66, 67, 68, 71, 72, 72A, 73, 74, 76 or 76A shall, if the Court so directs, be held in camera.
- Sec. 81c.
- (s) by inserting after section 81B the following section and subheading :—
- Misconduct with regard to corpses.*
- 81c. Any person who—
- (a) indecently interferes with any dead human body; or
- (b) improperly interferes with, or offers any indignity to, any dead human body or human remains (whether buried or not), shall be liable to imprisonment for two years.
- Miscon-
duct with
regard to
corpses.
- Sec. 91A.
(Procur-
ing, &c.)
- (t) by omitting from section 91A the words “female under the age of twenty-one years, whether with her consent or not, with intent that some other person may have carnal knowledge of such female” and by inserting instead the words “person, whether with that person’s consent or not, for purposes of prostitution”;
- Sec. 91B.
(Pro-
curing
person by
drugs, &c.)
- (u) by omitting from section 91B the words “woman of or above the age of twenty-one years with intent that some other person may have carnal knowledge of such woman” and by inserting instead the words “person for purposes of prostitution”;
- Sec. 91D.
(Employ-
ment in
brothel.)
- (v) by omitting from section 91D the word “female” and by inserting instead the words “person (not being a member of the police force acting in the course of his duty)”.

Crimes and Other Acts (Amendment).

6. The Crimes Act 1900 is further amended—

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Further
amend-
ment of
Act No.
40, 1900.

- (a) by inserting next after the words “Chapter I.—*Stealing and like offences.*” in Part IV the following section and subheading :—

GENERAL.

93J. Where on the trial of a person for any offence which includes the stealing of any property it appears that the property was, at the time when it was taken by the accused, already out of the possession of the owner by reason of its having been previously stolen, the accused may be convicted of the offence charged notwithstanding that it is not proved that the taking by him amounted to an interference with the right to possession of, or a trespass against, the owner.

- (b) by omitting from section 99 the word “seven” and by inserting instead the word “ten”; Sec. 99.
(Demanding money with intent to steal.)
- (c) by omitting from the subheading occurring before section 106 the word “, BURGLARY”; Sub-heading before sec. 106.
- (d) by omitting section 108; Sec. 108.
(Burglary.)
- (e) by omitting from section 109 the words “in the night, shall be deemed guilty of burglary, and”; Sec. 109.
(Entering with intent, or stealing, &c., in dwelling-house and breaking out.)

(f)

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No. 50, 1974

Sec. 114.

Being
armed,
&c., with
intent to
commit
offence.

(f) by omitting section 114 and by inserting instead the following section :—

114. (1) Any person who—

- (a) is armed with any weapon, or instrument, with intent to enter a building and to commit a felony or misdemeanour therein;
- (b) has in his possession, without lawful excuse, any implement of housebreaking or safe-breaking, or any implement capable of being used to enter or drive or enter and drive a conveyance;
- (c) has his face blackened or otherwise disguised, or has in his possession the means of blacking or otherwise disguising his face, with intent to commit a felony or misdemeanour;
- (d) enters or remains in or upon any part of a building or any land occupied or used in connection therewith with intent to commit a felony or misdemeanour in or upon the building,

shall be liable to penal servitude for seven years.

(2) For the purposes of subsection (1)

(b) "conveyance" means any cab, carriage, motor car, caravan, trailer, motor lorry, omnibus, motor or other bicycle, or any ship, or vessel, whether decked or undecked, used in or intended for navigation, and "drive" shall be construed accordingly.

Sub-
heading
before
sec. 117.(g) by omitting from the subheading appearing before section 117 the words "*Simple larceny and general*" and by inserting instead the word "*General*";

(h)

Crimes and Other Acts (Amendment).

- (h) by omitting from section 117 the word "simple" No. 50, 1974
wherever occurring; Sec. 117.
(Punish-
ment for
larceny.)
- (i) by inserting in section 120 after the word Sec. 120.
"pretence" where firstly occurring the words "or (Trial for
by any wilfully false promise"; larceny—
verdict of
embezzle-
ment, &c.)
- (j) by omitting from section 124 the words "two Sec. 124.
hundred dollars" and by inserting instead the words (Fraudulent
"\$2,000, or both"; appropriation.)
- (k) by omitting from section 125 the words ", and may Sec. 125.
be convicted thereof upon an indictment for simple (Larceny
larceny"; by bailee.)
- (l) by omitting from section 126 the word "ten" and Sec. 126.
by inserting instead the word "fourteen"; (Stealing
cattle or
killing
with intent
to steal.)
- (m) by omitting from section 134 the word "simple"; Sec. 134.
(Stealing,
destroying,
&c., valuable
security.)
- (n) by inserting in section 136 after the word Sec. 136.
"insolvency" the words ", or under compulsory (Proviso to
examination in some matter in the liquidation of a sections 134
corporation"; and 135.)
- (o) by omitting from section 139 the word "simple"; Sec. 139.
(Stealing,
&c., metal,
glass, wood,
&c., fixed
to house
or land.)
- (p)

Crimes and Other Acts (Amendment).

- No. 50, 1974
 Sec. 140.
 (Stealing,
 &c., trees,
 &c., in
 pleasure
 grounds.)
- (p) by omitting from section 140 the word "simple";
- Sec. 144.
 (Stealing
 ore of metal,
 coal, &c.)
- (q) by omitting from section 144 the word "simple";
- Sec. 147.
 (Fraud on
 partners in
 mines, &c.)
- (r) by omitting from section 147 the word "simple";
- Sec. 153.
 (Stealing
 from ship
 in distress
 or wrecked.)
- (s) by omitting from section 153 the word "fourteen"
 and by inserting instead the word "ten";
- Sec. 154.
 (Tenants,
 &c., stealing
 articles let
 to hire.)
- (t) by omitting from section 154 the word "simple";
- Sec. 154A.
- (u) by omitting section 154A and by inserting instead
 the following section :—
- Taking a
 conveyance
 without the
 consent of
 the owner.
- 154A. (1) Any person who—
- (a) without having the consent of the owner or
 person in lawful possession of a conveyance,
 takes and drives it, or takes it for the
 purpose of driving it, or secreting it, or
 obtaining a reward for its restoration or
 pretended restoration, or for any other
 fraudulent purpose; or
- (b) knowing that any conveyance has been
 taken without such consent, drives it or
 allows himself to be carried in or on it,
- shall be deemed to be guilty of larceny and liable to
 be indicted for that offence.

(2)

Crimes and Other Acts (Amendment).

(2) For the purposes of this section No. 50, 1974 "conveyance" means any cart, waggon, cab, carriage, motor car, caravan, trailer, motor lorry, omnibus, motor or other bicycle, or any ship, or vessel, whether decked or undecked, used or intended for navigation, and "drive" shall be construed accordingly.

- (v) by omitting from section 154c the word "simple"; Sec. 154c.
(Malicious or fraudulent abstraction, waste, &c., of electricity.)
- (w) by omitting from section 163 the word "simple"; Sec. 163.
(Trial for embezzlement —verdict of larceny.)
- (x) by omitting from section 173 the word "ten" and by inserting instead the word "fourteen"; Sec. 173.
(Directors, &c., fraudulently appropriating, &c., property.)
- (y) by omitting from section 174 the word "ten" and by inserting instead the word "fourteen"; Sec. 174.
(Directors, &c., omitting certain entries.)
- (z) by omitting from section 175 the word "ten" and by inserting instead the word "fourteen"; Sec. 175.
(Director, &c., wilfully destroying, &c., books of company, &c.)
- (aa) by omitting from section 176 the word "ten" and by inserting instead the word "fourteen"; Sec. 176.
(Director or officer publishing fraudulent statements.)

(bb)

Crimes and Other Acts (Amendment).

- No. 50, 1974
Sec. 177.
(Proviso to ss. 165 to 176 incl.)
- (bb) by inserting in section 177 after the word "insolvency" the words ", or under compulsory examination in some matter in the liquidation of a corporation";
- Sec. 183.
(Trial for false pretences, &c. — verdict of larceny.)
- (cc) by omitting from section 183 the word "simple";
- Sec. 184.
(Fraudulent personation.)
- (dd) by omitting from section 184 the word "life" and by inserting instead the words "seven years";
- Sec. 188.
(Receiving where principal guilty of felony.)
- (ee) by inserting in section 188 after the word "receives" the words ", or disposes of, or attempts to dispose of,";
- Sec. 189.
(Receiving where principal guilty of misdemeanour.)
- (ff) by inserting in section 189 after the word "receives" the words ", or disposes of, or attempts to dispose of,";
- Sec. 189A.
(Receiving, &c., goods stolen out of New South Wales.)
- (gg) (i) by inserting in section 189A (1) after the word "receives" the words ", or disposes of, or attempts to dispose of,";
- (ii) by inserting in section 189A (1) after the words "been stolen," the words "and whether or not he took part in the stealing of the property,";

(hh)

Crimes and Other Acts (Amendment).

(hh) by inserting after section 189A the following section :—

No. 50, 1974
Sec. 189B.

189B. (1) Where in the trial of a person for the offence under section 188 or 189 of receiving, or disposing of, or attempting to dispose of, any property knowing it to have been stolen, it is proved that the property was stolen in the course of transmission between New South Wales and any other jurisdiction or between any other jurisdiction and New South Wales—

Prosecution under section 188 or 189 where property stolen in course of transmission.

- (a) the person shall be liable to be convicted of the offence without proof that the stealing took place in New South Wales; and
- (b) for the purpose of determining whether or not the stealing amounts to a felony or a misdemeanour, the stealing shall be deemed to have taken place in New South Wales.

(2) For the purposes of subsection (1) "other jurisdiction" means a State (other than New South Wales) or Territory of the Commonwealth.

(ii) by inserting in section 190 after the word "receives" where secondly occurring the words ", or disposes of, or attempts to dispose of,";

Sec. 190.
(Receiving cattle feloniously killed, or carcass, &c.)

(jj) by omitting from section 213 the word "ten" and by inserting instead the word "five";

Sec. 213.
(Setting fire to fences.)

(kk) by omitting from section 214 the words "liable to penal servitude for seven years" and by inserting instead the words "liable to penal servitude for three years";

Sec. 214.
(Attempts to set fire to such things.)

(ll)

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- No. 50, 1974 (ll) by omitting section 216;
- Sec. 216.
(Injuring trees, shrubs, &c., in pleasure-ground, &c.)
- Sec. 217. (mm) by omitting section 217;
(The like to value of over \$10 elsewhere.)
- Sec. 218. (nn) by omitting section 218;
(Injuring trees, &c., after two summary convictions.)
- Sec. 219. (oo) by omitting section 219;
(Destroying plant, &c., in a garden after one summary conviction.)
- Sub-heading before sec. 230. (pp) by omitting from the subheading occurring before section 230 the words "*and telegraphs*";
- Sec. 233. (qq) by omitting section 233;
(Injuring telegraph posts, &c.)
- Sec. 234. (rr) by omitting section 234;
(Attempt.)
- Sec. 245. (ss) (i) by omitting from section 245 the words "other than pigs or goats,";
(Killing or maiming cattle.) (ii) by omitting from section 245 the words "forty dollars" and by inserting instead the matter "\$1,000";
- (tt)

Crimes and Other Acts (Amendment).

- (tt) by omitting section 246; No. 50, 1974
Sec. 246.
(Cruelly wounding or torturing cattle.)
- (uu) (i) by omitting from section 247 the words “, to an amount exceeding ten dollars,”; Sec. 247.
(Other injuries.)
- (ii) by omitting from section 247 the words “shall be liable to imprisonment for two years, and where such offence is committed in the night,”;
- (vv) by omitting from section 248 the word “seven” and by inserting instead the word “five”; Sec. 248.
(Letters threatening to destroy property.)
- (ww) by inserting after section 248 the following section and subheading :— Sec. 248A.

False statement that person or property in danger.

248A. Where any person knowingly makes to any other person a false statement, or sends to any other person a document containing a statement that he knows to be false, and the statement tends to give rise to apprehension for the safety of any person (including the person making the statement and the person to whom it is made) or property, or both, he shall be liable on summary conviction to a fine of \$1,000 or to imprisonment for twelve months, or both, or on conviction on indictment to imprisonment for five years.

Crimes and Other Acts (Amendment).

No. 50, 1974 7. The Crimes Act 1900 is further amended—

Further
amendment
of Act No.
40, 1900.

Sec. 271.
(Forging
wills.)

(a) by omitting from section 271 the word “life” and by inserting instead the words “fourteen years”;

Sec. 336.
(Tampering
with
witness.)

(b) (i) by omitting from section 336 the words “, in a judicial proceeding,”;

(ii) by omitting from section 336 the words “such person being bound by recognizance or subpoena so to attend,”;

Part VIII.A.

(c) by inserting after section 344 the following Part :—

PART VIII.A.

ATTEMPTS.

Attempts.

344A. (1) Subject to this Act, any person who attempts to commit any offence for which a penalty is provided under this Act shall be liable to that penalty.

(2) Where a person is convicted of an attempt to commit an offence and the offence concerned is a felony he shall be deemed to have been convicted of a felony.

Sec. 351.
(Abettors in
misde-
meanours
—how tried
and
punished.)

(d) by omitting from section 351 the word “Whosoever” and by inserting instead the words “Any person who aids,”;

Sec. 353B.
(Person
apprehended
carrying
razor, &c.)

(e) by inserting in section 353B after the word “months” the words “, or to a fine of \$500, or both”;

(f)

Crimes and Other Acts (Amendment).

- (f) by omitting section 354 and by inserting instead the following section :—

No. 50, 1974
Sec. 354.

354. (1) Upon a complaint made on oath that there is reasonable ground to believe that there is in or on any premises—

Search
warrant
for property
where indict-
able offence
in respect
thereof com-
mitted, &c.

- (a) anything upon or in respect of which any indictable offence has been or is suspected to have been committed;
- (b) anything that there is reasonable ground to believe will afford evidence with respect to the commission of any indictable offence; or
- (c) anything which there is reasonable ground to believe is intended to be used for the purpose of committing any indictable offence,

a justice may, by warrant, authorise and require any member of the police force to enter and search the premises.

(2) A warrant issued under subsection (1) shall be executed by day, unless the justice, by the warrant, authorises its execution by night.

(3) For the purpose of executing a warrant issued under subsection (1) a member of the police force may use force, whether by breaking open doors or otherwise, for the purpose of entering the premises.

(4) A member of the police force may execute a warrant issued under subsection (1) with the aid of such assistants as he deems necessary.

(5)

Crimes and Other Acts (Amendment).

No. 50, 1974

(5) A member of the police force executing a warrant issued under subsection (1) may—

- (a) seize or dispose of in a safe place, or guard in or on the premises, anything mentioned in the warrant and, in addition, any other thing that on reasonable grounds he believes has been obtained by, or has been used in, the commission of an offence, until any charge in relation thereto is dealt with; and
- (b) arrest, search and bring before a justice any person found in the premises whom he suspects of having committed an offence in respect of anything so seized.

(6) After it has been produced in evidence, or when it is not required as evidence, anything seized, disposed of in a safe place, or guarded in or on the premises, under subsection (5) (a) shall be disposed of as the Court or any stipendiary magistrate shall direct.

(7) Any person who without lawful excuse hinders or obstructs any person executing a warrant issued under subsection (1) shall be guilty of an offence and liable to imprisonment for two years or to a fine of \$2,000, or both.

(8) For the purposes of this section—

“indictable offence” includes any act or omission which if done, or omitted to be done, in New South Wales would constitute an offence punishable on indictment;

“premises” includes any structure, building, aircraft, vehicle, vessel, or place (whether built upon or not), and any part thereof.

(g)

Crimes and Other Acts (Amendment).

- (g) by omitting from section 356 (1) the words No. 50, 1974 "section three hundred and fifty-four or";

Sec. 356.
(Pro-
ceedings on
finding
explosive
substances,
&c., under
warrant.)

- (h) by omitting section 357 and by inserting instead the following section :—

357. (1) Upon a complaint made on oath that the complainant has reason to suspect, and believes, that an animal stolen or otherwise unlawfully obtained is concealed or lodged in or on any specified premises, a justice may, by warrant, authorise and require any member of the police force to enter and search the premises.

Searching
for stolen
cattle.

(2) A member of the police force may without a warrant—

- (a) require the person in charge of a vehicle to cause the vehicle to stop or remain stationary and afford him access to the vehicle, and may enter and search the vehicle; or

(b) enter and search a vehicle,

for the purpose of searching for any animal that has been stolen or otherwise unlawfully obtained, or that is reasonably suspected of having been stolen or otherwise unlawfully obtained.

(3) For the purpose of executing a warrant issued under subsection (1) a member of the police force may use force, whether by breaking open doors or otherwise, for the purpose of entering the premises.

(4)

Crimes and Other Acts (Amendment).

No. 50, 1974

(4) A member of the police force may execute a warrant issued under subsection (1) with the aid of such assistants as he deems necessary.

(5) A member of the police force may—

- (a) seize or dispose of in a safe place, or guard in or on the premises or in the vehicle, any animal found pursuant to a search under subsection (1) or (2) that is reasonably suspected of having been stolen or otherwise unlawfully obtained, until any charge in relation to the animal is dealt with; and
- (b) arrest, search and bring before a justice any person found in premises, or in charge of or in any vehicle, whom he suspects of having committed an offence in respect of any animal.

(6) After it has been produced in evidence, or when it is not required as evidence, anything seized, disposed of in a safe place, or guarded in or on premises or in a vehicle, under subsection (5) (a) shall be disposed of as the Court or any stipendiary magistrate shall direct.

(7) Any person who without lawful excuse—

- (a) hinders or obstructs any person executing a warrant issued under subsection (1), or a member of the police force searching a vehicle under subsection (2);

(b)

Crimes and Other Acts (Amendment).

(b) fails or neglects to cause a vehicle to stop ^{No. 50, 1974} or remain stationary when required to do so by a member of the police force acting under subsection (2); or

(c) fails to afford access to a vehicle to a member of the police force acting under subsection (2),

shall be guilty of an offence and liable to imprisonment for two years or to a fine of \$2,000, or both.

(8) Nothing in subsection (1) shall prevent a member of the police force who finds on any premises any animal reasonably suspected of having been stolen or unlawfully obtained, from seizing or retaining the animal without a warrant.

(9) For the purposes of this section—

“animal” means a bull, steer, cow, heifer, calf, horse, mare, gelding, colt, foal, filly, ram, ewe, sheep, lamb or pig, and includes any part, skin or carcass of any such animal;

“premises” includes any structure, building, or place (whether built upon or not), and any part thereof;

“vehicle” includes a vessel.

Crimes and Other Acts (Amendment).

No. 50, 1974 **8.** The Crimes Act 1900 is further amended—

Further
amendment
of Act No.
40, 1900.

Sec. 405A.

(a) by inserting after section 405 the following section :—

Notice
of alibi.

405A. (1) On a trial on indictment the defendant shall not without the leave of the Court adduce evidence in support of an alibi or assert in any statement made by him under section 405 (1) that he has an alibi unless, before the end of the prescribed period, he gives notice of particulars of the alibi.

(2) Without prejudice to subsection (1), on a trial on indictment the defendant shall not without the leave of the Court call any other person to give evidence in support of an alibi unless—

- (a) the notice under that subsection includes the name and address of the person, or, if the name or address is not known to the defendant at the time he gives the notice, any information in his possession which might be of material assistance in finding the person;
- (b) if the name or the address is not included in the notice, the Court is satisfied that the defendant before giving the notice took, and thereafter continued to take, all reasonable steps to secure that the name or the address would be ascertained;
- (c) if the name or the address is not included in the notice, but the defendant subsequently discovers the name or address or receives other information which might be of material assistance in finding the person, he forthwith gives notice of the name, address or other information, as the case may be; and

(d)

Crimes and Other Acts (Amendment).

(d) if the defendant is notified by or on behalf of the Crown that the person has not been traced by the name or at the address given by the defendant, he forthwith gives notice of any information which might be of material assistance in finding the person and which is then in his possession or, on subsequently receiving any such information, forthwith gives notice of it. No. 50, 1974

(3) The Court shall not refuse leave under this section if it appears to the Court that on the committal for trial of the defendant he was not informed by the committing justice of the requirements of subsections (1), (2) and (5), and the statement in writing of the committing justice that the defendant was so informed shall be evidence that the defendant was so informed.

(4) Any evidence tendered to disprove an alibi may, subject to any direction by the Court, be given before or after evidence is given in support of the alibi.

(5) Any notice purporting to be given under this section on behalf of the defendant by his solicitor shall, unless the contrary is proved, be deemed to be given with the authority of the defendant.

(6) A notice under this section shall be given in writing to the Clerk of the Peace, and may be given by delivering it to the Clerk of the Peace, or by leaving it at his office, or by sending it in a registered letter or by certified mail addressed to him at his office.

(7)

Crimes and Other Acts (Amendment).

No. 50, 1974

(7) In this section—

“evidence in support of an alibi” means evidence tending to show that by reason of the presence of the defendant at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission;

“the prescribed period” means the period of ten days commencing at the time of the committal of the defendant for trial.

Sec. 407.
(Competency of parties and accused persons and their husbands and wives to give evidence.)

(b) by omitting paragraph (1) of the proviso to section 407 and by inserting instead the following paragraph :—

(1) No such person charged with an indictable offence shall be liable to be called as a witness on behalf of the prosecution.

Sec. 409.
(Depositions may be read as evidence for prosecution.)

(c) (i) by omitting from section 409 (1) the words “on oath that”;

(ii) by inserting in section 409 (1) (a) before the words “the witness” the words “on oath that”;

(iii) by inserting in section 409 (1) (b) (i) before the words “the deposition” the word “that”;

(iv) by inserting in section 409 (1) (b) (ii) after the word “coroner,” the word “that”;

(v)

Crimes and Other Acts (Amendment).

- (v) by inserting in section 409 (1) (c) before the words "the accused" the word "that";
- (vi) by inserting after section 409 (4) the following subsections :—

(5) For the purposes of subsection (1), unless it is proved to the contrary—

- (a) a deposition, or a deposition in the form of a transcript, of the evidence of a witness shall be deemed to have been taken or made in the presence of the accused, or during any period when the accused, having been discharged under section 41 (1B) of the Justices Act, 1902, was absent; and
- (b) the accused or his counsel or attorney shall be deemed to have had a full opportunity of cross-examining the witness, or the accused, having been discharged under section 41 (1B), shall be deemed to have been absent when the deposition was taken and not represented by counsel or attorney,

if it appears from the deposition that it was so taken or made, and that the accused or his counsel had such an opportunity or was so absent and not represented by counsel or attorney, as the case may be.

(6) For the purposes of subsection (1) (b) (ii), where a deposition is in the form of a transcript of the record, unless it is proved to the contrary, the record shall be deemed to be a true record of the matter deposed, and the transcript shall be deemed to be a correct transcript of the record if, in the case of a transcript of a record—

- (a) made in shorthand notes, the transcript is identified by, and signed in the
handwriting

Crimes and Other Acts (Amendment).

No. 50, 1974

handwriting of, the person purporting to have made the shorthand notes; or

- (b) made by any other means (other than writing) authorised by law for the taking of a deposition, the transcript is certified in the manner prescribed by regulations made under the Justices Act, 1902.

Secs. 413A,
413B and
413C.

- (d) by inserting after section 413 the following sections :—

Restriction
on cross-
examina-
tion of
accused.

413A. (1) Subject to this section and section 413B, where in any proceedings an accused person gives evidence he shall not in cross-examination be asked, and if asked shall not be required to answer, any question tending to reveal to the Court or jury—

- (a) the fact that he has committed, or has been charged with or convicted or acquitted of, any offence other than the offence charged; or
- (b) the fact that he is generally or in a particular respect a person of bad disposition or reputation.

(2) Subsection (1) shall not apply to a question tending to reveal to the Court or jury any fact such as is mentioned in subsection (1) (a) or (b) if evidence of that fact is admissible for the purpose of proving the commission by the accused of the offence charged.

(3) Where, in any proceedings in which two or more persons are jointly charged, any of the accused persons gives evidence, subsection (1) shall not in his case apply to any question tending to reveal to the Court or jury a fact about him such as is mentioned in subsection (1) (a) or (b) if evidence of that fact is admissible for the purpose

of

Crimes and Other Acts (Amendment).

of showing any other of the accused to be not guilty of the offence with which that other is charged. No. 50, 1974

(4) Subsection (1) shall not apply if—

- (a) the accused person has personally or by his counsel asked any witness for the prosecution or for a person jointly charged with him any question concerning the witness's conduct on any occasion (other than his conduct in the activities or circumstances giving rise to the charge or his conduct during the trial or in the activities, circumstances or proceedings giving rise to the trial) or as to whether the witness has committed, or has been charged with or convicted or acquitted of, any offence; and
- (b) the Court is of the opinion that the main purpose of that question was to raise an issue as to the witness's credibility,

but the Court shall not permit a question falling within subsection (1) to be put to an accused person by virtue of this subsection unless it is of the opinion that the question is relevant to his credibility as a witness and that in the interests of justice and in the circumstances of the case it is proper to permit the question to be put.

(5) Subsection (1) shall not apply where the accused person has given evidence against any person jointly charged with him in the same proceedings.

Crimes and Other Acts (Amendment).

No. 50, 1974

Admissibility of evidence and questions about accused's disposition or reputation.

413B. (1) In any proceedings an accused person may—

- (a) personally or by his counsel ask questions of any witness with a view to establishing directly or by implication that the accused is generally or in a particular respect a person of good disposition or reputation;
- (b) himself give evidence tending to establish directly or by implication that the accused is generally or in a particular respect such a person; or

(c) call a witness to give any such evidence,

but where any of these things has been done, the prosecution may call, and any person jointly charged with the accused person may call, or himself give, evidence to establish that the accused person is a person of bad disposition or reputation, and the prosecution or any person so charged may in cross-examining any witness (including, where he gives evidence, the accused person) ask him questions with a view to establishing that fact.

(2) Where by virtue of this section a party is entitled—

- (a) to call evidence to establish that the accused person is a person of bad disposition or reputation, that party may call evidence of his previous convictions, if any, whether or not the party calls any other evidence for that purpose; or
- (b) in cross-examining the accused to ask him questions with a view to establishing that he is such a person section 413A (1) shall not apply in relation to his cross-examination by that party.

413C.

Crimes and Other Acts (Amendment).

413c. (1) Where in any proceedings the fact that an accused person has been convicted of an offence is admissible in evidence, a document purporting to be a record of the conviction (whether in the State or elsewhere) of the accused person for the offence and purporting to be signed by an authorised person shall be received in the proceedings as evidence of that fact.

No. 50, 1974
Documentary evidence
of previous
convictions.

(2) The method of proving a conviction authorised by this section shall be in addition to and not to the exclusion of any other method of proving a conviction.

(3) For the purposes of subsection (1), "authorised person" means—

- (a) the officer-in-charge of the Central Fingerprint Bureau of the Police Department, or any person authorised by him for the purposes of this section;
 - (b) a gaol recorder;
 - (c) the officer-in-charge of police at the town where the Court, in which it is proposed to give evidence that an accused person has been convicted of an offence, is being held; or
 - (d) in the case of proceedings before a stipendiary magistrate, the police prosecutor conducting the proceedings.
- (e) (i) by inserting in section 414A after the word "article" the words "or living person";

Sec. 414A.
(Certificate
of scientific
examination
evidence.)

(ii)

No. 50, 1974

(ii) by inserting at the end of section 414A the following subsections :—

(2) A certificate which would, by virtue of section 4E (12) (a) or (b) of the Motor Traffic Act, 1909, be prima facie evidence of the particulars certified in and by the certificate in proceedings for an offence under section 4E (1) of that Act shall be prima facie evidence of those particulars at any inquest or where a person is charged before a stipendiary magistrate or before any Court with an indictable offence.

(3) Where any certificate is admitted in evidence by virtue of subsection (2), evidence of the condition of a breath analysing instrument or the manner in which it was operated shall not be required unless evidence that the instrument was not in proper condition or was not properly operated has been adduced.

Sec. 415.

(f) by omitting section 415 and by inserting instead the following section :—

Proof of
banking
transactions.

415. (1) Subject to subsection (2), in any case where it is necessary to prove—

- (a) the state of an account in the books or records of a banking corporation, or company;
- (b) that any person has not or had not an account, or any funds, to his credit in any such books or records; or
- (c) any entry in any such books or records with respect to—
 - (i) the opening of an account of any kind;

(ii)

Crimes and Other Acts (Amendment).

- (ii) the specimen signature of any No. 50, 1974 person;
- (iii) the account number of any account;
- (iv) the issue of, or the number on, any cheque, draft, warrant, cheque-book, bank-book or passbook;
- (v) the particulars of any deposit, deposit slip or remitting warrant;
- (vi) the drawing, endorsement or marking of any cheque;
- (vii) the dishonouring of any cheque, draft or promissory note;
- (viii) the presentation and meeting of any cheque;
- (ix) the depositing or withdrawal of any money in respect of any account;
- (x) any documents in respect of any such deposit or withdrawal; or
- (xi) the lodgment of any document or security or other item in safe deposit or for safe custody or the granting of access to or withdrawal of any such item,

it shall not be necessary to produce any such book or record, but evidence of any such matter may be given, either orally or by affidavit, by any officer or clerk of the corporation or company who has examined the book or record.

(2) Where in any Court evidence is given by affidavit under subsection (1) the Court may if it thinks fit order that the evidence be not admitted unless the person who made the affidavit gives oral evidence in the proceedings or gives evidence by a further affidavit.

(3)

Crimes and Other Acts (Amendment).

No. 50, 1974

(3) The method of proving any matter referred to in subsection (1) shall be in addition to and not to the exclusion of any other method of proving that matter.

Sec. 420.
(Receivers.
Evidence of
guilty
knowledge.)

(g) by omitting from section 420 (b) the words "such trial" and by inserting instead the words "the commission of the offence charged, or if more than one offence is charged, the commission of the earliest such offence charged".

Further
amend-
ment of
Act No.
40, 1900.

9. The Crimes Act 1900 is further amended—

Sec. 434.
(Juvenile
offenders
may be
whipped.)

(a) by omitting the words "*Sentences of whipping or irons.*" occurring before section 434 and by omitting section 434;

Sec. 435.
(Whipping
adults in
certain
cases.)

(b) by omitting section 435;

Sec. 437.
(Compensa-
tion to
person
aggrieved
by any
felony or
mis-
demeanour.)

(c) (i) by omitting from section 437 (1) the words "two thousand dollars" and by inserting instead the matter "\$4,000";

(ii) by inserting in section 437 (1) after the word "misdemeanour" where secondly occurring the words "or any other offence taken into account pursuant to section 447B in passing sentence for such felony or misdemeanour";

(iii) by inserting in section 437 (3) after the word "misdemeanour" the words "or any other offence taken into account pursuant to section 447B in passing sentence for such felony or misdemeanour";

(iv)

Crimes and Other Acts (Amendment).

(iv) by inserting after section 437 (3) the following No. 50, 1974 subsection :—

(3A) Subject to section 9 of the Criminal Appeal Act, 1912, any sum directed under subsection (1) to be paid to an aggrieved person shall be paid forthwith, or within such period (if any) as is specified in the direction, to the Clerk of the Peace for payment to the person aggrieved.

(d) by inserting after section 437 the following Sec. 437A. section :—

437A. (1) This section shall have effect where a direction is given under section 437 (1) in favour of an aggrieved person in respect of any injury or loss and civil proceedings in respect of the injury or loss are subsequently brought by or on behalf of the aggrieved person. Effect of direction under s. 437 on civil proceedings.

(2) A direction under section 437 (1) shall not affect the right to bring the civil proceedings and the damages in the civil proceedings shall be assessed without regard to the direction, but where—

- (a) the whole or part of the amount directed under section 437 (1) to be paid; or
- (b) an amount under the Criminal Injuries Compensation Act, 1967, in respect of the injury or loss,

has been paid, the judgment of the Court, in so far as it relates to an amount of damages equal to the amount so paid under the direction or that Act, or under the direction and that Act, shall not be entered without the leave of the Court.

(v)

(3)

Crimes and Other Acts (Amendment).

No. 50, 1974

(3) Where there is an amount unpaid under a direction and a Court awards damages in civil proceedings, then the Court shall direct that the judgment—

- (a) if it is for an amount not exceeding the amount unpaid under the direction, shall not be enforced; or
- (b) if it is for an amount exceeding the amount unpaid under the direction, shall not be enforced as to the amount equal to the amount unpaid under the direction,

without the leave of the Court.

Sec. 440B.
(Imposition of fine on sentence being deferred or suspended.)

- (e) by omitting from section 440B (1) the words “two thousand dollars” and by inserting instead the matter “\$4,000”;

Sec. 442.
(Provision for passing sentences of less duration than those fixed.)

- (f) by omitting from section 442 (1) the words “or whipping.”;

Sec. 444.
(Sentence during any unexpired sentence may be cumulative.)

- (g) (i) by inserting in section 444 (1) after the word “Judge” the words “or magistrate”;
- (ii) by inserting in section 444 (1A) after the word “Judge” the words “or magistrate”;
- (iii) by inserting in section 444 (2) after the word “Judge” wherever occurring the words “or magistrate”;
- (iv) by inserting in section 444 (3) after the word “Judge” the words “or magistrate”;

(v)

Crimes and Other Acts (Amendment).

(v) by omitting section 444 (4) and by inserting No. 50, 1974 instead the following subsection :—

(4) Notwithstanding anything in this section, a magistrate, whether dealing with an offence or offences under section 476 or otherwise, shall not impose, or make an order having the effect of imposing, on any offender—

- (a) more than one sentence of imprisonment or penal servitude to be served consecutively on any other sentence of imprisonment or penal servitude then imposed on, or being served by, the offender; or
- (b) sentences of imprisonment or penal servitude, to be served consecutively, totalling more than three years.

10. The Crimes Act 1900 is further amended—

Further amendment of Act No. 40, 1900.

(a) by omitting section 453 ;

Sec. 453.
(Meaning and effect of penal servitude sentences.)

(b) by omitting section 454 ;

Sec. 454.
(Existing laws to be applicable.)

(c) by omitting the words "*Whipping sentences.*" occurring before section 455 and by omitting section 455 ;

Sec. 455.
(Kind of instrument and manner or use to be fixed by Comptroller-General.)

(d)

Crimes and Other Acts (Amendment).

No. 50, 1974 (d) by omitting section 456;

Sec. 456.
(Surgeon
may
remit
whipping
in certain
cases.)

Sec. 457. (e) by omitting section 457 and by inserting instead the following section :—

Direction
for com-
pensation to
be enforce-
able by
execution,
&c.

457. (1) Where pursuant to section 437 a Court or a Judge directs that a sum be paid to an aggrieved person in respect of any injury or loss and the whole or any part of that sum is not paid in accordance with section 437 (3A) to the Clerk of the Peace, the Clerk of the Peace, on the application of the aggrieved person, shall issue to the aggrieved person a certificate specifying the direction of the Court or the Judge and the amount of the sum required by the direction to be paid which has not, at the date of the certificate, been paid to the Clerk of the Peace.

(2) Where a certificate is issued pursuant to subsection (1) the Clerk of the Peace shall not thereafter accept any payments from the offender in respect of the direction specified in the certificate.

(3) An aggrieved person may file in the District Court at Sydney a certificate issued to him under subsection (1), and thereupon the registrar shall enter judgment in favour of the aggrieved person against the offender specified in the certificate for the amount specified in the certificate as having not been paid and any fees payable to the registrar in respect of the certificate.

(f)

Crimes and Other Acts (Amendment).

(f) by omitting from section 459 the following words :—

No. 50, 1974
Sec. 459.

, and also, if the Governor thinks fit so to direct, that he be kept in irons, for any time not exceeding the first three years of such servitude or imprisonment.

(Commuta-
tion of
capital
sentences.)

In addition thereto, in cases of rape, or of carnal knowledge of a girl under ten years, the Governor may direct that the offender shall be once, twice, or thrice publicly or privately whipped, at such times and with so many strokes at each time, not more than fifty, as he thinks fit;

(g) by omitting section 467.

Sec. 467.
(Position
of wife
of felon.)

11. The Crimes Act 1900 is further amended—

Further
amendment
of Act No.
40, 1900.

(a) by omitting section 476 and by inserting instead the following section :—

Sec. 476.

476. (1) Where a person is charged before a stipendiary magistrate with an offence mentioned in subsection (6) the magistrate may require the person to state whether he intends to plead guilty or not guilty to the charge, and if the person does not so state he shall be taken for the purposes of this section to have stated that he intends to plead not guilty.

Indictable
offences
punishable
summarily.

(2) Where a person states under subsection (1) that he intends to plead not guilty to a charge, and it appears to the magistrate that the case may properly be disposed of summarily and that the person consents to it being so disposed of,

the

Crimes and Other Acts (Amendment).

No. 50, 1974

the magistrate shall have jurisdiction to hear and determine the charge in a summary manner and pass sentence upon the person.

(3) Where a person states under subsection (1) that he intends to plead guilty to a charge the magistrate may accept or reject the plea.

(4) Where a magistrate rejects a plea under subsection (3) the proceedings before the magistrate shall continue as though the person had stated under subsection (1) that he intends to plead not guilty.

(5) Where a magistrate accepts a plea under subsection (3) and it appears to the magistrate—

- (a) that the case may be properly disposed of summarily and that the person consents to it being so disposed of, the magistrate shall have jurisdiction to pass sentence upon the person; or
- (b) that the case may not properly be disposed of summarily, or that the person does not consent to it being so disposed of, the provisions of section 51A of the Justices Act, 1902, shall apply as though the person had pleaded guilty to the charge under that section.

(6) The offences referred to in subsection (1) are—

- (a) (i) larceny, and any offence which under this Act is deemed to be, or is made punishable as, larceny or stealing;
- (ii) the offence of stealing any chattel, money, or valuable security from the person of another; and

(iii)

Crimes and Other Acts (Amendment).

(iii) any offence mentioned in section 126, **No. 50, 1974**
 131, 145, 146, 148, 150, 151, 152,
 156, 157, 159, 160, 165, 166, 168,
 169, 170, 178A, 178B, 178C, 179, 186,
 188, 189, 189A, 190, 192, 208, 209,
 210, 220, 229, 244, 245, 247, 248,
 273, 274 or 275,

where the value of the property, matter or thing the subject of the charge or the damage thereto, or the amount of money or reward the subject of the charge, does not exceed \$1,000;

- (b) any offence mentioned in section 71, 72, 76 or 76A, where the female the subject of the charge was at the time of the commission of the offence of or above the age of **fourteen years**;
- (c) any offence mentioned in section 81 where the person upon whom the assault was committed was at the time of the assault of or above the age of fourteen years;
- (d) any offence mentioned in section 56, 57, 58, 59, 61, 81A, 81B, 81C, 114, 132, 133, 154A, 158 or 252;
- (e) any offence mentioned in section 85 where the person charged is the mother of the child and is not charged with any other person;
- (f) any offence mentioned in section 112 where—
- (i) the felony alleged is stealing;
 - (ii) the value of the property stolen does not exceed \$1,000; and

(iii)

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- (iii) the person charged was neither armed with an offensive weapon or instrument, nor equipped with an implement of safe-breaking, nor in company with a person so armed or equipped;
 - (g) any offence mentioned in section 111 or 113 where—
 - (i) the felony intended is stealing; and
 - (ii) the person charged was neither armed with an offensive weapon or instrument, nor equipped with an implement of safe-breaking, nor in company with a person so armed or equipped;
 - (h) escape from lawful custody, except where the escape constitutes an offence against prison discipline within the meaning of Part IV of the Prisons Act, 1952; and
 - (i) (i) attempting to commit;
 - (ii) where the offence is a felony, being an accessory before or after the fact to; or
 - (iii) where the offence is a misdemeanour, aiding, abetting, counselling or procuring the commission of, any offence mentioned in paragraph (a), (b), (c), (d), (f), (g) or (h).
- (7) Notwithstanding anything in this Act to the contrary—
- (a) the maximum term of imprisonment, or penal servitude, to which a person may be sentenced by a magistrate under this section
in

Crimes and Other Acts (Amendment).

in respect of any one offence is two years, or the maximum term of imprisonment, or penal servitude, fixed by law (other than by this subsection) in respect of the offence, whichever is the shorter term; No. 50, 1974

- (b) the maximum fine which may be imposed by a magistrate under this section is, in respect of any one offence, \$2,000, or the maximum fine fixed by law (other than by this subsection) in respect of the offence, whichever is the smaller; and
- (c) where the maximum punishment which may be imposed by law (other than by this subsection) in respect of an offence is a term of imprisonment or penal servitude, or a fine, or both, the maximum punishment which may be imposed by a magistrate under this section in respect of the offence is that term, or two years, whichever is the shorter term, or that fine, or \$2,000, whichever is the smaller fine, or both.

(8) The provisions of section 82 of the Justices Act, 1902, apply to any fine imposed by a magistrate under this section.

(9) Where, before the commencement of the Crimes and Other Acts (Amendment) Act, 1974, a conviction in respect of an offence mentioned in this section would have been a conviction in respect of a felony, a conviction by a magistrate under this section in respect of that offence shall for all purposes be deemed to be a conviction in respect of a felony.

- (b) by omitting the words "*Offences and punishment.*" occurring before section 477 and by omitting section 477;

Sec. 477.
(List of offences within this jurisdiction.)

(c)

- No. 50, 1974 (c) by omitting section 478;
- Sec. 478.
(Punishment in such cases.)
- Sec. 479. (d) by omitting section 479;
(Accused to have option of summary disposal of case or of trial by jury.)
- Sec. 479A. (e) by omitting section 479A;
(Certain offences not to be dealt with summarily.)
- Sec. 480. (f) by omitting section 480 and by inserting instead the following section :—
- Certificate of dismissal. 480. Where a charge is disposed of summarily under section 476, the magistrate shall, if the case is dismissed and he is requested to do so, make out and deliver to the person charged with the offence so disposed of, a certificate under the magistrate's hand stating the fact of the dismissal.
- Secs. 482–492. (g) by omitting the words “CHAPTER II.—*Offences punishable summarily in certain cases by whipping.*” occurring before section 482 and by omitting sections 482, 483, 484, 485, 486, 487, 488, 489, 490, 491 and 492;
- Sec. 493. (h) by omitting section 493 and by inserting instead the following section :—
- Common assaults. 493. Whosoever assaults any person shall on summary conviction be liable to imprisonment for six months, or to a fine of \$500, or both.
- Sec. 494. (i) by omitting from section 494 the words “two hundred dollars” and by inserting instead the words “\$500, or both”;

(j)

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- (j) by omitting section 495; **No. 50, 1974**
Sec. 495.
(Assaults respecting the sale of grain.)
- (k) by omitting section 496; **Sec. 496.**
(Assaults obstructing workmen.)
- (l) by omitting section 497; **Sec. 497.**
(Where jurisdiction excluded.)
- (m) by omitting from section 498 the words "sections four hundred and ninety-three to four hundred and ninety-six both inclusive" and by inserting instead the words "section 493 or 494"; **Sec. 498.**
(Certificate of dismissal.)
- (n) by omitting from section 499 (2) the words "sections four hundred and ninety-three to four hundred and ninety-six both inclusive" and by inserting instead the words "section 493 or 494"; **Sec. 499.**
(Certificate or conviction a bar to other proceedings.)
- (o) (i) by omitting from section 501 (1) (a) the word "simple"; **Sec. 501.**
(List of offences punishable summarily without consent of accused.)
- (ii) by inserting in section 501 (1) (c) after the words "one hundred and fifty-two" the matter ", 178B";
- (iii) by omitting from section 501 (1) the words "one hundred dollars" where firstly occurring and by inserting instead the matter "\$500";
- (iv) by omitting from section 501 (1) the words "one hundred dollars" where secondly occurring and by inserting instead the words "\$1,000, or both";
- (p) by omitting from section 502 the words "one hundred dollars" and by inserting instead the words "\$500, or both"; **Sec. 502.**
(Possession of skin, &c., of stolen cattle.)
- (q)

Crimes and Other Acts (Amendment).

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- No. 50, 1974
Sec. 503.
(Stealing dogs.)
- (q) by omitting from section 503 the words “the value of the dog, in addition to a fine of forty dollars” and by inserting instead the words “a fine of \$500, or both”;
- Sec. 504.
(Possessing stolen dog or skin.)
- (r) by omitting from section 504 the words “forty dollars” and by inserting instead the matter “\$500”;
- Sec. 505.
(Stealing animals, &c., ordinarily kept in confinement.)
- (s) by omitting from section 505 the words “the value of the animal or bird, in addition to a fine of forty dollars” and by inserting instead the words “a fine of \$500, or both”;
- Sec. 507.
(Possession of stolen animals, &c.)
- (t) by omitting from section 507 the words “the value of such animal bird or skin, in addition to a fine of forty dollars” and by inserting instead the words “a fine of \$500, or both”;
- Sec. 510.
(Setting engine for deer, &c.)
- (u) by omitting from section 510 the words “forty dollars” and by inserting instead the matter “\$500”;
- Sec. 511.
(Killing pigeons.)
- (v) by omitting from section 511 the words “the value of the bird, in addition to a fine of four dollars” and by inserting instead the words “a fine of \$200”;
- Sec. 513.
(Stealing shrubs, &c.)
- (w) (i) by omitting from section 513 the words “, the value of or the injury done to which exceeds ten cents,”;
- (ii) by omitting from section 513 the words “pay the value of the property stolen, or intended to be stolen, or the amount of injury done, in addition to a fine of ten dollars” and by inserting instead the words “imprisonment for six months, or to pay a fine of \$500, or both”;
- Sec. 514.
(The like—second offence.)
- (x) by omitting section 514;
- (y)

Crimes and Other Acts (Amendment).

- (y) by omitting from section 515 the words "twenty dollars" and by inserting instead the matter "\$100"; No. 50, 1974
Sec. 515.
(Stealing,
&c., live
or dead
fence,
&c.)
- (z) by omitting section 516; Sec. 516.
(The like
—second
offence.)
- (aa) (i) by omitting from section 517 the words ", being of or above the value of ten cents,"; Sec. 517.
(Unlaw-
ful
possession
of trees,
fences,
&c.)
- (ii) by omitting from section 517 the words "ten dollars" and by inserting instead the matter "\$100"; possession
of trees,
fences,
&c.)
- (bb) (i) by omitting from section 518 the words ", such wood being of the value of or above ten cents,"; Sec. 518.
(Stealing
dead
wood.)
- (ii) by omitting from section 518 the words "ten dollars" and by inserting instead the matter "\$100";
- (cc) by omitting section 519; Sec. 519.
(The like
—second
offence.)
- (dd) by omitting from section 520 the words "the value of the article stolen, or the amount of injury done, in addition to a fine of forty dollars" and by inserting instead the words "a fine of \$500, or both"; Sec. 520.
(Stealing
plants,
&c., in
gardens.)
- (ee) by omitting from section 521 the words "the value of the article stolen, or the amount of injury done, in addition to a fine of two dollars" and by inserting instead the words "a fine of \$200"; Sec. 521.
(Stealing
plants,
&c., not
growing in
gardens.)
- (ff) (i) by omitting from section 522 the words "of the value of fifty cents,"; Sec. 522.
(Possession
of ship-
wrecked
goods.)
- (ii) by omitting from section 522 the words "the value of the article, in addition to a fine of forty dollars" and by inserting instead the words "a fine of \$500, or both";
- (gg)

Crimes and Other Acts (Amendment).

- No. 50, 1974
 Sec. 523.
 (Offering
 ship-
 wrecked
 goods
 for
 sale.)
- (gg) by omitting from section 523 the words “the value of the article, in addition to a fine of forty dollars” and by inserting instead the words “a fine of \$500, or both”;
- Sec. 525.
 (Stealing
 or
 damaging
 books, &c.,
 in public
 library,
 &c.)
- (hh) by inserting in section 525 after the word “fine” the words “of \$1,000 in addition to a fine”;
- Sec. 526A.
 (Taking a
 convey-
 ance
 without
 the
 consent of
 the
 owner.)
- (ii) by omitting section 526A (1) and by inserting instead the following subsections :—
- (1) Any person who—
- (a) without having the consent of the owner or person in lawful possession of a conveyance takes and drives it, or takes it for the purpose of driving it, or secreting it, or obtaining a reward for its restoration or pretended restoration, or for any other fraudulent purpose; or
- (b) knowing that any conveyance has been taken without such consent, drives it or allows himself to be carried in or on it,
- shall be guilty of larceny and shall, on conviction before two justices, be liable to imprisonment for twelve months, or to pay a fine of \$1,000, or both.
- (1A) For the purposes of this section “conveyance” means any cart, waggon, cab, carriage, motor car, caravan, trailer, motor lorry, omnibus, motor or other bicycle, or any ship, or vessel, whether decked or undecked, used in or intended for navigation, and “drive” shall be construed accordingly.
- (jj)

Crimes and Other Acts (Amendment).

- (jj) by omitting from section 527 the words "three months, or to pay a fine of forty dollars" and by inserting instead the words "six months, or to pay a fine of \$500, or both";
- No. 50, 1974
Sec. 527.
(Fraudulently appropriating or retaining property.)
- (kk) by omitting from section 528 the words "one hundred dollars" and by inserting instead the matter "\$500";
- Sec. 528.
(Advertising reward for return of stolen property.)
- (ll) by omitting section 529 and by inserting instead the following section:—
- Sec. 529.
529. (1) In this section—
- "receives" includes disposes of, and attempts to dispose of;
- "stolen" includes taken, extorted, obtained, embezzled, and otherwise disposed of, unlawfully.
- (2) Any person who receives any stolen property of a value not exceeding \$500, knowing the same to have been stolen, shall, on conviction before two justices, be liable to imprisonment for twelve months, or to pay a fine of \$1,000, or both.
- Receivers punishable summarily.
12. The Crimes Act 1900 is further amended—
- Further amendment of Act No. 40, 1900.
- (a) by omitting the subheading "(C) MALICIOUS INJURIES TO PROPERTY. *Declaratory clauses.*" occurring before section 530 and by omitting section 530;
- Sec. 530.
(Ownership and possession of property injured.)
- (b)

Crimes and Other Acts (Amendment).

- No. 50, 1974
- Sec. 531.
(Actual malice—
certain
acts not
malicious.)
- Sec. 539.
(Killing
or maiming
animals not
being
cattle.)
- Sec. 540.
(The like—
second
offence.)
- Sec. 541.
(Injuring
property not
previously
provided
for.)
- Sec. 542.
(The like—
second
offence.)
- Sec. 543.
(Application
of com-
pensation.)
- Sec. 544.
(Uttering
defaced
coin.)
- Sec. 545.
(Posses-
sing above
five pieces
of counter-
feit foreign
coin.)
- Sec. 545A.
(Bogus
advertise-
ments.)
- (b) by omitting section 531;
- (c) by omitting the words "*Injuries to trees, shrubs, vegetable produce, fences, &c.*" and "*Injuries to certain animals.*" occurring before section 539 and by omitting section 539;
- (d) by omitting section 540;
- (e) by omitting the words "*Injuries not otherwise provided for.*" occurring before section 541 and by omitting section 541;
- (f) by omitting section 542;
- (g) by omitting the words "*Application of compensation.*" occurring before section 543 and by omitting section 543;
- (h) by omitting the words "(D) COINAGE OFFENCES." occurring before section 544 and by omitting section 544;
- (i) by omitting section 545;
- (j) by omitting from section 545A (1) the words "forty dollars" and by inserting instead the words "\$200. or both";
- (k)

Crimes and Other Acts (Amendment).

- (k) by omitting from section 545B (1) the words “forty dollars” and by inserting instead the words “\$500, or both”; No. 50, 1974
Sec. 545B.
(Intimidation or annoyance by violence or otherwise.)
- (l) (i) by omitting from section 545c (1) the words “forty dollars” and by inserting instead the words “\$500, or both”; Sec. 545c.
(Knowingly joining or continuing in an unlawful assembly.)
- (ii) by omitting from section 545c (2) the words “one hundred dollars” and by inserting instead the words “\$1,000, or both”;
- (m) by omitting from section 545D the words “six months” and by inserting instead the words “twelve months, or to a fine not exceeding \$1,000, or both”; Sec. 545D.
(Unlawful making or possession of explosives.)
- (n) by inserting in section 546 after the words “summary conviction,” the word “aids,”; Sec. 546.
(Abetting or procuring.)
- (o) by inserting after section 547A the following section and subheading :— Sec. 547B.

(H) PUBLIC MISCHIEF.

547B. (1) Any person who, by any means, knowingly makes to a member of the police force any false representation that an act has been, or will be, done or that any event has occurred, or will occur, which act or event as so represented is such as calls for an investigation by a member of the police force, shall be liable on conviction before a stipendiary magistrate to imprisonment for six months, or to a fine of \$500, or both. Public mischief.

(2) For the purposes of subsection (1), a person shall be deemed to make a representation to a member of the police force if he makes the representation

Crimes and Other Acts (Amendment).

No. 50, 1974

representation to any other person and the nature of the representation reasonably requires that other person to communicate it to a member of the police force and that person does so communicate it.

Sec. 548A.
(Power to
commit.)

(p) by omitting section 548A and the subheading thereto;

Sec. 554.
(Damages
and
compensa-
tion.)

(q) by omitting from section 554 (3) the words "three hundred dollars" and by inserting instead the matter "\$600";

(r) by omitting the words "*Conditional release of offenders.*" occurring before section 556A and by inserting instead the heading "PART XV. CONDITIONAL RELEASE OF OFFENDERS.";

Sec. 556A.
(Power to
permit
release of
offenders.)

(s) (i) by omitting from section 556A (1) the words "a court of summary jurisdiction" and by inserting instead the words "any court";

(ii) by inserting in section 556A (1) after the word "committed," the words "or to any other matter which the court thinks it proper to consider,";

(iii) by inserting after section 556A (1) the following subsection :—

(1A) A recognizance mentioned in subsection (1) shall be conditioned upon and subject to such terms and conditions as the court shall order.

(iv) by omitting from section 556A (2) the words "subsection three of section five hundred and fifty-four" and by inserting instead the matter "section 437 (1) or section 554 (3)";

(v)

Crimes and Other Acts (Amendment).

- (v) by omitting section 556A (3) and by inserting **No. 50, 1974** instead the following subsection :—

(3) Where under subsection (1) a charge is dismissed or an offender is conditionally discharged, the person charged shall have the same rights as to appeal on the ground that he was not guilty of the offence charged as he would have had if convicted of the offence.

- (t) (i) by inserting in section 556B after the word "recognizance" where firstly occurring the words "(whether entered into for the purposes of section 556A or otherwise)"; **Sec. 556B.**
(Proceedings on breach of condition of recognizance.)
- (ii) by omitting from section 556B the words "summary jurisdiction" and by inserting instead the words "like jurisdiction to that court".

13. The Crimes Act 1900 is further amended—

**Further
amend-
ment of
Act No.
40, 1900.**

- (a) by omitting the heading "PART XV. FIRST OFFENDERS." occurring before section 557 and by omitting section 557; **Sec. 557.**
(Interpretation.)
- (b) by omitting section 558 and by inserting instead the following section:— **Subst.
sec. 558.**

558. (1) A Court before which a person comes to be sentenced for any offence may if it thinks fit defer passing sentence upon the person and order his release upon his entering into a recognizance, with or without sureties, in such amount as the Court directs, to be of good behaviour for such period as the Court thinks proper and to come up for sentence if called upon. **Deferring
sentence.**

(2)

Crimes and Other Acts (Amendment).

No. 50, 1974

(2) A recognizance mentioned in subsection (1) shall be conditioned upon and subject to such terms and conditions as the Court shall order.

(3) Where a person has entered into a recognizance mentioned in subsection (1) he may be removed to such gaol, or other place, as the Court may determine, and there forthwith submitted to the examination customary for securing future identification, and may be detained for whatever period, not exceeding forty-eight hours, as may be necessary for this purpose.

(4) Where the penalty provided by law in respect of an offence is a sentence of imprisonment or a fine or both, nothing in this section prevents the imposition of a fine for the offence when sentence for the offence is deferred under subsection (1).

(5) The provisions of section 82 of the Justices Act, 1902, apply to a fine imposed as referred to in subsection (4).

(6) A person may be called up for sentence and sentenced on the breach by him of any of the terms or conditions of a recognizance entered into by him under this section if the breach occurs during the period of the recognizance fixed under subsection (1), notwithstanding that the period has expired.

(7) Any power conferred upon a Court by the operation of this section shall be in addition to, and not in substitution for, any power conferred upon the Court otherwise.

(c)

Crimes and Other Acts (Amendment).

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|--|---|
| (c) by omitting section 559; | No. 50, 1974
Sec. 559.
(Order for restitution or payment of compensation may be made by Court.) |
| (d) by omitting section 560; | Sec. 560.
(Offender discharged to report himself.) |
| (e) by omitting section 561; | Sec. 561.
(Forfeiture of recognizance, &c.) |
| (f) by omitting section 562; | Sec. 562.
(Otherwise to be discharged and conviction not to be deemed a previous conviction.) |
| (g) by inserting in section 578 after the word "seventy-six," the matter "76A,"; | Sec. 578.
(Publication of evidence may be forbidden in certain cases.) |
| (h) by omitting the Second Schedule and by inserting instead the following Schedule :— | Second Schedule. |

SECOND SCHEDULE.

Parts and sections in force, so far as their provisions are applicable, with respect to all offences and courts.

Sections 4 to 10 inclusive, 23, 34, 40, 62, 77, 78, 116, 118 to 124 inclusive, 128 to 130 inclusive, 163, 183, 191, 193 to 195 inclusive, 206, 231, 250, 251,

Crimes and Other Acts (Amendment).

No. 50, 1974
 251, 344A, 345 to 347 inclusive, 351, Parts X to XIII inclusive, sections 547 to 556B inclusive, section 558 and Part XVI.

Fourth Schedule. (i) by omitting from the Fourth Schedule the words "two hundred and thirty-three, two hundred and thirty-four,";

Sixth Schedule. (j) by omitting the Sixth Schedule.

Amendment of Act No. 27, 1902. **14.** The Justices Act, 1902, is amended—

Sec. 51A. (Effect of plea of guilty in committal proceedings.) (a) by omitting section 51A (6) (a) and by inserting instead the following paragraph :—

(a) a magistrate has jurisdiction to pass sentence upon the person under section 476 (5) (a) of the Crimes Act 1900; or;

Sec. 80. (After hearing case Justices to convict or make an order or dismiss case.) (b) by omitting from section 80 the words " : Provided that in the case of an information, if upon the close of the case for the prosecution it appears to the Justice or Justices that the offence ought to be dealt with by indictment, he or they shall abstain from adjudication thereon and shall deal with the case for the purpose of committal for trial only";

Sec. 125. (Powers of Court appealed to.) (c) by inserting after section 125 (1) the following subsection :—

(1A) Where the conviction, order, sentence, or adjudication appealed against was recorded, made, passed, or given under the jurisdiction conferred upon a magistrate under section 476 of the Crimes Act 1900, the Court hearing the appeal shall not vary any penalty imposed by increasing it beyond the penalty which could have been imposed by the magistrate under that section.

15.

*Crimes and Other Acts (Amendment).***15.** The Jury Act, 1912, is amended— No. 50, 1974

- (a) by omitting section 27 (3) and by inserting instead the following subsection :— Amendment of Act No. 31, 1912.
Sec. 27.

(3) Upon the trial of any person for a felony (Trial by jury in criminal cases.) the jury shall, unless the court otherwise orders, be permitted to separate, at any time before they consider their verdict, in the same way as the jury upon the trial of any person for a misdemeanour are permitted to separate.

- (b) by omitting section 27A and by inserting instead the following section :— Sec. 27A.

27A. Where in the course of a criminal trial any member of the jury dies or is discharged by the court as being through illness incapable of continuing to act, or for any other reason, the jury shall nevertheless— Provision for continuance of trial where juror dies or becomes incapable.

- (a) if the number of its members is not reduced below ten; or
- (b) if the number of its members is reduced below ten and assent in writing is given by or on behalf of both the Crown Prosecutor and the accused (which assent the accused is hereby authorised to give),

and if the court so orders, be considered as remaining for all the purposes of that trial properly constituted.

16. The Criminal Appeal Act, 1912, is amended— Amendment of Act No. 16, 1912.

- (a) by omitting from section 5A (2) (g) the words “for the New South Wales State Reports or Weekly Notes” and by inserting instead the words “for any lawful purpose of the Council of Law Reporting for New South Wales”; Sec. 5A.
(Point of law stated by judge.)

(b)

Crimes and Other Acts (Amendment).

No. 50, 1974

Sec. 9.
(Revest-
ing and
restitu-
tion of
property
on
convic-
tion.)

(b) by inserting after section 9 (3) the following subsections :—

(4) Where a direction for the payment of compensation is given under section 437 of the Crimes Act 1900 against any person in respect of an offence taken into account under section 447B of that Act in passing sentence—

(a) the operation of the direction shall be suspended until the expiration of the time provided for appealing to the court; and

(b) where notice of appeal or of application for leave to appeal is given within the time provided, the operation of the direction shall be suspended until the determination of the appeal or refusal of the application,

and in cases where the operation of any such direction is suspended until the determination of the appeal, the direction shall not take effect if the conviction for the offence or, if more than one, all the offences, of which that person was convicted in the proceedings in which the direction was given, is quashed on appeal, except by the special order of the court.

(5) Where a direction for the payment of compensation is given under section 437 of the Crimes Act 1900 against any person in respect of an offence taken into account under section 447B of that Act in passing sentence, the court may annul or vary any such direction although the conviction for the offence or, if more than one, all the offences, of which that person was convicted in the proceedings in which the direction was given is not quashed on appeal.

Crimes and Other Acts (Amendment).

17. The Criminal Injuries Compensation Act, 1967, is No. 50, 1974 amended—

Amend-
ment of
Act No.
14, 1967.

(a) by omitting section 5 (2) and by inserting instead the following subsections :—

Sec. 5.
(Payment
of com-
pensation
by
Treasurer
to
applicant.)

(2) Where the Treasurer, after receiving the Under Secretary's statement relating to any such application, considers that in the circumstances of the case the making under this subsection of a payment to the applicant is justified, the Treasurer may make a payment to the applicant not exceeding the appropriate amount referred to in subsection (1) (a) as specified in that statement.

(2A) In determining the amount of any payment to be made under subsection (2) the Treasurer shall have regard to—

(a) the appropriate amount referred to in subsection (1) (a); and

(b) any amounts referred to in subsection (1) (b),

as specified in the Under Secretary's statement, and any recommendations made by the Under Secretary with respect to any such amounts referred to in subsection (1) (b).

(2B) Any payment made under subsection (2) shall be made *ex gratia* and not as of right.

(b) by omitting section 7 and by inserting instead the following section :—

Sec. 7.

7. (1) Where a payment is made under section 5 (2) to an aggrieved person—

Rights
against
convicted
person
where
payment
made.

(a) the Under Secretary shall forthwith notify the Clerk of the Peace of the particulars of the payment, including the date and amount;

(b)

Crimes and Other Acts (Amendment).

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- (b) the Clerk of the Peace shall endorse on any certificate thereafter issued by him to the aggrieved person under section 457 (1) of the Crimes Act 1900 the date and amount of the payment so notified to him, and may also issue to the Under Secretary any certificate so endorsed;
- (c) the Under Secretary may file a certificate so issued to him in the District Court at Sydney, and thereupon the registrar of the District Court for Sydney shall enter judgment in favour of the Under Secretary against the offender specified in the certificate for the amount endorsed on the certificate under paragraph (b); and
- (d) the aggrieved person may file a certificate endorsed under paragraph (b) in the District Court at Sydney, and thereupon the registrar of the District Court for Sydney shall enter judgment in favour of the aggrieved person against the offender specified in the certificate for the balance of the amount of the sum directed to be paid, specified in the certificate, after deduction of the amount endorsed on the certificate under paragraph (b).

(2) Where judgment has been entered in favour of an aggrieved person under section 457 (3) of the Crimes Act 1900 in respect of a direction made under section 437 (1) of that Act, and a payment has been made to the aggrieved person pursuant to section 5 (2) in respect of that direction, the Under Secretary may file a notice specifying the date and amount of the payment in

the

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the District Court at Sydney, and thereupon the registrar of the District Court for Sydney shall— No. 50, 1974

- (a) reduce the amount of the judgment by the amount specified in the notice; and
- (b) enter judgment in favour of the Under Secretary, against the offender against whom judgment in favour of the aggrieved person was entered, for the amount specified in the notice.

(3) The Under Secretary shall pay to the Consolidated Revenue Fund any money recovered by him pursuant to this section.
