

# Crimes Act 1900 No 40

[1900-40]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**

*Crimes (Community Welfare) Amendment Act 1982 No 81, Sch 1 (1)-(4), (6) and (7) (not commenced)*

*National Parks and Wildlife (Marine Mammals Protection) Amendment Act 1986 No 133 (not commenced — to commence on 2.2.1987)*

*Crimes (Photographic Evidence) Amendment Act 1986 No 162 (not commenced)*

*Crimes (Remissions) Further Amendment Act 1986 No 189 (not commenced)*

*Miscellaneous Acts (Public Prosecutions) Amendment Act 1986 No 212 (not commenced)*

### Authorisation

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# Crimes Act 1900 No 40



New South Wales

An Act to consolidate the Statutes relating to Criminal Law.

## Part 1 Preliminary and interpretation

### ***Short title and division into Parts***

#### **1 Name of Act and contents of Act**

This Act may be cited as the *Crimes Act 1900* and is divided into Parts, as follows:

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(2) *Repeals and savings—s 2*

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## ***Repeals and savings***

### **2 Repeals and savings**

- (1) The Acts mentioned in the First Schedule hereto are, to the extent therein expressed, hereby repealed, except as to offences committed and things done or commenced before the passing of this Act, which shall be dealt with and continued, and in respect of which every right and liability shall remain as if this Act had not been passed.
- (2) All persons appointed under any Act, or section of an Act, hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed hereunder.
- (3) All proclamations, regulations, forms of indictments, records, informations, depositions, convictions, warrants, recognisances, and proceedings, and all orders or directions prescribing the form or kind of instrument to be used in the whipping of offenders, or the manner of its use, made, prescribed, or given under the authority of any Act hereby repealed, and being in force at the time of the passing of this Act, shall be deemed to have been made, prescribed, or given under the authority of this Act.



## ***Application of certain sections and Parts***

### **3 Application of certain Parts of Act**

The sections mentioned in the Second Schedule, so far as their provisions can be applied, shall be in force with respect to all offences, whether at Common Law or by Statute, whensoever committed and in whatsoever Court tried.

## ***Interpretation***

### **4 Definitions**

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

***Aircraft*** includes any machine that can derive support in the atmosphere from the reactions of the air.

***Banker*** includes every director or manager of any banking company, whether incorporated or not, or of any branch thereof, and every person carrying on the business of a banker.

***Cattle*** includes any horse, mare, gelding, colt, foal, filly, ass, mule, bull, cow, ox, steer, heifer, calf, ram, ewe, sheep, lamb, pig, goat, deer, alpaca, llama, vicuna, camel, or dromedary, and every hybrid or cross thereof.

***Counsel*** includes attorneys.

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

***Document of title to goods*** includes every bill of lading, India warrant, dock warrant, warehouse-keeper's certificate, warrant, or order for the delivery or transfer of any goods or valuable thing, and every bought and sold note or document used in the ordinary course of business as proof of the possession or control of goods, or purporting to authorise by indorsement or delivery, the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to.

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

***Domestic violence offence*** means:

- (a) an offence under, or mentioned in, section 19, 24, 27, 28, 29, 30, 33, 33A, 35, 39, 41, 44, 46, 47, 48, 49, 58, 59, 61, 61B, 61C, 61D, 61E, 493 or 494 committed upon:

- (i) a person who is or has been married to the person who commits the offence, or
  - (ii) a person who is living with or has lived with the person who commits the offence as his wife or her husband, as the case may be, on a bona fide domestic basis although not married to him or her, as the case may be, or
- (b) an offence of attempting to commit an offence referred to in paragraph (a).

**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.

**Governor** means, except in respect of the exercise of the pardoning power, the Governor with the advice of the Executive Council.

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

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

**Judge**—see **Court**.

**Justice** means a Justice of the Peace.

**Loaded arms** means any gun, pistol, or other arms, loaded in the barrel or chamber or magazine with gunpowder or other explosive substance, and with ball, shot, slug, or other destructive material, although the attempt to discharge may fail from want of proper priming, or from any other cause; and every gun, pistol, or other arms, unlawfully presented at any person, shall be deemed to be loaded unless the contrary is shown.

**Member of the crew** in relation to an aircraft means a person having functions or duties on board the aircraft.

**Money** includes all coined money, whether current within New South Wales or not, and all bank notes or instruments ordinarily so called, if current as such, and payable to the bearer.

**Night** means the period of time commencing at nine of the clock in the evening of each day and concluding at six of the clock in the morning of the next succeeding day.

**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.

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

**Person, Master, and Employer** severally include, any society, company, or corporation.

**Place of Divine worship** includes any building or structure ordinarily used for Divine worship.

**Property** includes every description of real and personal property; money, valuable securities, debts, and legacies; and all deeds and instruments relating to, or evidencing the title or right to any property, or giving a right to recover or receive any money or goods; and includes not only property originally in the possession or under the control of any person, but also any property into or for which the same may have been converted or exchanged, and everything acquired by such conversion or exchange, whether immediately or otherwise.

**Property belonging to a vessel** includes every portion of its cargo, and property belonging to any of the officers, crew, or passengers thereof.

**Railway** includes tramways.

**Telegraph** includes telephones.

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

**Valuable security** includes every order or other security whatsoever entitling or evidencing the title of any person to any share or interest in any public stock or fund, whether of any part of the British dominions or of any Foreign State, or in any fund of any body corporate, company, or society, whether within or without the British dominions, or to any deposit in any bank; and every debenture, deed, bond, bill, note, cheque, warrant, order, or security whatsoever for money, or for payment of money, whether current in any part of the British dominions or in any Foreign State, and every document of title to land or goods, as herein defined.

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

**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.

- (2) A dwelling-house does not cease to be a dwelling-house by reason only of being temporarily unoccupied.
- (3) Notwithstanding section 11A of the *Interpretation Act 1897*, every heading to a provision of this Act shall be taken to be part of this Act if it appears in italics or in capital letters.
- (4) In this Act, except in so far as the context or subject-matter otherwise indicates or requires, a reference to an offence mentioned in a specified provision of this Act that has been amended or repealed is, or includes, a reference to an offence mentioned in the provision as in force before its amendment or repeal.

## 5 **Maliciously**

**Maliciously:** Every act done of malice, whether against an individual or any corporate body or number of individuals, or done without malice but with indifference to human life or suffering, or with intent to injure some person or persons, or corporate body, in property or otherwise, and in any such case without lawful cause or excuse, or done recklessly or wantonly, shall be taken to have been done maliciously, within the meaning of this Act, and of every indictment and charge where malice is by law an ingredient in the crime.

## 6 **Month**

In this Act, and in every sentence passed by any Court or Judge or Justice under this or any other Act or at Common Law, unless the contrary is expressed:

**Month** means a calendar month.

## 7 **“Possession” when criminal**

Where by this or any other Act the felonious receiving of any property, or its possession without lawful cause or excuse, is expressed to be an offence, every person shall be deemed to have such property in his possession within the meaning of such Act who:

- (a) has any such property in his custody, or
- (b) knowingly has any such property in the custody of another person, or
- (c) knowingly has any such property in a house, building, lodging, apartment, field, or other place, whether belonging to or occupied by himself or not, and whether such property is there had or placed for his own use, or the use of another.

## 8 **“Public place” etc**

Where, by this or any other Act, or by any rule, regulation, ordinance or by-law, duly made under or by virtue of the provisions of any Act, any offence, conduct, or language, in a public place, or open and public place, or place of public resort, is made punishable, or a person guilty thereof is made liable to apprehension, the place shall be deemed public for

the purposes of the enactment or taken to be otherwise within its meaning if the same, although a vessel or vehicle only, or a room, or field, or place, ordinarily private, was at the time used for a public purpose, or as a place of common resort, or was open to the public on the payment of money or otherwise.

## **9 What offences felonies**

Whenever by this Act a person is made liable to the punishment of penal servitude, the offence for which such punishment may be awarded is hereby declared to be and shall be dealt with as a felony, and wherever in this Act the term **felony** is used, the same shall be taken to mean an offence punishable by penal servitude.

## **10 What offences misdemeanours**

Whenever by this Act no greater punishment can be awarded than imprisonment, with or without hard labour, or the imposition of a fine, in addition to or without imprisonment, the offence shall be and be dealt with as a misdemeanour only.

## **Part 2 Offences against the Sovereign**

### ***Treason-felony***

#### **11 Provisions of 36 Geo III, c 7, and 57 Geo III, c 6, repealed except as to offences against the person of the Sovereign**

The provisions of the Act of the Parliament of Great Britain, thirty-sixth George the Third chapter seven, made perpetual by the Act of the Parliament of Great Britain and Ireland fifty-seventh George the Third chapter six, and all the provisions of the last mentioned Act in relation thereto, save such of the same respectively as relate to the compassing, imagining, inventing, devising, or intending death or destruction, or any bodily harm tending to death or destruction, maim, or wounding, imprisonment, or restraint of the person of the heirs and successors of His said Majesty King George the Third, and the expressing, uttering, or declaring of such compassings, imaginations, inventions, devices, or intentions, or any of them, shall be and the same are hereby repealed.

#### **12 Compassing etc deposition of the Sovereign—overawing Parliament etc**

Whosoever, within New South Wales or without, compasses, imagines, invents, devises, or intends to deprive or depose Our Most Gracious Lady the Queen, her heirs or successors, from the style, honour, or Royal name of the Imperial Crown of the United Kingdom, or of any other of Her Majesty's dominions and countries, or to levy war against Her Majesty, her heirs or successors, within any part of the United Kingdom, or any other of Her Majesty's dominions, in order, by force or constraint, to compel her or them to change her or their measures or counsels, or in order to put any force or constraint upon, or in order to intimidate or overawe, both Houses or either House of the Parliament of the United Kingdom, or the Parliament of New South Wales, or to move or stir any foreigner or stranger with force to invade the United Kingdom, or any other Her Majesty's dominions,

or countries under the obeisance of Her Majesty, her heirs or successors, and expresses, utters, or declares such compassings, imaginations, inventions, devices, or intentions, or any of them, by publishing any printing or writing, or by open and advised speaking, or by any overt act or deed, shall be liable to penal servitude for life.

**13 Time within which prosecution shall be commenced and warrant issued**

- (1) No person shall be prosecuted for any felony by virtue of this Part in respect of such compassings, imaginations, inventions, devices, or intentions as aforesaid, in so far as the same are expressed, uttered, or declared by open and advised speaking only, unless:
  - (a) information of such compassings, imaginations, inventions, devices, and intentions, and of the words by which the same were expressed, uttered, or declared is given upon oath to one or more Justice or Justices within six days after such words were spoken, and
  - (b) a warrant, for the apprehension of the person by whom such words were spoken, is issued within ten days next after such information was given as aforesaid.
- (2) No person shall be convicted of any such compassings, imaginations, inventions, devices, or intentions as aforesaid, in so far as the same are expressed, uttered, or declared by open or advised speaking as aforesaid, except upon his own confession in open Court, or unless the words so spoken are proved by two credible witnesses.

**14 In informations more than one overt act may be charged**

In any information for any felony under this Part, any number of the matters, acts, or deeds by which such compassings, imaginations, inventions, devices, or intentions as aforesaid, or any of them, have been expressed, uttered, or declared, may be charged against the accused.

**15 Information for such felonies valid though the facts may amount to treason**

If the facts or matters alleged in an information for any felony under this Part amount in law to treason, such information shall not by reason thereof be deemed void, erroneous, or defective, and if the facts or matters proved on the trial of any person informed against for any felony under this Part amount in law to treason, such person shall not by reason thereof be entitled to be acquitted of such felony, but no person tried for such felony shall be afterwards prosecuted for treason upon the same facts.

**16 Nothing herein to affect 25 Ed III, c 2**

Nothing contained in this Part shall lessen the force of, or in any matter affect, anything enacted by the Statute passed in the twenty-fifth year of King Edward the Third "A declaration which offences shall be adjudged Treason".

### **16A Procedure in cases of treason**

In all cases of treason, whether alleged to have been committed before or after the passing of the *Crimes (Amendment) Act 1951*, the person charged shall be arraigned and tried in the same manner, and according to the same course and order of trial in every respect as if such person stood charged with murder.

## **Part 3 Offences against the person**

### ***Homicide***

#### **17 (Repealed)**

#### **18 Murder and manslaughter defined**

(1)

(a) Murder shall be taken to have been committed where the act of the accused, or thing by him omitted to be done, causing the death charged, was done or omitted with reckless indifference to human life, or with intent to kill or inflict grievous bodily harm upon some person, or done in an attempt to commit, or during or immediately after the commission, by the accused, or some accomplice with him, of a crime punishable by penal servitude for life.

(b) Every other punishable homicide shall be taken to be manslaughter.

(2)

(a) No act or omission which was not malicious, or for which the accused had lawful cause or excuse, shall be within this section.

(b) No punishment or forfeiture shall be incurred by any person who kills another by misfortune only, or in his own defence.

#### **19 Murder—punishment**

Whosoever commits the crime of murder shall be liable to penal servitude for life.

The provisions of section 442 shall not be in force with respect to the sentence to be passed under this section unless it appears to the Judge that the person's culpability for the crime is significantly diminished by mitigating circumstances, whether disclosed by the evidence in the trial or otherwise.

#### **20 Child murder—when child deemed born alive**

On the trial of a person for the murder of a child, such child shall be held to have been born alive if it has breathed, and has been wholly born into the world whether it has had an independent circulation or not.

## **21 Child murder by mother—verdict of contributing to death etc**

Whosoever, being a woman delivered of a child is indicted for its murder, shall, if the jury acquit her of the murder, and specially find that she has in any manner wilfully contributed to the death of such child, whether during delivery, or at or after its birth, or has wilfully caused any violence, the mark of which has been found on its body, be liable to penal servitude for ten years.

## **22 Trial for child murder—verdict of concealment of birth**

Where, on the trial of a person for the murder or manslaughter of a child, the jury are not satisfied that he is guilty thereof, but are satisfied that he is guilty of an offence within section 85, they may acquit him of the offence charged and find him guilty of an offence under the said section, and he shall be liable to punishment accordingly.

## **22A Infanticide**

- (1) Where a woman by any wilful act or omission causes the death of her child, being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for this section the offence would have amounted to murder, she shall be guilty of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of such child.
- (2) Where upon the trial of a woman for the murder of her child, being a child under the age of twelve months, the jury are of opinion that she by any wilful act or omission caused its death, but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to such child or by reason of the effect of lactation consequent upon the birth of the child, then the jury may, notwithstanding that the circumstances were such that but for the provisions of this section they might have returned a verdict of murder, return in lieu thereof a verdict of infanticide, and the woman may be dealt with and punished as if she had been guilty of the offence of manslaughter of the said child.
- (3) Nothing in this section shall affect the power of the jury upon an indictment for the murder of a child to return a verdict of manslaughter or a verdict of not guilty on the ground of insanity, or a verdict of concealment of birth.

## **23 Trial for murder—provocation**

- (1) Where, on the trial of a person for murder, it appears that the act or omission causing death was an act done or omitted under provocation and, but for this subsection and the provocation, the jury would have found the accused guilty of murder, the jury shall acquit the accused of murder and find the accused guilty of manslaughter.



- (2) For the purposes of subsection (1), an act or omission causing death is an act done or omitted under provocation where:
- (a) the act or omission is the result of a loss of self-control on the part of the accused that was induced by any conduct of the deceased (including grossly insulting words or gestures) towards or affecting the accused, and
  - (b) that conduct of the deceased was such as could have induced an ordinary person in the position of the accused to have so far lost self-control as to have formed an intent to kill, or to inflict grievous bodily harm upon, the deceased,
- whether that conduct of the deceased occurred immediately before the act or omission causing death or at any previous time.
- (3) For the purpose of determining whether an act or omission causing death was an act done or omitted under provocation as provided by subsection (2), there is no rule of law that provocation is negatived if:
- (a) there was not a reasonable proportion between the act or omission causing death and the conduct of the deceased that induced the act or omission,
  - (b) the act or omission causing death was not an act done or omitted suddenly, or
  - (c) the act or omission causing death was an act done or omitted with any intent to take life or inflict grievous bodily harm.
- (4) Where, on the trial of a person for murder, there is any evidence that the act causing death was an act done or omitted under provocation as provided by subsection (2), the onus is on the prosecution to prove beyond reasonable doubt that the act or omission causing death was not an act done or omitted under provocation.
- (5) This section does not exclude or limit any defence to a charge of murder.

### **23A Diminished responsibility**

- (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) Where, on the trial of a person for 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.

#### **24 Manslaughter—punishment**

Whosoever commits the crime of manslaughter shall be liable to penal servitude for life:

Provided that, in any case, if the Judge is of the opinion that, having regard to all the circumstances, a nominal punishment would be sufficient, he may discharge the jury from giving any verdict, and such discharge shall operate as an acquittal.

#### **25 Trial where the death or cause of death occurs out of New South Wales**

Where, in any case of homicide, the cause of death happened on the sea, or elsewhere without New South Wales, but the death was within New South Wales, or the cause of death happened within New South Wales, but the death was on the sea or elsewhere without New South Wales, the offence may be dealt with, in all respects, as if the same had been wholly committed within New South Wales.

### ***Conspiracy to murder***

#### **26 Conspiring to commit murder**

Whosoever:

conspires and agrees to murder any person, whether a subject of Her Majesty or not, and whether within the Queen's dominions or not, or

solicits, encourages, persuades, or endeavours to persuade, or proposes to, any person to commit any such murder,

shall be liable to penal servitude for life.

### ***Attempts to murder***

#### **27 Acts done to the person with intent to murder**

Whosoever:

administers to, or causes to be taken by, any person any poison, or other destructive thing, or

by any means wounds, or causes grievous bodily harm to any person,

with intent in any such case to commit murder,  
shall be liable to penal servitude for life.

## **28 Acts done to property with the like intent**

Whosoever:

sets fire to any vessel, or any chattel therein, or any part of her tackle apparel or furniture, or

casts away or destroys any vessel, or

by the explosion of gunpowder, or other explosive substance, destroys, or damages any building, or

places, or throws, any matter or thing upon or across a railway, or

removes, or displaces any sleeper, or other thing belonging to a railway,

with intent in any such case to commit murder,  
shall be liable to penal servitude for life.

## **29 Certain other attempts to murder**

Whosoever:

attempts to administer to, or cause to be taken by, any person any poison, or other destructive thing, or

shoots at, or in any manner attempts to discharge any kind of loaded arms at any person, or

attempts to drown, suffocate, or strangle any person,

with intent in any such case to commit murder,  
shall, whether any bodily injury is effected or not, be liable to penal servitude for life.

## **30 Attempts to murder by other means**

Whosoever, by any means other than those specified in sections 27 to 29 both inclusive, attempts to commit murder shall be liable to penal servitude for life.

## ***Letters threatening to murder***

### **31 Letters threatening to murder**

Whosoever maliciously sends, delivers, or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing threatening to kill any person shall be liable to penal servitude for ten years.

## ***Suicide***

### **31A Suicide and attempt to commit suicide**

The rule of law that it is a crime for a person to commit, or to attempt to commit, suicide is abrogated.

### **31B Survivor of suicide pact**

- (1) The survivor of a suicide pact shall not be guilty of murder or manslaughter but may be guilty of an offence under section 31C.
- (2) In this section, ***suicide pact*** means a common agreement between 2 or more persons having for its object the death of all of them, whether or not each is to take his or her own life, but nothing done by a person who enters into a suicide pact shall be treated as being done by the person in pursuance of the pact unless it is done while the person has the settled intention of dying in pursuance of the pact.
- (3) The onus of proving the existence of a suicide pact shall lie with the accused person on the balance of probabilities.

### **31C Aiding etc suicide**

- (1) A person who aids or abets the suicide or attempted suicide of another person shall be liable to imprisonment for 10 years.
- (2) Where:
  - (a) a person incites or counsels another person to commit suicide, and
  - (b) that other person commits, or attempts to commit, suicide as a consequence of that incitement or counsel,the firstmentioned person shall be liable to imprisonment for 5 years.

## ***Acts causing danger to life or bodily harm***

### **32 Impeding endeavours to escape shipwreck**

Whosoever:

maliciously prevents or impedes any person on board of, or having quitted, any ship or

vessel in distress, or wrecked, stranded, or cast on shore, in his endeavour to save his life, or

maliciously prevents or impedes any person in his endeavour to save the life of such first-mentioned person,

shall be liable to penal servitude for life.

### **32A Destruction of aircraft**

Whosoever destroys an aircraft with intent to cause the death of a person or with reckless indifference to the safety of the life of a person shall be liable to penal servitude for life.

### **32B Assault etc on member of crew of aircraft**

Whosoever while on board an aircraft assaults or intimidates or threatens with violence a member of the crew of the aircraft so as to interfere with the performance by the member of his functions or duties connected with the operation of the aircraft or so as to lessen his ability to perform those functions or duties shall be liable to penal servitude for fourteen years.

### **32C Threats to destroy aircraft or other conveyances**

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

### **33 Wounding etc with intent to do bodily harm or resist arrest**

Whosoever:

maliciously by any means wounds or inflicts grievous bodily harm upon any person, or

maliciously shoots at, or in any manner attempts to discharge any kind of loaded arms at any person,

with intent in any such case to do grievous bodily harm to any person, or with intent to resist, or prevent, the lawful apprehension or detainer either of himself or any other person,  
shall be liable to penal servitude for life.

**33A Discharging loaded arms with intent**

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.

**33B Use of weapon to resist arrest etc**

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.

**34 Feloniously wounding—verdict of minor offence**

Where, on the trial of a person for an offence under section 33, the jury are satisfied that the accused is guilty of the wounding, or inflicting grievous bodily harm, mentioned in the indictment, but are not satisfied that he is guilty of the intent charged therein, they may acquit him of such intent and find him guilty of an offence under section 35, and he shall be liable to punishment accordingly.

**35 Malicious wounding or infliction of grievous bodily harm**

Whosoever maliciously by any means:

- (a) wounds any person, or
- (b) inflicts grievous bodily harm upon any person,

shall be liable to penal servitude for 7 years.

**36 (Repealed)**

**37 Attempts to choke etc (garrotting)**

Whosoever:

by any means attempts to choke suffocate or strangle any person, or

by any means calculated to choke suffocate or strangle, attempts to render any person insensible unconscious or incapable of resistance,

with intent in any such case to enable himself or another person to commit, or with intent in any such case to assist any person in committing, an indictable offence, shall be liable to penal servitude for life.

**38 Using chloroform etc to commit an offence**

Whosoever unlawfully applies or administers to, or causes to be taken by, or attempts to apply or administer to, or cause to be taken by, any person, any chloroform laudanum or other stupefying or over-powering drug or thing, with intent in any such case to enable himself, or another person, to commit, or with intent to assist another person in committing, an indictable offence, shall be liable to penal servitude for life.

**39 Using poison etc so as to endanger life**

Whosoever maliciously administers to, or causes to be administered to, or taken by, any person, any poison or other destructive or noxious thing, so as to endanger the life of such person, or so as to inflict upon such person grievous bodily harm, shall be liable to penal servitude for ten years.

**40 On trial for poisoning—verdict of minor offence**

Where, on the trial of a person for an offence under section 39, the jury are not satisfied that the accused is guilty thereof, but are satisfied that he is guilty of an offence within section 41, they may acquit him of the offence charged, and find him guilty of an offence under the said last-mentioned section, and he shall be liable to punishment accordingly.

**41 Administering poison etc with intent to injure or annoy**

Whosoever maliciously administers to, or causes to be administered to, or taken by, any person, any poison or other destructive or noxious thing, with intent to injure aggrieve or annoy such person, shall be liable to penal servitude for five years.

**41A Poisoning etc of water supply**

Whosoever maliciously introduces any poison or other destructive or noxious thing into a supply of water with intent to injure any person or persons shall be liable to penal servitude for 5 years.

**42 Injuries to child at time of birth**

Whosoever, during or after the delivery of a child, maliciously inflicts on such child, whether then wholly born or not, any grievous bodily harm, shall be liable to penal servitude for fourteen years.

**43 Exposing or abandoning child under two**

Whosoever unlawfully abandons or exposes any child under the age of two years, whereby the life of such child was or is endangered, or its health was or is likely to be seriously injured, shall be liable to penal servitude for five years.

**44 Not providing wife, child or servant with food etc**

Whosoever:

being legally liable to provide any wife, child, ward, apprentice, or servant or any insane person with necessary food, clothing, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, or

maliciously does, or causes to be done, any bodily harm to any wife, child, ward, apprentice or servant, or to any insane person

so that, in any such case, his or her life is endangered, or his or her health becomes or is or is likely to be seriously injured, shall be liable to penal servitude for five years.

**45 (Repealed)**

**46 Causing bodily injury by gunpowder etc**

Whosoever maliciously by the explosion of gunpowder or other substance, or the use of any corrosive fluid, or destructive matter, burns maims disfigures disables, or does grievous bodily harm to, any person, shall be liable to penal servitude for life.

**47 Using etc explosive substance or corrosive fluid etc**

Whosoever:

maliciously causes any gunpowder or other explosive substance to explode, or

maliciously sends, or delivers to, or causes to be taken, or received by, any person, any explosive substance, or other dangerous or noxious thing, or

maliciously puts or lays at any place, or casts or throws at, or upon, or otherwise applies to, any person, any corrosive fluid or any destructive or explosive substance,

with intent in any such case to burn maim disfigure disable, or do grievous bodily harm to, any person,

shall, whether bodily injury is effected or not, be liable to penal servitude for life.

**48 Placing gunpowder near a building etc**

Whosoever maliciously places, or throws into, upon, against, or near, any building, ship, or vessel, any gunpowder, or other explosive substance, with intent to do some bodily injury to any person, shall, whether an explosion takes place or not, and whether bodily injury is



effected or not, be liable to penal servitude for fourteen years.

#### **49 Setting trap etc**

(1) Any person who:

(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.

#### **50 Placing wood etc on a railway**

Whosoever:

maliciously puts, or throws, upon, or across a railway any wood stone or other thing, or

maliciously takes up, removes, or displaces, any rail, sleeper, or other thing belonging to any railway, or

maliciously turns moves, or diverts, or neglects to turn move, or divert, any point, or other machinery belonging to any railway, or

maliciously makes shows hides, or removes, any signal or light, upon, or near to any railway, or

maliciously does, or causes to be done, or neglects to do, or cause to be done any other thing,

with intent in any such case to injure, or endanger the safety of any person travelling, or being on such railway, or in any railway carriage, engine, tender, or truck shall be liable to penal servitude for life.

#### **51 Casting stone etc on a railway carriage**

Whosoever maliciously throws, or causes to fall, or strike at, against, into, or upon, any engine, tender, carriage, or truck, used upon a railway, any wood, stone, or other thing, with intent to injure, or endanger the safety of, any person in or upon such engine, tender, carriage, or truck, or in or upon any other engine, tender, carriage, or truck, of the same train, shall be liable to penal servitude for ten years.

## **52 Endangering passengers on railway**

Whosoever, by any unlawful or negligent act or omission, endangers, or causes to be endangered, the safety of any person conveyed, or being in or upon a railway, shall be liable to imprisonment for three years.

### **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 or on which that person was being conveyed (whether as a passenger or otherwise),
  - (b) a motor vehicle in or on which that person was being conveyed (whether as a passenger or otherwise) overturning or leaving the highway,
  - (c) impact with a motor vehicle,
  - (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,
  - (da) impact with anything on, or attached to, a motor vehicle, or
  - (db) impact with anything that is in motion through falling from a motor vehicle, and the motor vehicle was at the time of the impact, or at the time of overturning or leaving the highway, or at the time the thing fell from it, 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.
- (3) It shall be a defence to any charge under this section that the death or the grievous bodily harm occasioned, as the case may be, was not in any way attributable to the fact that the person charged was under the influence of intoxicating liquor or of a drug or, as the case may be, to the speed at which or the manner in which the vehicle was driven.

- (4) This section shall not take away the liability of any person to be prosecuted for or found guilty of murder, manslaughter or any other offence, or affect the punishment which may be imposed therefor:

Provided that no person who has been convicted or acquitted of an offence under this section shall afterwards be prosecuted for murder or manslaughter or for any other offence under this Act on the same or substantially the same facts, nor shall any person who has been convicted or acquitted of murder or manslaughter or of any other offence be afterwards prosecuted for an offence under this section on the same or substantially the same facts.

- (5) Upon the trial of a person who is indicted for murder or manslaughter or for an offence under section 53 or 54 in connection with the driving of a motor vehicle by him, it shall be lawful for the jury, if they are satisfied that he is guilty of an offence under this section, to find him guilty of that offence.
- (6) In this section **drug** has the meaning ascribed to that expression by subsection (2) of section 5 of the *Motor Traffic Act 1909*, as amended by subsequent Acts.
- (7) Without limiting the generality of the meaning of the expression **object**, that expression, in subsections (1) and (2), includes animal, building, structure, earthwork, embankment, gutter, stormwater channel, drain, bridge, culvert, median strip, post and tree.

## 52B Culpable navigation

- (1) In this section:

**drug** has the same meaning as it has in section 5 (2) of the *Motor Traffic Act 1909*.

**object** includes pier, wharf, jetty, pontoon, breakwater, bridge, bridge support, mooring post or platform, navigation aid, retaining wall, marina, boatshed, slipway and swimming enclosure.

**vessel** means a vessel within the meaning of the *Maritime Services Act 1935*, propelled or towed upon water otherwise than by human or animal power.

- (2) Where the death of, or grievous bodily harm to, any person is occasioned through:
- (a) the impact with any object of a vessel in or on which that person was being conveyed (whether as a passenger or otherwise),
  - (b) a vessel in or on which that person was being conveyed (whether as a passenger or otherwise) overturning or running aground,
  - (c) impact with a vessel,
  - (d) the impact of a vessel with any vessel or other object in, on or near which that

person was at the time of the impact,

(e) impact with anything on, or attached to, a vessel, or

(f) impact with anything that is in motion through falling from a vessel,

and the vessel was at the time of the impact, or at the time of overturning or running aground, or at the time the thing fell from it, being navigated by another person:

(g) under the influence of intoxicating liquor or of a drug, or

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

the person who was so navigating the vessel shall be guilty of the misdemeanour of culpable navigation.

(3) A person convicted of the misdemeanour of culpable navigation is:

(a) if the death of any person was occasioned, liable to imprisonment for 5 years, or

(b) if grievous bodily harm to any person was occasioned, liable to imprisonment for 3 years.

(4) It shall be a defence to any charge under this section that the death or the grievous bodily harm occasioned, as the case may be, was not in any way attributable to the fact that the person charged was under the influence of intoxicating liquor or of a drug or, as the case may be, to the speed at which or the manner in which the vessel was navigated.

(5) This section does not take away the liability of any person to be prosecuted for or found guilty of murder, manslaughter or any other offence or affect the punishment which may be imposed therefor, but:

(a) a person who has been convicted or acquitted of an offence under this section shall not afterwards be prosecuted for murder or manslaughter or for any other offence under this Act on the same, or substantially the same, facts, and

(b) a person who has been convicted or acquitted of murder or manslaughter or of any other offence shall not afterwards be prosecuted for an offence under this section on the same, or substantially the same, facts.

(6) Upon the trial of a person for murder or manslaughter or for an offence under section 54 in connection with the navigation of a vessel by him, it shall be lawful for the jury, if they are satisfied that he is guilty of an offence under this section, to find him guilty of that offence.

### **53 Injuries by furious driving etc**

Whosoever, being at the time on horseback, or in charge of any carriage or other vehicle,

by wanton or furious riding, or driving, or racing, or other misconduct, or by wilful neglect, does or causes to be done to any person any bodily harm, shall be liable to imprisonment for two years.

#### **54 Causing grievous bodily harm**

Whosoever by any unlawful or negligent act, or omission, causes grievous bodily harm to any person, shall be liable to imprisonment for two years.

### ***Possessing or making explosives, &c, with intent to injure the person***

#### **55 Possessing etc gunpowder etc with intent to injure the person**

Whosoever knowingly has in his possession, or makes, or manufactures, any gunpowder, explosive substance, or dangerous or noxious thing, or any machine, engine, instrument, or thing:

- (a) with intent by means thereof to injure, or otherwise commit an offence being felony against the person of any one, or
- (b) for the purpose of enabling another person to injure, or otherwise commit an offence being felony against the person of any one,

shall be liable to penal servitude for five years.

### ***Assaults upon clergymen, officers, and others***

#### **56 Obstructing clergyman in discharge of his duties**

Whosoever:

by threats or force prevents, or endeavours to prevent, any clergyman, or other person duly authorised in that behalf, from officiating in a place of divine worship, or from the performance of his duty in the lawful burial of the dead in a burial-place, or strikes, or offers any violence to, any clergyman, or minister engaged in, or to the knowledge of the offender about to engage in, any of the duties aforesaid, or going to perform the same,

shall be liable to imprisonment for two years.

#### **57 Assault on persons preserving wreck**

Whosoever wounds, strikes, or assaults, any person while in the execution of his duty concerning the preservation of a vessel in distress, or any vessel or effects, stranded, or cast on shore, or lying under water, with intent to obstruct him, or thereby in fact obstructing him in the execution of such duty, shall be liable to penal servitude for seven years.

**58 Assault with intent to commit felony on certain officers**

Whosoever:

assaults any person with intent to commit felony, or

assaults, resists, or wilfully obstructs any officer while in the execution of his duty, such officer being a Justice, constable, or other peace officer, custom-house officer, prison officer, sheriff's officer, or bailiff, or any person acting in aid of such officer, or

assaults any person, with intent to resist or prevent the lawful apprehension or detainer of any person for any offence,

shall be liable to imprisonment for two years.

**59 Assault occasioning actual bodily harm**

Whosoever assaults any person, and thereby occasions actual bodily harm, shall be liable to penal servitude for five years.

**60 Assault by husband on wife**

Where any husband has been convicted of any assault within section 59, or of any aggravated assault, specially so found by the jury, upon his wife, the Judge, if satisfied that her future safety is in peril, may add to the sentence a declaration that she shall no longer be bound to cohabit with her husband.

Every such declaration shall have the effect, in all respects, of a decree of judicial separation on the ground of cruelty.

***Common assaults***

**61 Common assault prosecuted by indictment**

Whosoever assaults any person, although not occasioning actual bodily harm, shall be liable to imprisonment for two years.

***Offences in the nature of rape, offences relating to other acts of sexual assault, &c***

**61A Definition of sexual intercourse etc**

(1) For the purposes of sections 61A–66E, ***sexual intercourse*** means:

- (a) sexual connection occasioned by the penetration of the vagina of any person or anus of any person by:
  - (i) any part of the body of another person, or
  - (ii) an object manipulated by another person,

except where the penetration is carried out for proper medical purposes,

(b) sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another person,

(c) cunnilingus, or

(d) the continuation of sexual intercourse as defined in paragraph (a), (b) or (c).

(2) For the purposes of sections 61B–66E, a person shall not, by reason only of age, be presumed incapable of having sexual intercourse with another person or of having an intent to have sexual intercourse with another person.

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

(4) The fact that a person is married to a person:

(a) upon whom an offence under section 61B, 61C or 61D is alleged to have been committed shall be no bar to the firstmentioned person being convicted of the offence, or

(b) upon whom an offence under any of those sections is alleged to have been attempted shall be no bar to the firstmentioned person being convicted of the attempt.

(5) For the purposes of sections 61D–66E, a person is under the authority of another person if the person is in the care, or under the supervision or authority, of the other person.

**61B Sexual assault category 1—inflicting grievous bodily harm with intent to have sexual intercourse**

(1) Any person who maliciously inflicts grievous bodily harm upon another person with intent to have sexual intercourse with the other person shall be liable to penal servitude for 20 years.

(2) Any person who maliciously inflicts grievous bodily harm upon another person with intent to have sexual intercourse with a third person who is present or nearby shall be liable to penal servitude for 20 years.

**61C Sexual assault category 2—inflicting actual bodily harm etc with intent to have sexual intercourse**

(1) Any person who:

(a) maliciously inflicts actual bodily harm upon another person, or

(b) threatens to inflict actual bodily harm upon another person by means of an

offensive weapon or instrument,

with intent to have sexual intercourse with the other person shall be liable to penal servitude for 12 years.

(2) Any person who:

(a) maliciously inflicts actual bodily harm upon another person, or

(b) threatens to inflict actual bodily harm upon another person,

with intent to have sexual intercourse with a third person who is present or nearby shall be liable to penal servitude for 12 years.

**61D Sexual assault category 3—sexual intercourse without consent**

(1) Any person who has sexual intercourse with another person without the consent of the other person and who knows that the other person does not consent to the sexual intercourse shall be liable to penal servitude for 7 years or, if the other person is under the age of 16 years, to penal servitude for 10 years.

(1A) Any person who has sexual intercourse with another person who:

(a) is under the age of 16 years, and

(b) is (whether generally or at the time of the sexual intercourse only) under the authority of the person,

without the consent of the other person and who knows that the other person does not consent to the sexual intercourse shall be liable to penal servitude for 12 years.

(2) For the purposes of subsections (1) and (1A), a person who has sexual intercourse with another person without the consent of the other person and who is reckless as to whether the other person consents to the sexual intercourse shall be deemed to know that the other person does not consent to the sexual intercourse.

(3) For the purposes of subsections (1) and (1A) and without limiting the grounds upon which it may be established that consent to sexual intercourse is vitiated:

(a) a person who consents to sexual intercourse with another person:

(i) under a mistaken belief as to the identity of the other person, or

(ii) under a mistaken belief that the other person is married to the person,

shall be deemed not to consent to the sexual intercourse,

(b) a person who knows that another person consents to sexual intercourse under a mistaken belief referred to in paragraph (a) shall be deemed to know that the other person does not consent to the sexual intercourse,



- (c) a person who submits to sexual intercourse with another person as a result of threats or terror, whether the threats are against, or the terror is instilled in, the person who submits to the sexual intercourse or any other person, shall be regarded as not consenting to the sexual intercourse, and
- (d) a person who does not offer actual physical resistance to sexual intercourse shall not, by reason only of that fact, be regarded as consenting to the sexual intercourse.

**61E Sexual assault category 4—indecent assault and act of indecency**

(1) Any person who assaults another person and, at the time of, or immediately before or after, the assault, commits an act of indecency upon or in the presence of the other person, shall be liable to imprisonment for 4 years.

(1A) Any person who assaults another person who:

- (a) is under the age of 16 years, and
- (b) is (whether generally or at the time of the assault only) under the authority of the person,

and, at the time of, or immediately before or after, the assault, commits an act of indecency upon or in the presence of the other person, shall be liable to penal servitude for 6 years.

(2) Any person who commits an act of indecency with or towards a person under the age of 16 years, or incites a person under that age to an act of indecency with that or another person, shall be liable to imprisonment for 2 years.

(2A) Any person who commits an act of indecency with or towards a person who:

- (a) is under the age of 16 years, and
- (b) is (whether generally or at the time the act is committed only) under the authority of the firstmentioned person,

or who incites any such person to an act of indecency with that or another person shall be liable to imprisonment for 4 years.

(3) For the purposes of this Act, a person who incites a person under the age of 16 years to an act of indecency, as referred to in subsection (2), shall be deemed to commit an offence on the person under the age of 16 years.

**61F Attempt to commit offence under section 61B, 61C, 61D or 61E**

Any person who attempts to commit an offence under section 61B, 61C, 61D or 61E shall be liable to the penalty provided for the commission of the offence.

### **61G Alternative verdicts**

- (1) Where on the trial of a person for an offence under section 61B the jury is satisfied that the accused maliciously inflicted actual bodily harm with the intent charged but is not satisfied that the harm was grievous bodily harm, it may find the accused not guilty of the offence charged but guilty of an offence under section 61C, and the accused shall be liable to punishment accordingly.
- (2) Where on the trial of a person for an offence under section 61D committed before the commencement of Schedule 2 to the *Crimes (Child Assault) Amendment Act 1985* the jury is satisfied that the person upon whom the offence was alleged to have been committed was a girl under the age of 16 years, but above the age of 10 years, and that the accused had carnal knowledge of her but is not satisfied that carnal knowledge was had without her consent, it may find the accused not guilty of the offence charged but guilty of an offence under section 71, and the accused shall be liable to punishment accordingly.
- (2A) Where on the trial of a person for an offence under section 61D (1) committed on or after the commencement of Schedule 2 to the *Crimes (Child Assault) Amendment Act 1985* the jury is satisfied that the person upon whom the offence was alleged to have been committed was under the age of 16 years, but above the age of 10 years, and that the accused had sexual intercourse with the person but is not satisfied that the sexual intercourse was had without the person's consent, it may find the accused not guilty of the offence charged but guilty of an offence under section 66C (1), and the accused shall be liable to punishment accordingly.
- (2B) Where on the trial of a person for an offence under section 61D (1A) the jury is not satisfied that the accused had sexual intercourse without the consent of the other person but is satisfied that the accused is guilty of an offence under section 66C (2), it may find the accused not guilty of the offence charged but guilty of an offence under section 66C (2), and the accused shall be liable to punishment accordingly.
- (2C) Where on the trial of a person for an offence under section 61D (1A) or 61E (1A) or (2A) the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of an offence under section 61D (1) or 61E (1) or (2), as the case may require, it may find the accused not guilty of the offence charged but guilty of an offence under section 61D (1) or 61E (1) or (2), as the case may be, and the accused shall be liable to punishment accordingly.
- (3) Where on the trial of a person for an offence under section 61D the jury is not satisfied that the accused is guilty of the offence charged but is satisfied that the accused is guilty of an offence under section 78A or 78B, as the case may require, it may find the accused not guilty of the offence charged but guilty of an offence under section 78A or 78B, as the case may be, and the accused shall be liable to punishment accordingly.

## **62 Carnal knowledge—proof**

- (1) “Carnal knowledge” shall, in every case under this Act, be deemed complete upon proof of penetration only.
- (2) In this Act, ***carnal knowledge*** includes sexual connection occasioned by the penetration of the anus of a female by the penis of any person, or the continuation of that sexual connection.

## **63 Common law offences of rape and attempted rape abolished**

The common law offences of rape and attempted rape are abolished.

## **64 Trial for rape—verdict of carnal knowledge**

Where on the trial of a person for rape committed before the commencement of Schedule 1 to the *Crimes (Sexual Assault) Amendment Act 1981*, the jury are satisfied that the female was a girl under the age of sixteen years, but above the age of ten years, and that the accused had carnal knowledge of her, but are not satisfied that carnal knowledge was had without her consent, they may acquit him of the rape charged and find him guilty of an offence under section 71, and he shall be liable to punishment accordingly.

## **65 (Repealed)**

## **66 Procuring etc carnal knowledge by fraud**

Whosoever:

by any false pretence, false representation, or other fraudulent means, or by the use of any intoxicating drug, induces, or procures, a woman to have illicit carnal connection with a man, or by any such means has such connection with a woman, or

having by his language or conduct induced any woman to believe that he is her husband, when in fact he is not, has carnal knowledge of such woman with her consent while she is under such belief,

shall be liable to penal servitude for fourteen years.

## **66A Sexual intercourse—child under 10**

Any person who has sexual intercourse with another person who is under the age of 10 years shall be liable to penal servitude for 20 years.

## **66B Attempting, or assaulting with intent, to have sexual intercourse with child under 10**

Any person who attempts to have sexual intercourse with another person who is under the age of 10 years, or assaults any such person with intent to have sexual intercourse, shall be liable to penal servitude for 20 years.

**66C Sexual intercourse—child between 10 and 16**

- (1) Any person who has sexual intercourse with another person who is of or above the age of 10 years, and under the age of 16 years, shall be liable to penal servitude for 8 years.
- (2) Any person who has sexual intercourse with another person who:
  - (a) is of or above the age of 10 years, and under the age of 16 years, and
  - (b) is (whether generally or at the time of the sexual intercourse only) under the authority of the person,shall be liable to penal servitude for 10 years.

**66D Attempting, or assaulting with intent, to have sexual intercourse with child between 10 and 16**

Any person who attempts to commit an offence under section 66C upon another person who is of or above the age of 10 years, and under the age of 16 years, or assaults any such person with intent to commit such an offence, shall be liable to the penalty provided for the commission of the offence.

**66E Alternative verdicts**

- (1) Where on the trial of a person for an offence under section 66A the jury is not satisfied that the other person upon whom the offence was alleged to have been committed was under the age of 10 years, but is satisfied that:
  - (a) the other person was under the age of 16 years, and
  - (b) the accused had sexual intercourse with the other person,it may find the accused not guilty of the offence charged but guilty of an offence under section 66C (1), and the accused shall be liable to punishment accordingly.
- (2) Where on the trial of a person for an offence under section 66A the jury is not satisfied that the other person upon whom the offence was alleged to have been committed was under the age of 10 years or that the accused had sexual intercourse with the other person, but is satisfied that:
  - (a) the other person was under the age of 16 years, and
  - (b) the accused is guilty of an offence under section 66D,it may find the accused not guilty of the offence charged but guilty of an offence under section 66D, and the accused shall be liable to punishment accordingly.

**67, 68 (Repealed)**

**69 Trial for carnal knowledge—girl in fact over 10**

Where on the trial of a person for an offence under section 67, the jury are satisfied that the girl was of or above the age of ten years, but under the age of sixteen years, and that the accused had carnal knowledge of such girl, they may acquit him of the offence charged and find him guilty of an offence under section 71, and he shall be liable to punishment accordingly.

**70 Trial for carnal knowledge—verdict of assault with intent**

Where on the trial of a person for an offence under section 67, the jury are satisfied that the girl was of or above the age of ten years, but under the age of sixteen years, but are not satisfied that the accused had carnal knowledge of the girl, and are satisfied that he was guilty of an offence under section 72, they may acquit him of the offence charged and find him guilty of an offence under the said last-mentioned section, and he shall be liable to punishment accordingly.

**71, 72 (Repealed)**

**72A Carnal knowledge of idiot or imbecile**

Whosoever knowing a woman or girl to be an idiot or imbecile has or attempts to have unlawful carnal knowledge of her shall be liable to penal servitude for five years.

**73 Carnal knowledge by teacher etc**

Whosoever, being a schoolmaster or other teacher, or a father, or step-father, unlawfully and carnally knows any girl of the age of 16 years, being his pupil, or daughter, or step-daughter, shall be liable to penal servitude for 8 years.

**74 Attempts**

Whosoever, being a schoolmaster or other teacher, or a father, or step-father, by any means attempts unlawfully and carnally to know any girl of the age of 16 years, being his pupil, or daughter, or step-daughter, or assaults any such girl with intent carnally to know her, shall be liable to penal servitude for 8 years.

**75 Alternative charge**

Nothing in section 73 or section 74 as respectively in force before the commencement of Schedule 2 to the [Crimes \(Child Assault\) Amendment Act 1985](#) shall prevent such schoolmaster, teacher, father or step-father from being prosecuted under section 71 or 72.

**76, 76A (Repealed)**

**77 Consent no defence in certain cases**

(1) Except as provided by subsection (2), the consent of the child or other person to

whom the charge relates shall be no defence to a charge under section 61E (1A), (2) or (2A), 66A, 66B, 66C, 66D, 67, 68, 71, 72, 72A, 73, 74 or 76A or, if the child to whom the charge relates was under the age of 16 years at the time the offence is alleged to have been committed, to a charge under section 61E (1) or 76.

- (2) It shall be a sufficient defence to a charge which renders a person liable to be found guilty of an offence under section 61E (1A), (2) or (2A), 66C, 66D, 71, 72 or 76A or, if the child to whom the charge relates was under the age of 16 years at the time the offence is alleged to have been committed, to a charge under section 61E (1) or 76 if the person charged and the child to whom the charge relates are not both male and it is made to appear to the court or to the jury before whom the charge is brought that:
- (a) the child to whom the charge relates was over the age of 14 years at the time the offence is alleged to have been committed,
  - (b) the child to whom the charge relates consented to the commission of the offence, and
  - (c) the person so charged had, at the time the offence is alleged to have been committed, reasonable cause to believe, and did in fact believe, that the child to whom the charge relates was of or above the age of 16 years.

#### **77A Proceedings in camera in certain cases**

- (1) Any proceedings or any part of any proceedings in respect of an offence under section 61B, 61C, 61D, 61E, 63, 65, 66, 66A, 66B, 66C, 66D, 67, 68, 71, 72, 72A, 73, 74, 76 or 76A or of an offence of attempting, or of conspiracy or incitement, to commit an offence under any of those sections shall, if the Court so directs, be held in camera.
- (2) (Repealed)
- (3) Where, under this section, the Court directs that proceedings or a part of any proceedings be held in camera, it may, either absolutely or subject to conditions, exempt any person from that direction to the extent necessary to allow that person to be present as a support for a person giving evidence or for any other purpose which the Court thinks fit.
- (4) A Court may make a direction under this section on its own motion or at the request of any party and, in determining whether to make such a direction in proceedings in respect of an offence alleged to have been committed upon a child under the age of 18 years, the Court shall consider:
- (a) the need of the child to have any person excluded from those proceedings,
  - (b) the need of the child to have any person present in those proceedings,
  - (c) the interests of justice, and

(d) any other matter which the Court thinks relevant.

### **78 Limitation**

No prosecution in respect of any offence under section 61E (1), 66C (1), 66D, 71, 72 or 76 shall, if the person upon whom the offence is alleged to have been committed was at the time of the alleged offence over the age of fourteen years and under the age of sixteen years, be commenced after the expiration of twelve months from the time of the alleged offence.

### **78A Incest**

Whosoever, being a male, has carnal knowledge of a female of or above the age of 16 years who is his mother, sister, daughter, or grand-daughter, or being a female of or above the age of sixteen years, with her consent permits her grandfather, father, brother, or son to have carnal knowledge of her (whether in any such case the relationship is of half or full blood, or is or is not traced through lawful wedlock) shall be liable to penal servitude for seven years.

### **78B Incest attempts**

Whosoever, being a male, attempts to commit any offence under section 78A, shall be liable to imprisonment for two years.

### **78C Defences**

- (1) It shall be a sufficient defence to a charge under section 78A or section 78B that the person charged did not know that the person with whom the offence is alleged to have been committed was related to him or her, as alleged.
- (2) It shall be no defence to a charge under section 78A or section 78B that the person with whom the offence is alleged to have been committed consented thereto.

### **78D Removal from guardianship etc**

On the conviction of a father or step-father of an offence under section 73 or section 74 or of a male person of an offence under section 72A or under section 78A or under section 78B, the court may divest the offender of all authority over the female with whom the offence has been committed and, if the offender is the guardian of such female, may remove the offender from such guardianship, and in any such case may appoint any person or persons to be the guardian or guardians of such female during her minority, or for any greater or less period.

### **78E Rape or attempt—verdict of incest or attempt**

If on the trial of any male person for an offence under section 63 or 65 the jury are not satisfied that he is guilty of the offence charged, but are satisfied that he is guilty of an offence under section 78A or under section 78B, they may acquit such person of the

offence charged, and find him guilty of an offence under section 78A or under section 78B, and he shall be liable to punishment accordingly.

**78F Sanction of Attorney-General**

- (1) No prosecution for an offence under sections 78A or 78B shall be commenced without the sanction of the Attorney-General.
- (2) All proceedings under the said sections shall be held in camera.

**78G Definition of “homosexual intercourse” for sections 78H-78Q**

In sections 78H-78Q, **homosexual intercourse** means:

- (a) sexual connection occasioned by the penetration of the anus of any male person by the penis of any person,
- (b) sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another male person, or
- (c) the continuation of homosexual intercourse as defined in paragraph (a) or (b).

**78H Homosexual intercourse with male under 10** (cf s 67)

A male person who has homosexual intercourse with a male person under the age of 10 years shall be liable to penal servitude for life.

**78I Attempt, or assault with intent, to have homosexual intercourse with male under 10** (cf s 68)

A male person who attempts to have homosexual intercourse with a male person under the age of 10 years, or assaults any such male person with intent to have homosexual intercourse with him, shall be liable to penal servitude for 14 years.

**78J Trial for homosexual intercourse offence—male in fact between 10 and 18** (cf ss 69, 70)

- (1) Where on the trial of a male person for having homosexual intercourse with a male person under the age of 10 years, the jury is satisfied that the secondmentioned person was of or above that age, but under the age of 18 years, and that the accused had homosexual intercourse with that person, it may acquit him of the offence charged and find him guilty of an offence under section 78K, and he shall be liable to punishment accordingly.
- (2) Where on the trial of a male person for having homosexual intercourse with a male person under the age of 10 years, the jury is satisfied that the secondmentioned person was of or above that age, but under the age of 18 years, but is not satisfied that the accused had homosexual intercourse with that person, and is satisfied that he was guilty of an offence under section 78L, it may acquit him of the offence charged and find him guilty of an offence under section 78L, and he shall be liable to



punishment accordingly.

**78K Homosexual intercourse with male between 10 and 18** (cf s 71)

A male person who has homosexual intercourse with a male person of or above the age of 10 years, and under the age of 18 years, shall be liable to penal servitude for 10 years.

**78L Attempt, or assault with intent, to have homosexual intercourse with male between 10 and 18** (cf s 72)

A male person who attempts to have homosexual intercourse with a male person of or above the age of 10 years, and under the age of 18 years, or assaults any such male person with intent to have homosexual intercourse with him, shall be liable to penal servitude for 5 years.

**78M Homosexual intercourse with idiot or imbecile** (cf s 72A)

A male person who, knowing a male person to be an idiot or imbecile, has or attempts to have homosexual intercourse with him shall be liable to penal servitude for 5 years.

**78N Homosexual intercourse by teacher etc** (cf s 73)

A male person who, being a schoolmaster or other teacher, or a father, or step-father, has homosexual intercourse with any male person of or above the age of 10 years, and under the age of 18 years, being his pupil, son or step-son, shall be liable to penal servitude for 14 years.

**78O Attempt, or assault with intent, to have homosexual intercourse with pupil etc** (cf s 74)

A male person who, being a schoolmaster or other teacher, or a father, or step-father, by any means attempts to have homosexual intercourse with any male person of or above the age of 10 years, and under the age of 18 years, being his pupil, son or step-son, shall be liable to penal servitude for 7 years.

**78P Alternative charge** (cf s 75)

Nothing in section 78N or 78O prevents a schoolmaster, teacher, father or step-father from being prosecuted under section 78K or 78L.

**78Q Acts of gross indecency** (cf s 81A)

- (1) Any male person who commits, or is a party to the commission of, an act of gross indecency with a male person under the age of 18 years shall be liable to imprisonment for 2 years.
- (2) Any person who solicits, procures, incites or advises any male person under the age of 18 years to commit or to be a party to the commission of an act of homosexual intercourse, or an act of gross indecency, with a male person shall be liable to

imprisonment for 2 years.

**78R Consent no defence in certain cases** (cf s 77)

The consent of a male person the subject of the charge shall be no defence to any charge under section 78H, 78I, 78K, 78L, 78M, 78N, 78O or 78Q.

**78S Proceedings in camera in certain cases** (cf s 77A)

Any proceedings or any part of any proceedings in respect of an offence under section 78H, 78I, 78K, 78L, 78M, 78N, 78O or 78Q or of an offence of attempting, or of conspiracy or incitement, to commit an offence under any of those sections shall, if the Court so directs, be held in camera.

**78T Limitations** (cf ss 78, 78F)

- (1) No prosecution in respect of any offence under section 78K or 78L, shall, if the person upon whom the offence is alleged to have been committed was at the time of the alleged offence over the age of 16 years and under the age of 18 years, be commenced after the expiration of 12 months from the time of the alleged offence.
- (2) No prosecution for an offence under section 78H, 78I, 78K, 78L, 78M, 78N, 78O or 78Q or for an offence of attempting, or of conspiracy or incitement, to commit an offence under any of those sections shall, if the accused was at the time of the alleged offence under the age of 18 years, be commenced without the sanction of the Attorney General.

**79 Bestiality**

Any person who commits an act of bestiality with any animal shall be liable to penal servitude for fourteen years.

**80 Attempt to commit bestiality**

Any person who attempts to commit an act of bestiality with any animal shall be liable to penal servitude for five years.

**81-81B (Repealed)**

***Misconduct with regard to corpses***

**81C Misconduct with regard to corpses**

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.

### ***Attempts to procure abortion***

#### **82 Administering drugs etc to herself by woman with child**

Whosoever, being a woman with child,

unlawfully administers to herself any drug or noxious thing, or

unlawfully uses any instrument or other means,

with intent in any such case to procure her miscarriage,

shall be liable to penal servitude for ten years.

#### **83 Administering drugs etc to woman with intent**

Whosoever:

unlawfully administers to, or causes to be taken by, any woman, whether with child or not, any drug or noxious thing, or

unlawfully uses any instrument or other means,

with intent in any such case to procure her miscarriage,

shall be liable to penal servitude for ten years.

#### **84 Procuring drugs etc**

Whosoever unlawfully supplies or procures any drug or noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used with intent to procure the miscarriage of any woman, whether with child or not, shall be liable to penal servitude for five years.

### ***Concealing birth of a child***

#### **85 Concealment of birth**

- (1) Whosoever by any disposition of the dead body of a child, whether the child died before or after or during its birth, wilfully conceals or attempts to conceal the birth of the child, shall be liable to imprisonment for two years.
- (2) It shall be a sufficient defence to any charge under this section if the accused person shall satisfy the court or jury that the dead body in respect of which the disposition took place had issued from the body of its mother before the expiration of the twenty-eighth week of pregnancy.

## **Abduction**

### **86 Abduction of woman against her will**

Whosoever, from motives of lucre, takes away, or detains, against her will, a female of any age who has an interest in property or is a presumptive heiress or next of kin to any one having such interest, with intent to marry or carnally know her, or to cause her to be married, or carnally known, by any person, shall be liable to penal servitude for fourteen years.

### **87 The like against the will of parent etc**

Whosoever fraudulently allures, takes away, or detains any female under the age of twenty-one years, out of the possession and against the will of any person having the lawful charge of her, with intent to marry or carnally know her, or to cause her to be married to or carnally known by any person, shall be liable to penal servitude for seven years.

### **88 In such cases property of woman to remain hers**

No offender under section 86 or section 87 shall be capable of taking any estate or interest in any property in right of any such female, and if any marriage has taken place, the property of the wife shall be settled in such manner as the Supreme Court, at the suit of the Attorney-General, may appoint.

### **89 Forcible abduction of a woman**

Whosoever by force takes away, or detains against her will, any female of any age, with intent to marry or carnally know her, or to cause her to be married to or carnally known by any person, shall be liable to penal servitude for fourteen years.

### **90 Abduction of girl under 16**

Whosoever unlawfully takes, or causes to be taken, any unmarried girl under the age of sixteen years, out of the possession and against the will of any person having the lawful charge of her, shall be liable to imprisonment for three years.

### **90A Kidnapping**

Whosoever leads takes or entices away or detains a person with intent to hold him for ransom or for any other advantage to any person shall be liable to penal servitude for twenty years or, if it is proved to the satisfaction of the judge that the person so led taken enticed away or detained was thereafter liberated without having sustained any substantial injury, to penal servitude for fourteen years.

This section does not apply to any person who shall, in good faith, have claimed a right to the possession of a person so led, taken or enticed away or detained.

## **91 Taking child with intent to steal etc**

Whosoever:

by force or fraud, leads or takes away, entices away, or detains, any child under the age of twelve years, with intent to deprive any person having the lawful charge of such child of the possession of such child, or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong, or

receives or harbours any such child, knowing such child to have been so led, taken, enticed away, or detained,

shall be liable to penal servitude for ten years:

Provided that this section shall not extend to any person who shall, in good faith, have claimed a right to the possession of such child.

### **91A Procuring etc**

Whosoever procures, entices or leads away any person (not being a prostitute), whether with that person's consent or not, for purposes of prostitution, either within or without New South Wales, shall, notwithstanding that some one or more of the various acts constituting the offence may have been committed outside New South Wales, be liable to penal servitude for seven years.

### **91B Procuring person by drugs etc**

Whosoever by means of any fraud, violence, threat, or abuse of authority, or by the use of any drug or intoxicating liquor, procures, entices, or leads away any person for purposes of prostitution, either within or without New South Wales, shall, notwithstanding that some one or more of the various acts constituting the offence may have been committed outside New South Wales, be liable to penal servitude for ten years.

### **91C, 91D (Repealed)**

## ***Bigamy***

### **92 Bigamy**

Whosoever, being married, marries another person during the life of the former husband or wife, shall be liable to penal servitude for seven years:

Provided that no person shall be convicted under this section whose husband or wife has at the time of such second marriage been continually absent from such person for the space of seven years, or, if domiciled in New South Wales at the time of the first marriage, has been continually absent from New South Wales for the space of five years then last past, and was, on reasonable grounds, believed by the accused at the time of the second marriage not to be living, of which facts the proof shall lie on the accused.

**Editorial note—**

See [Marriage Act 1961](#) (Commonwealth), section 94.

**93 Participator in bigamy**

Whosoever, whether married or unmarried, marries the husband or wife of any person not continually so absent, as in the proviso to section 92 mentioned, knowing him or her to be married, and the former wife or husband to be alive, shall be liable to penal servitude for five years.

**Editorial note—**

See [Marriage Act 1961](#) (Commonwealth), section 94.

**Part 3A**

**93A-93I (Repealed)**

**Part 4 Offences relating to property**

**Chapter 1 Stealing and like offences**

**GENERAL**

**93J Property previously stolen**

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.

**ROBBERY**

**94 Robbery or stealing from the person**

Whosoever:

robs or assaults with intent to rob any person, or

steals any chattel, money, or valuable security from the person of another,

shall, except where a greater punishment is provided by this Act, be liable to penal servitude for fourteen years.

**95 Same with striking**

Whosoever robs, or assaults with intent to rob, any person, or steals any chattel, money, or valuable security, from the person of another, and immediately before, or at the time

of, or immediately after such robbery, assault, or larceny from the person, strikes, or uses any other corporal violence to any person, shall be liable to penal servitude for twenty years.

**96 Same with wounding**

Whosoever commits any offence under section 95, and thereby wounds any person, shall be liable to penal servitude for life.

**97 Robbery etc or stopping a mail, being armed or in company**

Whosoever, being armed with an offensive weapon, or instrument, or being in company with another person,

robs, or assaults with intent to rob, any person, or

stops any mail, or vehicle, railway train, or person conveying a mail, with intent to rob, or search the same,

shall be liable to penal servitude for twenty years.

**98 Robbery with arms etc and wounding**

Whosoever, being armed with an offensive weapon, or instrument, or being in company with another person so armed, robs, or assaults with intent to rob, any person, and immediately before, or at the time of, or immediately after, such robbery, or assault, wounds, or inflicts grievous bodily harm upon, such person, shall be liable to penal servitude for life.

**EXTORTION, &c, BY MENACE OR THREAT**

**99 Demanding money with intent to steal**

Whosoever, with menaces, or by force, demands any property from any person, with intent to steal the same, shall be liable to penal servitude for ten years.

**100 Letter demanding money etc with menaces**

Whosoever sends, delivers, or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing demanding any property of any person, with menaces or any threat, and without reasonable cause, shall be liable to penal servitude for ten years.

**100A Blackmail by threat to publish etc**

(1) Whosoever with intent to cause gain for himself or any other person, or with intent to procure for himself or any other person any appointment or office, or with intent to cause loss to any person:

- (a) makes any unwarranted demand, and
  - (b) supports that demand by making:
    - (i) any unwarranted threat to publish,
    - (ii) any unwarranted proposal to abstain from publishing, or
    - (iii) any unwarranted offer to prevent the publication of,
- any matter or thing concerning any person (whether living or dead),

shall be liable to penal servitude for ten years.

(2) For the purposes of this section:

- (a) **publish** means communicate to any person,
- (b) a demand is unwarranted unless the person making it does so in the belief that he has reasonable grounds for making it,
- (c) a threat, proposal or offer in support of a demand is unwarranted unless the person making it does so in the belief that it is a proper means of supporting the demand,
- (d) **gain** means gain in money or other property, whether temporary or permanent, and includes a gain by keeping what one has, as well as a gain by getting what one has not, and
- (e) **loss** means loss in money or other property, whether temporary or permanent, and includes a loss by not getting what one might get, as well as a loss by parting with what one has.

### **101 Threatening letters**

Whosoever sends, delivers, or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing accusing or threatening to accuse a person of felony, or of having committed, or attempted to commit, an infamous crime as defined in section 104, or of having committed an offence against decency in a public place, with intent in any such case to extort or gain property from any person, shall be liable to penal servitude for fourteen years.

### **102 Accusing or threatening to accuse of crime to extort money etc**

Whosoever, in any manner, by words or otherwise, accuses, or threatens to accuse, either the person to whom such accusation or threat is made, or some other person, of any such crime or offence as is referred to in section 101, with intent in any such case to extort or gain property from any person, shall be liable to penal servitude for ten years.



### **103 Causing a person by violence or threats to execute deeds etc**

Whosoever by unlawful violence to, or restraint of the body of, any person, or by any threat of such violence, or restraint, or by accusing or threatening to accuse a person of any such infamous crime as is defined in section 104, compels, or induces, any person to execute, make, accept, indorse, alter, or destroy, the whole or any part of any valuable security, or to write, impress, or affix, any name or seal upon, or to, any paper or parchment, with intent in any such case to defraud, shall be liable to penal servitude for fourteen years.

### **104 Term “infamous crime” defined**

For the purposes of sections 101, 102 and 103 the term *infamous crime* shall include offences under sections 61B–61D, the crimes of rape, and buggery, or bestiality, with mankind, or an animal, and every assault with intent to commit, or attempt to commit, any such offence or crime, and every solicitation, promise, or threat, offered, or made, to any person whereby to induce him to commit, or permit, any such offence or crime.

### **105 Menace may be of violence or accusation etc**

It shall be immaterial whether any such menace or threat, as is referred to in sections 99 to 103 both inclusive, is of violence, or injury, or of an accusation to be caused, or made, by the offender, or by any other person, or whether the accusation, if made, shall purport to be that of the offender, or some other person.

## **SACRILEGE AND HOUSEBREAKING**

### **106 Breaking and entering place of Divine worship and committing felony**

Whosoever:

breaks and enters any place of Divine worship and commits any felony therein, or,

being in any place of Divine worship, commits any felony therein and breaks out of the same,

shall be liable to penal servitude for fourteen years.

Whosoever, being armed with an offensive weapon, or instrument, or being in company with another person so armed, commits an offence under the foregoing provisions of this section, shall be liable to penal servitude for twenty years.

### **107 The like with intent to commit felony**

Whosoever breaks and enters any place of Divine worship, with intent to commit felony therein, shall be liable to penal servitude for ten years.

Whosoever, being armed with an offensive weapon, or instrument, or being in company with another person so armed, commits an offence under the foregoing provisions of this

section shall be liable to penal servitude for fourteen years.

**108 (Repealed)**

**109 Entering with intent, or stealing etc in dwelling-house and breaking out**

Whosoever:

enters the dwelling-house of another, with intent to commit felony therein, or,  
being in such dwelling-house commits any felony therein,

and in either case breaks out of the said dwelling-house shall be liable to penal servitude for fourteen years.

Whosoever, being armed with an offensive weapon, or instrument, or being in company with another person so armed, commits an offence under the foregoing provisions of this section shall be liable to penal servitude for twenty years.

**110 Breaking, entering and assaulting with intent to murder etc**

Whosoever breaks and enters any dwelling-house, or any building appurtenant thereto, and while therein or on premises occupied therewith assaults with intent to murder any person, or inflicts grievous bodily harm upon any person, shall be liable to penal servitude for life.

**111 Entering dwelling-house in the night**

Whosoever enters any dwelling-house in the night, with intent to commit felony therein, shall be liable to penal servitude for ten years.

Whosoever, being armed with an offensive weapon, or instrument, or being in company with another person so armed, commits an offence under the foregoing provisions of this section shall be liable to penal servitude for fourteen years.

**112 Breaking etc into any house etc and committing felony**

Whosoever:

breaks and enters any dwelling-house, or any building within the curtilage of any dwelling-house and occupied therewith but not being part thereof, or any school-house, shop, warehouse, or counting-house, office, store, garage, pavilion, factory, or workshop, or any building belonging to His Majesty or to any Government department, or to any municipal or other public authority, and commits any felony therein, or

being in any dwelling-house, or any such building as aforesaid, or any school-house, shop, warehouse, or counting-house, office, store, garage, pavilion, factory or workshop, or any building belonging to His Majesty or to any Government department, or to any municipal or other public authority, commits any felony therein and breaks out of the same,

shall be liable to penal servitude for fourteen years.

Whosoever, being armed with an offensive weapon, or instrument, or being in company with another person so armed, commits an offence under the foregoing provisions of this section shall be liable to penal servitude for twenty years.

### **113 Breaking etc into any house etc with intent to commit felony**

Whosoever breaks and enters any dwelling-house, or any building within the curtilage of any dwelling-house, or any school-house, shop, warehouse, or counting-house, office, store, garage, pavilion, factory, or workshop, or any building belonging to His Majesty, or to any Government department, or to any municipal or other public authority, with intent to commit felony therein, shall be liable to penal servitude for ten years.

Whosoever, being armed with an offensive weapon, or instrument, or being in company with another person so armed, commits an offence under the foregoing provisions of this section shall be liable to penal servitude for fourteen years.

### **114 Being armed etc with intent to commit offence**

(1) Any person who:

- (a) is armed with any weapon, or instrument, with intent to commit an indictable offence or to enter a building and to commit a misdemeanour therein,
- (b) has in his possession, without lawful excuse, any implement of housebreaking or safebreaking, 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.

### **115 The like after a previous conviction**

Whosoever, having been convicted of any felony or misdemeanour, afterwards commits any offence mentioned in section 114, shall be liable to penal servitude for ten years.

## **LARCENY**

### ***Declaratory***

#### **116 All larcenies to be of same nature**

Every larceny, whatever the value of the property stolen, shall be deemed to be of the same nature, and shall be subject to the same incidents in all respects, as grand larceny was before the passing of the Act seventh and eighth George the Fourth, chapter twenty-nine.

### ***General provisions***

#### **117 Punishment for larceny**

Whosoever commits larceny, or any felony by this Act made punishable like larceny, shall, except in the cases hereinafter otherwise provided for, be liable to penal servitude for five years.

#### **118 Intent to return property no defence**

Where, on the trial of a person for larceny, it appears that the accused appropriated the property in question to his own use, or for his own benefit, or that of another, but intended eventually to restore the same, or in the case of money to return an equivalent amount, such person shall not by reason only thereof be entitled to acquittal.

#### **119 Verdict where several takings proved**

Where, on the trial of a person for larceny, it appears that the property alleged in any count to have been stolen at one time, was taken at different times, the prosecutor shall not be required to elect upon which taking he will proceed, unless the Judge so orders:

Provided always that evidence shall not in any such case be given of any taking which occurred more than six months in point of time from any other of such takings.

#### **120 Trial for larceny—verdict of embezzlement etc**

Where, on the trial of a person for larceny, it appears that he took the property in such manner as to amount in law to the offence of embezzlement or fraudulent misappropriation, or the fraudulent application, or disposition, of property as a clerk, or servant, or person employed in the Public Service, or of obtaining property by any false pretence or by any wilfully false promise, or partly by a false pretence and partly by a wilfully false promise, the jury may acquit him of the larceny charged, and find him guilty of such other offence, and he shall be liable to punishment accordingly.

#### **121 Verdict of “larceny or receiving”**

Where, on the trial of a person charged with larceny, or any offence which includes

larceny, and, also, with having feloniously received the property charged to have been stolen, knowing it to have been stolen, the jury find specially that he either stole, or feloniously received, such property, and that they are unable to say which of those offences was committed by him, such person shall not by reason thereof be entitled to acquittal, but shall be liable to be sentenced for the larceny, or for the felonious receiving, whichever of the two offences is subject to the lesser punishment.

**122 Verdict where persons indicted for joint larceny or receiving**

On the trial of any two, or more, persons charged with larceny, and also with having feloniously received property, the jury may find all, or any, of such persons guilty, either of stealing, or feloniously receiving, the property, or part or parts thereof, or may find one, or more, of the said persons guilty of stealing, and the other, or others, of them guilty of feloniously receiving the property, or part or parts thereof.

**123 Verdict of misdemeanour**

Where, on the trial of a person for larceny, it appears that the property in question was taken, appropriated, or retained, under circumstances amounting to a misdemeanour, the jury may acquit him of the offence charged and find him guilty of such misdemeanour, and he shall be liable to punishment accordingly.

**124 Fraudulent appropriation**

Where, upon the trial of a person for larceny, it appears:

- (a) that he had fraudulently appropriated to his own use or that of another, the property in respect of which he is indicted, although he had not originally taken the property with any fraudulent intent, or
- (b) that he had fraudulently retained the property in order to secure a reward for its restoration,

the jury may return a verdict accordingly, and thereupon he shall be liable to imprisonment for two years, or to a fine of \$2,000, or both.

***Larceny by bailees***

**125 Larceny by bailee**

Whosoever, being a bailee of any property, fraudulently takes, or converts, the same, or any part thereof, or any property into or for which it has been converted, or exchanged, to his own use, or the use of any person other than the owner thereof, although he does not break bulk, or otherwise determine the bailment, shall be deemed to be guilty of larceny.

The accused shall be taken to be a bailee within the meaning of this section, although he may not have contracted to restore, or deliver, the specific property received by him, or may only have contracted to restore, or deliver, the property specifically.

## ***Of animals***

### **126 Stealing cattle or killing with intent to steal**

Whosoever:

steals any cattle, or

wilfully kills any cattle with intent to steal the carcass, or skin, or other part, of the cattle so killed,

shall be liable to penal servitude for fourteen years.

### **127 Stealing or killing cattle—uncertainty as to sex or age not to entitle to acquittal**

Where, on the trial of a person for an offence under section 126 it appears that he stole, or killed, an animal of the species described in the indictment, but it is uncertain on the evidence what was its sex, or age, such person shall not be entitled to acquittal by reason only of such uncertainty.

### **128 Trial for stealing cattle—verdict of stealing skins**

Where, on the trial of a person for stealing cattle, the jury are not satisfied that he is guilty thereof, but are satisfied that he is guilty of stealing the carcass, or skin, or part, of such cattle, or of killing the said cattle within section 126, they may acquit him of the offence charged, and find him guilty of such last-mentioned stealing, or killing, and he shall be liable to punishment accordingly.

### **129 Trial for killing cattle—verdict of stealing**

Where, on the trial of a person for the offence of killing cattle within the meaning of section 126, the jury are not satisfied that he is guilty thereof, but are satisfied that he is guilty of stealing such cattle, they may acquit him of the offence charged, and find him guilty of such stealing, and he shall be liable to punishment accordingly.

### **130 Trial for stealing cattle—verdict of misdemeanour**

Where, on the trial of a person for stealing cattle, the jury are not satisfied that he is guilty thereof, but are satisfied that he is guilty of an offence within section 131, they may acquit him of the offence charged, and find him guilty of an offence under the said last mentioned section, and he shall be liable to punishment accordingly.

### **131 Unlawfully using etc another person's cattle**

Whosoever:

takes and works, or otherwise uses, or takes for the purpose of working, or using, any cattle the property of another person without the consent of the owner, or person in lawful possession thereof, or

takes any such cattle for the purpose of secreting the same, or obtaining a reward for the restoration or pretended finding thereof, or for any other fraudulent purpose, or fraudulently brands, or ear-marks, or defaces, or alters, the brands or ear-marks of any cattle the property of another person,

shall be liable to imprisonment for three years.

### **132 Stealing dogs**

Whosoever, having been summarily convicted under this or any former Act, of any such offence as is hereinafter in this section mentioned, afterwards,

steals any dog, or

has unlawfully in his possession any stolen dog, or the skin of any stolen dog, knowing such dog to have been stolen,

shall be liable to imprisonment for one year.

### **133 Taking money to restore dogs**

Whosoever corruptly takes any money or reward, directly or indirectly, under pretence, or upon account, of aiding any person to recover any dog which has been stolen, or which is in the possession of any person other than its owner, shall be liable to imprisonment for one year.

## ***Of written instruments***

### **134 Stealing, destroying etc valuable security**

Whosoever steals, embezzles, or for any fraudulent purpose destroys, cancels, obliterates, or conceals, the whole or any part of any valuable security, shall be liable, as if he had stolen a chattel, to be punished as for larceny.

### **135 Stealing, destroying etc wills or codicils**

Whosoever steals, or, for any fraudulent purpose destroys, cancels, obliterates, or conceals, the whole or any part of any will, codicil, or other testamentary instrument, either during the life of the testator, or after his death, or whether the same relates to real, or personal estate, or to both, shall be liable to penal servitude for seven years.

### **136 Proviso to sections 134 and 135**

No person shall be convicted under section 134 or section 135 in respect of any act done by him, if, before being charged with the offence, he first disclosed such act on oath, under compulsory process, in a proceeding instituted in good faith by a party aggrieved, or under compulsory examination in some matter in bankruptcy, or insolvency, or under compulsory examination in some matter in the liquidation of a corporation.

**137 Civil remedies not affected by conviction**

- (1) Nothing in section 134 or in section 135, nor any proceeding, conviction, or judgment thereupon, shall affect any remedy at law, or in equity, which any party aggrieved would have had if this Act had not been passed.
- (2) No evidence of the conviction of any person under either of the said sections shall be admissible in any action, or suit, against him.

**138 Stealing, destroying etc records etc of any court or public office**

Whosoever steals, or for any fraudulent purpose, takes from its place of deposit, for the time being, or from any person having the lawful custody thereof, or unlawfully and maliciously cancels, obliterates, injures, or destroys, the whole or any part, of any record, document, or writing, of, or belonging to, any Court, or relating to any matter or cause, civil or criminal, pending, or terminated, in any Court, or relating to the business of any office or employment under Her Majesty, and being in any public office, shall be liable to penal servitude for seven years.

***Of things attached to or growing on land***

**139 Stealing etc metal, glass, wood etc fixed to house or land**

Whosoever steals, or rips, cuts, severs, or breaks with intent to steal, any glass, or woodwork, belonging to any building, or any metal, or any utensil, or fixture, whether made of metal or other material, or of both respectively, fixed in, or to, any building, or anything made of metal, fixed in any land being private property, or used as a fence to any dwelling-house, garden, or area, or being in any square, or street, or in, or on, any place dedicated to public use or ornament, or in any burial-ground, shall be liable to be punished as for larceny.

**140 Stealing etc trees etc in pleasure-grounds**

Whosoever:

steals, or destroys or damages with intent to steal, the whole, or any part, of any tree, sapling, shrub, or plant, or any underwood, growing in any park, pleasure-ground, garden, orchard, or avenue, or in any ground belonging to any dwelling-house, where the value of the article stolen, or the amount of injury done, exceeds two dollars, or

steals, or destroys or damages with intent to steal, the whole, or any part, of any tree, sapling, shrub, or plant, or any underwood respectively growing elsewhere than in any situation beforementioned, where the value of the article stolen, or the amount of injury done, exceeds ten dollars,

shall be liable to be punished as for larceny.

**141-143 (Repealed)**



## ***From mines***

### **144 Stealing ore of metal, coal etc**

Whosoever steals, or severs with intent to steal, any gold, or the ore of any metal, or any metal or mineral of commercial value, or any coal, or cannel coal, from any mine, bed, or vein thereof respectively, or from any claim, or land comprised in any lease, or promise of lease, for mining purposes by or on behalf of the Crown, shall be liable to be punished as for larceny.

### **145 Miners removing ore with intent to defraud**

Whosoever, being employed in or about any mine, or claim, or any land comprised in any lease, or promise of lease, for mining purposes by or on behalf of the Crown, takes, removes, or conceals, any gold, or the ore of any metal, or any metal or mineral of commercial value, found, or being in such mine, claim, or land, with intent to defraud any mining company, or partnership, or any proprietor of, or adventurer in, such mine, claim, or land, or any workman or miner employed therein shall be liable to imprisonment for three years.

### **146 Concealing royalty**

Whosoever, being the holder of any lease issued under any Act relating to the gold-fields

by any device or contrivance defrauds, or attempts to defraud, Her Majesty of any gold, or money payable under such lease, or

conceals, or makes a false statement as to the amount of any gold procured by him, or falsifies any account, with intent in any such case to defraud,

shall be guilty of a misdemeanour.

### **147 Fraud on partners in mines etc**

Whosoever, with intent to defraud his co-partner, or co-adventurer, in any claim, or land comprised in any lease, or promise of lease, for mining purposes by or on behalf of the Crown, or in any share or interest therein, secretly keeps back, or conceals, any gold, or any other metal or mineral of commercial value, found in, or upon, or taken from, such claim or land, shall be liable to be punished as for larceny.

## ***In dwelling-house***

### **148 Stealing property in a dwelling-house**

Whosoever steals in a dwelling-house any property shall be liable to penal servitude for seven years.

**149 The same with menaces**

Whosoever steals any property in a dwelling-house, and uses thereafter any menace or threat to any person therein, shall be liable to penal servitude for fourteen years.

***Of goods in process of manufacture, tools, &c***

**150 Stealing goods in process of manufacture**

Whosoever steals, to the value of one dollar, any goods, article, or material, while anywhere placed, or exposed, during the process or progress of manufacture, shall be liable to penal servitude for a term not exceeding three years.

**151 Selling etc materials to be manufactured**

Whosoever, being, for the purpose of manufacture, or any special purpose connected with manufacture, employed to make, prepare, or work up, any goods, article, or material, or being for any such purpose entrusted with any such goods, article, or material, or with any tools, or apparatus, sells, pawns, purloins, secretes, embezzles, exchanges, or otherwise fraudulently disposes of the same, or any part thereof, shall be liable to imprisonment for four years.

***From ships or wharfs***

**152 Stealing from ship in port or on wharfs etc**

Whosoever:

steals any property in any vessel, barge, or boat, while in any haven, or port, or upon any navigable river, or canal, or in any creek, or basin, belonging to, or communicating with, any such haven, port, river, or canal, or

steals any property from any dock, wharf, or quay,

shall be liable to penal servitude for seven years.

**153 Stealing from ship in distress or wrecked**

Whosoever steals, or plunders, any part of any vessel in distress, or wrecked, stranded, or cast on shore, or any property of any kind to the value of two dollars belonging to such vessel, shall be liable to penal servitude for ten years.

***By tenants or lodgers***

**154 Tenants etc stealing articles let to hire**

Whosoever, being the tenant, or occupier, of any house, building, or lodging, steals any chattel, or fixture let to be used therewith, whether the contract was entered into by the accused, or by any person on his behalf, shall be liable to be punished as for larceny.

## ***Of vehicles or boats***

### **154A Taking a conveyance without consent of owner**

- (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) For the purposes of this section **conveyance** means any cart, wagon, cab, carriage, motor car, caravan, trailer, motor lorry, tractor, earth moving equipment, 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.

## ***Larceny and illegal use of aircraft***

### **154B Stealing aircraft and unlawfully taking or exercising control of aircraft**

- (1) Whosoever steals any aircraft shall be liable to penal servitude for ten years.
- (2) Whosoever without lawful excuse takes or exercises control, whether direct or through another person, of an aircraft shall be deemed to be guilty of larceny and be liable to penal servitude for seven years.
- (3) Whosoever without lawful excuse takes or exercises control, whether direct or through another person, of an aircraft while another person, not being an accomplice of the first-mentioned person, is on board the aircraft shall be deemed to be guilty of larceny and be liable to penal servitude for fourteen years.
- (4) Whosoever without lawful excuse, by force or violence or threat of force or violence, or by any trick or false pretence, takes or exercises control, whether direct or through another person, of an aircraft while another person, not being an accomplice of the first-mentioned person, is on board the aircraft shall be deemed to be guilty of larceny and be liable to penal servitude for twenty years.

## ***Of electricity***

### **154C Malicious or fraudulent abstraction, waste etc of electricity**

Whosoever maliciously or fraudulently abstracts, causes to be wasted or diverted, consumes or uses any electricity, shall be guilty of larceny, and punishable accordingly.

## **EMBEZZLEMENT OR LARCENY**

### ***By clerks and servants***

#### **155 Definition of clerk or servant**

Every person employed for any purpose, as, or in the capacity of, a clerk, or servant, or as a collector of moneys, although temporarily only, or employed also by other persons, or employed to pay as well as receive moneys, or although he had no authority from his employer to receive money, or other property, on his account, shall be deemed a clerk, or servant.

#### **156 Larceny by clerks or servants**

Whosoever, being a clerk, or servant, steals any property belonging to, or in the possession, or power of, his master, or employer, or any property into or for which it has been converted, or exchanged, shall be liable to penal servitude for ten years.

#### **157 Embezzlement by clerks or servants**

Whosoever, being a clerk, or servant, fraudulently embezzles, either the whole or any part of, any property delivered to, or received, or taken into possession by him, for, or in the name, or on the account of, his master, or employer, shall be deemed to have stolen the same, although such property was not received into the possession of such master, or employer, otherwise than by the actual possession of such clerk, or servant, and shall be liable to penal servitude for ten years.

#### **158 Destruction, falsification of accounts etc by clerk or servant**

Whosoever, being a clerk, or servant, or person acting in the capacity of a clerk, or servant,

destroys, alters, mutilates, or falsifies, any book, paper, writing, valuable security, or account, belonging to, or in the possession of, or received for his employer, or

makes, or concurs in making, any false entry in, or omits, or alters, or concurs in omitting or altering, any material particular from, or in, any such book, or writing, or account,

with intent in any such case to defraud,  
shall be liable to penal servitude for five years.

### ***By persons employed in the Public Service***

#### **159 Larceny by persons in Public Service**

Whosoever, being employed in the Public Service, steals any property, or any part thereof, intrusted to him, or taken into his possession, or being in his custody, or under his control,

by virtue or colour of such employment, shall be liable to penal servitude for ten years.

#### **160 Embezzlement etc by persons in the Public Service**

Whosoever, being employed in the Public Service, fraudulently embezzles any property, or any part thereof, so intrusted to him, or taken into his possession, or being in his custody, or under his control, or fraudulently secretes, removes, or in any manner fraudulently applies, or disposes of, the same, or any part thereof, shall be deemed to have stolen the same, and shall be liable to penal servitude for ten years.

### ***General deficiency***

#### **161 Proof of general deficiency in accounts**

On the prosecution of a person for larceny, or embezzlement as a clerk, or servant, or as a person employed in the Public Service, where the charge is in respect of money, it shall not be necessary to prove the larceny, or embezzlement, by the accused of any specific sum of money, if there is proof of a general deficiency on the examination of the books of account, or entries kept, or made by him, or otherwise, and the jury are satisfied that he stole, or fraudulently embezzled the deficient money, or any part thereof.

### ***By joint owners***

#### **162 Larceny etc by joint owners**

Whosoever, being a member of any copartnership, or being one of two, or more, joint owners, steals, or embezzles, any property of, or belonging to, such copartnership, or joint owners, may be convicted of, and punished for, the offence as if he was not a member of the copartnership, or one of such joint owners.

***Copartnership*** shall, for the purposes of this section, include all corporations and societies whatsoever.

### ***Alternative verdict***

#### **163 Trial for embezzlement—verdict of larceny**

Where, on the trial of any person for embezzlement, or the fraudulent application, or disposition, of property as a clerk, or servant, or person employed in the Public Service, it appears that he obtained the property in such manner as to amount in law to larceny, the jury may acquit him of the offence charged, and find him guilty of larceny, or of larceny as such clerk, servant, or person, as the case may be, and he shall be liable to punishment accordingly.

## **FRAUDS BY FACTORS AND OTHER AGENTS**

### **164 Terms “agents”, “intrusted” and “misappropriate”**

For the purposes of sections 165 to 171 both inclusive:

***intrusted*** means intrusted, either solely, or jointly, with any other person.

***agent*** includes bankers, merchants, attorneys, factors, brokers, and every other person acting in the capacity of an agent so intrusted.

***misappropriate*** means appropriate in any manner, whether by sale, pledge, or otherwise, to the agent’s own use or benefit, or the use or benefit of some one other than the person, by, or for whom, he was so intrusted.

### **165 Agent misappropriating money etc intrusted to him**

Whosoever having been intrusted as an agent with any money, or security for the payment of money, with a direction in writing to apply, pay, or deliver, such money, or security, or any part thereof, respectively, or the proceeds, or any part of the proceeds, of such security for any purpose, or to any person specified in such direction, misappropriates in any manner such money, security, or proceeds, or any part thereof, respectively, in violation of good faith, and contrary to the terms of such direction, shall be liable to penal servitude for ten years.

### **166 The like as to goods etc intrusted to him**

Whosoever having been intrusted as an agent with any chattel, or valuable security, for safe custody, or for any special purpose, without authority to sell, negotiate, transfer, or pledge the same, or with any power of attorney for the sale, or transfer, of any share, or interest, in any public stock, or fund, or in any stock, or fund of any body corporate, or company, misappropriates in any manner such chattel, or security, or the proceeds of the same, or any part thereof, or the share, or interest, in the stock or fund, to which such power of attorney relates, or any part thereof, in violation of good faith, and contrary to the purpose for which such chattel, security, or power of attorney, was intrusted to him, shall be liable to penal servitude for ten years.

### **167 Not to affect trustees or mortgagees nor to restrain agents from receiving money on valuable securities etc**

Nothing in section 165 or section 166 shall affect any trustee under any instrument, or any mortgagee of property, in respect of any act done by such trustee, or mortgagee, in relation to the property comprised in, or affected by, the trust, or mortgage, or shall restrain an agent from receiving money payable upon any valuable security according to the tenor and effect thereof, or from disposing of property on which he has any claim entitling him by law so to do, unless such disposal extends to more than is requisite for satisfying such claim.

**168 Fraudulent sale of property by agent**

Whosoever, being an agent intrusted with property for safe custody, fraudulently sells, negotiates, transfers, pledges, or in any manner misappropriates, the same, or any part thereof, shall be guilty of a misdemeanour.

**169 The same by person under power of attorney**

Whosoever, being intrusted with any power of attorney for the sale, or transfer, of property, fraudulently sells, transfers, or otherwise misappropriates the same, or any part thereof, shall be liable to penal servitude for ten years.

**170 Agent obtaining advances on property of his principal**

Whosoever, being an agent intrusted with property for the purpose of sale, or otherwise disposing of the same,

otherwise than for the use of his principal, and in violation of good faith, transfers, consigns, pledges, or delivers the same, or any part thereof, as security for money, or other valuable thing, borrowed, or received, or to be borrowed, or received, by such agent, or,

otherwise than for the use of his principal, and in violation of good faith, obtains any advance of money, or other valuable thing, upon any undertaking by him to transfer, consign, pledge, or deliver such property, or any part thereof, or

assists in the making of any such transfer, consignment, pledge, or delivery, or in the obtaining of any such advance, knowing the same in any such case to be in violation of good faith,

shall be liable to penal servitude for ten years:

Provided that nothing in this section shall extend to any transfer, consignment, pledge, or delivery, made, or agreed to be made, as security for no greater sum than the amount, if any, then due to such agent, and of any current bill, or bills, drawn by, or on account of, his principal and accepted by such agent.

**171 What to be deemed intrusting with goods etc**

For the purposes of section 170:

- (1) every agent intrusted with the possession of a document of title to property, whether derived immediately from the owner of the property, or obtained by such agent by reason of his having possession of such property, or of some other document of title thereto, shall be deemed to have been intrusted with the property indicated by such document,
- (2) every transfer, pledge, or delivery, of any such document shall be deemed a transfer, pledge, or delivery, of the property indicated by the same,

- (3) where any such document, or the property thereby indicated, is held by any person on the behalf, or subject to the control, of any such agent, the same shall be taken to be in the possession of such agent,
- (4) every agent in possession of property, or of any such document of title, shall be taken to have been intrusted therewith by the owner, unless the contrary is shown.

**172 Trustees fraudulently disposing of property**

Whosoever, being a trustee of property for the use or benefit, wholly or partially, of some other person or for any public or charitable purpose,

converts, or appropriates, the same, or any part thereof, for the use or benefit of himself, or some other person, or for any other than such public or charitable purpose, or,

otherwise disposes of, or destroys such property, or any part thereof,

in violation in any such case of good faith, and with intent to defraud, shall be liable to penal servitude for ten years:

Provided that no prosecution shall be instituted under this section without the leave of the Supreme Court or of the Attorney-General.

**173 Directors etc fraudulently appropriating etc property**

Whosoever, being a director, officer, or member, of any body corporate, or public company,

fraudulently takes, or applies, for his own use or benefit, or any use or purpose other than the use or purpose of such body corporate, or company, or

fraudulently destroys any of the property of such body corporate, or company,

shall be liable to penal servitude for 10 years.

**174 Directors etc omitting certain entries**

Whosoever, being a director, or officer of any body corporate, or public company, receives, or possesses himself, of any of the property of such body corporate, or company, otherwise than in payment of a just debt, and, with intent to defraud, omits to make, or direct to be made, a true and sufficient entry thereof in the books, or accounts, of such body corporate, or company, shall be liable to penal servitude for 10 years.

**175 Director etc wilfully destroying etc books of company etc**

Whosoever, being a director, officer, or member, of any body corporate, or public company,

destroys, alters, mutilates, or falsifies, any book, entry, paper-writing, or valuable



security, belonging to such body corporate, or company, or

makes, or concurs in making, any false entry, or omits, or concurs in omitting, any material particular in any book of account, or other document,

with intent in any such case to defraud,  
shall be liable to penal servitude for 10 years.

### **176 Director or officer publishing fraudulent statements**

Whosoever, being a director, or officer, of any body corporate, or public company, makes, circulates, or publishes, or concurs in making, circulating, or publishing, any written statement, or account, which he knows to be false in any material particular, with intent to deceive, or defraud, any member, shareholder, or creditor, of such body corporate, or company, or with intent to induce any person to become a shareholder, or partner therein, or to intrust, or advance, any property to such body corporate, or company, or to enter into any security for the benefit thereof, shall be liable to penal servitude for 10 years.

### **176A Directors etc cheating or defrauding**

Whosoever, being a director, officer, or member, of any body corporate or public company, cheats or defrauds, or does or omits to do any act with intent to cheat or defraud, the body corporate or company or any person in his dealings with the body corporate or company shall be liable to imprisonment for 10 years.

### **177 Proviso to sections 165 to 176 inclusive**

No person shall be convicted of any offence under any of the sections from section 165 to section 176 both inclusive in respect of any act or omission by him, if, before being charged with the offence, he first disclosed such act or omission, on oath, under compulsory process, in a proceeding instituted by a party aggrieved, or under compulsory examination in some matter in bankruptcy, or insolvency, or under compulsory examination in some matter in the liquidation of a corporation.

### **178 No relief from compulsory disclosures**

- (1) Nothing in sections 165 to 176 both inclusive shall relieve any person from making a full discovery, by answer to interrogatories, or from answering any question in a civil proceeding.
- (2) No evidence of the conviction of any person, under any of the said sections, shall be admissible in any suit against him.
- (3) Nothing in the said sections, nor any proceeding or conviction under them, shall affect any remedy which any party would have had if this Act had not been passed, nor shall affect any agreement entered into, or security given, by a trustee, having for its object the restoration, or repayment, of any trust property misappropriated.

## **FRAUDULENT MISAPPROPRIATION**

### **178A Fraudulent misappropriation of moneys collected or received**

Whosoever having collected or received any money or valuable security upon terms requiring him to deliver or account for or pay to any person the whole or any part of:

- (a) such money or valuable security or the proceeds thereof, or
- (b) any balance of such money, valuable security, or proceeds thereof after any authorised deductions or payments have been made thereout,

fraudulently misappropriates to his own use or the use of any other person, or fraudulently omits to account for or pay the whole or any part of such money, valuable security, or proceeds, or the whole or any part of such balance in violation of the terms on which he collected or received such money or valuable security, shall be liable to penal servitude for seven years.

For the purposes of this section any such money, valuable security, or proceeds thereof, or any balance thereout shall be deemed to be the property of the person who authorised the collection or receipt of the money or valuable security or from whom the money or valuable security was received notwithstanding that the accused may have been authorised to make any deduction thereout on his own behalf, or any payment thereout to another person, or to mix such money, valuable security, or proceeds thereof, or such balance with his own moneys.

## **VALUELESS CHEQUES**

### **178B Valueless cheques**

Whosoever obtains any chattel, money or valuable security by passing any cheque which is not paid on presentation shall, unless he proves:

- (a) that he had reasonable grounds for believing that that cheque would be paid in full on presentation, and
- (b) that he had no intent to defraud,

be liable to imprisonment for one year, notwithstanding that there may have been some funds to the credit of the account on which the cheque was drawn at the time it was passed.

## **OBTAINING MONEY, ETC, BY DECEPTION**

### **178BA Obtaining money etc by deception**

- (1) Whosoever by any deception dishonestly obtains for himself or another person any money or valuable thing or any financial advantage of any kind whatsoever shall be

liable to imprisonment for 5 years.

- (2) For the purposes of subsection (1), **deception** means any deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including a deception as to the present intentions of the person using the deception or any other person.

## **OBTAINING MONEY, ETC, BY FALSE OR MISLEADING STATEMENTS**

### **178BB Obtaining money etc by false or misleading statements**

Whosoever, with intent to obtain for himself or another person any money or valuable thing or any financial advantage of any kind whatsoever, makes or publishes, or concurs in making or publishing, any statement (whether or not in writing) which he knows to be false or misleading in a material particular or which is false or misleading in a material particular and is made with reckless disregard as to whether it is true or is false or misleading in a material particular shall be liable to imprisonment for 5 years.

## **OBTAINING CREDIT BY FRAUD**

### **178C Obtaining credit by fraud**

Whosoever incurring any debt or liability obtains credit by any false pretence or by any wilfully false promise or partly by a false pretence and partly by a wilfully false promise or by any other fraud shall be liable to imprisonment for one year.

## **FALSE PRETENCES**

### **179 False pretences etc**

Whosoever, by any false pretence or by any wilfully false promise, or partly by a false pretence and partly by a wilfully false promise, obtains from any person any property, with intent to defraud, shall be liable to penal servitude for five years.

### **180 Causing payment etc by false pretence etc**

Where the accused, by any false pretence or by any wilfully false promise, or partly by a false pretence and partly by a wilfully false promise, causes, or procures, any money to be paid, or any property to be delivered, to himself, or any other person for the use or benefit, or on account of himself, or any other person, with intent to defraud, he shall be deemed to have obtained the same within the meaning of section 179.

### **181 False pretence of title**

Where the accused falsely, and with intent to defraud, represents that he has a title, or right, to certain property, or to convey, or dispose of, certain property, knowing such representation to be false, and thereby obtains any property, he shall be deemed to have obtained the same within the meaning of section 179.

**182 Accused may be convicted on a charge of false pretences etc though property obtained partly by a false promise**

Where, on the trial of a person for obtaining property by any false pretence or by any wilfully false promise, it appears that the property was obtained partly by a false pretence and partly by a wilfully false promise, such person shall not by reason thereof be entitled to acquittal.

**183 Trial for false pretences etc—verdict of larceny**

Where, on the trial of a person for obtaining property by any false pretence or by any wilfully false promise, or partly by a false pretence and partly by a wilfully false promise, it appears that he obtained the property in such manner as to amount in law to larceny or fraudulent misappropriation, the jury may acquit him of the offence charged, and find him guilty of larceny, or of larceny as a clerk, or servant, or a person employed in the Public Service, or of fraudulent misappropriation, as the case may be, and he shall be liable to punishment accordingly.

**184 Fraudulent personation**

Whosoever falsely personates, or pretends to be, some other person, with intent fraudulently to obtain any property, shall be liable to penal servitude for seven years.

Nothing in this section shall prevent any person so personating, or pretending, from being proceeded against in respect of such act, or pretence, under any other enactment or at Common Law.

**185 Inducing persons by fraud to execute instruments**

Whosoever, with intent to defraud or injure any person, causes, or induces, any person, by any false pretence, to execute, make, accept, indorse, or destroy, the whole, or any part, of any valuable security, or to write, impress, or affix, any name, or seal, upon any paper, or parchment, in order that the same may be afterwards made or converted into, or used or dealt with as a valuable security, shall be liable to penal servitude for seven years.

***Fraudulent arrangements***

**185A Inducing persons to enter into certain arrangements by misleading etc statements etc**

(1) Whosoever, by any statement, promise or forecast which he knows to be misleading, false or deceptive, or by any dishonest concealment of material facts, or by the reckless making (dishonestly or otherwise) of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to take part or offer to take part in any arrangements with respect to property other than marketable securities, being arrangements the purpose or effect, or pretended purpose or effect, of which is to enable persons taking part in the arrangements

(whether by becoming owners of the property or any part of the property or otherwise) to participate in or receive profits or income alleged to arise or to be likely to arise from the acquisition, holding, management or disposal of such property, or sums to be paid or alleged to be likely to be paid out of such profits or income, shall be liable to penal servitude for five years.

- (2) Any person guilty of conspiracy to commit an offence under subsection (1) shall be punishable as if he had committed such an offence.
- (3) Without limiting the generality of subsection (1) a statement, promise or forecast shall, for the purposes of that subsection, be deemed to be misleading or deceptive if it is of such a nature that it would reasonably tend to lead to a belief in the existence of a state of affairs that does not in fact exist, whether or not the statement, promise or forecast indicates that that state of affairs does exist.
- (4) Where a body corporate is convicted of an offence under subsection (1) any director of the body corporate, or any manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity shall, if he consented to or connived at the commission of that offence, be guilty of that offence and be liable to be proceeded against and punished accordingly.
- (5) Without limiting the generality of subsection (4), a person shall, for the purposes of that subsection, be deemed to be a director of a body corporate if he occupies in relation thereto the position of a director, by whatever name called, or is a person in accordance with whose directions or instructions the directors of the company or any of them act:

Provided that a person shall not, by reason only that the directors of a body corporate act on advice given by him in a professional capacity, be taken, for the purposes of this subsection, to be a person in accordance with whose directions or instructions those directors act.

- (6) In this section **marketable securities** has the meaning ascribed to that expression in the *Companies (New South Wales) Code*.

## **CORRUPT REWARDS**

### **186 Taking reward for helping to recover stolen property**

Whosoever corruptly takes, or offers, or agrees, to take, any money, or reward, directly or indirectly, under pretence, or upon account, of helping any person to recover any property, taken, or obtained, or converted, or disposed of, in such manner as to be punishable by this Act, shall, unless he has used all due diligence to cause the offender to be brought to trial for the same, be liable to penal servitude for five years.

## **RECEIVERS**

### **187 Term “stealing” in sections 188 and 189**

For the purposes of sections 188 and 189:

**Stealing** includes the taking, extorting, obtaining, embezzling, or otherwise disposing of the property in question.

### **188 Receiving etc where principal guilty of felony**

Whosoever receives, or disposes of, or attempts to dispose of, any property, the stealing whereof amounts to felony, knowing the same to have been stolen, shall be guilty of felony, and may be indicted, either as an accessory after the fact, or for a substantive felony, and in the latter case whether the principal felon has been previously tried or not, or is amenable to justice or not, and in either case shall be liable to penal servitude for ten years.

### **189 Receiving etc where principal guilty of misdemeanour**

Whosoever receives, or disposes of, or attempts to dispose of, any property, the stealing whereof is a misdemeanour, knowing the same to have been stolen, shall be guilty of a misdemeanour, and whether the person guilty of the principal offence has been previously tried or not, or is amenable to justice or not, shall be liable to imprisonment for three years.

### **189A Receiving etc goods stolen out of New South Wales**

- (1) Whosoever, without lawful excuse, receives or disposes of, or attempts to dispose of, or has in his possession, any property stolen outside the State of New South Wales, knowing the same to have been stolen, and whether or not he took part in the stealing of the property, shall be liable to penal servitude for ten years.
- (2) For the purposes of this section property shall be deemed to have been stolen if it has been taken, extorted, obtained, embezzled, converted, or disposed of under such circumstances that if the act had been committed in the State of New South Wales the person committing it would have been guilty of an indictable offence according to the law for the time being of the State of New South Wales.
- (3) No person shall be liable to conviction under this section if the taking, extorting, obtaining, embezzling, converting, or disposing is not a criminal offence in the country in which the act is committed.

### **189B Prosecution under section 188 or 189 where property stolen in course of transmission**

- (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:

- (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.

### **190 Receiving etc cattle feloniously killed, or carcass etc**

Whosoever:

receives any animal, feloniously killed, with intent to steal the carcass, or skin, or other part thereof, knowing the same to have been so killed, or

receives, or disposes of, or attempts to dispose of, any part of an animal so killed, or of an animal feloniously stolen, knowing it to have been so killed or so stolen,

shall be guilty of felony, and may be indicted and punished as if the animal had been stolen, and the accused had feloniously received the same.

### **191 Uncertainty as to sex or age not to entitle to acquittal**

Where, on the trial of a person for an offence under section 190, it appears that the animal was of the species mentioned in the indictment, but it is uncertain on the evidence what was its sex or age, such person shall not be entitled to acquittal by reason only of such uncertainty.

### **192 Receiving material or tools intrusted for manufacture**

Whosoever receives any goods, article, or material or any tools, or apparatus for manufacturing, or working up, the same, knowing the same to have been purloined, embezzled, or secreted, within the meaning of section 151, or that the person offering the same is fraudulently disposing thereof, shall be liable to imprisonment for four years.

### **193 Verdict where several persons are indicted for jointly receiving**

Where, on the trial of two or more persons for jointly receiving property, it appears that one, or more, separately received such property, or any part thereof, the jury may convict such one or more of the said persons as is, or are, proved to have so received the same.

## **Chapter 2 Malicious injuries to property**

### ***Declaratory and general***

#### **194 Ownership and possession of property injured**

- (1) Every act of malicious injury to property punishable under this Act, shall be an offence so punishable, whether the property belonged to a private person, or to Her Majesty, or was otherwise of a public nature.
- (2) Every act of malicious injury done to property by any person, with intent to injure or defraud another, shall be an offence within this Act, although the offender was, at the time of its commission, in lawful possession of such property.

#### **195 Actual malice**

On the trial of a person for any such act as is referred to in section 194, it shall not be necessary to prove the existence of malice, either against the owner of the property, or against any other person:

Provided that:

No act shall be deemed malicious which was done by the accused under a reasonable supposition that he had a right to do such act.

### ***Injuries to buildings, &c, by fire***

#### **196 Setting fire to dwelling etc knowing person therein**

Whosoever maliciously sets fire to any dwelling-house vehicle or aircraft, knowing any person to be then in such dwelling-house vehicle or aircraft, shall be liable to penal servitude for life.

#### **197 Setting fire to dwelling etc a person being therein or to a church**

Whosoever maliciously sets fire to any dwelling-house vehicle or aircraft, any person being then in such dwelling-house vehicle or aircraft, or to any place of Divine worship, shall be liable to penal servitude for life.

#### **198 Setting fire to certain other buildings etc**

Whosoever maliciously sets fire to any dwelling-house vehicle or aircraft, or warehouse, office, shop, mill, barn, store-house, granary, or wool-shed, whether the same is then in the possession of the offender, or of any other person, with intent to injure or defraud any person, shall be liable to penal servitude for fourteen years.

#### **199 Setting fire to railway station or public building**

Whosoever maliciously sets fire to any station, engine-house, warehouse, or other



building, belonging, or appertaining, to any railway, port, dock, or harbour, or canal, or other navigation, or to any building, the property of the Queen, or of the council, or body corporate of any municipal institution, or the property of any university, or college, or dedicated to public use or ornament, or erected, or maintained, by public subscription, shall be liable to penal servitude for fourteen years.

#### **200 Setting fire to other buildings**

Whosoever maliciously sets fire to any building not mentioned in sections 196 to 199 both inclusive shall be liable to penal servitude for ten years.

#### **201 Setting fire to things in or adjacent to buildings etc**

Whosoever maliciously sets fire to any matter or thing, in, against, or under, any building vehicle or aircraft, under such circumstances that if the building, vehicle or aircraft were thereby set on fire the offence would amount to felony, shall be liable to penal servitude for seven years.

#### **202 Attempt to set fire to buildings etc**

Whosoever maliciously attempts to set fire to any such building vehicle, aircraft, or matter, or thing as is referred to in sections 196 to 201 both inclusive, shall be liable to penal servitude for five years.

### ***Injuries to buildings by explosive substances***

#### **203 Destroying or damaging a house etc with gunpowder**

Whosoever maliciously, by the explosion of gunpowder or other explosive substance, destroys, throws down, or damages, the whole, or any part, of any dwelling-house vehicle or aircraft, any person being therein, or the whole, or any part of any building whatsoever vehicle or aircraft, whereby the life of any person is endangered, shall be liable to penal servitude for life.

#### **204 Attempting to destroy building etc with gunpowder**

Whosoever maliciously places, or throws in, or into, or upon, under, against, or near any building vehicle or aircraft, any gunpowder, or other explosive substance, with intent to destroy or damage any building vehicle, aircraft, engine, machinery, tools, fixtures, or other property, whether any explosion takes place or not, and whether any damage is caused or not, shall be liable to penal servitude for fourteen years.

### ***Offences relating to aircraft***

#### **204A Acts prejudicial to safe operation of aircraft**

Whosoever does any act with intent to prejudice the safe operation of an aircraft shall be liable to penal servitude for fourteen years.

**204B Acts endangering safety of aircraft**

Whosoever while on board an aircraft does any act or thing that is likely to endanger the safety of the aircraft shall be liable to penal servitude for seven years.

**204C Dangerous article on aircraft**

(1) Subject to this section whosoever:

- (a) carries or places a dangerous article on board an aircraft,
- (b) delivers a dangerous article to a person for the purpose of its being placed on board an aircraft, or
- (c) has a dangerous article in his possession on board an aircraft,

shall be liable to penal servitude for seven years.

(2) This section shall not apply:

- (a) to or in relation to any act done with the consent of the owner or operator of the aircraft given with a knowledge of the nature of the article concerned, or
- (b) to or in relation to the carrying or placing of a firearm or ammunition for a firearm on board an aircraft with permission granted under the [Air Navigation Regulations](#) made under the [Air Navigation Act 1920](#) of the Parliament of the Commonwealth of Australia, as amended by subsequent Acts of that Parliament.

(3) In this section **dangerous article** means:

- (a) a firearm, ammunition for a firearm, a weapon or an explosive substance, or
- (b) a substance or thing that, by reason of its nature or condition, may endanger the safety of an aircraft or of persons on board an aircraft.

**204D Threat to destroy etc aircraft**

Whosoever threatens, states that it is his intention, or makes a statement from which it could reasonably be inferred that it is his intention, to destroy, damage or endanger the safety of an aircraft or to kill or injure all or any of the persons on board an aircraft shall be liable to imprisonment for two years.

**204E False information as to plan etc to prejudice safety of aircraft or persons thereon**

Whosoever makes a statement or conveys information, being a statement or information that he knows to be false, to the effect, or from which it could reasonably be inferred, that there has been or is to be a plan, proposal, attempt, conspiracy or threat to:

- (a) take or exercise control by force or violence of an aircraft,

- (b) destroy, damage or endanger the safety of an aircraft, or
  - (c) kill or injure all or any of the persons on board an aircraft,
- shall be liable to imprisonment for two years.

### ***Injuries to buildings by rioters***

#### **205 Rioters demolishing buildings or machinery**

Whosoever is one of any persons riotously and tumultuously assembled together, to the disturbance of the public peace, who unlawfully and with force, demolish, pull down, or destroy, or begin, or attempt, to demolish, pull down, or destroy, any such place, or building, or erection, as is mentioned in sections 196 to 199 inclusive, or any machinery, whether fixed or movable, prepared for employment, or employed, in any manufacture, or any steam-engine, or other engine, for sinking, working, ventilating, or draining, any mine, or any staith, or erection, used in conducting the business of any mine, or any bridge, waggon-way, tramway, trunk, or shoot, for conveying minerals from any mine, shall be liable to penal servitude for ten years.

#### **206 Riotous demolition—alternative verdict**

Where, on the trial of a person for an offence under section 205, the jury are not satisfied that the accused is guilty thereof, but are satisfied that he is guilty of an offence within section 207, they may acquit him of the offence charged, and find him guilty of an offence under the said last-mentioned section, and he shall be liable to punishment accordingly.

#### **207 Rioters injuring building etc**

Whosoever is one of any persons riotously and tumultuously assembled together, to the disturbance of the public peace, who unlawfully and with force, injure, or damage, any such place, or building, or erection, as is mentioned in sections 196 to 199 inclusive, or in section 205, shall be liable to penal servitude for seven years.

### ***Injuries to buildings by tenants***

#### **208 Tenants maliciously injuring houses**

Whosoever, being possessed of any building, or part of any building, held for any period, or at will, or held over after the termination of any tenancy:

maliciously pulls down, or demolishes, or begins, or attempts, to pull down, or demolish, the same, or any part thereof, or,

maliciously pulls down, or severs from the freehold, any fixture belonging to such building,

shall be liable to imprisonment for three years.

## ***Injuries to manufactures, machinery, &c***

### **209 Injuring machinery or goods in process of manufacture**

Whosoever:

maliciously cuts, breaks, or destroys, or damages, with intent to destroy or render useless, any goods, article, or material, in any stage process, or progress, of manufacture, or any loom, frame, machine, engine, rack, tackle, tool, or implement, whether fixed or movable, prepared for, or employed in, manufacturing, or preparing, any such goods, article, or material, or,

by force enters into any building, or place, with intent to commit any such offence,

shall be liable to penal servitude for seven years.

### **210 Injuring agricultural and other machines**

Whosoever maliciously cuts, breaks, or destroys, or damages, with intent to destroy, or render useless, any machine, or engine, whether fixed or movable, used, or intended to be used, for performing any agricultural operation, or any machine, or engine, used, or intended to be used, for sheep-washing, wool-pressing, sugar-crushing, cotton-ginning, or for performing any process connected with the preparation of any agricultural, or pastoral, produce, or with the preservation of meat, or other animal substances, or any appliance, or apparatus, in connection with any such machine, or engine, shall be liable to penal servitude for five years.

## ***Injuries to corn, hay-stacks, trees, &c***

### **211 Setting fire to crops**

Whosoever maliciously sets fire to any crop of hay, grass, sugar-cane, corn, grain, pulse, cotton, or cultivated vegetable produce of any kind, whether standing or cut down, or to any wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern, or to any natural grass, wheresoever growing, shall be liable to penal servitude for fourteen years.

### **212 Setting fire to stacks etc**

Whosoever maliciously sets fire to any stack of corn, grain, pulse, tares, hay, straw, haulm, stubble, or cultivated vegetable produce, or of furze, gorse, heath, fern, turf, peat, coals, kerosene-shale, charcoal, wood, or bark, or to any grain, or hay, housed in a barn or shed, shall be liable to penal servitude for fourteen years.

### **213 Setting fire to fences**

Whosoever maliciously sets fire to any fence, or to any timber cut, laid down, or prepared, for the purpose of fencing, shall be liable to penal servitude for five years.

**214 Attempts to set fire to such things**

Whosoever maliciously attempts to set fire to any matter, article, or thing, mentioned in section 211, 212 or 213, shall be liable to penal servitude for three years.

**215 Destroying hopbinds, vines etc**

Whosoever maliciously destroys, or damages, any hopbinds growing on poles in any plantation of hops, or any vines growing in any vineyard or garden, or any growing or planted cotton, or sugar-canes, shall be liable to penal servitude for ten years.

**216-219 (Repealed)**

**220 Driving cattle etc on to cultivated land**

Whosoever:

maliciously drives any cattle into, or upon, any enclosed land then under cultivation,  
or

maliciously pulls, or breaks down, or removes, cuts, or severs, any fence, wall, dyke,  
or palisade, or

maliciously opens, or leaves open, any gate, or slip-rail,

with intent in any such case to allow cattle to stray in or upon such enclosed land,  
shall be liable to imprisonment for four years.

***Injuries to mines***

**221 Setting fire to coal-mine**

Whosoever maliciously sets fire to any mine of coal, cannel-coal, anthracite, kerosene-shale, or other mineral, fuel, or to any well of mineral oil, shall be liable to penal servitude for life.

**222 Attempt to fire coal-mine**

Whosoever maliciously attempts to set fire to any such mine, or well, as is mentioned in section 221, shall be liable to penal servitude for fourteen years.

**223 Conveying water into mine, shaft etc**

Whosoever:

maliciously causes any water to be conveyed, or run, into any mine, or into any subterranean passage communicating therewith, or

maliciously pulls down, fills up, or obstructs, or damages, with intent to destroy, obstruct, or render useless, any airway, waterway, drain, pit, level, or shaft, of or

belonging to any mine,

with intent in any such case to destroy, or damage, such mine, or to hinder, or delay, the working thereof,

shall be liable to penal servitude for seven years.

#### **224 Damaging engines, staiths, waggon-ways**

Whosoever:

maliciously sets fire to, or pulls down, or destroys, or damages, with intent to destroy, or render useless, any engine employed, or about to be employed in sinking, draining, ventilating, or working any mine, or any appliance or apparatus in connection therewith, or any staith, building, or erection, bridge, waggon-way, or trunk, used or intended to be used, in, or about, the business of any mine, whether such engine, staith, building, erection, bridge, waggon-way, or trunk, is completed or unfinished, or

maliciously prevents, or obstructs, the working of any such engine, appliance, or apparatus, or

maliciously cuts, breaks, unfastens, or damages, with intent to destroy, or render useless, any rope, chain, or tackle used in any mine, or in or upon any way, or work, employed in, or connected with, any mine, or the business thereof,

shall be liable to penal servitude for seven years.

#### ***Injuries to sea or river banks, &c***

#### **225 Destroying sea or river bank or wall**

Whosoever:

maliciously breaks down, cuts down, or otherwise destroys or damages, any sea-bank, or sea-wall, or the bank, dam, or wall, of or belonging to, any river, creek, canal, drain, reservoir, pool, or marsh, whereby any land or building is, or probably may be, overflowed, or damaged, or

maliciously throws, breaks, or cuts down, levels, undermines, or otherwise destroys, or damages, any water-course, aqueduct, pipe, dam, embankment, cutting, or reservoir, connected with any work for the supply or conservation of water, or any quay, wharf, jetty, lock, sluice, floodgate, weir, tunnel, towing-path, drain, watercourse, or other work belonging to any port, harbour, dock, or reservoir, or on, or belonging to, any navigable river, creek, or canal,

shall be liable to penal servitude for life.

#### **226 Removing piles, or obstructing navigation of river**

Whosoever:

maliciously cuts off, draws up, or removes, any materials fixed in, or placed on, the ground, and used for securing any sea-bank, or sea-wall, or the bank, dam, or wall, of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, harbour, dock, quay, wharf, jetty, or lock, or

maliciously opens, or draws up, any floodgate, or sluice, or does any other injury to any navigable river or canal with intent to obstruct, or prevent the carrying on, completing, or maintaining, the navigation thereof,

shall be liable to penal servitude for seven years.

### ***Injuries to ponds, reservoirs, &c***

#### **227 Breaking down dams etc, poisoning fish**

Whosoever:

maliciously cuts through, breaks down, or destroys, the dam, floodgate, or sluice, of any fish-pond, or any water being private property, with intent thereby to take, or destroy, any fish in such pond or water, or so as to cause the loss, or destruction, of any such fish, or

maliciously puts any lime, or other noxious material, in any such pond or water, with intent thereby to destroy any fish then, or that may thereafter be, therein, or

maliciously cuts through, breaks down, or destroys, the dam, or floodgate, of any mill-pond, reservoir, or pool,

shall be liable to imprisonment for four years.

### ***Injuries to bridges, viaducts, and toll-bars***

#### **228 Injury to public bridge etc**

Whosoever:

maliciously pulls, or throws, down, or in anywise destroys, any bridge, viaduct, or aqueduct, over or under which any highway, railway road, or canal, passes, or

maliciously does any injury with intent thereby to render such bridge, viaduct, or aqueduct, or the highway, railway, road, or canal, passing over or under the same, or any part thereof, dangerous, or impassable,

shall be liable to penal servitude for life.

#### **229 Destroying turnpike-gate etc**

Whosoever maliciously throws down, levels, or otherwise destroys, in the whole, or in part, any turnpike-gate, or toll-bar, or any wall, chain, rail, post, bar, or other fence, belonging

to any turnpike-gate, or toll-bar, erected to prevent passengers passing by without paying toll, or any house, building, or weighing-engine, erected for the better collection, ascertainment, or security, of any such toll, shall be liable to imprisonment for one year.

### ***Injuries to railway carriages***

#### **230 Certain acts etc on railway with intent to obstruct etc**

Whosoever:

maliciously places, or throws, any matter, or thing, upon, or across, any railway, or

maliciously takes up, removes, or displaces, any rail, sleeper, or other thing, belonging to any railway, or

maliciously turns, moves, or diverts, or neglects to turn, move, or divert, any point, or other machinery belonging to any railway, or

maliciously makes, or shows, hides, or removes, any signal, or light, upon or near to any railway, or

maliciously does, or causes to be done, any other thing,

with intent in any such case to obstruct, overthrow, destroy, or injure any engine, tender, carriage, or truck, on such railway,  
shall be liable to penal servitude for life.

#### **231 Obstructing railways—verdict of misdemeanour**

Where, on the trial of a person for an offence under section 230, the jury are not satisfied that the accused is guilty thereof, but are satisfied that he is guilty of an offence within section 232, they may acquit him of the offence charged, and find him guilty of an offence under the said last-mentioned section, and he shall be liable to punishment accordingly.

#### **232 Obstructing engines or carriages on railways**

Whosoever, by any unlawful act, or wilful omission, or neglect, obstructs, or causes to be obstructed, the passing, or working, of any engine, or carriage, on any railway, or aids, or assists, in any such offence, shall be liable to imprisonment for three years.

#### **233, 234 (Repealed)**

### ***Injuries to vessels***

#### **235 Setting fire to vessels, any person being therein**

Whosoever maliciously sets fire to, or casts away, or by any means destroys, any vessel which is afloat, any person being then in such vessel, shall be liable to penal servitude for life.



**236 Setting fire to vessels**

Whosoever:

maliciously sets fire to, or casts away, or in anywise destroys, any vessel, whether complete or unfinished, or

maliciously, and with intent to destroy such vessel, sets fire to the tackle, apparel, or furniture, of such vessel, or any goods therein,

shall be liable to penal servitude for life.

**237 Setting fire to vessels—attempt**

Whosoever maliciously attempts to set fire to, or cast away, or destroy, any such vessel, shall be liable to penal servitude for fourteen years.

**238 Placing gunpowder near a ship with intent to damage it**

Whosoever maliciously places, or throws in, or into, or upon, against, or near, any vessel, any gunpowder, or other explosive substance, with intent to destroy or damage such vessel, or any machinery, working tools, or chattel, in or near the same, whether an explosion takes place or any damage is caused or not, shall be liable to penal servitude for fourteen years.

**239 Damaging ship otherwise than by fire**

Whosoever maliciously damages, otherwise than by fire, gunpowder, or other explosive substance, any vessel, whether complete or unfinished, with intent to destroy the same, or render the same useless, shall be liable to penal servitude for seven years.

**240 Exhibiting false signals etc**

Whosoever maliciously masks, alters, or removes, any light or signal, or exhibits a false light or signal, with intent to bring any vessel or boat into danger, shall be liable to penal servitude for life.

**241 Doing any act with intent to cause loss of vessel etc**

Whosoever maliciously does anything with intent to cause the loss, or destruction of, or serious injury to, any vessel or boat, for which offence no punishment is provided in sections 235 to 240 both inclusive, shall be liable to penal servitude for life.

**242 Removing or concealing buoys etc**

Whosoever maliciously cuts away, casts adrift, removes, alters, defaces, sinks, or destroys, or does any act with intent to cut away, cast adrift, remove, alter, deface, sink, or destroy, or injure, or conceal, any boat, buoy, buoy-rope, perch, or mark used or intended for the guidance of seamen, or the purposes of navigation, shall be liable to

penal servitude for seven years.

#### **243 Destroying wrecks etc**

Whosoever maliciously destroys any part of any vessel in distress, or wrecked, stranded, or cast on shore, or any goods, or article of any kind, belonging to such ship, or vessel, shall be liable to penal servitude for fourteen years.

### ***Injuries to books, works of art, &c, in museums, &c***

#### **244 Injuring works of art in museums or other public places etc**

Whosoever maliciously destroys, or damages, any book, manuscript, picture, print, statue, bust, or vase, monument, or other memorial, painted glass, ornament, or ornamental work, or other article or thing, kept, or deposited, for the purposes of art, science, or literature, or as an object of curiosity, in any building belonging to the Queen, or in any museum, gallery, cabinet; library, school of arts, or other repository, habitually, or from time to time, open for the admission of the public, whether gratuitously, or by the payment of money, or in any place of Divine worship, or in any building belonging to the council, or body corporate, of any municipal institution, or to any university, or college, or in any street, burial-ground, or public garden, or ground, or any statue, or monument, exposed to public view, or any ornament, railing, or fence, belonging to, or surrounding, the same, or any post office receiving box, or pillar, or any drinking fountain, or any erection, place, or object of public or scientific interest, shall be liable to penal servitude for five years.

### ***Injuries to cattle***

#### **245 Killing or maiming cattle**

Whosoever maliciously kills, maims, or wounds, any cattle shall be liable to penal servitude for ten years:

Provided that:

Where, on the trial of a person for an offence under this section, it appears that he was the occupier of any enclosed land under cultivation, or a person acting by the order of such occupier, and that the cattle when killed, maimed, or wounded, were trespassing on such land, he shall be liable only to imprisonment for one year, or to a fine of \$1,000.

#### **246 (Repealed)**

### ***Injuries not otherwise provided for***

#### **247 Other injuries**

Whosoever maliciously injures any real or personal property whatsoever, either of a public or private nature for which act no punishment is provided in this Chapter, shall be liable to

penal servitude for five years.

### ***Letters threatening to burn or destroy property***

#### **248 Letters threatening to destroy property**

Whosoever sends, delivers, or utters, or directly or indirectly causes to be received, knowing the contents thereof, any letter or writing, threatening to burn, or destroy, any vessel, or any building, or any rick, or stack of grain, hay, or straw, or other agricultural produce, or any grain, hay, straw, or other agricultural produce, in or under, any building, shall be liable to penal servitude for five years.

### ***False statement that person or property in danger***

#### **248A False statement that person or property in danger**

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.

### ***Making or having gunpowder, &c, with intent to commit offences against property***

#### **249 Making or having gunpowder etc to commit malicious injury**

Whosoever makes, or knowingly has in his possession, any gunpowder, or other explosive substance, or any dangerous, or noxious thing, or any machine, engine, instrument, or thing, with intent thereby, or by means thereof, to commit, or for the purpose of enabling some other person to commit, any malicious injury within the meaning of this Act, shall be liable to imprisonment for three years.

## **Part 5 Forgery**

### ***Declaratory and general***

#### **250 Forging and uttering defined**

For the purposes of this Act:

***Forging*** means the counterfeiting, or altering in any particular, by whatsoever means effected, with intent to defraud, of an instrument, or document, or of some signature, or other matter, or thing, or of any attestation, or signature of a witness, whether by law required or not to any instrument, document, or matter, the forging of which is punishable under this Act.

**Utter**, or **uttering**, wherever used herein with respect to any forged instrument, document, signature, matter, or thing, or any instrument, document, or matter with a forged attestation or signature of a witness thereto, means that the person uttered, offered, disposed of, or put off, the same with intent to defraud, knowing it to be forged.

**251 Uttering to be offence of same degree and subject to same punishment as forging**

The uttering of any forged instrument, document, signature, matter, or thing, or of any instrument, document, or matter with a forged attestation or signature of a witness thereto, whether in any such case the same was made, or purports to have been made, in or out of New South Wales, shall, wherever the forging of the same is punishable under this Act, be an offence of the same degree, and punishable in the same manner as such forgery.

***Forgeries not specially provided for***

**252 Forgeries not specially provided for**

Whosoever forges, or utters, any instrument, or matter, the forging or uttering of which is not by any provision in this Part otherwise punishable, shall be liable to imprisonment for two years.

***Forgery, &c, of public seals or official signatures***

**253 Royal or public seals**

Whosoever:

forges any of Her Majesty's seals, or the seal of New South Wales, or of any British Colony, or the impression of any such seal, or

utters any instrument, having thereon, or affixed thereto, the impression of any such forged seal, or any forged impression made, or apparently intended, to resemble the impression of any such seal, or

forges any instrument having any such impression thereon, or affixed thereto,

shall be liable to penal servitude for fourteen years.

**254 Signature of Governor, Minister of the Crown etc**

Whosoever forges, or utters, the signature of the Governor, or of any of Her Majesty's Principal or Under Secretaries of State, or of any Minister of the Crown, or Under Secretary in New South Wales, or of the Surveyor-General, Deputy Surveyor-General or Auditor-General, to any grant, commission, warrant, order, or other official instrument or document, shall be liable to penal servitude for ten years.

## ***Forgery of Acts, Proclamations, &c***

### **255 Acts, proclamations etc**

Whosoever:

prints any copy of any Act, or of any proclamation or commission issued by the Governor, which copy falsely purports to have been printed by the Government Printer, or

tenders in evidence any such copy knowing the same was not printed by the Government Printer,

shall be liable to penal servitude for fourteen years.

## ***Forgery, &c, of transfers of stock, &c***

### **256 Transfer of certain stock, or power of attorney relating thereto**

Whosoever:

forges, or utters, any transfer of any share or interest of or in any stock annuity or other public fund of or in any part of Her Majesty's dominions, or of or in the capital stock of any body corporate, company, or society, now or hereafter established by charter, or by any Imperial or Colonial Act, or

forges, or utters, any power of attorney, or other authority to transfer any such share, or interest, or to receive any dividend, or money payable in respect of any such share or interest, or

demands, or endeavours, to have any such share or interest transferred, or to receive any dividend, or money payable in respect thereof, by virtue of any such forged power of attorney, or authority, knowing the same to be forged,

with intent in any such case to defraud,  
shall be liable to penal servitude for 10 years.

### **257 Personating owner of stock or property**

Whosoever falsely and deceitfully personates any owner of any such share, or interest, as is referred to in section 256, or any owner of any dividend, or money payable in respect of any such share, or interest, or any owner of any property whatever, or any estate, or interest, therein, or any charge or encumbrance thereon, and thereby transfers, or endeavours to transfer, any share, estate, or interest belonging to any such owner, or thereby receives, or endeavours to receive, any money due to any such owner as if such offender were the true owner, shall be liable to penal servitude for 10 years.

**258 Falsifying books of public funds**

Whosoever:

wilfully makes any false entry in, or alters any word or figure in, any book of account, in which the accounts of the owners of any share, or interest of or in any stock, annuities, or other public funds are entered, or wilfully falsifies any of the accounts of any such owner in any such book, or

wilfully makes any transfer of any share, or interest of or in any such stock, annuity, or public fund, or any such capital stock as aforesaid, or of or in the capital stock of any such body corporate, company or society, as aforesaid, in the name of any person not being the true owner of such share or interest,

with intent in any such case to defraud,  
shall be liable to penal servitude for 10 years.

**259 Public Servant making false dividend warrants etc**

Whosoever being employed in the Public Service knowingly and with intent to defraud, makes out, or delivers, any dividend warrant, or warrant for the payment to any person of any annuity, interest, or salary, payable by public authority, for a greater or less amount than such person is entitled to, shall be liable to penal servitude for seven years.

***Forgery of India bonds, Exchequer bills, &c***

**260 East India bonds, Exchequer bills, or debentures etc**

Whosoever forges, or utters, any East India bond, or any bond, debenture, or security made under the authority of any Act relating to the East Indies, or any indorsement on, or assignment of, any such bond, debenture, or security, or any Exchequer bill, bond, or debenture, or any indorsement on, or assignment of, any such bill, bond, or debenture, or any Treasury bill, or debenture of the Government of New South Wales, or receipt, or certificate for interest accruing thereon, shall be liable to penal servitude for fourteen years.

**261 Making plates etc like those used for Exchequer bills etc**

Whosoever:

without lawful authority makes, or knowingly has in his possession, any frame, mould, or instrument, having therein or thereon any words, letters, figures, marks, lines, or devices, peculiar to, and appearing in, the substance of any paper provided or used for Exchequer bills, bonds, or debentures, or Treasury bills, or debentures of the Government of New South Wales, or any machinery for working threads into the substance of any paper, and intended to imitate any such words, letters, figures, marks, lines, threads, or devices, or any plate peculiarly employed for printing such bills, bonds, or debentures, or any die, or seal, peculiarly used for preparing any such

plate, or for sealing such bills, bonds, or debentures, or any plate, die, or seal, intended to imitate any such plate, die, or seal, as aforesaid, or

without lawful authority causes any such act as aforesaid to be done, or assists in the doing thereof,

shall be liable to penal servitude for seven years.

## **262 Making paper like that used for Exchequer bills etc**

Whosoever:

without lawful authority makes any paper in the substance of which appear any words, letters, figures, marks, lines, threads, or other devices peculiar to, and appearing in the substance of any paper provided or used for any such bills, bonds, or debentures, as mentioned in section 261, or any part of such words, letters, or other matter and intended to imitate the same, or

knowingly has in his possession any paper in the substance whereof appear any such words, letters, or other matter, or any parts of such words, letters, or matter and intended to imitate the same, or

without lawful authority causes any such words, letters, or other matter, as aforesaid, or any part thereof, and intended to imitate the same, to appear in the substance of any paper, or

without lawful authority takes any impression of any such plate, die, or seal, as in the said section mentioned, or

without lawful authority causes any such act as aforesaid to be done, or assists in the doing thereof,

shall be liable to penal servitude for seven years.

## **263 Having paper etc to be used for Exchequer bills etc**

Whosoever without lawful authority receives, or knowingly has in his possession, any such plate, die, or seal, as mentioned in section 261 or 262, or any paper manufactured under the direction of Her Majesty's Treasury, or of the Government of New South Wales, for the purpose of being used as Exchequer bills, bonds, or debentures, or Treasury bills, or debentures of the Government of New South Wales, before such paper shall have been lawfully issued for public use, shall be liable to imprisonment for three years.

## ***Forgery, &c, of stamps, or having forged dies, &c***

### **264 Forging stamps or possessing false dies etc**

Whosoever:

forges, or utters, any stamp authorised to be issued under the authority of any Act now or hereafter passed, or

without lawful authority or excuse, makes, uses, or knowingly has in his possession, the whole or any part of any forged die, plate, or instrument, resembling or apparently intended to resemble, wholly or in part, any die, plate, or instrument, provided or used under the direction of the Government of New South Wales, or of any other Colony, for denoting stamp duty, or any material having thereon, wholly or in part, the impression of any such forged die, plate, or instrument, or any impression, resembling or apparently intended to resemble, wholly or in part, the impression of any such die, plate, or instrument, or

fraudulently uses, fixes, or places, with or upon any material, any stamp removed from any other material or fraudulently cuts, or gets, from any material, any word, figure, or other matter, with intent to use any stamp then upon such material for any instrument or thing, in respect whereof any stamp duty is payable, or

knowingly uses, utters, sells, or exposes for sale, or without authority or excuse has in his possession, any stamped material from which any such matter has been fraudulently cut or obtained,

shall be liable to penal servitude for ten years.

### ***Forgery, &c, of, or engraving plate, &c, for, Bank notes, &c***

#### **265 Forging a bank note etc**

Whosoever:

forges, or utters, any note, or bill of exchange, of any company or person carrying on the business of banking, whether in New South Wales or elsewhere, commonly called a bank note, bank bill of exchange, or bank post bill, or any indorsement on, or assignment of, any such note or bill, or

for any unlawful purpose, or without lawful authority or excuse, purchases or receives from any person, or has in his possession, any such forged bank note, bank bill of exchange, or bank post bill, knowing the same to be forged,

shall be liable to penal servitude for fourteen years.

#### **266 Engraving or having any plate etc for making bank notes or paper**

Whosoever, for any unlawful purpose, or without lawful authority or excuse,

engraves, or makes, upon any material, any words or writing purporting to be a bank note, bank bill of exchange, or bank post bill, of any company or person carrying on the business of banking in New South Wales, or elsewhere, or to be part of any such instrument, or any name, word, or character, resembling or apparently intended to



resemble any subscription to any such instrument, issued by any such company or person, or

uses any material, or implement, or device, for making or printing any such instrument, or any part thereof, or

knowingly has in his possession any such material, or any such implement or device, or

knowingly offers, utters, disposes of, or puts off, or has in his possession, any paper, upon which any such instrument, or any part thereof, or any name, word, or character, resembling or apparently intended to resemble any such subscription as aforesaid, is made or printed,

shall be liable to penal servitude for fourteen years.

#### **267 Engraving etc any part of a bank note etc**

Whosoever, for any unlawful purpose, or without lawful authority or excuse,

engraves, or makes upon any material any word, number, figure, device, character, or ornament, the impression taken from which resembles, or apparently is intended to resemble, any part of a bank note, bank bill of exchange, or bank post bill, of any company or person carrying on the business of banking in New South Wales or elsewhere, or

uses, or knowingly has in his possession, any such material, or instrument, or device, for impressing upon paper or other material any word, number, figure, character, or ornament, which resembles or apparently is intended to resemble any part of any such note, or bill, or

knowingly offers, utters, disposes of, or puts off, or has in his possession, any paper or other material, upon which there is an impression of any such matter as aforesaid,

shall be liable to penal servitude for fourteen years.

#### **268 Instruments in blank**

Every instrument in blank, which in a complete state would be a bank note, bank bill of exchange, or bank post bill, shall be within sections 266 and 267.

#### **269 Having moulds for paper with the name of any banker**

Whosoever, for any unlawful purpose, or without lawful authority or excuse,

makes or uses, any frame, mould, or instrument for the manufacture of paper, with the name or firm of any company or person carrying on the business of banking in New South Wales or elsewhere appearing visible in the substance of the paper, or knowingly has in his possession any such frame, mould, or instrument, or

makes, uses, sells, exposes for sale, utters, or disposes of, or knowingly has in his possession, any paper, in the substance of which the name or firm of any such company or person appears visible, or

by any art or contrivance causes the name or firm of any such company or person to appear visible in the substance of the paper upon which the same is written or printed,

shall be liable to penal servitude for fourteen years.

### **270 Engraving plates for foreign bills or notes**

Whosoever, for any unlawful purpose, or without lawful authority or excuse,

engraves, or makes upon any material, any bill of exchange, promissory-note, undertaking, or order for payment of money, or any part of any such instrument, in whatsoever language the same is expressed, and whether the same is under seal or not, or intended to be under seal, purporting to be the bill, note, undertaking, or order, or part of the bill, note, undertaking, or order of a foreign prince or State, or any body corporate, or body of the like nature, or person or company of persons, in any country not under the dominion of Her Majesty, or

uses, or knowingly has in his possession any material upon which any such foreign bill, note, undertaking, or order, or any part thereof, is engraved, or made, or

knowingly offers, utters, disposes of, or puts off, or has in his possession, any paper upon which any part of any such instrument is made or printed,

shall be liable to penal servitude for fourteen years.

## ***Forgery, &c, of wills, deeds, bills of exchange, &c***

### **271 Forging wills**

Whosoever forges, or utters, any will, testament, codicil, or testamentary instrument shall be liable to penal servitude for fourteen years.

### **272 Forging deeds**

Whosoever forges any deed, bond, or writing obligatory, or any assignment thereof, shall be liable to penal servitude for 10 years.

### **273 Forging bills, notes, or orders, receipts for goods etc**

Whosoever forges, or utters, any bill of exchange, or any acceptance, indorsement, or assignment thereof, or any promissory-note for the payment of money, or any indorsement, or assignment thereof, or any undertaking, warrant, order, authority, or request, for the payment of money, or the delivery or transfer of any chattel, note, bill, or security, or for procuring, or giving credit, or any acquittance, or receipt for money, or

goods, or for any note, bill, or other security, or any indorsement on, or assignment of, any such undertaking, warrant, order, authority, request, receipt, or other instrument, shall be liable to penal servitude for ten years.

#### **274 Signing bill, note etc by procuration without authority**

Whosoever:

draws, makes, signs, accepts, or indorses, any bill of exchange or promissory-note, or any such undertaking, warrant, order, authority, or request, as is referred to in section 273, by procuration or otherwise, for or in the name or on the account of any other person, without lawful authority or excuse, or

offers, utters, disposes of, or puts off, any such instrument so drawn, made, signed, accepted, or indorsed, knowing the same to have been so drawn, made, signed, accepted, or indorsed,

with intent in any such case to defraud,  
shall be liable to penal servitude for ten years.

#### **275 Obliterating crossings on cheques**

Whosoever, when any cheque or draft on any banker is crossed with

- (a) the name of a banker between two parallel transverse lines, or
- (b) the word "bank" or the words "and company" or any abbreviation of them respectively between two parallel transverse lines, or
- (c) two parallel transverse lines simply, or
- (d) the word "credit" followed by the name of any individual or firm between two parallel transverse lines,

either with or without the words "not negotiable",

obliterates, adds to, or alters, any such crossing, or

utters any cheque or draft whereon any such obliteration, addition, or alteration has been made, knowing the same to have been made,

with intent in any such case to defraud,  
shall be liable to penal servitude for ten years.

#### **276 Forging debentures**

Whosoever forges, or utters, any debenture, or other security, or instrument, issued, or purporting to be issued, under any lawful authority whatsoever, either within Her Majesty's dominions or elsewhere, the forging, or uttering, of which is not by any provision of this Part otherwise punishable, shall be liable to penal servitude for ten years.

## ***Forgery of instruments, &c, made by Judges, Officers of Court, Justices of the Peace, &c, or of signature thereto***

### **277 Forging instruments etc made by Judges etc or signature thereto**

Whosoever forges, or utters, any instrument, document, writing, or signature, made, or purporting, or appearing to be made, by any Judge, or by a master in any Division of the Supreme Court, or by any officer of any Court, or by any Justice or any officer authorised to take affidavits or solemn declarations, shall be liable to penal servitude for ten years.

### **278 Forging signature of Supreme Court Judge to decree etc or tendering same in evidence with forged signature**

Whosoever:

forges the signature of any Judge of the Supreme Court purporting to be attached or appended to any decree, order, certificate, or other official, or judicial document, or

tenders in evidence any such decree, order, certificate, or document, as aforesaid, with a false or counterfeit signature of any such Judge thereto, knowing the same to be false or counterfeit,

shall be liable to penal servitude for fourteen years.

## ***Forgery, &c, of records, &c, or copies thereof***

### **279 Term "Court"—sections 280 to 284**

For the purposes of sections 280 to 284 both inclusive—**Court** includes the District Court and every Court of Petty Sessions.

### **280 Forging records etc of any Court**

Whosoever forges any record, entry, minute, process, instrument, or document, of or belonging to, or issued by, or filed in, any Court in New South Wales, shall be liable to penal servitude for ten years.

### **281 Forging seal or stamp on records etc**

Whosoever forges the seal of any Court in New South Wales, or any stamp or seal used for stamping or sealing any such record, entry, minute, process, instrument, or document, or the impression thereof on any such matter, shall be liable to penal servitude for seven years.

### **282 Forging copy of certificate of record etc**

Whosoever:

forges, or utters, any copy or certificate of any such record, entry, minute, process,

instrument, or document, or

utters any such copy or certificate having thereon any forged signature, or,

not being an officer or clerk of or in the Court, signs or certifies any such copy or certificate as such officer or clerk,

shall be liable to penal servitude for seven years.

### **283 Serving etc forged process**

Whosoever:

serves, or enforces, any forged process of any Court, knowing the same to be forged, or

delivers, or causes to be delivered, to any person, any parchment or paper, falsely purporting to be any such process, or a copy thereof, or to be a decree or order of any Court, or a copy thereof, knowing the same to be false, or

acts, or professes to act, under any such false process, knowing the same to be false,

shall be liable to penal servitude for seven years.

## ***Forgery, &c, of instruments of evidence***

### **284 Forging documents etc used as evidence**

Whosoever forges any document or writing, or any copy of any document or writing, used, or intended to be used, as evidence in any Court, shall be liable to penal servitude for ten years.

### **285 Forgery of signature to copies admissible in evidence of decrees etc**

Whosoever, where any copy of any judgment, decree, rule, or order filed or recorded in the Supreme Court at Sydney, or formerly filed or recorded in the Supreme Court of New South Wales for the district of Port Phillip, is admissible in evidence when certified under the hand of the proper officer of such Court,

forges the signature of such officer to any such copy, or

tenders in evidence any such copy with a false or counterfeit signature thereto, knowing the same to be false,

shall be liable to penal servitude for fourteen years.

### **286 Forgery of signature to certificate admissible in evidence of facts relating to trials etc**

Whosoever, where the fact that any particular cause or case or matter was tried, or was under inquiry, in any Court, or before any Judge or Justice, or that any person was

acquitted, or convicted of any offence, or sentenced to any punishment or fine, or was ordered to pay any sum of money, may be proved by a certificate under the hand, or purporting so to be, of the officer having ordinarily the custody of such records, or documents, or proceedings,

forges, or procures to be forged, the signature of any such officer, or person, to any such certificate, or to any paper purporting to be such a certificate, or

fraudulently alters any such certificate after it has been signed, or

gives or tenders in evidence, any such forged, or altered, certificate or paper, knowing the same to be forged or fraudulently altered, or

signs, issues, gives or tenders in evidence, any such certificate or paper, knowing the same to be false in any particular,

shall be liable to imprisonment for five years.

**287 Clerk of Court or other officer wilfully certifying false copy of record of conviction etc or of public document**

Whosoever, being an officer to whose custody is intrusted any book or document of such a public nature as to be admissible in evidence on its mere production from the proper custody, and being authorised, or required, by any Act to furnish certified copies or extracts of such books or documents, wilfully certifies any document as being a true copy or extract of any such book or document, knowing that the same is not a true copy or extract, as the case may be, shall be liable to imprisonment for eighteen months.

**288 Forgery of seal etc on such copy etc or on examined copy of any document inspected by order of Judge**

Whosoever:

forges the seal, stamp, or signature, of any document, being such certified copy or extract as mentioned in section 287, or being an examined copy or extract of any document in the said section mentioned, or being an examined copy of any document inspected under an order of the Supreme Court or any Judge thereof, or

tenders in evidence any such certified copy or extract, or any such examined copy or extract, with a false or counterfeit seal, stamp, or signature thereto, knowing the same to be false or counterfeit,

shall be liable to penal servitude for seven years.

**289 Forgery of seal etc on public documents etc and copies admissible in evidence**

Whosoever, where any certificate, or official, or public document, or any document or proceeding of any corporation, or joint stock or other company, now or hereafter to be established, or any certified copy of any document, or by-law, or entry in any register or

other book, or of any other proceeding, is admissible in evidence under any Act, now or hereafter in force, when purporting to be sealed or stamped and signed as directed by the Act under which the same is so admissible,

forges the seal, stamp, or signature appended to any such certificate, or document, or proceeding, or to any such certified copy, as aforesaid, or

tenders in evidence any such certificate, or document, or proceeding, or any such certified copy, as aforesaid, with a false or counterfeit seal, stamp, or signature thereto, knowing the same to be false or counterfeit,

shall be liable to penal servitude for fourteen years.

**290 Forging signature or seal on copy admissible in evidence of treaty etc of a State or proceeding of a Court outside New South Wales**

Whosoever, where any copy of any proclamation, treaty, or other act of State of Great Britain, or of any British Colony, or of any Foreign State, or any judgment, decree, order, or other judicial proceeding of any Court of Justice in Great Britain, or any British Colony, or in any Foreign State, or any affidavits, pleadings, or other legal documents, filed or deposited in any such Court, is admissible in evidence when such copy is an examined copy, or is authenticated by purporting to be sealed, or signed, as directed by the Act under which the same is so admissible,

forges the seal, or signature, or any such copy, or

tenders in evidence any such copy with a false and counterfeit seal or signature thereto, knowing the same to be false or counterfeit,

shall be liable to penal servitude for seven years.

**291 Forging etc certificate issued by officer outside New South Wales**

Whosoever, where a certificate of the birth, marriage, or death, of any person in any part of the British dominions other than New South Wales, is admissible in evidence when purporting to be issued by the officer authorised by the law in that behalf of such part of the said dominions,

forges, or utters any such certificate, or

tenders, or causes to be tendered, in evidence any such certificate, knowing the same to be forged,

shall be liable to penal servitude for fourteen years.

**292 Forging instruments made evidence by statute**

Whosoever forges, or utters, any instrument, whether written or printed, or partly written and partly printed, which is made evidence by any Act or Imperial Act, the forging, or

uttering, of which is not by any provision of this Part otherwise punishable, shall be liable to penal servitude for seven years.

### ***Forgery of instruments, &c, under registration legislation***

#### **293 Forgery of deeds etc made etc under registration legislation**

Whosoever:

forges, or utters, any instrument, document, entry, or writing, made or issued, or purporting so to be, under the provisions of any Act passed or to be passed for or relating to any register kept or to be kept by the Registrar-General, or

forges the seal of, or belonging to, any office of the Registrar-General, or any stamp or impression of any such seal, or

forges, or utters, any signature, purporting to be the signature of any person to any such instrument, document, or writing,

shall be liable to penal servitude for ten years.

### ***Falsely acknowledging recognizances, &c***

#### **294 Acknowledging recognizances etc in the name of another**

Whosoever, without lawful authority or excuse, confesses a judgment in any Court, or signs any cognovit, or acknowledges any recognizance, deed, or instrument, or gives any bail undertaking, or enters into any agreement or makes any acknowledgment pursuant to a bail condition, in the name of another person before any Court or person lawfully authorised in that behalf, shall be liable to penal servitude for seven years.

### ***Forgery, &c, of matters relating to marriage***

#### **295 Forging marriage certificates etc**

Whosoever:

forges, or utters, any consent, or writing purporting to be a consent, to the marriage of a person under the age of twenty-one years, or any certificate of marriage, or writing purporting to be a certificate of marriage, or any copy of any registry of marriage, or writing purporting to be a copy of any such registry, or

signs, or transmits, to any registrar, district registrar, or other officer, appointed under any Act passed or to be passed relating to marriage or the registration thereof, any certificate, or writing, being, or purporting to be, a certificate containing any false statement, knowing the same in any such case to be false,

shall be liable to penal servitude for ten years.

**Editorial note—**



See *Marriage Act 1961* (Commonwealth), section 98.

## ***Falsifying entries of births, deaths, &c***

### **296 Falsifying entries of births etc or giving false certificates**

Whosoever:

unlawfully destroys, defaces, or injures, any register of births, marriages, deaths, or burials, now or hereafter by law required to be kept, or any certified copy of any such register, or

forges, or fraudulently obliterates, or alters in any such register or copy, any entry relating to any birth, marriage, death, or burial, or fraudulently inserts in any such register or copy any false entry, or matter relating to any such matter, or

fraudulently gives any false certificate relating to any birth, marriage, death, or burial, or certifies any writing to be a copy, or extract from, any such register, knowing such writing or the entry to which it relates to be false, or

forges, or utters, the signature, or any seal, or stamp, of or belonging to, or used by, the Registrar-General or any local, district or other registrar, or

causes, or knowingly permits, the doing of any such act as aforesaid,

shall be liable to penal servitude for fourteen years.

### **297 Making false entries in copies sent to registrar**

Whosoever:

wilfully inserts, in any copy of any register required by law to be transmitted to a registrar, any false entry or matter relating to any birth, marriage, or burial, or

forges, or utters, any copy of any such register, or

wilfully signs, or verifies, any copy of any such register, which copy is false in any part, knowing the same to be false, or

forges, or unlawfully destroys, defaces, or injures, or for any fraudulent purpose takes from its place of deposit, or conceals, any such register or copy, or

causes, or knowingly permits, the doing of any such act as aforesaid,

shall be liable to penal servitude for fourteen years.

## ***Obtaining or demanding property on forged instruments***

### **298 Demanding property on forged instruments**

Whosoever, with intent to defraud, obtains, or demands, or causes to be delivered, or paid to any person, or endeavours to obtain, or cause to be delivered, or paid to any person, any property, upon or by virtue of any forged instrument, knowing the same to be forged, or upon or by virtue of any probate, or letters of administration, knowing the will, codicil, or testamentary writing, on which the same was, or were, obtained, to have been forged, or such probate, or letters, to have been obtained by any false oath or affirmation, shall be liable to penal servitude for fourteen years.

## **Part 6 Offences relating to fauna in danger of extinction**

### **299 Interpretation: Part 6**

- (1) Except in so far as a contrary intention appears, words and expressions used in this Part have the meaning (if any) assigned to them in the [National Parks and Wildlife Act 1974](#).
- (2) A reference in this Part to an offence arising under this Part, or arising under a particular provision of this Part, includes a reference to an attempt to commit the offence to which the reference is made.

### **300 Fauna to which this Part applies**

This Part applies to fauna of a species named in Part 3 or 4 of Schedule 12 to the [National Parks and Wildlife Act 1974](#).

### **301 Taking or killing of endangered fauna**

- (1) Any person who:
  - (a) takes or kills any fauna to which this Part applies, or
  - (b) uses any animal, firearm, explosive, net, trap, hunting device or instrument or means whatever for the purpose of taking or killing any such fauna,shall be liable to imprisonment for 5 years or to pay a fine not exceeding \$10,000, or both.
- (2) Where the provisions of any Act or instrument under any Act (other than the [National Parks and Wildlife Act 1974](#), or any instrument thereunder) authorise or require anything to be done that would constitute an offence arising under subsection (1):
  - (a) the provisions of this section prevail, and
  - (b) a person shall not be convicted of an offence against any such Act or instrument by reason of a failure to comply therewith in so far as compliance therewith would

constitute an offence arising under subsection (1).

- (3) A person shall not be convicted of an offence under subsection (1) if the person proves:
- (a) that the animal concerned was in some person's lawful possession and that the act constituting the offence was, having regard to the circumstances of the case, reasonably necessary for promoting the welfare of the animal, or
  - (b) that the animal concerned had strayed or escaped from some person's lawful possession and that the act constituting the offence was, having regard to the circumstances of the case, reasonably necessary for securing the return of the animal.

### **302 Buying, selling or possessing endangered fauna**

- (1) Any person who buys, sells or has in the person's possession or control any fauna to which this Part applies shall be liable to imprisonment for 5 years or to pay a fine not exceeding \$10,000, or both.
- (2) A person shall not be convicted of an offence arising under subsection (1) in respect of the possession of any fauna, if the person satisfies the court:
- (a) that the person believed, on reasonable grounds, that the person had obtained the fauna lawfully,
  - (b) that the fauna is the progeny of any fauna which the person believed, on reasonable grounds, had been lawfully obtained by the person, being progeny born after the lastmentioned fauna was so obtained, or
  - (c) that:
    - (i) the animal concerned was incapable of fending for itself in its natural habitat,
    - (ii) the person notified the Director of National Parks and Wildlife, in the manner and within the time prescribed for the purposes of section 101 (5) (c) (ii) of the [National Parks and Wildlife Act 1974](#), that the animal came into the person's possession, and
    - (iii) the person complied with any direction given to the person with respect to the animal by the Director of National Parks and Wildlife.
- (3) A reference in this section to a person's having fauna in the person's possession includes a reference to the person's having fauna in a vehicle, building, lodging, apartment, field or other place whether belonging to or occupied by the person, and whether the fauna is then had or placed for the person's own use or the use of another.

### **303 Defence of authority conferred by licence etc**

A person shall not be convicted of an offence arising under this Part if the person satisfies the court that the person believed, on reasonable grounds, that the act or the state of affairs constituting the offence was done or existed under and in accordance with or by virtue of the authority conferred by any licence or certificate issued under Division 2 of Part 9 of the *National Parks and Wildlife Act 1974*.

### **304 Fines imposed by the District Court**

Where a person is convicted, in the District Court, of an offence arising under this Part:

- (a) the Court may impose a penalty not exceeding the maximum penalty provided by this Act in respect of the offence, and
- (b) any fine so imposed:
  - (i) is payable to the registrar for such proclaimed place, within the meaning of the *District Court Act 1973*, as the Court directs,
  - (ii) if unpaid may, if the Court so orders, be enforced, subject to rules of Court, as if (for the purposes of that Act) the amount of the fine were a judgment debt, the person upon whom the fine was imposed were a judgment debtor and the Director of National Parks and Wildlife were a judgment creditor.

### **305 Appropriation of fines**

The amount of any fine imposed and recovered in respect of an offence arising under this Part shall be paid into the Fund referred to in section 137 of the *National Parks and Wildlife Act 1974*.

### **306 Compensation**

- (1) The provisions of section 177 (1) of the *National Parks and Wildlife Act 1974* apply to and in respect of an offence arising under this Part in the same way as those provisions apply to and in respect of an offence against that Act.
- (2) An order for compensation made, by virtue of subsection (1), in respect of an offence arising under this Part may be enforced, and the amount payable under the order may be recovered, as if it were a fine imposed for the offence by the court making the order.

### **307 Proceedings and evidence**

The provisions of sections 179 and 181 of the *National Parks and Wildlife Act 1974* apply to and in respect of proceedings for an offence arising under this Part in the same way as those provisions apply to and in respect of proceedings for an offence against that Act.

### **308-326 (Repealed)**

## **Part 7 Perjury and like offences**

### **327 Perjury**

Whosoever commits the crime of perjury shall be liable to penal servitude for seven years.

### **328 Same with intent to procure conviction etc**

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

### **329 Conviction for false swearing on indictment for perjury**

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

### **330 False swearing not being perjury**

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

### **331 Contradictory statements on oath**

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

### **332 Certain technical defects provided for**

Where, on the trial of a person for perjury, or for wilfully making a false statement on oath not amounting to perjury, any affidavit, deposition, examination, or solemn declaration, offered in evidence, is wrongly intitled, or otherwise informal or defective, or the jurat to any such instrument is informal or defective, or any such deposition, where taken before a Justice or Coroner has no caption, or no proper caption, the accused shall not be entitled to an acquittal by reason of such omission, defect, or informality, but every such instrument, if otherwise admissible, may be given in evidence and used for all purposes of the trial.

### **333 (Repealed)**

**334 Subornation of perjury etc**

Whosoever procures, or causes, any person to make, any false statement on oath, the making of which amounts in law to perjury, or is by any Act punishable as perjury, shall be guilty of subornation of perjury, and be liable to be punished as if he had himself been convicted of perjury.

**335 Attempting to suborn etc**

Whosoever persuades, or induces, or endeavours to persuade or induce, any person to make a false statement on oath in a judicial proceeding, before a Court, or Justice or Coroner, shall be liable to penal servitude for five years.

**336 Tampering with witness**

Whosoever, without lawful cause, persuades, or induces, or endeavours to persuade, or induce, any person to abstain from giving evidence, or attending as a witness before a Court, or Justice, or Coroner, shall be liable to imprisonment for three years.

**337 False statements respecting births, marriages etc**

Whosoever wilfully makes, for the purpose of being inserted in any register of births, marriages, deaths, or burials, any false statement of, or respecting, any particular required to be registered by any Act now or hereafter passed in that behalf, shall be liable to penal servitude for seven years.

**338 (Repealed)**

**339 False statement in solemn declaration**

Whosoever, where a solemn declaration is required to be taken, or is authorised to be received, wilfully makes any false statement in any such declaration, shall be guilty of a misdemeanour.

**340 Directing prosecution for perjury**

- (1) Where any statement on oath has been made by any person in any suit, proceeding, or matter, pending in the Supreme Court, or District Court, or before any Judge of any such Court or any magistrate, the Judge or magistrate before whom the same was so made, may, if reasonable cause appears for so doing, direct such person to be prosecuted for perjury in respect thereof, and may, subject to the *Bail Act 1978*, commit him to take his trial at the proper court, and may require any person then present to enter into a recognizance to give evidence against the person whose prosecution is so directed. Where there is a committal by a magistrate and bail is not granted the magistrate may issue any necessary warrant.
- (2) In this section, **magistrate** includes a stipendiary magistrate, a special magistrate exercising the jurisdiction of a children's court and an industrial magistrate appointed

under the *Industrial Arbitration Act 1940*.

### **341 For restraining vexatious prosecutions**

- (1) No prosecution in respect of any such statement on oath, as in section 340 mentioned, shall be instituted without such direction as in the said section provided, or without the leave of the Court, or Judge, or magistrate, therein mentioned.
- (2) No prosecution in respect of any statement on oath made before any Registrar, or District Registrar in Bankruptcy, or Justice, or Justices, other than a magistrate as defined in section 340 (2), shall be instituted without the leave of a Judge of the Supreme Court or of a District Court Judge.
- (3) Where by reason of the death, illness, termination of appointment, or absence, of any judge or magistrate, it is impossible to apply to such judge or magistrate for leave to prosecute under subsection one of this section, in respect of any statement on oath as in section 340 mentioned, or it is for any other reason impracticable to do so, a prosecution in respect of any such statement on oath may be instituted with the leave of a judge of the Supreme Court.

### **342 Application of Act**

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

### **343 Saving of other punishments**

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

## **Part 8 Conspiracy to accuse of crime**

### **344 Conspiracy to accuse of crime felony**

Any conspiracy falsely to accuse a person of a crime shall be punishable by penal servitude for fourteen years.

## **Part 8A Attempts**

### **344A Attempts**

- (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.

## **Part 9 Abettors and accessories**

### **345 Principals in the second degree—how tried and punished**

Every principal in the second degree in any felony, whether the same is a felony at Common Law, or by this or any other statute, now existing or hereafter to be passed, shall be liable to the same punishment as the principal in the first degree.

### **346 Accessories before the fact—how tried and punished**

Every accessory before the fact to any such felony may be indicted, convicted, and sentenced, either before or after the trial of the principal felon, or together with such felon, or indicted, convicted, and sentenced, as a principal in the felony, and shall be liable in either case to the same punishment as the principal felon, whether the principal felon has been tried or not, or is amenable to justice or not.

### **347 Accessories after the fact—how tried**

Every accessory after the fact to any such felony may be indicted, convicted, and sentenced as such accessory, either before, or together with, or after the trial of the principal felon, whether such felon has been previously tried or not, or is amenable to justice or not.

### **348 Punishment of accessories after the fact to treason**

Every accessory after the fact to any felony under Part 2, relating to treason-felony, shall be liable to imprisonment for two years.

### **349 Punishment of accessories after the fact to murder etc**

- (1) Every accessory after the fact to murder shall be liable to penal servitude for life.
- (2) Every accessory after the fact to the crime of robbery with arms or in company with one or more person or persons, or the crime of kidnapping referred to in section 90A, shall be liable to penal servitude for fourteen years.

### **350 Punishment of accessories after the fact to other felonies etc**

Every accessory after the fact to any other felony, except where otherwise specifically enacted, whether a felony at Common Law or by Statute, shall be liable to penal servitude for five years.

### **351 Abettors in misdemeanours—how tried and punished**

Any person who aids, abets, counsels, or procures, the commission of any misdemeanour, whether the same is a misdemeanour at Common Law or by any statute, may be indicted,



convicted, and punished as a principal offender.

## **Part 10 Apprehension of offenders, powers of search, powers of entry and discharge of persons in custody**

### ***Apprehension of offenders***

#### **352 Person in act of committing or having committed offence**

- (1) Any constable or other person may without warrant apprehend,
  - (a) any person in the act of committing, or immediately after having committed, an offence punishable, whether by indictment, or on summary conviction, under any Act,
  - (b) any person who has committed a felony for which he has not been tried, and take him, and any property found upon him, before a Justice to be dealt with according to law.
- (2) Any constable may without warrant apprehend,
  - (a) any person whom he, with reasonable cause, suspects of having committed any such offence or crime,
  - (b) any person lying, or loitering, in any highway, yard, or other place during the night, whom he, with reasonable cause, suspects of being about to commit any felony,and take him, and any property found upon him, before a Justice to be dealt with according to law.
- (3) Any constable may, although the warrant is not at the time in his possession, apprehend any person for whose apprehension for a misdemeanour, or an offence punishable as a misdemeanour, a warrant has been issued, and take him, and any property found upon him, before a Justice to be dealt with according to law.
- (4) Any constable may, although the warrant is not at the time in his possession, apprehend any person for whose apprehension on any ground other than a charge of felony or misdemeanour or offence punishable as a misdemeanour a warrant has been lawfully issued, provided the issue of such warrant has been certified by telegraph by the Commissioner of Police or by the Justice who has signed such warrant.

#### **352AA Arrest of prisoners unlawfully at large**

- (1) Any constable may, without warrant, apprehend any person whom the constable, with reasonable cause, suspects of being a prisoner unlawfully at large and take the person before:

- (a) a Magistrate, or
- (b) a Justice employed in the Local Courts Administration, Attorney General's Department,

who may, by warrant, commit the person to prison, there to be kept in custody under the same authority, and subject to the same conditions and with the benefit of the same privileges and entitlements, as would have applied in respect of the person had the person not been at large.

- (2) A reference in subsection (1) to a prisoner unlawfully at large is a reference to a person who is at large (otherwise than by reason of having escaped from lawful custody) at a time when the person is required by law to be in custody in prison.

**352A Power of arrest in cases of certain offences committed outside the State**

- (1) This section applies to an offence:
  - (a) that is an offence against the law of a State (other than New South Wales) or a Territory of the Commonwealth, and
  - (b) that consists of an act or omission which, if it occurred in New South Wales, would constitute:
    - (i) an indictable offence, or
    - (ii) an offence punishable by imprisonment for 2 years or more.
- (2) A member of the police force may, at any hour of the day or night and without any warrant other than this Act, apprehend any person whom he has reasonable cause to suspect of having committed an offence to which this section applies.
- (3) A person apprehended under this section shall be brought as soon as practicable before a court and the court:
  - (a) may discharge the person, or
  - (b) may:
    - (i) commit him to custody, or
    - (ii) admit him to bail,pending the execution under a law of the Commonwealth of a warrant or provisional warrant for his apprehension or his earlier release from bail, or discharge from custody, under subsection (7).
- (4) Subject to this section, a person apprehended under this section for an offence to which this section applies shall generally have the same rights, and be liable to be

dealt with in the same way, as a person charged with the commission of the like offence in New South Wales, and in particular:

(a) a member of the police force may exercise, in respect of a person so apprehended, the powers conferred on him by section 353A, as if the person were in lawful custody upon a charge or for any crime referred to in that section, and

(b) the provisions of:

(i) the *Bail Act 1978*, and

(ii) the *Justices Act 1902*,

shall, with such modifications as may be necessary, apply in relation to the admission of any such person to bail and in relation to proceedings before a court under this section.

(5) Where a person has been committed to custody under subsection (3) (b) (i) and a warrant for his apprehension is subsequently presented for execution, he shall be delivered in accordance with the terms of the warrant to the custody of the person executing it.

(6) Where a person has been admitted to bail under subsection (3) (b) (ii) or under Part 3 of the *Bail Act 1978*, and subsequently, but before he has complied with his bail undertaking, a warrant for his apprehension is executed under a law of the Commonwealth, he shall be deemed, at the time the warrant is executed to be released from that bail and to have complied with any condition or undertaking in relation to that bail at that time outstanding, not being a condition or undertaking with which he has by that time failed, without lawful excuse, to comply.

(7) Where:

(a) a person has been admitted to bail or, under subsection (3) (b), committed to custody, and

(b) a warrant or provisional warrant for his apprehension is not executed within a reasonable time (not exceeding 7 days) thereafter,

the person may be released from bail or shall be discharged from custody, as the case may require, by order of a court.

(8) In this section **court** has the same meaning as it has in the *Bail Act 1978*.

### **353 Persons offering stolen property**

Every person to whom any property is offered to be sold, or pawned, or delivered, and who has reasonable cause to suspect that an offence has been committed with respect to such property, may, and if in his power is required, to apprehend and forthwith take

before a Justice the person offering the same, together with such property, to be dealt with according to law.

**353A Power to search person, make medical examination, take photograph, finger-prints etc**

(1) Where a person is in lawful custody upon a charge of committing any crime or offence:

(a) any constable, or

(b) where the person in custody is female and no female constable is available to conduct the search—any female acting under and in accordance with the request of a constable,

may search the person and take from the person anything found upon that search.

(1A) A search conducted by a person under and in accordance with a request made by a constable under subsection (1) (b) does not, if the search would be lawful if conducted by a constable, subject the person making the search personally to any action, liability, claim or demand whatever.

(2) When a person is in lawful custody upon a charge of committing any crime or offence which is of such a nature and is alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of the crime or offence, any legally qualified medical practitioner acting at the request of any officer of police of or above the rank of sergeant, and any person acting in good faith in his aid and under his direction, may make such an examination of the person so in custody as is reasonable in order to ascertain the facts which may afford such evidence.

(3) When a person is in lawful custody for any offence punishable on indictment or summary conviction, the officer in charge of police at the station where he is so in custody may take or cause to be taken all such particulars as may be deemed necessary for the identification of such person, including his photograph and finger-prints and palm-prints.

**353B Person apprehended carrying razor etc**

Where a person is in lawful custody upon a charge of committing any crime or offence and is found to have been carrying at the time or immediately before he was apprehended any razor, razor blade or other cutting weapon, he shall, unless the justice before whom he is brought is satisfied that he was carrying the same for a lawful purpose the proof of which shall lie upon the accused, be liable to imprisonment for a term not exceeding six months, or to a fine of \$500, or both.

### **353C Arrest by commander of aircraft**

- (1) The person in command of an aircraft may, on board the aircraft, with such assistance as is necessary, arrest without warrant a person whom he finds committing or reasonably suspects of having committed, or of having attempted to commit, an offence on or in relation to, or affecting the use of, an aircraft and that person in command or a person authorised by him for the purpose may hold the person so arrested in custody until he can be brought before a Justice or other proper authority to be dealt with according to law.
- (2) The person in command of an aircraft may, where he considers it necessary so to do in order to prevent an offence on or in relation to, or affecting the use of, the aircraft or to avoid danger to the safety of the aircraft or of persons on board the aircraft, with such assistance as he thinks necessary:
  - (a) place a person who is on board the aircraft under restraint or in custody, or
  - (b) if the aircraft is not in the course of a flight, remove a person from the aircraft.

### **354-357 (Repealed)**

### ***Powers of search***

#### **357A Powers of search**

- (1) Where any person reasonably suspects that an offence involving the safety of an aircraft has been, is being or may be committed on board or in relation to an aircraft and:
  - (a) he is the commander of the aircraft, or
  - (b) a Justice, on the basis of that suspicion, authorises him in writing so to do,he may, subject to subsection (2), search the aircraft, any person on board, or about to board, the aircraft and any luggage or freight on board, or about to be placed on board, the aircraft.
- (2) A female shall not be searched pursuant to subsection (1) except by a female.

#### **357B Definitions**

In sections 357C and 357D:

***police vessel*** means a vessel ordinarily used by members of the police force in the execution of their duty.

***vessel*** includes an undecked boat.

### **357C Police may board vessels**

A member of the police force of or above the rank of sergeant or in charge of a police station or police vessel may at any time with as many members of the police force as he thinks necessary:

- (a) enter into any part of any vessel,
- (b) search and inspect the vessel,
- (c) take all necessary measures for preventing injury on the vessel to persons or damage to property by fire or otherwise, and
- (d) take all necessary measures for preserving peace and good order on the vessel or for preventing, detecting or investigating any offences that may be, or may have been, committed on the vessel.

### **357D Police may stop and detain vessels**

A member of the police force of or above the rank of sergeant or in charge of a police station or police vessel, may, for the purposes of enabling any powers conferred on members of the police force by this Act or any other law to be exercised, stop and detain any vessel in which he reasonably suspects:

- (a) that an indictable offence has been or is about to be committed,
- (b) that there is a person who has committed an indictable offence or for whose arrest there is in force a warrant, or
- (c) that there is any thing stolen or otherwise unlawfully obtained or any thing that has been used or is intended to be used in the commission of an indictable offence.

### **357E Police may stop and search persons and vehicles**

A member of the police force may stop, search and detain:

- (a) any person whom he reasonably suspects of having or conveying any thing stolen or otherwise unlawfully obtained or any thing used or intended to be used in the commission of an indictable offence, or
- (b) any vehicle in which he reasonably suspects there is any thing stolen or otherwise unlawfully obtained or any thing used or intended to be used in the commission of an indictable offence.

## ***Powers of entry in cases of domestic violence***

### **357F Entry by invitation**

- (1) In this section, ***occupier***, in relation to a dwelling-house, means a person immediately

entitled to possession of the dwelling-house.

(2) A member of the police force who believes on reasonable grounds that an offence has recently been or is being committed, or is imminent, or is likely to be committed, in any dwelling-house and that the offence is a domestic violence offence, may, subject to subsection (3):

- (a) enter the dwelling-house, and
- (b) remain in the dwelling-house,

for the purpose of investigating whether such an offence has been committed or, as the case may be, for the purpose of taking action to prevent the commission or further commission of such an offence, if invited to do so by a person who apparently resides in the dwelling-house, whether or not the person is an adult.

(3) Except as provided in subsection (4), a member of the police force may not enter or remain in a dwelling-house by reason only of an invitation given as referred to in subsection (2) if authority to so enter or remain is expressly refused by an occupier of the dwelling-house and the member of the police force is not otherwise authorised (whether under this or any other Act or at common law) to so enter or remain.

(4) The power of a member of the police force to enter or remain in a dwelling-house by reason of an invitation given as referred to in subsection (2) by the person whom the member of the police force believes to be the person upon whom a domestic violence offence has recently been or is being committed, or is imminent, or is likely to be committed in the dwelling-house may be exercised by the member of the police force notwithstanding that an occupier of the dwelling-house expressly refuses authority to the member of the police force to so enter or remain.

### **357G Entry by radio/telephone warrant etc where entry denied**

(1) In this section, a reference to:

- (a) a telephone includes a reference to a radio or any other communication device, and
- (b) a stipendiary magistrate includes a reference to a Justice employed in Local Courts Administration, Attorney General's Department.

(2) (Repealed)

(3) Upon complaint made by a member of the police force to a stipendiary magistrate that:

- (a) the member of the police force has been denied entry to a specified dwelling-house, and

(b) the member of the police force suspects or believes that:

(i) a domestic violence offence has recently been or is being committed, or is imminent, or is likely to be committed in the dwelling-house, and

(ii) it is necessary for a member of the police force to enter the dwelling-house immediately in order to investigate whether a domestic violence offence has been committed or, as the case may be, to take action to prevent the commission or further commission of a domestic violence offence,

the stipendiary magistrate may, if satisfied that there are reasonable grounds for that suspicion or belief, by warrant, authorise and require the member of the police force to enter the dwelling-house and to investigate whether a domestic violence offence has been committed or, as the case may be, to take action to prevent the commission or further commission of a domestic violence offence.

- (4) A complaint under this section may be made by a member of the police force to a stipendiary magistrate in person or by telephone and may be made directly to the stipendiary magistrate or, where, in all the circumstances, it is impracticable to make the complaint directly, by causing the complaint to be transmitted by another member of the police force by either of those means.
- (5) The fact that a complaint is made under this section to a stipendiary magistrate by a member of the police force who causes the complaint to be transmitted by another member of the police force to the stipendiary magistrate does not, if the stipendiary magistrate is of the opinion that it is, in all the circumstances, impracticable to communicate directly with the member of the police force making the complaint, prevent the stipendiary magistrate being satisfied as to the matters referred to in subsection (3).
- (6) A stipendiary magistrate grants a warrant under subsection (3) by stating the terms of the warrant.
- (7) Where a stipendiary magistrate grants a warrant under subsection (3), the stipendiary magistrate shall cause a record to be made in writing in a form prescribed by regulations made under subsection (14) of:
- (a) the name of the member of the police force who was the complainant,
- (b) where the complaint was transmitted by a member of the police force on behalf of the complainant—the name of the member of the police force who so transmitted the complaint,
- (c) the details of the complaint, including the name of any person who is alleged to have informed the police as to the domestic violence the subject of the warrant and the grounds which the stipendiary magistrate was satisfied were reasonable grounds for the suspicion or belief by reason of which the warrant was granted,



- (d) the terms of the warrant (which shall include the address of the dwelling-house the subject of the warrant), and
  - (e) the date and time the warrant was granted.
- (8) A warrant granted under subsection (3) shall be executed as soon as practicable after the warrant is granted and may be executed by day or night.
- (9) For the purpose of executing a warrant granted under subsection (3), a member of the police force may use force, whether by breaking open doors or otherwise, for the purpose of entering a dwelling-house.
- (10) A member of the police force may execute a warrant granted under subsection (3) with the aid of such assistants as the member of the police force deems necessary.
- (11) A warrant granted under subsection (3) is not invalidated by any defect, other than a defect which affects the substance of the warrant in a material particular.
- (12) Where a warrant has been granted under subsection (3) a record in triplicate in a form prescribed by regulations made under subsection (14) shall be made containing the following details:
- (a) the address of the dwelling-house the subject of the warrant,
  - (b) the name of the stipendiary magistrate who granted the warrant,
  - (c) the name of the member of the police force who was the complainant authorised to enter the dwelling-house pursuant to the warrant,
  - (d) the time at which the warrant was granted.
- (13) The copies of a record relating to a warrant and made as referred to in subsection (12) shall be dealt with as follows:
- (a) the first copy shall, upon entry into the dwelling-house the subject of the warrant or as soon as practicable thereafter, if a person who appears to reside in the dwelling-house and to be of or above the age of 18 years is present, be furnished to such a person together with a statement in a form prescribed by regulations made under subsection (14) and containing a summary of the nature of the warrant and the powers given by the warrant,
  - (b) the second and third copies shall be endorsed with:
    - (i) the name of the person (if any) who informed the police as to the domestic violence the subject of the warrant, and
    - (ii) a notation as to whether a dwelling-house was entered pursuant to the warrant and, if so, the time of entry and the action taken in the dwelling-house,

- (c) the second copy shall be forwarded to the Director of the Magistrates Courts Administration or such other officer as may be prescribed for the purposes of this subsection by regulations made under subsection (14),
- (d) the third copy shall be retained by the member of the police force authorised to enter a dwelling-house pursuant to the warrant to be dealt with in such manner as may be prescribed by regulations made under subsection (14).

(14) The Governor may make regulations, not inconsistent with this Act, prescribing any matter required or permitted to be prescribed under this section.

### **357H Provisions relating to powers of entry under sections 357F and 357G**

- (1) Where a member of the police force enters a dwelling-house in pursuance of an invitation (as referred to in section 357F), or in pursuance of a warrant granted under section 357G, for the purpose, in either case, of investigating whether an offence which the member of the police force suspects or believes to be a domestic violence offence has been committed or, as the case may be, for the purpose of taking action to prevent the commission or further commission of such an offence, the member of the police force shall:
  - (a) take only such action in the dwelling-house as is reasonably necessary:
    - (i) to investigate whether such an offence has been committed,
    - (ii) to render aid to any person who appears to be injured,
    - (iii) to exercise any lawful power to arrest a person, and
    - (iv) to prevent the commission or further commission of such an offence, and
  - (b) remain in the dwelling-house only as long as is reasonably necessary to take that action.
- (2) Nothing in subsection (1) or in section 357F or 357G limits any other power which a member of the police force may have under this or any other Act or at common law to enter or remain in or on premises.

### ***Discharge of persons in custody***

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

- (1) The Attorney-General may, in respect of any person under committal for trial, and in all cases in which any person is remanded to prison, and in which he may in his discretion think fit not further to proceed, transmit at any time a certificate to the Judges of the Supreme Court, any one of whom may thereupon by warrant direct the gaoler in whose custody the prisoner, or person under remand, may be to discharge

him from custody in respect of the offence mentioned in such warrant, and, if such gaoler neglects so to do, he shall be liable to a fine of one hundred dollars, to be recovered in the name of the Attorney-General in any court of competent jurisdiction as a debt or liquidated demand.

- (2) In the case of a person under committal for trial, the certificate shall be in the Form No 1 in the Third Schedule, and the warrant in the Form No 2 in the said Schedule.
- (3) In the case of a person under remand, the certificate shall be in Form No 3, and the warrant in Form No 4 in the said Schedule.

### ***Disposal of property in the custody of the police***

#### **358A Disposal of property in custody of police**

- (1) A court may, on the application of any person, make an order that any property which is in the custody of a member of the police force in connection with any offence whether punishable on indictment or summarily, be delivered to the person who appears to it to be lawfully entitled thereto.
- (2) If any property referred to in subsection (1) has not been delivered to the person lawfully entitled thereto, whether pursuant to an order under subsection (1) or otherwise, within one month after the determination of proceedings against a person for an offence with respect to the property, the property, if money, shall be paid to the Treasurer for payment into the Consolidated Revenue Fund or, if not money, may be sold by public auction and the proceeds of the sale shall be paid to the Treasurer for payment into that Fund.
- (3) A person who is lawfully entitled to any property which has been dealt with in accordance with subsection (2) may recover the money or the proceeds of the sale, as the case may be, from the Treasurer.
- (4) In subsection (1), **court** means:
  - (a) where the value of the property, if not money, does not exceed \$2,000 or the property, if money, does not amount to more than \$2,000—the court of petty sessions for the district in which the property or money is held,
  - (b) where the value of the property, if not money, exceeds \$2,000 but does not exceed \$20,000 or the property, if money, amounts to more than \$2,000 but does not amount to more than \$20,000—the District Court of New South Wales, or
  - (c) where the value of the property, if not money, exceeds \$20,000 or the property, if money, amounts to more than \$20,000—the Supreme Court of New South Wales.

## **Part 11 Procedure, evidence, verdict, &c**

### ***As to indictment—form, venue, amendments, &c***

#### **359 Meaning of “Statute” and “Act” in indictments etc**

In all indictments and informations, and all criminal pleadings and proceedings, the word **Statute**, and the word **Act**, used to indicate an enactment shall each include an Imperial Act as well as an Act.

#### **360 What defects shall not vitiate an indictment**

No indictment shall be held bad or insufficient for want of an averment of any matter unnecessary to be proved, or necessarily implied, nor for the omission of the words “as appears by the record”, or “with force and arms”, or “against the peace”, nor for the insertion or omission of the words “against the form of the statute”, nor for designating any person by a name of office, or other descriptive appellation, instead of his proper name, nor for omitting to state the time at which the offence was committed, nor for stating the time wrongly, in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or a day that never happened, nor for want of a proper or perfect venue, or a proper or formal conclusion, nor for the omission or improper insertion of the word “feloniously”, nor for want of or imperfection in any addition of the accused, nor for want of any statement of the value or price of any matter or thing, or the amount of damage, or injury, in any case where such value, or price, or amount, is not of the essence of the offence.

#### **360A Indictment etc of corporations**

- (1) Every provision of an Act relating to offences punishable upon indictment or upon summary conviction may, unless a contrary intention appears, be construed to apply to bodies corporate as well as to individuals.
- (2) Where a corporation whether alone or jointly with some other person is charged before justices with an indictable offence, the justices may, if they are of opinion that the evidence is sufficient to put the accused corporation upon trial, make an order authorising an indictment to be filed for the offence named in the order or for such other offence as the Attorney-General or any other person authorised by law to prosecute indictable offences shall deem proper, and such order shall be deemed to be a committal for trial:

Provided that:

- (a) where the offence is an offence which in the case of an adult may be dealt with summarily and the corporation does not appear by a representative or, if it does so appear, consents that the offence should be so dealt with, the offence may be dealt with summarily, and

- (b) if the corporation appears by a representative any answer to the question to be put under section 41 (4) of the *Justices Act 1902* may be made on behalf of the corporation by that representative, but if the corporation does not so appear it shall not be necessary to put the question.
- (3) Where a bill is found against a corporation the corporation may on arraignment enter in writing by its representative a plea of guilty or not guilty. If no such plea is entered the court shall enter a plea of not guilty and the trial shall proceed as though the corporation had pleaded not guilty.
- (4) A representative need not be appointed under the seal of the corporation, and a written statement purporting to be signed by any person being one of the persons having the management of the affairs of the corporation to the effect that the person named has been appointed as the representative of the corporation shall be admissible as prima facie evidence that the person has been so appointed.
- (5) Any summons or other document may be served upon the corporation by leaving it at or sending it by post to the registered office of the corporation or to any place at which it trades or carries on business.
- (6) Where the penalty in respect of any offence is a term of imprisonment only, the court before which the offence is tried may, if it thinks fit, in the case of a body corporate, impose a pecuniary penalty not exceeding:
- (a) where the term of imprisonment does not exceed six months—two hundred dollars,
  - (b) where the term of imprisonment exceeds six months but does not exceed one year—four hundred dollars,
  - (c) where the term of imprisonment exceeds one year but does not exceed two years—one thousand dollars,
  - (d) where the term of imprisonment exceeds two years—two thousand dollars.

In this subsection **imprisonment** includes penal servitude.

- (7) For the avoidance of doubt it is hereby declared that for the purposes of this section **indictable offence** means an offence punishable on indictment at common law or under any Act or Imperial Act.

### 361 Venue in indictment

- (1) New South Wales shall be a sufficient venue for all places, whether the indictment is in the Supreme Court or any other Court having criminal jurisdiction:

Provided that some district or place, within, or at, or near which the offence is charged to have been committed, shall be mentioned in the body of the indictment.

- (2) Every such district or place shall be deemed to be in New South Wales, and within the jurisdiction of the Court unless the contrary is shown.

### **362 Formal objections when to be taken**

Every objection to an indictment, for any formal defect apparent on the face thereof, shall be taken by demurrer or motion to quash such indictment before the jury are sworn, and every Court before which any such objection is taken may thereupon cause the indictment to be forthwith amended, and afterwards the trial shall proceed as if no such defect had appeared.

### **363 Judgment on demurrer to indictment**

In all cases of felony and misdemeanour alike, the judgment against the accused on demurrer shall be that he “answer over” to the charge.

### **364 Traversing indictment**

No traverse shall in any case be allowed, or trial postponed, or time to plead to the indictment given, unless the Court shall so order:

Provided that where the Judge is of opinion that the accused ought to be allowed time, either to prepare for his defence, or otherwise, such Judge shall postpone the trial upon such terms as to him seems meet, and may respite the recognizances of the prosecutor and witnesses accordingly.

### **365 Orders for amendment of indictment, separate trial and postponement of trial**

- (1) Where, before trial, or at any stage of a trial, it appears to the court that the indictment is defective, the court shall make such order for the amendment of the indictment as the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice.
- (2) Where, before trial, or at any stage of a trial, the court is of opinion that a person accused may be prejudiced or embarrassed in his defence by reason of being charged with more than one offence in the same indictment, or that for any other reason it is desirable to direct that the person should be tried separately for any one or more offences charged in an indictment, the court may order a separate trial of any count or counts of such indictment.
- (3) Where, before trial, or at any stage of a trial, the court is of opinion that the postponement of the trial of a person accused is expedient as a consequence of the exercise of any power of the court under this Act to amend an indictment or to order a separate trial of a count, the court shall make such order as appears necessary.
- (4) Where an order of the court is made under this section for a separate trial, or for the postponement of a trial:

- (a) if such an order is made during a trial, the court may order that the jury are to be discharged from giving a verdict on the count or counts the trial of which is postponed, or on the indictment as the case may be, and
- (b) the procedure on the separate trial of a count and the procedure on the postponed trial shall be the same in all respects (if the jury has been discharged), as if the trial had not commenced, and
- (c) the court may, subject to the [Bail Act 1978](#), commit the accused person to prison or make such order as to the enlargement of recognizances and otherwise as the court thinks fit.

(5) Any power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

### **366 Amended indictment**

Where any indictment is amended, a note of the order for amendment shall be endorsed on the indictment, and the indictment in its amended form shall be treated as the indictment for the purposes of the trial, and for the purposes of all proceedings in connection therewith or consequent thereon.

### **367 Verdict and judgment valid after amendment**

Every verdict, and judgment, given after the making of any amendment under this Act, shall be of the same force and effect, as if the indictment had originally been in the words, and form, in which it is after such amendment.

### **368 Form of record after amendment**

If it is necessary at any time to draw up a formal record, in any case where an amendment has been made, such record may be drawn up in the words and form of the amended indictment, without noticing the fact of amendment.

### **369 Respite recognizances on postponement**

In all cases where the trial is postponed the Court may respite the recognizance of the prosecutor and witnesses requiring them severally to appear and prosecute, or give evidence, at the time and place to which the trial is so postponed.

### **370 Separate offences when can be joined**

In every case counts may be inserted in the same indictment, against the same person, for any number of distinct offences of the same kind, not exceeding three, committed against the same person:

Provided that no more than six months have elapsed between the first and last of such offences:

Provided further that nothing in this section shall affect the right of the Crown to insert alternative counts in any indictment describing the offence in different terms.

**371 Accessories may be charged together in one indictment**

In every case of felony, at Common Law or by Statute, any number of accessories thereto, whether before or after the fact, may be charged with substantive felonies in the same indictment, and be tried together, although the principal felon is not included in such indictment, or is not in custody or amenable to justice.

**372 Indictment charging previous offence also**

In an indictment for an offence committed after a previous conviction for an offence, whether indictable or punishable on summary conviction, it shall be sufficient, after charging the subsequent offence, to state that the accused was theretofore at a certain time and place convicted of an indictable offence, or an offence punishable on summary conviction, as the case may be, without particularly describing such previous offence.

**373 Description of partners etc**

Whenever, in any indictment, it is necessary to mention, for any purpose, any partners, joint-tenants, parceners, or tenants in common, it shall be sufficient to describe them by naming one of such persons, and referring to the rest as "another", or "others", as the case may be.

This provision shall extend to all joint stock companies, executors, administrators, and trustees.

**374 Description of written instruments**

In every case where a written, or printed, instrument, or instrument partly written and partly printed, is the subject of an indictment, or it is necessary to make an averment in an indictment respecting such instrument, it shall be sufficient to describe such instrument by any name or designation by which the same is usually known, or by the purport thereof, without setting out any copy thereof, or otherwise describing the same, and without stating the value thereof.

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

- (1) In every case where it is necessary to allege an intent to defraud, or injure, it shall be sufficient to allege that the accused did the act with such intent, without alleging an intent to defraud, or injure, any particular person.
- (2) In an indictment for doing an act fraudulently, or for a fraudulent purpose, it shall not be necessary to state what was the fraudulent intent, or purpose.

**376, 377 (Repealed)**



**378 Form of indictment against accessories to murder**

In an indictment against an accessory to murder, or manslaughter, it shall be sufficient to charge the felony of the principal in the manner hereinbefore specified, and then to charge the accused as an accessory in the manner heretofore accustomed.

**379-380 (Repealed)**

**381 Indecent assault**

In an indictment for an indecent assault it shall be sufficient to state that the accused did, on the day and at the place named, commit an indecent assault on the person alleged to have been assaulted, without stating the mode of such assault.

**382 Where not necessary to lay property in any person**

In an indictment in respect of any of the matters mentioned in the Fourth Schedule, it shall not be necessary to allege that the instrument, document, building, chattel, or other matter, or thing, in respect of which the offence was committed, is the property of any person.

**383 Property of partners or joint owners**

In an indictment wherein it is necessary to state the ownership of property belonging to more than one person, whether as partners in trade, joint-tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to allege such property to belong to the person so named, and another, or others as the case may be.

This provision shall extend to all joint stock companies, executors, administrators, and trustees.

**384 Stealing and receiving in one indictment**

In an indictment containing a charge of feloniously stealing property, a count may be added, against the same person, for feloniously receiving the same, or any part thereof, knowing the same to have been stolen, and the prosecutor shall not be put to his election as to such charges.

**385 Separate receivers may be charged in one indictment**

Whenever any property has been stolen, taken, embezzled, obtained, or fraudulently applied, or disposed of, in such a manner as to amount to felony at Common Law or by Statute, any number of receivers at different times of such property, or of parts thereof, may be charged with substantive felonies in the same indictment, and be tried together, although the principal felon is not included in such indictment, or is not in custody or amenable to justice.

**386 Allegations in indictment as to money or securities stolen**

In an indictment for stealing, taking, receiving, or embezzling, or for the misappropriation, or fraudulent application, or disposal, of money, or any valuable security, or for the obtaining of money or any valuable security by any threat, or false pretence, or partly by a false pretence and partly by a wilfully false promise, it shall be sufficient to describe the property as a certain amount of money, or as a certain valuable security, without specifying any particular kind of money or security, which description shall be sustained by proof of the taking, receiving, embezzling, appropriating, disposal, or obtaining, of any money or valuable security, although some part of the value thereof was agreed to be, or was in fact, returned, and although, as it respects money, the particular kind of money is not proved, or provable.

**387 Indictment for stealing by tenants**

In every case of stealing any chattel let to be used in, or with, any house, or lodging, an indictment in the common form as for larceny, and in every case of stealing any fixture so let as aforesaid, an indictment in the same form as if the offender were not a tenant, or lodger, shall be sufficient, and in either case the property may be laid in the owner, or the person letting to hire.

**388 Indictment for stealing deeds**

In an indictment for stealing, embezzling, destroying, cancelling, obliterating, or concealing, any document of title to land, or any part thereof, it shall be sufficient to allege such document to contain evidence of the title to such land, and to mention the person, or one of the persons, having an interest in such land, or some part thereof.

**389 Indictment for larceny by public servant, property to be laid in the Queen**

In an indictment for larceny, or embezzlement, as a public servant, the property may be described as the property of Her Majesty, from whom it shall be deemed to have been stolen.

**390 Description in indictment for engraving etc**

In an indictment for engraving, or making the whole, or any part, of any instrument, or thing, or using, or having possession of any plate, or material upon which the whole, or any part, of any instrument or thing, is engraved, or made, or for having possession of paper upon which the whole, or any part, of any instrument, or thing, is made or printed, it shall be sufficient to describe such instrument, or thing, by any name or designation by which it is usually known, without setting out any copy of the same, or any part thereof.

**391 Indictment for sale etc of counterfeit coin**

In an indictment, under this Act, respecting the unlawful buying, or selling, of counterfeit coin, it shall not be necessary to allege at what rate, or for what price, the same was

bought, sold, received, or paid, or put off, or offered so to be.

### **392 Indictment for perjury**

In an indictment for perjury it shall be sufficient to allege that the accused on a certain day and at a certain place, before a person named, falsely swore, or falsely declared, or affirmed, the matter charged as false, stating the substance only of such matter, and averring that the same was so sworn, declared or affirmed, on an occasion when the truth of such matter was material, without specifying the occasion, or showing how the matter was material, or what was the cause or trial or inquiry, if any, pending, or the judicial, or official character of the person administering the oath, or taking the declaration, or affirmation, charged as false, and it shall be sufficient to state generally that the matter charged as having been falsely sworn was false in fact without negating each assignment specifically.

### **393 Indictment for conspiracy**

In an indictment for conspiracy, it shall not be necessary to state any overt act, and each defendant in any case of conspiracy, whether two or more defendants are included in the same indictment or not, may be charged separately, in any count, as having conspired with divers persons, of whom it shall be sufficient to name one only, or as having conspired with one other named person only, and may be convicted on such count upon proof of his having unlawfully conspired for the purpose therein alleged with any one such person:

Provided always, that no more than three counts against the same defendant shall be inserted in any such indictment, and that the Court may, in any case before plea pleaded, order such particulars to be given, as to such Court shall seem meet, and that where conspiracies substantially different are charged in the same indictment, the prosecutor may be put to his election as to the one on which he will proceed.

## ***Arraignment, plea, and trial***

### **394 Arraignment etc on charge of previous conviction**

- (1) No person shall be arraigned, in respect of any previous conviction charged in any indictment, unless he is convicted of the subsequent offence charged therein.
- (2) Upon such conviction he shall forthwith be arraigned, and the jury shall be charged as to such previous conviction, or convictions, and the trial shall proceed in respect thereof.

### **394A Conviction on indictment**

Where a prisoner is arraigned on an indictment for any offence and can lawfully be convicted on such indictment of some other offence not charged in such indictment, he may plead not guilty of the offence charged in the indictment, but guilty of such other

offence, and the Crown may elect to accept such plea of guilty or may require the trial to proceed upon the charge upon which the prisoner is arraigned.

**395 Plea of “not guilty”**

If any person arraigned on an indictment pleads thereto “not guilty”, he shall, without further form, be deemed to have put himself upon the country for trial, and the Court shall, in the usual manner, order a jury for his trial accordingly.

**396 Refusal to plead**

If any person being so arraigned stands mute, or will not answer directly to the indictment, the Court may order a plea of “not guilty” to be entered on behalf of such person, and the plea so entered shall have the same effect as if he had actually pleaded the same.

**397, 398 (Repealed)**

**399 Plea of autrefois convict etc**

In any plea of autrefois convict, or of autrefois acquit, it shall be sufficient for the accused to allege that he has been lawfully convicted, or acquitted, as the case may be, of the offence charged in the indictment, without specifying the time or place of such previous conviction or acquittal.

**400 Practice as to entering the dock**

In every case, whether of felony or misdemeanour, the presiding Judge shall have power to order the accused to enter the dock or usual place of arraignment, or to allow him to remain on the floor of the Court, and in either case to sit down, as such Judge shall see fit.

**401 (Repealed)**

**402 Accused may be defended by counsel**

Every accused person shall, in all Courts, be admitted to make full answer and defence by counsel, and in every case may reserve his address until the close of the evidence for the defence, and in the latter case, all evidence in reply for the Crown and any address by the prosecutor shall be given before such address for the defence.

**403 Right to inspect depositions on trial**

Every accused person shall be entitled on his trial to inspect, without fee or reward, all depositions taken against him and returned into, or which shall be in, the Court before which he is under trial.

**404 Admission by accused at trial**

Every accused person on his trial may, if so advised by counsel, make any admissions as

to matters of fact, whatever the crime charged, or give any consent which might lawfully be given in a civil case.

**405 Statement and address to jury by accused**

- (1) Every accused person on his trial, whether defended by counsel or not, may make any statement at the close of the case for the prosecution, and before calling any witness in his defence, without being liable to examination thereupon by counsel for the Crown or by the Court and, after the prosecutor has addressed the jury or has declined to address the jury, may, personally or by his counsel, address the jury.
- (2) Where the accused intends to give evidence or to call any witness or witnesses in support of the defence the accused or his counsel shall be entitled to open the case for the defence before calling his evidence.
- (3) Where, in the closing address by or on behalf of the accused, relevant facts are asserted which are not supported by any evidence or unsworn statement that is before the jury, the Court may grant leave to counsel for the Crown to make a supplementary address to the jury replying to any such assertion.

**405A Notice of alibi**

- (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) 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.

- (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) 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.

#### **405B Warning to be given by Judge in relation to lack of complaint in certain sexual offence proceedings**

- (1) In this section:

***prescribed sexual offence*** means:

- (a) an offence under section 61B, 61C, 61D, 61E, 66A, 66B, 66C or 66D, or
- (b) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a).

- (2) Where on the trial of a person for a prescribed sexual offence evidence is given or a question is asked of a witness which tends to suggest an absence of complaint in respect of the commission of the alleged offence by the person upon whom the offence is alleged to have been committed or to suggest delay by that person in making any such complaint, the Judge shall:

- (a) give a warning to the jury to the effect that absence of complaint or delay in complaining does not necessarily indicate that the allegation that the offence was committed is false, and
- (b) inform the jury that there may be good reasons why a victim of a sexual assault may hesitate in making, or may refrain from making, a complaint about the assault.

**405C Judge not required to warn jury against convicting person of certain sexual offences**

- (1) In this section, **prescribed sexual offence** has the same meaning as it has in section 405B (1).
- (2) On the trial of a person for a prescribed sexual offence, the Judge is not required by any rule of law or practice to give, in relation to any offence of which the person is liable to be convicted on the charge for the prescribed sexual offence, a warning to the jury to the effect that it is unsafe to convict the person on the uncorroborated evidence of the person upon whom the offence is alleged to have been committed.
- (3) Nothing in subsection (2) affects the operation (if any) of any rule of law or practice which requires:
  - (a) a Judge on the trial of a person for a sexual offence alleged to have been committed before the commencement of this section to give the jury a warning as referred to in subsection (2), or
  - (b) a Judge on the trial of a person for a sexual offence alleged to have been committed after the commencement of this section, being a sexual offence other than a prescribed sexual offence, to give the jury a warning as referred to in subsection (2).
  - (c) (Repealed)

**Rules respecting evidence**

**406 Depositions by persons dangerously ill—how to be taken and when admissible in evidence**

Whenever by the representation of any credible person on oath, or in case of urgency without oath, it is made to appear to any Justice that a person, able to give material information respecting an indictable offence, is dangerously ill, whereby his evidence will probably be lost if not forthwith taken, such Justice may take the deposition of the person so in danger, touching such offence, in like manner as if a prosecution for the same were then pending before such Justice, and transmit the same to the Attorney-General. And if afterwards, on the trial of any person for the offence to which the deposition relates, or for the murder or manslaughter of the deponent, in case of his death or alleged death by reason of such offence, it is proved to the satisfaction of the Judge that the witness is

dead, or unable from illness to attend the trial, or to give evidence, his deposition may be read in evidence for or against the accused, although not taken in the presence or hearing either of the party prosecuting or of such accused person:

Provided always that:

- (1) Every such deposition shall be in the form, or substantially in the form, contained in the Fifth Schedule, and shall be subscribed by the Justice taking the same, of which fact, and that, such deposition was duly taken by him under this section, the deposition itself, if purporting to be signed by such Justice, shall be sufficient proof.
- (2) A copy of every such deposition shall be delivered to every person whom the same may affect criminally, as soon after the taking thereof as shall be practicable.
- (3) If practicable, every such person shall, before being committed or placed on his trial, have full opportunity afforded him, if he thinks fit, for the cross-examination of any such deponent, for which purpose any Judge or magistrate may, by any order or orders in writing, cause any person in custody to be conveyed to any place mentioned in any such order, and afterwards to be returned to that custody.

#### **407 Competency of parties and accused persons and their husbands and wives to give evidence**

Every party to a civil proceeding, inquiry in which evidence is or may be given, or arbitration, and the husband or wife of such party, shall be competent to give evidence in such proceeding, inquiry, or arbitration.

Every accused person in a criminal proceeding, and the husband or wife of such person, shall be competent, but, except as provided in this section and section 407AA, not compellable, to give evidence in such proceeding in every Court:

Provided that:

- (1) No such person charged with an indictable offence shall be liable to be called as a witness on behalf of the prosecution.
- (2) The failure of an accused person or of the wife or husband, as the case may be, of an accused person to give evidence, shall not be made the subject of any comment by the judge or by counsel for the Crown.

Where two or more persons are being tried together, and comment is made, by or on behalf of any of them, upon the failure of any of them, or of the husband or wife, as the case may be, of any of them, to give evidence, the judge may make such observations to the jury in regard to such comment or such failure to give evidence as he thinks fit.

- (3) The husband or wife of any accused person in a criminal proceeding shall be compellable to give evidence in such proceeding in every Court, either for the



prosecution or for the defence, and without the consent of the accused:

- (a) where the offence charged is under any Act or Imperial Act by which the husband or wife of the accused is made a compellable witness in a proceeding in respect of the offence,
- (b) where the offence charged is under the provisions of sections 27, 41, 42, 54, 60, 114, or 118 of the *Child Welfare Act 1923*, or any Act amending or replacing the said provisions.

**407AA Compellability of spouses to give evidence in certain proceedings**

(1) In this section:

- (a) a reference to the husband or wife of an accused person includes a reference to a person living with the accused person as the husband or wife of the accused person on a bona fide domestic basis although not married to the accused person,
- (b) a reference to a domestic violence offence committed upon the husband or wife of an accused person includes a reference to an offence of failing to comply with a restriction or prohibition specified in an order under section 547AA where that husband or wife was the aggrieved spouse of the accused person, as referred to in section 547AA, and
- (c) a reference to a child assault offence is a reference to:
  - (i) an offence under, or mentioned in, section 19, 24, 27, 28, 29, 30, 33, 33A, 35, 39, 41, 42, 43, 44, 46, 47, 48, 49, 58, 59, 61, 61B, 61C, 61D, 61E, 66A, 66B, 66C, 66D, 493 or 494 committed upon a child under the age of 18 years, or
  - (ii) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in subparagraph (i).

(2) Except as provided in subsection (3), the husband or wife of an accused person in a criminal proceeding shall, where the offence charged is a domestic violence offence (other than an offence constituted by a negligent act or omission) committed upon that husband or wife, be compellable to give evidence in the proceeding in every Court, either for the prosecution or for the defence, and without the consent of the accused person.

(2A) Except as provided in subsection (3), the husband or wife of an accused person in a criminal proceeding shall, where the offence charged is a child assault offence (other than an offence constituted by a negligent act or omission) committed upon:

- (a) a child living in the household of the accused person, or
- (b) a child who, although not living in the household of the accused person, is a child of the accused person and that husband or wife,

be compellable to give evidence in the proceeding in every Court, either for the prosecution or for the defence, and without the consent of the accused person.

- (3) The husband or wife of an accused person shall not be compellable to give evidence for the prosecution as referred to in subsection (2) or (2A) if that husband or wife has applied to, and been excused by, the Judge or Justice.
- (4) A Judge or Justice may excuse the husband or wife of an accused person from giving evidence for the prosecution as referred to in subsection (2) or (2A) if satisfied that the application to be excused is made by that husband or wife freely and independently of threat or any other improper influence by any person and that:
  - (a) it is relatively unimportant to the case to establish the facts in relation to which it appears that that husband or wife is to be asked to give evidence or there is other evidence available to establish those facts, and
  - (b) the offence with which the accused person is charged is of a minor nature.
- (5) A Judge or Justice shall, when excusing the husband or wife of an accused person from giving evidence under subsection (4), state the reasons for so doing and cause those reasons to be recorded in writing in a form prescribed by regulations made under subsection (9).
- (6) An application under this section by the husband or wife of an accused person to be excused from giving evidence shall be made and determined in the absence of the jury (if any) and the accused person but in the presence of the legal representative (if any) of the accused person.
- (7) A Judge or Justice may conduct the hearing of an application under this section in any manner thought fit and is not bound to observe rules of law governing the admission of evidence but may obtain information on any matter in any manner thought fit.
- (8) The fact that the husband or wife of an accused person in a criminal proceeding has applied under this section to be excused, or has been excused, from giving evidence in the proceeding shall not be made the subject of any comment by the Judge or by any party in the proceeding.
- (9) The Governor may make regulations, not inconsistent with this Act, prescribing the form of a record required to be made as referred to in subsection (5).

**407A Abolition of presumption of coercion of wife by husband**

- (1) Any presumption of law that an offence committed by a wife in the presence of her husband is committed under the coercion of the husband is hereby abolished.
- (2) This section shall come into operation as from the date of the passing of the *Crimes (Amendment) Act 1924*.

#### **408 Declaration by person since deceased**

- (1) Every declaration, by a person since deceased, shall be admissible in evidence, in any case where a dying declaration is now admissible, if the declarant was at the time aware of his danger, and on the whole believed that he would shortly die, although he entertained some degree of hope.
- (2) No such declaration, if otherwise admissible as a dying declaration, shall be excluded because of its having been, or purporting to be, on oath.

#### **409 Depositions may be read as evidence for prosecution**

- (1) A deposition of a witness may be read as evidence for the prosecution at the trial of the accused upon proof:
  - (a) on oath that the witness is dead, or so ill as not to be able to travel or to give evidence, or is absent from Australia, and
  - (b)
    - (i) that the deposition, if taken down in writing and purporting to be signed by the Justice or coroner by or before whom it purports to have been taken, was taken 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, or
    - (ii) where the deposition is in the form of a transcript of the record made, by any means, other than writing, authorised by law for the taking of the deposition, of the matter deposed by the witness in proceedings before a Justice or coroner, that the record so made is a true record of the matter so deposed and was 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 the transcript is a correct transcript of the record so made, and
  - (c) that the accused, or his counsel or attorney, had a full opportunity of cross-examining the witness, or the accused, having been discharged under section 41 (1B) of the *Justices Act 1902*, was absent when the deposition was taken and was not represented by counsel or attorney:

Provided that no such deposition as is referred to in paragraph (b) (i) shall be so read as evidence if it be proved that it was not in fact signed by the Justice or coroner purporting to sign it.

- (2) The deposition of any witness called and examined before a Justice or coroner by and on behalf of the accused may, if the accused so require, be read as evidence in his defence at the trial whenever:
  - (a) the witness is dead, or so ill as not to be able to travel or to give evidence, or is

absent from Australia, or

- (b) the Justice or coroner who committed the accused or held him to bail has certified before the committal or holding to bail that the evidence of the witness is material, and that he is, in his belief, willing to attend the trial, but is unable to bear the expense of attendance.

Provided that no deposition may be so read upon the ground mentioned in paragraph (b) if the witness has, in due time before the trial, been subpoenaed by the Crown.

- (3) Depositions taken on the preliminary or other investigation of any charge of felony or misdemeanour, may be read as evidence on the trial of the accused for any other offence, although of a higher or different nature, if they would be admissible on his trial for the offence in respect of which they were taken; and such depositions may be proved in the same manner as if the accused were on trial for that offence.
- (4) The reference in subsection (1) to “deposition” where firstly occurring and any reference in subsections (2) and (3) to “deposition” or “depositions” shall, where the deposition or depositions was or were recorded by any means, other than writing, authorised by law for the taking of the deposition or depositions, be read and construed as a reference to a transcript, certified in the manner prescribed by regulations made under the *Justices Act 1902*, of the deposition or depositions as so recorded.
- (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 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*.

(7) Except in so far as the Judge otherwise orders, a prescribed statement may be read as evidence for the prosecution at the trial of the accused upon proof on oath that the person who made the statement is dead, or so ill as not to be able to travel or to give evidence, or is absent from Australia.

(8) A prescribed statement may, if the accused so requires, be read as evidence in the accused's defence at the trial of the accused whenever:

(a) the person who made the statement is dead, or so ill as not to be able to travel or to give evidence, or is absent from Australia, or

(b) the Justice who committed the accused or held the accused to bail has certified before the committal or holding to bail that the evidence of the person who made the statement is material, and that that person is, in the belief of the Justice, willing to attend the trial, but is unable to bear the expense of attendance,

but no statement may be so read on the ground mentioned in paragraph (b) if the person who made the statement has, in due time before the trial, been subpoenaed by the Crown.

(9) A prescribed statement made in respect of any charge of felony or misdemeanour may be read as evidence on the trial of the accused for any other offence, although of a higher or different nature, if the contents of the statement would be admissible on the trial of the accused for the offence in respect of which it was made.

(10) Where at a trial it appears to the Judge that the whole or any part of a prescribed statement is inadmissible, the Judge may reject the statement or that part, as the case may be, as evidence.

(11) In this section, **prescribed statement** means a written statement the whole or a part of which was admitted as evidence under section 48A of the *Justices Act 1902* and includes a part thereof rejected under section 48F of that Act.

#### **409A Depositions of previous connected proceedings may be read as evidence in committal proceedings**

(1) In this section:

**deposition** has the same meaning as it has where it appears in section 409.

**prescribed sexual offence** has the same meaning as it has in section 405B (1).

(2) In a hearing referred to in section 41 of the *Justices Act 1902*, being a hearing in relation to a prescribed sexual offence, where:

- (a) the prescribed sexual offence is alleged to have been committed in the course of a connected set of circumstances in which another prescribed sexual offence is alleged to have been committed,
- (b) a person has been committed for trial in respect of, or has been convicted of, the other prescribed sexual offence, and
- (c) each of the prescribed sexual offences is alleged to have been committed on the same person,

any of the depositions of the person referred to in paragraph (c) taken at the proceedings in which the person referred to in paragraph (b) was committed or tried in respect of the other prescribed sexual offence may, in so far as they are relevant to the prescribed sexual offence the subject of the hearing, be read as evidence.

- (3) Where, in a hearing referred to in subsection (2) in relation to a prescribed sexual offence, the person charged with that offence has been served with a copy of the depositions referred to in subsection (2) and has had a reasonable opportunity to examine them, the person upon whom the offence is alleged to have been committed shall not, without the leave of the Justice, be asked by or on behalf of the person so charged to give in evidence any material contained in, or to answer a question which is the same or substantially similar to a question an answer to which is contained in, a deposition which may, pursuant to subsection (2), be read as evidence.

#### **409B Admissibility of evidence relating to sexual experience etc**

- (1) In this section:

**prescribed sexual offence** has the same meaning as it has in section 405B (1).

**prescribed sexual offence proceedings** means proceedings in which a person stands charged with a prescribed sexual offence, whether the person stands charged with that offence alone or together with any other offence (as an additional or alternative count) and whether or not the person is liable, on the charge, to be found guilty of any other offence.

**the accused person**, in relation to any proceedings, means the person who stands, or any of the persons who stand, charged in those proceedings with a prescribed sexual offence.

**the complainant**, in relation to any proceedings, means the person, or any of the persons, upon whom a prescribed sexual offence with which the accused person stands charged in those proceedings is alleged to have been committed.

- (2) In prescribed sexual offence proceedings, evidence relating to the sexual reputation of the complainant is inadmissible.

- (3) In prescribed sexual offence proceedings, evidence which discloses or implies that the complainant has or may have had sexual experience or a lack of sexual experience or has or may have taken part or not taken part in any sexual activity is inadmissible except:
- (a) where it is evidence:
    - (i) of sexual experience or a lack of sexual experience of, or sexual activity or a lack of sexual activity taken part in by, the complainant at or about the time of the commission of the alleged prescribed sexual offence, and
    - (ii) of events which are alleged to form part of a connected set of circumstances in which the alleged prescribed sexual offence was committed,
  - (b) where it is evidence relating to a relationship which was existing or recent at the time of the commission of the alleged prescribed sexual offence, being a relationship between the accused person and the complainant,
  - (c) where:
    - (i) the accused person is alleged to have had sexual intercourse, as defined in section 61A (1), with the complainant and the accused person does not concede the sexual intercourse so alleged, and
    - (ii) it is evidence relevant to whether the presence of semen, pregnancy, disease or injury is attributable to the sexual intercourse alleged to have been had by the accused person,
  - (d) where it is evidence relevant to whether:
    - (i) at the time of the commission of the alleged prescribed sexual offence, there was present in the complainant a disease which, at any relevant time, was absent in the accused person, or
    - (ii) at any relevant time, there was absent in the complainant a disease which, at the time of the commission of the alleged prescribed sexual offence, was present in the accused person,
  - (e) where it is evidence relevant to whether the allegation that the prescribed sexual offence was committed by the accused person was first made following a realisation or discovery of the presence of pregnancy or disease in the complainant (being a realisation or discovery which took place after the commission of the alleged prescribed sexual offence), or
  - (f) where it is evidence given by the complainant in cross-examination by or on behalf of the accused person, being evidence given in answer to a question which may, pursuant to subsection (5), be asked,

and its probative value outweighs any distress, humiliation or embarrassment which the complainant might suffer as a result of its admission.

- (4) In prescribed sexual offence proceedings, a witness shall not be asked:
- (a) to give evidence which is inadmissible under subsection (2) or (3), or
  - (b) by or on behalf of the accused person, to give evidence which is or may be admissible under subsection (3) unless the Court or Justice has previously decided that the evidence would, if given, be admissible.
- (5) In prescribed sexual offence proceedings, where the Court or Justice is satisfied that:
- (a) it has been disclosed or implied in the case for the prosecution against the accused person that the complainant has or may have, during a specified period or without reference to any period:
    - (i) had sexual experience, or a lack of sexual experience, of a general or specified nature, or
    - (ii) taken part or not taken part in sexual activity of a general or specified nature, and
  - (b) the accused person might be unfairly prejudiced if the complainant could not be cross-examined by or on behalf of the accused person in relation to the disclosure or implication,
- the complainant may be so cross-examined but only in relation to the experience or activity of the nature (if any) so specified during the period (if any) so specified.
- (6) On the trial of a person, any question as to the admissibility of evidence under subsection (2) or (3) or the right to cross-examine under subsection (5) shall be decided by the Judge in the absence of the jury.
- (7) Where a Court or Justice has decided that evidence is admissible under subsection (3), the Court or Justice shall, before the evidence is given, record or cause to be recorded in writing the nature and scope of the evidence that is so admissible and the reasons for that decision.
- (8) Nothing in this section authorises the admission of evidence of a kind which was inadmissible immediately before the commencement of this section.

#### **409C Limitation on dock statements in certain sexual offence proceedings**

- (1) In prescribed sexual offence proceedings referred to in section 409B, a person may not, in any statement made under section 405, make reference to a matter which would not, by virtue of section 409B, be admissible if given on oath.
- (2) Where a person has made reference, in a statement made under section 405, to a



matter which would not, by virtue of section 409B, be admissible if given on oath, the Judge shall tell the jury to disregard that matter.

**410 Confessions etc, when inadmissible**

- (1) No confession, admission, or statement shall be received in evidence against an accused person if it has been induced:
  - (a) by any untrue representation made to him by the prosecutor, or some person in authority, or
  - (b) by any threat or promise, held out to him by the prosecutor, or some person in authority.
- (2) Every confession, admission, or statement made after any such representation or threat or promise shall be deemed to have been induced thereby, unless the contrary be shown.
- (3) Provided that no confession, admission, or statement by the accused shall be rejected by reason of his having been told, by a person in authority, that whatever he should say might be given in evidence for or against him.

**411 Criminating statements admissible though on oath**

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

**412 Evidence to character of accused**

Evidence to the character of the accused shall, in all cases, be received and dealt with as evidence on the question of his guilt.

**413 Witnesses to character—what evidence admissible**

Every witness examined as to character, whether of the accused or of any other person, may give evidence not only as to the general repute of such person, but also as to the witness's own knowledge of his habits, disposition, and conduct.

But no witness shall be allowed to state that he would not believe another on his oath.

**413A Restriction on cross-examination of accused**

- (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 showing any other of the accused to be not guilty of the offence with which that other is charged.

(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.

**413B Admissibility of evidence and questions about accused's disposition or reputation**

(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 Documentary evidence of previous convictions**

- (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.
- (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, New South Wales Police Fingerprint Section, 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.

#### **414 Evidence of previous conviction charged in an indictment**

No evidence of any previous conviction, charged in an indictment, shall be offered, except in reply to evidence of character, unless the accused is convicted of the subsequent offence charged in such indictment.

#### **414A Certificate of scientific examination evidence**

- (1) At any inquest or where a person is charged before a justice or justices with an indictable offence it shall not be necessary, unless so directed by the coroner or the said justice or justices, for any person who has made a scientific examination of any article or living person or body to give evidence of the result of the examination, but a certificate under the hand of such person setting out that he has made the examination, the nature of his scientific qualifications, and the facts and conclusions he has arrived at shall be prima facie evidence of the matters stated in the certificate.

Where the certificate is tendered by the prosecutor the justice or justices shall not dispose of the case summarily except with the consent of the accused.

- (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 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.
- (4) A certificate which would, by virtue of section 4G 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 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.

#### **414B Proof of service of notice to produce**

An affidavit by the clerk of the peace or his clerk, or by the accused or his solicitor or his solicitor's clerk, or by any officer of police of the service of any notice to produce and of the time when it was served, with a copy of such notice annexed to such affidavit, shall be sufficient evidence of the service of the original of such notice and of the time when it was served.

#### **415 Proof of banking transactions**

- (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) the specimen signature of any 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 or by an authorised person who has examined the book or record.

- (1A) Evidence that a book or record was a book or record of a banking corporation or company may, if given by an authorised person who has examined the book or record, be given on information and belief.
- (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) 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.
- (4) This section applies to and in respect of books and records:
  - (a) wherever situated,
  - (b) whenever examined, and
  - (c) whether the corporation or company whose books or records they are carries on

business in New South Wales or elsewhere.

(5) In this section **authorised person** means:

- (a) a person before whom, pursuant to section 26 of the *Oaths Act 1900*, an oath, declaration or affidavit may be taken or made in a country or place outside New South Wales,
- (b) a member of the police force of or above the rank of sergeant, or
- (c) a person approved by the Attorney-General for the purposes of this section.

#### **416 Proof of by-laws etc**

In any case, where, by any Act, power to make by-laws, rules, ordinances, or regulations, is conferred upon any persons, or body, any printed paper purporting to be such by-laws, rules, ordinances, or regulations, and to be printed by the Government Printer, shall be evidence:

- (a) that by-laws, rules, ordinances, or regulations, in the words printed in such paper, were duly made by such persons or body,
- (b) that such by-laws, rules, ordinances, or regulations if appearing by such paper to have been approved of or confirmed by the Governor, have been so approved or confirmed.

#### **417 Proof of lawful authority or excuse**

Wherever, by this Act, doing a particular act or having a specified article or thing in possession without lawful authority or excuse, is made or expressed to be an offence, the proof of such authority or excuse shall lie on the accused.

#### **418 (Repealed)**

#### **419 Bigamy—evidence of first marriage**

On the prosecution of a person for bigamy the first marriage shall not be proved by the evidence of the husband, or wife, of such marriage alone.

#### **419A Pilfering of goods from vessel, wharf etc**

On the prosecution of any person for stealing any property in or from any vessel, barge, boat or train, or from any dock, wharf, quay, railway yard or other railway premises, or from any store or shed used in connection with and adjoining such dock, wharf, quay, railway yard or other railway premises, or in the course of transit from any vessel, barge, boat or train, or from any store or shed used in connection with and adjoining such wharf, dock, quay, railway yard or other railway premises, or for receiving any property so stolen knowing it to have been stolen, evidence may be given of any writing, printing, or marks upon the said property, or upon the packages containing the same without producing or giving notice to produce the original writing, printing, or marks; and on any such

prosecution a document purporting to be the bill of lading, shipping receipt, consignment note, railway receipt, waybill, original order, delivery order, specification, schedule, packing list, or invoice relating to the said property shall be admissible in evidence on production and without further proof, and shall be evidence of the particulars contained therein, and that the ownership of the said property is in the consignee referred to therein or his assignee.

In this section **train** includes any railway carriage, railway truck or other railway vehicle which is on any railway.

#### **420 Receivers—evidence of guilty knowledge**

On the trial of a person for feloniously receiving stolen property, evidence may be given

- (a) that he has been, within seven years previously, convicted of larceny, or the felonious receiving of stolen property, or of obtaining property by false pretences,
- (b) that other stolen property, if stolen within twelve months before the commission of the offence charged, or if more than one offence is charged, the commission of the earliest such offence charged, has been found in his possession, or on his premises,

and such facts may be taken into consideration by the jury as evidence of guilty knowledge:

Provided always, that

- (1) the same facts have been given in evidence against the accused on his committal, or
- (2) that ten days' notice, at the least, was given him before his trial of the intention to adduce such evidence.

#### **421 Cases of forged English stamps**

On the trial of a person for an offence under this Act relating to the stamps of the United Kingdom, any stamp, or impression, transmitted to the Governor, with a despatch purporting to be from one of Her Majesty's Secretaries of State, as a genuine stamp, or impression of any die-plate, or instrument, provided, or used, under the direction of the Commissioners of Stamps, or other lawful authority, for the purpose of denoting any stamp duty, shall be evidence of such stamp, or impression, die-plate, or instrument.

#### **422 Proof of coin being counterfeit**

Where, on the trial of a person for an offence under this Act relating to the Queen's current coin, it is necessary to prove that any coin is counterfeit, it shall not be necessary to prove that fact by the evidence of an officer of Her Majesty's Mint, but it shall be sufficient to prove the same by the evidence of any other witness.

**423 On trial for perjury presumption of authority to administer oath etc**

On any trial for perjury, the person before whom the perjury is alleged to have been committed shall be presumed to have had authority to administer the oath, or take the declaration, or affirmation, unless the contrary is shown.

**423A Joint trial in case of perjury etc**

Where any two or more persons are severally indicted for perjury or false swearing and the statements alleged to be false are alleged to have been made on the same occasion and before the same tribunal and in respect of the same subject matter and are in each case to the same effect, whether in identical terms or not, all such persons may be tried together at the same time and before the same jury, provided that each person shall have his full right of challenge.

**424 Witnesses in mitigation**

After the conviction of an accused person in any case, and before sentence passed, the Court may if it sees fit, as well on application by the Crown as by or on behalf of the accused, summon witnesses and examine them on oath, in respect of any matter in extenuation of his offence.

***Verdict generally***

**425 Conviction for misdemeanour where facts amount to felony**

Where, on the trial of a person for a misdemeanour, it appears that the facts in evidence amount in law to felony, he may notwithstanding be found guilty of and sentenced for such misdemeanour, and in that case shall not be liable to be prosecuted for felony on the same facts:

Provided always, that the Court may discharge the jury from giving any verdict upon such trial, and direct the person to be indicted for felony.

**426 After trial for felony, where alternative verdict possible no further prosecution**

No person tried for felony, in any case where under this Act he may be acquitted thereof but be found guilty of some other offence, shall be liable to prosecution on the same facts for any such other offence.

**427 On trial for any felony or misdemeanour—verdict of attempt**

Where on the trial of a person for any felony, or misdemeanour, the jury are not satisfied that he is guilty thereof, but are satisfied that he is guilty of an attempt to commit, or of an assault with intent to commit, the same, they may acquit him of the offence charged, and find him guilty of such attempt, or assault, and he shall be liable to punishment accordingly.



**428 (Repealed)**

**Part 11A Unfitness to be tried for an offence**

**Chapter 1 Proceedings in the Supreme Court or District Court**

**428A Application**

This Chapter applies to criminal proceedings in the Supreme Court (including criminal proceedings within the summary jurisdiction of the Supreme Court) and criminal proceedings in the District Court.

**428B Interpretation**

(1) In this Chapter:

**forensic patient** means a forensic patient as defined in section 4 (1) of the [Mental Health Act 1983](#).

**hospital** means a hospital as defined in section 4 (1) of the [Mental Health Act 1983](#).

**inquiry** means an inquiry under section 428F (1).

**mental condition** means a condition of disability of mind not including either mental illness or developmental disability of mind.

**Mental Health Review Tribunal** means the Mental Health Review Tribunal constituted under the [Mental Health Act 1983](#).

**special hearing** means a special hearing under section 428M (2).

(2) In this Chapter, a reference to a person having done an act alleged to have been done is a reference to a person having done or having omitted to do an act, matter or thing alleged to have been done or alleged to have been omitted to be done.

**428C Person by whom question of unfitness may be raised**

The question of a person's unfitness to be tried for an offence may be raised by any party to the proceedings in respect of the offence or by the Court.

**428D Basis of determination of question of unfitness**

The question of a person's unfitness to be tried for an offence shall be determined on the balance of probabilities.

**428E Time at which question of unfitness may be raised**

(1) The question of a person's unfitness to be tried for an offence shall, so far as practicable, be raised before the person is arraigned upon a charge in respect of the offence but may be raised at any time during the course of the hearing of the

proceedings in respect of the offence.

- (2) Where the question of a person's unfitness to be tried for an offence is raised at any time before the person is arraigned upon a charge in respect of the offence, the Attorney General shall determine whether an inquiry should be conducted before the hearing of the proceedings in respect of the offence.
- (3) Nothing in subsection (1) prevents the question of a person's unfitness to be tried for an offence from being raised on more than one occasion in respect of the same proceedings.

**428F Procedure on raising question of unfitness**

- (1) Where, in respect of an offence:
  - (a) the Attorney General determines under section 428E (2) that an inquiry should be conducted, or
  - (b) the question of a person's unfitness to be tried for the offence is raised after the person is arraigned upon a charge in respect of the offence,the Court shall, except as provided by subsections (2), (4) and (5), as soon as practicable after the Attorney General's determination is made or the question is raised, as the case may be, conduct an inquiry in order to determine whether the person is unfit to be tried for the offence.
- (2) The Court shall not conduct an inquiry into the question of a person's unfitness to be tried for an offence unless it appears to the Court that the question has been raised bona fide.
- (3) Where the question of a person's unfitness to be tried for an offence is raised after the person is arraigned upon a charge in respect of the offence, the Court shall hear any submissions relating to the conducting of an inquiry in the absence of any jury which has been constituted for the purposes of the proceedings relating to the offence.
- (4) Before conducting an inquiry, the Court may do any one or more of the following:
  - (a) adjourn the proceedings,
  - (b) grant the accused person bail in accordance with the [Bail Act 1978](#),
  - (c) remand the accused person in custody for a period not exceeding 28 days,
  - (d) request the accused person to undergo a psychiatric examination or other examination,
  - (e) request that a psychiatric report or other report relating to the accused person be obtained,

- (f) discharge any jury constituted for the purpose of those proceedings,
- (g) make any other order that the Court considers appropriate.

(5) Where, in respect of a person charged with an offence, the Court is of the opinion that it is inappropriate, having regard to the trivial nature of the charge or offence, the nature of the person's disability or any other matter which the Court thinks proper to consider, to inflict any punishment, the Court may determine not to conduct an inquiry and may dismiss the charge and order that the person be released.

#### **428G Determination of question of unfitness**

- (1) The question of a person's unfitness to be tried for an offence shall be determined by a jury constituted for that purpose.
- (2) The *Jury Act 1977* applies to and in respect of the constitution of a jury and a jury constituted as referred to in subsection (1) in the same way as it applies to and in respect of the constitution of a jury and a jury constituted for the trial of any criminal proceedings.
- (3) Where, in relation to the hearing of any proceedings against an accused person in respect of an offence, a jury has been constituted and, after the jury has been constituted:
  - (a) the prosecutor's opening address has commenced, or
  - (b) in the event that there is no such opening address, evidence has been called,a member of the jury is disqualified from being a member of a jury constituted as referred to in subsection (1) for the purpose of an inquiry conducted in relation to the same accused person and the same offence.
- (4) A member of a jury constituted as referred to in subsection (1) is disqualified from being a member of a jury otherwise constituted for the purpose of any proceedings relating to the same accused person and the same offence.

#### **428H Conduct of inquiry**

- (1) At an inquiry, the accused person shall, unless the Court otherwise allows, be represented by counsel or a solicitor.
- (2) An inquiry shall not be conducted in an adversary manner.
- (3) The onus of proof of the question of a person's unfitness to be tried for an offence shall not rest on any particular party to the proceedings in respect of the offence.
- (4) At the commencement of an inquiry the Court shall explain to the jury the reason for the inquiry, the findings which may be made on the inquiry and the consequences, both at law and otherwise, of those findings.

**428I Procedure after completion of inquiry**

- (1) Where, following an inquiry, an accused person is found fit to be tried for an offence, the proceedings brought against the person in respect of the offence shall recommence or continue in accordance with the appropriate criminal procedures.
- (2) Where, following an inquiry, an accused person is found unfit to be tried for an offence, the proceedings brought against the person in respect of the offence shall not, except for the purpose of doing any of the things referred to in paragraph (b), be recommenced or continued and the Court:
  - (a) shall refer the person to the Mental Health Review Tribunal, and
  - (b) may discharge any jury constituted for the purpose of those proceedings and may, pending the determination of the Tribunal under section 428K, do any one or more of the following:
    - (i) adjourn the proceedings,
    - (ii) grant the person bail in accordance with the *Bail Act 1978*,
    - (iii) remand the person in custody until the determination of the Tribunal has been given effect to,
    - (iv) make any other order that the Court considers appropriate.

**428J Presumptions as to findings concerning unfitness**

It shall be presumed:

- (a) that a person who has, in accordance with this Chapter, been found to be unfit to be tried for an offence shall continue to be unfit to be tried for the offence until the contrary is, on the balance of probabilities, determined to be the case, and
- (b) that a person who has, in accordance with this Chapter, been found fit to be tried for an offence shall continue to be fit to be tried for the offence until the contrary is, on the balance of probabilities, determined to be the case.

**428K Functions of Mental Health Review Tribunal**

- (1) Where a person has been referred to the Mental Health Review Tribunal under section 428I (2), the Tribunal shall, as soon as practicable after the person is so referred, determine whether, on the balance of probabilities, the person will, during the period of 12 months after the finding of unfitness, become fit to be tried for the offence.
- (2) Where, under subsection (1), the Tribunal determines that a person will, during the period referred to in that subsection, become fit to be tried for an offence, the Tribunal shall also determine whether or not:

- (a) the person is suffering from a mental illness, or
  - (b) the person is suffering from a mental condition for which treatment is available in a hospital and, where the person is not in a hospital, whether or not the person objects to being detained in a hospital.
- (3) After determining in respect of a person the matters referred to in subsections (1) and (2), the Tribunal shall notify the Court which referred the person to it of its determination.
- (4) Where, under subsection (1), the Tribunal determines that a person will not, during the period referred to in that subsection, become fit to be tried for an offence, the Tribunal shall notify the Attorney General of the determination.

**428L Order of Court following determination of Mental Health Review Tribunal as to unfitness**

Where, under section 428K (3), a Court is notified by the Mental Health Review Tribunal of its determination in respect of a person, the Court may:

- (a) grant the person bail in accordance with the *Bail Act 1978* for a period not exceeding 12 months, or
- (b) where the Tribunal has determined:
  - (i) that the person is suffering from a mental illness or that the person is suffering from a mental condition for which treatment is available in a hospital and that the person, not being in a hospital, does not object to being detained in a hospital—order that the person be taken to and detained in a hospital, or
  - (ii) that the person is not suffering from a mental illness or from a mental condition referred to in subparagraph (i) or that the person is suffering from such a mental condition but that the person objects to being detained in a hospital—order that the person be detained in a place other than a hospital,for a period not exceeding 12 months.

**428M Functions of Attorney General following determination of Mental Health Review Tribunal**

- (1) Where, under section 428K (4), the Attorney General is notified by the Mental Health Review Tribunal of its determination in respect of a person, the Attorney General may:
- (a) direct that a special hearing be conducted in respect of the offence with which the person is charged, or
  - (b) advise:
    - (i) the Minister for Police, and

(ii) the Court which referred the person to the Tribunal,

that the person will not be further proceeded against by the Attorney General in respect of the offence.

- (2) Where, under subsection (1) (a), the Attorney General directs that a special hearing be conducted in respect of an offence with which a person is charged, the appropriate Court shall, as soon as practicable after the Attorney General so directs, conduct a special hearing for the purpose of ensuring, notwithstanding the unfitness of the person to be tried in accordance with the normal procedures, that the person is acquitted unless it can be proved to the requisite criminal standard of proof that, on the limited evidence available, the person committed the offence charged or any other offence available as an alternative to the offence charged.
- (3) Where, under subsection (1) (b), the Attorney General advises a Court that a person will not be further proceeded against in respect of an offence, the Court shall thereupon order the release of the person.

#### **428N Determination at special hearing**

- (1) The question whether a person has committed an offence charged or any other offence available as an alternative to an offence charged shall be determined at a special hearing by a jury constituted for that purpose.
- (2) The *Jury Act 1977* applies to and in respect of the constitution of a jury and a jury constituted as referred to in subsection (1) in the same way as it applies to and in respect of the constitution of a jury and a jury for the trial of any criminal proceedings.
- (3) A member of a jury otherwise constituted for the purpose of any proceedings relating to the same accused person and the same offence is disqualified from being a member of a jury constituted as referred to in subsection (1).

#### **428O Nature and conduct of special hearing**

- (1) Except as provided by this Chapter, a special hearing shall be conducted as nearly as possible as if it were a trial of criminal proceedings.
- (2) At a special hearing, the accused person shall, unless the Court otherwise allows, be represented by counsel or a solicitor and the fact that the person has been found unfit to be tried for an offence shall be presumed not to be an impediment to the person's representation.
- (3) At a special hearing:
- (a) the accused person shall be deemed to have pleaded not guilty in respect of the offence charged,
  - (b) the counsel or solicitor, if any, who represents the accused person may exercise

the rights of the person to challenge jurors or the jury,

- (c) without limiting the generality of subsection (1), the accused person may raise any defence that could be properly raised if the special hearing were an ordinary trial of criminal proceedings, and
  - (d) without limiting the generality of subsection (1), the accused person shall be entitled to give evidence or to make an unsworn statement.
- (4) At the commencement of a special hearing, the Court shall explain to the jury the fact that the accused person is unfit to be tried in accordance with the normal procedures, the meaning of unfitness to be tried, the purpose of the special hearing, the verdicts which are available and the legal and practical consequences of those verdicts.
- (5) The verdicts available to the jury or the Court at a special hearing include the following, namely:
- (a) not guilty of the offence charged,
  - (b) not guilty on the ground of mental illness,
  - (c) that on the limited evidence available, the accused person committed the offence charged,
  - (d) that on the limited evidence available, the accused person committed an offence available as an alternative to the offence charged.
- (6) A verdict in accordance with subsection (5) (b) shall be deemed to be equivalent for all purposes to a special verdict that an accused person is not guilty by reason of mental illness under section 428ZA.
- (7) A verdict in accordance with subsection (5) (c) or (d):
- (a) shall constitute a qualified finding of guilt and shall not constitute a basis in law for any conviction for the offence to which the finding relates,
  - (b) shall, subject to section 428R, constitute a bar to further prosecution in respect of the same circumstances,
  - (c) shall be subject to appeal in the same manner as a verdict in an ordinary trial of criminal proceedings, and
  - (d) shall be deemed to be a conviction for the purpose of enabling a victim of the offence in respect of which the verdict is given to make a claim for criminal injuries compensation.

#### **428P Procedure after completion of special hearing**

- (1) Where, following a special hearing, it is found on the limited evidence available that

an accused person committed the offence charged or some other offence available as an alternative, the Court:

- (a) shall indicate whether, if the special hearing had been a normal trial of criminal proceedings against a person who was fit to be tried for the offence which the person is found to have committed, it would have imposed a sentence of imprisonment or penal servitude, and
- (b) where the Court would have imposed such a sentence, shall nominate a term, in this section referred to as **a limiting term**, in respect of that offence, being the best estimate of the head sentence the Court would have considered appropriate if the special hearing had been a normal trial of criminal proceedings against a person who was fit to be tried for that offence and the person had been found guilty of that offence.

(2) Where in respect of a person a Court has nominated a limiting term, the Court:

- (a) shall refer the person to the Mental Health Review Tribunal, and
- (b) may make such order with respect to the custody of the person as the Court considers appropriate.

(3) Where, under subsection (2), a Court refers a person to the Tribunal, the Tribunal shall determine whether or not:

- (a) the person is suffering from a mental illness, or
- (b) the person is suffering from a mental condition for which treatment is available in a hospital and, where the person is not in a hospital, whether or not the person objects to being detained in a hospital.

(4) The Tribunal shall notify the Court which referred the person to it under subsection (2) of its determination with respect to the person.

(5) Where at a special hearing the defence of mental illness is raised and the jury returns a special verdict that the accused person is not guilty by reason of mental illness, the person shall thereafter be dealt with and an order may be made under this subsection in respect of the person as if the jury had returned such a special verdict at a normal trial of criminal proceedings.

(6) Where, at a special hearing, it is found that an accused person is not guilty of an offence charged, the person shall thereafter be dealt with as if the person had been found not guilty at a normal trial of criminal proceedings.

#### **428Q Order of Court following determination of Mental Health Review Tribunal as to mental condition**

Where, under section 428P (4), a Court is notified by the Mental Health Review Tribunal of



its determination in respect of a person, the Court may:

- (a) where the Tribunal has determined that the person is suffering from a mental illness or that the person is suffering from a mental condition for which treatment is available in a hospital and that the person, not being in a hospital, does not object to being detained in a hospital—order that the person be taken to and detained in a hospital, or
- (b) where the Tribunal has determined that the person is not suffering from a mental illness or from a mental condition referred to in paragraph (a) or that the person is suffering from such a mental condition but that the person objects to being detained in a hospital—order that the person be detained in a place other than a hospital.

**428R Effect on other proceedings of finding on special hearing**

- (1) Where, following a special hearing, an accused person is found on the limited evidence available to have committed the offence charged or some other offence available as an alternative, the finding shall, except as provided by subsection (2), constitute a bar to any other criminal proceedings brought against the person for the same offence or substantially the same offence.
- (2) Nothing in subsection (1) prevents other criminal proceedings referred to in that subsection from being commenced at any time prior to the expiration of any limiting term within the meaning of section 428P in respect of a person unless, before the expiration of the limiting term, the person has been released from custody as a prisoner or discharged from detention as a forensic patient.
- (3) Where, pursuant to other criminal proceedings referred to in subsection (1), an accused person is convicted of the offence or substantially the same offence as that which, at a special hearing, the person was found to have committed, the periods, if any, of the person's custody or detention before, during and after the special hearing, being periods relating to the offence, shall be fully taken into account in determining any period of any sentence or the terms of any disposition consequent upon the conviction.

**428S Recommendation for further inquiry**

- (1) Where the Mental Health Review Tribunal has notified the Attorney General that it is of the opinion that a person who has been found to be unfit to be tried for an offence has become fit to be tried for the offence (whether or not a special hearing has been conducted in respect of the offence), the Attorney General:
  - (a) shall request the Court before which the person was found to be unfit to be tried for the offence to hold a further inquiry as to the person's unfitness, or
  - (b) shall:
    - (i) determine that the person will not be further proceeded against by the

Attorney General in respect of the offence, and

- (ii) notify the Minister for Health of the determination.
- (2) Where, under subsection (1) (a), the Attorney General requests that a further inquiry be held, the appropriate Court shall, as soon as practicable after the Attorney General so requests, hold a further inquiry.
- (3) Where, under subsection (1) (b), the Attorney General notifies the Minister for Health of a determination not to further proceed against a person, the Minister for Health shall, after having informed the Minister for Police of the date of the person's release, do all such things within the power of the Minister for Health to order the person's release from detention or to otherwise ensure the person's release from detention.
- (4) Sections 428G (subsection (3) excepted) and 428H apply to and in respect of a further inquiry under subsection (2) in the same way as those sections apply to and in respect of an inquiry.

#### **428T Procedure after completion of further inquiry**

- (1) Where, following a further inquiry under section 428S (2), an accused person is found fit to be tried for an offence, the proceedings brought against the person in respect of the offence shall recommence or continue in accordance with the appropriate criminal procedures.
- (2) Where, following a further inquiry under section 428S (2), an accused person is found unfit to be tried for an offence:
  - (a) in the case of an accused person who has been detained in custody as a prisoner or in a hospital as a forensic patient for a period or continuous periods in the aggregate of not less than 12 months—the Court shall conduct a special hearing, or
  - (b) in the case of any other accused person—the Court may:
    - (i) conduct a special hearing, or
    - (ii) order that the person be returned to the custody or hospital from which the person was taken.

## **Chapter 2 Other proceedings**

### **428U Application**

This Chapter applies to criminal proceedings in respect of summary offences or indictable offences triable summarily, being proceedings before a magistrate, but does not apply to committal proceedings.

#### **428V Interpretation**

- (1) In this Chapter, **magistrate** means a justice or justices, a stipendiary magistrate and, on and from the date of commencement of Part 9 of the [Community Welfare Act 1982](#), a member of the Children's Court of New South Wales.
- (2) In this Chapter, a reference to a person having done an act alleged to have been done is a reference to a person having done or having omitted to do an act, matter or thing alleged to have been done or alleged to have been omitted to be done.

#### **428W Persons suffering from a mental illness or condition**

Where, in proceedings before a magistrate, it appears to the magistrate:

- (a) that the defendant is developmentally disabled, is suffering from a mental illness or is suffering from a mental condition for which treatment is available in a hospital, but is not a mentally ill person within the meaning of the [Mental Health Act 1983](#), and
- (b) that, on an outline of the facts alleged in the proceedings or such other evidence as the magistrate may consider relevant, it would be more appropriate to deal with the defendant in accordance with the provisions of this Chapter than otherwise in accordance with law,

the magistrate:

- (c) may dismiss the charge and discharge the defendant:
  - (i) into the care of a responsible person, unconditionally or subject to conditions,
  - (ii) upon the condition that the defendant attend upon a person or at a place specified by the magistrate for assessment of the defendant's mental condition or treatment, or both, or
  - (iii) unconditionally, or
- (d) may do any one or more of the following:
  - (i) adjourn the proceedings,
  - (ii) grant the defendant bail in accordance with the [Bail Act 1978](#),
  - (iii) make any other order that the magistrate considers appropriate.

#### **428X Mentally ill persons**

- (1) Where, in proceedings before a magistrate, it appears to the magistrate that the defendant is a mentally ill person within the meaning of the [Mental Health Act 1983](#), the magistrate (without derogating from any other order the magistrate may make in relation to the defendant, whether by way of adjournment, the granting of bail in accordance with the [Bail Act 1978](#) or otherwise):

- (a) may order that the defendant be taken to a hospital as defined in section 4 (1) of the *Mental Health Act 1983*, for assessment, or
  - (b) may discharge the defendant, unconditionally or subject to conditions, into the care of a responsible person.
- (2) Where a defendant is dealt with in proceedings before a magistrate in accordance with subsection (1), the charge which gave rise to the proceedings shall, on the expiration of the period of 6 months after the date on which the defendant is so dealt with, be deemed to have been dismissed unless, within that period, the defendant is brought before a magistrate to be further dealt with in relation to the charge.
- (3) Where a defendant is brought before a magistrate to be further dealt with in relation to a charge as referred to in subsection (2), the magistrate shall, in dealing with the charge, take account of any period during which the defendant was in a hospital as a consequence of an order made under subsection (1) (a).

**428Y Means by which magistrate may be informed**

For the purposes of this Chapter, a magistrate may inform himself or herself as the magistrate thinks fit, but not so as to require a defendant to incriminate himself or herself.

**Part 11B Defence of mental illness**

**428Z Explanation to jury**

Where, upon the trial of a person charged with an offence, a question is raised as to whether the person was, at the time of commission of the offence, mentally ill as referred to in section 428ZA, the Court shall explain to the jury the findings which may be made upon the trial and the legal and practical consequences of those findings and shall include in its explanation a reference to the existence and composition of the Mental Health Review Tribunal constituted under the *Mental Health Act 1983* and the relevant functions of that Tribunal with respect to forensic patients within the meaning of that Act, including a reference to the requirements under sections 118 (1) (b) (ii) and 119 of that Act, that the Tribunal may only make a recommendation for release of a person detained in accordance with section 428ZB where the Tribunal is satisfied, on the evidence available to it, that the safety of the person or any member of the public will not be seriously endangered by the person's release.

**428ZA Special verdict**

Where, in an indictment or information, an act or omission is charged against a person as an offence and it is given in evidence on the trial of the person for the offence that the person was mentally ill, so as not to be responsible, according to law, for his or her action at the time when the act was done or omission made, then, if it appears to the jury before which the person is tried that the person did the act or made the omission charged, but was mentally ill as aforesaid at the time when the person did or made the same, the jury

shall return a special verdict that the accused person is not guilty by reason of mental illness.

**428ZB Effect of finding and declaration as to mental illness**

Where, upon the trial of a person charged with an offence, the jury returns a special verdict that the accused person is not guilty by reason of mental illness, the Court shall order that the person be detained in strict custody in such place and in such manner as the Court thinks fit until released by due process of law.

**Part 12 Sentences**

**429 (Repealed)**

***Sentences of death***

**430 (Repealed)**

**431 Convicted persons not to be liable to death penalty**

(1) This section applies to offences under:

- (a) an Act,
- (b) an Imperial Act so far as it applies in New South Wales, or
- (c) a rule of law,

whether committed before or after the commencement of the [Crimes \(Death Penalty Abolition\) Amendment Act 1985](#).

- (2) A person is not liable to the punishment of death for an offence to which this section applies.
- (3) Where, but for this subsection, no penalty would be provided for an offence to which this section applies that was formerly punishable by death, that offence shall be punishable by penal servitude for life.

***Sentences of imprisonment—hard labour—solitary confinement—and sureties***

**432 Misdemeanours**

- (1) Where any offender is sentenced to imprisonment, whether for a misdemeanour at common law, or under this or any other Act, or Imperial Act, he shall be kept, if a male, to hard labour, and if a female, to light labour, unless the court shall in and by the sentence otherwise direct.
- (2) The court may, in the sentence, also require the offender to enter into a recognizance,

with or without sureties, for keeping the peace and being of good behaviour for a term not exceeding three years:

Provided that no person shall be imprisoned under this Act more than one year for not finding sureties.

**433-436 (Repealed)**

***Order for payment of compensation***

**437 Compensation to person aggrieved by indictable offence etc**

(1) This section applies to:

- (a) an offence punishable on indictment, whether or not tried on indictment,
- (b) an offence under this Act, and
- (c) an offence for which proceedings are taken in the Supreme Court in its summary jurisdiction.

(2) In this section:

***aggrieved person***, in relation to an offence in respect of the death of a person, means, except in subsection (8), the spouse (if any), or the person (if any) who was living with the dead person as the spouse, and any parent or child (as defined in section 7 (1) of the [Compensation to Relatives Act of 1897](#)), of the dead person.

***compensation for injury*** includes:

- (a) compensation for:
  - (i) actual and future expenses,
  - (ii) actual loss of earnings, and
  - (iii) loss of future earnings or a capacity to earn, sustained as direct consequence of injury, and
- (b) in relation to an injury causing the death of a person, compensation for:
  - (i) actual expenses, and
  - (ii) loss of material benefits in the nature of support or domestic services, sustained as a direct consequence of the injury or death.

***compensation for loss*** does not include compensation for injury.

***injury*** means bodily harm, and includes pregnancy, mental shock and nervous shock.

**prescribed amount**, in relation to a direction given under this section, means:

- (a) except as provided by paragraph (b)—\$20,000, or
  - (b) where the direction is given on or after a conviction by a Court (other than the Supreme Court) exercising summary jurisdiction—\$10,000.
- (3) Subject to subsection (6), where a person is convicted of an offence to which this section applies, the Court may, on the conviction or at any time thereafter, direct that a sum not exceeding the prescribed amount be paid out of the property of the offender to any aggrieved person, or to any aggrieved persons in such proportions as may be specified in the direction, by way of compensation for any injury or loss sustained through, or by reason of, the offence or, where applicable, any other offence taken into account pursuant to section 447B in passing sentence for the offence.
- (4) A direction under this section that a sum be paid to an aggrieved person may be given by a Court on its own motion or upon application being made to it by or on behalf of the aggrieved person.
- (5) A direction given under this section shall specify the sum, if any, to be paid by way of compensation for injury and the sum, if any, to be paid by way of compensation for loss.
- (6) A Court shall not give a direction under this section in respect of the conviction of a person for an offence if the aggregate of the sum specified in the direction and of all sums:
- (a) specified in a direction previously given under this section or section 554:
    - (i) on the conviction of any other person for that offence, or
    - (ii) on the conviction of that or any other person for a related offence, or
  - (b) stated in a certificate previously granted under section 4 of the *Criminal Injuries Compensation Act 1967*:
    - (i) on the acquittal of, or dismissal of an information against, any other person, being a certificate granted in respect of that offence, or
    - (ii) on the acquittal of, or dismissal of an information against, that or any other person, being a certificate granted in respect of a related offence,
- exceeds the prescribed amount.
- (7) For the purposes of subsection (6) an offence is related to another offence if:
- (a) both of the offences were committed against the same person, and
  - (b) in the opinion of the Court, both of the offences were committed at approximately

the same time or were, for any other reason, related to each other.

- (8) In determining whether or not to give a direction under this section and in determining the sum to be paid under such a direction, the Court shall have regard to:
- (a) any behaviour of the aggrieved person which directly or indirectly contributed to the injury or loss sustained by the aggrieved person,
  - (b) whether the aggrieved person is or was a relative of the convicted person or was, at the time of the commission of the offence or, where applicable, any other offence taken into account pursuant to section 447B in passing sentence for the offence, living with the convicted person as his wife or her husband or as a member of the convicted person's household,
  - (c) the provisions of the *Criminal Injuries Compensation Act 1967*, and
  - (d) such other circumstances as it considers relevant.
- (9) Subject to section 9 of the *Criminal Appeal Act 1912* and to the provisions of the *Justices Act 1902*, any sum directed under this section to be paid to an aggrieved person shall be paid forthwith, or within such period (if any) as is specified in the direction, to:
- (a) in the case of a direction given by the Supreme Court or District Court—the Clerk of the Peace, or
  - (b) in the case of a direction given by any other Court—the clerk of that Court,
- for payment to the aggrieved person.
- (10) The power conferred on a Court by subsection (3) does not extend to the Children's Court or to any other court exercising the powers of the Children's Court.

**437A Effect of direction under sec 437 on civil proceedings**

- (1) This section shall have effect where a direction is given under section 437 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.
- (2) A direction under section 437 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 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.

- (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.

### ***Order for restitution of property stolen, &c***

#### **438 Restitution of property stolen in certain cases**

- (1) Where a person is convicted under this Act of stealing, embezzling, or receiving property, the Court may order the restitution thereof, in a summary manner, to the owner, or his representative.
- (2) Where any person indicted for any such offence is acquitted, the Court in its discretion, on being satisfied that any property mentioned in the indictment has been stolen, embezzled, or received, contrary to this Act, may order in like manner the restitution of such property.
- (3) Where any valuable security has been paid by some person liable to the payment thereof, or, being a negotiable instrument, has been taken for a valuable consideration, without notice, or cause to suspect, that the same had been dishonestly come by, the Court shall not order such restitution.
- (4) This section shall equally apply to property in any manner taken, or otherwise acquired, received, retained, or disposed of, in violation of any provision of this Act.

#### **439 (Repealed)**

### ***Sentences for statutory offences***

#### **440 Statutory offences**

Whosoever is convicted of an offence not punishable with death, shall be punished in the manner prescribed by the statute relating thereto, and where no punishment is specially provided, shall be liable to penal servitude for five years.

### ***Power to fine in certain cases***

#### **440A Power to fine in certain cases**

Where a person is convicted on indictment of an offence mentioned in section 476 and the evidence before the Court is such that if:

- (a) that person had been charged before a Justice or Justices with that offence, and
- (b) the same evidence had been given before the Justice or Justices,

the Justice or Justices would, with the consent of that person, have had power to hear and determine the charge in a summary manner under Chapter 1 of Part 14, then the Court shall have the same power to impose a fine in respect of that offence as the Justice or Justices would have had if that person had pleaded guilty to, or been convicted of, the charge pursuant to that Chapter.

Nothing in this section affects any power of the Court to deal with the person so convicted or his property in any other manner in which the Court, apart from this section, has power to deal with him or his property, but any fine imposed under this section shall be in lieu of any period of penal servitude or imprisonment that might otherwise be imposed when sentence is being passed for the offence of which he is so convicted.

Section 82 of the *Justices Act 1902* does not apply to or in respect of any fine imposed under this section.

#### **440B Imposition of fine on sentence being deferred or suspended**

- (1) Where a person is convicted on indictment of an offence, not being the offence of homicide or other offence punishable by penal servitude for life, and the Court defers sentence in accordance with the provisions of this Act and requires the offender to enter into a recognizance conditioned that he be of good behaviour, the Court may, in addition, impose a fine not exceeding \$4,000.
- (2) The Court, when imposing a fine under this section:
  - (a) shall direct that the recognizance referred to in subsection (1) be further conditioned on the payment to a specified person, at a specified time or by specified instalments at specified times, of the fine so imposed, and
  - (b) may, if it thinks fit, require the offender to give security for the observance of any such direction.
- (3) Unless the Court otherwise directs, the provisions of section 4 of the *Fines and Penalties Act 1901* shall not apply to or in respect of a fine imposed under this section.
- (4) Upon the forfeiture of a recognizance entered into under subsection (1) any order made under that subsection for the imposition of a fine shall be vacated and any moneys paid under the order shall be forfeited.

## ***Deferred sentences***

### **441 Judgment after sentence deferred**

Where a person is convicted of an offence and sentence is deferred, the Court before which he was tried or any other court of like jurisdiction, or the Supreme Court, may pronounce judgment against him at any time afterwards.

## ***Commencement of sentence***

### **441A Time from which sentences shall take effect**

For the avoidance of doubt it is hereby declared that every sentence passed shall take effect from the time when it is passed, unless the Court otherwise directs.

## ***Reduction of sentence or fine below term or amount fixed***

### **442 Provision for passing sentences of less duration than those fixed**

(1) Where by any section of this Act an offender is made liable to penal servitude for life or to penal servitude or imprisonment for a fixed term, the judge may nevertheless pass a sentence of either penal servitude or imprisonment of less duration.

Nothing in this subsection shall prevent the awarding of hard labour or solitary confinement, where at present authorised by law, or the directing of the offender to enter into recognizances to keep the peace and be of good behaviour.

(2) Where by any section of this Act an offender is made liable to a fine of any fixed amount, the judge may nevertheless inflict a fine of less amount.

### **442A Circumstances of certain sexual offences to be considered in passing sentence**

Where a person is convicted of an offence under section 61B or 61C and an offence under section 61D, whether at the same time or at different times, the Judge passing sentence on the person in respect of the 2 convictions or the later of the 2 convictions, as the case may be, shall, if it appears that the 2 offences arose substantially out of the one set of circumstances, take that fact into account in passing sentence.

## ***Additional and cumulative sentences***

### **443 Additional sentences on second or third convictions**

In every case where, on the conviction of a person of an offence punishable under this Act, it is made to appear to the Judge that the offender has been previously convicted of, and sentenced for, an indictable offence, under this or any former Act, such Judge may sentence him to a term of punishment, in addition to that prescribed for the offence of which he then stands convicted.

Such additional punishment shall be:

- (1) Where the offence of which he then stands convicted is a felony:
  - (a) if he has been once previously so convicted and sentenced—penal servitude for ten years, or not less than two years,
  - (b) if he has been twice or oftener previously so convicted and sentenced—penal servitude for fourteen years, or not less than three years.
- (2) Where the offence of which he then stands convicted is a misdemeanour—imprisonment for eighteen months, or not less than six months.

**444 Sentence during any unexpired sentence may be cumulative**

- (1) Subject to subsection (3), where a person is convicted of any offence, and at the time of passing sentence the term of any sentence previously passed on him, whether of penal servitude, or imprisonment, is unexpired, the Judge or magistrate may, whether or not that person has commenced to serve that unexpired term, direct that the sentence for the offence of which such person then stands convicted shall commence:
  - (a) at the expiration of the period of such unexpired sentence, or
  - (b) where any sentence previously passed on that person commences on or after the day on which he so stands convicted, at the expiration of the period of any such sentence.
- (1A) Where, upon the same indictment or otherwise, a person is convicted of two or more offences, the Judge or magistrate may direct that the sentences imposed in respect of the convictions shall be served consecutively, in which case the term of each sentence so imposed, other than:
  - (a) a sentence in respect of which a direction has been given under subsection (1), or
  - (b) where no direction under that subsection has been given, the first sentence imposed,shall commence at the expiration of the period of the sentence imposed immediately before it.
- (2) Except to the extent that the Judge or magistrate otherwise directs under subsection (1) or (1A), or where the Judge or magistrate directs that subsection (3) shall not apply, a sentence imposed upon a person in the circumstances referred to in those subsections, and an unexpired sentence then being served by that person, shall be concurrent.
- (3) Where a person is convicted of assault or any other offence against the person of another and, at the time of the assault or such other offence the person so convicted was serving a sentence of penal servitude or imprisonment the term of which is unexpired at the time he is sentenced for his conviction of the assault or other

offence, the sentence for that conviction shall, unless the Judge or magistrate directs that this subsection shall not apply thereto, commence:

- (a) at the expiration of the period of such unexpired sentence, or
- (b) where any sentence previously passed on that person commences on or after the day on which he so stands convicted, at the expiration of the period of that sentence or, if there is more than one such sentence, at the expiration of the period of the sentence that last expires.

(4) Notwithstanding anything in this section, except subsection (5), 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.

(5) Where a person is serving a sentence of penal servitude or imprisonment at the time of his conviction by a magistrate in respect of 1 or more offences which are committed after the commencement of this subsection and which involved an assault on a prison officer while in the execution of his duty, the magistrate may:

- (a) whether or not the person is being dealt with under section 476,
- (b) whether or not the sentence being served is cumulative on other sentences already served,
- (c) whether or not the person is liable to serve a cumulative sentence or cumulative sentences of penal servitude or imprisonment on the expiration of the sentence being served, and
- (d) if:
  - (i) in a case where the person is not liable to serve a cumulative sentence or cumulative sentences on the expiration of the sentence being served—the sentence being served, or
  - (ii) in a case where the person is liable to serve a cumulative sentence or cumulative sentences on the expiration of the sentence being served—the last of the sentences to be served,

was imposed by a Judge,

direct that the sentence for the offence or for 1 only of the offences, as the case may

be, of which the person then stands convicted shall commence, in the case referred to in paragraph (d) (i), at the expiration of the sentence being served or, in the case referred to in paragraph (d) (ii), at the expiration of the last of the sentences to be served.

#### **445 Proof of previous conviction**

Any previous conviction and sentence referred to in section 444 may be proved by a certificate admissible in evidence under the *Evidence Act 1898*, or other evidence together with evidence of the identity of the offender to the satisfaction of the Judge:

Provided that where an offender is convicted of an offence and sentenced for the same, and is in the same Court, and during the same sittings, convicted a second time or oftener, judicial notice may be taken of every such previous conviction and sentence.

#### **446 Previous sentences to be noted in new sentence**

Whenever an additional, or cumulative, sentence is passed as aforesaid, the fact of the previous sentence, or sentences, specifying the date, or dates, thereof, and of the term, or terms, of sentence shall be entered on the minutes and record of the sentence lastly passed.

#### **447 (Repealed)**

#### **447A Punishment on escape**

Whosoever escapes from lawful custody while undergoing a sentence involving deprivation of liberty, shall be liable upon recapture to undergo the punishment which he was undergoing at the time of his escape, for a term equal to that during which he was absent from prison after the escape and before the expiration of the term of his original sentence, whether at the time of his recapture the term of that sentence has or has not expired, in addition to any punishment which may be awarded for the escape.

### ***Taking outstanding charges into account***

#### **447B Outstanding charges may be taken into account in passing sentence**

- (1) Where a person is found guilty of an offence not punishable with penal servitude for life with which he has been charged on indictment and the Court is satisfied that:
  - (a) there has been filed in court a document in or to the effect of the form contained in the Ninth Schedule, signed by a member of the police force and by the person so found guilty, showing on the back thereof a list of other indictable offences not punishable with penal servitude for life with which he has been charged (whether or not he has been committed for trial in respect of those other offences),
  - (b) a copy of that document has been furnished to the person so found guilty, and

(c) in all the circumstances of the case it is proper so to do,

the Court may, with the consent of counsel for the Crown and before passing sentence on the person for the offence of which he has been found guilty, ask that person whether he admits his guilt in respect of all or any of the offences specified in the list and wishes them to be taken into account in passing sentence upon him.

If the person so found guilty admits his guilt in respect of all or any of the offences specified in the list and wishes them to be taken into account by the Court in passing sentence for the offence of which he has been found guilty, the Court may, if it thinks fit, take all or any of the offences in respect of which he has so admitted guilt into account accordingly.

Provided that any sentence imposed in any such case upon the person so found guilty shall not exceed the maximum sentence that may be imposed in respect of the offence of which he has been found guilty.

- (2) The Court shall certify upon the document filed in court the offences specified in the list on the back thereof that have, in respect of the person concerned, been taken into account in passing sentence upon that person, and thereafter proceedings or further proceedings upon those offences shall not be taken against that person:

Provided that such proceedings or further proceedings may be taken where the decision of the Court is quashed or set aside.

- (3) An admission of guilt under and for the purposes of this section in respect of an offence shall not be admissible in evidence:

(a) in any proceedings or further proceedings taken under the proviso to subsection (2), or

(b) in any proceedings or further proceedings in respect of the offence if the offence was not taken into account under this section in passing sentence.

- (4) An offence taken into account under and in accordance with this section in passing sentence upon any person for another offence shall not, by reason of its being so taken into account, be regarded for any purpose as an offence of which that person has been convicted.

- (5) Where the Court before which a person was convicted of an indictable offence in passing sentence for that offence took into account under and in accordance with this section any other offence or offences, then whenever in or in relation to any criminal proceeding:

(a) reference may lawfully be made to the fact that that person was convicted of the indictable offence, reference may also be made to the fact that that other offence or those other offences was or were so taken into account,

- (b) evidence may lawfully be given of the fact that that person was convicted of the indictable offence, evidence may also be given of the fact that that other offence or those other offences was or were so taken into account.

The fact that that other offence or those other offences was or were so taken into account may be proved in the same manner as the conviction for the indictable offence may be proved.

Nothing in this subsection affects the operation of subsection (4).

- (6) A reference in this section to ***passing sentence*** includes a reference to:
- (a) deferring the passing of a sentence,
  - (b) making an order under section 556A (1), and
  - (c) making a decision or an order to remand in custody or to remand and release upon conditions or otherwise.

## **Part 13 Proceedings after sentence**

### **(A) EXECUTION OF SENTENCE**

#### **448-456 (Repealed)**

#### ***Enforcing payment of compensation***

#### **457 Direction for compensation to be enforceable by execution etc**

- (1) Where, pursuant to section 437, a Court directs that a sum be paid to an aggrieved person and the whole or any part of the sum is not paid in accordance with section 437, the Clerk of the Peace or, as the case may require, the clerk of the Court shall, on the application of the aggrieved person, issue to the aggrieved person a certificate specifying the direction of the Court 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 or the clerk of the Court, as the case may be.
- (2) Where a certificate is issued pursuant to subsection (1) the Clerk of the Peace or, as the case may require, the clerk of the Court 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 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.



## ***Sentences of Courts-martial***

### **458 Sentences by Courts-martial under Imperial Acts**

In all cases where, under an Imperial Act now or hereafter passed, relating to Her Majesty's land or sea forces, the Supreme Court, or a Judge thereof, is authorised to carry into effect a sentence of penal servitude, or any commutation of a capital sentence, passed by a Court-martial on any soldier, marine, or seaman, and an order is accordingly made by such Court, or Judge, such sentence or commutation shall be carried into effect according to the terms of such order, under the provisions of this Act so far as it can be applied, and, subject thereto, this Act shall apply to every such sentence or commutation, and to every such soldier, marine, or seaman.

## **(B) COMMUTATION OR MITIGATION OF SENTENCES**

### **459, 460 (Repealed)**

### **460A Remission of sentences**

(1) Where a person:

(a) was convicted before, or is convicted on or after, the day on which this section commences, and

(b) is sentenced on or after that day by a Judge,

the Judge may, upon sentencing the person, order that the person shall not be entitled to any remissions, or to any remissions granted in such circumstances as the Judge may specify, in so far as those remissions would, but for the order, reduce the term of the sentence.

(2) A Judge shall not make an order under subsection (1) unless it appears to the Judge that the making of the order is desirable by reason of the nature of the offence or the antecedent character of the person convicted.

(3) Where a Judge makes an order under subsection (1), the Judge shall state the reasons for the order.

### **461 General regulations for remission of sentences**

The Governor may make such general regulations as he thinks fit for the mitigation or remission, conditional or otherwise, of the punishments of penal servitude, or imprisonment, or of imprisonment with hard labour, as an incentive to, or reward for, good conduct, whilst the offender is serving under any sentence or order of a Court, and may mitigate or remit the term of punishment accordingly.

#### **462 Remission on recognizances**

- (1) The Governor, with the advice of the Executive Council, and on the recommendation of the Minister, may grant, at any time, to an offender under sentence, a remission of the whole or any portion of such sentence, on condition of his giving security by recognizance for his good behaviour, as to the Governor, with the advice of the Executive Council, and on the recommendation of the Minister, shall seem meet.
- (2) A recommendation shall not be made for the purposes of subsection (1) except in accordance with a recommendation made by the Release on Licence Board under section 60 of the *Prisons Act 1952*.

#### **463 Tickets-of-leave**

- (1) The Governor, with the advice of the Executive Council, and on the recommendation of the Minister, may grant to any offender a written licence to be at large, within limits specified in the licence, but not elsewhere, during the unexpired portion of his sentence, subject to such conditions indorsed on the licence as the Governor, with the advice of the Executive Council, and on the recommendation of the Minister, shall prescribe, and while such offender continues to reside within the limits specified, and to perform the conditions so prescribed, his sentence shall be suspended.
- (2) Any such licence may at any time be revoked by the Governor, with the advice of the Executive Council, and on the recommendation of the Minister, and shall be revoked by a justice on proof before him in a summary way that the licensee has been guilty of a breach of any condition of the licence.

Where a licence is revoked as aforesaid the person released on licence may be taken by any member of the police force with or without a warrant and returned to gaol, and may be detained there to undergo the remainder of his sentence.

Any justice may issue a warrant for the apprehension of any person who has been convicted of an offence committed within the State whether the offence is indictable or punishable on summary conviction, and whose licence is revoked as aforesaid. Any such warrant may be in the form stated in the Eighth Schedule.

- (3) Where the holder of any such licence is found out of the limits specified therein, or reasonably suspected of having broken any other condition of his licence, any constable may arrest the person so offending, or so suspected, and bring him before some Justice to be dealt with summarily, under this subsection or subsection (2).
- (4) If adjudged to have wilfully and without lawful excuse broken any such condition, the offender may be dealt with by such Justice under subsection (2) or subsection (3).
- (4A) Where the Chairman of the Release on Licence Board or the Deputy Chairman is of the opinion that:

- (a) the matter of whether a licence is to be revoked is being considered by the Board or will shortly be considered by the Board, and
  - (b) circumstances exist that justify the immediate apprehension of the licensee, the Chairman or Deputy Chairman may issue a warrant to a member of the police force directing that the licensee be apprehended and returned to gaol.
- (4B) A direction in a warrant under subsection (4A) for the apprehension by a member of the police force of a licensee and the return of the licensee to gaol is sufficient authority for that apprehension and for the detention of the licensee in gaol pending a decision as to whether or not the licence will be revoked.
- (5) A recommendation shall not be made for the purposes of subsection (1), nor shall any limits be specified in or conditions indorsed on any such licence, except in accordance with:
- (a) a recommendation made by the Release on Licence Board under section 60 of the *Prisons Act 1952*, or
  - (b) a report of a Judge of the Court of Criminal Appeal as referred to in section 27 of the *Criminal Appeal Act 1912*.
- (6) A recommendation shall not be made for the purposes of subsection (2) except in accordance with a recommendation made by the Release on Licence Board under section 60 of the *Prisons Act 1952*.

#### **464 Remissions where more than one sentence**

Where an offender is under more than one sentence of penal servitude, or imprisonment, and one of such sentences is vacated or avoided by due course of law, or remitted by the Governor, the remaining sentences, or sentence, shall take effect and be computed on and from the day of such vacation, avoidance, or remission, or such earlier day as the Governor shall direct.

#### **464A (Repealed)**

### **(C) CONSEQUENCES, &c, OF CONVICTION FOR FELONY**

#### **465 Forfeiture in felonies abolished**

- (1) No inquest, conviction, or judgment, in respect of any felony, shall cause any escheat or forfeiture of lands or goods.
- (2) There shall be no forfeiture of any chattel which may have moved to, or caused, the death of any human being for or in respect of such death.

**466 Disabilities of felony**

After the conviction of an offender for any felony, until he has endured the punishment to which he was sentenced, or the punishment, if any, substituted for the same, or the unremitted portion of such punishment, or has received a free pardon for his offence, he shall be incapable of holding, or being elected or appointed to any office, or of exercising any electoral or municipal franchise.

**467 (Repealed)**

**468 Effect of reversing judgment in such cases**

Upon the avoidance or vacating of the conviction of any such person, or reversal of the judgment against him, the provisions of sections 437, 457 and 466 shall, with respect to such person, determine, and every order made for the payment of money out of his property shall become of no effect, and he shall be restored to all that he may have lost thereby.

**469-474 (Repealed)**

**(E) ENQUIRY SUBSEQUENT TO CONVICTION**

**475 Governor or Judge may direct inquiry etc**

- (1) Whenever, after the conviction of any person, any doubt or question arises as to his guilt, or any mitigating circumstances in the case, or any portion of the evidence therein, the Governor on the petition of the person convicted, or some person on his behalf, representing such doubt or question, or the Supreme Court of its own motion, may direct any Justice to, and such Justice may, summon and examine on oath all persons likely to give material information on the matter suggested.
- (2) The attendance of every person so summoned may be enforced, and his examination compelled, and any false statement wilfully made by him shall be punishable, in like manner as if he had been summoned by, or been duly sworn and examined before, the same Justice, in a case lawfully pending before him.
- (3) Where on such inquiry the character of any person who was a witness on the trial is affected thereby, the Justice shall allow such person to be present, and to examine any witness produced before such Justice.
- (4) Every deposition taken under this section shall be stated in the commencement to have been so taken, and in reference to what case, and in pursuance of whose direction, mentioning the date thereof, and shall be transmitted by the Justice, before whom the same was taken, as soon as shall be practicable together with his report as to the conclusions to be drawn therefrom, to the Governor if the inquiry was directed by him, or to the Supreme Court, if the inquiry was directed by the Supreme Court, and the matter shall thereafter be disposed of, as to the Governor, on the report of the

Supreme Court, if the inquiry was directed by the Supreme Court, or otherwise, shall appear to be just.

## **Part 13A Offences punishable by the Supreme Court in its summary jurisdiction**

### **475A Offences punishable summarily**

- (1) Subject to subsection (2) and section 475B but notwithstanding any other law, proceedings for any offence mentioned in the Tenth Schedule may, pursuant to an application made under section 4 (1) of the *Supreme Court (Summary Jurisdiction) Act 1967* by the Attorney-General, be taken before the Supreme Court in its summary jurisdiction.
- (2) Proceedings for an offence mentioned in paragraph (f) of the Tenth Schedule may not be taken under subsection (1) unless, in the application made under section 4 (1) of the *Supreme Court (Summary Jurisdiction) Act 1967* in respect of the offence, the person against whom the offence is charged is also charged with an offence mentioned in paragraph (a), (b), (c), (d), (d1) or (e) of that Schedule.
- (3) A person may be convicted of an offence mentioned in paragraph (f) of the Tenth Schedule notwithstanding that he is not convicted of the offence mentioned in paragraph (a), (b), (c), (d), (d1) or (e) of that Schedule that was also charged in the application made under section 4 (1) of the *Supreme Court (Summary Jurisdiction) Act 1967* in respect of the offence mentioned in paragraph (e) of that Schedule.
- (4) The penalty that may be imposed by the Supreme Court in its summary jurisdiction on a person convicted of an offence mentioned in the Tenth Schedule is the penalty provided by law (other than this subsection), except that any fine imposed shall not exceed \$10,000 and any term of penal servitude or imprisonment imposed shall not exceed 10 years, whether the penalty imposed is either a fine or a term of penal servitude or imprisonment only or is both a fine and a term of penal servitude or imprisonment.
- (5) Subsection (1) does not prevent proceedings for any offence referred to in that subsection from being taken otherwise than before the Supreme Court in its summary jurisdiction.
- (6) The reference in subsection (1) to the Attorney-General includes, in relation to any proceedings, a reference to any person who is authorised in writing by the Governor to act, for the purposes of that subsection, on behalf of the Attorney-General in relation to those proceedings or in relation to proceedings for all offences mentioned in the Tenth Schedule.
- (7) A document purporting to be signed:

- (a) by the Governor and to authorise a person specified in the document to act as referred to in subsection (6) is, in any proceedings referred to in subsection (1), admissible in evidence as prima facie evidence that the person is authorised so to act, or
- (b) by the Attorney-General for the purpose of any proceedings referred to in subsection (1) is admissible in evidence as prima facie evidence that the Attorney-General signed the document.

**475B Election for summary trial**

- (1) Section 475A (1) applies only if, upon the completion of the pre-trial procedures in any proceedings in respect of an offence to which an application under section 4 (1) of the *Supreme Court (Summary Jurisdiction) Act 1967* relates, being procedures prescribed by rules made under that Act, the defendant makes an election to be tried for that offence in the Supreme Court in its summary jurisdiction.
- (2) Notwithstanding subsection (1) where the defendant in any proceedings is the subject of an application (not being an application referred to in subsection (3)), under section 4 (1) of the *Supreme Court (Summary Jurisdiction) Act 1967* relating to 2 or more offences, he is not entitled to make an election under subsection (1) unless he makes it in respect of every offence to which the application relates.
- (3) Where 2 or more defendants are the subject of an application under section 4 (1) of the *Supreme Court (Summary Jurisdiction) Act 1967*, an election under subsection (1) made by one of the defendants in respect of any offence to which the application relates and alleged to have been committed by him has no effect for the purposes of this section unless such an election is made by that defendant in respect of every other offence to which the application relates and which is alleged to have been committed by him and by each of the other defendants in respect of every offence to which the application relates and which is alleged to have been committed by each of them.
- (4) A reference in subsection (1), (2) or (3) to an offence to which an application under section 4 (1) of the *Supreme Court (Summary Jurisdiction) Act 1967* relates does not include a reference to such an offence to which the person charged with the offence has, upon such an application, pleaded guilty.
- (5) Where the defendant does not make an election under subsection (1):
  - (a) the Supreme Court shall order that the proceedings for the offence to which the election relates shall be tried in the Supreme Court otherwise than in its summary jurisdiction, and
  - (b) the provisions of section 475A (1) shall cease to apply to or in respect of the proceedings for that offence.

- (6) A person tried pursuant to an order under subsection (5) (a) shall for all purposes, be deemed to be tried on indictment and if convicted to have been convicted on indictment.
- (7) A reference in this section to a plea of guilty does not include a reference to such a plea if the plea has been withdrawn or has not been accepted.

## **Part 14 Offences punishable by Justices and procedure before Justices generally**

### **Chapter 1 Indictable offences punishable summarily only by consent of the accused**

#### ***Extent of jurisdiction***

##### **476 Indictable offences punishable summarily with consent of accused**

- (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.
- (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 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) any offence mentioned in section 126, 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 (except in the case of a conveyance as defined for the purposes of section 154A) 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 \$10,000,

- (aa) any offence mentioned in section 52A or 52B except an offence whereby death was occasioned,
- (b) any offence mentioned in section 61E, 66C (1), 66D, 71, 72, 76 or 76A, where the person upon whom the offence was committed was at the time of the commission of the offence of or above the age of 14 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 35 (a), 53, 54, 56, 57, 58, 59, 61, 78Q, 81A, 81B, 81C, 114, 132, 133, 154A, 158, 172, 173, 174, 175, 176, 176A, 178BA, 178BB 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 \$10,000, and
  - (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 4 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), (aa), (b), (c), (d), (f), (g) or (h).

(7) Notwithstanding anything in this Act to the contrary, subsection (7A) excepted:

- (a) the maximum term of imprisonment, or penal servitude, to which a person may be sentenced by a magistrate under this section 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,
- (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.

(7A) Notwithstanding anything in this Act to the contrary:

- (a) the maximum term of imprisonment to which a person may be sentenced by a magistrate for any one offence mentioned in section 52A or 52B is 18 months,
- (b) a magistrate may, instead of imposing a term of imprisonment for an offence disposed of under this section, impose a penalty not exceeding \$2,000, and
- (c) the maximum term of imprisonment to which a person may be sentenced by a magistrate for any one offence mentioned in section 53 or 54 is 12 months.

- (8) (Repealed)
- (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.
- (10) Where, pursuant to this section, a magistrate decides to hear and determine a charge in a summary manner after written statements have been admitted as evidence under section 48A of the *Justices Act 1902*:
- (a) the magistrate shall enquire of the parties if any of them wish to have any person who made a statement admitted as evidence called to give evidence in the proceedings,
  - (b) if a party requires the attendance of any person referred to in paragraph (a), or if the magistrate is of the opinion that any such person should be called:
    - (i) the magistrate shall direct the attendance of that person to give evidence, and
    - (ii) the statement shall, as soon as the direction is given, be thereafter treated as not being admitted as evidence in the proceedings, unless that party, after requiring the attendance of that person, consents to the re-admission in evidence of the statement or the magistrate, after giving the direction, withdraws the direction, and
  - (c) if the attendance of any person referred to in paragraph (a) is not required, the statement made by the person shall continue to be evidence in the proceedings.
- (11) Where in any proceedings in which a magistrate decides to hear and determine a charge in a summary manner there are 2 or more defendants, the provisions of subsection (10):
- (a) apply in relation to each such defendant to the extent only that a written statement referred to in that subsection has been admitted as evidence against that defendant under section 48A of the *Justices Act 1902*, and
  - (b) so apply in relation to each such defendant as if that defendant were the only defendant,
- and references in that subsection to a party shall be construed accordingly.
- (12) Without limiting the powers of the magistrate to adjourn proceedings, the magistrate shall grant such adjournments as appear to be just and reasonable as a consequence of any of the provisions of subsection (10).

**477, 478 (Repealed)**

## ***Procedure in such cases***

### **479, 479A (Repealed)**

### **480 Certificate of dismissal**

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.

### **481 Summary conviction or dismissal a bar to indictment**

Every conviction upon a charge disposed of summarily under section 476 shall have the same effect as a conviction upon an indictment for the offence would have had, and no person, convicted as aforesaid, or who obtains a certificate of dismissal under section 480, shall be afterwards liable to prosecution for the same cause.

### **482-492 (Repealed)**

## **Chapter 3 Other offences punishable summarily**

### **(A) ASSAULTS**

#### **493 Common assaults**

Whosoever assaults any person shall on summary conviction be liable to imprisonment for six months, or to a fine of \$500, or both.

#### **494 Aggravated assaults**

Whosoever unlawfully assaults an officer, being a justice, constable, or other peace officer, custom-house officer, prison officer, sheriff's officer or bailiff, while in the execution of his duty, or any person acting in aid of such officer, or a child under twelve years of age, or any female, or being in company with any person together with such person assaults any other person, shall on conviction before two Justices be liable to imprisonment for a term not exceeding six months, or to pay a fine, exclusive of costs if ordered, of \$500, or both.

#### **495-497 (Repealed)**

#### **498 Certificate of dismissal**

If, on the hearing of any case of assault under section 493 or 494 upon the merits, the Justices deem the offence not to be proved, or find the assault to have been justified, or so trifling as not to call for punishment, and accordingly dismiss the complaint, they shall forthwith make out a certificate of such dismissal, and deliver the same to the defendant.

#### **499 Certificate or conviction a bar to other proceedings**

- (1) Any person who obtains a certificate of dismissal under section 498, or, who having been convicted, pays the amount adjudged to be paid, or suffers the imprisonment awarded, shall be released:
  - (a) from all criminal proceedings for the same cause, and
  - (b) from all civil proceedings for the same cause at the suit of the person laying the information in respect of the proceedings for assault.
- (2) Any person against whom civil proceedings have been taken in respect of any act done by him which is an offence of which he might have been convicted under section 493 or 494 shall be released from all criminal proceedings for the same cause on the information of the person by whom the civil proceedings were taken.

#### **500 Exception from jurisdiction**

Nothing in sections 493 to 499 both inclusive shall authorise Justices to hear and determine any case of assault, in which any question arises as to the title to land, or any interest therein, or accruing therefrom, unless such determination does not involve any determination as to the title to the land or to any interest therein or accruing therefrom.

### **(B) LARCENY AND SIMILAR OFFENCES**

#### ***Larceny, &c, of animals, &c***

#### **501 List of offences punishable summarily without consent of accused**

- (1) Whosoever commits or attempts to commit:
  - (a) larceny, or
  - (b) the offence of stealing any chattel, money, or valuable security from the person of another, or
  - (c) any offence mentioned in the following sections of this Act, namely, 126, 131, 132, 133, 139, 140, 144, 148, 150, 151, 152, 178B, 178C, 179, 247,and the amount of money or the value of the property in respect of which the offence is charged, or of the reward, does not exceed \$2,000, shall on conviction in a summary manner before two justices be liable to imprisonment for twelve months or to pay a fine of \$1,000, or both.
- (2) The jurisdiction conferred on two justices by this section shall be exercisable only by a stipendiary magistrate.
- (3) The provisions of section 56 of the *Justices Act 1902* shall not apply to proceedings under this section.

**502 Possession of skin etc of stolen cattle**

Whosoever, in whose possession there has been found the skin or carcass of any stolen cattle, or of any cattle reasonably suspected to have been stolen, or any part of any such skin or carcass, may be brought before or may be summoned to appear before any two Justices to show in what manner he became possessed of the same, and if there is reasonable cause to believe that he has dishonestly come by the same, and if he fails to satisfy the Justices before whom the case is heard that he obtained the same without any knowledge or reasonable ground to suspect that the same was the skin or carcass, or part of the skin or carcass, of any stolen cattle, he shall be liable to imprisonment for six months, or to pay a fine of \$500, or both.

**503 Stealing dogs**

Whosoever steals any dog shall, on conviction before two Justices, be liable to imprisonment for six months, or to pay a fine of \$500, or both.

**504 Possessing stolen dog or skin**

Whosoever has unlawfully in his possession any stolen dog, or the skin of any such dog, knowing the dog to have been stolen, shall, on conviction before two Justices, be liable to pay a fine of \$500.

**505 Stealing animals etc ordinarily kept in confinement**

Whosoever:

steals any animal or bird ordinarily kept in a state of confinement, or for any domestic purpose, but not being the subject of larceny at Common Law, or

kills any such animal or bird with intent to steal the same, or any part thereof,

shall, on conviction before two Justices, be liable to imprisonment for six months, or to pay a fine of \$500, or both.

**506 Stealing animals etc ordinarily kept in confinement—second offence**

Whosoever, having been convicted under this or any former Act of any such offence as is mentioned in section 505, afterwards commits any offence in the said section mentioned shall, on conviction before two Justices, be liable to imprisonment for one year.

**507 Possession of stolen animals etc**

Whosoever in whose possession there has been found any such animal or bird as in section 505 mentioned, or the skin thereof, respectively, which to his knowledge has been stolen, or is the skin of a stolen animal or bird, shall, on conviction before two Justices, be liable to imprisonment for six months, or to pay a fine of \$500, or both.

**508 Possession of stolen animals etc—second offence**

Whosoever, having been convicted, under this or any former Act, of any such offence as is mentioned in section 507, afterwards commits any offence in the said section mentioned, shall, on conviction before two Justices, be liable to imprisonment for one year.

**509 Restoration of such stolen animals etc**

Any such animal or bird as is mentioned in section 505, or the skin thereof, which has been found in the possession of any person may be restored to the owner thereof by the order of any Justice.

**510 Setting engine for deer etc**

Whosoever:

unlawfully and wilfully sets, or uses, any snare, or engine, for the purpose of taking or killing deer upon any inclosed land in the occupation of the owner of such deer, or

unlawfully and wilfully destroys any part of the fence of any land where deer are then kept

shall, on conviction before two Justices, be liable to pay a fine of \$500.

**511 Killing pigeons**

Whosoever unlawfully and wilfully kills, wounds, or takes, any house-dove, or pigeon, under circumstances not amounting to larceny at Common Law, shall, on conviction before two Justices, be liable to pay a fine of \$200.

**512 Taking fish in waters on private property**

Whosoever unlawfully and wilfully takes, or destroys, any fish in any water being private property, shall, on conviction before two Justices, be liable to pay the value of the fish taken or destroyed, in addition to a fine of ten dollars.

***Larceny of things attached to land***

**513 Stealing shrubs etc**

Whosoever steals, or destroys, or damages with intent to steal, the whole, or any part, of any tree, sapling, shrub, or plant, or any underwood shall, on conviction before two Justices, be liable to imprisonment for six months, or to pay a fine of \$500, or both.

**514 (Repealed)**

**515 Stealing etc live or dead fence etc**

Whosoever steals, or cuts, breaks, or throws down with intent to steal, any part of any live or dead fence, or any material set up, or used, as a fence, or any stile, or gate, or any part

thereof, respectively, shall, on conviction before two Justices, be liable to pay the value of the property stolen, or the amount of injury done, in addition to a fine of \$100.

**516 (Repealed)**

**517 Unlawful possession of trees, fences etc**

Whosoever, in whose possession the whole or any part of any tree, sapling, or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, wire, rail, stile, or gate, or any part thereof has been found, on being taken or summoned before two Justices fails to satisfy them that he came lawfully by the same, shall on conviction, before such Justices, be liable to pay the value of the property found, in addition to a fine of \$100.

**518 Stealing dead wood**

Whosoever steals, or destroys, or damages with intent to steal, any dead wood, lying on land in the occupation of another person shall, on conviction before two Justices, be liable to pay the value of the wood, in addition to a fine of \$100.

**519 (Repealed)**

**520 Stealing plants etc in gardens**

Whosoever steals, or destroys, or damages with intent to steal, any plant, root, fruit, or vegetable produce, growing in any garden, orchard, pleasure-ground, nursery-ground, hothouse, greenhouse, or conservatory, shall, on conviction before two Justices, be liable to imprisonment for six months, or to pay a fine of \$500, or both.

**521 Stealing plants etc not growing in gardens**

Whosoever steals, or destroys, or damages with intent to steal, any cultivated root, or plant, used for the food of man or beast, or for medicine, or for distilling, or dyeing, or for any manufacture, and growing in any inclosed land, not being a garden, orchard, pleasure-ground, or nursery-ground, shall, on conviction before two Justices be liable to pay a fine of \$200.

**521A Stealing of rock, stone etc**

Whosoever steals:

- (a) any rock or rocks,
- (b) any stone or stones, or
- (c) any gravel, soil, sand or clay,

that is or are in, on or under, or forms or form part of any land shall, on conviction before 2 Justices, be liable to imprisonment for 6 months, or to pay a fine of \$500, or both.

## ***Larceny of shipwrecked goods***

### **522 Possession of shipwrecked goods**

Whosoever in whose possession any article belonging to a vessel in distress, or wrecked, stranded, or cast on shore, has been found, on being summoned before two Justices, fails to satisfy them that he came lawfully by the same, shall be liable to imprisonment for six months, or to pay a fine of \$500, or both:

And such article shall, by the order of such Justices, be delivered to or for the use of the owner.

### **523 Offering shipwrecked goods for sale**

Whosoever offers for sale any article unlawfully taken, or reasonably suspected to have been so taken, from any vessel in distress, or wrecked, stranded, or cast on shore, and who, on being summoned before two Justices, fails to satisfy them that he came lawfully by such article, or received the same without knowing or having cause to suspect that it had been so taken as aforesaid, shall be liable to imprisonment for six months, or to pay a fine of \$500, or both.

And such article shall, by the order of such Justices, be delivered to or for the use of the owner upon payment of a reasonable reward, to be ascertained by them, to the person who seized the same.

### **524 Seizure of such goods**

Any person, to whom any article mentioned in section 523 is offered, or any officer of customs or police, may seize the same, and shall carry it to, or give notice of such seizure to, some Justice.

## ***Larceny from a public library, &c***

### **525 Stealing or damaging books etc in public library etc**

Whosoever steals, or removes, secretes, or damages with intent to steal, any book, print, manuscript, or other article, or any part thereof, kept for the purposes of reference, or exhibition, or of art, science, or literature, in any public library, or in any building belonging to the Queen, or to any university or college, or the council of any municipality, shall, on conviction before two Justices, be liable to imprisonment for one year, and to pay a fine of \$1,000 in addition to a fine equal to four times the value of the article stolen, or intended to have been stolen.

### **526 Term "Public Library"**

Every collection of books, prints, manuscripts, or similar articles, kept in any school-of-arts, or mechanics-institute, or in any building, or room, occupied or habitually used by the members of any association, or municipality, as a reading-room, or library, shall be



deemed a public library within the meaning of section 525.

### ***Unlawfully using vehicle or boat***

#### **526A Taking a conveyance without the consent of the owner**

(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, tractor, earth moving equipment, 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.

(2) The jurisdiction conferred on two justices by this section shall be exercisable only by a stipendiary magistrate.

#### **526B (Repealed)**

### ***Fraudulently appropriating or retaining property***

#### **527 Fraudulently appropriating or retaining property**

Whosoever:

fraudulently appropriates, to his own use, or that of another, any property belonging to another person, although not originally taken with any fraudulent intent, or

fraudulently retains any such property in order to procure a reward for its restoration,

shall, on conviction before two Justices, be liable to imprisonment for six months, or to pay a fine of \$500, or both.

### ***Obtaining money, &c, by false representation***

#### **527A Obtaining money etc by a wilfully false representation**

Any person who by any wilfully false representation obtains or attempts to obtain any money or valuable thing, or any benefit, from another person, shall be liable on conviction

before a stipendiary magistrate to imprisonment for 6 months or to a fine of \$400.

### ***Framing a false invoice***

#### **527B Framing a false invoice**

Any person who fraudulently prepares, causes to be prepared or produces an invoice, receipt or document containing a false statement, with intent to induce the belief that any thing was not stolen or otherwise unlawfully obtained or to prevent any thing from being seized on suspicion of being stolen or otherwise unlawfully obtained or from being produced in evidence concerning an alleged offence, shall be liable on conviction before a stipendiary magistrate to imprisonment for 3 months, or to a fine of \$200.

### ***Persons unlawfully in possession of property***

#### **527C Persons unlawfully in possession of property**

- (1) Any person who:
- (a) has any thing in his custody,
  - (b) has any thing in the custody of another person,
  - (c) has any thing in or on premises, whether belonging to or occupied by himself or not, or whether that thing is there for his own use or the use of another, or
  - (d) gives custody of any thing to a person who is not lawfully entitled to possession of the thing,

which thing may be reasonably suspected of being stolen or otherwise unlawfully obtained, shall be liable on conviction before a stipendiary magistrate to imprisonment for 6 months, or to a fine of \$500.

- (2) It is a sufficient defence to a prosecution for an offence under subsection (1) if the defendant satisfies the court that he had no reasonable grounds for suspecting that the thing referred to in the charge was stolen or otherwise unlawfully obtained.
- (3) In this section, ***premises*** includes any structure, building, vehicle, vessel, whether decked or undecked, or place, whether built upon or not, and any part thereof.

### ***Offering rewards for stolen property***

#### **528 Advertising reward for return of stolen property**

Whosoever:

advertises a reward for the return of any property stolen, or lost, and uses words purporting that no questions will be asked, or

makes use of words, in any advertisement, purporting that a reward will, without seizing or making any inquiry after the person producing the same, be given for any such property, or

promises, or offers, in any advertisement to return any money advanced upon, or paid for, any such property, or

publishes any such advertisement,

shall, on conviction before two Justices, be liable to pay a fine of \$500.

## **Receivers**

### **529 Receivers punishable summarily**

(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 \$2,000, 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.

### **530-545 (Repealed)**

## **(D1) BOGUS ADVERTISEMENTS**

### **545A Bogus advertisements**

(1) Any person who tenders for insertion or causes to be inserted in any newspaper any bogus advertisement, knowing the same to be bogus, shall, on conviction before two justices, be liable to imprisonment for three months or to pay a fine of \$200, or both.

(2) For the purposes of this section a bogus advertisement shall mean any advertisement or notice containing any material false statement or representation with respect to any birth, death, engagement, marriage, or employment, or with respect to any matter concerning any person other than the person who tenders the advertisement or causes it to be inserted, or concerning the property of such other person.

## **(D2) INTIMIDATION, &c**

### **545B Intimidation or annoyance by violence or otherwise**

(1) Whosoever:

(a) with a view to compel any other person to abstain from doing or to do any act

which such other person has a legal right to do or abstain from doing, or

- (b) in consequence of such other person having done any act which he had a legal right to do, or of his having abstained from doing any act which he had a legal right to abstain from doing,

wrongfully and without legal authority:

- (i) uses violence or intimidation to or toward such other person or his wife, child, or dependant, or does any injury to him or to his wife, child, or dependant, or
- (ii) follows such other person about from place to place, or
- (iii) hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof, or
- (iv) watches or besets the house or other place where such other person resides or works, or carries on business, or happens to be, or the approach to such house or place, or
- (v) follows such other person with two or more other persons in a disorderly manner in or through any street, road, or public place,

shall, on conviction before two justices, be liable to imprisonment for six months, or to a fine of \$500, or both.

(2) In this section:

**Intimidation** means the causing of a reasonable apprehension of injury to a person or to any member of his family or to any of his dependants, or of violence or damage to any person or property, and **intimidate** has a corresponding meaning, and

**Injury** includes any injury to a person in respect of his property, business, occupation, employment, or other source of income, and also includes any actionable wrong of any nature, and

**Watches or besets** includes attending at or near any house or place in such numbers or otherwise in such manner as is calculated to intimidate any person in that house or place, or to obstruct the approach thereto or egress therefrom, or to lead to a breach of the peace.

### **(D3) JOINING UNLAWFUL ASSEMBLIES, &c**

#### **545C Knowingly joining or continuing in an unlawful assembly**

- (1) Whosoever knowingly joins an unlawful assembly or continues in it shall be taken to be a member of that assembly, and shall, on conviction before a stipendiary magistrate, be liable to imprisonment for a term not exceeding six months or to a fine

not exceeding \$500, or both.

- (2) Whosoever being armed with any weapon or loaded arms, or with anything which used as a weapon of offence is likely to cause death or grievous bodily harm, is a member of an unlawful assembly, shall be liable, on conviction before a stipendiary magistrate, to imprisonment for a term not exceeding twelve months or to a fine not exceeding \$1,000, or both.
- (3) Any assembly of five or more persons whose common object is by means of intimidation or injury to compel any person to do what he is not legally bound to do or to abstain from doing what he is legally entitled to do, shall be deemed to be an unlawful assembly.

## **(D4) UNLAWFUL MAKING OR POSSESSION OF EXPLOSIVES**

### **545D Unlawful making or possession of explosives**

Whosoever being charged before two Justices with:

- (a) having made, or
- (b) knowingly having in his possession or under his control,

any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he did not make such substance, or did not have such substance in his possession or under his control, for a lawful purpose, does not satisfy such Justices that he made the explosive substance, or had such substance in his possession or under his control, for a lawful purpose, shall be liable to imprisonment for a term not exceeding twelve months, or to a fine not exceeding \$1,000, or both.

## **(E) ABETTORS**

### **546 Abetting or procuring**

Whosoever, where any offence is by this Act punishable on summary conviction, aids, abets, counsels, or procures the commission of such offence, shall, on conviction before two Justices, be guilty in the same degree, and liable to the same forfeiture, and punishment, as the principal offender.

## **(E1) CONSORTING**

### **546A Consorting with convicted persons**

Any person who habitually consorts with persons who have been convicted of indictable offences, if he knows that the persons have been convicted of indictable offences, shall be liable on conviction before a stipendiary magistrate to imprisonment for 6 months, or to a fine of \$400.

## **(E2) INTENT TO REPEAT INDICTABLE OFFENCE**

### **546B Convicted persons found with intent to commit offence**

- (1) Any person who, having been convicted of an indictable offence, is found in or near any premises or public place with intent to commit an indictable offence shall be liable on conviction before a stipendiary magistrate to imprisonment for 6 months, or to a fine of \$400.
- (2) In this section, **premises** includes any structure, building, vehicle, vessel, whether decked or undecked, or place, whether built upon or not, and any part thereof.

## **(E3) RESISTING, &c, POLICE**

### **546C Resisting etc police**

Any person who resists or hinders or incites any person to assault, resist or hinder a member of the police force in the execution of his duty shall be liable on conviction before a stipendiary magistrate to imprisonment for 3 months, or to a fine of \$200.

## **(F) APPREHENDED VIOLENCE OR INJURY**

### **547 Apprehended violence or injury—recognizance to keep the peace**

- (1) In every case of apprehended violence by any person to the person of another, or of his wife or child, or of apprehended injury to his property, any Justice may on the complaint of the person apprehending such violence or injury, issue a summons or warrant as in any case of apprehended violence to the person, where at present security is required to keep the peace—and any Justice may examine the complainant, and defendant, and their witnesses, as to the truth of the matter alleged, and, if it appears that the apprehension alleged is reasonable, but not otherwise, the Justice may require the defendant to enter into a recognizance to keep the peace, with or without sureties, for a term not exceeding six months, and, in default of its being entered into forthwith, the defendant may be imprisoned for three months, unless such recognizance is sooner entered into.
- (2) If in any such case the defendant has spoken any offensive or defamatory words to or of the complainant, on an occasion when a breach of the peace might have been induced thereby, he may be required by the Justice to enter into a recognizance, with or without sureties, to be of good behaviour for a term not exceeding twelve months, and, in default of its being entered into forthwith, the defendant may be imprisoned for six months, unless such recognizance is sooner entered into.
- (3) The Justice, in every such case, may award costs to either complainant or defendant, to be recovered as costs in summary jurisdiction cases are recoverable.

**547AA Apprehended domestic violence orders**

- (1) Where, upon complaint made in accordance with subsection (2), a court of summary jurisdiction is satisfied on the balance of probabilities that a person apprehends:
- (a) the commission by another person of a domestic violence offence upon the person, or
  - (b) the commission by:
    - (i) another person who is or has been married to the person, or
    - (ii) another person who is living with or has lived with the person as his wife or her husband, as the case may be, on a bona fide domestic basis although not married to him or her, as the case may be,
- or conduct consisting of harassment or molestation of the person, being conduct which falls short of actual or threatened violence but which, in the opinion of the court, is sufficient to warrant the making of an order under this section,
- and is satisfied on the balance of probabilities that the apprehension is reasonable, the court may make an order imposing, for a period not exceeding 6 months, such restrictions or prohibitions on the behaviour of the defendant as appear necessary or desirable.

- (1A) In this section, ***aggrieved spouse of the defendant***, in relation to a complaint under this section or an order made upon such a complaint, means the person whose apprehension concerning the commission of a domestic violence offence or conduct referred to in subsection (1) (b) is the subject of the complaint.
- (2) A complaint under this section shall be made in the manner prescribed by regulations made under subsection (16) and may be made by:
- (a) the aggrieved spouse of the defendant, or
  - (b) a member of the police force.
- (3) Without limiting the generality of subsection (1), an order made under this section may do all or any of the following things:
- (a) prohibit or restrict approaches by the defendant to the aggrieved spouse of the defendant,
  - (b) prohibit or restrict access by the defendant to any specified premises occupied by, any specified place of work of, or any other specified premises or place frequented by, the aggrieved spouse of the defendant, whether or not the defendant has a legal or equitable interest in the premises or place,
  - (c) prohibit or restrict specified behaviour by the defendant which might affect the

aggrieved spouse of the defendant.

- (4) Before making an order under this section which prohibits or restricts access by a person to premises or a place in which the defendant resides, the court shall consider the accommodation needs of all relevant parties and the effect of making such an order on any children.
- (5) Where a person stands charged before a court of summary jurisdiction with an offence which appears to the court to be a domestic violence offence, the court shall enquire whether a complaint under this section has been made or is to be made either by a member of the police force or the person upon whom the domestic violence offence is alleged to have been committed and, where such a complaint has been made or is made, the court may deal with the complaint forthwith.
- (6) An order under this section may, if in all the circumstances it appears to the court to be necessary or appropriate, be made in the absence of the defendant.
- (7) A person against whom an order has been made under this section and who:
  - (a) has been served personally with a copy of a record of the order made in the form and in the manner prescribed by regulations made under subsection (16), and
  - (b) after having been so served, knowingly fails to comply with a restriction or prohibition specified in the order so served,shall be guilty of an offence and liable on conviction before a stipendiary magistrate to imprisonment for 6 months, or to a fine of \$2,000, or both.
- (8) Where a member of the police force believes on reasonable grounds that a person has committed an offence under subsection (7), the member of the police force may, without warrant, arrest and detain the person.
- (9) A person arrested and detained as referred to in subsection (8) shall be brought as soon as practicable before a stipendiary magistrate to be dealt with for the offence.
- (10) Where an order has been made under this section:
  - (a) the complainant,
  - (b) where the complainant was a member of the police force—the aggrieved spouse of the defendant, or
  - (c) the defendant,may at any time apply to a court of summary jurisdiction for variation or revocation of the order and the court may, if satisfied that in all the circumstances it is proper to do so, vary or revoke the order by a further order.



- (11) Where a complaint or order is made under this section or an order so made is varied or revoked, the clerk of the court at which the complaint is made or by which the order is made, varied or revoked shall forward a copy of the complaint, order, variation or revocation, as the case may be, to the Commissioner of Police and, where the complaint is made by a member of the police force, to the aggrieved spouse of the defendant.
- (12) Upon a complaint under this section, the court may award costs to the complainant or the defendant, to be recovered as costs in summary jurisdiction cases are recoverable.
- (13) Nothing in this section prevents or restricts the application of section 547 in relation to cases to which this section may apply.
- (14) Where a complaint has been made under this section:
- (a) a Justice may issue a summons for the appearance of the defendant or (except in the case of a complaint relating exclusively to the apprehension by a person of conduct referred to in subsection (1) (b)) a warrant for the arrest of the defendant as if the complaint alleged the commission of an offence, and
  - (b) the *Bail Act 1978* applies to and in respect of the defendant as if:
    - (i) where the defendant is arrested pursuant to a warrant issued upon the complaint or first appears before a court in answer to a summons so issued, the defendant were an accused person charged with an offence, and
    - (ii) proceedings in respect of the complaint or an order made under this section upon the complaint were proceedings in respect of an offence.
- (15) Where an order has been made under this section:
- (a) the order shall be deemed to be an order whereby the defendant is punished within the meaning of section 122 of the *Justices Act 1902*, and
  - (b) in the application of section 123 of that Act and the *Bail Act 1978* to and in respect of the defendant, the defendant shall be deemed to be an accused person who, by reason of the restrictions or prohibitions imposed by the order on the behaviour of the defendant, is in custody.
- (16) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that is required or permitted to be prescribed under this section or that is necessary or convenient to be prescribed for carrying out or giving effect to this section.

## **(G) FALSE STATEMENT RESPECTING BIRTHS, DEATHS, OR MARRIAGES**

### **547A False statements respecting births, deaths and marriages**

- (1) Every person who wilfully gives to any district registrar, or assistant district registrar, appointed under any Act providing for the registration of births or deaths, any false information concerning any birth or death, or the cause of any death, or who wilfully makes any false declaration under or for the purpose of any Act relating to the registration of births or deaths, shall on conviction before two justices be liable to imprisonment for a term not exceeding six months, or to pay a fine not exceeding one hundred dollars.
- (2) Any person who wilfully makes any false statement before any minister of religion, or district registrar, authorised to celebrate marriages, or before any person authorised to give his written consent to the marriage of any minor, for the purpose of procuring the celebration of any marriage, or any person who induces or endeavours to induce any person to celebrate a marriage between parties where such first-mentioned person knows that one of such parties is under age, and that the written consent required by law has not previously been obtained, shall upon conviction before two justices be liable to imprisonment for a term not exceeding six months, or to pay a fine not exceeding one hundred dollars.

#### **Editorial note—**

See [Marriage Act 1961](#) (Commonwealth), sections 96-98.

- (3) Proceedings for an offence against this section may be commenced within one year after the date of the commission of the offence, and subject to the permission of the Attorney-General.

## **(H) PUBLIC MISCHIEF**

### **547B Public mischief**

- (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.
- (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 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.

## **(I) PRYING**

### **547C Peeping or prying**

Any person who is in, on or near a building without reasonable cause with intent to peep or pry upon another person shall be liable on conviction before a stipendiary magistrate to imprisonment for 3 months, or to a fine of \$200.

## **Chapter 4 Procedure, &c, before Justices**

### ***Alternative methods of procedure***

#### **548 Alternative methods of proceeding before Justices**

Where by this Act a person is made liable to imprisonment, or to pay a sum of money, on conviction before Justices, such person may be proceeded against and convicted in a summary way under this Act, so far as it is applicable, or under any Act in force for the time being regulating proceedings on summary convictions, and every provision contained in any such Act shall be applicable to such proceedings as if the same were incorporated in this Act.

#### **548A (Repealed)**

### ***Enforcing appearance***

#### **549 Offenders may be summoned under existing Acts**

The several provisions in any Act regulating summary proceedings before Justices, in force for the time being, respecting the issue of summonses and warrants, shall be applicable for the purpose of compelling the appearance of a person charged with an offence under this Act before any Justice, whether a Police or Stipendiary Magistrate or not, notwithstanding any power of apprehension, or arrest without warrant, given by this Act.

### ***Certain averments***

#### **550 Where not necessary to allege particular ownership**

In any proceeding before Justices in respect of any of the matters mentioned in the Fourth Schedule, it shall not be necessary to allege that the instrument, document, building, chattel, or other matter or thing, in respect of which the offence was committed, is the property of any person.

#### **551 General averment of intent to defraud or injure**

In any proceeding before Justices where it is necessary to allege an intent to defraud, or to injure, it shall be sufficient to allege that the accused did the act with such intent, without alleging an intent to defraud or to injure any particular person.

**552 (Repealed)**

***Reduction of sentence below fixed term***

**553 Sentence may be for less term or fine of less amount than that fixed**

Where by any Act an offender is for any offence made liable to imprisonment for a fixed term or to a fine of any fixed amount the Justice or Justices may nevertheless pass a sentence of imprisonment of less duration or inflict a fine of less amount.

***Sentence to hard labour***

**554 Hard or light labour**

- (1) Wherever imprisonment is awarded by a Court of summary jurisdiction for an offence punishable under this, or any other Act, the Court may direct that the offender be imprisoned in any gaol, with either hard labour or light labour.
- (2) The said Court may, in addition to, or in substitution for any sentence imposing a fine or a term of imprisonment, require the offender to enter into a recognizance, with or without a surety or sureties to be of good behaviour for a term which shall not be less than twelve months or more than three years, and in default of entering into such recognizance, may direct that the offender be imprisoned, or further imprisoned, for a period not exceeding three months with either hard labour or light labour, unless such recognizance is sooner entered into:

Provided that in no case shall the total term of such imprisonment and further imprisonment together exceed twelve months.

- (3) Subject to subsection (8), where a person is convicted by a Court (other than the Supreme Court) exercising summary jurisdiction of an offence punishable under this or any other Act, the Court may, on the conviction or at any time thereafter, upon notice given to the offender, direct that a sum not exceeding \$1,000 be paid to any aggrieved person, or to any aggrieved persons in such proportions as may be specified in the direction, by way of compensation for any injury or loss sustained through, or by reason of, the offence.
- (4) A direction under subsection (3) that a sum be paid to an aggrieved person may be given by a Court on its own motion or upon application being made to it by or on behalf of the aggrieved person.
- (5) A sum directed by a Court under subsection (3) to be paid by an offender to an aggrieved person shall be paid by the offender to the clerk of the Court, to be paid by that clerk to the aggrieved person.
- (6) A direction under subsection (3) shall be deemed to be a conviction or order whereby a sum of money is adjudged to be paid within the meaning of the [Justices Act 1902](#).

- (7) A direction given under subsection (3) shall specify the sum, if any, to be paid by way of compensation for injury and the sum, if any, to be paid by way of compensation for loss.
- (8) A Court shall not give a direction under subsection (3) in respect of the conviction of a person for an offence if the aggregate of the sum specified in the direction and of all sums:
- (a) specified in a direction previously given under section 437 or subsection (3):
    - (i) on the conviction of any other person for that offence, or
    - (ii) on the conviction of that or any other person for a related offence, or
  - (b) stated in a certificate previously granted under section 4 of the *Criminal Injuries Compensation Act 1967*:
    - (i) on the acquittal of, or dismissal of an information against, any other person, being a certificate granted in respect of that offence, or
    - (ii) on the acquittal of, or dismissal of an information against, that or any other person, being a certificate granted in respect of a related offence,
- exceeds \$1,000.
- (9) For the purposes of subsection (8), an offence is related to another offence if:
- (a) both of the offences were committed against the same person, and
  - (b) in the opinion of the Court, both of the offences were committed at approximately the same time or were, for any other reason, related to each other.
- (10) In determining whether or not to give a direction under subsection (3) and in determining the sum to be paid under such a direction, the Court shall have regard to:
- (a) any behaviour of the aggrieved person which directly or indirectly contributed to the injury or loss sustained by the aggrieved person,
  - (b) whether the aggrieved person is or was a relative of the convicted person or was, at the time of the commission of the offence, living with the convicted person as his wife or her husband or as a member of the convicted person's household,
  - (c) the provisions of the *Criminal Injuries Compensation Act 1967*, and
  - (d) such other circumstances as it considers relevant.
- (11) In this section:
- compensation for injury** includes compensation for:

- (a) actual and future expenses,
  - (b) actual loss of earnings, and
  - (c) loss of future earnings or a capacity to earn,
- sustained as a direct consequence of injury.

**compensation for loss** does not include compensation for injury.

**injury** means bodily harm, and includes pregnancy, mental shock and nervous shock.

### ***Penalties, &c—application***

#### **555 Application of forfeitures and penalties**

Every sum forfeited for the amount of any injury shall be assessed by the convicting Justices, and paid to the party aggrieved, except where he is unknown, in which case such sum shall be applied in the same manner as a penalty:

Every sum imposed as a penalty by Justices, whether in addition to such amount, or otherwise, shall be applied as directed by the Acts in force for the time being providing for the application of penalties:

Provided that, where several persons have joined in the commission of the same offence, and on conviction are severally adjudged to forfeit a sum equivalent to the amount of the injury done, no greater sum shall be paid to the party aggrieved than such amount, and the remaining sum or sums forfeited shall be applied, in the same manner as any penalty imposed by Justices is applied.

### ***Summary conviction, &c, a bar***

#### **556 Summary conviction a bar to further proceedings**

- (1) Where any person, summarily convicted under this Act, pays the sum or sums adjudged to be paid, together with costs, or receives a remission thereof from the Crown, or suffers the imprisonment provided for non-payment thereof, or the imprisonment adjudged in the first instance, he shall not be liable:
  - (a) to any other criminal proceedings for the same cause,
  - (b) to any civil proceedings for the same cause at the suit of the person laying the information upon which he was summarily convicted under this Act.
- (2) Any person against whom civil proceedings have been taken in respect of any act or thing done or omitted to be done by him which is an offence of which he might have been convicted summarily without consent under this Act shall be released from all criminal proceedings for the same cause on the information of the person by whom the civil proceedings were taken.

## **Part 15 Conditional release of offenders**

### **556A Power to permit release of offenders**

- (1) Where any person is charged before any court with an offence punishable by such court, and the court thinks that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, or to any other matter which the court thinks it proper to consider, it is inexpedient to inflict any punishment, or any other than a nominal punishment, or that it is expedient to release the offender on probation, the court may, without proceeding to conviction, make an order either:
  - (a) dismissing the charge, or
  - (b) discharging the offender conditionally on his entering into a recognizance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order.
- (1A) A recognizance mentioned in subsection (1) shall be conditioned upon and subject to such terms and conditions as the court shall order.
- (2) Where an order is made under this section the order shall, for the purpose of re-vesting or restoring stolen property, and of enabling the court to make orders as to the restitution or delivery of property to the owner, and as to the payment of money upon or in connection with such restitution or delivery, and for the purpose of the exercise of any power conferred by section 437 or section 554 (3), have the like effect as a conviction.
- (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.

### **556B Proceedings on breach of condition of recognizance**

If the court before which an offender is bound by recognizance (whether entered into for the purposes of section 556A or otherwise) to appear for conviction or sentence, or any court of like jurisdiction to that court, is satisfied by information on oath that the offender has failed to observe any condition of his recognizance, it may issue a warrant for his apprehension and upon his apprehension, on being satisfied that he has failed to observe any condition of his recognizance, may convict and sentence him, or sentence him, as the case may require, for the offence with which he was originally charged as if he had not been released on recognizance.

### **557 (Repealed)**

### **558 Deferring sentence**

- (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.
- (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.

### **559-560 (Repealed)**

#### **560A Probation officers, regulations etc**

- (1) The Governor may appoint probation officers for the purposes of this Act, and may make regulations relating to the supervision of offenders by such probation officers.
- (2) Such regulations shall:
  - (i) be published in the Gazette,
  - (ii) take effect from the date of publication, or from a later date to be specified in such regulations,
  - (iii) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days



after the commencement of the next session. If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House, disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

**Editorial note—**

See [Interpretation Act 1897](#), sec 41.

**561, 562 (Repealed)**

**Part 16 Miscellaneous enactments**

**563 (Repealed)**

**564 No Court fees to be taken in criminal cases**

It shall not be lawful to receive any Court fees, for the issuing of process on behalf of a person charged with felony, or misdemeanour, in any Court, or before any Justice, nor to receive a fee from any such person, for taking a recognizance, or issuing any writ, or recording any appearance, or plea to an indictment, or discharging any recognizance.

**Editorial note—**

So much of section as relates to proceedings before any Justice repealed: Act No 14, 1904, Sch.

**565 Power of Courts to bring prisoners before them**

Every Court or Judge, for the purposes of any trial or prosecution, shall have power, by order in writing directed to any gaoler, to cause any prisoner to be brought before such Court or Judge, under secure conduct, in order to be tried, or examined, or to give evidence, before such Court or Judge, or before any other court, or any Justice, and immediately after such prisoner's trial, or examination, or his having so given evidence, to be returned to his former custody:

Provided that nothing in this section shall affect the power of a Court of Gaol Delivery, sitting for the delivery of a gaol, to cause any prisoner therein to be brought before it for any purpose without order in writing.

**565A [Bail Act 1978](#) to prevail**

The [Bail Act 1978](#) shall prevail to the extent of any inconsistency between that Act and this Act.

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

Where a person bound by recognizance, or served with a subpoena, to attend as a witness in any Court at a trial, who has failed to appear when called in open Court, either at such trial, or on the day appointed for such trial, has been captured under a warrant issued by such Court, bail may be taken before any Justice for his appearance at the trial.

**567 Supreme Court rules may prescribe forms of indictments etc**

Without limiting the rule-making powers conferred by the [Supreme Court Act 1970](#) rules may from time to time be made under that Act framing and prescribing forms of indictments, records, informations, depositions, convictions, warrants, recognizances, and proceedings, in all Courts, and before all Justices, in respect of any of the offences and matters mentioned in this Act, and every such form, so prescribed, shall thereafter be sufficient for the purpose, and be deemed sufficiently to state the offence, or matter, for, or in respect of which, it is framed.

**567A Counts for felonies and misdemeanours in one indictment**

An indictment may contain counts for felonies or misdemeanours or both.

**568-571 (Repealed)**

**572 Governor may appoint persons to prosecute in District Court**

The Governor may appoint a person or persons by whom and in whose name all crimes, misdemeanours, and offences cognizable in the District Court may be prosecuted:

Provided that nothing herein contained shall be construed to limit or control any authority vested by law in the Attorney-General.

**573 Provision for wife where husband convicted of aggravated assault**

In every case of aggravated assault by a husband on his wife, where a declaration is made under section 60, to the effect therein mentioned, any Judge may at any time make an order or orders, which may be varied by any Judge from time to time, as to the legal custody of the children of the marriage, and also as to the payment by the husband to the wife, or some person for her use, after the expiration of his sentence, of a weekly or monthly sum for her support.

Every such last-mentioned order may be enforced in the same manner as any order under the [Maintenance Act 1964](#).

**574 Prosecutions for blasphemy**

No person shall be liable to prosecution in respect of any publication by him orally, or otherwise, of words or matter charged as blasphemous, where the same is by way of argument, or statement, and not for the purpose of scoffing or reviling, nor of violating public decency, nor in any manner tending to a breach of the peace.

**574A Information etc for obscene or blasphemous libel**

(1) It shall not be necessary to set out in an information, indictment or criminal proceeding instituted against the publisher of an obscene or blasphemous libel the obscene or blasphemous passages.

- (2) It shall be sufficient to deposit the book, newspaper or other document containing the alleged libel with the information, indictment or criminal proceedings, together with particulars showing precisely, by reference to pages, columns and lines, in what part of the book, newspaper or other document the alleged libel is to be found.
- (3) The particulars under subsection (2) shall be deemed to form part of the record.
- (4) All proceedings may be taken thereon as though the passages complained of had been set out in the information, indictment or proceeding.

#### **574B Prevention of suicide**

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

#### **575 Misappropriation of corn etc by servants**

No servant who, contrary to the orders of his master, takes any food being his master's property for the purpose of its being given to any animal in the possession of his master, shall by reason thereof be guilty of an indictable offence, but shall be liable to be dealt with under any Act for the time being in force, regulating the duties and liabilities of masters and servants.

#### **576 Indecent exposure of the person**

Every indecent exposure of the person which is punishable at Common Law or by Statute if seen by two or more persons, shall be equally an offence and punishable if such exposure was, or could have been, seen by one person.

#### **577 Change of venue**

In any criminal proceeding, if it is made to appear to the Court:

- (a) that a fair or unprejudiced trial cannot otherwise be had, or
- (b) that for any other reason it is expedient so to do,

the Supreme Court may change the venue, and direct the trial to be had in such other district, or at such particular place, as the Court thinks fit, and may for that purpose make all such orders as justice appears to require.

#### **578 Publication of evidence may be forbidden in certain cases**

- (1) Any Judge presiding at the trial of any person for an offence under section 61B, 61C, 61D, 61E, 63, 65, 66, 66A, 66B, 66C, 66D, 67, 68, 71, 72, 72A, 73, 74, 76, 76A, 78A, 78B, 78H, 78I, 78K, 78L, 78M, 78N, 78O, 78Q, 79, 80, 81, 81A, 81B, 86, 87, 89, 90, 91A or 91B or an offence of attempting, or of conspiracy or incitement, to commit an offence under any of those sections may at any stage of the trial and from time to

time make an order forbidding publication of the evidence therein or any report or account of that evidence either as to the whole or portions thereof:

Provided that if the accused or counsel for the Crown indicates to the Judge that it is desired that any particular matter given in evidence should be available for publication, no such order shall be made in respect of that matter.

(1A) (Repealed)

(2) Any person who commits a breach of an order made under this section shall, on conviction before two Justices, be liable to a penalty of two thousand dollars.

(3) The provisions of this section are subject to any Act or law under which evidence relating to a child under the age of 18 years, or a report or account of that evidence, may not be published.

### **579 Evidence of proceedings dealt with by way of recognizance after 15 years**

(1) Where, following the conviction of any person for an offence or a finding that a charge of an offence has been proved against any person, whether the conviction or finding was before or after the commencement of the *Crimes (Amendment) Act 1961*:

(a) sentence in respect of the conviction was suspended or deferred upon the person entering into a recognizance or, in substitution for sentence in respect of the conviction, the person was required to enter into a recognizance, or no conviction in respect of the finding was made and the person was discharged conditionally on his entering into a recognizance, and

(b) a period of fifteen years has elapsed since the recognizance was entered into:

(i) without the recognizance having been forfeited during that period or a court having found during that period that the person failed to observe any condition of the recognizance, and

(ii) without the person having, during that period, been convicted of an indictable offence on indictment or otherwise or of any other offence punishable by imprisonment (otherwise than under section 82 of the *Justices Act 1902* as amended by subsequent Acts) or without a finding during that period that a charge of such an indictable or other offence has been proved against the person,

the conviction or finding shall, where that period expired before the commencement of the *Crimes (Amendment) Act 1961*, as on and from that commencement, or, where that period expires or has expired after that commencement, as on and from the expiration of that period:

(c) be disregarded for all purposes whatsoever, and

(d) without prejudice to the generality of paragraph (c), be inadmissible in any criminal, civil or other legal proceedings as being no longer of any legal force or effect.

Without prejudice to the generality of the foregoing provisions of this section, any question asked of or concerning that person in or in relation to any criminal, civil or other legal proceedings otherwise than by his counsel, attorney or agent or other person acting on his behalf may be answered as if the conviction or finding had never taken place or the recognizance had never been entered into.

(2) Notwithstanding the provisions of subsection (1), where in any criminal, civil or other legal proceedings the person first referred to in that subsection, by himself, his counsel, attorney or agent or other person acting on his behalf, otherwise than in answer to a question that can, in accordance with the last paragraph of that subsection, be answered in the negative, makes an assertion that denies the fact that the conviction or finding took place or that the recognizance was entered into, then the conviction, finding or recognizance is admissible:

(a) in those proceedings, as to the character, credit or reputation of the person so referred to,

(b) in any prosecution for perjury or false swearing founded on the assertion.

The non-disclosure of the conviction, finding or recognizance in the making or giving of a statement or evidence as to the good character, credit or reputation of the person so referred to shall not of itself be taken, for the purposes of this subsection, to mean that the statement or evidence contains such an assertion.

- (3) In this section **legal proceedings** includes any application for a licence, registration, authority, permit or the like under any statute.
- (4) This section does not affect the operation of section 55 of the [Defamation Act 1974](#), or the operation of section 23 of the [Evidence Act 1898](#), for the purposes of section 55 of the [Defamation Act 1974](#).

### **580 Certain charges not to be brought at common law**

A person may not be charged with any common law offence in respect of any act committed upon or in relation to another person, being an act which could, but for the amendment of sections 79 and 80 and the repeal of sections 81, 81A and 81B by the [Crimes \(Amendment\) Act 1984](#), have been the subject of a charge for an offence under any of those sections.

## **First Schedule**

### **Repeal of Acts**

<b>Reference to Act</b>	<b>Subject or short title</b>	<b>Extent of repeal</b>
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4 Vic No 22	Administration of Justice	So much of s 10 as relates to appointment of Crown Prosecutor at Quarter Sessions, s 12, and so much of s 15 as relates to criminal proceedings.
7 Vic No 16	Deeds Registration	Section 28.
11 & 12 Vic, c 42, adopted by 14 Vic No 43.	Duties of Justices (Indictable Offences Act).	Section 17.
13 Vic No 16	Law of Evidence	So much of s 5 as is hitherto unrepealed.
13 Vic No 18	Deodands Abolition	Sections 1 and 3.
14 Vic No 43	Imperial Acts Adoption and Application.	Section 16.
16 Vic No 1	Acts Shortening Act	Section 13.
16 Vic No 14	Law of Evidence Amendment.	Section 10 and so much of s 11 as is hitherto unrepealed.
17 Vic No 39	<i>"The Justices Act Amendment Act of 1853"</i> .	Section 13.
22 Vic No 7	Law of Evidence Further Amendment.	Section 10.
22 Vic No 12	Acts Shortening Act	So much of section 7 as relates to criminal pleadings and proceedings, and section 10.
22 Vic No 18	<i>"District Courts Act of 1885"</i> .	Section 25.
23 Vic No 1	Quarter Sessions Chairman.	The whole.
24 Vic No 6	Common Law Procedure Act Extension.	Sections 1 and 2 so far as they relate to criminal trials.
30 Vic No 9	<i>"District Courts Amendment Act of 1866"</i> .	All hitherto unrepealed, except so far as it relates to District Courts.
31 Vic No 25	<i>"Treason Felony Act of 1868"</i> .	The whole.

46 Vic No 17	"Criminal Law Amendment Act".	All hitherto unrepealed, except s 295, from the words "And every solemn declaration" to the end of the section; ss 336 to 340 inclusive; the last clause of s 342; s 343; ss 346, 347; so much of s 359 as relates to the custody of records by the Prothonotary; s 434; s 436; ss 440 to 444 inclusive; the last clause of s 445; ss 453, 454, 455; so much of s 459 as relates to Courts of Petty Sessions; s 471; and the Seventh Schedule.
52 Vic No 6	<i>"Criminal Law Amendment Act of 1888"</i> .	The whole, except s 2.
55 Vic No 5	<i>"Criminal Law and Evidence Amendment Act of 1891"</i> .	All hitherto unrepealed, except ss 17, 23, 24, 26, and 34, and so much of s 35 as relates to 40 Vic No 14.
57 Vic No 23	<i>"First Offenders Probation Act of 1894"</i> .	The whole.
No 11, 1898	<i>"Evidence Act 1898"</i>	Sections 7, 27, 31, 37, 38, 39, 40, 41, and 48.
No 12, 1898	"Evidence (Penalties) Act".	The whole.
No 30, 1898	<i>"Accused Persons Evidence Act of 1898"</i> .	The whole.

## 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, 344A, 345 to 347 inclusive, 351, Parts 10 to 13 inclusive, sections 547 to 556B inclusive, section 558 and Part 16.

## Third Schedule

(Section 358)

### Form No 1

*Discharge of persons committed for trial*

Certificate of Attorney-General

This is to certify that I decline to file any information against A.B., a prisoner now in the Gaol at \_\_\_\_\_, under the warrant of R.W., Esquire, justice of the peace, upon a charge of [stating same].

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

To their Honors the Judges  
of the Supreme Court.



L.M.,  
Attorney-General.

**Form No 2**

*Warrant thereupon*

Supreme Court of New South Wales.

Whereas A.B. is detained in your custody under the warrant of R.W., Esquire, justice of the peace, upon a charge of [as in certificate], and it has been certified to the judges of this Court by Her Majesty's Attorney-General that he declines to file any information against the said A.B. for the said offence, you are therefore hereby required forthwith to discharge the said A.B. from your custody under the said warrant.

Given under my hand this          day of          , 18          .

To the Sheriff and to the keeper of  
H.M.'s Gaol at          .



S.M.,  
A Judge of the Supreme Court.

**Form No 3**

*Discharge of persons under remand*

Certificate of Attorney-General

This is to certify that I decline to proceed further upon an indictment filed against A.B., a prisoner now in the gaol at          , under the order of His Honor          , a Judge of the Supreme Court, or A.M., Esquire, Chairman of Quarter Sessions, upon a charge of [stating same].

Given under my hand this          day of          , 18          .

To their Honors the Judges  
of the Supreme Court.



L.M.,  
Attorney-General.

**Form No 4**

*Warrant thereupon*

Supreme Court of New South Wales.

Whereas A.B. is detained in your custody under the order of His Honor          , a Judge of the Supreme Court, or A.M., Esquire, Chairman of Quarter Sessions, upon a charge of [as in certificate], and it has been certified to the judges of this Court by Her Majesty's Attorney-General that he declines to proceed further upon an indictment filed against the said A.B. for the said offence, you are therefore hereby required forthwith to discharge the said A.B. from your custody under the said order.

Given under my hand this          day of          , 18          .

To the Sheriff and to the keeper of  
H.M.'s Gaol at          .



S.M.,  
A Judge of the Supreme Court.

**Fourth Schedule**

(Sections 382, 550)

***As to allegation of property***



- (1)** Stealing or destroying or injuring any testamentary instrument, or any document of any Court, or anything fixed or growing in any square or street or place dedicated to public use or ornament.
- (2)** Any offence committed in or respecting a place of Divine Worship or respecting property in any public library or building.
- (3)** Any matter or thing mentioned in any of the following sections of this Act, viz:—Sections 199, 209, 228, 229, 242, 243, 244, 535.

## Fifth Schedule

(Section 406)

### *Form of deposition*

The deposition of A.B., a person now dangerously ill, taken before the undersigned Justice at S. in the County (or Police District) of \_\_\_\_\_ which said A.B. being duly sworn saith as follows:

[The witness's statement is to be in the first person—and it ought to be reasonably full as to all material facts. The witness's signature or mark, if from any cause unable to write, should be added. *Then will follow this jurat and certificate.*]

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ 18 .

And I hereby certify that I have taken this deposition under the provisions of the *Crimes Act 1899*—because it has been made to appear to me that the deponent is dangerously ill, and that his evidence, if not forthwith taken, would probably be lost.

[*Signature of Justice*]

[If the deposition be by Solemn Affirmation, or Declaration, the form will be varied accordingly.]

## Sixth, Seventh Schedules (Repealed)

## Eighth Schedule

(Section 463)

### *Warrant for arrest of person whose licence has been revoked*

To the Commissioner of Police and all other Peace Officers in the State of New South Wales—  
Whereas A.B. was on the \_\_\_\_\_ day of \_\_\_\_\_ convicted of (the indictable offence of \_\_\_\_\_ or \_\_\_\_\_ and offence punishable upon summary conviction) and the said offence was committed within the said State. And  
Whereas for his said offence the said A.B. was sentenced to be imprisoned for the space of \_\_\_\_\_ thereafter. And  
Whereas the said A.B. was afterwards released under licence from the gaol at \_\_\_\_\_ in the said State. And  
Whereas the said licence has been revoked. These are therefore to command you to take the said A.B. and (him or her) safely to convey to the said gaol and deliver (him or her) to the keeper thereof together with this precept. And I do hereby command you, the said keeper of the said gaol to receive the said A.B. into your custody in the said gaol there to undergo the remainder of (his or her) said sentence.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, in the year of Our Lord one thousand nine hundred and \_\_\_\_\_ at \_\_\_\_\_ in the said State.

C.D. (L.S.)  
A Justice of the Peace for the State of New South Wales.

## Ninth Schedule

(Section 447B)

*Form of list of other indictable offences charged*

Police Department,  
Criminal Investigation Branch,

Sydney (or.....  
..... Police Station.)

TO .....

indicted on a charge of ..... for trial at the sittings of the Supreme Court at ..... (or, as the case may be at ..... Quarter Sessions) commencing on ....., 19 ..

*Memorandum for Accused's Information*

- (1) The list on the back hereof gives particulars of ..... other alleged offences with which you are charged.
- (2) If you are found guilty of the charge of ..... first mentioned above, you may before sentence is passed, if the presiding Judge so decides and counsel for the Crown consents, admit all or any of the other offences set out on the back hereof and ask that any of those offences that you have admitted be taken into account by the presiding Judge in passing sentence upon you.
- (3) If you are found guilty and the presiding Judge does take any of the other offences that you have admitted into account, the maximum sentence that may be imposed upon you will nevertheless be the maximum sentence for the offence of ..... first mentioned above.
- (4) No further proceedings may be taken against you in respect of the other offences taken into account unless the decision of the Court in respect of the offence of ..... first mentioned above is set aside or quashed.
- (5) If proceedings are taken in the circumstances mentioned in (4) or if the presiding Judge does not for any reason take any one or more of the other offences that you have admitted into account, your admission cannot be used as evidence against you in any proceedings taken in the circumstances mentioned or taken in respect of the offences not taken into account.

Signature of member of the police force .....

Date .....

Signature of accused acknowledging receipt of copy of this document .....

Date .....

*Certificate*

In sentencing ..... for the offence of ..... this day, I have taken into account the following offences alleged against and admitted by him, that is to say, the offences numbered ..... in the list on the back hereof.

Dated this        day of        , 19 ..

.....

A Judge of the Supreme Court or a Chairman of Quarter Sessions.

[BACK OF FORM]

Number	Place where offence was committed	Date of offence	Offence(s) (Brief description)	Whether or not committed for trial? Yes or No.

## Tenth Schedule

(Section 475A)

### **Offences punishable by the Supreme Court in its summary jurisdiction**

- (a) Any offence arising under, or the common law offence of attempting, or of conspiracy, to commit any offence arising under, section 173, 174, 175, 176, 176A or 179 of this Act; any offence arising under section 185A (1) or (2) of this Act; the common law offence of attempting to commit any offence arising under section 185A (1) of this Act.
- (b) Any offence arising under, or the common law offence of attempting, or of conspiracy, to commit any offence arising under, section 124, 374A (1) or (3), 374B, 374C (2), 374G, 375 (2), 375A or 376 (2) of the *Companies Act 1961*.
- (c) Any offence arising under, or the common law offence of attempting, or of conspiracy, to commit any offence arising under, section 14 (1), 27, 59 (7), 109 (1) or (2), 110, 111, 112 (1), (2), (3), (4), (5) or (6) or 121 (1) of the *Securities Industry Act 1975*.
- (d) Any offence arising under, or the common law offence of attempting, or of conspiracy, to commit any offence arising under, section 70, 71 (1) or (3), 72 (1) or 73 of the *Securities Industry Act 1970*.
- (d1) Any offence arising under, or the common law offence of attempting, or of conspiracy, to commit any offence arising under:
- (i) section 37 (1), 73 (7), 124 (1) or (2), 125, 126, 128 (1), (2), (3), (4), (5) or (6) or 137 of the *Securities Industry (New South Wales) Code*, or
  - (ii) section 16 (1) of the *National Companies and Securities Commission (State Provisions) Act 1981*.
- (e) The common law offence of conspiracy to cheat and defraud.
- (f) Subject to section 475A (2) of this Act, any offence arising under, or the common law offence of attempting, or of conspiracy, to commit any offence arising under:
- (i) section 165, 166, 168, 169, 170, 172, 178A, 178BA, 178BB, 178C, 185, 252, 256, 257, 258, 259, 272, 273, 274, 275, 276, 292, 327, 330 or 339 of this Act,
  - (ii) section 47 (1), 51 (3), 64 (10), 86 (1), 163 (1) (being an offence committed as referred to in section 163 (3)), 179A (1), 180J (1) or (1A), 180W or 374F (1) or (2) of the *Companies Act 1961*,
  - (iii) section 12 (6), 25 (1), 54 (1) or 58 (1), (2), (3) or (4) of the *Securities Industry Act 1975*,
  - (iv) section 14 (6), 34 (1), 68 (1) or 72 (1), (2), (3) or (4) of the *Securities Industry (New South*

*Wales) Code,*

(v) section 44 or 53 of the *Companies (Acquisition of Shares) (New South Wales) Code*, or

(vi) section 108 (1), 123 (11), 174 (1), 276 (1) (being an offence committed as referred to in section 276 (1) (b)), 310 (1), 559 or 560 of the *Companies (New South Wales) Code*.