

Crimes Act 1900 No 40

[1900-40]



New South Wales

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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 \(Sentencing\) Amendment Act 1987 No 183](#) (not commenced)
 - [Crimes \(Personal and Family Violence\) Amendment Act 1987 No 184](#), Sch 3 (6) (not commenced)
 - [Crimes \(Firearms\) Amendment Act 1989 No 27](#) (not commenced)
 - [Crimes \(Apprehended Violence\) Amendment Act 1989 No 62](#) (not commenced)
 - [Crimes \(Amendment\) Act 1989 No 198](#) (not commenced)
 - [Crimes \(Life Sentences\) Amendment Act 1989 No 218](#) (not commenced)
 - [Prisons \(Serious Offenders Review Board\) Amendment Act 1989 No 219](#) (not commenced)

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Crimes Act 1900 No 40



New South Wales

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Crimes Act 1900 No 40



New South Wales

An Act to consolidate the Statutes relating to Criminal Law.

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Short title and division into Parts

1 Name of Act and contents of Act

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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- (1) The Acts mentioned in the First Schedule hereto are, to the extent therein expressed, hereby repealed, except as to offences committed and things done or commenced before the passing of this Act, which shall be dealt with and continued, and in respect of which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- (2) All persons appointed under any Act, or section of an Act, hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed hereunder.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the whipping of offenders, or the manner of its use, made, prescribed, or given under the authority of any Act hereby repealed, and being in force at the time of the passing of this Act, shall be deemed to have been made, prescribed, or given under the authority of this Act.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 or 61E committed upon:
 - (i) a person who is or has been married to the person who commits the offence,
 - (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,
 - (iii) a person who is living or has lived ordinarily in the same household as the person who commits the offence (otherwise than merely as a tenant or boarder),
 - (iv) a person who is or has been a relative (within the meaning of Part 15A) of the person who commits the offence, or
 - (v) a person who has or has had as intimate personal relationship with the person who commits the offence, 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.

Prescribed sexual offence means:

- (a) an offence under section 61B, 61C, 61D, 61E, 65A, 66A, 66B, 66C, 66D, 66F, 78H, 78I, 78K or 78L,

- (b) an offence (such as an offence under section 37 or 112) which includes the commission, or an intention to commit, an offence referred to in paragraph (a), or
- (c) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (a) or (b).

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.

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 a tramway, and also includes all stations, buildings, structures and equipment belonging to or associated with a railway or tramway.

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 35 of the *Interpretation Act 1987*, 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) In this Act, a reference to:
 - (a) conviction before Justices, or
 - (b) conviction before two Justices,includes a reference to conviction before a Local Court.

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.

Except in the case of murder committed by a person who is under the age of 18 years, 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 negated if:
 - (a) there was not a reasonable proportion between the act or omission causing death and the conduct of the deceased that induced the act or omission,
 - (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-32C (Repealed)

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.

50-52 (Repealed)

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 under this Act 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 under this Act 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 5 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-66F, ***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–66F, 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–66F, 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.

(6) For the purposes of sections 61C–61E, a person is in the company of others if the person is in the company of 1 or more other persons.

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.

(3) Any person who, in the company of others:

- (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 14 years.

(4) Any person who, in the company of others:

- (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 14 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 8 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.

(1B) Any person who, in the company of others, 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 10 years or, if the other person is under the age of 16 years, to penal servitude for 12 years.

(1C) Any person who, in the company of others, 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 14 years.

(2) For the purposes of this section, 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 this section 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.

(1B) Any person who, in the company of others, 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 penal servitude for 6 years.

(1C) Any person who, in the company of others, 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 8 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.
- (1A) Where on the trial of a person for an offence under section 61C (3) or (4), 61D (1B) or (1C) or 61E (1B) or (1C) 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 61C (1) or (2), 61D (1) or (1A) or 61E (1) or (1A), it may find the accused not guilty of the offence charged but guilty of an offence under section 61C (1) or (2), 61D (1) or (1A) or 61E (1) or (1A), as the case may be, 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)

65A Sexual intercourse procured by intimidation, coercion and other non-violent threats

- (1) In this section:

non-violent threat means intimidatory or coercive conduct, or other threat, which does not involve a threat of physical force.

- (2) Any person who has sexual intercourse with another person shall, if the other person submits to the sexual intercourse as a result of a non-violent threat and could not in the circumstances be reasonably expected to resist the threat, be liable to penal servitude for 6 years.
- (3) A person does not commit an offence under this section unless the person knows that the person concerned submits to the sexual intercourse as a result of the non-violent threat.

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.

66F Sexual intercourse—intellectual disability

(1) In this section:

intellectual disability means an appreciably below average general intellectual function that results in the person requiring supervision or social habilitation in connection with daily life activities.

(2) Any person who has sexual intercourse with another person who:

- (a) has an intellectual disability, and
- (b) is (whether generally or at the time of the sexual intercourse only) under the authority of the person in connection with any facility or programme providing services to persons who have intellectual disabilities,

shall be liable to penal servitude for 10 years.

(3) Any person who has sexual intercourse with another person who has an intellectual disability, with the intention of taking advantage of the other person's vulnerability to sexual exploitation, shall be liable to penal servitude for 8 years.

(4) Any person who attempts to commit an offence under this section upon another person who has an intellectual disability shall be liable to the penalty provided for the commission of the offence.

(5) A person does not commit an offence under this section unless the person knows that the person concerned has an intellectual disability.

(6) No prosecution for an offence against this section shall be commenced without the approval of the Attorney General.

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.

71-72A (Repealed)

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 or above the age of 16 years, and under the age of 17 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 or above the age of 16 years, and under the age of 17 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, 66F, 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) This section applies to:
 - (a) a prescribed sexual offence,
 - (b) an offence under section 63, 65, 66, 67, 68, 71, 72, 72A, 73, 74, 76, 76A, 78M, 78N, 78O, 78Q, 91D, 91E, 91F or 91G, and
 - (c) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraph (b).
- (2) Any proceedings, or any part of any proceedings, in respect of an offence to which this section applies shall, if the Court so directs, be held in camera.
- (3) If the Court makes a direction under this section, 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) The Court may make a direction under this section on its own motion or at the request

of any party.

- (5) In determining whether to make a direction under this section the Court shall consider:
- (a) the need of the complainant to have any person excluded from those proceedings,
 - (b) the need of the complainant to have any person present in those proceedings,
 - (c) the interests of justice, and
 - (d) any other matter which the Court thinks relevant.

- (6) In this section:

complainant, in relation to any proceedings, means the person, or any of the persons, upon whom the offence with which the accused person stands charged in those proceedings, is alleged to have been committed and includes:

- (a) in relation to an offence under section 91D, 91E or 91F, the person under the age of 18 years who is alleged to have participated in an act of child prostitution, and
- (b) in relation to an offence under section 91G, the person under the age of 18 years who is alleged to have been employed for pornographic purposes.

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 (Repealed)

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 (Repealed)

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.

Child prostitution and pornography

91C Definitions of "act of child prostitution", "child"

For the purposes of sections 91C–91G:

act of child prostitution means any sexual service, whether or not involving an indecent act:

- (a) that is provided by a child for the payment of money or the provision of any other material thing (whether or not it is in fact paid or provided to the child or to any other person), and
- (b) that can reasonably be considered to be aimed at the sexual arousal or sexual gratification of a person or persons other than the child,

and includes (but is not limited to) sexual activity between persons of different sexes or the same sex, comprising sexual intercourse (as defined in section 61A) for payment or masturbation committed by one person on another for payment, engaged in by a child.

child means a person who is under the age of 18 years.

91D Promoting or engaging in acts of child prostitution

(1) Any person who:

- (a) by any means, causes or induces a child to participate in an act of child prostitution, or
- (b) participates as a client with a child in an act of child prostitution,

is liable to penal servitude for 10 years or, if the child is under the age of 14 years, to penal servitude for 14 years.

(2) Except where the child and the other person alleged to have participated in the act of child prostitution are both male, a person is not guilty of an offence under this section if the person satisfies the court:

- (a) that the child was not under the age of 14 years when the offence is alleged to have been committed, and
- (b) that the child consented to the act of child prostitution, and
- (c) that the person had, when the offence is alleged to have been committed, reasonable cause to believe, and did in fact believe, that the child was a person of or above the age of 18 years.

(3) The consent of a child is not a defence to a charge relating to an offence under this section, except as provided by subsection (2).

91E Obtaining benefit from child prostitution

(1) Any person who receives money or any other material benefit knowing that it is derived directly or indirectly from an act of child prostitution is liable to penal

servitude for 10 years.

- (2) A person is not guilty of an offence under this section if the person satisfies the court that the money or other material benefit concerned:
- (a) was received by the person for the lawful provision of goods or services, or
 - (b) was paid or provided in accordance with a judgment or an order of a court or a legislative requirement, whether or not under New South Wales law.

91F Premises not to be used for child prostitution

- (1) Any person who is capable of exercising lawful control over premises at which a child participates in an act of child prostitution is liable to penal servitude for 7 years.

- (2) For the purposes of this section, each person:

- (a) who is an owner, lessee, licensee or occupier of premises, or
- (b) who is concerned in the management of premises or in controlling the entry of persons to, or their movement within, premises,

is to be considered as capable of exercising lawful control over the premises, whether or not any other person is capable of exercising lawful control over the premises.

- (3) A person is not guilty of an offence under this section relating to an act of child prostitution if the person satisfies the court:

- (a) that the person did not know about the act, or
- (b) that the person did not know that a child was participating in the act or, for any other reason, did not know that the act was an act of child prostitution, or
- (c) that the person used all due diligence to prevent the child from participating in the act.

91G Children not to be employed for pornographic purposes

- (1) Any person:

- (a) who employs a child for pornographic purposes, or
- (b) who causes or procures a child to be so employed, or
- (c) who, having the care (but not necessarily entitled by law to have the custody) of a child, consents to the child being so employed or allows the child to be so employed,

is liable to penal servitude for 5 years or, if the child is under the age of 14 years, to penal servitude for 7 years.

- (2) For the purposes of this section, a child is employed for pornographic purposes only if money or some other material thing is paid or provided (whether or not to the child) for the employment of the child and, in the course of the child's employment:
- (a) the child is engaged in an activity of a sexual nature (for example, actual or simulated sexual intercourse or a striptease) for the purpose of producing pornography, or
 - (b) the child is in the presence of another person who is so engaged.

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 Offences relating to public order

93A Definition

In this Part:

violence means any violent conduct, so that:

- (a) except for the purposes of section 93C, it includes violent conduct towards property as well as violent conduct towards persons, and
- (b) it is not restricted to conduct causing or intended to cause injury or damage but

includes any other violent conduct (for example, throwing at or towards a person a missile of a kind capable of causing injury which does not hit or falls short).

93B Riot

- (1) Where 12 or more persons who are present together use or threaten unlawful violence for a common purpose and the conduct of them (taken together) is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety, each of the persons using unlawful violence for the common purpose is guilty of riot and liable to penal servitude for 10 years.
- (2) It is immaterial whether or not the 12 or more persons use or threaten unlawful violence simultaneously.
- (3) The common purpose may be inferred from conduct.
- (4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.
- (5) Riot may be committed in private as well as in public places.

93C Affray

- (1) A person who uses or threatens unlawful violence towards another and whose conduct is such as would cause a person of reasonable firmness present at the scene to fear for his or her personal safety is guilty of affray and liable to penal servitude for 5 years.
- (2) If 2 or more persons use or threaten the unlawful violence, it is the conduct of them taken together that must be considered for the purposes of subsection (1).
- (3) For the purposes of this section, a threat cannot be made by the use of words alone.
- (4) No person of reasonable firmness need actually be, or be likely to be, present at the scene.
- (5) Affray may be committed in private as well as in public places.

93D Mental element under sections 93B and 93C

- (1) A person is guilty of riot only if the person intends to use violence or is aware that his or her conduct may be violent.
- (2) A person is guilty of affray only if the person intends to use or threaten violence or is aware that his or her conduct may be violent or threaten violence.
- (3) Subsection (1) does not affect the determination for the purposes of riot of the number of persons who use or threaten violence.

93E Offences of riot, rout, affray abolished

The common law offences of riot, rout and affray are abolished.

93F-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 and liable to be indicted for that offence.

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.

154AA Car stealing etc

- (1) Any person who steals a motor car is liable to penal servitude for 10 years.
- (2) In this section:

motor car means any motor vehicle (as defined in the [Motor Traffic Act 1909](#)) but does not include a caravan, trailer or motor vehicle constructed principally for use in agricultural production.

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) In subsection (1):

deception means deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including:

(a) a deception as to the present intentions of the person using the deception or of any other person, and

(b) an act or thing done or omitted to be done with the intention of causing:

(i) a computer system, or

(ii) a machine that is designed to operate by means of payment or identification,

to make a response that the person doing or omitting to do the act or thing is not authorised to cause the computer system or machine to make.

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.

184A Personating owner of stock or property

A person who falsely and deceitfully personates:

- (a) any owner of any share or interest of or in any stock, annuities or other public funds or of or in the capital stock of any body corporate, or

(b) any owner of any dividend or money payable in respect of a share or interest referred to in paragraph (a), or

(c) any owner of any property, or any estate or interest in or charge or encumbrance on property,

and transfers, or endeavours to transfer, any share, estate or interest belonging to the owner or receives, or endeavours to receive, any money due to the owner as if the person were the true owner is liable to penal servitude for 10 years.

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 Criminal destruction and damage

Division 1 Interpretation

194 Interpretation

- (1) In this Chapter, a reference to property does not include a reference to property that is not of a tangible nature.
- (2) In this Chapter, a reference to property includes a reference to wild creatures that have been tamed or are ordinarily kept in captivity and also includes any other wild creatures or their carcasses but only if they:
 - (a) have been reduced into possession that has not been lost or abandoned, or
 - (b) are in the course of being reduced into possession.
- (3) For the purposes of this Chapter, an act done by a person under a reasonable belief that the person had a right to do the act shall be taken not to have been done maliciously.

Division 2 Crimes against property generally

195 Maliciously destroying or damaging property

A person who maliciously destroys or damages property belonging to another or to that person and another is liable:

- (a) to penal servitude for 5 years, or
- (b) if the destruction or damage is caused by means of fire or explosives, to penal servitude for 10 years.

196 Maliciously destroying or damaging property with intent to injure a person

A person who maliciously destroys or damages property, intending by the destruction or damage to cause bodily injury to another, is liable:

- (a) to penal servitude for 7 years, or
- (b) if the destruction or damage is caused by means of fire or explosives, to penal servitude for 14 years.

197 Dishonestly destroying or damaging property

A person who dishonestly, with a view to making a gain for that person or another, destroys or damages property is liable:

- (a) to penal servitude for 7 years, or
- (b) if the destruction or damage is caused by means of fire or explosives, to penal servitude for 14 years.

198 Maliciously destroying or damaging property with the intention of endangering life

A person who maliciously destroys or damages property, intending by the destruction or damage to endanger the life of another, is liable to penal servitude for life.

199 Threatening to destroy or damage property

A person who, without lawful excuse, makes a threat to another, with the intention of causing that other to fear that the threat would be carried out:

- (a) to destroy or damage property belonging to that other or to a third person, or
- (b) to destroy or damage the first-mentioned person's own property in a way which that person knows will or is likely to endanger the life of, or to cause bodily injury to, that other or a third person,

is liable to penal servitude for 5 years.

200 Possession, custody or control of an article with intent to destroy or damage property

A person who has possession, custody or control of an article with the intention that it should be used maliciously to destroy or damage property belonging to:

- (a) some other person, or
 - (b) the first-mentioned person or the user, or both of them, and some other person,
- is liable to penal servitude for 3 years.

Division 3 Crimes relating to particular kinds of property etc

201 Interfering with a mine

A person who maliciously:

- (a) causes water to run into a mine or any subterranean channel connected to it,
- (b) destroys, damages or obstructs any shaft, passage, pit, airway, waterway or drain of, or associated with, a mine,
- (c) destroys, damages or renders useless any equipment, building, road or bridge belonging to a mine, or
- (d) hinders the working of equipment belonging to a mine,

is liable to penal servitude for 7 years.

202 Causing damage etc to sea, river, canal and other works

A person who:

- (a) maliciously destroys, damages, removes or interferes with piles or other materials that form part of, or have been fixed or placed in position in order to secure:
 - (i) a sea wall or other structure designed to prevent erosion by the sea,
 - (ii) the bank or bed of, or a dam, weir or lock located on, a river or canal,
 - (iii) a drain, aqueduct, marsh or reservoir, or
 - (iv) a dock, quay, wharf, jetty or other harbour installation,
- (b) maliciously opens a floodgate or sluice that is located at or on a dam, weir, reservoir or watercourse, or
- (c) with the intention of obstructing or hindering the navigation of vessels or boats on a navigable river or canal:
 - (i) interferes with or obstructs the flow of the river or canal,

- (ii) damages or interferes with the bank or bed of the river or canal, or
- (iii) destroys, damages or interferes with any structure or equipment constructed or installed in connection with the use of the river or canal for the purposes of navigation,

is liable to penal servitude for 7 years.

203 False statement that a person or property is in danger

If:

(a) a person:

- (i) makes to another person a statement that the first-mentioned person knows to be false or misleading, or
- (ii) sends to another person a document containing such a statement, and

(b) the statement is likely to make that other person fear for the safety of a person (including the maker of the statement or the person to whom it is made) or for the safety of property, or both,

the first-mentioned person is liable to imprisonment for 5 years.

Part 4AA Offences relating to transport services

Division 1 Offences relating to aircraft, vessels etc

204 Destruction of, or damage to, an aircraft or vessel with intent or reckless indifference

Any person who:

- (a) with intent to cause the death of a person, or
- (b) with reckless indifference for the safety of the life of a person,

destroys or damages an aircraft or vessel is liable to penal servitude for life.

205 Prejudicing the safe operation of an aircraft or vessel

A person who, whether on board the aircraft or vessel or not, does anything with the intention of prejudicing the safety of an aircraft or vessel is liable to penal servitude for 14 years.

206 Assault etc on member of crew of aircraft or vessel

A person who, while on board an aircraft or vessel, assaults or threatens with violence a member of the crew of the aircraft or vessel:

- (a) so as to interfere with the functions or duties performed by the crew member in

connection with the safe operation of the aircraft or vessel, or

- (b) so as to diminish the ability of the crew member to perform those functions or duties, is liable to penal servitude for 14 years.

207 Placing etc dangerous articles on board an aircraft or vessel

- (1) In this section:

dangerous article means:

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

- (2) A person who:

- (a) places or carries on board an aircraft or vessel an article knowing that it is a dangerous article,
(b) knowing that an article is a dangerous article, delivers the article to a person for the purpose of having the article placed or carried on board an aircraft or vessel, or
(c) has possession of an article while on board an aircraft or vessel knowing that the article is a dangerous article,

is liable to penal servitude for 7 years.

- (3) Subsection (2):

- (a) does not apply to or in relation to anything done with an article in relation to an aircraft or vessel with the consent of the owner or operator of the aircraft or vessel where that consent is given with a knowledge of the nature or condition of the article, and
(b) does not apply to or in relation to the carrying or placing of a firearm or ammunition for a firearm on board an aircraft or vessel with permission given in accordance with regulations in force under the [Air Navigation Act 1920](#) of the Commonwealth.

208 Threatening to destroy etc an aircraft, vessel or vehicle

- (1) In this section:

threat includes:

- (a) an expression of intention, or

(b) the making of a statement from which an expression of intention could reasonably be inferred.

transport vehicle means:

(a) a mechanically or electrically driven vehicle that is used or designed to be used for the purpose of conveying passengers or goods, or passengers and goods, or for the purpose of drawing a vehicle or vehicles of the kind referred to in paragraph (b), or

(b) a vehicle not so driven that is directly or indirectly connected to and drawn by or designed to be connected to and drawn by, a vehicle of the kind first referred to in paragraph (a),

but does not include an aircraft or vessel.

(2) A person who makes a demand of another person with a threat:

(a) to destroy or damage, or endanger the safety of, an aircraft, vessel or transport vehicle, or

(b) to kill, or inflict bodily injury on, persons who are in or on an aircraft, vessel or transport vehicle,

is liable to penal servitude for 14 years.

(3) A person who makes a demand of another person together with a threat to do any of the things mentioned in subsection (2) (a) or (b) and, while that threat still has effect:

(a) discharges a firearm,

(b) causes an explosion, or

(c) inflicts grievous bodily harm on, or wounds, a person,

is liable to penal servitude for life.

(4) A person who makes a threat:

(a) to destroy or damage, or endanger the safety of, an aircraft, vessel or transport vehicle, or

(b) to kill, or inflict bodily injury on, persons who are in or on an aircraft, vessel or transport vehicle,

is liable to imprisonment for 5 years.

209 False information as to plan etc to prejudice the safety of an aircraft or vessel or

persons on board an aircraft or vessel

A person who makes a statement or conveys information, knowing it to be false, to the effect, or from which it could reasonably be inferred, that there has been, is or is to be a plan, proposal, attempt, conspiracy or threat to:

- (a) take, or exercise control of, an aircraft or vessel by force,
- (b) destroy or damage, or endanger the safety of, an aircraft or vessel, or
- (c) kill, or inflict bodily injury on, persons in or on an aircraft or vessel,

is liable to imprisonment for 2 years.

210 Destroying, damaging etc an aid to navigation

A person who:

- (a) maliciously destroys, damages, removes, conceals or interferes with a mark, device or equipment used or designed to be used to assist the navigation of aircraft or vessels, or
- (b) does any act with the intention of causing any such destruction, damage, concealment or interference,

is liable to penal servitude for 7 years.

Division 2 Offences relating to railways etc

211 Criminal acts relating to railways

(1) A person who:

- (a) maliciously does any act on or in connection with the operation of a railway, or
- (b) maliciously omits to do any act on or in connection with a railway that it is the person's duty to do,

with the intention of causing the death of, inflicting bodily injury on or endangering the safety of any person who is on the railway, or who is in or on any locomotive or other rolling stock on the railway, is liable to penal servitude for life.

(2) A person who:

- (a) maliciously does any act on or in connection with the operation of a railway, or
- (b) maliciously omits to do any act on or in connection with the operation of a railway that it is the person's duty to do,

with the intention of causing any locomotive or other rolling stock on the railway to be

derailed, destroyed or damaged, is liable to penal servitude for 14 years.

212 Endangering passengers etc on railway

A person who, by an unlawful act or a negligent omission, endangers the safety of any person who is on, or who is being conveyed on, a railway is liable to imprisonment for 3 years.

213 Obstructing a railway

A person who:

- (a) intentionally and without lawful excuse, does an act, or omits to do an act, which causes the passage or operation of a locomotive or other rolling stock on a railway to be obstructed, or
- (b) assists a person to do or omit to do such an act, with the knowledge that the person's intention to do or omit to do that act is without lawful excuse,

is liable to imprisonment for 2 years.

214 Obstructing a railway—verdict of misdemeanour

- (1) If, on the trial of a person for an offence under section 211, the jury is not satisfied that the person is guilty of the offence, but is satisfied that the person is guilty of an offence under section 212 or 213, it may acquit the person of the offence charged and instead find the person guilty of an offence under section 212 or 213.
- (2) If, in accordance with subsection (1), a jury finds a person guilty of an offence under section 212 or 213, the person is liable to be punished as provided by that section.

215-249 (Repealed)

Part 4A Corruptly receiving commissions and other corrupt practices

249A Definitions

In this Part:

agent includes:

- (a) any person employed by, or acting for or on behalf of, any other person (who in this case is referred to in this Part as the person's principal) in any capacity,
- (b) any person purporting to be, or intending to become, an agent of any other person (who in this case is referred to in this Part as the person's principal), and
- (c) any person serving under the Crown (which in this case is referred to in this Part as the person's principal).

benefit includes money and any contingent benefit.

249B Corrupt commissions or rewards

- (1) If any agent corruptly receives or solicits (or corruptly agrees to receive or solicit) from another person for the agent or for anyone else any benefit:
 - (a) as an inducement or reward for or otherwise on account of:
 - (i) doing or not doing something, or having done or not having done something,
or
 - (ii) showing or not showing, or having shown or not having shown, favour or disfavour to any person,

in relation to the affairs or business of the agent's principal, or
 - (b) the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,

the agent is liable to imprisonment for 7 years.

- (2) If any person corruptly gives or offers to give to any agent, or to any other person with the consent or at the request of any agent, any benefit:
 - (a) as an inducement or reward for or otherwise on account of the agent's:
 - (i) doing or not doing something, or having done or not having done something,
or
 - (ii) showing or not showing, or having shown or not having shown, favour or disfavour to any person,

in relation to the affairs or business of the agent's principal, or
 - (b) the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,

the firstmentioned person is liable to imprisonment for 7 years.

- (3) For the purposes of subsection (1), where a benefit is received or solicited by anyone with the consent or at the request of an agent, the agent shall be deemed to have received or solicited the benefit.

249C Misleading documents or statements used or made by agents

- (1) Any agent who uses, or gives to the agent's principal, a document which contains anything that is false or misleading in any material respect, with intent to defraud the

agent's principal, is liable to imprisonment for 7 years.

- (2) Any agent who makes a statement to the agent's principal which is false or misleading in any material respect, with intent to defraud the principal, is liable to imprisonment for 7 years.

249D Corrupt inducements for advice

- (1) If a person corruptly gives a benefit to another person for giving advice to a third person, being advice which the person giving the benefit intends will influence the third person:

- (a) to enter into a contract with the person who gives the benefit, or
(b) to appoint the person who gives the benefit to any office,

and, at the time the benefit is given, the person who gives the benefit intends the giving of the benefit not be made known to the person advised, the person who gives the benefit is liable to imprisonment for 7 years.

- (2) If a person corruptly receives a benefit for giving advice to another person, being advice which is likely to influence the other person:

- (a) to enter into a contract with the person who gave the benefit, or
(b) to appoint the person who gave the benefit to any office,

and, at the time the benefit is received, the person who receives the benefit intends the giving of the benefit not be made known to the person to be advised, the person who receives the benefit is liable to imprisonment for 7 years.

- (3) For the purposes of subsections (1) and (2), where a benefit is given or received by anyone with the consent or at the request of another person, the other person shall be deemed to have given or received the benefit.

- (4) If any person corruptly offers or solicits a benefit for the giving of advice by one person to another:

- (a) intending that the advice will influence the person advised:

- (i) to enter into a contract with anyone, or
(ii) to appoint anyone to any office, and

- (b) intending that the giving or receipt of the benefit not be made known to the person advised,

the firstmentioned person is liable to imprisonment for 7 years.

- (5) In this section:

- (a) a reference to the giving of advice includes a reference to the providing of information orally or in writing,
- (b) a reference to entering into a contract includes a reference to offering to enter into a contract, and
- (c) a reference to the appointment of a person includes a reference to:
 - (i) joining in the appointment of the person, and
 - (ii) voting for or assisting in the election or appointment of the person.

249E Corrupt benefits for trustees and others

- (1) In this section, a reference to a person entrusted with property is a reference to:
 - (a) a trustee of the property,
 - (b) an executor or administrator appointed for the purpose of dealing with the property,
 - (c) a person who, because of a power of attorney or a power of appointment, has authority over the property, and
 - (d) a person or a member of a committee managing or administering the property (or appointed or employed to manage or administer the property) under the *Mental Health Act 1958* or *Protected Estates Act 1983*.
- (2) Any person who offers or gives a benefit to a person entrusted with property, and any person entrusted with property who receives or solicits a benefit for anyone, without the consent:
 - (a) of each person beneficially entitled to the property, or
 - (b) of the Supreme Court,as an inducement or reward for the appointment of any person to be a person entrusted with the property, are each liable to imprisonment for 7 years.
- (3) In this section, a reference to the appointment of a person includes a reference to:
 - (a) joining in the appointment of the person, and
 - (b) assisting in the appointment of the person.
- (4) Proceedings for an offence under this section shall not be commenced without the consent of the Attorney General.
- (5) A consent to commence any such proceedings purporting to have been signed by the Attorney General is evidence of that consent without proof of the signature of the

Attorney General.

249F Aiding, abetting etc

- (1) A person who aids, abets, counsels, procures, solicits or incites the commission of an offence under this Part is guilty of an offence and is liable to imprisonment for 7 years.
- (2) A person who, in New South Wales, aids, abets, counsels or procures the commission of an offence in any place outside New South Wales, being an offence punishable under the provisions of a law in force in that place which corresponds to a provision of this Part, is guilty of an offence and is liable to imprisonment for 7 years.

249G Repayment of value of gift etc

- (1) If a person is convicted of an offence under this Part, the court may (as well as imposing a penalty for the offence) order the person to pay to such other person as the court directs the whole or part of the amount or the value, assessed by the court, of any benefit received or given by the person.
- (2) Any money payable to a person under this section may be recovered in a court of competent jurisdiction as a debt due to the person.

249H Disqualification for office

If a person is convicted of an offence under this Part, the person is disqualified for a civic office, within the meaning of the [Local Government Act 1919](#), for the period of 7 years from the conviction or such lesser period as the court may order.

249I Dismissal of trivial case

If, in any proceedings for an offence under this Part, it appears to the court that the offence is of a trivial or merely technical nature, the court may in its discretion dismiss the case.

249J Custom not a defence

In any proceedings for an offence under this Part, it is not a defence that the receiving, soliciting, giving or offering of any benefit is customary in any trade, business, profession or calling.

Part 5 Forgery and false instrument offences

Chapter 1 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.

252 (Repealed)

Forgery, &c, of public seals

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 (Repealed)

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.

256-259 (Repealed)

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.

261-264 (Repealed)

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, &c

271 Forging wills

Whosoever forges, or utters, any will, testament, codicil, or testamentary instrument shall be liable to penal servitude for fourteen years.

272-276 (Repealed)

Forgery of signature of Judge

277 (Repealed)

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.

279-283 (Repealed)

Forgery, &c, of instruments of evidence

284 (Repealed)

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.

286-288 (Repealed)

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 (Repealed)

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.

292-295 (Repealed)

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.

Chapter 2 False instruments

299 Interpretation

(1) In this Chapter:

instrument means:

- (a) any document, whether of a formal or informal character, or
- (b) a card by means of which property or credit can be obtained, or
- (c) a disc, tape, sound track or other device on or in which information is recorded or stored by mechanical, electronic or other means.

(2) For the purposes of this Chapter, an instrument is false if it purports:

- (a) to have been made in the form in which it is made by a person who did not in fact make it in that form, or
- (b) to have been made in the form in which it is made on the authority of a person who did not in fact authorise its making in that form, or
- (c) to have been made in the terms in which it is made by a person who did not in fact make it in those terms, or
- (d) to have been made in the terms in which it is made on the authority of a person

who did not in fact authorise its making in those terms, or

- (e) to have been altered in any respect by a person who did not in fact alter it in that respect, or
- (f) to have been altered in any respect on the authority of a person who did not in fact authorise the alteration in that respect, or
- (g) to have been made or altered on a date on which, or at a place at which, or otherwise in circumstances in which, it was not in fact made or altered, or
- (h) to have been made or altered by an existing person who did not in fact exist.

300 Making or using false instruments

- (1) A person who makes a false instrument, with the intention that he or she, or another person, will use it to induce another person:
 - (a) to accept the instrument as genuine, and
 - (b) because of that acceptance, to do or not do some act to that other person's, or to another person's, prejudice,is liable to penal servitude for 10 years.
- (2) A person who uses an instrument which is, and which the person knows to be, false, with the intention of inducing another person:
 - (a) to accept the instrument as genuine, and
 - (b) because of that acceptance, to do or not do some act to that other person's, or to another person's, prejudice,is liable to penal servitude for 10 years.

301 Making or using copies of false instruments

- (1) A person who makes a copy of an instrument which is, and which the person knows to be, a false instrument, with the intention that he or she, or another person, will use it to induce another person:
 - (a) to accept the copy as a copy of a genuine instrument, and
 - (b) because of that acceptance, to do or not do some act to that other person's, or to another person's, prejudice,is liable to penal servitude for 10 years.
- (2) A person who uses a copy of an instrument which is, and which he or she knows to be a false instrument, with the intention of inducing another person:

- (a) to accept the copy as a copy of a genuine instrument, and
 - (b) because of that acceptance, to do or not do some act to that other person's, or to another person's, prejudice,
- is liable to penal servitude for 10 years.

302 Custody of false instruments etc

A person who has in his or her custody, or under his or her control, an instrument which is false, and which he or she knows to be false, with the intention that the person or another person will use it to induce another person:

- (a) to accept the instrument as genuine, and
- (b) because of that acceptance, to do or not do some act to that other person's, or to another person's, prejudice,

is liable to penal servitude for 10 years.

303 Response of machine to false instrument etc

(1) In this Chapter, a reference to inducing a person to accept:

- (a) a false instrument as genuine, or
- (b) a copy of a false instrument as a copy of a genuine instrument,

includes a reference to causing a machine to respond to the instrument or copy as if it were a genuine instrument or a copy of a genuine instrument.

(2) If:

- (a) a machine responds to an instrument or copy in that way, and
 - (b) the act or omission intended to be caused by the response is an act or omission that would be (if it were an act or omission of a person) to a person's prejudice,
- the act or omission intended to be caused by the machine's so responding shall, for the purposes of this Chapter, be taken to be an act or omission to a person's prejudice.

304 When a false instrument is made

For the purposes of this Chapter, a person is to be treated as making a false instrument if the person alters an instrument so as to make it false in any respect (whether or not it is false in some other respect apart from that alteration).

305 When an act or omission is prejudicial

For the purposes of this Chapter, an act or omission is to a person's prejudice if, and only

if, it is one that (if it occurs):

(a) will result:

- (i) in the person's temporary or permanent loss of property, or
- (ii) in the person's being deprived of an opportunity to earn remuneration or greater remuneration, or
- (iii) in the person's being deprived of an opportunity to obtain a financial advantage otherwise than by way of remuneration, or

(b) will result in any person being given an opportunity:

- (i) to earn remuneration or greater remuneration from the first-mentioned person, or
- (ii) to obtain a financial advantage from the first-mentioned person otherwise than by way of remuneration, or

(c) will be the result of the person's having accepted a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, in connection with the person's performance of a duty.

306 Intention to induce may be general

In proceedings for an offence against this Chapter, if it is necessary to allege an intent to induce a person to accept:

- (a) a false instrument as genuine, or
- (b) a copy of a false instrument as a copy of a genuine one,

it is not necessary to allege that the accused intended so to induce a particular person.

307 Abolition of common law offence

The offence of forgery at common law is abolished for all purposes not relating to offences committed before the commencement of this Chapter (as inserted by the [Crimes \(Computers and Forgery\) Amendment Act 1989](#)).

Part 6 Offences relating to computers

308 Definitions

In this Part:

- (a) a reference to data includes a reference to information, and
- (b) a reference to a program or data includes a reference to part of the program or data, and

- (c) a reference to data stored in a computer includes a reference to data entered or copied into the computer.

309 Unlawful access to data in computer

- (1) A person who, without authority or lawful excuse, intentionally obtains access to a program or data stored in a computer is liable, on conviction before two justices, to imprisonment for 6 months, or to a fine of \$5,000, or both.

- (2) A person who, with intent:

(a) to defraud any person, or

(b) to obtain for himself or herself or another person any financial advantage of any kind, or

(c) to cause loss or injury to any person,

obtains access to a program or data stored in a computer is liable to imprisonment for 2 years, or to a fine of \$50,000, or both.

- (3) A person who, without authority or lawful excuse, intentionally obtains access to a program or data stored in a computer, being a program or data that the person knows or ought reasonably to know relates to:

(a) confidential government information in relation to security, defence or inter-governmental relations, or

(b) the existence or identity of any confidential source of information in relation to the enforcement or administration of the law, or

(c) the enforcement or administration of the criminal law, or

(d) the maintenance or enforcement of any lawful method or procedure for protecting public safety, or

(e) the personal affairs of any person (whether living or deceased), or

(f) trade secrets, or

(g) records of a financial institution, or

(h) information (other than trade secrets) that has a commercial value to any person that could be destroyed or diminished if disclosed,

is liable to imprisonment for 2 years, or to a fine of \$50,000, or both.

- (4) A person who:

(a) without authority or lawful excuse, has intentionally obtained access to a program

or data stored in a computer, and

(b) after examining part of that program or data, knows or ought reasonably to know that the part of the program or data examined relates wholly or partly to any of the matters referred to in subsection (3), and

(c) continues to examine that program or data,

is liable to imprisonment for 2 years, or to a fine of \$50,000, or both.

310 Damaging data in computer

A person who intentionally and without authority or lawful excuse:

(a) destroys, erases or alters data stored in or inserts data into a computer, or

(b) interferes with, or interrupts or obstructs the lawful use of a computer,

is liable to penal servitude for 10 years, or to a fine of \$100,000, or both.

311-326 (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 False statements in evidence on commission

If any person, in giving any testimony (either orally or in writing) otherwise than on oath,

where required to do so by an order under section 79 of the *Evidence Act 1898*, makes a statement:

- (a) which the person knows to be false in a material particular, or
- (b) which is false in a material particular and which the person does not believe to be true,

the person is liable to imprisonment for 3 years.

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 Children's Magistrate 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.
- (5) In this section, **telegraph** includes telephone, radio, telex, facsimile transmission, computer used to relay information and any other communication device.

352AA Arrest of prisoners unlawfully at large

- (1) Any constable may, with or without warrant, apprehend any person whom the constable, with reasonable cause, suspects of being a prisoner unlawfully at large and take the person before an authorised Justice 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.
- (3) A constable may apply to an authorised Justice for a warrant for the apprehension of a prisoner whom the constable, with reasonable cause, suspects of being a prisoner unlawfully at large.
- (4) The authorised Justice to whom an application is made under subsection (3) may, if satisfied that there are reasonable grounds for doing so, issue a warrant for the apprehension of the prisoner concerned.

- (5) Section 64 of the *Justices Act 1902* applies, with any necessary adaptations, to such a warrant in the same way as it applies to a warrant referred to in that section.
- (6) In this section, **authorised Justice** means:
 - (a) a Magistrate, or
 - (b) a Justice employed in the Local Courts Administration, Attorney General's Department.

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, where the person is of or above the age of 14 years, his photograph and finger-prints and palm-prints.

353AA Photographing, finger-printing etc children under 14 years of age

- (1) This section applies to a child under the age of 14 years who is in lawful custody for any offence punishable on indictment or summary conviction.
- (2) A person shall not take a photograph or the finger-prints or palm-prints of a child to whom this section applies except in accordance with this section.
- (3) A member of the police force of or above the rank of sergeant may, in respect of a child to whom this section applies, apply:
 - (a) to the Children's Court, or
 - (b) where it is not possible to apply to the Children's Court within 72 hours after the taking of the child into custody, to a Justice,

for an order authorising, for the purpose only of identifying the child, the taking of the child's photograph, finger-prints and palm-prints.

- (4) The Children's Court or a Justice, as the case may be, may hear an application under subsection (3) and may make the order sought in the application.
- (5) A child to whom this section applies shall not be held in custody for the purpose only of an application being made under subsection (3).

353AB Destruction of certain photographs, finger-prints etc

- (1) Where a court finds an offence alleged against a child who has had the child's photograph, finger-prints and palm-prints taken in accordance with section 353A (3) or 353AA not proved, the court shall cause to be served on:

- (a) the child,
- (b) where practicable, the parents or guardian of the child, and
- (c) any other person who has the care of the child,

a notice stating that if the child or they so desires or desire, the court will order that the photograph, finger-prints and palm-prints, and any other prescribed records (other than the records of the court), relating to the alleged offence be destroyed and the court may make the order accordingly.

- (2) In this section:

prescribed records means records of the kind prescribed for the purposes of section 38 (1) of the *Children (Criminal Proceedings) Act 1987*.

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 and search in cases of child prostitution or pornography

357EA Police may enter and search

- (1) A member of the police force may apply to an authorised justice for the issue of a search warrant if the member of the police force has reasonable grounds for believing that an offence against section 91D, 91E, 91F or 91G has recently been or is being committed on or with respect to any premises.
- (2) An authorised justice to whom an application is made under subsection (1) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any member of the police force:
 - (a) to enter and search the premises concerned for evidence of an offence against section 91D, 91E, 91F or 91G, and

(b) to make in the premises inquiries relating to such an offence, and

(c) to seize any article that may be evidence of such an offence.

(3) Part 3 of the [Search Warrants Act 1985](#) applies to a search warrant issued under this section.

(4) In this section:

authorised justice means:

(a) a Magistrate, or

(b) a justice employed in the Attorney General's Department.

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 or Director of Public Prosecutions

- (1) The Attorney-General or the Director of Public Prosecutions 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 before or on trial

Every accused person before or 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 Director of Public Prosecutions, and may be given by delivering it to the Director, 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) (Repealed)
- (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) (Repealed)
- (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)
- (4) 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 an offence alleged to have been committed under section 78H, 78I, 78K or 78L before the commencement of the amendments

made to this Act by the *Statute Law (Miscellaneous Provisions) Act (No 1) 1987* 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 that commencement, being a sexual offence other than a prescribed sexual offence, to give the jury a warning as referred to in subsection (2).

Rules respecting evidence

406 Depositions by persons dangerously ill—how to be taken and when admissible in evidence

- (1) 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.
- (2) A copy of the deposition shall be forwarded by the Attorney General to the Director of Public Prosecutions.

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 section 25, 26, 50, 51 or 52 of the *Children (Care and Protection) Act 1987*.

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 contravening a prohibition or restriction specified in an apprehended domestic violence order under Part 15A

which was made against the accused person and in respect of which that husband or wife was the aggrieved person,

(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), and

(d) a reference to a child assault offence committed upon a child includes a reference to an offence of contravening a prohibition or restriction specified in an apprehended domestic violence order under Part 15A which was made against the accused person and in respect of which that child was the aggrieved person.

(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.

- (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:

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, 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 Certificates to be 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.

- (1A) A certificate which would, by virtue of section 4AB of the [Traffic Act 1909](#), be prima facie evidence of the particulars certified in and by the certificate in proceedings for an offence shall be prima facie evidence of those particulars at any inquest or where a person is charged before a Magistrate or before any Court with an indictable offence.
- (1B) Where any certificate is admitted in evidence by virtue of subsection (1A), evidence of the accuracy or reliability of the approved radar speed measuring device to which it relates shall not be required unless evidence that the device was not accurate or not reliable has been adduced.

- (2) A certificate which would, by virtue of section 4E (12) (a) or (b) of the *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.
- (3A) A certificate which would, by virtue of section 5AB of the *Traffic Act 1909* (Evidence of presence of drugs), be prima facie evidence of the particulars certified in and by the certificate in proceedings for an offence under section 5 (2) of that Act shall be prima facie evidence of those particulars:
- (a) at any inquest, or
 - (b) where a person is charged before a Magistrate or before any Court with an indictable offence which involved the use of a motor vehicle on a public street.
- (3B) (Repealed)
- (4) A certificate which would, by virtue of section 4G of the *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.
- (5) At any inquest or where a person is charged before a Magistrate or before any Court with an indictable offence:
- (a) a photograph tendered in evidence as a photograph taken by means of the operation, on a specified day, of an approved camera detection device (within the meaning of the *Traffic Act 1909*) installed at a specified location for the purpose of recording any contravention of a traffic control light signal shall be deemed to have been so taken unless evidence is adduced to the contrary,
 - (b) a photograph deemed to have been so taken shall be prima facie evidence of the matters shown or recorded on the photograph, and
 - (c) evidence of the condition of the approved camera detection device shall not be required unless evidence that the device was not in proper condition has been adduced.
- (6) If a photograph is tendered in evidence in proceedings referred to in subsection (5), a certificate purporting to be signed by a member of the police force certifying that:

- (a) the member is authorised by the Commissioner of Police to install and inspect approved camera detection devices (within the meaning of the *Traffic Act 1909*),
- (b) on a day and at a time specified in the certificate (being within 48 hours before the time recorded on the photograph as the time at which the photograph was taken), the member carried out the inspection specified in the certificate on the approved camera detection device by means of which the photograph was taken, and
- (c) upon that inspection, the approved camera detection device was found to be properly operating,

shall be tendered in evidence in those proceedings and shall be prima facie evidence of the particulars certified in and by the certificate.

- (7) A certificate which would, by virtue of Part 5 of Schedule 4 to the *Transport Administration Act 1988*, be prima facie evidence of the particulars certified in and by the certificate in proceedings for an offence under Schedule 4 to that Act shall be prima facie evidence of those particulars:
 - (a) at any inquest, or
 - (b) where a person is charged before a Magistrate or before any Court with an indictable offence.
- (8) Where any certificate under clause 20 of Schedule 4 to the *Transport Administration Act 1988* is admitted in evidence by virtue of subsection (7), 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.

414B Proof of service of notice to produce

An affidavit by the Director of Public Prosecutions or the Solicitor for Public Prosecutions or a member of the staff of the Director of Public Prosecutions, 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.
- (2A) The Attorney General may, at any time before the inquiry is commenced, determine that there is no longer any need for such an inquiry to be conducted.
- (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 that an inquiry should be conducted and does not subsequently determine, before the inquiry is commenced, that there is no longer any need for such an inquiry to 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 and furnish the Director of Public Prosecutions with a copy of the notification.

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 (after receiving and considering the advice of the Director of Public Prosecutions) 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 or the Director of Public Prosecutions 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 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.
- (1A) Where a Court indicates that it would not have imposed a sentence of imprisonment or penal servitude in respect of a person, the Court may impose any other penalty or make any other order it might have made on conviction of the person for the relevant offence in a normal trial of criminal proceedings.
- (1B) Any such other penalty imposed or order made, under subsection (1A), shall be subject to appeal in the same manner as a penalty or order in a normal trial of criminal proceedings.
- (1C) In nominating a limiting term in respect of a person or imposing any other penalty or making any other order, the Court may, if it thinks fit, take into account the periods, if any, of the person's custody or detention before, during and after the special hearing (being periods related to the offence).
- (1D) A limiting term nominated in respect of a person takes effect from the time when it is nominated unless the Court, after taking into account the periods, if any, of the person's custody or detention before, during and after the special hearing (being periods related to the offence), directs that the term be taken to have commenced at an earlier time.
- (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 (after consultation with the Director of Public Prosecutions):
- (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 advise the Minister for Health that the person will not be further proceeded against by the Attorney General or the Director of Public Prosecutions in respect of the offence.
- (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 advises the Minister for Health that a person will not be further proceeded against, 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 Summary proceedings before a magistrate

428U Application

- (1) 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.
- (2) Sections 428W and 428X apply to the condition of a defendant as at the time when a magistrate considers whether to apply the relevant section to the defendant.

428V Interpretation

- (1) In this Chapter:
 - magistrate** means:
 - (a) a justice or justices,
 - (b) a Magistrate, or
 - (c) a Children’s Magistrate.
- (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

- (1) Where, at the commencement or at any time during the course of the hearing of 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 1958, 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.

- (2) A decision under subsection (1) (c) to dismiss charges against a defendant does not constitute a finding that the charges against the defendant are proven or otherwise.

428X Mentally ill persons

- (1) Where, at the commencement or at any time during the course of the hearing of 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 1958*, 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 person be taken by a member of the Police Force to, and be detained in, an admission centre within the meaning of the *Mental Health Act 1958* to be examined and dealt with under that Act as if the person were a person admitted to and detained in an admission centre under section 12 (1) of that Act, 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 at the commencement or at any time during the

course of the hearing of 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 an admission centre, a mental hospital or an authorised hospital within the meaning of the *Mental Health Act 1958* as a consequence of an order made under subsection (1) (a).
- (4) A deemed dismissal of charges under subsection (2) does not constitute a finding that the charges against the defendant are proven or otherwise.

428XA Disqualification of magistrate

(1) If:

- (a) a magistrate has inquired into whether a defendant should be dealt with under section 428W or 428X, and
- (b) the magistrate has decided not to so deal with the defendant,

the magistrate shall, on the application of the defendant, disqualify herself or himself from further hearing the proceedings concerned.

(2) An application may only be made by a defendant under this section if:

- (a) except as provided by paragraph (b), the question whether the defendant should be dealt with under section 428W or 428X has not been previously inquired into by another magistrate in the same proceedings, or
- (b) in the case of proceedings in which another magistrate has previously inquired into whether the defendant should be dealt with under section 428W or 428X, the magistrate before whom the proceedings are being heard considers that it should, because of the circumstances of the case, be permitted to be made.

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.

Chapter 3 Other powers of magistrates

428YA Definition

In this Chapter:

magistrate means:

- (a) a justice or justices, or
- (b) a Magistrate, or
- (c) a Children's Magistrate.

428YB Transfer of prisoners

- (1) This section applies to a person who is awaiting committal for trial or trial for an offence or summary disposal of the person's case.
- (2) Where it appears to a magistrate that it may be appropriate to transfer a person to whom this section applies from prison to a hospital under section 123 or 124 of the [Mental Health Act 1983](#), the magistrate may make an order directing:
 - (a) that the defendant be examined by 2 medical practitioners, one of whom is a psychiatrist, and
 - (b) that, if appropriate, the relevant certificates be furnished to the Chief Health Officer under section 123 or 124 of the [Mental Health Act 1983](#), and
 - (c) that the Director of the Prison Medical Service notify the magistrate of the action, if any, taken under section 123 or 124 of the [Mental Health Act 1983](#).

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.

433-437A (Repealed)

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 \$10,000.
- (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 Cumulative or concurrent sentences

(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.

(6) This section applies in relation to unexpired sentences passed outside New South Wales and being served or to be served within New South Wales in the same way as it applies in relation to unexpired sentences passed within New South Wales.

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.

447B (Repealed)

Part 13 Proceedings after sentence

(A) EXECUTION OF SENTENCE

448-457 (Repealed)

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

459-462 (Repealed)

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 duly vacated, avoided or remitted, 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 or the Director of Public Prosecutions, 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 or the Director of Public Prosecutions includes, in relation to any proceedings, a reference to any person who is authorised in writing by the Attorney-General or Director to act, for the purposes of that subsection, on behalf of the Attorney-General or Director 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 Attorney-General or the Director of Public Prosecutions 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 or the Director of Public Prosecutions for the purpose of any proceedings referred to in subsection (1) is admissible in evidence as prima facie evidence that the Attorney-General or the Director of Public Prosecutions 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, 184, 186, 188, 189, 189A, 190, 192, 195, 196, 197, 201, 202, 210, 249B, 249D, 249E or 249F,

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 \$15,000,

- (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, 57, 78Q, 81A, 81B, 81C, 91A, 91B, 91D, 91E, 91F, 91G, 93B, 93C, 114, 132, 133, 154A, 154AA, 158, 172, 173, 174, 175, 176, 176A, 178BA, 178BB, 199, 200, 203, 207, 208 (4), 209, 212, 213, 249C, 249F (where no benefit is concerned), 300, 301, 302, 309 (2), (3) or (4) or 310,
- (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 \$15,000, 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) INDICTABLE OFFENCES PUNISHABLE SUMMARILY WITHOUT CONSENT

493, 494 (Repealed)

495 Indictable offences punishable summarily without consent of accused: assaults

- (1) Proceedings for an offence under section 56, 58, 59 or 61 may be disposed of in a summary manner before a Local Court constituted by a Magistrate sitting alone.
- (2) The penalty that a Local Court may impose for an offence under section 56 or 61 disposed of under this section is imprisonment for a maximum period of 12 months, or a fine not exceeding \$1,000, or both.
- (3) The penalty that a Local Court may impose for an offence under section 58 or 59 disposed of under this section is imprisonment for a maximum period of 2 years, or a fine not exceeding \$5,000, or both.
- (4) The provisions of section 56 of the *Justices Act 1902* do not apply to proceedings under this section.
- (5) A reference in this section to an offence under a provision of this Act includes a reference to an attempt to commit an offence under the provision.

496 Indictable 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 section 125, 126, 131, 132, 133, 139, 140, 144, 148, 150, 151, 152, 156, 157, 158, 159, 160, 178A, 178B, 178BA, 178BB, 178C, 179, 184, 185, 185A, 186, 188, 189, 189A, 190, 192, 247, 249B, 249D, 249E or 249F,

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 \$5,000, shall on conviction in a summary manner before two justices be liable to imprisonment for twelve months or to pay a fine of \$2,000, 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.

497 General provisions regarding indictable offences punishable summarily without consent of accused

- (1) A Local Court may, in its discretion, decline to deal with an offence under section 495 or 496.
- (2) Nothing in this section or section 495 or 496 prevents an offence referred to in any of those sections from being dealt with on indictment.
- (3) In this section, **Local Court** includes a Magistrate.

498, 499 (Repealed)

500 Exception from jurisdiction

Nothing in section 495 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 (Renumbered as sec 496)

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 2 years, or to a fine of \$5,000, 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

529-545 (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) RECOGNIZANCE TO KEEP THE PEACE

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 (Repealed)

(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.

Jurisdiction of Magistrates not affected by certain matters

552 Jurisdiction of Magistrates in respect of offences arising under Chapter 2 of Part 4

In a case where, by virtue of section 476 or 501, a Magistrate has jurisdiction to deal with a charge arising under Chapter 2 of Part 4 (Criminal destruction and damage), the Magistrate may hear the charge irrespective of whether, in order to determine the charge, it is necessary to determine title to any property.

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)-(11) (Repealed)

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.
- (1B) The power conferred on a court by subsection (1) does not extend to the Children's Court or to any other court exercising the powers of the Children's Court.
- (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 on the court by Part 6 of the *Victims Compensation Act 1987*, 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.
- (1A) The power conferred on a Court by subsection (1) does not extend to the Children's Court or to any other court exercising the powers of the Children's Court.
- (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.

559-562 (Repealed)

Part 15A Apprehended domestic violence orders

562A Definitions

In this Part:

aggrieved person means the person whose fear of a domestic violence offence or other conduct is the subject of a complaint under this Part.

authorised Justice means:

- (a) a Magistrate, or
- (b) a Justice employed in the Attorney General's Department.

court means:

- (a) a Local Court,
- (b) the Children's Court, or
- (c) the District Court,

exercising jurisdiction under section 562G.

defendant means the person against whom an order is made.

order means an apprehended domestic violence order in force under this Part and, if the order is varied under this Part, means the order as so varied.

relative means:

- (a) father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law,
- (b) son, daughter, grandson, granddaughter, step-son, step-daughter, son-in-law or daughter-in-law,

- (c) brother, sister, half-brother, half-sister, brother-in-law or sister-in-law,
- (d) uncle, aunt, uncle-in-law or aunt-in-law,
- (e) nephew or niece, or
- (f) cousin,

and includes, in the case of de-facto partners, a person who would be such a relative if the de-facto partners were married.

562B Apprehended domestic violence orders

- (1) A court may, on complaint, make an apprehended domestic violence order if it is satisfied on the balance of probabilities that a person fears the commission by another person:
 - (a) who is or has been the spouse or de-facto partner of the person,
 - (b) who is living or has lived ordinarily in the same household as the person (otherwise than merely as a tenant or boarder),
 - (c) who is or has been a relative of the person, or
 - (d) who has or has had an intimate personal relationship with the person,of a domestic violence offence on the person or of 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 the order).
- (2) Before the court makes an order it must be satisfied on the balance of probabilities that the person's fear is reasonable.
- (3) An order may impose such prohibitions or restrictions on the behaviour of the defendant as appear necessary or desirable to the court.

562C Making of complaint

- (1) A complaint for an order:
 - (a) may be made orally or in writing to a Justice, and
 - (b) shall be substantiated on oath before the Justice.
- (2) A complaint for an order may be made by:
 - (a) the aggrieved person, or
 - (b) a member of the Police Force.

- (3) Notwithstanding subsection (2), a complaint for an order must be made by a member of the Police Force if the aggrieved person is a child under the age of 18 years at the time of the complaint.
- (4) A complaint for an order may be made by or on behalf of more than one aggrieved person.

562D Prohibitions and restrictions imposed by orders

- (1) Without limiting the generality of section 562B, an order may do all or any of the following:
 - (a) prohibit or restrict approaches by the defendant to the aggrieved person,
 - (b) prohibit or restrict access by the defendant to any specified premises occupied by the aggrieved person, any specified place of work of the aggrieved person or any other specified premises or place frequented by the aggrieved person (whether or not the defendant has a legal or equitable interest in the premises or place),
 - (c) prohibit or restrict the possession of all or any specified firearms by the defendant,
 - (d) prohibit or restrict specified behaviour by the defendant which might affect the aggrieved person.
- (2) Before making an order which prohibits or restricts access to the defendant's residence, the court shall consider the accommodation needs of all relevant parties and the effect of making such an order on any children.
- (3) If the court makes an order which prohibits or restricts the possession of firearms by the defendant, the court may by the order require the defendant to dispose of firearms in the defendant's possession and to surrender to the Commissioner of Police any licence, permit or other authority under the *Firearms and Dangerous Weapons Act 1973* held by the defendant.

562E Duration of order

- (1) An order remains in force for such period as is specified in the order by the court, and does not have effect unless a period is so specified.
- (2) The period so specified shall be as long as is necessary, in the opinion of the court, to ensure the protection of the aggrieved person.

562F Variation or revocation of orders

- (1) If an order is made:
 - (a) the aggrieved person (whether or not the complainant),
 - (b) if the complainant was a member of the Police Force—that or any other member

of the Police Force, or

(c) the defendant,

may, at any time, apply to a court for the variation or revocation of the order.

- (2) Notwithstanding subsection (1), an application must be made by a member of the Police Force if the aggrieved person is a child under the age of 18 years at the time of the application.
- (3) The court may, if satisfied that in all the circumstances it is proper to do so, vary or revoke the order.
- (4) In particular, an order may be varied under this section:
 - (a) by extending or reducing the period during which the order is to remain in force,
 - (b) by amending or deleting any prohibitions or restrictions specified in the order, or
 - (c) by specifying additional prohibitions or restrictions in the order.
- (5) An order shall not be varied or revoked on the application of the defendant unless notice of the application has been served on the aggrieved person.
- (6) An order shall not be varied or revoked on the application of the complainant or aggrieved person unless notice of the application has been served on the defendant.
- (7) Notice of an application shall be served personally or in such other manner as the court hearing the application directs.

562G Courts authorised to make orders etc

- (1) The following courts have jurisdiction (in the circumstances specified) to make orders under this Part:
 - (a) a Local Court—except where the defendant is less than 18 years of age at the time the complaint is made,
 - (b) the Children’s Court—where the defendant is less than 18 years of age at the time the complaint is made,
 - (c) the District Court—where a complaint by or on behalf of the aggrieved person has been dismissed by a Local Court or the Children’s Court.
- (2) A Local Court has jurisdiction to vary or revoke an order made by it or any other court (except where the defendant is less than 18 years of age at the time the application for the variation or revocation is made).
- (3) The Children’s Court has jurisdiction to vary or revoke an order made by it irrespective of the age of the defendant at the time the application for variation or revocation is

made.

- (4) The District Court has jurisdiction to vary or revoke an order made by it.

562H Interim orders etc made in absence of defendant

- (1) An order may, if in all the circumstances it appears to the court to be necessary or appropriate, be made in the absence of the defendant.
- (2) An order may be made in the absence of the defendant whether or not the defendant has been given notice of the proceedings.
- (3) If an order is made in the absence of the defendant and without the defendant having been given notice of the proceedings:
- (a) the court shall summon the defendant to appear at a further hearing of the matter as soon as possible after the order is made,
 - (b) at the further hearing the court may confirm or may revoke or vary the order (whether or not the defendant appears at the further hearing), and
 - (c) pending the further hearing, the order has the same effect as any other order under this Part.

562I Offence of contravening order

- (1) A person who knowingly contravenes a prohibition or restriction specified in an order made against the person is guilty of an offence.
- Penalty: 20 penalty units or imprisonment for 6 months, or both.
- (2) A person is not guilty of an offence against this section unless a copy of the record of the order concerned was served on the person:
- (a) personally under section 562J, or
 - (b) in such other manner as the court which made the order directs.
- (3) If a member of the Police Force believes on reasonable grounds that a person has committed an offence against this section, the member of the Police Force may, without warrant, arrest and detain the person.
- (4) A person so arrested and detained shall be brought as soon as practicable before a court to be dealt with for the offence.
- (5) Proceedings for an offence against this section shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

562J Service of copy of order etc on defendant, police etc

- (1) The clerk of a court which makes an order, or varies or revokes an order, shall prepare a written record of the order or of the variation or revocation.
- (2) The clerk of the court shall:
 - (a) serve a copy of the record of an order or of the variation of an order personally on the defendant if the defendant is present in court, or
 - (b) if the clerk of the court is unable to serve a copy of that record personally on the defendant, the clerk shall arrange for the copy of that record to be served personally on the defendant by a member of the Police Force or such other person as the clerk thinks fit.
- (3) The clerk of the court shall cause:
 - (a) a copy of the record of an order, or of the variation or revocation of an order, and
 - (b) a copy of any complaint for an order,to be forwarded to the Commissioner of Police and to the aggrieved person.

562K Summons for appearance or arrest of defendant

- (1) If a complaint for an order is made, an authorised Justice may issue:
 - (a) a summons for the appearance of the defendant, or
 - (b) a warrant for the arrest of the defendant,as if the complaint alleged the commission of an offence.
- (2) An authorised Justice may issue a warrant for the arrest of the defendant even though the defendant is not alleged to have committed an offence.
- (3) An authorised Justice shall issue a warrant for the arrest of the defendant if it appears to the authorised Justice that the personal safety of the aggrieved person will be put at risk unless the defendant is arrested for the purpose of being brought before the court.

562L Application of [Bail Act 1978](#)

If a complaint for an order is made, the [Bail Act 1978](#) applies to the defendant as if:

- (a) where the defendant is arrested pursuant to a warrant issued under this Part or first appears before a court in answer to a summons so issued—the defendant were an accused person charged with an offence, and
- (b) proceedings in respect of the complaint or order were proceedings in respect of an

offence to which section 8 of the *Bail Act 1978* applies.

562M Appeal by defendant against order made by Local Court or Children's Court

- (1) An order made by a Local Court or the Children's Court shall be deemed to be an order whereby the defendant is punished within the meaning of section 122 of the *Justices Act 1902*.
- (2) In the application of section 123 of the *Justices Act 1902* and the *Bail Act 1978* to the defendant, the defendant shall be deemed to be an accused person who, because of the prohibitions or restrictions imposed by the order, is in custody.
- (3) In this section, **order** includes an order which varies an order.

562N Costs

- (1) A court may, in proceedings under this Part, award costs to the complainant or the defendant.
- (2) A Local Court or the Children's Court shall not award costs against a complainant who is the aggrieved person unless satisfied that the complaint was frivolous or vexatious.
- (3) Costs awarded under this section may be recovered in the same manner as costs awarded by the court in proceedings for an offence.

562O Concurrent criminal proceedings

- (1) A court may make an order against a defendant even though the defendant has been charged with an offence arising out of the same conduct as that out of which the complaint for the order arose.
- (2) Where a person stands charged before a court with an offence which appears to the court to be a domestic violence offence:
 - (a) the court shall inquire whether a complaint under this Part has been made,
 - (b) if a complaint has not been made, the court shall inform the person on whom the offence is alleged to have been committed and who appears in the proceedings of the person's right to apply for an order under this Part, and
 - (c) the court shall then inquire whether a complaint under this Part is to be made.
- (3) If such a complaint has been or is made, the court shall, if it has jurisdiction and it is practicable to do so, deal with the complaint forthwith.

562P Recognizance to keep peace not affected

Nothing in this Part prevents or restricts the application of section 547 in relation to cases to which this Part applies.

562Q Regulations

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 Part or that is necessary or convenient to be prescribed for carrying out or giving effect to this Part.

562R Transitional provisions

- (1) An order in force under section 547AA, immediately before the commencement of this Part, shall be deemed to be an order under this Part.
- (2) A complaint for an order under section 547AA, or an application for the variation or revocation of such an order, pending on the commencement of this Part, shall be deemed to be a complaint or application made under this Part.
- (3) In this Part a reference to the Children's Court shall, before the commencement of the *Children's Court Act 1987*, be construed as a reference to a children's court under the *Child Welfare Act 1939*.
- (4) The District Court does not have jurisdiction under this Part in the case of a complaint that has been dismissed by a court before the commencement of this Part.

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.

568-572 (Repealed)

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, 65A, 66, 66A, 66B, 66C, 66D, 66F, 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, 91B, 91D, 91E, 91F or 91G 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.
- (4) A reference in this section to the Judge presiding at a trial includes a reference to a Justice presiding at committal proceedings.

578A Prohibition of publication identifying victims of certain sexual offences

- (1) In this section:

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.

matter includes a picture.

publish includes broadcast by radio or television.

- (2) A person shall not publish any matter which identifies the complainant in prescribed sexual offence proceedings or any matter which is likely to lead to the identification of the complainant.

Penalty: In the case of an individual—50 penalty units or imprisonment for 6 months, or both; in the case of a corporation—500 penalty units.

- (3) This section applies even though the prescribed sexual offence proceedings have been finally disposed of.

- (4) This section does not apply to:
- (a) a publication authorised by the Judge or Justice presiding in the proceedings concerned,
 - (b) a publication made with the consent of the complainant (being a complainant who is of or over the age of 14 years at the time of publication),
 - (c) a publication authorised by the Attorney General under section 11 of the *Children (Criminal Proceedings) Act 1987* in respect of a complainant who is under the age of 14 years at the time of publication,
 - (d) an official law report of the prescribed sexual offence proceedings or any official publication in the course of, and for the purposes of, those proceedings,
 - (e) the supply of transcripts of the prescribed sexual offence proceedings to persons with a genuine interest in those proceedings or for genuine research purposes, or
 - (f) a publication made after the complainant's death.
- (5) A Judge or Justice shall not authorise a publication under subsection (4) (a) unless the Judge or Justice:
- (a) has sought and considered any views of the complainant, and
 - (b) is satisfied that the publication is in the public interest.
- (6) The prohibition contained in this section applies in addition to any other prohibition or restriction imposed by law on the publication of any matter relating to prescribed sexual offence proceedings.
- (7) Proceedings for an offence against this section shall be dealt with summarily before:
- (a) a Local Court constituted by a Magistrate sitting alone, or
 - (b) the Supreme Court in its summary jurisdiction.
- (8) If proceedings for an offence against this Act are brought before a Local Court, the maximum penalty that the Local Court may impose on a corporation is 50 penalty units.

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

Reference to Act	Subject or short title	Extent of repeal
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 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 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	<i>"Criminal Law Amendment Act"</i> .	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

(Section 3)

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, 77A, 78, 116, 118 to 124 inclusive, 128 to 130 inclusive, 163, 183, 191, 193, 194, 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 or Director of Public Prosecutions

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 or Director of Public Prosecutions.

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 or the Director of Public Prosecutions 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 or Director of Public Prosecutions

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 or Director of Public Prosecutions.

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 or the Director of Public Prosecutions 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 thing mentioned in section 202 or 210.

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 (Repealed)

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, 184A, 185, 327, 330, 338 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*.