

# Crimes Act 1900 No 40

[1900-40]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Does not include amendments by**
  - [Crimes \(Sentencing\) Amendment Act 1987 No 183](#) (not commenced)
  - [Statute Law Revision \(Local Government\) Act 1995 No 11](#) (not commenced)
- **See also**
  - [Crimes Amendment \(Child Pornography\) Bill 1995](#)
  - [Criminal Procedure Amendment \(Indictable Offences\) Bill 1995](#)
  - [Evidence \(Consequential and Other Provisions\) Bill 1995](#)
  - [Statute Law \(Miscellaneous Provisions\) Bill 1995](#)
  - [Criminal Legislation Amendment Bill 1995](#)

### Authorisation

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File last modified 9 June 1995

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New South Wales

## Contents

<b>Long title</b> .....	33
<b>Part 1 Preliminary and interpretation</b> .....	33
<b>Short title and division into Parts</b> .....	33
1 Name of Act and contents of Act .....	33
<b>Repeals and savings</b> .....	40
2 Repeals and savings .....	40
<b>Application of certain sections and Parts</b> .....	40
3 Application of certain Parts of Act .....	40
<b>Territorial application of the criminal law of the State</b> .....	40
3A Territorial application of the criminal law of the State .....	40
<b>Interpretation</b> .....	42
4 Definitions .....	42
5 Maliciously .....	47
6 Month .....	47
7 "Possession" when criminal .....	47
8 "Public place" etc .....	47
9 What offences felonies .....	47
10 What offences misdemeanours .....	48
<b>Part 2 Offences against the Sovereign</b> .....	48

<b>Treason-felony</b> .....	48
11 Provisions of 36 Geo III, c 7, and 57 Geo III, c 6, repealed except as to offences against the person of the Sovereign .....	48
12 Compassing etc deposition of the Sovereign—overawing Parliament etc .....	48
13 Time within which prosecution shall be commenced and warrant issued .....	48
14 In informations more than one overt act may be charged.....	49
15 Information for such felonies valid though the facts may amount to treason .....	49
16 Nothing herein to affect 25 Ed III, c 2 .....	49
16A Procedure in cases of treason.....	49
<b>Part 3 Offences against the person</b> .....	49
<b>Homicide</b> .....	49
17 (Repealed) .....	49
17A Date of death .....	50
18 Murder and manslaughter defined .....	50
19 (Repealed) .....	50
19A Punishment for murder.....	50
20 Child murder—when child deemed born alive .....	51
21 Child murder by mother—verdict of contributing to death etc .....	51
22 Trial for child murder—verdict of concealment of birth.....	51
22A Infanticide .....	51
23 Trial for murder—provocation .....	52
23A Diminished responsibility .....	52
24 Manslaughter—punishment.....	53
25 (Repealed) .....	53
<b>Conspiracy to murder</b> .....	53
26 Conspiring to commit murder.....	53
<b>Attempts to murder</b> .....	54
27 Acts done to the person with intent to murder.....	54
28 Acts done to property with intent to murder .....	54
29 Certain other attempts to murder .....	54

30 Attempts to murder by other means .....	54
<b>Documents containing threats</b> .....	<b>55</b>
31 Documents containing threats .....	55
<b>Suicide</b> .....	<b>55</b>
31A Suicide and attempt to commit suicide .....	55
31B Survivor of suicide pact .....	55
31C Aiding etc suicide .....	55
<b>Acts causing danger to life or bodily harm</b> .....	<b>56</b>
32 Impeding endeavours to escape shipwreck.....	56
32A-32C (Repealed) .....	56
33 Wounding etc with intent to do bodily harm or resist arrest.....	56
33A Discharging loaded arms with intent.....	56
33B Use or possession of weapon to resist arrest etc .....	56
34 Feloniously wounding—verdict of minor offence .....	57
35 Malicious wounding or infliction of grievous bodily harm .....	57
35A Maliciously cause dog to inflict grievous bodily harm or actual bodily harm.....	57
36 Causing a grievous bodily disease.....	57
37 Attempts to choke etc (garrotting) .....	58
38 Using chloroform etc to commit an offence.....	58
39 Using poison etc so as to endanger life .....	58
40 On trial for poisoning—verdict of minor offence .....	58
41 Administering poison etc with intent to injure or annoy .....	58
41A Poisoning etc of water supply.....	58
42 Injuries to child at time of birth .....	59
43 Exposing or abandoning child under two.....	59
44 Not providing wife, child or servant with food etc .....	59
45 Prohibition of female genital mutilation.....	59
46 Causing bodily injury by gunpowder etc.....	61
47 Using etc explosive substance or corrosive fluid etc .....	61
48 Placing gunpowder near a building etc.....	61
49 Setting trap etc.....	61
50-52 (Repealed) .....	61

52A Dangerous driving: substantive matters .....	62
52AA Dangerous driving: procedural matters .....	64
52B Culpable navigation.....	65
53 Injuries by furious driving etc .....	66
54 Causing grievous bodily harm .....	67
<b>Possessing or making explosives, &amp;c, with intent to injure the person</b> .....	<b>67</b>
55 Possessing etc gunpowder etc with intent to injure the person.....	67
<b>Assaults upon clergymen, officers, and others</b> .....	<b>67</b>
56 Obstructing clergyman in discharge of his duties.....	67
57 Assault on persons preserving wreck .....	67
58 Assault with intent to commit felony on certain officers.....	67
59 Assault occasioning actual bodily harm.....	68
60 Assault by husband on wife .....	68
<b>Common assaults</b> .....	<b>68</b>
61 Common assault prosecuted by indictment .....	68
<b>Offences in the nature of rape, offences relating to other acts of sexual assault, &amp;c</b>	
.....	68
61A-61G (Repealed).....	68
61H Definition of sexual intercourse etc.....	68
61I Sexual assault .....	69
61J Aggravated sexual assault .....	69
61K Assault with intent to have sexual intercourse.....	70
61L Indecent assault .....	70
61M Aggravated indecent assault .....	70
61N Act of indecency.....	70
61O Aggravated act of indecency .....	71
61P Attempt to commit offence under sections 61I-61O.....	71
61Q Alternative verdicts.....	71
61R Consent.....	72
61S Offenders who are minors .....	72

61T Offender married to victim .....	73
61U Circumstances of certain sexual offences to be considered in passing sentence .....	73
62 Carnal knowledge—proof.....	73
63 Common law offences of rape and attempted rape abolished .....	73
64 Trial for rape—verdict of carnal knowledge .....	73
65 (Repealed) .....	73
65A Sexual intercourse procured by intimidation, coercion and other non-violent threats .....	73
66 Procuring etc carnal knowledge by fraud .....	74
66A Sexual intercourse—child under 10.....	74
66B Attempting, or assaulting with intent, to have sexual intercourse with child under 10.....	74
66C Sexual intercourse—child between 10 and 16 .....	74
66D Attempting, or assaulting with intent, to have sexual intercourse with child between 10 and 16 .....	75
66E Alternative verdicts .....	75
66F Sexual intercourse—intellectual disability .....	76
67, 68 (Repealed) .....	76
69 Trial for carnal knowledge—girl in fact over 10.....	76
70 Trial for carnal knowledge—verdict of assault with intent .....	76
71–72A (Repealed) .....	77
73 Carnal knowledge by teacher etc .....	77
74 Attempts.....	77
75 Alternative charge .....	77
76, 76A (Repealed).....	77
77 Consent no defence in certain cases .....	77
77A Proceedings in camera in certain cases .....	78
78 (Repealed) .....	79
78A Incest.....	79
78B Incest attempts .....	79
78C Defences .....	79
78D Removal from guardianship etc .....	79
78E Rape or attempt—verdict of incest or attempt.....	79
78F Sanction of Attorney-General.....	79
78G Definition of “homosexual intercourse” for sections 78H–78Q.....	80
78H Homosexual intercourse with male under 10.....	80

78I Attempt, or assault with intent, to have homosexual intercourse with male under 10.....	80
78J Trial for homosexual intercourse offence—male in fact between 10 and 18.....	80
78K Homosexual intercourse with male between 10 and 18.....	80
78L Attempt, or assault with intent, to have homosexual intercourse with male between 10 and 18 .	81
78M (Repealed) .....	81
78N Homosexual intercourse by teacher etc.....	81
78O Attempt, or assault with intent, to have homosexual intercourse with pupil etc .....	81
78P Alternative charge .....	81
78Q Acts of gross indecency .....	81
78R Consent no defence in certain cases.....	81
78S (Repealed) .....	81
78T Limitations.....	82
79 Bestiality.....	82
80 Attempt to commit bestiality .....	82
80A Sexual assault by forced self-manipulation .....	82
81-81B (Repealed) .....	82
<b>Misconduct with regard to corpses .....</b>	<b>82</b>
81C Misconduct with regard to corpses.....	82
<b>Attempts to procure abortion.....</b>	<b>83</b>
82 Administering drugs etc to herself by woman with child .....	83
83 Administering drugs etc to woman with intent.....	83
84 Procuring drugs etc .....	83
<b>Concealing birth of a child.....</b>	<b>83</b>
85 Concealment of birth .....	83
<b>Abduction.....</b>	<b>84</b>
86 Abduction of woman against her will.....	84
87 The like against the will of parent etc.....	84
88 In such cases property of woman to remain hers .....	84
89 Forcible abduction of a woman.....	84
90 Abduction of girl under 16 .....	84
90A Kidnapping .....	84

91 Taking child with intent to steal etc .....	85
91A Procuring etc .....	85
91B Procuring person by drugs etc.....	85
<b>Child prostitution and pornography</b> .....	85
91C Definitions of “act of child prostitution”, “child” .....	85
91D Promoting or engaging in acts of child prostitution.....	86
91E Obtaining benefit from child prostitution.....	86
91F Premises not to be used for child prostitution .....	87
91G Children not to be employed for pornographic purposes .....	87
<b>Bigamy</b> .....	88
92 Bigamy .....	88
93 Participator in bigamy .....	88
<b>Part 3A Offences relating to public order</b> .....	88
93A Definition.....	88
93B Riot.....	88
93C Affray.....	89
93D Mental element under sections 93B and 93C.....	89
93E Offences of riot, rout, affray abolished .....	89
<b>Part 3B Offences relating to firearms etc</b> .....	89
93F Definition .....	89
93G Causing danger with firearm or spear gun .....	90
93H Trespassing with or dangerous use of firearm or spear gun .....	90
93I (Repealed) .....	91
<b>Part 4 Offences relating to property</b> .....	91
<b>Chapter 1 Stealing and like offences</b> .....	91
<b>GENERAL</b> .....	91
93J Property previously stolen .....	91
<b>ROBBERY</b> .....	91
94 Robbery or stealing from the person .....	91



95 Same in circumstances of aggravation.....	91
96 Same (robbery) with wounding .....	92
97 Robbery etc or stopping a mail, being armed or in company .....	92
98 Robbery with arms etc and wounding .....	92
<b>EXTORTION, &amp;c, BY MENACE OR THREAT.....</b>	<b>93</b>
99 Demanding money with intent to steal .....	93
100 Letter demanding money etc with menaces .....	93
100A Blackmail by threat to publish etc .....	93
101 Threatening letters .....	94
102 Accusing or threatening to accuse of crime to extort money etc .....	94
103 Causing a person by violence or threats to execute deeds etc .....	94
104 Term “infamous crime” defined .....	94
105 Menace may be of violence or accusation etc .....	94
<b>SACRILEGE AND HOUSEBREAKING .....</b>	<b>95</b>
105A Definitions .....	95
106 Breaking and entering place of Divine worship and committing felony.....	95
107 The like with intent to commit felony .....	96
108 (Repealed) .....	96
109 Entering with intent, or stealing etc in dwelling-house and breaking out.....	96
110 Breaking, entering and assaulting with intent to murder etc .....	96
111 Entering dwelling-house .....	97
112 Breaking etc into any house etc and committing felony .....	97
113 Breaking etc into any house etc with intent to commit felony .....	97
114 Being armed etc with intent to commit offence .....	98
115 The like after a previous conviction .....	98
115A Alternative verdicts .....	98
<b>LARCENY .....</b>	<b>99</b>
<b>Declaratory .....</b>	<b>99</b>
116 All larcenies to be of same nature .....	99
<b>General provisions.....</b>	<b>99</b>
117 Punishment for larceny.....	99

118 Intent to return property no defence .....	99
119 Verdict where several takings proved.....	100
120 Trial for larceny—verdict of embezzlement etc.....	100
121 Verdict of “larceny or receiving” .....	100
122 Verdict where persons indicted for joint larceny or receiving .....	100
123 Verdict of misdemeanour.....	100
124 Fraudulent appropriation .....	100
<b>Larceny by bailees</b> .....	101
125 Larceny by bailee .....	101
<b>Of animals</b> .....	101
126 Stealing cattle or killing with intent to steal .....	101
127 Stealing or killing cattle—uncertainty as to sex or age not to entitle to acquittal .....	101
128 Trial for stealing cattle—verdict of stealing skins .....	101
129 Trial for killing cattle—verdict of stealing.....	102
130 Trial for stealing cattle—verdict of misdemeanour .....	102
131 Unlawfully using etc another person’s cattle.....	102
132 Stealing dogs.....	102
133 Taking money to restore dogs .....	102
<b>Of written instruments</b> .....	103
134 Stealing, destroying etc valuable security.....	103
135 Stealing, destroying etc wills or codicils .....	103
136 Proviso to sections 134 and 135.....	103
137 Civil remedies not affected by conviction.....	103
138 Stealing, destroying etc records etc of any court or public office.....	103
<b>Of things attached to or growing on land</b> .....	104
139 Stealing etc metal, glass, wood etc fixed to house or land.....	104
140 Stealing etc trees etc in pleasure-grounds etc .....	104
141–143 (Repealed) .....	104
<b>From mines</b> .....	104
144 Stealing ore of metal, coal etc.....	104
145 Miners removing ore with intent to defraud .....	104

146 Concealing royalty .....	105
147 Fraud on partners in mines etc .....	105
<b>In dwelling-house</b> .....	105
148 Stealing property in a dwelling-house .....	105
149 The same with menaces .....	105
<b>Of goods in process of manufacture, tools, &amp;c</b> .....	105
150 Stealing goods in process of manufacture .....	105
151 Selling etc materials to be manufactured .....	105
<b>From ships or wharfs</b> .....	106
152 Stealing from ship in port or on wharfs etc .....	106
153 Stealing from ship in distress or wrecked .....	106
<b>By tenants or lodgers</b> .....	106
154 Tenants etc stealing articles let to hire .....	106
<b>Of vehicles or boats</b> .....	106
154A Taking a conveyance without consent of owner .....	106
154AA Car stealing etc .....	107
<b>Larceny and illegal use of aircraft</b> .....	107
154B Stealing aircraft and unlawfully taking or exercising control of aircraft .....	107
154C (Repealed) .....	107
<b>EMBEZZLEMENT OR LARCENY</b> .....	107
<b>By clerks and servants</b> .....	107
155 Definition of clerk or servant .....	107
156 Larceny by clerks or servants .....	108
157 Embezzlement by clerks or servants .....	108
158 Destruction, falsification of accounts etc by clerk or servant .....	108
<b>By persons employed in the Public Service</b> .....	108
159 Larceny by persons in Public Service .....	108
160 Embezzlement etc by persons in the Public Service .....	108

<b>General deficiency</b> .....	109
161 Proof of general deficiency in accounts .....	109
<b>By joint owners</b> .....	109
162 Larceny etc by joint owners.....	109
<b>Alternative verdict</b> .....	109
163 Trial for embezzlement—verdict of larceny.....	109
<b>FRAUDS BY FACTORS AND OTHER AGENTS</b> .....	109
164 Terms “agents”, “intrusted” and “misappropriate” .....	109
165 Agent misappropriating money etc intrusted to him .....	110
166 The like as to goods etc intrusted to him .....	110
167 Not to affect trustees or mortgagees nor to restrain agents from receiving money on valuable securities etc .....	110
168 Fraudulent sale of property by agent .....	110
169 The same by person under power of attorney.....	110
170 Agent obtaining advances on property of his principal .....	110
171 What to be deemed intrusting with goods etc.....	111
172 Trustees fraudulently disposing of property .....	111
173 Directors etc fraudulently appropriating etc property .....	112
174 Directors etc omitting certain entries.....	112
175 Director etc wilfully destroying etc books of company etc .....	112
176 Director or officer publishing fraudulent statements.....	112
176A Directors etc cheating or defrauding.....	113
177 Proviso to sections 165 to 176 inclusive.....	113
178 No relief from compulsory disclosures.....	113
<b>FRAUDULENT MISAPPROPRIATION</b> .....	113
178A Fraudulent misappropriation of moneys collected or received .....	113
<b>VALUELESS CHEQUES</b> .....	114
178B Valueless cheques .....	114
<b>OBTAINING MONEY, ETC, BY DECEPTION</b> .....	114

178BA Obtaining money etc by deception .....	114
<b>OBTAINING MONEY, ETC, BY FALSE OR MISLEADING STATEMENTS</b> .....	<b>115</b>
178BB Obtaining money etc by false or misleading statements .....	115
<b>OBTAINING CREDIT BY FRAUD</b> .....	<b>115</b>
178C Obtaining credit by fraud .....	115
<b>FALSE PRETENCES</b> .....	<b>115</b>
<b>Subdivision</b> .....	<b>115</b>
179 False pretences etc .....	115
180 Causing payment etc by false pretence etc .....	115
181 False pretence of title .....	115
182 Accused may be convicted on a charge of false pretences etc though property obtained partly by a false promise .....	115
183 Trial for false pretences etc—verdict of larceny .....	116
184 Fraudulent personation .....	116
184A Personating owner of stock or property .....	116
185 Inducing persons by fraud to execute instruments .....	116
<b>Fraudulent arrangements</b> .....	<b>117</b>
185A Inducing persons to enter into certain arrangements by misleading etc statements etc .....	117
<b>CORRUPT REWARDS</b> .....	<b>118</b>
186 Taking reward for helping to recover stolen property .....	118
<b>RECEIVERS</b> .....	<b>118</b>
187 Term “stealing” in sections 188 and 189 .....	118
188 Receiving etc where principal guilty of felony .....	118
189 Receiving etc where principal guilty of misdemeanour .....	118
189A Receiving etc goods stolen out of New South Wales .....	118
189B Prosecution under section 188 or 189 where property stolen in course of transmission .....	119
190 Receiving etc cattle feloniously killed, or carcass etc .....	119
191 Uncertainty as to sex or age not to entitle to acquittal .....	119
192 Receiving material or tools intrusted for manufacture .....	120

193 Verdict where several persons are indicted for jointly receiving.....	120
<b>Chapter 2 Criminal destruction and damage .....</b>	<b>120</b>
<b>Division 1 Interpretation.....</b>	<b>120</b>
194 Interpretation .....	120
<b>Division 2 Crimes against property generally .....</b>	<b>120</b>
195 Maliciously destroying or damaging property.....	120
196 Maliciously destroying or damaging property with intent to injure a person .....	120
197 Dishonestly destroying or damaging property.....	121
198 Maliciously destroying or damaging property with the intention of endangering life .....	121
199 Threatening to destroy or damage property.....	121
200 Possession, custody or control of an article with intent to destroy or damage property .....	121
<b>Division 3 Crimes relating to particular kinds of property etc .....</b>	<b>121</b>
201 Interfering with a mine .....	121
202 Causing damage etc to sea, river, canal and other works.....	122
203 False statement that a person or property is in danger.....	122
<b>Part 4AA Offences relating to transport services .....</b>	<b>123</b>
<b>Division 1 Offences relating to aircraft, vessels etc.....</b>	<b>123</b>
204 Destruction of, or damage to, an aircraft or vessel with intent or reckless indifference.....	123
205 Prejudicing the safe operation of an aircraft or vessel.....	123
206 Assault etc on member of crew of aircraft or vessel.....	123
207 Placing etc dangerous articles on board an aircraft or vessel.....	123
208 Threatening to destroy etc an aircraft, vessel or vehicle.....	124
209 False information as to plan etc to prejudice the safety of an aircraft or vessel or persons on board an aircraft or vessel .....	125
210 Destroying, damaging etc an aid to navigation .....	125
<b>Division 2 Offences relating to railways etc .....</b>	<b>126</b>
211 Criminal acts relating to railways .....	126
212 Endangering passengers etc on railway .....	126
213 Obstructing a railway .....	126

214 Obstructing a railway—verdict of misdemeanour .....	127
215–249 (Repealed) .....	127
<b>Part 4A Corruptly receiving commissions and other corrupt practices ..</b>	<b>127</b>
249A Definitions .....	127
249B Corrupt commissions or rewards .....	127
249C Misleading documents or statements used or made by agents .....	128
249D Corrupt inducements for advice .....	128
249E Corrupt benefits for trustees and others .....	129
249F Aiding, abetting etc .....	130
249G Repayment of value of gift etc .....	130
249H Disqualification for office .....	131
249I Dismissal of trivial case .....	131
249J Custom not a defence .....	131
<b>Part 5 Forgery and false instrument offences .....</b>	<b>131</b>
<b>Chapter 1 Forgery .....</b>	<b>131</b>
<b>Declaratory and general .....</b>	<b>131</b>
250 Forging and uttering defined .....	131
251 Uttering to be offence of same degree and subject to same punishment as forging .....	131
252 (Repealed) .....	132
<b>Forgery, &amp;c, of public seals .....</b>	<b>132</b>
253 Royal or public seals .....	132
254 (Repealed) .....	132
<b>Forgery of Acts, Proclamations, &amp;c .....</b>	<b>132</b>
255 Acts, proclamations etc .....	132
256–259 (Repealed) .....	132
<b>Forgery of India bonds, Exchequer bills, &amp;c .....</b>	<b>132</b>
260 East India bonds, Exchequer bills, or debentures etc .....	132
261–264 (Repealed) .....	133
<b>Forgery, &amp;c, of, or engraving plate, &amp;c, for, bank notes, &amp;c .....</b>	<b>133</b>

265 Forging etc a bank note etc .....	133
266 Engraving or having any plate etc for making bank notes or paper .....	133
267 Engraving etc any part of a bank note etc .....	134
268 Instruments in blank .....	134
269 Having moulds for paper with the name of any banker .....	134
270 Engraving plates for foreign bills or notes .....	134
<b>Forgery, &amp;c, of wills, &amp;c .....</b>	<b>135</b>
271 Forging wills .....	135
272-276 (Repealed) .....	135
<b>Forgery of signature of Judge .....</b>	<b>135</b>
277 (Repealed) .....	135
278 Forging signature of Supreme Court Judge to decree etc or tendering same in evidence with forged signature .....	135
279-283 (Repealed) .....	135
<b>Forgery, &amp;c, of instruments of evidence .....</b>	<b>135</b>
284 (Repealed) .....	135
285 Forgery of signature to copies etc admissible in evidence of decrees etc .....	135
286-288 (Repealed) .....	136
289 Forgery of seal etc on public documents etc and copies admissible in evidence .....	136
290 (Repealed) .....	136
291 Forging etc certificate issued by officer outside New South Wales .....	136
292-295 (Repealed) .....	136
<b>Falsifying entries of births, deaths, &amp;c .....</b>	<b>137</b>
296 Falsifying entries of births etc or giving false certificates .....	137
297 Making false entries in copies sent to registrar .....	137
<b>Obtaining or demanding property on forged instruments .....</b>	<b>137</b>
298 Demanding property on forged instruments .....	137
<b>Chapter 2 False instruments .....</b>	<b>138</b>
299 Interpretation .....	138



300 Making or using false instruments.....	138
301 Making or using copies of false instruments.....	139
302 Custody of false instruments etc .....	139
303 Response of machine to false instrument etc.....	140
304 When a false instrument is made .....	140
305 When an act or omission is prejudicial .....	140
306 Intention to induce may be general.....	141
307 Abolition of common law offence .....	141
<b>Part 6 Offences relating to computers .....</b>	<b>141</b>
308 Definitions .....	141
309 Unlawful access to data in computer.....	141
310 Damaging data in computer.....	142
<b>Part 7 Public justice offences.....</b>	<b>143</b>
<b>Chapter 1 Definitions .....</b>	<b>143</b>
311 Definitions .....	143
312 Meaning of “pervert the course of justice” .....	143
313 Knowledge that offence is a serious offence is unnecessary .....	143
<b>Chapter 2 Interference with the administration of justice .....</b>	<b>143</b>
314 False accusations etc.....	143
315 Hindering investigation etc.....	144
316 Concealing serious offence.....	144
317 Tampering etc with evidence.....	144
318 Making or using false official instrument to pervert the course of justice .....	145
319 General offence of perverting the course of justice.....	145
<b>Chapter 3 Interference with judicial officers, witnesses, jurors etc .....</b>	<b>145</b>
320 Extended meaning of “giving evidence” .....	145
321 Corruption of witnesses and jurors .....	146
322 Threatening or intimidating judges, witnesses, jurors etc .....	146
323 Influencing witnesses and jurors .....	147
324 Increased penalty if serious offence involved.....	147
325 Preventing, obstructing or dissuading witness or juror from attending etc .....	147

326 Reprisals against judges, witnesses, jurors etc.....	147
<b>Chapter 4 Perjury, false statements etc</b> .....	148
327 Offence of perjury.....	148
328 Perjury with intent to procure conviction or acquittal.....	148
329 Conviction for false swearing on indictment for perjury.....	148
330 False statement on oath not amounting to perjury.....	148
331 Contradictory statements on oath.....	148
332 Certain technical defects provided for.....	149
333 Subornation of perjury.....	149
334 General provisions applicable to perjury and false statement offences.....	149
335 False statements in evidence on commission.....	150
336 False entry on public register.....	150
337 False instruments issued by public officers.....	150
338 Restrictions on prosecutions for perjury.....	150
339 Application of Chapter to perjury under other Acts.....	150
<b>Chapter 5 Miscellaneous</b> .....	151
340 Extent of abolition of offences.....	151
341 Certain common law offences abolished.....	151
342 Certain conspiracy offences not affected.....	151
343 Certain common law offences not abolished.....	152
343A Saving of other punishments.....	152
<b>Part 8 (Repealed)</b> .....	152
<b>Part 8A Attempts</b> .....	152
344A Attempts.....	152
<b>Part 9 Abettors and accessories</b> .....	152
345 Principals in the second degree—how tried and punished.....	152
346 Accessories before the fact—how tried and punished.....	152
347 Accessories after the fact—how tried and punished.....	153
348 Punishment of accessories after the fact to treason.....	153
349 Punishment of accessories after the fact to murder etc.....	153
350 Punishment of accessories after the fact to other felonies etc.....	153

351 Abettors in misdemeanours—how tried and punished ..... 153

**Part 10 Apprehension of offenders, powers of search, powers of entry and discharge of persons in custody**

..... 153

**Apprehension of offenders** ..... 153

352 Person in act of committing or having committed offence ..... 153

352AA Arrest of prisoners unlawfully at large ..... 154

352A Power of arrest in cases of certain offences committed outside the State ..... 155

353 Persons offering stolen property..... 157

353A Power to search person, make medical examination, take photograph, finger-prints etc ..... 157

353AA Photographing, finger-printing etc children under 14 years of age ..... 158

353AB Destruction of certain photographs, finger-prints etc..... 159

353B Person apprehended carrying razor etc..... 159

353C Arrest by commander of aircraft ..... 159

354–356 (Repealed) ..... 160

**Powers of search** ..... 160

357 Searching for and seizing firearms etc ..... 160

357A Powers of search ..... 161

357B Definitions ..... 162

357C Police may board vessels ..... 162

357D Police may stop and detain vessels..... 162

357E Police may stop and search persons and vehicles..... 163

**Powers of entry and search in cases of child prostitution or pornography**

..... 163

357EA Police may enter and search ..... 163

**Powers of entry in cases of domestic violence**..... 163

357F Entry by invitation ..... 163

357G Entry by radio/telephone warrant etc where entry denied..... 164

357H Provisions relating to powers of entry under sections 357F and 357G..... 167

357I Police may enter and search for firearms ..... 167

<b>Discharge of persons in custody</b> .....	168
358 When case not to be proceeded with gaoler to discharge prisoner on certificate from Attorney-General or Director of Public Prosecutions .....	168
<b>Disposal of property in the custody of the police</b> .....	168
358A (Repealed) .....	168
358B Disposal of seized firearms etc .....	168
<b>Part 11 Procedure, evidence, verdict, &amp;c</b> .....	169
<b>As to indictment—form, venue, amendments, &amp;c</b> .....	169
359 Meaning of “Statute” and “Act” in indictments etc .....	169
360 What defects shall not vitiate an indictment .....	170
360A Indictment etc of corporations .....	170
361 Venue in indictment .....	171
362 Formal objections when to be taken .....	171
363 Judgment on demurrer to indictment .....	172
364 Traversing indictment .....	172
365 Orders for amendment of indictment, separate trial and postponement of trial .....	172
366 Amended indictment .....	173
367 Verdict and judgment valid after amendment .....	173
368 Form of record after amendment .....	173
369 Respiting recognizances on postponement .....	173
370 Separate offences when can be joined .....	173
371 Accessories may be charged together in one indictment .....	173
372 Indictment charging previous offence also .....	174
373 Description of partners etc .....	174
374 Description of written instruments .....	174
375 General averment of intent to defraud or injure .....	174
376, 377 (Repealed) .....	174
378 Form of indictment against accessories to murder .....	174
379–380 (Repealed) .....	174
381 Indecent assault .....	174
382 Where not necessary to lay property in any person .....	175

383 Property of partners or joint owners .....	175
384 Stealing and receiving in one indictment .....	175
385 Separate receivers may be charged in one indictment .....	175
386 Allegations in indictment as to money or securities stolen .....	175
387 Indictment for stealing by tenants.....	176
388 Indictment for stealing deeds.....	176
389 Indictment for larceny by public servant, property to be laid in the Queen .....	176
390 Description in indictment for engraving etc .....	176
391 Indictment for sale etc of counterfeit coin.....	176
392 Indictment for perjury.....	176
393 Indictment for conspiracy .....	177
<b>Arraignment, plea, and trial .....</b>	<b>177</b>
394 Arraignment etc on charge of previous conviction .....	177
394A Conviction on indictment.....	177
395 Plea of “not guilty” .....	177
396 Refusal to plead.....	177
397, 398 (Repealed) .....	178
399 Plea of autrefois convict etc .....	178
400 Practice as to entering the dock.....	178
401 (Repealed) .....	178
402 Accused may be defended by counsel .....	178
403 Right to inspect depositions on trial .....	178
404 Admission by accused before or at trial.....	178
404A Abolition of an accused’s right to make unsworn statement or to give unsworn evidence .....	178
405 Address to jury by accused.....	179
405AA Summary by Judge.....	179
405A Notice of alibi .....	179
405B Warning to be given by Judge in relation to lack of complaint in certain sexual offence proceedings .....	180
405C Judge not required to warn jury against convicting person of certain sexual offences.....	181
405D Closed-circuit television may be used for giving child victim’s evidence .....	182
405E Use of closed-circuit television facilities .....	182
405F Alternative arrangements for child victim’s evidence.....	183

405G (Repealed).....	183
405H Warning to jury.....	183
405I Validity of proceedings not affected .....	184
<b>Rules respecting evidence</b> .....	184
406 Depositions by persons dangerously ill—how to be taken and when admissible in evidence .....	184
407 Competency of parties and accused persons and their husbands and wives to give evidence....	185
407AA Compellability of spouses to give evidence in certain proceedings .....	185
407A Abolition of presumption of coercion of wife by husband .....	187
408 Declaration by person since deceased .....	187
409 Depositions may be read as evidence for prosecution etc .....	188
409A Depositions of previous connected proceedings may be read as evidence in committal proceedings .....	190
409B Admissibility of evidence relating to sexual experience etc .....	191
409C (Repealed).....	193
410 Confessions etc, when inadmissible .....	193
411 Criminating statements admissible though on oath .....	194
412 Evidence to character of accused.....	194
413 Witnesses to character—what evidence admissible .....	194
413A Restriction on cross-examination of accused .....	194
413B Admissibility of evidence and questions about accused’s disposition or reputation .....	195
413C Documentary evidence of previous convictions .....	195
414 Evidence of previous conviction charged in an indictment.....	196
414A Certificates to be evidence.....	196
414B Proof of service of notice to produce .....	200
415 Proof of banking transactions .....	200
416 Proof of by-laws etc .....	201
417 Proof of lawful authority or excuse .....	202
418 Evidence by police officers .....	202
419 Bigamy—evidence of first marriage .....	202
419A Pilfering of goods from vessel, wharf etc.....	202
420 Receivers—evidence of guilty knowledge.....	203
421 Cases of forged English stamps.....	203
422 Proof of coin being counterfeit .....	203

423 On trial for perjury presumption of authority to administer oath etc.....	203
423A Joint trial in case of perjury etc.....	204
424 Witnesses in mitigation .....	204
<b>Verdict generally</b> .....	204
425 Conviction for misdemeanour where facts amount to felony .....	204
426 After trial for felony, where alternative verdict possible no further prosecution.....	204
427 On trial for any felony or misdemeanour—verdict of attempt .....	204
428 (Repealed) .....	204
<b>Parts 11A, 11B (Repealed)</b> .....	204
<b>Part 12 Sentences</b> .....	205
<b>(Repealed)</b> .....	205
<b>Sentences of death</b> .....	205
430 (Repealed) .....	205
431 Convicted persons not to be liable to death penalty .....	205
431A Life sentences .....	205
<b>Sentences of imprisonment—hard labour—solitary confinement—and sureties</b> .....	206
432 Misdemeanours .....	206
433–437A (Repealed) .....	206
<b>Order for restitution of property stolen, &amp;c</b> .....	206
438 Restitution of property stolen in certain cases .....	206
<b>Guilty pleas</b> .....	207
439 Guilty plea to be taken into account.....	207
<b>Sentences for statutory offences</b> .....	207
440 Statutory offences .....	207
<b>Power to fine in certain cases</b> .....	207

440A (Repealed) .....	207
440AA Power to fine .....	207
440AB Consideration of accused's means to pay .....	208
440AC Instalments and time for payment .....	208
440B Imposition of fine on sentence being deferred or suspended .....	209
<b>Deferred sentences</b> .....	209
441 Judgment after sentence deferred .....	209
<b>Commencement of sentence</b> .....	209
441A Time from which sentences shall take effect .....	209
<b>Reduction of sentence or fine below term or amount fixed</b> .....	210
442 Provision for passing sentences of less duration than those fixed .....	210
442A Circumstances of certain sexual offences to be considered in passing sentence .....	210
442B Reduction of sentences for assistance to authorities .....	210
<b>Additional and cumulative sentences</b> .....	211
443 Additional sentences on second or third convictions .....	211
444 Cumulative or concurrent sentences .....	212
445 Proof of previous conviction .....	214
446 Previous sentences to be noted in new sentence .....	214
447 (Repealed) .....	214
447A Punishment on escape .....	214
447B (Repealed) .....	214
<b>Part 13 Proceedings after sentence</b> .....	214
<b>(A) EXECUTION OF SENTENCE</b> .....	214
<b>(Repealed)</b> .....	214
<b>Sentences of Courts-martial</b> .....	214
458 Sentences by Courts-martial under Imperial Acts .....	214
<b>(B) COMMUTATION OR MITIGATION OF SENTENCES</b> .....	215
459–463 (Repealed) .....	215



464 Remissions where more than one sentence .....	215
464A (Repealed) .....	215
<b>(C) CONSEQUENCES, &amp;c, OF CONVICTION FOR FELONY .....</b>	<b>215</b>
465 Forfeiture in felonies abolished.....	215
466 Disabilities of felony .....	215
467 (Repealed) .....	215
468 Effect of reversing judgment in such cases .....	215
469-474 (Repealed) .....	215
<b>Part 13A Review of convictions .....</b>	<b>215</b>
<b>Division 1 Preliminary .....</b>	<b>216</b>
474A Definitions .....	216
<b>Division 2 Petitions to Governor .....</b>	<b>216</b>
474B Petitions to Governor.....	216
474C Consideration of petitions .....	216
<b>Division 3 Applications to Supreme Court.....</b>	<b>217</b>
474D Applications to Supreme Court.....	217
474E Consideration of applications .....	217
<b>Division 4 Inquiries .....</b>	<b>218</b>
474F Inquiries.....	218
474G Procedure for conducting inquiry .....	218
474H Action to be taken on completion of inquiry.....	219
<b>Division 5 Court of Criminal Appeal .....</b>	<b>219</b>
474I Definitions .....	219
474J Quashing of conviction following pardon.....	219
474K Procedure on application for quashing of conviction .....	220
474L Reference to Court under section 474C (1) (b) following petition to Governor .....	220
474M Request to Court under section 474C (1) (c) following petition to Governor .....	220
474N Reference to Court under section 474H (2) following inquiry.....	221
<b>Division 6 General.....</b>	<b>221</b>

474O Exercise of Supreme Court’s jurisdiction .....	221
474P Prerogative of mercy preserved.....	221
475 (Repealed) .....	221

**Part 13B Offences punishable by the Supreme Court in its summary jurisdiction**

.....	221
475A Offences punishable summarily .....	221
475B Election for summary trial .....	222

**Part 14 Offences punishable by Justices and procedure before Justices generally**

.....	223
-------	-----

**Chapter 1 Indictable offences punishable summarily only by consent of the accused**

.....	223
-------	-----

**Extent of jurisdiction.....** 223

476 Indictable offences punishable summarily with consent of accused .....	223
477, 478 (Repealed) .....	227

**Procedure in such cases.....** 228

479, 479A (Repealed).....	228
480 Certificate of dismissal .....	228
481 Summary conviction or dismissal a bar to indictment.....	228
482–492 (Repealed) .....	228

**Chapter 3 Other offences punishable summarily.....** 228

**(A) INDICTABLE OFFENCES PUNISHABLE SUMMARILY WITHOUT CONSENT**

.....	228
493, 494 (Repealed) .....	228
495 Indictable offences punishable summarily without consent of accused: assaults etc .....	228
496 Indictable offences punishable summarily without consent of accused: larceny etc.....	229
496A Additional indictable offences punishable summarily without consent of accused .....	229
497 General provisions regarding indictable offences punishable summarily without consent of accused	

.....	229
498, 499 (Repealed) .....	230
500 Exception from jurisdiction .....	230
<b>(B) LARCENY AND SIMILAR OFFENCES .....</b>	<b>230</b>
<b>Larceny, &amp;c, of animals, &amp;c .....</b>	<b>230</b>
501 (Renumbered as sec 496).....	230
502 Possession of skin etc of stolen cattle .....	230
503 Stealing dogs.....	230
504 Possessing stolen dog or skin .....	230
505 Stealing animals etc ordinarily kept in confinement.....	230
506 Stealing animals etc ordinarily kept in confinement—second offence.....	231
507 Possession of stolen animals etc .....	231
508 Possession of stolen animals etc—second offence .....	231
509 Restoration of such stolen animals etc .....	231
510 Setting engine for deer etc.....	231
511 Killing pigeons .....	231
512 Taking fish in waters on private property.....	232
<b>Larceny of things attached to land.....</b>	<b>232</b>
513 Stealing shrubs etc .....	232
514 (Repealed) .....	232
515 Stealing etc live or dead fence etc .....	232
516 (Repealed) .....	232
517 Unlawful possession of trees, fences etc .....	232
518 Stealing dead wood .....	232
519 (Repealed) .....	232
520 Stealing plants etc in gardens .....	232
521 Stealing plants etc not growing in gardens .....	233
521A Stealing of rock, stone etc.....	233
<b>Larceny of shipwrecked goods .....</b>	<b>233</b>
522 Possession of shipwrecked goods .....	233
523 Offering shipwrecked goods for sale.....	233

524 Seizure of such goods.....	234
<b>Larceny from a public library, &amp;c</b> .....	234
525 Stealing or damaging books etc in public library etc.....	234
526 Term “Public Library” .....	234
526A, 526B (Repealed).....	234
<b>Fraudulently appropriating or retaining property</b> .....	234
527 Fraudulently appropriating or retaining property.....	234
<b>Obtaining money, &amp;c, by false representation</b> .....	234
527A Obtaining money etc by wilfully false representation .....	234
<b>Framing a false invoice</b> .....	235
527B Framing a false invoice.....	235
<b>Persons unlawfully in possession of property</b> .....	235
527C Persons unlawfully in possession of property .....	235
<b>Offering rewards for stolen property</b> .....	235
528 Advertising reward for return of stolen property .....	235
<b>Receivers</b> .....	236
529–545 (Repealed) .....	236
<b>(D1) BOGUS ADVERTISEMENTS</b> .....	236
545A Bogus advertisements.....	236
<b>(D2) INTIMIDATION, &amp;c</b> .....	236
545B Intimidation or annoyance by violence or otherwise.....	236
<b>(D3) JOINING UNLAWFUL ASSEMBLIES, &amp;c</b> .....	237
545C Knowingly joining or continuing in etc an unlawful assembly .....	237
<b>(D4) UNLAWFUL MAKING OR POSSESSION OF EXPLOSIVES</b> .....	237
545D Unlawful making or possession of explosives .....	237
<b>(D5) UNLAWFUL POSSESSION OF CERTAIN DANGEROUS ARTICLES</b> .....	238

545E Possession of dangerous articles other than firearms .....	238
<b>(E) ABETTORS</b> .....	239
546 Abetting or procuring .....	239
<b>(E1) CONSORTING</b> .....	239
546A Consorting with convicted persons.....	239
<b>(E2) INTENT TO REPEAT INDICTABLE OFFENCE</b> .....	239
546B Convicted persons found with intent to commit offence .....	239
<b>(E3) RESISTING, &amp;c, POLICE</b> .....	239
546C Resisting etc police .....	239
<b>(F) RECOGNIZANCE TO KEEP THE PEACE</b> .....	239
547 Apprehended violence or injury—recognizance to keep the peace etc .....	239
547AA (Repealed).....	240
<b>(G) FALSE STATEMENT RESPECTING BIRTHS, DEATHS, OR MARRIAGES</b> .....	240
547A False statements respecting births, deaths and marriages .....	240
<b>(H) PUBLIC MISCHIEF</b> .....	241
547B Public mischief .....	241
<b>(I) PRYING</b> .....	241
547C Peeping or prying .....	241
<b>Chapter 4 Procedure, &amp;c, before Justices</b> .....	241
<b>Alternative methods of procedure</b> .....	241
548 Alternative methods of proceeding before Justices .....	241
548A (Repealed).....	241
<b>Enforcing appearance</b> .....	242
549 Offenders may be summoned under existing Acts .....	242
<b>Certain averments</b> .....	242
550 Where not necessary to allege particular ownership.....	242

551 General averment of intent to defraud or injure.....	242
<b>Jurisdiction of Magistrates not affected by certain matters.....</b>	<b>242</b>
552 Jurisdiction of Magistrates in respect of offences arising under Chapter 2 of Part 4.....	242
<b>Reduction of sentence below fixed term.....</b>	<b>242</b>
553 Sentence may be for less term or fine of less amount than that fixed .....	242
<b>Sentence to hard labour .....</b>	<b>242</b>
554 Hard or light labour .....	242
<b>Penalties, &amp;c—application .....</b>	<b>243</b>
555 Application of forfeitures and penalties .....	243
<b>Summary conviction, &amp;c, a bar .....</b>	<b>243</b>
556 Summary conviction a bar to further proceedings .....	243
<b>Part 15 Conditional release of offenders .....</b>	<b>244</b>
556A Power to permit release of offenders.....	244
556B Proceedings on breach of condition of recognizance.....	244
557 (Repealed) .....	245
558 Deferring sentence .....	245
559–562 (Repealed) .....	245
<b>Part 15A Apprehended violence .....</b>	<b>245</b>
<b>Division 1 Definitions and offence.....</b>	<b>246</b>
562A Definitions .....	246
562AB Stalking, intimidation with intent to cause fear for personal safety .....	247
<b>Division 2 Apprehended violence orders generally .....</b>	<b>247</b>
562B Court may make apprehended violence orders.....	247
562BA Orders made by court with consent of parties .....	248
562BB Interim court orders .....	248
562BC Order prohibits stalking, intimidation etc .....	249
562BD Order can also protect family etc.....	249
562C Making of complaint for court order .....	250

---

562D Prohibitions and restrictions imposed by orders .....	250
562E Duration of court orders .....	251
562F Variation or revocation of court orders .....	251
562G Courts authorised to make orders etc .....	252
562H Telephone interim orders after hours .....	253
562I Offence of contravening order.....	255
562J Service of copy of order on defendant, police etc .....	256
562K Summons for appearance or arrest of defendant.....	256
562L Application of Bail Act 1978 .....	257
562M Appeal by defendant against order made by Local Court or Children’s Court .....	257
562N Costs .....	257
562O Concurrent criminal proceedings .....	258
562P Recognizance to keep peace not affected .....	258
562Q Regulations .....	258
562R Transitional provisions .....	258
<b>Division 3 Registration of interstate restraint orders.....</b>	<b>259</b>
562S Application for registration of interstate restraint order .....	259
562T Registration of interstate restraint order .....	259
562U Effect of registration of interstate restraint order.....	260
562V Variation etc of registered interstate restraint orders .....	260
<b>Part 16 Miscellaneous enactments .....</b>	<b>261</b>
563 (Repealed) .....	261
564 No Court fees to be taken in criminal cases .....	261
565 Power of Courts to bring prisoners before them .....	261
565A Bail Act 1978 to prevail .....	262
566 Witnesses neglecting to attend trial captured under warrant may be admitted to bail.....	262
567 Supreme Court rules may prescribe forms of indictments etc.....	262
567A Counts for felonies and misdemeanours in one indictment.....	262
568–572 (Repealed) .....	262
573 Provision for wife where husband convicted of aggravated assault .....	262
574 Prosecutions for blasphemy.....	262
574A Information etc for obscene or blasphemous libel.....	263
574B Prevention of suicide .....	263

---

575 Misappropriation of corn etc by servants.....	263
576 Indecent exposure of the person .....	263
577 Change of venue .....	263
578 Publication of evidence may be forbidden in certain cases.....	264
578A Prohibition of publication identifying victims of certain sexual offences .....	264
579 Evidence of proceedings dealt with by way of recognizance after 15 years.....	265
580 Certain charges not to be brought at common law .....	267
580A Abolition of offence of being a common nightwalker.....	267
581 Savings and transitional provisions .....	267
<b>First Schedule</b> .....	267
<b>Second Schedule</b> .....	269
<b>Third Schedule</b> .....	269
<b>Fourth Schedule</b> .....	270
<b>Fifth Schedule</b> .....	270
<b>Sixth-Ninth Schedules (Repealed)</b> .....	271
<b>Tenth Schedule</b> .....	271
<b>Eleventh Schedule Savings and transitional provisions</b> .....	272



# Crimes Act 1900 No 40



New South Wales

An Act to consolidate the Statutes relating to Criminal Law.

## Part 1 Preliminary and interpretation

### *Short title and division into Parts*

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

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

PART 1—PRELIMINARY AND INTERPRETATION:

(1) *Short title and division into Parts*—s 1

(2) *Repeals and savings*—s 2

(3) *Application of certain sections and Parts*—s 3

(3A) *Territorial application of the criminal law of the State*—s 3A

(4) *Interpretation*—ss 4-8

(5) *What offences to be deemed and treated as felonies or misdemeanours*—ss 9, 10

PART 2—OFFENCES AGAINST THE SOVEREIGN—*Treason-felony*—ss 11-16A

PART 3—OFFENCES AGAINST THE PERSON:

(1) *Homicide*—ss 17A-25

(2) *Conspiracy to murder*—s 26

(3) *Attempts to murder*—ss 27-30

(4) *Documents containing threats*—s 31

(4A) *Suicide*—ss 31A-31C

(5) *Acts causing danger to life or bodily harm*—ss 32-54

- (6) *Possessing or making explosives, &c, with intent to injure the person—s 55*
- (7) *Assaults upon clergymen, officers, and others—ss 56-60*
- (8) *Common assault—s 61*
- (9) *Offences in the nature of rape, offences relating to other acts of sexual assault, &c—ss 61A-80*
- (10A) *Misconduct with regard to corpses—s 81C*
- (11) *Attempts to procure abortion—ss 82-84*
- (12) *Concealing birth of a child—s 85*
- (13) *Abduction—ss 86-91B*
- (13A) *Child prostitution and pornography—ss 91C-91G*
- (14) *Bigamy—ss 92, 93*

PART 3A—OFFENCES RELATING TO PUBLIC ORDER—ss 93A-93E

PART 3B—OFFENCES RELATING TO FIREARMS ETC—ss 93F-93H

PART 4—OFFENCES RELATING TO PROPERTY:

CHAPTER 1—*Stealing and like offences:*

- (aa) GENERAL—s 93]
- (a) ROBBERY—ss 94-98
- (b) EXTORTION, &c, BY MENACE OR THREAT—ss 99-105
- (c) SACRILEGE AND HOUSEBREAKING—ss 105A-115A
- (d) LARCENY:
  - (1) *Declaratory—s 116*
  - (2) *General provisions—ss 117-124*
  - (3) *Larceny by bailees—s 125*
  - (4) *Of animals—ss 126-133*
  - (5) *Of written instruments—ss 134-138*
  - (6) *Of things attached to or growing on land—ss 139-140*
  - (7) *From mines—ss 144-147*

- (8) *In dwelling-house*—ss 148, 149
  - (9) *Of goods in process of manufacture, tools, &c*—ss 150, 151
  - (10) *From ships or wharfs*—ss 152, 153
  - (11) *By tenants or lodgers*—s 154
  - (12) *Of vehicles or boats*—ss 154A, 154AA
  - (12A) *Larceny and illegal use of aircraft*—s 154B
  - (13) *Of electricity*—s 154C
  - (e) EMBEZZLEMENT OR LARCENY:
    - (1) *By clerks or servants*—ss 155-158
    - (2) *By persons employed in the Public Service*—ss 159, 160
    - (3) *General deficiency*—s 161
    - (4) *By joint owners*—s 162
    - (5) *Alternative verdict*—s 163
  - (f) FRAUDS BY FACTORS AND OTHER AGENTS—ss 164-178
    - (f1) FRAUDULENT MISAPPROPRIATION—s 178A
    - (f2) VALUELESS CHEQUES—s 178B
      - (f2a) OBTAINING MONEY, ETC, BY DECEPTION—s 178BA
      - (f2b) OBTAINING MONEY, ETC, BY FALSE OR MISLEADING STATEMENTS—s 178BB
    - (f3) OBTAINING CREDIT BY FRAUD—s 178C
  - (g) FALSE PRETENCES—ss 179-185
    - (g1) FRAUDULENT ARRANGEMENTS—s 185A
  - (h) CORRUPT REWARDS—s 186
  - (i) RECEIVERS—ss 187-193
- CHAPTER 2—*Criminal destruction and damage:*
- (1) *Interpretation*—s 194
  - (2) *Crimes against property generally*—ss 195-200

(3) *Crimes relating to particular kinds of property etc—ss 201-203*

PART 4AA—OFFENCES RELATING TO TRANSPORT SERVICES:

(1) *Offences relating to aircraft, vessels etc—ss 204-210*

(2) *Offences relating to railways etc—ss 211-214*

PART 4A—CORRUPTLY RECEIVING COMMISSIONS AND OTHER CORRUPT PRACTICES—ss 249A-249J

PART 5—FORGERY AND FALSE INSTRUMENT OFFENCES:

CHAPTER 1—*Forgery:*

(1) *Declaratory and general—ss 250, 251*

(2) *Forgery, etc, of public seals—s 253*

(3) *Forgery of Acts, Proclamations, etc—s 255*

(4) *Forgery of India bonds, Exchequer bills, etc—s 260*

(5) *Forgery, etc, of, or engraving plate, etc, for, Bank notes, etc—ss 265-270*

(6) *Forgery, etc, of wills, etc—s 271*

(7) *Forgery of signatures of Judge—s 278*

(8) *Forgery, etc, of instruments of evidence—ss 285-291*

(9) *Falsifying entries of births, deaths, etc—ss 296, 297*

(10) *Obtaining or demanding property on forged instruments—s 298*

CHAPTER 2—*False instruments:*

(1) *False instruments—ss 299-307*

PART 6—OFFENCES RELATING TO COMPUTERS—ss 308-310

PART 7—PUBLIC JUSTICE OFFENCES:

CHAPTER 1—*Definitions—ss 311-313*

CHAPTER 2—*Interference with the administration of justice—ss 314-319*

CHAPTER 3—*Interference with judicial officers, witnesses, jurors etc—ss 320-326*

CHAPTER 4—*Perjury, false statements etc—ss 327-339*

CHAPTER 5—*Miscellaneous—ss 340-343A*

PART 8A—ATTEMPTS—s 344A

PART 9—ABETTORS AND ACCESSORIES—ss 345–351

PART 10—APPREHENSION OF OFFENDERS, POWERS OF SEARCH, POWERS OF ENTRY AND DISCHARGE OF PERSONS IN CUSTODY:

(1) *Apprehension of offenders—ss 352–353C*

(2) *Powers of search—ss 357–357E*

(2AA) *Powers of entry and search in cases of child prostitution or pornography—s 357EA*

(2A) *Powers of entry in cases of domestic violence—ss 357F–357H*

(3) *Discharge of persons in custody—s 358*

(4) *Disposal of property in the custody of the police—ss 358A, 358B*

PART 11—PROCEDURE, EVIDENCE, VERDICT, &c:

(1) *As to indictment—Form, venue, amendments, &c—ss 359–393*

(2) *Arraignment, plea and trial—ss 394–405I*

(3) *Rules respecting evidence—ss 406–424*

(4) *Verdict generally—ss 425–427*

PART 12—SENTENCES:

(2) *Sentences of death—s 431*

(3) *Sentences of imprisonment—Hard labour—Solitary confinement—And sureties—s 432*

(6) *Order for restitution of property stolen, &c—s 438*

(7) *Guilty pleas—s 439*

(8) *Sentences for statutory offences—s 440*

(8A) *Power to fine in certain cases—s 440A*

(8B) *Imposition of fine on deferment or suspension of sentence—s 440B*

(9) *Deferred sentences—s 441*

(9A) *Commencement of sentence—s 441A*

(10) *Reduction of sentence or fine below term or amount fixed—ss 442–442B*

(11) *Additional and cumulative sentences—ss 443–447A*

PART 13—PROCEEDINGS AFTER SENTENCE:

(A) EXECUTION OF SENTENCE:

(1) *Capital sentences—ss 448–452*

(5) *Sentences of Courts-martial—s 458*

(B) COMMUTATION OR MITIGATION OF SENTENCES—ss 459–464

(C) CONSEQUENCES, &c, OF CONVICTION FOR FELONY—ss 465–468

PART 13A—REVIEW OF CONVICTIONS

(1) *Preliminary—s 474A*

(2) *Petitions to Governor—ss 474B, 474C*

(3) *Applications to Supreme Court—ss 474D, 474E*

(4) *Inquiries—ss 474F–474H*

(5) *Court of Criminal Appeal—ss 474I–474N*

(6) *General—ss 474O, 474P*

PART 13B—OFFENCES PUNISHABLE BY THE SUPREME COURT IN ITS SUMMARY JURISDICTION—ss 475A, 475B

PART 14—OFFENCES PUNISHABLE BY JUSTICES AND PROCEDURE BEFORE JUSTICES GENERALLY:

CHAPTER 1—*Indictable offences punishable summarily only by consent of the accused:*

(1) *Extent of jurisdiction—s 476*

(3) *Procedure in such cases—ss 480–481*

CHAPTER 3—*Other offences punishable summarily:*

(A) INDICTABLE OFFENCES PUNISHABLE SUMMARILY WITHOUT CONSENT—ss 495–500

(B) LARCENY AND SIMILAR OFFENCES:

(1) *Larceny, &c, of animals, &c—ss 502–512*

(2) *Larceny of things attached to land—ss 513–521A*

- (3) *Larceny of shipwrecked goods*—ss 522-524
- (4) *Larceny from a public library, &c*—ss 525, 526
- (4B) *Person drunk while in charge of vehicle*—s 526B
- (5) *Fraudulently appropriating or retaining property*—s 527
- (5A) *Obtaining money, &c, by false representation*—s 527A
- (5B) *Framing a false invoice*—s 527B
- (5C) *Persons unlawfully in possession of property*—s 527C
- (6) *Offering rewards for stolen property*—s 528
- (7) *Receivers*—s 529
  
- (D1) BOGUS ADVERTISEMENTS—s 545A
- (D2) INTIMIDATION—s 545B
- (D3) JOINING UNLAWFUL ASSEMBLIES, &c—s 545C
- (D4) UNLAWFUL MAKING OR POSSESSION OF EXPLOSIVES
- (D5) UNLAWFUL POSSESSION OF CERTAIN DANGEROUS ARTICLES—s 545E
- (E) ABETTORS—s 546
- (E1) CONSORTING—s 546A
- (E2) INTENT TO REPEAT INDICTABLE OFFENCE—s 546B
- (E3) RESISTING, &c, POLICE—s 546C
- (F) RECOGNIZANCE TO KEEP THE PEACE—s 547
- (G) FALSE STATEMENT RESPECTING BIRTHS, DEATHS, OR MARRIAGES—s 547A
- (H) PUBLIC MISCHIEF—s 547B
- (I) PRYING—s 547C
  
- CHAPTER 4—*Procedure, &c, before Justices:*
  - (1) *Alternative methods of procedure*—s 548
  - (2) *Enforcing appearance*—s 549
  - (3) *Certain averments*—ss 550, 551

(4) *Jurisdiction of Magistrates not affected by certain matters*—s 552

(5) *Reduction of sentence below fixed term*—s 553

(6) *Sentence to hard labour*—s 554

(7) *Penalties, &c—application*—s 555

(8) *Summary conviction, &c, a bar*—s 556

PART 15—CONDITIONAL RELEASE OF OFFENDERS—ss 556A-560A

PART 15A—APPREHENDED VIOLENCE—ss 562A-562R

PART 16—MISCELLANEOUS ENACTMENTS—ss 564-580

## ***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, recognizances, 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.

## ***Territorial application of the criminal law of the State***

### **3A Territorial application of the criminal law of the State**

- (1) An offence against the law of the State is committed if:



- (a) all elements necessary to constitute the offence (disregarding territorial considerations) exist, and
  - (b) a territorial nexus exists between the State and at least one element of the offence.
- (2) A territorial nexus exists between the State and an element of an offence if:
- (a) the element is or includes an event occurring in the State, or
  - (b) the element is or includes an event that occurs outside the State but while the person alleged to have committed the offence is in the State.
- (3) The existence of the territorial nexus required by subsection (1) (b) (the **necessary territorial nexus**) is to be presumed and the presumption is conclusive unless rebutted under subsection (4).
- (4) If a person charged with an offence disputes the existence of the necessary territorial nexus, the court is to proceed with the trial of the offence in the usual way and if at the conclusion of the trial the court, or, in the case of a jury trial, the jury, is satisfied on the balance of probabilities that the necessary territorial nexus does not exist, it must, subject to subsection (5), make or return a finding to that effect and the charge is to be dismissed.
- (5) If the court, or, in the case of a jury trial, the jury, would, disregarding territorial considerations, find the person not guilty of the offence (but not on the ground of mental illness) the court or jury must make or return a finding of not guilty.
- (6) The issue of whether the necessary territorial nexus exists must, if raised before the trial, be reserved for consideration at the trial.
- (7) A power or authority exercisable on reasonable suspicion that an offence has been committed may be exercised in the State if the person in whom the power or authority is vested suspects on reasonable grounds that the elements necessary to constitute the offence exist (whether or not that person suspects or has any ground to suspect that the necessary territorial nexus with the State exists).
- (8) This section applies to offences committed before or after the commencement of this section but does not apply to an offence if:
- (a) the law under which the offence is created makes the place of commission (explicitly or by necessary implication) an element of the offence, or
  - (b) the law under which the offence is created is a law of extraterritorial operation and explicitly or by necessary implication excludes the requirement for a territorial nexus between the State and an element of the offence, or
  - (c) proceedings are pending at the commencement of this section in relation to the

offence.

(9) This section is in addition to and does not derogate from any other basis on which the courts of the State may exercise criminal jurisdiction.

(10) In this section:

**event** means any act, omission, occurrence, circumstance or state of affairs (not including intention, knowledge or any other state of mind).

**the State** includes:

(a) the territorial sea adjacent to the State, and

(b) the sea on the landward side of the territorial sea that is not within the limits of the State.

(11) If a person charged with a particular offence could be found guilty on that charge of some other offence or offences, that person is, for the purposes of this section, taken to be charged with each offence.

(12) To avoid doubt, a reference in this section to a trial (whether or not a jury trial) includes a reference to a special hearing within the meaning of the [Mental Health \(Criminal Procedure\) Act 1990](#).

## **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.

**Armed**, in relation to a weapon, or instrument, or an offensive weapon, or instrument, that is a dangerous weapon, includes bearing or having the immediate physical possession of the weapon, or instrument.

**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.

**Dangerous weapon** means:

- (a) a firearm (within the meaning of the *Firearms Act 1989*), or
- (b) a prohibited weapon or prohibited article (within the meaning of the *Prohibited Weapons Act 1989*), or
- (c) a spear gun.

**Document of title to goods** includes every bill of lading, India warrant, dock warrant, warehousekeeper'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 personal violence offence committed against:

- (a) a person who is or has been married to the person who commits the offence, or
- (b) a person who is living with or has lived with the person who commits the offence as his wife or her husband, as the case may be, on a bona fide domestic basis although not married to him or her, as the case may be, or
- (c) a person who is living with or has lived ordinarily in the same household as the person who commits the offence (otherwise than merely as a tenant or boarder), or
- (d) a person who is or has been a relative (within the meaning of subsection (6)) of the person who commits the offence, or
- (e) a person who has or has had an intimate personal relationship with the person who commits the offence.

**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 a dangerous weapon and also 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.

**Personal violence offence** means:

(a) an offence under, or mentioned in, section 19, 24, 27, 28, 29, 30, 33, 33A, 35, 39, 41, 44, 46, 47, 48, 49, 58, 59, 61, 61B, 61C, 61D, 61E, 61I, 61J, 61K, 61L, 61M, 61N or 61O, or

(b) an offence of attempting to commit an offence referred to in paragraph (a).

**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, 61I, 61J, 61K, 61L, 61M, 61N, 61O, 65A, 66A, 66B, 66C, 66D, 66F, 78H, 78I, 78K, 78L or 80A,
- (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 a dangerous weapon and also 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 the 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.
- (6) For the purposes of the definition of **domestic violence offence**, a relative is:
  - (a) a father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law, or
  - (b) a son, daughter, grandson, grand-daughter, step-son, step-daughter, son-in-law or daughter-in-law, or
  - (c) a brother, sister, half-brother, half-sister, brother-in-law or sister-in-law, or
  - (d) an uncle, aunt, uncle-in-law or aunt-in-law, or
  - (e) a nephew or niece, or
  - (f) a 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.

## 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 the 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 of 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 25 years.

#### **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)**

### **17A Date of death**

- (1) The rule of law that it is conclusively presumed that an injury was not the cause of death of a person if the person died after the expiration of the period of a year and a day after the date on which the person received the injury is abrogated.
- (2) This section does not apply in respect of an injury received before the commencement of this section.

### **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 or for 25 years.
  - (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 (Repealed)**

#### **19A Punishment for murder**

- (1) A person who commits the crime of murder is liable to penal servitude for life.
- (2) A person sentenced to penal servitude for life for the crime of murder is to serve that sentence for the term of the person's natural life.
- (3) Nothing in this section affects the operation of section 442 (which authorises the passing of a lesser sentence than penal servitude for life).
- (4) This section applies to murder committed before or after the commencement of this section.
- (5) However, this section does not apply where committal proceedings (or proceedings by way of ex officio indictment) for the murder were instituted against the convicted person before the commencement of this section. In such a case, section 19 as in force before that commencement continues to apply.

(6) Nothing in this section affects the prerogative of mercy.

## **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 25 years:

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 (Repealed)**

### ***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 25 years.

## ***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 25 years.

### **28 Acts done to property with intent to murder**

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 25 years.

### **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 25 years.

### **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 25 years.

## ***Documents containing threats***

### **31 Documents containing threats**

- (1) A person who maliciously, and knowing its contents, sends or delivers, or directly or indirectly causes to be received, any document threatening to kill or inflict bodily harm on any person is liable to penal servitude for 10 years.
- (2) It is immaterial for the purposes of an offence under this section whether or not a document sent or delivered is actually received, and whether or not the threat contained in a document sent, delivered or received is actually communicated to the person concerned or to the recipient or intended recipient of the document (as relevant in the circumstances).

## ***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 25 years.

### **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 25 years.

### **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 or possession of weapon to resist arrest etc**

Any person who:

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

(b) threatens injury to any person or property,

with intent to commit an indictable offence or 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 12 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.

### **35A Maliciously cause dog to inflict grievous bodily harm or actual bodily harm**

- (1) **Maliciously cause dog to inflict grievous bodily harm** A person who, having control of a dog, maliciously does any act which causes the dog to inflict grievous bodily harm on another person is liable to penal servitude for 7 years.
- (2) **Maliciously cause dog to inflict actual bodily harm** A person who, having control of a dog, maliciously does any act which causes the dog to inflict actual bodily harm on another person is liable to penal servitude for 5 years.
- (3) **Alternative finding** If, on the trial of a person for an offence under subsection (1), it appears that grievous bodily harm was not inflicted on the other person but that actual bodily harm was inflicted, the person may be found not guilty of the offence charged but guilty of an offence under subsection (2) and be liable to punishment accordingly.
- (4) **Doing an act includes omitting to do the act** In this section, a reference to the doing of an act includes a reference to omitting to do the act.

### **36 Causing a grievous bodily disease**

A person:

- (a) who maliciously by any means causes another person to contract a grievous bodily disease, or
- (b) who attempts maliciously by any means to cause another person to contract a

grievous bodily disease,

with the intent in any such case of causing the other person to contract a grievous bodily disease, is liable to penal servitude for 25 years.

### **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 25 years.

### **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 25 years.

### **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 likely to be seriously injured, shall be liable to penal servitude for five years.

#### **45 Prohibition of female genital mutilation**

(1) A person who:

(a) excises, infibulates or otherwise mutilates the whole or any part of the labia majora or labia minora or clitoris of another person, or

(b) aids, abets, counsels or procures a person to perform any of those acts on another person,

is liable to penal servitude for 7 years.

(2) An offence is committed against this section even if one or more of the acts constituting the offence occurred outside New South Wales if the person mutilated by or because of the acts is ordinarily resident in the State.

(3) It is not an offence against this section to perform a surgical operation if that operation:

(a) is necessary for the health of the person on whom it is performed and is

performed by a medical practitioner, or

(b) is performed on a person in labour or who has just given birth, and for medical purposes connected with that labour or birth, by a medical practitioner or authorised professional, or

(c) is a sexual reassignment procedure and is performed by a medical practitioner.

(4) In determining whether an operation is necessary for the health of a person only matters relevant to the medical welfare of the person are to be taken into account.

(5) It is not a defence to a charge under this section that the person mutilated by or because of the acts alleged to have been committed consented to the acts.

(6) This section applies only to acts occurring after the commencement of the section.

(7) In this section:

**authorised professional** means:

(a) a person authorised to practise midwifery under the [Nurses Act 1991](#) or undergoing a course of training with a view to being so authorised, or

(b) in relation to an operation performed in a place outside New South Wales—a person authorised to practise midwifery by a body established under the law of that place having functions similar to the functions of the Nurses Registration Board, or undergoing a course of training with a view to being so authorised, or

(c) a medical student.

**medical practitioner**, in relation to an operation performed in a place outside New South Wales, includes a person authorised to practise medicine by a body established under the law of that place having functions similar to the functions of the New South Wales Medical Board.

**medical student** means:

(a) a registered medical student within the meaning of the [Medical Practice Act 1992](#), or

(b) in relation to an operation performed in a place outside New South Wales—a person undergoing a course of training with a view to being authorised to be a medical practitioner in that place.

**sexual reassignment procedure** means a surgical procedure to alter the genital appearance of a person to the appearance (as nearly as practicable) of the opposite sex to the sex of the person.

**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 25 years.

**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 25 years.

**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 Dangerous driving: substantive matters

(1) **Dangerous driving occasioning death** A person is guilty of the offence of dangerous driving occasioning death if the vehicle driven by the person is involved in an impact occasioning the death of another person and the driver was, at the time of the impact, driving the vehicle:

- (a) under the influence of intoxicating liquor or of a drug, or
- (b) at a speed dangerous to another person or persons, or
- (c) in a manner dangerous to another person or persons.

A person convicted of an offence under this subsection is liable to imprisonment for 10 years.

(2) **Aggravated dangerous driving occasioning death** A person is guilty of the offence of aggravated dangerous driving occasioning death if the person commits the offence of dangerous driving occasioning death in circumstances of aggravation. A person convicted of an offence under this subsection is liable to imprisonment for 14 years.

(3) **Dangerous driving occasioning grievous bodily harm** A person is guilty of the offence of dangerous driving occasioning grievous bodily harm if the vehicle driven by the person is involved in an impact occasioning grievous bodily harm to another person and the driver was, at the time of the impact, driving the vehicle:

- (a) under the influence of intoxicating liquor or of a drug, or
- (b) at a speed dangerous to another person or persons, or
- (c) in a manner dangerous to another person or persons.

A person convicted of an offence under this subsection is liable to imprisonment for 7 years.

(4) **Aggravated dangerous driving occasioning grievous bodily harm** A person is guilty of the offence of aggravated dangerous driving occasioning grievous bodily harm if the person commits the offence of dangerous driving occasioning grievous bodily harm in circumstances of aggravation. A person convicted of an offence under this subsection is liable to imprisonment for 11 years.

(5) **When vehicle is involved in impact—generally** For the purposes of this section, the circumstances in which a vehicle is involved in an impact occasioning the death of, or grievous bodily harm to, a person include if the death or harm is occasioned through any of the following:

- (a) the vehicle overturning or leaving a road while the person is being conveyed in or on that vehicle (whether as a passenger or otherwise),

- (b) an impact between any object and the vehicle while the person is being conveyed in or on that vehicle (whether as a passenger or otherwise),
  - (c) an impact between the person and the vehicle,
  - (d) the impact of the vehicle with another vehicle or an object in, on or near which the person is at the time of the impact,
  - (e) an impact with anything on, or attached to, the vehicle,
  - (f) an impact with anything that is in motion through falling from the vehicle.
- (6) **When vehicle is involved in causing other impacts** For the purposes of this section, a vehicle is also involved in an impact occasioning the death of, or grievous bodily harm to, a person if:
- (a) the death or harm is occasioned through the vehicle causing an impact between other vehicles or between another vehicle and any object or person or causing another vehicle to overturn or leave a road, and
  - (b) the prosecution proves that the vehicle caused the impact.
- (7) **Circumstances of aggravation** In this section, ***circumstances of aggravation*** means any circumstances at the time of the impact occasioning death or grievous bodily harm in which:
- (a) the prescribed concentration of alcohol was present in the accused's blood, or
  - (b) the accused was driving the vehicle concerned on a road at a speed that exceeded, by more than 45 kilometres per hour, the speed limit (if any) applicable to that length of road, or
  - (c) the accused was driving the vehicle to escape pursuit by a police officer.
- (8) **Defences** It is a defence to any charge under this section if the death or grievous bodily harm occasioned by the impact was not in any way attributable (as relevant):
- (a) to the fact that the person charged was under the influence of intoxicating liquor or of a drug, or
  - (b) to the speed at which the vehicle was driven, or
  - (c) to the manner in which the vehicle was driven.
- (9) **Definitions** In this section:
- drug** has the meaning it has in section 2 (1) of the [Traffic Act 1909](#).
- object** includes an animal, building, structure, earthwork, embankment, gutter, stormwater channel, drain, bridge, culvert, median strip, post or tree.

**prescribed concentration of alcohol** means a concentration of 0.15 grammes or more of alcohol in 100 millilitres of blood.

**road** means:

- (a) a public street within the meaning of the *Traffic Act 1909*, or
- (b) any other place.

**vehicle** means:

- (a) any motor car, motor carriage, motor cycle or other vehicle propelled wholly or partly by volatile spirit, steam, gas, oil, electricity, or by any other means other than human or animal power, or
- (b) a horse-drawn vehicle,

whether or not it is adapted for road use, but does not mean a vehicle used on a railway or tramway.

#### **52AA Dangerous driving: procedural matters**

- (1) **Presumption as to intoxication** For the purposes of section 52A, the accused is conclusively presumed to be under the influence of liquor if the prosecution proves that the prescribed concentration of alcohol was present in the accused's blood at the time of the impact occasioning death or grievous bodily harm.
- (2) **Evidence of intoxication** For the purposes of section 52A, evidence may be given of the concentration of alcohol present in the accused's blood at the time of the impact occasioning death or grievous bodily harm occurring at a place that is not a public street (within the meaning of the *Traffic Act 1909*) as determined by a blood analysis carried out in accordance with section 4F and 4G of that Act.
- (3) **Time of intoxication** A concentration of alcohol determined by the means referred to in subsection (2) is taken to be the concentration of alcohol in the accused's blood at the time of the impact occasioning death or grievous bodily harm:
  - (a) if the blood sample that was analysed was taken within 2 hours after the impact, and
  - (b) unless the accused proves that the concentration of alcohol in the accused's blood at the time of the impact was less than the prescribed concentration of alcohol.
- (4) **Alternative verdicts** If on the trial of a person who is indicted for murder or manslaughter or for an offence under section 53 or 54 the jury is satisfied that the person is guilty of an offence under section 52A, it may find the accused guilty of the offence under section 52A, and the accused is liable to punishment accordingly.
- (5) **Question of aggravation** If on the trial of a person for an offence under section 52A (2)



or (4) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under section 52A (1) or (3), it may find that the accused is guilty of the offence under section 52A (1) or (3), and the accused is liable to punishment accordingly.

- (6) **Double jeopardy** 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 that may be imposed for any such offence. However, a person who:
- (a) has been convicted or acquitted of an offence under section 52A cannot be prosecuted for murder or manslaughter or for any other offence under this Act on the same, or substantially the same, facts, or
  - (b) has been convicted or acquitted of murder or manslaughter or of any other offence under this Act cannot be prosecuted for an offence under section 52A on the same, or substantially the same, facts.

- (7) **Definitions** In this section:

**prescribed concentration of alcohol** means a concentration of 0.15 grammes or more of alcohol in 100 millilitres of blood.

## **52B Culpable navigation**

- (1) In this section:

**drug** has the same meaning as it has in section 2 (1) of the [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-61G (Repealed)**

#### **61H Definition of sexual intercourse etc**

(1) For the purposes of sections 61H-66F, ***sexual intercourse*** means:

(a) sexual connection occasioned by the penetration to any extent of the genitalia of a female person or the anus of any person by:

(i) any part of the body of another person, or

(ii) any object manipulated by another person,

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

(b) sexual connection occasioned by the introduction of any part of the penis of a

person into the mouth of another person, or

(c) cunnilingus, or

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

- (2) For the purposes of sections 61H-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.
- (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 section 61N or 61O, is to be taken to commit an offence on the person under the age of 16 years.

### **61I Sexual assault**

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 is liable to penal servitude for 14 years.

### **61J Aggravated sexual assault**

- (1) Any person who has sexual intercourse with another person without the consent of the other person and in circumstances of aggravation and who knows that the other person does not consent to the sexual intercourse is liable to penal servitude for 20 years.
- (2) In this section, ***circumstances of aggravation*** means circumstances in which:
- (a) at the time of, or immediately before or after, the commission of the offence, the alleged offender maliciously inflicts actual bodily harm on the alleged victim or any other person who is present or nearby, or
  - (b) at the time of, or immediately before or after, the commission of the offence, the alleged offender threatens to inflict actual bodily harm on the alleged victim or any other person who is present or nearby by means of an offensive weapon or instrument, or
  - (c) the alleged offender is in the company of another person or persons, or
  - (d) the alleged victim is under the age of 16 years, or
  - (e) the alleged victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender, or
  - (f) the alleged victim has a serious physical disability, or
  - (g) the alleged victim has a serious intellectual disability.

**61K Assault with intent to have sexual intercourse**

Any person who, with intent to have sexual intercourse with another person:

- (a) maliciously inflicts actual bodily harm on the other person or a third person who is present or nearby, or
- (b) threatens to inflict actual bodily harm on the other person or a third person who is present or nearby by means of an offensive weapon or instrument,

is liable to penal servitude for 20 years.

**61L Indecent assault**

Any person who assaults another person and, at the time of, or immediately before or after, the assault, commits an act of indecency on or in the presence of the other person, is liable to imprisonment for 5 years.

**61M Aggravated indecent assault**

- (1) Any person who assaults another person in circumstances of aggravation, and, at the time of, or immediately before or after, the assault, commits an act of indecency on or in the presence of the other person, is liable to imprisonment for 7 years.
- (2) Any person who assaults another person, and, at the time of, or immediately before or after, the assault, commits an act of indecency on or in the presence of the other person, is liable to imprisonment for 10 years, if the other person is under the age of 10 years.
- (3) In this section, ***circumstances of aggravation*** means circumstances in which:
  - (a) the alleged offender is in the company of another person or persons, or
  - (b) the alleged victim is under the age of 16 years, or
  - (c) the alleged victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender, or
  - (d) the alleged victim has a serious physical disability, or
  - (e) the alleged victim has a serious intellectual disability.

**61N Act of indecency**

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 or towards that or another person, is liable to imprisonment for 2 years.

### **61O Aggravated act of indecency**

- (1) 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, in either case in circumstances of aggravation, is liable to imprisonment for 5 years.
- (2) Any person who commits an act of indecency with or towards a person under the age of 10 years, or incites a person under that age to an act of indecency with that or another person, is liable to imprisonment for 7 years.
- (3) In this section, ***circumstances of aggravation*** means circumstances in which:
  - (a) the alleged offender is in the company of another person or persons, or
  - (b) the alleged victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender, or
  - (c) the alleged victim has a serious physical disability, or
  - (d) the alleged victim has a serious intellectual disability.

### **61P Attempt to commit offence under sections 61I-61O**

Any person who attempts to commit an offence under section 61I, 61J, 61K, 61L, 61M, 61N or 61O is liable to the penalty provided for the commission of the offence.

### **61Q Alternative verdicts**

- (1) **Question of aggravation** If on the trial of a person for an offence under section 61J, 61M or 61O the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under section 61I, 61L or 61N, it may find the accused not guilty of the offence charged but guilty of the latter offence, and the accused is liable to punishment accordingly.
- (2) **Question of consent regarding alleged victim under 16** If on the trial of a person for an offence under section 61I the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under section 66C (1) or 66C (2), it may find the accused not guilty of the offence charged but guilty of the latter offence, and the accused is liable to punishment accordingly.
- (3) **Question of consent or authority regarding alleged victim under 16** If on the trial of a person for an offence under section 61J the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under section 66A, 66C (1) or 66C (2), it may find the accused not guilty of the offence charged but guilty of the latter offence, and the accused is liable to punishment accordingly.

- (4) **Question of consent regarding incest** If on the trial of a person for an offence under section 61I or 61J the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under section 78A or 78B, it may find the accused not guilty of the offence charged but guilty of the latter offence, and the accused is liable to punishment accordingly.

### **61R Consent**

- (1) For the purposes of sections 61I and 61J, 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 is to be taken to know that the other person does not consent to the sexual intercourse.
- (2) For the purposes of sections 61I and 61J and without limiting the grounds on 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,is to be taken not to consent to the sexual intercourse, and
  - (a1) a person who consents to sexual intercourse with another person under a mistaken belief that the sexual intercourse is for medical or hygienic purposes is taken not to consent to the sexual intercourse, and
  - (b) a person who knows that another person consents to sexual intercourse under a mistaken belief referred to in paragraph (a) or (a1) is to be taken to know that the other person does not consent to the sexual intercourse, and
  - (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, is to be regarded as not consenting to the sexual intercourse, and
  - (d) a person who does not offer actual physical resistance to sexual intercourse is not, by reason only of that fact, to be regarded as consenting to the sexual intercourse.

### **61S Offenders who are minors**

- (1) For the purposes of sections 61H-61U, a person is not, by reason only of age, to be presumed incapable of having sexual intercourse with another person or of having an intent to have sexual intercourse with another person.
- (2) Subsection (1) does not affect the operation of any law relating to the age at which a child can be convicted of an offence.



### **61T Offender married to victim**

The fact that a person is married to a person:

- (a) upon whom an offence under section 61I, 61J or 61K is alleged to have been committed is 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 is no bar to the firstmentioned person being convicted of the attempt.

### **61U Circumstances of certain sexual offences to be considered in passing sentence**

Where a person is convicted of:

- (a) both an offence under section 61I and an offence under section 61K, or
- (b) both an offence under section 61J and an offence under section 61K,

whether at the same time or at different times, the Judge passing sentence on the person in respect of the two convictions or the later of the two convictions is required, if it appears that the two offences arose substantially out of the one set of circumstances, to take that fact into account in passing sentence.

### **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.

(3) Where on the trial of a person for an offence under section 66A the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under section 66B, it may find the accused not guilty of the offence charged but guilty of the latter offence, and the accused is liable to punishment accordingly.

(4) Where on the trial of a person for an offence under section 66C the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under section 66D, it may find the accused not guilty of the offence charged but guilty of the latter offence, and the accused is 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), 61M (2), 61N or 61O, 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), 61L, 61M (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), 61N, 61O, 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), 61L, 61M (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 (Repealed)**

**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 granddaughter, 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 25 years.

**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 or towards 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 or towards 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) (Repealed)
- (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.

**80A Sexual assault by forced self-manipulation**

- (1) In this section:

***self-manipulation*** means the penetration of the vagina of any person or anus of any person by an object manipulated by the person, except where the penetration is carried out for proper medical or other proper purposes.

***threat*** means:

- (a) a threat of physical force, or
  - (b) intimidatory or coercive conduct, or other threat, which does not involve a threat of physical force.
- (2) Any person who compels, by means of a threat, another person to engage in self-manipulation and the other person could not in the circumstances be reasonably expected to resist the threat, is liable to penal servitude for 14 years or, if the other person is under the age of 10 years, to penal servitude for 20 years.
  - (3) A person does not commit an offence under this section unless the person knows that the other person engages in the self-manipulation as a result of the threat.

**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 61H) 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,
  - (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.

## **Part 3B Offences relating to firearms etc**

### **93F Definition**

In this Part:

**firearm** has the same meaning as in the [Firearms Act 1989](#) and includes an antique pistol within the meaning of that Act.

**93G Causing danger with firearm or spear gun**

- (1) Any person who:
- (a) possesses a loaded firearm or loaded spear gun:
    - (i) in a public place, or
    - (ii) in any other place so as to endanger the life of any other person, or
  - (b) fires a firearm or spear gun in or near a public place, or
  - (c) carries or fires a firearm or spear gun in a manner likely to injure, or endanger the safety of, himself or herself or any other person or any property, or with disregard for the safety of himself or herself or any other person,
- is liable to imprisonment for 10 years.
- (2) For the purposes of this section:
- (a) a firearm is to be regarded as being loaded if there is ammunition:
    - (i) in its chamber or barrel, or
    - (ii) in any magazine or other device which is in such a position that the ammunition can be fitted into its chamber or barrel by operation of some other part of the firearm, and
  - (b) a spear gun is to be regarded as being loaded if a spear, or an instrument or thing similar to a spear, is fitted to it.
- (3) A person is not guilty of an offence under this section for possessing or doing anything referred to in subsection (1) if the person satisfies the court that he or she had a reasonable excuse for possessing it or doing it or possessed it or did it for a lawful purpose.

**93H Trespassing with or dangerous use of firearm or spear gun**

- (1) A person who, possessing a firearm, imitation firearm, spear gun or imitation spear gun, enters any building or land (other than a road), unless the person:
- (a) is the owner or occupier of the building or land or has the permission of the owner or occupier, or
  - (b) does so with a reasonable excuse, or
  - (c) does so for a lawful purpose,
- is liable to imprisonment for 5 years.
- (2) A person who fires a firearm or spear gun in or into any building or on or on to any

land, unless the person:

(a) is the owner or occupier of the building or land or has the permission of the owner or occupier, or

(b) does so with a reasonable excuse, or

(c) does so for a lawful purpose,

is liable to imprisonment for 10 years.

(3) The onus of proving the matters referred to in subsection (1) (a), (b) and (c) and subsection (2) (a), (b) and (c) lies with the defendant.

### **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 in circumstances of aggravation**

(1) Whosoever robs, or assaults with intent to rob, any person, or steals any chattel, money, or valuable security, from the person of another, in circumstances of aggravation, shall be liable to penal servitude for twenty years.

- (2) In this section, ***circumstances of aggravation*** means circumstances that (immediately before, or at the time of, or immediately after the robbery, assault or larceny) involve any one or more of the following:
- (a) the alleged offender uses corporal violence on any person,
  - (b) the alleged offender maliciously inflicts actual bodily harm on any person,
  - (c) the alleged offender deprives any person of his or her liberty.

**96 Same (robbery) with wounding**

Whosoever commits any offence under section 95, and thereby wounds or inflicts grievous bodily harm on any person, shall be liable to penal servitude for 25 years.

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

- (1) 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.
- (2) **Aggravated offence** A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) when armed with a dangerous weapon. A person convicted of an offence under this subsection is liable to penal servitude for 25 years.
- (3) **Alternative verdict** If on the trial of a person for an offence under subsection (2) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under subsection (1), it may find the accused not guilty of the offence charged but guilty of the latter offence, and the accused is liable to punishment accordingly.

**98 Robbery with arms etc and wounding**

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, 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 25 years.

## **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

### 105A Definitions

(1) In sections 106–115A:

**circumstances of aggravation** means circumstances involving any one or more of the following:

- (a) the alleged offender is armed with an offensive weapon, or instrument,
- (b) the alleged offender is in the company of another person or persons,
- (c) the alleged offender uses corporal violence on any person,
- (d) the alleged offender maliciously inflicts actual bodily harm on any person,
- (e) the alleged offender deprives any person of his or her liberty.

**circumstances of special aggravation** means circumstances involving either or both of the following:

- (a) the alleged offender wounds or maliciously inflicts grievous bodily harm on any person,
- (b) the alleged offender is armed with a dangerous weapon.

(2) The matters referred to in:

- (a) paragraph (c), (d) or (e) of the definition of **circumstances of aggravation**, or
- (b) paragraph (a) of the definition of **circumstances of special aggravation**,

can occur immediately before, or at the time of, or immediately after any of the elements of the offence concerned occurred.

(3) The definitions in subsection (1) are not mutually exclusive.

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

(1) 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.

(2) **Aggravated offence** A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in circumstances of aggravation. A person

convicted of an offence under this subsection is liable to penal servitude for 20 years.

- (3) **Specially aggravated offence** A person is guilty of an offence under this subsection if the person commits an offence under subsection (2) in circumstances of special aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 25 years.

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

- (1) Whosoever breaks and enters any place of Divine worship, with intent to commit felony therein, shall be liable to penal servitude for ten years.
- (2) **Aggravated offence** A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in circumstances of aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 14 years.
- (3) **Specially aggravated offence** A person is guilty of an offence under this subsection if the person commits an offence under subsection (2) in circumstances of special aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 20 years.

#### **108 (Repealed)**

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

- (1) 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.

- (2) **Aggravated offence** A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in circumstances of aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 20 years.
- (3) **Specially aggravated offence** A person is guilty of an offence under this subsection if the person commits an offence under subsection (2) in circumstances of special aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 25 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 25 years.



### **111 Entering dwelling-house**

- (1) Whosoever enters any dwelling-house, with intent to commit felony therein, shall be liable to penal servitude for ten years.
- (2) **Aggravated offence** A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in circumstances of aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 14 years.
- (3) **Specially aggravated offence** A person is guilty of an offence under this subsection if the person commits an offence under subsection (2) in circumstances of special aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 20 years.

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

- (1) 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.

- (2) **Aggravated offence** A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in circumstances of aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 20 years.
- (3) **Specially aggravated offence** A person is guilty of an offence under this subsection if the person commits an offence under subsection (2) in circumstances of special aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 25 years.

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

- (1) 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.

- (2) **Aggravated offence** A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in circumstances of aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 14 years.
- (3) **Specially aggravated offence** A person is guilty of an offence under this subsection if the person commits an offence under subsection (2) in circumstances of special aggravation. A person convicted of an offence under this subsection is liable to penal servitude for 20 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.

#### **115A Alternative verdicts**

- (1) **Aggravated offence reduced to basic offence** If on the trial of a person for an offence under section 106 (2), 107 (2), 109 (2), 111 (2), 112 (2) or 113 (2) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the

evidence that the accused is guilty of an offence under section 106 (1), 107 (1), 109 (1), 111 (1), 112 (1) or 113 (1) as appropriate, it may find the accused not guilty of the offence charged but guilty of the latter offence, and the accused is liable to punishment accordingly.

(2) **Specially aggravated offence reduced to aggravated offence** If on the trial of a person for an offence under section 106 (3), 107 (3), 109 (3), 111 (3), 112 (3) or 113 (3) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under section 106 (2), 107 (2), 109 (2), 111 (2), 112 (2) or 113 (2) as appropriate, it may find the accused not guilty of the offence charged but guilty of the latter offence, and the accused is liable to punishment accordingly.

(3) **Specially aggravated offence reduced to basic offence** If on the trial of a person for an offence under section 106 (3), 107 (3), 109 (3), 111 (3), 112 (3) or 113 (3) the jury is not satisfied that the accused is guilty of the offence charged, but is satisfied on the evidence that the accused is guilty of an offence under section 106 (1), 107 (1), 109 (1), 111 (1), 112 (1) or 113 (1) as appropriate, it may find the accused not guilty of the offence charged but guilty of the latter offence, and the accused is liable to punishment accordingly. This subsection does not apply to an offence if the jury proceeds under subsection (2) in relation to it.

## **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 20 penalty units, 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 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, 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.

#### **154C (Repealed)**

## **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 arrangement 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 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 25 years.

**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
- (d) 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 25 years.

#### **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 25 years.

(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 25 years.

(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 etc 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 etc 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 50 penalty units, or both.
- (2) A person who, with intent:
  - (a) to defraud any person, or
  - (b) to dishonestly obtain for himself or herself or another person any financial advantage of any kind, or
  - (c) to dishonestly 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 500 penalty units, 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 500 penalty units, 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 500 penalty units, 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 1,000 penalty units, or both.

## **Part 7 Public justice offences**

### **Chapter 1 Definitions**

#### **311 Definitions**

(1) In this Part:

**benefit** means any benefit or advantage whether or not in money or money's worth.

**judicial officer** means a person who is, or who alone or with others constitutes, a judicial tribunal and includes a coroner.

**judicial proceeding** means a proceeding in or before a judicial tribunal in which evidence may be taken on oath.

**judicial tribunal** means a person (including a coroner and an arbitrator), court or body authorised by law, or by consent of parties, to conduct a hearing for the purpose of the determination of any matter or thing and includes a person, court or body authorised to conduct a committal proceeding.

**public justice official** means a person who is a public officer employed in any capacity (other than as a judicial officer) for the investigation, detection or prosecution of offenders.

**serious offence** means an offence punishable by imprisonment or penal servitude for 5 years or more or for life.

(2) In this Part, a reference to the making of a statement on oath includes a reference to the verification of a statement on oath.

#### **312 Meaning of "pervert the course of justice"**

A reference in this Part to perverting the course of justice is a reference to obstructing, preventing, perverting or defeating the course of justice or the administration of the law.

#### **313 Knowledge that offence is a serious offence is unnecessary**

If it is an element of an offence under this Part that an offence is a serious offence, it is not necessary for the prosecution to establish that the accused knew that the offence was a serious offence.

### **Chapter 2 Interference with the administration of justice**

#### **314 False accusations etc**

A person who makes an accusation intending a person to be the subject of an

investigation of an offence, knowing that other person to be innocent of the offence, is liable to penal servitude for 7 years.

### **315 Hindering investigation etc**

- (1) A person who does anything intending in any way to hinder:
  - (a) the investigation of a serious offence committed by another person, or
  - (b) the discovery of evidence concerning a serious offence committed by another person, or
  - (c) the apprehension of another person who has committed a serious offence,is liable to penal servitude for 7 years.
- (2) For the purposes of subsection (1), a person is to be considered to have committed a serious offence if a public officer engaged in the detection or investigation of offenders suspects on reasonable grounds that a person has committed the offence.
- (3) It is not an offence against this section merely to refuse or fail to divulge information or produce evidence.

### **316 Concealing serious offence**

- (1) If a person has committed a serious offence and another person who knows or believes that the offence has been committed and that he or she has information which might be of material assistance in securing the apprehension of the offender or the prosecution or conviction of the offender for it fails without reasonable excuse to bring that information to the attention of a member of the Police Force or other appropriate authority, that other person is liable to imprisonment for 2 years.
- (2) A person who solicits, accepts or agrees to accept any benefit for himself or herself or any other person in consideration for doing anything that would be an offence under subsection (1) is liable to imprisonment for 5 years.
- (3) It is not an offence against subsection (2) merely to solicit, accept or agree to accept the making good of loss or injury caused by an offence or the making of reasonable compensation for that loss or injury.

### **317 Tampering etc with evidence**

A person who, with intent to mislead any judicial tribunal in any judicial proceeding:

- (a) suppresses, conceals, destroys, alters or falsifies anything knowing that it is or may be required as evidence in any judicial proceeding, or
- (b) fabricates false evidence (other than by perjury or suborning perjury), or



- (c) knowingly makes use of fabricated false evidence,  
is liable to penal servitude for 10 years.

### **318 Making or using false official instrument to pervert the course of justice**

- (1) In this section:

**official instrument** means an instrument of a kind that is made or issued by a person in his or her capacity as a public officer or by a judicial tribunal.

- (2) A person who makes a false official instrument, or who makes a copy of an instrument which the person knows to be a false official instrument, with the intention that:

(a) he or she or another person will use it to induce another person to accept the instrument as genuine or to accept the copy as a copy of a genuine official instrument, and

(b) that acceptance will pervert the course of justice,

is liable to penal servitude for 14 years.

- (3) A person who uses an instrument which the person knows to be a false official instrument, or who uses a copy of an instrument which the person knows to be a false official instrument, with the intention:

(a) of inducing another person to accept the instrument as genuine or to accept the copy as a copy of a genuine official instrument, and

(b) of thereby perverting the course of justice,

is liable to penal servitude for 14 years.

- (4) Chapter 2 of Part 5 applies to the interpretation of this section as if this section formed part of that Chapter.

### **319 General offence of perverting the course of justice**

A person who does any act, or makes any omission, intending in any way to pervert the course of justice, is liable to penal servitude for 14 years.

## **Chapter 3 Interference with judicial officers, witnesses, jurors etc**

### **320 Extended meaning of “giving evidence”**

In this Chapter, a reference to the giving of evidence includes a reference to the production of anything to be used as evidence.

### **321 Corruption of witnesses and jurors**

- (1) A person who confers or procures or offers to confer or procure or attempt to procure any benefit on or for any person:
- (a) intending to influence any person called or to be called as a witness in any judicial proceeding to give false evidence or withhold true evidence or to not attend as a witness or not produce anything in evidence pursuant to a summons or subpoena, or
  - (b) intending to influence any person (whether or not a particular person) in the person's conduct as a juror in any judicial proceeding or to not attend as a juror in any judicial proceeding, whether he or she has been sworn as a juror or not, and intending to pervert the course of justice,

is liable to penal servitude for 10 years.

- (2) A person who solicits, accepts or agrees to accept any benefit for himself or herself or any other person:
- (a) in consideration for any agreement or undertaking that any person will as a witness in any judicial proceeding give false evidence or withhold true evidence or not attend as a witness or not produce anything in evidence pursuant to a summons or subpoena, or
  - (b) on account of anything to be done or omitted to be done by him or her or another person as a juror in any judicial proceeding, or on account of his or her or another person's not attending as a juror in any judicial proceeding, intending to pervert the course of justice,

is liable to penal servitude for 10 years.

### **322 Threatening or intimidating judges, witnesses, jurors etc**

A person who threatens to do or cause, or who does or causes, any injury or detriment to any person:

- (a) intending to influence a person called or to be called as a witness in any judicial proceeding to give false evidence or withhold true evidence or to not attend as a witness or not produce anything in evidence pursuant to a summons or subpoena, or
- (b) intending to influence any person (whether or not a particular person) in the person's conduct as a juror in any judicial proceeding or to not attend as a juror in any judicial proceeding, whether he or she has been sworn as a juror or not, or
- (c) intending to influence any person in the person's conduct as a judicial officer, or
- (d) intending to influence any person in the person's conduct as a public justice official in

or in connection with any judicial proceeding,

is liable to penal servitude for 10 years.

### **323 Influencing witnesses and jurors**

A person who does any act:

- (a) intending to procure, persuade, induce or otherwise cause any person called or to be called as a witness in any judicial proceeding to give false evidence or withhold true evidence or to not attend as a witness or not produce any thing in evidence pursuant to a summons or subpoena, or
- (b) intending, other than by the production of evidence and argument in open court, to influence any person (whether or not a particular person) in the person's conduct as a juror in any judicial proceeding, whether he or she has been sworn as a juror or not,

is liable to imprisonment for 7 years.

### **324 Increased penalty if serious offence involved**

A person who commits an offence against section 321, 322 or 323 (offences concerning interference with witnesses, jurors, judicial officers and public justice officials) intending to procure the conviction or acquittal of any person of any serious offence is liable to penal servitude for 14 years.

### **325 Preventing, obstructing or dissuading witness or juror from attending etc**

- (1) A person who without lawful excuse wilfully prevents, obstructs or dissuades a person called as a witness in any judicial proceeding from attending as a witness or from producing anything in evidence pursuant to a summons or subpoena is liable to imprisonment for 5 years.
- (2) A person who without lawful excuse wilfully prevents, obstructs or dissuades a person summoned as a juror in any judicial proceeding from attending as a juror is liable to imprisonment for 5 years.

### **326 Reprisals against judges, witnesses, jurors etc**

A person who threatens to do or cause, or who does or causes, any injury or detriment to any person on account of anything lawfully done by a person:

- (a) as a witness or juror in any judicial proceeding, or
- (b) as a judicial officer, or
- (c) as a public justice official in or in connection with any judicial proceeding,

is liable to penal servitude for 10 years.

## **Chapter 4 Perjury, false statements etc**

### **327 Offence of perjury**

- (1) Any person who in or in connection with any judicial proceeding makes any false statement on oath concerning any matter which is material to the proceeding, knowing the statement to be false or not believing it to be true, is guilty of perjury and liable to penal servitude for 10 years.
- (2) A statement can be considered to have been made in connection with a judicial proceeding whether or not a judicial proceeding has commenced, or ever commences, in connection with it.
- (3) The determination of whether a statement is material to a judicial proceeding that has not commenced is to be made on the basis of any judicial proceeding likely to arise in connection with the statement.
- (4) The question of whether any matter is material to a proceeding is a question of law.

### **328 Perjury with intent to procure conviction or acquittal**

Any person who commits perjury intending to procure the conviction or acquittal of any person of any serious offence is liable to penal servitude for 14 years.

### **329 Conviction for false swearing on indictment for perjury**

If on the trial of a person for perjury the jury is not satisfied that the accused is guilty of perjury but is satisfied on the evidence that the accused is guilty of an offence under section 330 (False statement on oath not amounting to perjury) it may find the accused not guilty of the offence charged but guilty of the latter offence and the accused is liable to punishment accordingly.

### **330 False statement on oath not amounting to perjury**

A person who makes on oath any false statement knowing the statement to be false or not believing it to be true, if it is not perjury, is liable to imprisonment for 5 years.

### **331 Contradictory statements on oath**

If on the trial of a person for perjury or for an offence under section 330 (False statement on oath not amounting to perjury):

- (a) the jury is satisfied that the accused has made 2 statements on oath and one is irreconcilably in conflict with the other, and
- (b) the jury is satisfied that one of the statements was made by the accused knowing it was false or not believing it was true but the jury cannot say which statement was so made,

the jury may make a special finding to that effect and find the accused guilty of perjury or of an offence under section 330, as appropriate, and the accused is liable to punishment accordingly.

### **332 Certain technical defects provided for**

If on the trial of a person for perjury or for an offence under section 330 (False statement on oath not amounting to perjury):

- (a) any affidavit, deposition, examination or declaration offered in evidence is wrongly entitled or otherwise informal or defective, or
- (b) the jurat to any such instrument is informal or defective,

the accused is not entitled to an acquittal because of the omission, defect or informality but the instrument (if otherwise admissible) may be given in evidence and used for all purposes of the trial.

### **333 Subornation of perjury**

- (1) A person who procures, persuades, induces or otherwise causes a person to give false testimony the giving of which is perjury is guilty of subornation of perjury and liable to imprisonment for 7 years.
- (2) A person who commits subornation of perjury intending to procure the conviction or acquittal of any person of any serious offence is liable to penal servitude for 14 years.

### **334 General provisions applicable to perjury and false statement offences**

It is immaterial for the purposes of this Chapter:

- (a) whether a statement on oath is given orally or in writing, or
- (b) which forms and ceremonies are used in administering the oath (or otherwise binding the person giving the testimony to speak the truth) so long as the person assents to the forms and ceremonies actually used, or
- (c) whether (in the case of a statement made in a judicial proceeding) the judicial tribunal concerned is properly constituted or held in the proper place or not, so long as it actually acts as a judicial tribunal in the proceeding in which the statement is made, or
- (d) whether the person who makes the statement is a competent witness or not, or whether the statement is admissible in the proceeding or not, or
- (e) in the case of judicial proceedings in an arbitration, whether the law governing the arbitration agreement or the proceedings, or any other relevant law, is or is not the law of New South Wales.

### **335 False statements in evidence on commission**

If a person, in giving any testimony (either orally or in writing) otherwise than on oath, when required to do so by an order under section 79 of the *Evidence Act 1898*, makes any statement that is false in a material particular, knowing the statement to be false or not believing it to be true, is liable to imprisonment for 5 years.

### **336 False entry on public register**

- (1) A person who for an improper purpose makes a statement for the making of an entry in any register kept by a public officer for a public purpose, knowing the statement to be false or misleading in a material particular, is liable to imprisonment for 5 years.
- (2) A person who for an improper purpose makes an entry in any register kept by a public officer for a public purpose, knowing the entry to be false or misleading in a material particular, is liable to imprisonment for 5 years.

### **337 False instruments issued by public officers**

A public officer who, being authorised or required to issue an instrument whereby any person may be prejudicially affected, issues the instrument for an improper purpose knowing it to be false in a material particular is liable to imprisonment for 5 years.

### **338 Restrictions on prosecutions for perjury**

- (1) A person is not to be prosecuted for perjury except:
  - (a) by the Director of Public Prosecutions, or
  - (b) at the direction of the Attorney General, or
  - (c) by any other person with leave of the judicial officer who constituted the judicial tribunal before which the perjury is alleged to have been committed.
- (2) If it is impossible or impracticable to apply for leave to prosecute in accordance with subsection (1) (c), the prosecution may be instituted with leave of the Supreme Court.
- (3) A person is not to be prosecuted for perjury (except by the Director of Public Prosecutions or at the direction of the Attorney General) unless notice of the proposed prosecution has been given to the Director of Public Prosecutions.

### **339 Application of Chapter to perjury under other Acts**

Any false oath declared by any Act to be perjury or made punishable as perjury by any Act is to be considered to be perjury for the purposes of this Act.

## Chapter 5 Miscellaneous

### 340 Extent of abolition of offences

The offences at common law abolished by this Chapter are abolished for all purposes not relating to offences committed before the commencement of this Part (as substituted by the *Crimes (Public Justice) Amendment Act 1990*).

### 341 Certain common law offences abolished

The following offences at common law are abolished:

- the offence of perverting the course of justice,
- the offence of attempting or conspiring to pervert the course of justice,
- the offence of falsely accusing a person of a crime or of procuring a person to falsely accuse a person of a crime,
- the offence of concealing evidence so that a person is falsely accused of a crime,
- the offence of attempting to pervert the course of justice by assisting a person to avoid arrest,
- the offence of persuading a person to make a false statement to police to mislead them in their investigation,
- the offence of procuring a person to make a false accusation,
- the offence of misprision of felony,
- the offence of compounding a felony,
- the offence of dissuading, intimidating or preventing, or attempting to dissuade, intimidate or prevent, a person who is bound to give evidence in a criminal matter from doing so,
- the offence of using threats or persuasion to witnesses to induce them not to appear or give evidence in courts of justice,
- the offence of perjury,
- the offence of embracery (attempting to corrupt, influence or instruct a jury or to induce a jury to favour one side more than the other),
- personating a juror.

### 342 Certain conspiracy offences not affected

The abolition of the common law offence of conspiring to pervert the course of justice

does not prevent a prosecution for an offence of conspiring to commit an offence against this Part.

### **343 Certain common law offences not abolished**

To remove any doubt, it is declared that the following offences at common law are not abolished by this Chapter:

- (a) the offence of escaping from lawful custody,
- (b) the offence of assisting a person to escape from lawful custody,
- (c) the offence of refusing to assist a peace officer in the execution of his or her duty in preventing a breach of the peace.

### **343A Saving of other punishments**

Nothing in this Part prevents or affects any other punishment, or any forfeiture, provided under any Act.

## **Part 8**

### **344 (Repealed)**

## **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 and punished**

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 25 years.
- (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 an authorised 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 an authorised 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 an authorised 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:

**authorised Justice** means:

(a) a Magistrate, or

(b) a Justice employed in the Department of Courts Administration.

**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.

(4) A court that finds an offence prescribed by or under subsection (7) to be proved against a person may order that the person present himself or herself in accordance with the terms of the order and submit to the taking, by the officer in charge of a police station specified in the order, of all such particulars as may be thought necessary for the identification of the person, including the person's photograph,

finger-prints and palm-prints. When making the order, the court is to warn the person that a failure to comply with the order may result in the person's apprehension in accordance with subsection (6).

- (5) An order under subsection (4) may be made on the application of the prosecutor or on the court's own motion, and may be made:
  - (a) immediately after the person is sentenced, or
  - (b) before the person is sentenced, if the court is satisfied that the making of such an order would assist in resolving doubt about the defendant's identity.
- (6) At the direction of the officer in charge of the police station specified in an order under subsection (4), a person who does not present himself or herself in accordance with the terms of the order may be apprehended without warrant and taken into custody for such time as may be reasonably necessary for the taking of particulars in accordance with the order.
- (7) An order under subsection (4) may be made in respect of any of the following offences:
  - (a) any indictable offence,
  - (b) the offence under section 4 of the *Traffic Act 1909* of driving a motor vehicle upon a public street furiously or recklessly or at a speed or in a manner which is dangerous to the public,
  - (c) an offence under section 4AA, section 4E (1D), (1E) (a) or (b), (1F) (a) or (b), (1G) (a) or (b) or (7), section 4F (7), section 5 (2) (a) or (b), section 5AC (2) or section 8 (2) of the *Traffic Act 1909*,
  - (d) an offence prescribed, or of a kind or description prescribed, by the regulations.
- (8) The Governor may make regulations, not inconsistent with this Act, prescribing any matter required or permitted to be prescribed under this section.

### **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. Nothing in this section, however, prevents the taking of any child's photograph, finger-prints or palm-prints in accordance with the order of a court under section 353A (4).
- (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 5 penalty units, 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.

### **354-356 (Repealed)**

## ***Powers of search***

### **357 Searching for and seizing firearms etc**

- (1) This section applies:
  - (a) to any indictable offence, and
  - (b) to an offence against section 545E, and
  - (c) to an offence against the *Prohibited Weapons Act 1989*, the *Firearms Act 1989* or a regulation made under either of those Acts.
- (2) If a member of the police force suspects, on reasonable grounds, that a dangerous article is being or has been used in the commission of an offence to which this section applies and that it is in the possession of any person in a public place or is in any vehicle, vessel, aircraft, package or receptacle which is in a public place and is in the possession or under the control of any person, the member may, without warrant:
  - (a) detain and search the person and any such vehicle, vessel, aircraft, package or receptacle, and
  - (b) seize and detain any dangerous article found as a result of the search.
- (3) A member of the police force who for the time being is lawfully in any premises may seize and detain any dangerous article which the member finds in those premises and in respect of which the member suspects, on reasonable grounds, that an offence to which this section applies is being or has been committed.
- (4) Where a member of the police force:
  - (a) 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 that the member of the police force suspects or believes to be a domestic violence offence has been committed or for the purpose of taking action to prevent the commission or further commission of such an offence, and

(b) has reasonable cause to believe:

- (i) that a firearm (within the meaning of the *Firearms Act 1989*) or a spear gun is in the dwelling-house, and
- (ii) that the firearm or spear gun has been or may be used to commit a domestic violence offence,

the member of the police force may search the dwelling-house for the firearm or spear gun and seize and detain the firearm or speargun.

(5) In this section:

**dangerous article** means:

- (a) a firearm (within the meaning of the *Firearms Act 1989*) or a spare barrel for any such firearm, a prohibited weapon or prohibited article (within the meaning of the *Prohibited Weapons Act 1989*) or ammunition for any such firearm, prohibited weapon or prohibited article, or
- (b) a spear gun, or
- (c) an article or device, not being such a firearm, capable of discharging by any means:
  - (i) any irritant matter in liquid, powder, gas or chemical form or any dense smoke, or
  - (ii) any substance capable of causing bodily harm, or
- (d) a fuse capable of use with an explosive or a detonator, or
- (e) a detonator.

**premises** means any building, structure, vehicle, vessel or aircraft and any place, whether built on or not.

### **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 committed, is being committed or, within 72 hours, will be 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** has the same meaning as in the [Search Warrants Act 1985](#).

### ***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:

(a) is to 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

(a1) must inquire as to the presence of any firearms in the dwelling-house and, if informed that there is a firearm or firearms, must take all such action as is reasonably practicable to search for and to seize the firearm or firearms, and

(b) is to 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.

**357I Police may enter and search for firearms**

(1) If, on inquiry under section 357H (1) (a1), a member of the police force is informed that there is no firearm in the dwelling-house concerned but a member of the police force has reasonable cause to believe that there is a firearm or firearms in the dwelling-house, a member of the police force must apply to an authorised justice for the issue of a search warrant.

(2) A member of the police force who believes on reasonable grounds that:

- (a) a domestic violence offence has recently been or is being committed, or is imminent, or is likely to be committed, otherwise than in a dwelling-house, and
  - (b) any of the persons concerned may have a firearm in a dwelling-house,
- must apply to an authorised justice for the issue of a search warrant.
- (3) An authorised justice to whom an application is made 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 dwelling-house concerned for firearms, and
  - (b) to seize any firearms that may be found in the dwelling-house.
- (4) Part 3 of the [Search Warrants Act 1985](#) applies to a search warrant issued under this section.
- (5) In this section, **authorised justice** has the same meaning as in the [Search Warrants Act 1985](#).

### ***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 1 penalty unit, 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 (Repealed)**

#### **358B Disposal of seized firearms etc**

- (1) If a dangerous article is seized and detained under section 357, 357H or 357I, a Local



Court constituted by a Magistrate sitting alone may, on application made by a person claiming to be entitled to possession of the article (being an application made at least 21 days after the seizure of the article), order that the article be returned to the person, unless:

- (a) a person has been charged with an offence in respect of the article, and
- (b) the charge has not been withdrawn or finally determined by the person's having been found not guilty of the offence,

or the article has been forfeited to the Crown under subsection (2).

(2) Any such article shall, at the expiration of 90 days after seizure of the article, be forfeited to the Crown, unless, before the expiration of that period:

- (a) an order has been made under subsection (1) with respect to the article, or
- (b) a person has been found guilty (whether or not the person has been convicted) of an offence in respect of the article, and the court in which proceedings for the offence were taken, on the application of that or any other person, has otherwise ordered.

(3) Despite subsections (1) and (2), if a firearm or spear gun is seized and detained under section 357 (4), 357H (1) (a1) or 357I, the Commissioner of Police shall cause the firearm or spear gun to be returned, when 21 days have expired after its seizure, to the person who was, when the firearm or speargun was seized, occupying or using the dwelling-house in which the firearm or spear gun was seized or to the person from whom the firearm or spear gun was seized unless:

- (a) the person is the subject of a firearms prohibition order under the [Firearms Act 1989](#), or
- (b) possession of the firearm or spear gun by the person would otherwise constitute an offence, or
- (c) before those 21 days expire, a person has been charged with an offence in respect of the firearm or spear gun.

(4) (Repealed)

## **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 imposing punishment may, if it thinks fit, in the case of a body corporate, impose a pecuniary penalty not exceeding:
  - (a) 2,000 penalty units if the court is constituted by a Judge of the Supreme Court or District Court, or
  - (b) 100 penalty units if the court is not so constituted.
- (6A) In subsection (6), **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 at 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.

**404A Abolition of an accused's right to make unsworn statement or to give unsworn evidence**

- (1) Any rule of law or procedure or practice permitting a person who is charged with the commission of a criminal offence to make an unsworn statement or to give unsworn evidence in answer to the charge is abolished.
- (2) Nothing in this section prevents a person from giving unsworn evidence under Part 6 of the [Oaths Act 1900](#).

#### **405 Address to jury by accused**

- (1) Every accused person on his trial, whether defended by counsel or not, may, after the prosecutor has addressed the jury or has declined to address the jury, 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 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.

#### **405AA Summary by Judge**

- (1) A Judge of the Supreme Court or District Court need not summarise, at the end of a criminal trial before a jury, the evidence given in the trial if the Judge is of the opinion that, in all the circumstances of the trial, the summary is not necessary.
- (2) This section applies despite any rule of law or practice to the contrary.
- (3) Nothing in this section affects any aspect of a Judge's summing up function other than the summary of evidence in a trial.
- (4) This section extends to trials commenced, but not concluded, before the commencement of this section.

#### **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 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).
- (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).
  - (c) (Repealed)

**405D Closed-circuit television may be used for giving child victim's evidence**

- (1) In any criminal proceedings in which it is alleged that the accused person has committed a prescribed sexual offence on a child, the court may, on the application of the prosecution, make an order permitting the child's evidence to be given by means of closed-circuit television facilities.
- (2) If the court is not equipped with closed-circuit television facilities or it otherwise considers it appropriate to do so, the court may, for the purpose of permitting the child's evidence to be given by means of such facilities, adjourn the proceedings or any part of them to a court that is equipped with such facilities.
- (2A) If, pursuant to an order under subsection (1), a child's evidence is permitted to be given from other premises:
  - (a) the court may also order a court officer to be present at those other premises, or any other person to be present with the child as a support or interpreter, or both, and
  - (b) those other premises are taken to be part of the court in which the proceedings are being held.
- (3) An order may only be made under subsection (1) if the court is satisfied:
  - (a) that it is likely that the child would suffer mental or emotional harm if required to give evidence in the ordinary way, or
  - (b) that it is likely that the facts would be better ascertained if the child's evidence is given in accordance with such an order.
- (4) The court may vary or revoke an order made under this section, either of its own motion or on application by a party to the proceedings.
- (5) In this section, **child**, in relation to any proceedings, means a child under the age of 16 years at the time that the child is giving evidence in the proceedings.

**405E Use of closed-circuit television facilities**

- (1) Closed-circuit television facilities used for the giving of evidence by a child are to be operated in such a manner that the persons who have an interest in the proceedings are able to see the child (and any person present with the child) on the same or another television monitor.
- (2) The Governor may make regulations for or with respect to the use of closed-circuit television facilities for the giving of evidence by children in accordance with an order made under section 405D.
- (3) Rules of court may (subject to the regulations) also make provision for or with respect

to the use of closed-circuit television facilities for the giving of evidence by children in accordance with an order made under section 405D.

**405F Alternative arrangements for child victim's evidence**

- (1) In any criminal proceedings in which it is alleged that the accused person has committed a personal assault offence on a child, the court may, of its own motion or on the application of the prosecution, direct alternative arrangements to be made for the giving of evidence by the child.
- (2) Without limiting the generality of subsection (1), the following alternative arrangements may be directed to be made:
  - (a) seating arrangements for persons who have an interest in the proceedings (including the level at which they are seated and the persons in the child's line of vision),
  - (b) the use of screens,
  - (c) adjournment of the proceedings or any part of the proceedings to other premises.
- (2A) Any premises to which proceedings are adjourned for the purposes of subsection (2) are taken to be part of the court in which the proceedings are being held.
- (3) The court may vary or revoke a direction made under this section, either of its own motion or on application by a party to the proceedings.
- (4) Nothing in this section limits any discretion that a court has with respect to the conduct of proceedings in any case.
- (5) In this section:

**child**, in relation to any proceedings, means a child under the age of 16 years at the time that the child is giving evidence in the proceedings.

**personal assault offence** means an offence under:

- (a) Part 3, or
- (b) section 25 of the *Children (Care and Protection) Act 1987*,

or an offence of attempting, or of conspiracy or incitement, to commit such an offence (but does not include any offence exempted from this section by the regulations).

**405G (Repealed)**

**405H Warning to jury**

- (1) In any criminal proceedings in which the evidence of a child is given by means of closed-circuit television facilities, the Judge must warn the jury not to draw any

inference adverse to the accused person or give the evidence any greater or lesser weight because of the use of those facilities.

- (2) In any criminal proceedings in which alternative arrangements for the giving of evidence by a child are directed to be made under section 405F, the Judge must warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the use of those alternative arrangements.

#### **405I Validity of proceedings not affected**

The failure of a child to give evidence in accordance with an order made under section 405D or a direction made under section 405F does not affect the validity of the proceedings or any decision made in connection with those proceedings.

### ***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 the husband or wife was the protected 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, 61I, 61J, 61K, 61L, 61M, 61N, 61O, 66A, 66B, 66C, 66D, 80A, 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 protected 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 etc**

- (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) 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 of any such statement rejected under section 48F of that Act, or
  - (b) a written statement the whole or a part of which was tendered as evidence on a plea of guilty under section 51A of the *Justices Act 1902*.

**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 61H (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 (Repealed)**

**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.

- (1C) A certificate which would, by virtue of section 4AC of the *Traffic Act 1909*, be prima facie evidence of the particulars certified in and by the certificate in proceedings for an offence is 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.
- (1D) At an 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 an approved camera recording device (within the meaning of the *Traffic Act 1909*) on a specified day at a specified location is to be accepted as having been so taken unless evidence is adduced to the contrary, and
  - (b) a photograph so taken is prima facie evidence of the matters shown or recorded on the photograph, and
  - (c) evidence of the condition of the approved camera recording device is not required unless evidence that the device was not in proper condition has been adduced.
- (1E) If a photograph is tendered in evidence in proceedings referred to in subsection (1D), a certificate purporting to be signed by a member of the police force and certifying that:
- (a) the member is authorised by the Commissioner of Police to install and inspect approved camera recording devices (within the meaning of the *Traffic Act 1909*), and
  - (b) on the day recorded on the photograph as the day on which the photograph was taken, the member carried out the inspection specified in the certificate on the approved camera recording device that took the photograph, and
  - (c) on that inspection the approved camera recording device was found to be operating correctly,
- is to be tendered in evidence in those proceedings and is prima facie evidence of the particulars certified in and by the certificate.
- (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.

(4A) A certificate referred to in subsection (4) is not admissible, in proceedings under the *Drug Misuse and Trafficking Act 1985*, as evidence of the use or administration, by the person to whom the certificate relates, of any prohibited drug within the meaning of that Act.

(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 the 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.
- (7A) A certificate referred to in subsection (7) is not admissible, in proceedings under the *Drug Misuse and Trafficking Act 1985*, as evidence of the use or administration, by the person to whom the certificate relates, of any prohibited drug within the meaning of that Act.
- (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.
- (9) A certificate which would, by virtue of Part 3 of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*, be prima facie evidence of the particulars certified in and by the certificate in proceedings for an offence under that Part is 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.
- (10) A certificate referred to in subsection (9) is not admissible, in proceedings under the *Drug Misuse and Trafficking Act 1985*, as evidence of the use or administration, by the person to whom the certificate relates, of any prohibited drug within the meaning of that Act.

- (11) Where any certificate under section 24 (Certificate evidence of concentration of alcohol in blood determined by breath analysis) of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991* is admitted in evidence by virtue of subsection (9), evidence of the condition of a breath analysing instrument or the manner in which it was operated is not 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 Evidence by police officers**

- (1) In any criminal proceedings against a person charged with a summary or indictable offence, a police officer may give evidence in chief for the prosecution by reading, or being led through, a written statement previously made by the police officer.
- (2) Evidence may not be so given unless:
  - (a) the statement was made by the police officer at the time of or soon after the occurrence of the events to which it refers, and
  - (b) the police officer signed the statement at the time it was made, and
  - (c) a copy of the statement has been given to the person charged or to his or her counsel or attorney.
- (3) This section does not affect the rules as to the admissibility of evidence.
- (4) This section extends to criminal proceedings commenced, but not concluded, before 1 January 1991 (being the date of the commencement of this section).

#### **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)**

### **Parts 11A, 11B**

#### **428A-428ZB (Repealed)**

## **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 25 years.

### **431A Life sentences**

(1) This section applies to offences under:

- (a) an Act, or
- (b) an Imperial Act so far as it applies in New South Wales, or
- (c) a rule of law.

(2) A person is not liable to the punishment of penal servitude for life for any offence to which this section applies except for the offence of murder or for an offence carrying that punishment under the [Drug Misuse and Trafficking Act 1985](#).

(3) Where, but for this subsection, no penalty would be provided for an offence to which this section applies that was formerly punishable by penal servitude for life, that offence is punishable by penal servitude for 25 years.

(4) This section applies to offences committed before or after the commencement of this section. However, this section does not apply where committal proceedings (or proceedings by way of ex officio indictment) for the offence were instituted against the convicted person before the commencement of this section.

- (5) Any amendment made by the *Crimes (Life Sentences) Amendment Act 1989* altering the penalty for an offence under this Act from penal servitude for life to penal servitude for 25 years applies to an offence committed before or after the commencement of the amendment. However, the amendment does not apply where committal proceedings (or proceedings by way of ex officio indictment) for the offence were instituted against the convicted person before the commencement of the amendment.
- (6) A reference in this section to penal servitude includes a reference to imprisonment.

### ***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.

## ***Guilty pleas***

### **439 Guilty plea to be taken into account**

- (1) In passing sentence for an offence on a person who pleaded guilty to the offence, a Court must take into account:
- (a) the fact that the person pleaded guilty, and
  - (b) when the person pleaded guilty or indicated an intention to plead guilty,
- and may accordingly reduce the sentence that it would otherwise have passed.
- (2) A Court which does not, as a result of this section, reduce the sentence that it passes on a person who pleaded guilty to an offence must state that fact and its reasons for not reducing the sentence when passing sentence.
- (3) The failure of a Court to comply with this section does not invalidate any sentence imposed by the Court.
- (4) In this section, a reference to a Court includes a reference to a Judge and a Magistrate (whether exercising jurisdiction in respect of an indictable offence or a summary offence) but does not include a reference to the Children's Court or a court exercising the jurisdiction of the Children's Court.
- (5) This section applies to proceedings for an offence whether commenced before or after the commencement of this section.
- (6) This section also applies, and is taken always to have applied, where an order for a re-trial has been made or proceedings have been reopened.

## ***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 (Repealed)**

### **440AA Power to fine**

- (1) If a person is convicted on indictment of an offence, the Judge before whom the

person is brought for sentencing may, in addition to or instead of imposing any other punishment, impose a fine not exceeding 1,000 penalty units.

(2) This section does not apply where:

- (a) another provision (other than section 440B) empowers the imposition of a fine for the offence, or
- (b) the offence was committed before the commencement of this section and a sentence of penal servitude or imprisonment is also being imposed for the offence.

(3) Section 82 of the *Justices Act 1902* does not apply to a fine imposed under this section.

(4) A fine imposed under this section may be recovered in a court of competent jurisdiction as a debt due to the Crown.

#### **440AB Consideration of accused's means to pay**

In the exercise by a Judge of a discretion to fix the amount of any fine or monetary penalty, the Judge is required to consider:

- (a) such information regarding the means of the defendant as is reasonably and practicably available to the Judge for consideration, and
- (b) such other matters as, in the opinion of the Judge, are relevant to the fixing of that amount.

#### **440AC Instalments and time for payment**

(1) A Judge imposing a fine or monetary penalty is required to allow time for the payment of the amount of the fine or penalty, unless:

- (a) the Judge is satisfied that the person liable to pay the amount has sufficient means to pay the whole amount immediately, or
- (b) the person requests that no time be allowed for payment, or
- (c) there are, in the opinion of the Judge, special reasons for not allowing any time for payment and the Judge has stated those reasons.

(2) A Judge imposing a fine or monetary penalty may direct payment of the fine or penalty to be made by instalments.

(3) The period of time allowed for the payment of an amount or for the payment of instalments must be not less than 21 days, unless:

- (a) the period is a shorter period requested by the person liable to pay the amount, or
- (b) there are, in the opinion of the Judge, special reasons for allowing a shorter period



and the Judge has stated those reasons.

- (4) If an amount is directed to be paid by instalments, and default is made in the payment of any one instalment, the same proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.
- (5) A Judge directing the payment of an amount or of an instalment of an amount may direct payment to be made at such time or times, and in such place or places, and to such person or persons, as the Judge specifies.

#### **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 murder, 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 200 penalty units.
- (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 he 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.

### **442B Reduction of sentences for assistance to authorities**

- (1) In determining the sentence to be passed on a person convicted of an offence, a court may reduce the sentence it would otherwise impose, having regard to the degree to which the person has assisted, or undertaken to assist, law enforcement authorities in the prevention, detection or investigation of, or in proceedings relating to, the offence or other offences.
- (2) A court must not reduce a sentence so that the sentence becomes unreasonably disproportionate to the nature and circumstances of the offence.
- (3) In deciding whether to reduce a sentence and the extent of any reduction, the court is required to consider the following matters:
  - (a) the effect of the offence for which the offender is being sentenced on the victim or victims of the offence and the family or families of the victim or victims,
  - (b) the significance and usefulness of the offender's assistance to the authority or authorities concerned, taking into consideration any evaluation by the authority or authorities of the assistance rendered or undertaken to be rendered,
  - (c) the truthfulness, completeness and reliability of any information or evidence provided by the offender,
  - (d) the nature and extent of the offender's assistance or promised assistance,

- (e) the timeliness of the assistance or undertaking to assist,
  - (f) any benefits that the offender has gained or may gain by reason of the assistance or undertaking to assist,
  - (g) whether the offender will suffer harsher custodial conditions,
  - (h) any injury suffered by the offender or the offender's family, or any danger or risk of injury to the offender or the offender's family, resulting from the assistance or the undertaking to assist,
  - (i) whether the assistance or promised assistance concerns the offence for which the offender is being sentenced or an unrelated offence,
  - (j) the likelihood that the offender will commit further offences after release.
- (4) Nothing in this section precludes a court from considering any other matter that the court is required to consider or that the court considers it is appropriate to consider in sentencing an offender or in deciding to reduce a sentence and the extent of any reduction.
- (5) In this section, a reference to a court includes a reference to a Judge and a Magistrate (whether exercising jurisdiction in respect of an indictable offence or a summary offence).

### ***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**

### **459-463 (Repealed)**

#### **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)**

## **Part 13A Review of convictions**

## Division 1 Preliminary

### 474A Definitions

(1) In this Part:

**conviction** includes:

- (a) a verdict of the kind referred to in section 22 (1) (c) or (d) of the *Mental Health (Criminal Procedure) Act 1990*, being a verdict that the accused person:
  - (i) committed the offence charged, or
  - (ii) committed an offence available as an alternative to the offence charged, or
- (b) an acquittal on the ground of mental illness, where mental illness was not set up as a defence by the person acquitted.

**prescribed person** means a judicial officer within the meaning of the *Judicial Officers Act 1986* or a Justice.

**repealed provisions** means the provisions of section 475 of this Act, or section 26 of the *Criminal Appeal Act 1912*, as in force before the commencement of the *Crimes Legislation (Review of Convictions) Amendment Act 1993*.

(2) In this Part, a reference to a finding of guilt includes a reference to a qualified finding of the kind referred to in section 22 (3) of the *Mental Health (Criminal Procedure) Act 1990*.

## Division 2 Petitions to Governor

### 474B Petitions to Governor

A petition for a review of a conviction or the exercise of the Governor's pardoning power may be made to the Governor by the convicted person or by another person on behalf of the convicted person.

### 474C Consideration of petitions

(1) After the consideration of a petition:

- (a) the Governor may direct that an inquiry be conducted by a prescribed person into the conviction, or
- (b) the Minister may refer the whole case to the Court of Criminal Appeal, to be dealt with as an appeal under the *Criminal Appeal Act 1912*, or
- (c) the Minister may request the Court of Criminal Appeal to give an opinion on any point arising in the case.



- (2) Action under subsection (1) may only be taken if it appears that there is a doubt or question as to the convicted person's guilt, as to any mitigating circumstances in the case or as to any part of the evidence in the case.
- (3) The Governor or the Minister may refuse to consider or otherwise deal with a petition. Without limiting the foregoing, the Governor or the Minister may refuse to consider or otherwise deal with a petition if:
  - (a) it appears that the matter is the same as a matter that has previously been dealt with under this Part or under the repealed provisions, and
  - (b) the Minister is not satisfied that there are special facts or special circumstances that justify the taking of further action.
- (4) The Minister must cause a report to be given to the registrar of the Criminal Division of the Supreme Court as to any action taken by the Governor or the Minister under this section (including a refusal to consider or otherwise deal with a petition).
- (5) A petition (however described) that does not expressly seek a review of a conviction or the exercise of the Governor's pardoning power may be dealt with as if it did if the Minister is of the opinion that it should be so dealt with.

### **Division 3 Applications to Supreme Court**

#### **474D Applications to Supreme Court**

- (1) An application for an inquiry into a conviction may be made to the Supreme Court by the convicted person or by another person on behalf of the convicted person.
- (2) The registrar of the Criminal Division of the Supreme Court must cause a copy of any application made under this section to be given to the Minister.

#### **474E Consideration of applications**

- (1) The Supreme Court may direct that an inquiry be conducted by a prescribed person into a conviction:
  - (a) on considering an application under section 474D, or
  - (b) on its own motion.
- (2) Action under subsection (1) may only be taken if it appears that there is a doubt or question as to the convicted person's guilt, as to any mitigating circumstances in the case or as to any part of the evidence in the case.
- (3) The Supreme Court may refuse to consider or otherwise deal with an application. Without limiting the foregoing, the Supreme Court may refuse to consider or otherwise deal with an application if:

- (a) it appears that the matter is the same as a matter that has previously been dealt with under this Part or under the repealed provisions, and
  - (b) the Supreme Court is not satisfied that there are special facts or special circumstances that justify the taking of further action.
- (4) Proceedings under this section are not judicial proceedings. However, the Supreme Court may consider any written submissions made by the Crown with respect to an application.
- (5) The registrar of the Criminal Division of the Supreme Court must report to the Minister as to any action taken by the Supreme Court under this section (including a refusal to consider or otherwise deal with an application).

## **Division 4 Inquiries**

### **474F Inquiries**

An inquiry is to be conducted as soon as practicable after a direction for it has been given under section 474C or 474E.

### **474G Procedure for conducting inquiry**

- (1) An inquiry under this Division is to be conducted by:
- (a) a prescribed person appointed by the Governor, if the conduct of an inquiry was directed by the Governor, or
  - (b) a prescribed person appointed by the Chief Justice, if the conduct of an inquiry was directed by the Supreme Court.
- (2) The prescribed person conducting the inquiry has:
- (a) the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the *Royal Commissions Act 1923*, and
  - (b) in the case of a person who is a Judge of the Supreme Court or whose instrument of appointment under this section expressly so provides, the powers and authorities conferred on a commissioner by Division 2 of Part 2 of the *Royal Commissions Act 1923* (except for section 17).
- (3) The *Royal Commissions Act 1923* applies to any witness summoned by or before the prescribed person conducting the inquiry (except for sections 13 and 17 and, subject to subsection (2) (b), Division 2 of Part 2).
- (4) If it appears that the character of any person (being a person who was a witness at the proceedings from which the conviction arose) may be affected by the inquiry, the prescribed person must permit the person to be present at the inquiry and to examine

any witness who attends the inquiry.

#### **474H Action to be taken on completion of inquiry**

- (1) On completing an inquiry under this Division, the prescribed person must cause a report on the results of the inquiry (incorporating a transcript of the depositions given in the course of the inquiry) to be sent to:
  - (a) the Governor, in the case of an inquiry held on the direction of the Governor, or
  - (b) the Chief Justice, in the case of an inquiry held on the direction of the Supreme Court.
- (2) If of the opinion that there is a reasonable doubt as to the guilt of the convicted person, the prescribed person may also refer the matter to the Court of Criminal Appeal (together with a copy of the report) for consideration of the question of whether the conviction should be quashed.
- (3) After considering a report furnished to the Chief Justice under this section, the Supreme Court must cause its own report on the matter (together with a copy of the prescribed person's report) to be sent to the Governor.
- (4) The Governor may then dispose of the matter in such manner as to the Governor appears just.

### **Division 5 Court of Criminal Appeal**

#### **474I Definitions**

In this Division:

**Court** means the Court of Criminal Appeal.

**pardon** means a pardon granted under the prerogative of mercy.

#### **474J Quashing of conviction following pardon**

- (1) The Court may quash a conviction in respect of which a free pardon has been granted.
- (2) However, the mere fact that a free pardon has been granted does not entitle the person to whom the pardon has been granted to a quashing of the conviction.
- (3) An application for the quashing of the conviction may be made to the Court by the person to whom the pardon has been granted or by another person on behalf of that person.
- (4) However, such an application may not be made in respect of a free pardon arising from an inquiry under Division 4 if the matter has previously been dealt with under this Division as a consequence of a reference to the Court, under section 474H (2), by

the prescribed person conducting the inquiry.

- (5) The registrar of the Court must cause a copy of any application made under this section to be given to the Minister.

**474K Procedure on application for quashing of conviction**

- (1) In any proceedings on an application under section 474J:
- (a) the Crown has the right of appearance, and
  - (b) the Court is to consider:
    - (i) the report on the matter that is prepared by the prescribed person under section 474H, and
    - (ii) any report on the matter that is prepared by the Supreme Court under section 474H, and
    - (iii) any submissions on any such report that are made by the Crown or by the convicted person to whom the proceedings relate, and
  - (c) no other evidence is to be admitted or considered except with the leave of the Court.
- (2) The rules governing the admissibility of evidence do not apply to any such proceedings.
- (3) For the purpose of enabling the convicted person to make submissions with respect to a report referred to in subsection (1), the convicted person is entitled to receive a copy of the report.
- (4) The provisions of Parts 3 and 4 of the *Criminal Appeal Act 1912* relating to proceedings on an appeal under section 5 (1) of that Act apply to proceedings on an application under section 474J, as if:
- (a) any reference to an appeal were a reference to proceedings on such an application, and
  - (b) any reference to an appellant were a reference to the convicted person.

**474L Reference to Court under section 474C (1) (b) following petition to Governor**

On receiving a reference under section 474C (1) (b), the Court is to deal with the case so referred in the same way as if the convicted person had appealed against the conviction under the *Criminal Appeal Act 1912*, and that Act applies accordingly.

**474M Request to Court under section 474C (1) (c) following petition to Governor**

- (1) On receiving a request under section 474C (1) (c), the Court is to consider, and furnish

the Minister with its opinion on, the point raised by the request.

- (2) The Governor may then dispose of the matter in such manner as to the Governor appears just.

#### **474N Reference to Court under section 474H (2) following inquiry**

On receiving a reference under section 474H (2), the Court is to deal with the matter so referred in the same way as if an application had been made to the Court under section 474J (3), and sections 474J and 474K apply accordingly.

### **Division 6 General**

#### **474O Exercise of Supreme Court's jurisdiction**

The jurisdiction of the Supreme Court under this Part is to be exercised by the Chief Justice or by a Judge of the Supreme Court who is authorised by the Chief Justice to exercise that jurisdiction. References in this Part to the Supreme Court are to be construed accordingly.

#### **474P Prerogative of mercy preserved**

Nothing in this Part limits or affects in any manner the prerogative of mercy.

#### **475 (Repealed)**

### **Part 13B 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 100 penalty units 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.
- (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 as 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 (other than an offence mentioned in section 154A) 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,

- (ba) any offence mentioned in section 61M or 61O (2),
- (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), 35A (1), 53, 54, 57, 78Q, 81A, 81B, 81C, 91A, 91B, 91D, 91E, 91F, 91G, 93B, 93C, 114, 132, 133, 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,
- (da) any offence mentioned in section 316, 325, 335, 336 or 337,
- (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,
- (ea) any offence mentioned in section 109 (1) where:
  - (i) the felony intended is stealing, or
  - (ii) the felony alleged is stealing and the value of the property stolen does not exceed \$15,000,and the person charged was neither armed with an offensive weapon or instrument, nor in company with a person so armed,
- (f) any offence mentioned in section 112 (1) 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 (1) or 113 (1) 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), (ba), (c), (d), (da), (ea), (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, 100 penalty units, 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 100 penalty units, 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 100 penalty units, 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 etc**

- (1) Proceedings for an offence under section 35A (2), 56, 58, 59, 61, 61L, 61N or 61O (1) 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, 61 or 61N disposed of under this section is imprisonment for a maximum period of 12 months, or a fine not exceeding 20 penalty units, or both.
- (3) The penalty that a Local Court may impose for an offence under section 35A (2), 58, 59, 61L or 61O (1) disposed of under this section is imprisonment for a maximum period of 2 years, or a fine not exceeding 50 penalty units, 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: larceny etc**

(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, 195, 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 not exceeding 50 penalty units or both.

(1A) If the amount of money or the value of the property does not exceed \$2,000, the maximum monetary penalty is 20 penalty units.

(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.

**496A Additional indictable offences punishable summarily without consent of accused**

(1) Proceedings for an offence under section 93G, 93H or 154A 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 any such offence disposed of under this section is imprisonment for a maximum period of 2 years, or a fine not exceeding 50 penalty units, or both.

(3) The provisions of section 56 of the *Justices Act 1902* do not apply to proceedings under this section.

(4) 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.

**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, 496 or 496A.

(2) Nothing in this section or section 495, 496 or 496A 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 5 penalty units, 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 5 penalty units, 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 5 penalty units.

**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 5 penalty units, 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 5 penalty units, 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 5 penalty units.

**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 2 penalty units.

**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 0.1 penalty unit.

***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 5 penalty units, 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 1 penalty unit.

**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 1 penalty unit.

**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 1 penalty unit.

**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 5 penalty units, 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 2 penalty units.

#### **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 5 penalty units, 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 5 penalty units, 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 5 penalty units, 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 10 penalty units 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.

#### **526A, 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 5 penalty units, or both.

### ***Obtaining money, &c, by false representation***

#### **527A Obtaining money etc by 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 4 penalty units.

## ***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 2 penalty units.

## ***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 5 penalty units.

- (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 5 penalty units.

## **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 2 penalty units, 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,

is liable, on conviction before a Magistrate, to imprisonment for 2 years, or to a fine of 50 penalty units, 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 etc 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 5 penalty units, 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 10 penalty units, 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 10 penalty units, or both.

## **(D5) UNLAWFUL POSSESSION OF CERTAIN DANGEROUS ARTICLES**

### **545E Possession of dangerous articles other than firearms**

- (1) A person who, in a public place, possesses:
  - (a) anything (not being a firearm within the meaning of the *Firearms Act 1989*) capable of discharging by any means:
    - (i) any irritant matter in liquid, powder, gas or chemical form or any dense smoke, or
    - (ii) any substance capable of causing bodily harm, or
  - (b) a fuse capable of use with an explosive or a detonator, or
  - (c) a detonator,is liable, on conviction before a Magistrate, to imprisonment for 2 years, or a fine of 50 penalty units, or both.
- (2) A person is not guilty of an offence under this section for possessing anything referred to in subsection (1) if the person satisfies the court that he or she had a reasonable excuse for possessing it or possessed it for a lawful purpose.
- (3) A person is not guilty of an offence under this section for possessing anything referred to in subsection (1) (a) if the person satisfies the court that he or she possessed it for the purpose of self-defence and that it was reasonable in the circumstances to possess it for that purpose.
- (4) In considering a defence under subsection (3), the court must have regard to its reasonableness in all the circumstances of the case, including:
  - (a) the immediacy of the perceived threat to the person charged, and
  - (b) the circumstances, such as the time and location, in which the thing was possessed, and

(c) the type of thing possessed, and

(d) the age, characteristics and experiences of the person charged.

## **(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 4 penalty units.

## **(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 4 penalty units.
- (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 12 months or to a fine of 10 penalty units, or both.

## **(F) RECOGNIZANCE TO KEEP THE PEACE**

### **547 Apprehended violence or injury—recognizance to keep the peace etc**

- (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 1 penalty unit.
- (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 1 penalty unit.

**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 12 months, or to a fine of 50 penalty units, 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 2 penalty units.

## **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 violence**

## Division 1 Definitions and offence

### 562A Definitions

(1) In this Part:

**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 or is sought to be made.

**interstate restraint order** means an order made by a court of another State or Territory that has been made to prevent a person from acting in a manner specified in section 562B.

**intimidation** means:

- (a) conduct amounting to harassment or molestation, or
- (b) the making of repeated telephone calls, or
- (c) any conduct that causes a reasonable apprehension of injury to a person or to a person with whom he or she has a domestic relationship, or of violence or damage to any person or property.

**order** means an apprehended violence order (including a telephone interim order or an interim order made by a court) in force under this Part and, if the order is varied under this Part, means the order as so varied.

**protected person** means the person for whose protection an order is made.

**registered interstate restraint order** means an interstate restraint order registered under Division 3.

**stalking** means the following of a person about or the watching or frequenting of the vicinity of or an approach to a person's place of residence, business or work or any place that a person frequents for the purposes of any social or leisure activity.

**telephone interim order** means an interim apprehended violence order made by an authorised justice in accordance with section 562H.

**the appropriate court**, in relation to an interstate restraint order, means:

(a) a Local Court if the person against whom the order has been made is 18 or more years of age, or

(b) the Children's Court if the person against whom the order has been made is less than 18 years of age,

on the day on which an application is made under Division 3 for the registration of the interstate restraint order.

(2) For the purpose of determining whether a person's conduct amounts to intimidation, a court may have regard to any pattern of violence (especially violence constituting a domestic violence offence) in the person's behaviour.

(3) For the purposes of this Part, a person has a **domestic relationship** with another person if the person:

(a) is or has been the spouse or de-facto partner of the other person, or

(b) is living with or has lived ordinarily in the same household as the other person (otherwise than merely as a tenant or boarder), or

(c) is or has been a relative (within the meaning of section 4 (6)) of the other person, or

(d) has or has had an intimate personal relationship with the other person.

#### **562AB Stalking, intimidation with intent to cause fear for personal safety**

(1) A person who stalks or intimidates another person with the intention of causing the other person to fear personal injury is liable, on conviction before a Magistrate, to imprisonment for 5 years, or to a fine of 50 penalty units, or both.

(2) For the purposes of this section, causing a person to fear personal injury includes causing the person to fear personal injury to another person with whom he or she has a domestic relationship.

(3) For the purposes of this section, a person intends to cause fear of personal injury if he or she knows that the conduct is likely to cause fear in the other person.

(4) For the purposes of this section, the prosecution is not required to prove that the person alleged to have been stalked or intimidated actually feared personal injury.

## **Division 2 Apprehended violence orders generally**

### **562B Court may make apprehended violence orders**

(1) A court may, on complaint, make an apprehended violence order if it is satisfied on the balance of probabilities that a person has reasonable grounds to fear and in fact fears:

- (a) the commission by another person of a personal violence offence against the person, or
  - (b) the engagement of another person in conduct amounting to harassment or molestation of the person, being conduct that, in the opinion of the court, is sufficient to warrant the making of the order, or
  - (c) the engagement of another person in conduct in which the other person:
    - (i) intimidates the person or a person with whom he or she has a domestic relationship, or
    - (ii) stalks the person,being conduct that, in the opinion of the court, is sufficient to warrant the making of the order.
- (2) Despite subsection (1), it is not necessary for the court to be satisfied that the person for whose protection the order would be made in fact fears that such an offence will be committed, or that such conduct will be engaged in, if:
- (a) the person is under the age of 18 years, or
  - (b) the person is, in the opinion of the court, suffering from an appreciably below average general intellectual function.
- (3) For the purposes of this section, conduct may amount to harassment or molestation of a person even though:
- (a) it does not involve actual or threatened violence to the person, or
  - (b) it consists only of actual or threatened damage to property belonging to, in the possession of or used by the person.
- (4) An order made under this section may impose such prohibitions or restrictions on the behaviour of the defendant as appear necessary or desirable to the court.

**562BA Orders made by court with consent of parties**

- (1) A court may make an apprehended violence order without being satisfied as to the matters referred to in section 562B if the complainant and the defendant have consented to the order being made.
- (2) Such an order may be made whether or not the defendant admits to any or all of the particulars of the complaint.

**562BB Interim court orders**

- (1) A court may make an interim apprehended violence order (an *interim order*) if it



appears to the court that it is necessary or appropriate to do so in the circumstances.

- (2) An interim order may be made by a court whether or not:
  - (a) the defendant is present at the proceedings, or
  - (b) the defendant has been given notice of the proceedings.
- (3) A court may, in deciding whether to make an interim order, admit affidavit evidence tendered on behalf of the person for whose protection the order would be made if:
  - (a) the person is unable, for any good reason, to be present at the proceedings, and
  - (b) the court is satisfied that the matter requires urgent consideration by the court.
- (4) If an interim order is made by a court:
  - (a) the court is to summon the defendant to appear at a further hearing of the matter by the court as soon as possible after the order is made, and
  - (b) the court may, at the further hearing or an adjourned further hearing, confirm the interim order (with or without variation) or revoke the interim order (whether or not the defendant appears at any such further hearing).
- (5) An interim order is confirmed by the making of an order under section 562B against the defendant (with or without variation). In that case, the interim order ceases to have effect when the order under section 562B is made (in the case of a defendant who is then present in court) or when the defendant is served under section 562J with a copy of the record of the order under section 562B (in any other case).
- (6) An interim order has, while it remains in force, the same effect as an order made under section 562B.

**562BC Order prohibits stalking, intimidation etc**

Unless otherwise ordered, every order is taken to specify that the defendant is prohibited from doing any of the following:

- (a) engaging in conduct that intimidates the protected person or a person with whom he or she has a domestic relationship,
- (b) stalking the protected person.

**562BD Order can also protect family etc**

The power of a court under this Part to make an order for the protection of a person extends to authorise the making of an order for the protection of a person with whom the person for whose protection the order was applied for has a domestic relationship.

**562C Making of complaint for court order**

- (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 only by:
  - (a) a person for whose protection the order would be made, or
  - (b) a police officer.
- (3) Notwithstanding subsection (2), a complaint for an order must be made by a police officer:
  - (a) on behalf of a person against whom the police officer suspects or believes that a domestic violence offence has recently been or is being committed, or is imminent, or is likely to be committed, unless:
    - (i) the police officer believes that the person intends to make the complaint, or
    - (ii) the police officer believes that there is good reason not to make the complaint, or
  - (b) if the person for whose protection the order would be made is a child under the age of 16 years at the time of the complaint.
- (3A) A police officer who believes, as referred to in subsection (3) (a) (ii), that there is a good reason not to make the complaint must make a written record of the reason.
- (4) A complaint for an order may be made by or on behalf of more than one person.
- (5) The time within which a complaint for an order may be made is not limited by section 56 of the *Justices Act 1902*.
- (6) A court may deal with a complaint even though the court has only a facsimile transmission or other copy of the complaint.
- (7) A complainant for an order who is 16 years of age or over, but under 18 years of age, has full capacity to make the complaint and to apply for a variation or revocation of the order.

**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 protected person,

- (b) prohibit or restrict access by the defendant to any specified premises occupied by the protected person, any specified place of work of the protected person or any other specified premises or place frequented by the protected 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 protected person.
- (2) In deciding whether or not to make an order which prohibits or restricts access to the defendant's residence, the court is to consider:
- (a) the accommodation needs of all relevant parties, and
  - (b) the effect of making an order on any children living or ordinarily living at the residence, and
  - (c) the consequences for the person for whose protection the order would be made and any children living or ordinarily living at the residence if an order restricting access by the defendant to the residence is not made.
- (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 Act 1989* or the *Prohibited Weapons Act 1989* held by the defendant.

**562E Duration of court orders**

- (1) An order (other than an interim order) remains in force for such period as is specified in the order by the court.
- (2) The period specified in the order by the court is to be as long as is necessary, in the opinion of the court, to ensure the protection of the protected person.
- (3) If the court fails to specify a period in the order, the order remains in force for a period of 6 months.
- (4) An interim order made by a court remains in force until it is revoked or it otherwise ceases to have effect.

**562F Variation or revocation of court orders**

- (1) If an order is made:
  - (a) the protected person (whether or not the complainant),
  - (b) if the complainant was a police officer—that or any other police officer, 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 police officer if the protected person is a child under the age of 16 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 protected person.
- (6) An order shall not be varied or revoked on the application of the complainant or protected 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 person for whose protection an order is sought 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 Telephone interim orders after hours**

- (1) **Application by telephone** A police officer may apply by telephone to an authorised justice for an interim apprehended violence order.
- (2) **When application may be made** An application may be made by telephone in the following circumstances:
- (a) an incident occurs involving the person against whom the order is sought to be made and the person who would be protected by the order, and
  - (b) it is not practicable to make an immediate complaint for an interim order by a court because of the time at which, or the place at which, the incident occurs, and
  - (c) the police officer attending the incident has good reason to believe that unless an order is made immediately the person who would be protected by the order may suffer personal injury.
- (3) **Making of interim order** An authorised justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, make the interim apprehended violence order (a **telephone interim order**).
- (4) **Standard terms of order** A telephone interim order is an order which states that the defendant is prohibited from causing any personal injury to, or from harassing or molesting, the protected person.
- (5) **Further terms for exclusion of defendant from premises etc** If the police officer making the application for the telephone interim order has good reason to believe that the protected person is in imminent danger of personal injury from the defendant, the police officer may, in the application, request the authorised justice to impose all or any of the following prohibitions or restrictions on the behaviour of the defendant:
- (a) prohibiting or restricting approaches by the defendant to the protected person,
  - (b) prohibiting or restricting access by the defendant to any specified premises occupied by the protected person (whether or not the defendant has a legal or equitable interest in the premises).

The authorised justice may impose any or all of those prohibitions or restrictions by the order if satisfied there are reasonable grounds for doing so.

- (6) **Recording of order** The authorised justice who makes a telephone interim order is to inform the applicant of the terms of the order and of the date and time when it was made. The applicant is to complete a form of order in the terms so indicated and write on it the name of the authorised justice and the date and time when it was made. The order so completed is taken to be an order duly made under this section.

- (7) **Facsimile transmission** An authorised justice may, instead of proceeding under subsection (6), furnish the telephone interim order to the applicant by facsimile transmission. In that case, the copy produced by the transmission is taken to be the original document.
- (8) **Service** A telephone interim order is to be served personally on the defendant by a police officer as soon as practicable after it is made.
- (9) **Duration** A telephone interim order remains in force (unless sooner revoked) for such period as is specified in the order. The period specified must not extend beyond 9 pm on the fifth working day after the order is made. If the order includes prohibitions or restrictions referred to in subsection (5), the order must specify the period for which those prohibitions or restrictions remain in force and the period so specified must not extend beyond 9 pm on the next working day after the order is made.
- (10) **Action by police officer** As soon as practicable after a telephone interim order is made, the applicant for the order (or some other police officer) must make a complaint for an order of a court in the matter or report to an authorised justice the reasons why a complaint has not been made. This subsection applies whether or not the telephone interim order has expired or been revoked.
- (11) **Revocation** A telephone interim order may be revoked by:
- (a) the authorised justice who made it or any other authorised justice, or
  - (b) any court dealing with a complaint for an order against the same defendant.
- Notice of the revocation is to be served on the defendant, the protected person and the Commissioner of Police.
- (12) **Detention of defendant** A police officer who makes or is about to make an application for a telephone interim order may direct the person against whom the order is sought to remain at the scene of the incident concerned. If the person refuses to do so, the police officer may arrest and detain the person at the scene of the incident until the order is made and served.
- (13) **Excluded provisions** Sections 562C–562G and 562J–562N do not apply to telephone interim orders.
- (14) **Miscellaneous matters relating to applications** An application for a telephone interim order:
- (a) may be made at the request of the protected person or on the police officer’s own initiative, and
  - (b) may be transmitted to the authorised justice by another person on behalf of the applicant if it is not practicable for the application to be made by the person by

telephone directly to the authorised justice.

(15) **Miscellaneous matters relating to orders** A telephone interim order:

- (a) may not include prohibitions or restrictions referred to in subsection (5) if the defendant is under 18 years of age, and
- (b) may not be renewed and a further telephone interim order may not be made in respect of the same incident.

(16) **Definitions** In this section:

**authorised justice** means:

- (a) a Magistrate, or
- (b) a justice of the peace who is a Clerk of a Local Court, or
- (c) a justice of the peace who is employed in the Department of Courts Administration and who is declared under the [Search Warrants Act 1985](#) to be an authorised justice for the purposes of that Act.

**telephone** includes radio, facsimile and any other communication device.

**working day** means a day which is not a Saturday, Sunday or public holiday.

#### **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.

Maximum penalty: 50 penalty units or imprisonment for 2 years, or both.

(2) A person is not guilty of an offence under this section unless:

- (a) the person was served under section 562J with a copy of the record of the order concerned or was present in court when the order was made, or
- (b) in the case of a telephone interim order—the person was served with the order or a copy of the order under section 562H.

(2A) Unless the court otherwise orders, if a person is convicted of an offence against this section, the person must be sentenced to a term of imprisonment if the act constituting the offence was an act of violence against a person. This subsection does not apply if the person convicted was under 18 years of age at the time of the alleged offence.

(2B) Unless the court otherwise orders, where the court determines to impose a sentence of imprisonment in the circumstances referred to in subsection (2A), the court must consider a full psychiatric assessment and pre-sentence report on the person.

- (2C) Where the court determines not to impose a sentence of imprisonment, it must give its reasons for not doing so.
- (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 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 is to serve a copy of the record of the order (or of the variation of the order) personally on the defendant if the defendant is present in court.
- (2A) If the defendant is not present at the time the order or variation is made, or is present but the clerk is unable to serve a copy of the record personally on the defendant, the clerk is to arrange for a copy of the record to be served personally on the defendant by a police officer or such other person as the clerk thinks fit.
- (2B) Service on the defendant of the copy of the record of the order concerned may be effected in such other manner as the court directs.
- (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 protected person.
- (4) The Commissioner of Police is to make a record of the details of the material forwarded to the Commissioner under this section and is to retain that record for at least 10 years after the order to which it relates ceases to be in force.

**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 person for whose protection an order is sought will be put at risk unless the defendant is arrested for the purpose of being brought before the court.
- (4) In this section:

**authorised justice** means:

- (a) a Magistrate, or
- (b) a justice of the peace who is employed in the Department of Courts Administration.

#### **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 person for whose protection an order is sought unless satisfied that the complaint was frivolous or vexatious.
- (2A) A court shall not award costs against a police officer who makes a complaint as

referred to in section 562C (3).

- (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) In this section, **the amending Act** means the [Crimes \(Apprehended Violence\) Amendment Act 1989](#).
- (2) An order in force under this Part immediately before the commencement of Schedule 1 (6) to the amending Act shall be taken to be an order under this Part, as amended by the amending Act.
- (3) A complaint for an order under this Part, or an application for the variation or revocation of such an order, pending on the commencement of Schedule 1 (6) to the amending Act, shall be taken to be a complaint or an application under this Part, as amended by the amending Act.

- (4) A reference to an apprehended domestic violence order in any other Act or instrument shall be taken to include a reference to an order under this Part, as amended by the amending Act.

### **Division 3 Registration of interstate restraint orders**

#### **562S Application for registration of interstate restraint order**

- (1) A person may apply to the clerk of the appropriate court for the registration of an interstate restraint order.
- (2) An application is:
- (a) to be made in a form approved by the clerk of the appropriate court, and
  - (b) to be accompanied by a copy of the interstate restraint order, and
  - (c) to be accompanied by such evidence of effective service of the interstate restraint order on the person against whom it has been made as the clerk considers appropriate.

#### **562T Registration of interstate restraint order**

- (1) On receipt of an application under section 562S, the clerk of the appropriate court must:
- (a) register the interstate restraint order to which the application relates, or
  - (b) refer the interstate restraint order to a Magistrate (or a Children's Magistrate if the appropriate court is the Children's Court) for adaptation or modification.
- (2) On the referral of an interstate restraint order, the Magistrate or Children's Magistrate may do either or both of the following:
- (a) vary the period during which the order has effect in its operation in New South Wales,
  - (b) make such other adaptations or modifications to the order as the Magistrate or Children's Magistrate considers necessary or desirable for its effective operation in New South Wales.
- (3) The clerk of the appropriate court must register an interstate restraint order which has been adapted or modified under subsection (2).
- (4) On registering an interstate restraint order, the clerk of the appropriate court must provide the Commissioner of Police with a copy of the registered interstate restraint order.
- (5) Notice of the registration of an interstate restraint order is not to be served on the

person against whom the order has been made unless the person who applied for that registration has consented to that service.

- (6) A registered interstate restraint order is registered for the period during which the order, or the order as adapted or modified, is in force.

**562U Effect of registration of interstate restraint order**

- (1) An interstate restraint order which has been registered under section 562T:
- (a) has the same effect as an order made under Division 2, and
  - (b) may be enforced against a person as if it were an order which had been made under Division 2 and as if a copy of the record of the order had been served on that person in accordance with section 562J.
- (2) The variation or revocation of an interstate restraint order by a court of the State or Territory in which it was made after the order has been registered under section 562T has no effect in New South Wales.

**562V Variation etc of registered interstate restraint orders**

- (1) In this section:

***prescribed person*** means:

- (a) a person for whose protection a registered interstate restraint order has been made, or
  - (b) a person against whom a registered interstate restraint order has been made, or
  - (c) a police officer, or
  - (d) a person whom the appropriate court in which the interstate restraint order has been registered has granted leave to make an application under this section.
- (2) A prescribed person may apply to the appropriate court for one or more of the following:
- (a) the variation of a registered interstate restraint order as it applies in New South Wales,
  - (b) the extension or reduction of the period during which a registered interstate restraint order has effect in its operation in New South Wales,
  - (c) the revocation of the registration of a registered interstate restraint order.
- (3) The appropriate court may determine the application by doing one or more of the following:

- (a) by varying the order as it applies in New South Wales,
  - (b) by extending or reducing the period during which the order has effect in its operation in New South Wales,
  - (c) by revoking the registration.
- (4) A registered interstate restraint order is not to be varied or revoked on the application of a person referred to in subsection (1) (a), (c) or (d) unless notice of the application has been served on the person against whom the order has been made.
- (5) A registered interstate restraint order is not to be varied or revoked on the application of the person against whom the order has been made unless notice of the application has been served on the person for whose protection the order has been made.
- (6) Notice of an application is to be served personally or in such other manner as the appropriate court hearing the application directs.
- (7) A registered interstate restraint order varied under subsection (3) (a) or (b) is registered for the period during which the order, as varied, has effect in its operation in New South Wales.

## **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, 61I, 61J, 61K, 61L, 61M, 61N, 61O, 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, 80A, 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 20 penalty units.
- (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 court concerned under section 11 of the *Children (Criminal Proceedings) Act 1987* in respect of a complainant who is under the age of 16 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.

### **580A Abolition of offence of being a common nightwalker**

- (1) The common law offence of being a common nightwalker is abolished.
- (2) This section does not apply to an offence committed before the date of assent to the [Crimes \(Common Nightwalkers\) Amendment Act 1993](#).

### **581 Savings and transitional provisions**

The Eleventh Schedule has effect.

## **First Schedule**

### **Repeal of Acts**

<b>Reference to Act</b>	<b>Subject or short title</b>	<b>Extent of repeal</b>
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	<i>"Evidence (Penalties) Act"</i> .	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 3A 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 13A 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-Ninth Schedules (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 or 335 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*.

## Eleventh Schedule Savings and transitional provisions

(Section 581)

### Part 1 Crimes (Amendment) Act 1989

#### 1 References in legislation

- (1) In any other Act, in any instrument made under any Act or in any document of any kind:
  - (a) a reference (however expressed) to sexual intercourse within the meaning of section 61A is to be taken to be a reference to sexual intercourse within the meaning of section 61H, and
  - (b) a reference to an offence under section 61B or 61C is to be taken to include a reference to an offence under section 61K, and
  - (c) a reference to an offence under section 61D is to be taken to include a reference to an offence under section 61I or 61J, and
  - (d) a reference to an offence under section 61E is to be taken to include a reference to an offence under section 61L, 61M, 61N or 61O, and
  - (e) a reference to an attempt referred to in section 61F is to be taken to include a reference to an attempt referred to in section 61P.
- (2) Subclause (1) does not apply in relation to offences committed or alleged to have been committed before the commencement of Schedule 1 (2) to the *Crimes (Amendment) Act 1989*.

#### 2 Omitted provisions

Sections 61A-61G as in force before their repeal by the *Crimes (Amendment) Act 1989* continue to apply to offences committed or alleged to have been committed before the repeal.



## **Part 2 Criminal Legislation (Amendment) Act 1992**

### **3 Sexual intercourse**

It is declared that, from 14 July 1981 (being the date of commencement of the amendments made by the *Crimes (Sexual Assault) Amendment Act 1981*) until the commencement of the amendment made by the *Criminal Legislation (Amendment) Act 1992* to section 61H, an act has been an act of sexual intercourse within the meaning of this Act at the relevant time if the act has comprised sexual intercourse within the meaning of section 61H, as amended by the *Criminal Legislation (Amendment) Act 1992*.

### **4 Consent to sexual intercourse**

The amendments to section 61R made by the *Criminal Legislation (Amendment) Act 1992* apply only in respect of offences committed after the commencement of the amendments.

### **5 Application of amendment to section 409**

The amendment made by the *Criminal Legislation (Amendment) Act 1992* to section 409, to the extent to which it applies to a written statement the whole or a part of which was tendered as evidence on a plea of guilty under section 51A of the *Justices Act 1902*, applies to such a statement tendered after the commencement of the amendment.

### **6 Operation of amendments relating to taking of vehicles without consent and other indictable offences**

- (1) The amendments to sections 476 and 496A made by the *Criminal Legislation (Amendment) Act 1992* apply only in respect of proceedings for offences committed after the commencement of the amendments.
- (2) This Act applies in respect of proceedings for offences committed before the commencement of any such amendments as if the amendments had not been made.
- (3) Section 526A continues to apply to offences committed before that section was repealed as if the section is still in force.

### **7 Reduction of sentences for assistance to authorities**

Section 442B of this Act and section 5DA of the *Criminal Appeal Act 1912*, as inserted by the *Criminal Legislation (Amendment) Act 1992*, apply only to a sentence imposed after the commencement of the section concerned, but so apply whether the offence in relation to which the sentence is imposed was committed before or after that commencement.

## **Part 3 Crimes (Registration of Interstate Restraint Orders)**

## Amendment Act 1993

### 8 Interstate restraint orders

Part 15A, as amended by the *Crimes (Registration of Interstate Restraint Orders) Amendment Act 1993*, extends to an interstate restraint order (within the meaning of that Part) made before the commencement of that Act.

## Part 4 Crimes Legislation (Review of Convictions) Amendment Act 1993

### 9 Definition

In this Part, **appointed day** means the day appointed under section 2 of the *Crimes Legislation (Review of Convictions) Amendment Act 1993*.

### 10 Matters arising under section 475

- (1) Any matter that was pending, immediately before the appointed day, under section 475 (as in force before the appointed day) is to be finally disposed of in accordance with that section as if that section were still in force.
- (2) However, section 474H (2) (which enables a prescribed person to refer matters to the Court of Criminal Appeal) extends to a prescribed person conducting an inquiry under section 475.
- (3) Despite subclause (1), subsections (2), (3) and (4) of section 474G (which confer certain powers on a person conducting an inquiry under Division 4 of Part 13A) extend to a prescribed person conducting an inquiry under section 475 and to any witness summoned by or before the prescribed person.

### 11 Matters arising under section 26 of Criminal Appeal Act 1912

Any matter that was pending, immediately before the appointed day, under section 26 of the *Criminal Appeal Act 1912* (as in force before the appointed day) is to be finally disposed of in accordance with that section as if that section were still in force.

### 12 Application of Part 13A to past convictions

- (1) Part 13A extends to convictions recorded before the appointed day.
- (2) Section 474J extends to free pardons granted before the appointed day and to free pardons granted on or after the appointed day as a consequence of an inquiry that is disposed of under section 475, as referred to in clause 10.

## Part 5 Crimes Legislation (Unsworn Evidence) Amendment Act 1994

### 13 Application of abolition of accused person's right to give unsworn evidence or to make

**unsworn statement**

Section 404A, and the amendments to sections 405, 405A and 409C made by the *Crimes Legislation (Unsworn Evidence) Amendment Act 1994*, apply to the trial of a person charged with an offence on or after the commencement of that section and those amendments.

**Part 6 Crimes (Home Invasion) Amendment Act 1994**

**14 Section 476 (indictable offences punishable summarily with consent of accused)**

A reference in section 476 (6) (ea), (f) or (g) to an offence mentioned in section 109 (1), 111 (1), 112 (1) or 113 (1) of the kind described in the paragraph concerned is taken to include a reference to an offence mentioned in section 109, 111, 112 or 113 (as in force before the commencement of the amendment made to that paragraph by the *Crimes (Home Invasion) Amendment Act 1994*) of that kind and committed before that commencement.