

# Crimes Act 1900 No 40

[1900-40]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**
  - [Marine Safety Act 1998 No 121](#) (not commenced)
  - [Law Enforcement \(Powers and Responsibilities\) Act 2002 No 103](#) (not commenced)
  - [Crimes Legislation Amendment Act 2002 No 130](#), Sch 4 [2] [3] [4] (except so far as it inserts sec 356FA (1) and (2) (a)) and [5] (not commenced)
  - [Crimes Legislation Amendment \(Property Identification\) Act 2003 No 5](#) (not commenced)
  - [Nurses Amendment Act 2003 No 45](#) (not commenced)
- **See also**
  - [Crimes Amendment \(Protection of Innocent Accused\) Bill 2003](#) [Non-government Bill: Hon D E Oldfield, MLC]
  - [Firearms and Crimes Legislation Amendment \(Public Safety\) Bill 2003](#)
  - [Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2003](#)
  - [Crimes Legislation Further Amendment Bill 2003](#)

## Authorisation

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# Crimes Act 1900 No 40



New South Wales

An Act to consolidate the Statutes relating to Criminal Law.

## Part 1 Preliminary and interpretation

### 1 Name of Act

This Act is the *Crimes Act 1900*.

### 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- (1) The Acts mentioned in the First Schedule hereto are, to the extent therein expressed, hereby repealed, except as to offences committed and things done or commenced before the passing of this Act, which shall be dealt with and continued, and in respect of which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- (2) All persons appointed under any Act, or section of an Act, hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed hereunder.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the whipping of offenders, or the manner of its use, made, prescribed, or given under the authority of any Act hereby repealed, and being in force at the time of the passing of this Act, shall be deemed to have been made, prescribed, or given under the authority of this Act.

### 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.

### 3A, 3B (Repealed)

### 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.

**Authorised officer** has the same meaning as it has in the [Criminal Procedure Act 1986](#).

**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 1996](#)), or
- (b) a prohibited weapon within the meaning of the [Weapons Prohibition Act 1998](#), 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 has or has had a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with the person who commits the offence, or
- (c) a person who has or has had an intimate personal relationship with the person who commits the offence, whether or not the intimate relationship involves or has involved a relationship of a sexual nature, or
- (d) a person who is living or has lived in the same household or other residential facility as the person who commits the offence, or
- (e) a person who has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the person who commits the offence, or
- (f) a person who is or has been a relative (within the meaning of section 4 (6)) of 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**.

**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.

**Minor indictable offence** means an indictable offence that is not a serious



indictable offence.

**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 or instrument** means:

- (a) a dangerous weapon, or
- (b) any thing that is made or adapted for offensive purposes, or
- (c) any thing that, in the circumstances, is used, intended for use or threatened to be used for offensive purposes, whether or not it is ordinarily used for offensive purposes or is capable of causing harm.

**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, 61JA, 61K, 61L, 61M, 61N, 61O, 195, 196, 198, 199, 200 or 562I, 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.

**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.

**Serious indictable offence** means an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more.

**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.

- (2) A dwelling-house does not cease to be a dwelling-house by reason only of being temporarily unoccupied.
- (3) (Repealed)
- (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) (Repealed)
- (6) For the purposes of the definition of **Domestic violence offence**, a person is a relative of a person (the **other person**):
  - (a) if the person is:
    - (i) a father, mother, grandfather, grandmother, step-father, step-mother, father-in-law or mother-in-law, or
    - (ii) a son, daughter, grandson, grand-daughter, step-son, step-daughter, son-in-law or daughter-in-law, or
    - (iii) a brother, sister, half-brother, half-sister, brother-in-law or sister-in-law, or

- (iv) an uncle, aunt, uncle-in-law or aunt-in-law, or
  - (v) a nephew or niece, or
  - (vi) a cousin,
- of the other person, or
- (b) where the person is in a de facto relationship, within the meaning of the *Property (Relationships) Act 1984*, with somebody else (the **person's partner**)—if the other person is:
- (i) a father, mother, grandfather, grandmother, step-father or step-mother, or
  - (ii) a son, daughter, grandson, grand-daughter, step-son or step-daughter, or
  - (iii) a brother, sister, half-brother or half-sister, or
  - (iv) an uncle or aunt, or
  - (v) a nephew or niece, or
  - (vi) a cousin,
- of the person's partner.

## 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 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 unlawful 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 or her possession within the meaning of such Act who:

- (a) has any such property in his or her 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 herself or not, and whether such property is there had or placed for his or her 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, 10 (Repealed)**

# **Part 1A Geographical jurisdiction**

## **10A Application and effect of Part**

- (1) This Part applies to all offences.
- (2) This Part extends, beyond the territorial limits of the State, the application of a law of the State that creates an offence if there is the nexus required by this Part between the State and the offence.
- (3) If the law that creates an offence makes provision with respect to any geographical consideration concerning the offence, that provision prevails over any inconsistent provision of this Part.
- (4) This Part is in addition to and does not derogate from any other basis on which the courts of the State may exercise criminal jurisdiction.

## **10B Interpretation**

- (1) For the purposes of this Part, the necessary geographical nexus is the geographical nexus required by section 10C.
- (2) For the purposes of this Part, the place in which an offence is committed is the place in which the physical elements of the offence occur.
- (3) For the purposes of this Part, the place in which an offence has an effect includes:

- (a) any place whose peace, order or good government is threatened by the offence, and
  - (b) any place in which the offence would have an effect (or would cause such a threat) if the criminal activity concerned were carried out.
- (4) A reference in this Part to the State includes a reference to the coastal waters of the State in which the criminal law of the State applies (including in any part of the adjacent area of the State in which the substantive criminal law of the State applies by force of the law of the State or of the Commonwealth in accordance with the [Crimes at Sea Act 1998](#)).

#### **10C Extension of offences if there is a geographical nexus**

- (1) If:
- (a) all elements necessary to constitute an offence against a law of the State exist (disregarding geographical considerations), and
  - (b) a geographical nexus exists between the State and the offence,
- the person alleged to have committed the offence is guilty of an offence against that law.
- (2) A geographical nexus exists between the State and an offence if:
- (a) the offence is committed wholly or partly in the State (whether or not the offence has any effect in the State), or
  - (b) the offence is committed wholly outside the State, but the offence has an effect in the State.

#### **10D Provisions relating to double criminality**

- (1) This Part applies to an offence that is committed partly in the State and partly in another place outside the State, irrespective of whether it is also an offence in that other place.
- (2) This Part applies to an offence that is committed wholly in a place outside the State only if:
- (a) it is also an offence in that place, or
  - (b) it is not also an offence in that place, but the trier of fact is satisfied that the offence constitutes such a threat to the peace, order or good government of the State that the offence warrants criminal punishment in the State.

#### **10E Procedural and other provisions**

- (1) The existence of the necessary geographical nexus for an offence is to be presumed

and the presumption is conclusive unless rebutted under subsection (2).

- (2) If a person charged with an offence disputes the existence of the necessary geographical nexus, the court is to proceed with the trial of the offence in the usual way. If, at the conclusion of the trial, the trier of fact is satisfied on the balance of probabilities that the necessary geographical nexus does not exist, it must (subject to subsection (3)) make or return a finding to that effect and the charge is to be dismissed.
- (3) If the trier of fact would, disregarding any geographical considerations, find the person not guilty of the offence, it must make or return a finding of not guilty. The trier of fact must make or return a finding of not guilty on the grounds of mental illness in any such case if they were the only grounds on which the trier of fact would have found the person not guilty of the offence.
- (4) This section also applies to any alternative verdict available by law to the trier of fact in respect of another offence with which the person was not charged. A finding of guilt may be made or returned in any such case, unless the trier of fact is satisfied on the balance of probabilities that the necessary geographical nexus for that other offence does not exist.
- (5) The issue of whether the necessary geographical nexus exists must, if raised before the trial, be reserved for consideration at the trial.
- (6) A power or authority exercisable on reasonable suspicion or belief 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 or believes that the elements necessary to constitute the offence exist (whether or not the person suspects or believes or has any ground to suspect or believe that the necessary geographical nexus with the State exists).

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

### **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 imprisonment for 25 years.

### **13-15 (Repealed)**

### **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 (Repealed)**

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

### **Division 1 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 or her 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 or her, of a crime punishable by imprisonment 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.

## **19 (Repealed)**

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

(1) A person who commits the crime of murder is liable to imprisonment for life.

(2) A person sentenced to imprisonment 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 21 (1) of the [Crimes \(Sentencing Procedure\) Act 1999](#) (which authorises the passing of a lesser sentence than imprisonment 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 imprisonment 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 the person is guilty thereof, but are satisfied that the person is guilty of an offence within section 85, they may acquit the person of the offence charged and find the person guilty of an offence under the said section, and the person 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 Substantial impairment by abnormality of mind**

(1) A person who would otherwise be guilty of murder is not to be convicted of murder if:

(a) at the time of the acts or omissions causing the death concerned, the person's capacity to understand events, or to judge whether the person's actions were right or wrong, or to control himself or herself, was substantially impaired by an abnormality of mind arising from an underlying condition, and

(b) the impairment was so substantial as to warrant liability for murder being reduced to manslaughter.

(2) For the purposes of subsection (1) (b), evidence of an opinion that an impairment was so substantial as to warrant liability for murder being reduced to manslaughter is not admissible.

(3) If a person was intoxicated at the time of the acts or omissions causing the death concerned, and the intoxication was self-induced intoxication (within the meaning of section 428A), the effects of that self-induced intoxication are to be disregarded for

the purpose of determining whether the person is not liable to be convicted of murder by virtue of this section.

- (4) The onus is on the person accused to prove that he or she is not liable to be convicted of murder by virtue of this section.
- (5) A person who but for this section would be liable, whether as principal or accessory, to be convicted of murder is to be convicted of manslaughter instead.
- (6) The fact that a person is not liable to be convicted of murder in respect of a death by virtue of this section does not affect the question of whether any other person is liable to be convicted of murder in respect of that death.
- (7) If, on the trial of a person for murder, the person contends:
  - (a) that the person is entitled to be acquitted on the ground that the person was mentally ill at the time of the acts or omissions causing the death concerned, or
  - (b) that the person is not liable to be convicted of murder by virtue of this section,evidence may be offered by the prosecution 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.

- (8) In this section:

***underlying condition*** means a pre-existing mental or physiological condition, other than a condition of a transitory kind.

## **24 Manslaughter—punishment**

Whosoever commits the crime of manslaughter shall be liable to imprisonment 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, the Judge may discharge the jury from giving any verdict, and such discharge shall operate as an acquittal.

## **25 (Repealed)**

## **Division 2 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 imprisonment for 25 years.

### **Division 3 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 imprisonment 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 imprisonment 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 imprisonment 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 imprisonment for 25 years.

## **Division 4 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 imprisonment 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).

## **Division 5 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.

## **Division 6 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 or her endeavour to save his or her life, or

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

shall be liable to imprisonment 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 herself or any other person,

shall be liable to imprisonment for 25 years.

### **33A Discharging loaded arms with intent**

(1) 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 herself or any other person, shall be liable to imprisonment for fourteen years.

(2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in the company of another person or persons. A person convicted of an offence under this subsection is liable to imprisonment for 20 years.

### **33B Use or possession of weapon to resist arrest etc**

(1) 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 herself 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 imprisonment for 12 years.

(2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in the company of another person or persons. A person convicted of an offence under this subsection is liable to imprisonment for 15 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 the person is guilty of the intent charged therein, they may acquit the person of such intent and find the person guilty of an offence under section 35, and the person shall be liable to punishment accordingly.

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

(1) Whosoever maliciously by any means:

(a) wounds any person, or

(b) inflicts grievous bodily harm upon any person,

shall be liable to imprisonment for 7 years.

(2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in the company of another person or persons. A person convicted of an offence under this subsection is liable to imprisonment for 10 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 imprisonment 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 imprisonment 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 imprisonment 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 herself 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 imprisonment 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 herself, or another person, to commit, or with intent to assist another person in committing, an indictable offence, shall be liable to imprisonment 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 imprisonment 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 the person is guilty of an offence within section 41, they may acquit the person of the offence charged, and find the person guilty of an offence under the said last-mentioned section, and the person 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 imprisonment 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 imprisonment 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 imprisonment 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 imprisonment 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 imprisonment 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 imprisonment 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 imprisonment 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 imprisonment 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 imprisonment 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, 51 (Repealed)**

#### **51A Predatory driving**

- (1) The driver of a vehicle who, while in pursuit of or travelling near another vehicle:
  - (a) engages in a course of conduct that causes or threatens an impact involving the other vehicle, and
  - (b) intends by that course of conduct to cause a person in the other vehicle actual bodily harm,is guilty of an offence and liable to imprisonment for 5 years.
- (2) This section does not take away the liability of any person to be prosecuted for or found guilty of an offence under this Act or of 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 this section cannot be prosecuted for any other offence under this Act on the same, or substantially the same, facts, or
  - (b) has been convicted or acquitted of any other offence under this Act cannot be prosecuted for an offence under this section on the same, or substantially the same, facts.
- (3) In this section:

**impact** involving a vehicle includes:

  - (a) an impact with any other vehicle or with a person or object, or
  - (b) the vehicle overturning or leaving a road.

**vehicle** has the same meaning it has in section 52A.

## **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, or
  - (d) the accused's ability to drive was very substantially impaired by the fact that the accused was under the influence of a drug (other than intoxicating liquor) or a combination of drugs (whether or not intoxicating liquor was part of that combination).
- (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 a combination of drugs, 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 same meaning as it has in the *Road Transport (Safety and Traffic Management) Act 1999*.

**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 road or road related area within the meaning of the *Road Transport (General) Act 1999* (other than a road or road related area that is the subject of a declaration made under section 9 (1) (b) of that Act relating to all of the provisions of that Act), 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 road or road related area within the meaning of the *Road Transport (General) Act 1999* (other than a road or road related area that is the subject of a declaration made under section 9 (1) (b) of that Act relating to all of the provisions of that Act) as determined by a blood analysis carried out in accordance with Division 4 of Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999*.

- (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 Dangerous navigation: substantive matters**

- (1) **Dangerous navigation occasioning death** A person is guilty of the offence of dangerous navigation occasioning death if the vessel navigated by the person is involved in an impact occasioning the death of another person and the person navigating the vessel was, at the time of the impact, navigating the vessel:
- (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 navigation occasioning death** A person is guilty of the offence of aggravated dangerous navigation occasioning death if the person commits the offence of dangerous navigation occasioning death in circumstances of aggravation. A person convicted of an offence under this subsection is liable to imprisonment for 14 years.

(3) **Dangerous navigation causing grievous bodily harm** A person is guilty of the offence of dangerous navigation causing grievous bodily harm if the vessel navigated by the person is involved in an impact occasioning grievous bodily harm to another person and the person navigating the vessel was, at the time of the impact, navigating the vessel:

(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 navigation occasioning grievous bodily harm** A person is guilty of the offence of aggravated dangerous navigation occasioning grievous bodily harm if the person commits the offence of dangerous navigation 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 vessel is involved in impact—generally** For the purposes of this section, the circumstances in which a vessel 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 vessel overturning or running aground while the person is being conveyed in or on the vessel (whether as a passenger or otherwise),

(b) an impact between any object and the vessel while the person is being conveyed in or on that vessel (whether as a passenger or otherwise),

(c) an impact between the person and the vessel,

(d) the impact of the vessel with another vessel 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 vessel,

(f) an impact with anything that was in motion through falling from the vessel.

(6) **When vessel is involved in causing other impacts** For the purposes of this section, a vessel is also involved in an impact occasioning the death of, or grievous bodily harm to, a person if the death or harm is occasioned through the vessel causing an impact between other vessels or between another vessel and any object or person or causing another vessel to overturn or run aground.

(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 navigating the vessel at a speed that exceeds the speed limit (if any) applicable to the person navigating the vessel, or to the navigable waters, on which the vessel was navigated at the time of the impact, or

(c) the accused was navigating the vessel in an attempt to escape pursuit by a police officer, or

(d) the accused's ability to navigate was very substantially impaired by the fact that the accused was under the influence of a drug (other than intoxicating liquor) or a combination of drugs (whether or not intoxicating liquor was part of that combination).

(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 a combination of drugs, or

(b) to the speed at which the vessel was navigated, or

(c) to the manner in which the vessel was navigated.

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

**drug** has the same meaning as it has in the [Road Transport \(Safety and Traffic Management\) Act 1999](#).

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

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

**vessel** means a vessel within the meaning of the [Marine \(Boating Safety—Alcohol and](#)

*Drugs) Act 1991.*

**52BA Dangerous navigation: procedural matters**

- (1) **Presumption as to intoxication** For the purposes of section 52B, 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 52B, 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 as determined by a blood analysis carried out in accordance with Part 3 of the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*.
- (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 that time 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 54 the jury is satisfied that the person is guilty of an offence under section 52B, it may find the accused guilty of the offence under section 52B, and the accused is liable to punishment accordingly.
- (5) **Question of aggravation** If on the trial of a person for an offence under section 52B (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 52B (1) or (3), it may find that the accused is guilty of the offence under section 52B (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 52B 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 52B on the same, or substantially the same, facts.

(7) **Definition** In this section:

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

**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.

**Division 7 Possessing or making explosive etc with intent to injure the person**

**55 Possessing explosives etc with intent to injure**

Whosoever knowingly has in his or her 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 a serious indictable offence against the person of any one, or
- (b) for the purpose of enabling another person to injure, or otherwise commit a serious indictable offence against the person of any one,

shall be liable to imprisonment for five years.

**Division 8 Assaults**

**56 Obstructing member of the clergy in discharge of his or her duties**

Whosoever:

by threats or force prevents, or endeavours to prevent, any member of the clergy, or other person duly authorised in that behalf, from officiating in a place of divine worship, or from the performance of his or her duty in the lawful burial of the dead in a burial-place, or

strikes, or offers any violence to, any member of the clergy, 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 or her 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 her, or thereby in fact obstructing him or her in the execution of such duty, shall be liable to imprisonment for seven years.

**58 Assault with intent to commit a serious indictable offence on certain officers**

Whosoever:

assaults any person with intent to commit a serious indictable offence, or

assaults, resists, or wilfully obstructs any officer while in the execution of his or her duty, such officer being a 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**

(1) Whosoever assaults any person, and thereby occasions actual bodily harm, shall be liable to imprisonment for five years.

(2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in the company of another person or persons. A person convicted of an offence under this subsection is liable to imprisonment for 7 years.

**Division 8A Assaults and other actions against police and other law enforcement officers**

**60AA Meaning of "law enforcement officer"**

In this Division:

**law enforcement officer** means:

- (a) a police officer, or
- (b) the Commissioner for the Independent Commission Against Corruption or an Assistant Commissioner for that Commission, or
- (c) an officer of the Independent Commission Against Corruption, within the meaning of the *Independent Commission Against Corruption Act 1988*, who performs investigation

functions, or

- (d) the Commissioner for the Police Integrity Commission or an Assistant Commissioner for that Commission, or
- (e) an officer of the Police Integrity Commission, within the meaning of the *Police Integrity Commission Act 1996*, who performs investigation or confiscation functions, or
- (f) the Commissioner for the New South Wales Crime Commission or an Assistant Commissioner for that Commission, or
- (g) a member of staff of the New South Wales Crime Commission, within the meaning of the *New South Wales Crime Commission Act 1985*, who performs investigation or confiscation functions, or
- (h) the Commissioner of Corrective Services, or
- (i) governors of correctional centres, correctional officers and probation and parole officers, within the meaning of the *Crimes (Administration of Sentences) Act 1999*, or
- (j) an officer of the Department of Juvenile Justice who works with children who have, or are alleged to have, committed offences and who is employed at or works from a community centre or children's detention centre, or
- (k) an officer of the Department of Juvenile Justice who is involved in the conduct of youth justice conferences, or
- (l) a Crown Prosecutor or an Acting Crown Prosecutor, or
- (m) a solicitor who is employed as a member of staff of the Director of Public Prosecutions, or
- (n) a sheriff's officer.

## **60 Assault and other actions against police officers**

- (1) A person who assaults, stalks, harasses or intimidates a police officer while in the execution of the officer's duty, although no actual bodily harm is occasioned to the officer, is liable to imprisonment for 5 years.
- (2) A person who assaults a police officer while in the execution of the officer's duty, and by the assault occasions actual bodily harm, is liable to imprisonment for 7 years.
- (3) A person who maliciously by any means:
  - (a) wounds a police officer, or
  - (b) inflicts grievous bodily harm on a police officer,

while in the execution of the officer's duty is liable to imprisonment for 12 years.

- (4) For the purposes of this section, an action is taken to be carried out in relation to a police officer while in the execution of the officer's duty, even though the police officer is not on duty at the time, if it is carried out:
- (a) as a consequence of, or in retaliation for, actions undertaken by that police officer in the execution of the officer's duty, or
  - (b) because the officer is a police officer.

**60A Assault and other acts against law enforcement officers (other than police officers)**

- (1) A person who assaults, stalks, harasses or intimidates a law enforcement officer (other than a police officer) while in the execution of the officer's duty, although no actual bodily harm is occasioned to the officer, is liable to imprisonment for 5 years.
- (2) A person who assaults a law enforcement officer (other than a police officer) while in the execution of the officer's duty, and by the assault occasions actual bodily harm, is liable to imprisonment for 7 years.
- (3) A person who maliciously by any means:
- (a) wounds a law enforcement officer (other than a police officer), or
  - (b) inflicts grievous bodily harm on a law enforcement officer (other than a police officer),

while in the execution of the officer's duty is liable to imprisonment for 12 years.

- (4) For the purposes of this section, an action is taken to be carried out in relation to a law enforcement officer while in the execution of the officer's duty, even though the officer is not on duty at the time, if it is carried out:
- (a) as a consequence of, or in retaliation for, actions undertaken by that officer in the execution of the officer's duty, or
  - (b) because the officer is a law enforcement officer.

**60B Actions against third parties connected with law enforcement officers**

- (1) A person who assaults, stalks, harasses or intimidates any person with whom a law enforcement officer has a domestic relationship, with the intention of causing the law enforcement officer to fear physical or mental harm:
- (a) as a consequence of, or in retaliation for, actions undertaken by the law enforcement officer in the execution of the officer's duty, or
  - (b) because the law enforcement officer is a law enforcement officer,

is liable to imprisonment for 5 years.

(2) A person who obtains personal information about a person with whom a law enforcement officer has a domestic relationship, with the intention of using or permitting the use of the information to cause the officer to fear physical or mental harm:

(a) as a consequence of, or in retaliation for, actions undertaken by the law enforcement officer in the execution of the officer's duty, or

(b) because the law enforcement officer is a law enforcement officer,

is liable to imprisonment for 2 years.

(3) For the purposes of this section, causing a law enforcement officer to fear physical or mental harm includes causing the officer to fear physical or mental harm to another person with whom he or she has a domestic relationship.

(4) For the purposes of this section, a person intends to cause fear of physical or mental harm if he or she knows that the conduct is likely to cause fear in the other person.

(5) For the purposes of this section, the prosecution is not required to prove that the person alleged to have been assaulted, stalked, harassed or intimidated, or the law enforcement officer, actually feared physical or mental harm.

(6) In this section, a law enforcement officer has a **domestic relationship** with another person if the officer:

(a) is or has been married to the other person, or

(b) has or has had a de facto relationship, within the meaning of the [Property \(Relationships\) Act 1984](#), with the other person, or

(c) has or has had an intimate personal relationship with the other person, whether or not the intimate personal relationship involves or has involved a relationship of a sexual nature, or

(d) is living or has lived in the same household or other residential facility as the other person, or

(e) has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person, or

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

### **60C Obtaining of personal information about law enforcement officers**

A person who obtains personal information about a law enforcement officer, with the intention of using or permitting the use of the information for the purpose of assaulting,



stalking, harassing, intimidating, or otherwise harming, the officer:

- (a) as a consequence of, or in retaliation for, actions undertaken by the law enforcement officer in the execution of the officer's duty, or
- (b) because the officer is a law enforcement officer,

is liable to imprisonment for 2 years.

## **Division 8B Assaults etc at schools**

### **60D Definitions**

(1) In this Division:

**member of staff** of a school includes a person who performs voluntary work for the school.

**school** means:

- (a) an infants school, primary school or secondary school (however described), and
- (b) a child care facility for children under school age.

**school premises** includes parks and other community premises that are used by a school (but only while they are being used for the purposes of the school).

**school student** includes a child attending a child care facility.

(2) For the purposes of this Division, a school student or member of staff of a school is taken to be attending a school:

- (a) while the student or member of staff is on school premises for the purposes of school work or duty (even if not engaged in school work or duty at the time), or
- (b) while the student or member of staff is on school premises for the purposes of before school or after school child care, or
- (c) while entering or leaving school premises in connection with school work or duty or before school or after school care.

### **60E Assaults etc at schools**

- (1) A person who assaults, stalks, harasses or intimidates any school student or member of staff of a school while the student or member of staff is attending a school, although no actual bodily harm is occasioned, is liable to imprisonment for 5 years.
- (2) A person who assaults a school student or member of staff of a school while the student or member of staff is attending a school and by the assault occasions actual bodily harm, is liable to imprisonment for 7 years.

- (3) A person who maliciously by any means:
  - (a) wounds a school student or member of staff of a school, or
  - (b) inflicts grievous bodily harm on a school student or member of staff of a school,while the student or member of staff is attending a school, is liable to imprisonment for 12 years.
- (4) A person who enters school premises with intent to commit an offence under another provision of this section is liable to imprisonment for 5 years.
- (5) Nothing in subsection (1) applies to any reasonable disciplinary action taken by a member of staff of a school against a school student.

## **Division 9 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.

## **Division 9A Defence of lawful correction**

### **61AA Defence of lawful correction**

- (1) In criminal proceedings brought against a person arising out of the application of physical force to a child, it is a defence that the force was applied for the purpose of the punishment of the child, but only if:
  - (a) the physical force was applied by the parent of the child or by a person acting for a parent of the child, and
  - (b) the application of that physical force was reasonable having regard to the age, health, maturity or other characteristics of the child, the nature of the alleged misbehaviour or other circumstances.
- (2) The application of physical force, unless that force could reasonably be considered trivial or negligible in all the circumstances, is not reasonable if the force is applied:
  - (a) to any part of the head or neck of the child, or
  - (b) to any other part of the body of the child in such a way as to be likely to cause harm to the child that lasts for more than a short period.
- (3) Subsection (2) does not limit the circumstances in which the application of physical force is not reasonable.
- (4) This section does not derogate from or affect any defence at common law (other than

to modify the defence of lawful correction).

(5) Nothing in this section alters the common law concerning the management, control or restraint of a child by means of physical contact or force for purposes other than punishment.

(6) In this section:

**child** means a person under 18 years of age.

**de facto spouse** means one of two adult persons:

- (a) who live together as a couple, and
- (b) who are not married to one another or related by family.

**parent** of a child means a person having all the duties, powers, responsibilities and authority in respect of the child which, by law, parents have in relation to their children.

**person acting for a parent** of a child means a person:

- (a) who:
  - (i) is a step-parent of the child, a de facto spouse of a parent of the child, a relative (by blood or marriage) of a parent of the child or a person to whom the parent has entrusted the care and management of the child, and
  - (ii) is authorised by a parent of the child to use physical force to punish the child,  
or
- (b) who, in the case of a child who is an Aboriginal or Torres Strait Islander (within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*), is recognised by the Aboriginal or Torres Strait Islander community to which the child belongs as being an appropriate person to exercise special responsibilities in relation to the child.

(7) This section does not apply to proceedings arising out of an application of physical force to a child if the application of that force occurred before the commencement of this section.

(8) The Attorney General is to review this section to determine whether its provisions continue to be appropriate for securing the policy objectives of the section. The review is to be undertaken as soon as possible after the period of 3 years from the commencement of this section. A report on the outcome of the review is to be tabled in each House of Parliament within 6 months after the end of the period of 3 years.

## **Division 10 Offences in the nature of rape, offences relating to other**

## acts of sexual assault etc

### 61A-61G (Repealed)

### 61H Definition of “sexual intercourse” and other terms

- (1) For the purposes of this Division, **sexual intercourse** means:
  - (a) sexual connection occasioned by the penetration to any extent of the genitalia (including a surgically constructed vagina) 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 this Division, 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 another person to an act of indecency, as referred to in section 61N or 61O, is taken to commit an offence on the other person.

### 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 imprisonment 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 imprisonment 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.

**61JA Aggravated sexual assault in company**

(1) A person:

- (a) 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, and
- (b) who is in the company of another person or persons, and
- (c) who:
  - (i) at the time of, or immediately before or after, the commission of the offence, maliciously inflicts actual bodily harm on the alleged victim or any other person who is present or nearby, or
  - (ii) at the time of, or immediately before or after, the commission of the offence, 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
  - (iii) deprives the alleged victim of his or her liberty for a period before or after the commission of the offence,

is liable to imprisonment for life.

(2) A person sentenced to imprisonment for life for an offence under this section is to serve that sentence for the term of the person's natural life.

(3) Nothing in this section affects the operation of section 21 of the *Crimes (Sentencing Procedure) Act 1999* (which authorises the passing of a lesser sentence than imprisonment for life).

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

**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 imprisonment 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**

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

- (2) Any person who commits an act of indecency with or towards a person of the age of 16 years or above, or incites a person of the age of 16 years or above to an act of indecency with or towards that or another person, is liable to imprisonment for 18 months.

**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 or towards that or another person, in either case in circumstances of aggravation, is liable to imprisonment for 5 years.
- (1A) Any person who commits an act of indecency with or towards a person of the age of 16 years or above, or incites a person of the age of 16 years or above to an act of indecency with or towards that or another person, in either case in circumstances of aggravation, is liable to imprisonment for 3 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 or towards 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, 61JA, 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.
- (1A) **Question of aggravation in company** If on the trial of a person for an offence under section 61JA 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 or 61J), it may find the person 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 (3) or 66C (4), 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 or 61JA 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 or 66C, 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, 61J and 61JA, 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, 61J and 61JA 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 (or any other mistaken belief about the nature of the act induced by fraudulent means) 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 any offence, 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, 61JA 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, or
- (c) both an offence under section 61JA 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 (Repealed)**

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

- (1) The common law offences of rape and attempted rape are abolished.

- (2) Parts 1A, 1 and 19 of the Eleventh Schedule make provision with respect to rape and other former sexual offences.

**64** (Renumbered as clause 51 of the Eleventh Schedule)

**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 imprisonment 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 (Repealed)**

**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 imprisonment for 25 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 imprisonment for 25 years.

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

- (1) **Child between 10 and 14** Any person who has sexual intercourse with another person who is of or above the age of 10 years and under the age of 14 years is liable to imprisonment for 16 years.
- (2) **Child between 10 and 14—aggravated offence** Any person who has sexual intercourse with another person who is of or above the age of 10 years and under the age of 14 years in circumstances of aggravation is liable to imprisonment for 20 years.
- (3) **Child between 14 and 16** Any person who has sexual intercourse with another person who is of or above the age of 14 years and under the age of 16 years is liable to imprisonment for 10 years.

- (4) **Child between 14 and 16—aggravated offence** Any person who has sexual intercourse with another person who is of or above the age of 14 years and under the age of 16 years in circumstances of aggravation is liable to imprisonment for 12 years.
- (5) 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 (whether generally or at the time of the commission of the offence) under the authority of the alleged offender, or
  - (e) the alleged victim has a serious physical disability, or
  - (f) the alleged victim has a serious intellectual disability, or
  - (g) the alleged offender took advantage of the alleged victim being under the influence of alcohol or a drug in order to commit the offence.

**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 14 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.
- (1A) Where on the trial of a person for an offence under section 66C (2) or 66C (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 66C (1) or 66C (3), 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.

(1B) Where on the trial of a person for an offence under section 66C (1) or 66C (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 66C (3) or 66C (4), 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) 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.

**66EA Persistent sexual abuse of a child**

(1) A person who, on 3 or more separate occasions occurring on separate days during any period, engages in conduct in relation to a particular child that constitutes a sexual offence is liable to imprisonment for 25 years.

(2) It is immaterial whether or not the conduct is of the same nature, or constitutes the same offence, on each occasion.

(3) It is immaterial that the conduct on any of those occasions occurred outside New South Wales, so long as the conduct on at least one of those occasions occurred in New South Wales.

- (4) In proceedings for an offence against this section, it is not necessary to specify or to prove the dates or exact circumstances of the alleged occasions on which the conduct constituting the offence occurred.
- (5) A charge of an offence against this section:
  - (a) must specify with reasonable particularity the period during which the offence against this section occurred, and
  - (b) must describe the nature of the separate offences alleged to have been committed by the accused during that period.
- (6) In order for the accused to be convicted of an offence against this section:
  - (a) the jury must be satisfied beyond reasonable doubt that the evidence establishes at least 3 separate occasions, occurring on separate days during the period concerned, on which the accused engaged in conduct constituting a sexual offence in relation to a particular child of a nature described in the charge, and
  - (b) the jury must be so satisfied about the material facts of the 3 such occasions, although the jury need not be so satisfied about the dates or the order of those occasions, and
  - (c) if more than 3 such occasions are relied on as evidence of the commission of an offence against this section, all the members of the jury must be so satisfied about the same 3 occasions, and
  - (d) the jury must be satisfied that the 3 such occasions relied on as evidence of the commission of an offence against this section occurred after the commencement of this section.
- (7) In proceedings for an offence against this section, the judge must inform the jury of the requirements of subsection (6).
- (8) A person who has been convicted or acquitted of an offence against this section may not be convicted of a sexual offence in relation to the same child that is alleged to have been committed in the period during which the accused was alleged to have committed an offence against this section. This subsection does not prevent an alternative verdict under subsection (10).
- (9) A person who has been convicted or acquitted of a sexual offence may not be convicted of an offence against this section in relation to the same child if any of the occasions relied on as evidence of the commission of the offence against this section includes the occasion of that sexual offence.
- (10) If on the trial of a person charged with an offence against this section the jury is not satisfied that the offence is proven but is satisfied that the person has, in respect of

any of the occasions relied on as evidence of the commission of the offence against this section, committed a sexual offence, the jury may acquit the person of the offence charged and find the person guilty of that sexual offence. The person is liable to punishment accordingly.

(11) Proceedings for an offence against this section may only be instituted by or with the approval of the Director of Public Prosecutions.

(12) In this section:

**child** means a person under the age of 18 years.

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

- (a) an offence under section 61I, 61J, 61JA, 61K, 61L, 61M, 61N, 61O, 66A, 66B, 66C, 66D, 66F, 73, 74, 78H, 78I, 78K, 78L, 78N, 78O, 78Q or 80A,
- (b) an offence of attempting to commit an offence referred to in paragraph (a),
- (c) an offence under the law of a place outside New South Wales that would, if it had been committed in New South Wales, be an offence referred to in paragraph (a) or (b).

#### **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 imprisonment 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 imprisonment 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** (Renumbered as clause 52 of the Eleventh Schedule)

**70** (Renumbered as clause 53 of the Eleventh Schedule)

**71-72A (Repealed)**

**73 Sexual intercourse with child between 16 and 18 under special care**

- (1) Any person who has sexual intercourse with another person who:
  - (a) is under his or her special care, and
  - (b) is of or above the age of 16 years and under the age of 17 years,is liable to imprisonment for 8 years.
- (2) Any person who has sexual intercourse with another person who:
  - (a) is under his or her special care, and
  - (b) is of or above the age of 17 years and under the age of 18 years,is liable to imprisonment for 4 years.
- (3) For the purposes of this section, a person (***the victim***) is under the special care of another person (***the offender***) if, and only if:
  - (a) the offender is the step-parent, guardian or foster parent of the victim, or
  - (b) the offender is a school teacher and the victim is a pupil of the offender, or
  - (c) the offender has an established personal relationship with the victim in connection with the provision of religious, sporting, musical or other instruction to the victim, or
  - (d) the offender is a custodial officer of an institution of which the victim is an inmate, or
  - (e) the offender is a health professional and the victim is a patient of the health professional.
- (4) Any person who attempts to commit an offence under subsection (1) or (2) is liable to the penalty provided for the commission of the offence.

- (5) A person does not commit an offence under this section if the person and the other person to whom the charge relates were, at the time the offence is alleged to have been committed, married to each other.

**74-76A (Repealed)**

**77 Consent no defence in certain cases**

- (1) 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 (1) or 61O (1) or (2), 66A, 66B, 66C, 66D, 66EA, 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) (Repealed)

**77A, 78 (Repealed)**

**78A Incest**

- (1) Any person who has sexual intercourse with a close family member who is of or above the age of 16 years is liable to imprisonment for 8 years.
- (2) For the purposes of this section, a **close family member** is a parent, son, daughter, sibling (including a half-brother or half-sister), grandparent or grandchild, being such a family member from birth.

**78B Incest attempts**

Any person who attempts to commit an offence under section 78A is 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 (Repealed)**

**78E** (Renumbered as clause 54 of the Eleventh Schedule)

**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) (Repealed)

**78G-78S (Repealed)**

**78T** (Renumbered as clause 55 of the Eleventh Schedule)

**79 Bestiality**

Any person who commits an act of bestiality with any animal shall be liable to imprisonment 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 imprisonment for five years.

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

(1) In this section:

**self-manipulation** means the penetration of the vagina (including a surgically constructed vagina) 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 imprisonment for 14 years or, if the other person is under the age of 10 years, to imprisonment 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.

**80AA Referral to child protection agency**

On conviction of a person for an offence under this Division, the court may refer the matter to an appropriate child protection agency if the person against whom or with whom the offence was committed is under the authority of the offender.

**Division 10A Sexual servitude**

**80B Meaning of “sexual servitude”**

- (1) For the purposes of this Division, sexual servitude is the condition of a person who provides sexual services and who, because of the use of force or threats:
- (a) is not free to cease providing sexual services, or
  - (b) is not free to leave the place or area where the person provides sexual services.

- (2) In this section:

**sexual service** means the commercial use or display of the body of the person providing the service for the sexual arousal or sexual gratification of others.

**threat** means:

- (a) a threat of force, or
- (b) a threat to cause a person’s deportation, or
- (c) a threat of any other detrimental action unless there are reasonable grounds for the threat of that action in connection with the provision of sexual services by a person.

**80C Meaning of “circumstances of aggravation”**

In this Division, **circumstances of aggravation** means circumstances involving either or both of the following:

- (a) the alleged victim is under the age of 18 years,
- (b) the alleged victim has a serious intellectual disability.

**80D Causing sexual servitude**

- (1) A person:
- (a) who causes another person to enter into or remain in sexual servitude, and
  - (b) who intends to cause, or is reckless as to causing, that sexual servitude,
- is guilty of an offence.

Maximum penalty: Imprisonment for 15 years.

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

Maximum penalty: Imprisonment for 19 years.

### **80E Conduct of business involving sexual servitude**

(1) A person:

- (a) who conducts any business that involves the sexual servitude of other persons, and
  - (b) who knows about, or is reckless as to, that sexual servitude,
- is guilty of an offence.

Maximum penalty: Imprisonment for 15 years.

(2) A person commits an offence against this subsection if the person commits an offence under subsection (1) in circumstances of aggravation.

Maximum penalty: Imprisonment for 19 years.

(3) For the purposes of this section, **conducting a business** includes:

- (a) taking any part in the management of the business, or
- (b) exercising control or direction over the business, or
- (c) providing finance for the business.

### **80F Alternative verdicts**

If on the trial of a person for an offence under section 80D (2) or 80E (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 80D (1) or 80E (1), respectively, 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.

### **81-81B (Repealed)**

## **Division 11 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.

## **Division 12 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 imprisonment 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 imprisonment 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  
imprisonment for five years.

## **Division 13 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.

## **Division 13A**

(Renumbered as Part 3 Division 14)  
85A(Renumbered as sec 86)

## **Division 14 Kidnapping**

## 86 Kidnapping

(1) **Basic offence** A person who takes or detains a person, without the person's consent:

- (a) with the intention of holding the person to ransom, or
- (b) with the intention of obtaining any other advantage,

is liable to imprisonment for 14 years.

(2) **Aggravated offence** A person is guilty of an offence under this subsection if:

- (a) the person commits an offence under subsection (1) in the company of another person or persons, or
- (b) the person commits an offence under subsection (1) and at the time of, or immediately before or after, the commission of the offence, actual bodily harm is occasioned to the alleged victim.

A person convicted of an offence under this subsection is liable to imprisonment 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 (1):

- (a) in the company of another person or persons, and
- (b) at the time of, or immediately before or after, the commission of the offence, actual bodily harm is occasioned to the alleged victim.

A person convicted of an offence under this subsection is liable to imprisonment for 25 years.

(4) **Alternative verdicts** If on the trial of a person for an offence under subsection (2) or (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 a lesser offence under this section, it may find the accused not guilty of the offence charged but guilty of the lesser offence, and the accused is liable to punishment accordingly.

(5) A person who takes or detains a child is to be treated as acting without the consent of the child.

(6) A person who takes or detains a child does not commit an offence under this section if:

- (a) the person is the parent of the child or is acting with the consent of a parent of the child, and
- (b) the person is not acting in contravention of any order of a court relating to the

child.

(7) In this section:

**child** means a child under the age of 16 years.

**detaining** a person includes causing the person to remain where he or she is.

**parent** of a child means a person who has, in relation to the child, all the duties, powers, responsibilities and authority that, by law, parents have in relation to their children.

**taking** a person includes causing the person to accompany a person and causing the person to be taken.

### **87 Child abduction**

(1) A person who takes or detains a child with the intention of removing or keeping the child from the lawful control of any person having parental responsibility for the child, without the consent of that person, is liable to imprisonment for 10 years.

(2) A person who takes or detains a child with the intention of stealing from the child is liable to imprisonment for 10 years.

(3) In this section:

**child** means a child under the age of 12 years.

**detaining a child** includes causing the child to remain where he or she is.

**taking a child** includes causing the child to accompany a person and causing the child to be taken.

(4) In this section, a reference to a person who has parental responsibility for a child is a reference to:

- (a) a person who has, in relation to a child, all the duties, powers, responsibilities and authority that, by law, parents have in relation to their children, or
- (b) a person authorised to be the carer of the child under an Act relating to the care and protection of children.

### **88-91 (Repealed)**

## **Division 14A Procuring for prostitution**

### **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 imprisonment 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 imprisonment for ten years.

**Division 15 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 imprisonment for 10 years or, if the child is under the age of 14 years, to imprisonment for 14 years.

(2) (Repealed)

(3) The consent of a child is not a defence to a charge relating to an offence under this

section.

**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 imprisonment 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 imprisonment 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 used for pornographic purposes**

- (1) Any person:
  - (a) who uses a child for pornographic purposes, or
  - (b) who causes or procures a child to be so used, 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 used or allows the child to be so used,  
is liable to imprisonment for 5 years or, if the child is under the age of 14 years, to imprisonment for 7 years.

- (2) For the purposes of this section, a child is used by a person for pornographic purposes if:
- (a) the child is engaged in activity of a sexual nature (for example, actual or simulated sexual intercourse or a striptease) for the purpose of the production of pornography by that person, or
  - (b) the child is in the presence of another person engaged in such an activity for that purpose.

## Division 16 Bigamy

### 92 Bigamy

Whosoever, being married, marries another person during the life of the former husband or wife, shall be liable to imprisonment 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 imprisonment 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 imprisonment 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 imprisonment 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 1996](#).

**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 3C Public order offences relating to contamination of goods**

### **93IA Definitions of “contaminate” and “goods”**

- (1) In this Part:

**contaminate** goods includes:

  - (a) interfere with the goods, or
  - (b) making it appear that the goods have been contaminated or interfered with.

**goods** includes any substance or article:

  - (a) whether or not for human consumption, and
  - (b) whether natural or manufactured, and
  - (c) whether or not incorporated or mixed with other goods.
- (2) In this Part, a reference to economic loss caused through public awareness of the

contamination of goods includes a reference to economic loss caused through:

- (a) members of the public not purchasing or using those goods or similar goods, or
- (b) steps taken to avoid public alarm or anxiety about those goods or similar goods.

**93IB Contaminating goods with intent to cause public alarm or economic loss**

A person who contaminates goods with the intention of:

- (a) causing public alarm or anxiety, or
- (b) causing economic loss through public awareness of the contamination,

is liable to imprisonment for 10 years.

**93IC Threatening to contaminate goods with intent to cause public alarm or economic loss**

(1) A person who makes a threat that goods will be contaminated with the intention of:

- (a) causing public alarm or anxiety, or
- (b) causing economic loss through public awareness of the contamination,

is liable to imprisonment for 10 years.

(2) For the purposes of this section, a threat may be made by any act, and may be explicit or implicit and conditional or unconditional.

**93ID Making false statements concerning contamination of goods with intent to cause public alarm or economic loss**

(1) A person who makes a statement that the person believes to be false:

- (a) with the intention of inducing the person to whom the statement is made or others to believe that goods have been contaminated, and
- (b) with the intention of thereby:
  - (i) causing public alarm or anxiety, or
  - (ii) causing economic loss through public awareness of the contamination,

is liable to imprisonment for 10 years.

(2) For the purposes of this section, making a statement includes conveying information by any means.

**93IE Aggravated circumstances—unwarranted demand**

(1) A person is guilty of an offence against this section if the person commits an offence under section 93IB, 93IC or 93ID in connection with an unwarranted demand by the

person. An unwarranted demand is a demand that the person believes he or she does not have any reasonable grounds for making.

- (2) A person convicted of an offence against this section is liable to imprisonment for 14 years.
- (3) If on the trial of a person for an offence against this section 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 93IB, 93IC or 93ID, 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.

**93IF Aggravated circumstances—death or grievous bodily harm**

- (1) A person is guilty of an offence against this section if the person commits an offence against section 93IB or 93IC and:
  - (a) the contamination of the goods causes the death of any person or grievous bodily harm to any person, or
  - (b) the person intends by that contamination to cause such death or harm.
- (2) A person convicted of an offence against this section is liable to imprisonment for 25 years.
- (3) If on the trial of a person for an offence against this section 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 93IB or 93IC, 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.

**93IG Special provisions relating to geographical application of this Part**

- (1) A person commits an offence against a provision of this Part if:
  - (a) the person does an act outside the State that constitutes the offence, and
  - (b) (apart from this section) the act would have constituted the offence had it been done within this State, and
  - (c) the offence involves intending to cause public alarm or anxiety, or economic loss, within the State.
- (2) A person who commits an offence by the operation of this section may be dealt with, and is liable to the same punishment, as if the person had committed the offence within the State.
- (3) If an offence against a provision of this Part involves intending to cause public alarm or anxiety, or economic loss, within the State, a geographical nexus between the State

and any other element of the offence is not required.

- (4) The other provisions of this Act, the provisions of other Acts and the common law, in so far as these are applicable, apply to an offence to which this section applies as if it had been committed within the State (for example, section 344A and the rules of law relating to attempts to commit offences apply to such an offence).
- (5) 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.

### **Part 3D Public order offences relating to bomb and other hoaxes**

#### **93IH Conveying false information that a person or property is in danger**

- (1) A person who conveys information:
  - (a) that the person knows to be false or misleading, and
  - (b) that is likely to make the person to whom the information is conveyed fear for the safety of a person or of property, or both,

is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

- (2) This section extends to conveying information by any means including making a statement, sending a document, or transmitting an electronic or other message.
- (3) In this section, a reference to the safety of a person includes the safety of the person who conveys the information and the person to whom it is conveyed.

#### **93II Leaving or sending an article with intent to cause alarm**

- (1) A person:
  - (a) who leaves in any place, or sends by any means, a substance or article, and
  - (b) who intends to induce a false belief that the substance or article is likely to be a danger to the safety of a person or of property, or both,

is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

- (2) For the purposes of this section, a false belief that a substance or article is likely to be a danger includes a false belief that the substance or article is likely to explode, ignite, or contain, consist of or discharge a dangerous matter.

## **Part 4 Offences relating to property**

### **Division 1 Stealing and like offences**

#### **Subdivision 1 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 or her amounted to an interference with the right to possession of, or a trespass against, the owner.

#### **Subdivision 2 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 imprisonment 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 imprisonment 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 imprisonment 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 imprisonment 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 imprisonment 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 imprisonment for 25 years.

## **Subdivision 3 Extortion etc by menace or threat**

### **99 Demanding property with intent to steal**

- (1) Whosoever, with menaces, or by force, demands any property from any person, with intent to steal the same, shall be liable to imprisonment for ten years.
- (2) A person is guilty of an offence under this subsection if the person commits an offence under subsection (1) in the company of another person or persons. A person convicted of an offence under this subsection is liable to imprisonment for 14 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 imprisonment for ten years.

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

(1) Whosoever with intent to cause gain for himself or herself or any other person, or with intent to procure for himself or herself 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 imprisonment 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 or she 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 a serious indictable offence, 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 imprisonment 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 imprisonment 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 imprisonment 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 the person 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.

## **Subdivision 4 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,
- (f) the alleged offender knows that there is a person, or that there are persons, in the place where the offence is alleged to be committed.

**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.

(2A) For the purposes of paragraph (f) of the definition of **circumstances of aggravation**, if there was a person, or there were persons, in the place in relation to which an offence is alleged to have been committed at the time it was committed, the defendant is presumed to have known that fact unless the defendant satisfies the court that he or she had reasonable grounds for believing that there was no one in the place.

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

#### **106 Breaking and entering place of Divine worship and committing serious indictable offence**

(1) Whosoever:

breaks and enters any place of Divine worship and commits any serious indictable offence therein, or,

being in any place of Divine worship, commits any serious indictable offence therein and breaks out of the same,

shall be liable to imprisonment 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 imprisonment 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 imprisonment for 25 years.

**107 The like with intent to commit a serious indictable offence**

- (1) Whosoever breaks and enters any place of Divine worship, with intent to commit a serious indictable offence therein, shall be liable to imprisonment 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 imprisonment 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 imprisonment for 20 years.

**108 (Repealed)**

**109 Breaking out of dwelling-house after committing, or entering with intent to commit, indictable offence**

- (1) Whosoever:
  - enters the dwelling-house of another, with intent to commit a serious indictable offence therein, or,
  - being in such dwelling-house commits any serious indictable offence therein,and in either case breaks out of the said dwelling-house shall be liable to imprisonment 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 imprisonment 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 imprisonment 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 imprisonment for 25 years.

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

- (1) Whosoever enters any dwelling-house, with intent to commit a serious indictable offence therein, shall be liable to imprisonment 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 imprisonment 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 imprisonment for 20 years.

### **112 Breaking etc into any house etc and committing serious indictable offence**

- (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 serious indictable offence 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 serious indictable offence therein and breaks out of the same,

shall be liable to imprisonment 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 imprisonment 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 imprisonment for 25 years.

### **113 Breaking etc into any house etc with intent to commit a serious indictable offence**

- (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 a serious indictable offence therein, shall be liable to imprisonment 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 imprisonment 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 imprisonment for 20 years.

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

- (1) Any person who:
- (a) is armed with any weapon, or instrument, with intent to commit an indictable offence,
  - (b) has in his or her 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 or her face blackened or otherwise disguised, or has in his or her possession the means of blacking or otherwise disguising his or her face, with intent to commit an indictable offence,
  - (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 an indictable offence in or upon the building,

shall be liable to imprisonment 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 Being convicted offender armed with intent to commit indictable offence**

Whosoever, having been convicted of any indictable offence, afterwards commits any offence mentioned in section 114, shall be liable to imprisonment 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.

## **Subdivision 5 Larceny**

### **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.

### **117 Punishment for larceny**

Whosoever commits larceny, or any indictable offence by this Act made punishable like larceny, shall, except in the cases hereinafter otherwise provided for, be liable to imprisonment 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 the accused's own use, or for the accused's 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 the prosecutor 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 the person 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 the person of the larceny charged, and find the person guilty of such other offence, and the person 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 unlawfully received the property charged to have been stolen, knowing it to have been stolen, the jury find specially that the person either stole, or unlawfully received, such property, and that they are unable to say which of those offences was committed by the person, such person shall not by reason thereof be entitled to acquittal, but shall be liable to be sentenced for the larceny, or for the unlawful 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 unlawfully received property, the jury may find all, or any, of such persons guilty, either of stealing, or unlawfully 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 unlawfully receiving the property, or part or parts thereof.

**123 Verdict of minor indictable offence**

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 minor indictable offence, the jury may acquit the person of the offence charged and find the person guilty of the minor indictable offence, and the person shall be liable to punishment accordingly.

**124 Fraudulent appropriation**

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

(a) that the person had fraudulently appropriated to his or her own use or that of another,

the property in respect of which the person is indicted, although the person had not originally taken the property with any fraudulent intent, or

(b) that the person had fraudulently retained the property in order to secure a reward for its restoration,

the jury may return a verdict accordingly, and thereupon the person shall be liable to imprisonment for two years, or to a fine of 20 penalty units, or both.

### **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 or her own use, or the use of any person other than the owner thereof, although he or she 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 or she may not have contracted to restore, or deliver, the specific property received by him or her, or may only have contracted to restore, or deliver, the property specifically.

### **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 imprisonment 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 the person 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 the person is guilty thereof, but are satisfied that the person 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 the person of the offence charged, and find the person guilty of such last-mentioned stealing, or killing, and the person 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 the person is guilty thereof, but are satisfied that the person is guilty of stealing such cattle, they may acquit the person of the offence charged, and find the person guilty of such stealing, and the person 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 the person is guilty thereof, but are satisfied that the person is guilty of an offence within section 131, they may acquit the person of the offence charged, and find the person guilty of an offence under the said last mentioned section, and the person 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 or her 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.

**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 or she 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 the testator's death, or whether the same relates to real, or personal estate, or to both, shall be liable to imprisonment 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 the person, if, before being charged with the offence, the person 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 the person.

**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 imprisonment for seven years.

**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.

**141-147 (Repealed)**

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

Whosoever steals in a dwelling-house any property shall be liable to imprisonment 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 imprisonment for fourteen years.

**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 imprisonment 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.

### **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 imprisonment 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 imprisonment for ten years.

### **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 or her behalf, shall be liable to be punished as for larceny.

### **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 or herself 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 vehicle is liable to imprisonment for 10 years.

(2) In this section:

**identification plate** means a plate authorised to be placed on a vehicle, or taken to have been placed on a vehicle, under the *Motor Vehicle Standards Act 1989* of the Commonwealth.

**motor vehicle** means:

- (a) a motor vehicle within the meaning of the *Road Transport (General) Act 1999* (whether or not the vehicle contains the motor intended to form part of it), or
- (b) a motor intended to form part of, or capable of forming part of, any such vehicle, or
- (c) any part of any such motor vehicle containing, or consisting of, an identification plate.

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

- (1) Whosoever steals any aircraft shall be liable to imprisonment 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 imprisonment 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 imprisonment 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 imprisonment for twenty years.

**154C Car-jacking**

- (1) A person who:
  - (a) assaults another person with intent to take a motor vehicle and, without having the consent of the owner or person in lawful possession of it, takes and drives it, or takes it for the purpose of driving it, or
  - (b) without having the consent of the owner or person in lawful possession of a motor vehicle, takes and drives it, or takes it for the purpose of driving it, when a person is in or on it,is liable to imprisonment for 10 years.
- (2) 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 imprisonment for 14 years.

(3) In this section:

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

- (a) the alleged offender is in the company of another person or persons,
- (b) the alleged offender is armed with an offensive weapon or instrument,
- (c) the alleged offender maliciously inflicts actual bodily harm on any person.

**motor vehicle** means a motor vehicle within the meaning of the [Road Transport \(General\) Act 1999](#).

## Subdivision 6 Embezzlement or larceny

### 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 the person had no authority from his or her employer to receive money, or other property, on his or her 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 or her master, or employer, or any property into or for which it has been converted, or exchanged, shall be liable to imprisonment 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 or her, for, or in the name, or on the account of, his or her 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 imprisonment 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 or her 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 imprisonment for five years.

**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 her, or taken into his or her possession, or being in his or her custody, or under his or her control, by virtue or colour of such employment, shall be liable to imprisonment 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 her, or taken into his or her possession, or being in his or her custody, or under his or her 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 imprisonment for ten years.

**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 her, or otherwise, and the jury are satisfied that he or she stole, or fraudulently embezzled the deficient money, or any part thereof.

**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 or she 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.

**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 the person obtained the property in such manner as to amount in law to larceny, the jury may acquit the person of the offence charged, and find the person guilty of larceny, or of larceny as such clerk, servant, or person, as the case may be, and the

person shall be liable to punishment accordingly.

## **Subdivision 7 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 or she was so intrusted.

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

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 imprisonment for ten years.

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

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 or her shall be liable to imprisonment 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 or she has any claim entitling him or her 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 an indictable offence and liable to imprisonment for 5 years.

**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 imprisonment for ten years.

**170 Agent obtaining advances on property of his or her 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 or her 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 or her principal, and in violation of good faith, obtains any advance of money, or other valuable thing, upon any undertaking by him or her 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 imprisonment 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 or her 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 or her 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 herself, 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 imprisonment 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 or her 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 imprisonment 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 or herself, 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 imprisonment 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 imprisonment 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 or she 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 imprisonment 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 or her 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 the person, if, before being charged with the offence, the person 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 the person.
- (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.

## **Subdivision 8 Fraudulent misappropriation**

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

Whosoever having collected or received any money or valuable security upon terms requiring him or her 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 or her 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 or she collected or received such money or valuable security, shall be liable to imprisonment 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 or her own behalf, or any payment thereout to another person, or to mix such money, valuable security, or proceeds thereof, or such balance with his or her own moneys.

## **Subdivision 9 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 or she proves:

- (a) that he or she had reasonable grounds for believing that that cheque would be paid in full on presentation, and
- (b) that he or she 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.

## **Subdivision 10 Obtaining money etc by deception**

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

- (1) Whosoever by any deception dishonestly obtains for himself or herself 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.
- (3) For the purposes of and without limiting Part 1A, the necessary geographical nexus exists between the State and an offence against this section if the offence is committed by a public official (within the meaning of the *Independent Commission Against Corruption Act 1988*) and involves public money of the State or other property held by the public official for or on behalf of the State.

### **Subdivision 11 Obtaining money etc by false or misleading statements**

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

- (1) Whosoever, with intent to obtain for himself or herself 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 or she 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.
- (2) For the purposes of and without limiting Part 1A, the necessary geographical nexus exists between the State and an offence against this section if the offence is committed by a public official (within the meaning of the *Independent Commission Against Corruption Act 1988*) and involves public money of the State or other property held by the public official for or on behalf of the State.

## **Subdivision 12 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.

## **Subdivision 13 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 imprisonment 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 herself, or any other person for the use or benefit, or on account of himself or herself, or any other person, with intent to defraud, the accused 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 the accused 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, the accused 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 the person obtained the property in such manner as to amount in law to larceny or fraudulent misappropriation, the jury may acquit the person of the offence charged, and find the person 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 the person 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 imprisonment 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 imprisonment 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 imprisonment for seven years.

### **Subdivision 14 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 or she 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 imprisonment for five years.

- (2) Any person guilty of conspiracy to commit an offence under subsection (1) shall be punishable as if he or she 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 or she 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 or she 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 the person 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 [Corporations Act 2001](#) of the Commonwealth.

## **Subdivision 15 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 or she has used all due diligence to cause the offender to be brought to trial for the same, be liable to imprisonment for five years.

## **Subdivision 16 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 stolen property where stealing a serious indictable offence**

(1) Whosoever receives, or disposes of, or attempts to dispose of, any property, the stealing whereof amounts to a serious indictable offence, knowing the same to have been stolen, shall be guilty of a serious indictable offence, and may be indicted, either as an accessory after the fact, or for a substantive offence, and in the latter case whether the principal offender has been previously tried or not, or is amenable to justice or not, and in either case is liable:

- (a) if the property is a motor vehicle or a motor vehicle part, to imprisonment for 12 years, or
- (b) in the case of any other property, to imprisonment for 10 years.

(2) In this section:

**motor vehicle** has the same meaning as it has in section 154AA.

**189 Receiving etc where principal guilty of minor indictable offence**

Whosoever receives, or disposes of, or attempts to dispose of, any property, the stealing whereof is a minor indictable offence, knowing the same to have been stolen, shall be guilty of a minor indictable offence, 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 or her possession, any property stolen outside the State of New South Wales, knowing the same to have been stolen, and whether or not he or she took part in the stealing of the property, shall be liable to imprisonment 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 serious indictable offence or a minor indictable offence, 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 unlawfully killed, or carcass etc**

Whosoever:

receives any animal, unlawfully 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 unlawfully stolen, knowing it to have been so killed or so stolen,

shall be guilty of a serious indictable offence, and may be indicted and punished as if the animal had been stolen, and the accused had unlawfully 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.

## **Division 2 Criminal destruction and damage**

### **Subdivision 1 Interpretation**

#### **194 Interpretation**

- (1) In this Division, a reference to property does not include a reference to property that is not of a tangible nature.
- (2) In this Division, 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 Division, 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.

### **Subdivision 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 imprisonment for 5 years, or
- (b) if the destruction or damage is caused by means of fire or explosives, to imprisonment 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 imprisonment for 7 years, or
- (b) if the destruction or damage is caused by means of fire or explosives, to imprisonment 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 imprisonment for 7 years, or
- (b) if the destruction or damage is caused by means of fire or explosives, to imprisonment 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 imprisonment 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 imprisonment 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 imprisonment for 3 years.

**Subdivision 3 Crimes relating to particular kinds of property**

**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 imprisonment 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 imprisonment for 7 years.

## 203 (Repealed)

### Subdivision 4 Sabotage

#### 203A Definitions

In this Subdivision:

**economic loss** includes the disruption of government functions or the disruption of the use of public facilities.

**public facility** means any of the following (whether publicly or privately owned):

- (a) a government facility, including premises used by government employees in connection with official duties,
- (b) a public infrastructure facility, including a facility providing water, sewerage, energy or other services to the public,
- (c) a public transport facility, including a conveyance used to transport people or goods,

(d) a public place, including any premises, land or water open to the public.

### **203B Sabotage**

A person:

- (a) whose conduct causes damage to a public facility, and
- (b) who intended to cause that damage, and
- (c) who intended by that conduct to cause:
  - (i) extensive destruction of property, or
  - (ii) major economic loss,

is guilty of an offence.

Maximum penalty: Imprisonment for 25 years.

### **203C Threaten sabotage**

(1) A person who:

- (a) makes to another person a threat to damage a public facility, and
- (b) intends that person to fear that the threat will be carried out and will cause:
  - (i) extensive destruction of property, or
  - (ii) major economic loss,

is guilty of an offence.

Maximum penalty: Imprisonment for 14 years.

(2) In the prosecution of an offence under this section it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

(3) For the purposes of this section:

- (a) a threat may be made by any conduct, and may be explicit or implicit and conditional or unconditional, and
- (b) a threat to a person includes a threat to a group of persons, and
- (c) fear that a threat will be carried out includes apprehension that it will be carried out.

## **Subdivision 5 Bushfires**



### 203D Definitions

In this Subdivision:

**causing a fire** includes:

- (a) lighting a fire, or
- (b) maintaining a fire, or
- (c) failing to contain a fire, except where the fire was lit by another person or the fire is beyond the control of the person who lit the fire.

**firefighter** means a member of a fire brigade under the [Rural Fires Act 1997](#) or the [Fire Brigades Act 1989](#) or of any other official firefighting unit (including a unit from outside the State).

**spread** of a fire means spread of a fire beyond the capacity of the person who causes the fire to extinguish it.

### 203E Offence

- (1) A person:
  - (a) who intentionally causes a fire, and
  - (b) who is reckless as to the spread of the fire to vegetation on any public land or on land belonging to another,

is guilty of an offence.

Maximum penalty: Imprisonment for 14 years.

- (2) For the purposes of this section, recklessness may also be established by proof of intention.
- (3) A person is not criminally responsible for an offence against this section if:
  - (a) the person is a firefighter or acting under the direction of a firefighter, and
  - (b) the person caused the fire in the course of bushfire fighting or hazard reduction operations.
- (4) If on the trial of a person for an offence against this section 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 against section 100 (1) of the [Rural Fires Act 1997](#), 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.

## 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 imprisonment 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 imprisonment 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 imprisonment 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 imprisonment 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 imprisonment 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 imprisonment 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 imprisonment 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 imprisonment 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 imprisonment 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), and
- (d) a police officer (and in this case a reference in this Part to the agent's principal is a reference to the Crown), and
- (e) a councillor within the meaning of the *Local Government Act 1993* (and in this case a reference in this Part to the agent's principal is a reference to the local council of which the person is a councillor).

**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 from holding civic office for the purposes of the *Local Government Act 1993*, 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**

### **Division 1 Forgery**

#### **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)**

**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 imprisonment for fourteen years.

**254 (Repealed)**

**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 imprisonment for fourteen years.

**256-259 (Repealed)**

**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 imprisonment for fourteen years.

**261-264 (Repealed)**

**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 or her possession, any such forged bank note, bank bill of exchange, or bank post bill, knowing the same to be forged,

shall be liable to imprisonment 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 or her possession any such material, or any such implement or device, or

knowingly offers, utters, disposes of, or puts off, or has in his or her 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 imprisonment 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 or her 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 or her possession, any

paper or other material, upon which there is an impression of any such matter as aforesaid,

shall be liable to imprisonment 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 or her possession any such frame, mould, or instrument, or

makes, uses, sells, exposes for sale, utters, or disposes of, or knowingly has in his or her 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 imprisonment 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 or her 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 or her possession, any paper upon which any part of any such instrument is made or printed,

shall be liable to imprisonment for fourteen years.

### **271 Forging wills**

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

**272-277 (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 imprisonment for fourteen years.

**279-284 (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 imprisonment 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 imprisonment 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 imprisonment for fourteen years.

**292-295 (Repealed)**

**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 of Births, Deaths and Marriages, or

causes, or knowingly permits, the doing of any such act as aforesaid,

shall be liable to imprisonment 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 imprisonment for fourteen years.

### **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 imprisonment for fourteen years.

## **Division 2 False instruments**

### **299 Interpretation**

(1) In this Division:

***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 Division, 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 imprisonment 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 imprisonment 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 imprisonment 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 imprisonment 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 imprisonment for 10 years.

### **302A Making or possession of implements for making false instruments**

A person who makes, or who has in his or her custody or under his or her control, a machine or implement, or paper or other material, that is, and that the person knows to be, specially designed or adapted for the making of 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 imprisonment for 10 years.

### **303 Response of machine to false instrument etc**

(1) In this Division, 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 Division, 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 Division, 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 Division, 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 Division, 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 Division (as inserted by the *Crimes (Computers and Forgery) Amendment Act 1989*).

### **Division 3 False and misleading information**

#### **307A False or misleading applications**

(1) A person is guilty of an offence if:

- (a) the person makes a statement (whether orally, in a document or in any other way), and
- (b) the person does so knowing that, or reckless as to whether, the statement:
  - (i) is false or misleading, or
  - (ii) omits any matter or thing without which the statement is misleading, and
- (c) the statement is made in connection with an application for an authority or benefit, and
- (d) any of the following subparagraphs apply:
  - (i) the statement is made to a public authority,
  - (ii) the statement is made to a person who is exercising or performing any power, authority, duty or function under, or in connection with, a law of the State,
  - (iii) the statement is made in compliance or purported compliance with a law of the State.

Maximum penalty: Imprisonment for 2 years, or a fine of 200 penalty units, or both.

- (2) Subsection (1) does not apply as a result of subsection (1) (b) (i) if the statement is not false or misleading in a material particular.
- (3) Subsection (1) does not apply as a result of subsection (1) (b) (ii) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.
- (4) The burden of establishing a matter referred to in subsection (2) or (3) lies on the accused person.
- (5) In this section:

**application** includes any claim, request or other form of application and also includes, in the case of an application for an authority, any application for the issue, grant, amendment, transfer, renewal, restoration or replacement of the authority and any other application in connection with the authority.

**authority** includes any licence, permit, consent, approval, registration or other form of authority.

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

**307B False or misleading information**

(1) A person is guilty of an offence if:

(a) the person gives information to another person, and

(b) the person does so knowing that the information:

(i) is false or misleading, or

(ii) omits any matter or thing without which the information is misleading, and

(c) any of the following subparagraphs apply:

(i) the information is given to a public authority,

(ii) the information is given to a person who is exercising or performing any power, authority, duty or function under, or in connection with, a law of the State,

(iii) the information is given in compliance or purported compliance with a law of the State.

Maximum penalty: Imprisonment for 2 years, or a fine of 200 penalty units, or both.

(2) Subsection (1) does not apply as a result of subsection (1) (b) (i) if the information is not false or misleading in a material particular.

(3) Subsection (1) does not apply as a result of subsection (1) (b) (ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

(4) Subsection (1) does not apply as a result of subsection (1) (c) (i) if, before the information was given by a person to the public authority, the public authority did not take reasonable steps to inform the person of the existence of the offence against subsection (1).

(5) Subsection (1) does not apply as a result of subsection (1) (c) (ii) if, before the information was given by a person (the **first person**) to the person mentioned in that subparagraph (the **second person**), the second person did not take reasonable steps to inform the first person of the existence of the offence against subsection (1).

(6) The burden of establishing a matter referred to in subsection (2), (3), (4) or (5) lies on the accused person.

- (7) For the purposes of subsections (4) and (5), it is sufficient if the following form of words is used:

“Giving false or misleading information is a serious offence.”

### **307C False or misleading documents**

- (1) A person is guilty of an offence if:

- (a) the person produces a document to another person, and
- (b) the person does so knowing that the document is false or misleading, and
- (c) the document is produced in compliance or purported compliance with a law of the State.

Maximum penalty: Imprisonment for 2 years, or a fine of 200 penalty units, or both.

- (2) Subsection (1) does not apply if the document is not false or misleading in a material particular.
- (3) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:
- (a) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular, and
  - (b) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.
- (4) The burden of establishing a matter referred to in subsection (2) or (3) lies on the accused person.

## **Part 6 Computer offences**

### **308 General definitions**

In this Part:

**data** includes:

- (a) information in any form, or
- (b) any program (or part of a program).

**data held in a computer** includes:

- (a) data entered or copied into the computer, or
- (b) data held in any removable data storage device for the time being in the computer, or

- (c) data held in a data storage device on a computer network of which the computer forms part.

**data storage device** means any thing (for example a disk or file server) containing or designed to contain data for use by a computer.

**electronic communication** means a communication of information in any form by means of guided or unguided electromagnetic energy.

**serious computer offence** means:

- (a) an offence against section 308C, 308D or 308E, or
- (b) conduct in another jurisdiction that is an offence in that jurisdiction and that would constitute an offence against section 308C, 308D or 308E if the conduct occurred in this jurisdiction.

**308A Meaning of access to data, modification of data and impairment of electronic communication**

(1) In this Part, **access** to data held in a computer means:

- (a) the display of the data by the computer or any other output of the data from the computer, or
- (b) the copying or moving of the data to any other place in the computer or to a data storage device, or
- (c) in the case of a program—the execution of the program.

(2) In this Part, **modification** of data held in a computer means:

- (a) the alteration or removal of the data, or
- (b) an addition to the data.

(3) In this Part, **impairment** of electronic communication to or from a computer includes:

- (a) the prevention of any such communication, or
- (b) the impairment of any such communication on an electronic link or network used by the computer,

but does not include a mere interception of any such communication.

(4) A reference in this Part to any such access, modification or impairment is limited to access, modification or impairment caused (whether directly or indirectly) by the execution of a function of a computer.

**308B Meaning of unauthorised access, modification or impairment**

- (1) For the purposes of this Part, access to or modification of data, or impairment of electronic communication, by a person is **unauthorised** if the person is not entitled to cause that access, modification or impairment.
- (2) Any such access, modification or impairment is not unauthorised merely because the person has an ulterior purpose for that action.
- (3) For the purposes of an offence under this Part, a person causes any such unauthorised access, modification or impairment if the person's conduct substantially contributes to the unauthorised access, modification or impairment.

**308C Unauthorised access, modification or impairment with intent to commit serious indictable offence**

- (1) A person who causes any unauthorised computer function:
  - (a) knowing it is unauthorised, and
  - (b) with the intention of committing a serious indictable offence, or facilitating the commission of a serious indictable offence (whether by the person or by another person),

is guilty of an offence.

Maximum penalty: The maximum penalty applicable if the person had committed, or facilitated the commission of, the serious indictable offence in this jurisdiction.

- (2) For the purposes of this section, an **unauthorised computer function** is:
  - (a) any unauthorised access to data held in any computer, or
  - (b) any unauthorised modification of data held in any computer, or
  - (c) any unauthorised impairment of electronic communication to or from any computer.
- (3) For the purposes of this section, a **serious indictable offence** includes an offence in any other jurisdiction that would be a serious indictable offence if committed in this jurisdiction.
- (4) A person may be found guilty of an offence against this section:
  - (a) even if committing the serious indictable offence concerned is impossible, or
  - (b) whether the serious indictable offence is to be committed at the time of the unauthorised conduct or at a later time.
- (5) It is not an offence to attempt to commit an offence against this section.



**308D Unauthorised modification of data with intent to cause impairment**

- (1) A person who:
- (a) causes any unauthorised modification of data held in a computer, and
  - (b) knows that the modification is unauthorised, and
  - (c) intends by the modification to impair access to, or to impair the reliability, security or operation of, any data held in a computer, or who is reckless as to any such impairment,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

- (2) A conviction for an offence against this section is an alternative verdict to a charge for:
- (a) an offence against section 195 (Maliciously destroying or damaging property), or
  - (b) an offence against section 308E (Unauthorised impairment of electronic communication).

**308E Unauthorised impairment of electronic communication**

- (1) A person who:
- (a) causes any unauthorised impairment of electronic communication to or from a computer, and
  - (b) knows that the impairment is unauthorised, and
  - (c) intends to impair electronic communication to or from the computer, or who is reckless as to any such impairment,

is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

- (2) A conviction for an offence against this section is an alternative verdict to a charge for:
- (a) an offence against section 195 (Maliciously destroying or damaging property), or
  - (b) an offence against section 308D (Unauthorised modification of data with intent to cause impairment).

**308F Possession of data with intent to commit serious computer offence**

- (1) A person who is in possession or control of data:

- (a) with the intention of committing a serious computer offence, or
- (b) with the intention of facilitating the commission of a serious computer offence (whether by the person or by another person),

is guilty of an offence.

Maximum penalty: Imprisonment for 3 years.

- (2) For the purposes of this section, **possession or control of data** includes:
  - (a) possession of a computer or data storage device holding or containing the data or of a document in which the data is recorded, and
  - (b) control of data held in a computer that is in the possession of another person (whether the computer is in this jurisdiction or outside this jurisdiction).
- (3) A person may be found guilty of an offence against this section even if committing the serious computer offence concerned is impossible.
- (4) It is not an offence to attempt to commit an offence against this section.

**308G Producing, supplying or obtaining data with intent to commit serious computer offence**

- (1) A person who produces, supplies or obtains data:
  - (a) with the intention of committing a serious computer offence, or
  - (b) with the intention of facilitating the commission of a serious computer offence (whether by the person or by another person),

is guilty of an offence.

Maximum penalty: Imprisonment for 3 years.

- (2) For the purposes of this section, **produce, supply or obtain data** includes:
  - (a) produce, supply or obtain data held or contained in a computer or data storage device, or
  - (b) produce, supply or obtain a document in which the data is recorded.
- (3) A person may be found guilty of an offence against this section even if committing the serious computer offence concerned is impossible.
- (4) It is not an offence to attempt to commit an offence against this section.

**308H Unauthorised access to or modification of restricted data held in computer**

**(summary offence)**

(1) A person:

- (a) who causes any unauthorised access to or modification of restricted data held in a computer, and
  - (b) who knows that the access or modification is unauthorised, and
  - (c) who intends to cause that access or modification,
- is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

(2) An offence against this section is a summary offence.

(3) In this section:

**restricted data** means data held in a computer, being data to which access is restricted by an access control system associated with a function of the computer.

**308I Unauthorised impairment of data held in computer disk, credit card or other device (summary offence)**

(1) A person:

- (a) who causes any unauthorised impairment of the reliability, security or operation of any data held on a computer disk, credit card or other device used to store data by electronic means, and
  - (b) who knows that the impairment is unauthorised, and
  - (c) who intends to cause that impairment,
- is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

(2) An offence against this section is a summary offence.

(3) For the purposes of this section, impairment of the reliability, security or operation of data is **unauthorised** if the person is not entitled to cause that impairment.

**309, 310 (Repealed)**

**Part 6A Offences relating to escape from lawful custody**

**310A Definitions**

In this Part:

**correctional centre** means a correctional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999*, and includes a correctional complex within the meaning of that Act.

**inmate** has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*.

**310B Rescuing inmate from lawful custody**

Any person who, by force, rescues or attempts to rescue an inmate from lawful custody is guilty of an offence.

Maximum penalty: imprisonment for 14 years.

**310C Aiding escape**

Any person:

- (a) who aids an inmate in escaping or attempting to escape from lawful custody, or
- (b) who conveys anything or causes anything to be conveyed into a correctional centre or to an inmate with intent to facilitate the escape of an inmate,

is guilty of an offence.

Maximum penalty: imprisonment for 7 years.

**310D Escaping**

Any inmate:

- (a) who escapes or attempts to escape from lawful custody, or
- (b) who, having been temporarily released from lawful custody, fails to return to lawful custody at the end of the time for which the inmate has been released,

is guilty of an offence.

Maximum penalty: imprisonment for 10 years.

**310E Tunnels to facilitate escape**

- (1) A person who constructs, or takes part in the construction of, a tunnel that could reasonably be thought likely to be intended for use in facilitating an inmate's escape from lawful custody is guilty of an offence.

Maximum penalty: imprisonment for 10 years.

- (2) It is not necessary for the prosecution to prove that the tunnel was actually intended for use in facilitating an escape, but it is a defence for the accused person to establish that he or she did not intend it to be so used.

(3) In this section:

**tunnel** includes any partially completed tunnel and any excavation.

### **310F Permitting escape**

(1) Any person who, being an officer of a correctional centre or a police officer, has actual custody of an inmate for the time being is guilty of an offence if he or she wilfully permits the inmate to escape from custody.

Maximum penalty: imprisonment for 7 years.

(2) Any person who, being an officer of a correctional centre or a police officer, has actual custody of an inmate for the time being is guilty of an indictable offence if he or she negligently permits the inmate to escape from custody.

Maximum penalty: imprisonment for 2 years.

(3) Any person who is employed by the management company of a managed correctional centre (within the meaning of the *Crimes (Administration of Sentences) Act 1999*) as a custodian of inmates at, or travelling to or from, the correctional centre is, for the purposes of this section, an officer of a correctional centre.

### **310G Harboursing escapee**

Any person who knowingly harbours, maintains or employs an escaped inmate is guilty of an offence.

Maximum penalty: imprisonment for 3 years.

### **310H Application of Part**

This Part does not apply to or in respect of:

- (a) an inmate who is in lawful custody for the purpose of serving a sentence of imprisonment the subject of a periodic detention order or home detention order under the *Crimes (Sentencing Procedure) Act 1999*, or
- (b) a detention centre or a detainee within the meaning of the *Children (Detention Centres) Act 1987*.

## **Part 7 Public justice offences**

### **Division 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.

- (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 indictable offence is unnecessary**

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

## **Division 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 imprisonment 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 indictable offence committed by another person, or
  - (b) the discovery of evidence concerning a serious indictable offence committed by another person, or
  - (c) the apprehension of another person who has committed a serious indictable offence,

is liable to imprisonment for 7 years.

- (2) For the purposes of subsection (1), a person is to be considered to have committed a serious indictable 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.

### **315A Threatening or intimidating victims or witnesses**

- (1) A person who threatens to do or cause, or who does or causes, any injury or detriment to any other person intending to influence any person not to bring material information about an indictable offence to the attention of a police officer or other appropriate authority is liable to imprisonment for 7 years.
- (2) In this section:

**material information** means information that a person has that might be of material assistance in securing the apprehension of a person who has committed an indictable offence, or the prosecution or conviction of any such person.

### **316 Concealing serious indictable offence**

- (1) If a person has committed a serious indictable 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.
- (4) A prosecution for an offence against subsection (1) is not to be commenced against a person without the approval of the Attorney General if the knowledge or belief that an offence has been committed was formed or the information referred to in the subsection was obtained by the person in the course of practising or following a profession, calling or vocation prescribed by the regulations for the purposes of this subsection.
- (5) The regulations may prescribe a profession, calling or vocation as referred to in subsection (4).

### **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 imprisonment 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 imprisonment 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 imprisonment for 14 years.

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

### **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 imprisonment for 14 years.



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

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

In this Division, 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 imprisonment 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 imprisonment 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 imprisonment 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 indictable 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 indictable offence is liable to imprisonment 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.

(1A) A person who without lawful excuse wilfully prevents, obstructs or dissuades another person who the person believes may be called as a witness in any judicial proceeding from attending the proceeding 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**

- (1) 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 imprisonment for 10 years.
- (2) A person who threatens to do or cause, or who does or causes, any injury or detriment to another person because the person believes the other person will or may be or may have been called as a witness, or will or may serve or may have served as a juror, in any judicial proceeding is liable to imprisonment for 10 years.
- (3) For the purposes of this section, it is immaterial whether the accused acted wholly or partly for a reason specified in subsection (1) or (2).

## **Division 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 imprisonment 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 indictable offence is liable to imprisonment 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 indictable offence is liable to imprisonment for 14 years.

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

It is immaterial for the purposes of this Division:

- (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 33 (Power of the Supreme Court to give effect to application for assistance) of the *Evidence on Commission Act 1995*, 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 Division 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.

## **Division 5 Miscellaneous**

### **340 Extent of abolition of offences**

The offences at common law abolished by this Division 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 Division:

- (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 Unlawful gambling**

### **344 Offence of conducting unlawful gambling operation**

- (1) A person who conducts an unlawful gambling operation is guilty of an offence.

Maximum penalty: 1,000 penalty units or imprisonment for 7 years (or both).

- (2) For the purposes of subsection (1), **an unlawful gambling operation** means an operation involving at least 2 of the following elements (one of which must be paragraph (d)):

- (a) the keeping of at least 2 premises (whether or not either or both are gambling premises) that are used for the purposes of any form of gambling that is prohibited by or under the *Unlawful Gambling Act 1998*,
  - (b) substantial planning and organisation in relation to matters connected with any such form of prohibited gambling (as evidenced by matters such as the number of persons, and the amount of money and gambling turnover, involved in the operation),
  - (c) the use of sophisticated methods and technology (for example, telephone diverters, telecommunication devices, surveillance cameras and encrypted software programs) in connection with any such form of prohibited gambling or in avoiding detection of that gambling,
  - (d) a substantial loss of potential revenue to the State that would be derived from lawful forms of gambling.
- (3) In any proceedings for an offence under this section, evidence that persons have been in regular attendance at premises suspected of being used for the purposes of any form of gambling that is prohibited by or under the *Unlawful Gambling Act 1998* is relevant to the matters referred to in subsection (2) (a) or (b).
- (4) In this section:

**conduct** includes organise or manage.

**gambling premises** has the same meaning as in the *Unlawful Gambling Act 1998*.

## **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 serious indictable offence the person shall be deemed to have been convicted of a serious indictable offence.

## **Part 9 Abettors and accessories**

### **345 Principals in the second degree—how tried and punished**

Every principal in the second degree in any serious indictable offence 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 a serious indictable offence may be indicted, convicted,



and sentenced, either before or after the trial of the principal offender, or together with the principal offender, or indicted, convicted, and sentenced, as a principal in the offence, and shall be liable in either case to the same punishment as the principal offender, whether the principal offender 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 a serious indictable offence may be indicted, convicted, and sentenced as such accessory, either before, or together with, or after the trial of the principal offender, whether the principal offender has been previously tried or not, or is amenable to justice or not.

**347A Wife may be accessory after fact to husband's felony**

- (1) The common law rule granting immunity to a wife against prosecution as an accessory after the fact to a felony committed by her husband is abolished.
- (2) This section does not apply in respect of any act of, or omission by, a wife if the act or omission occurred before the commencement of this section.

**348 Punishment of accessories after the fact to certain treason-related offences**

Every accessory after the fact to an offence under section 12 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 imprisonment 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 86, shall be liable to imprisonment for fourteen years.

**350 Punishment of accessories after the fact to other serious indictable offences**

An accessory after the fact to any other serious indictable offence is liable to imprisonment for 5 years, except where otherwise specifically enacted.

**351 Trial and punishment of abettors of minor indictable offences**

Any person who aids, abets, counsels, or procures, the commission of a minor indictable offence, whether the same is an offence at Common Law or by any statute, may be proceeded against and convicted together with or before or after the conviction of the principal offender and may be indicted, convicted, and punished as a principal offender.

**351A Recruiting children to engage in criminal activity**

- (1) A person (not being a child) who recruits a child to carry out or assist in carrying out a criminal activity is liable to imprisonment for 10 years.

(2) In this section:

**child** means a person under the age of 18 years.

**criminal activity** means conduct that constitutes a serious indictable offence.

**recruit** means counsel, procure, solicit, incite or induce.

### **351B Aiders and abettors punishable as principals**

- (1) Every person who aids, abets, counsels or procures the commission of any offence punishable on summary conviction may be proceeded against and convicted together with or before or after the conviction of the principal offender.
- (2) On conviction any such person is liable to the penalty and punishment to which the principal offender is liable.
- (3) This section applies to offences committed before or after the commencement of this section.
- (4) This section applies to an indictable offence that is being dealt with summarily.

## **Part 10 Arrest of offenders**

### **352 Person in act of committing or having committed an 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 serious indictable offence for which the person has not been tried,and take the person, and any property found upon the person, before an authorised Justice to be dealt with according to law.
- (2) Any constable may without warrant apprehend,
  - (a) any person whom the constable, with reasonable cause, suspects of having committed any such offence,
  - (b) any person lying, or loitering, in any highway, yard, or other place during the night, whom the constable, with reasonable cause, suspects of being about to commit any serious indictable offence,and take the person, and any property found upon the person, 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 or her possession, apprehend any person for whose apprehension for a minor indictable offence a warrant has been issued, and take the person, and any property found upon the person, 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 or her possession, apprehend any person for whose apprehension on any ground (other than a charge of an indictable offence) 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) an authorised officer.

**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) Division 2 of Part 4 of Chapter 4 of the [Criminal Procedure Act 1986](#) 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) an authorised officer.

**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 or she 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 the person to custody, or
    - (ii) admit the person to bail,pending the execution under a law of the Commonwealth of a warrant or provisional warrant for the person's apprehension or the person's 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 or her 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 *Criminal Procedure Act 1986*,

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 the person's apprehension is subsequently presented for execution, the person 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 the person has complied with his or her bail undertaking, a warrant for his or her apprehension is executed under a law of the Commonwealth, the person 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 the person 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 the person's 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 (Repealed)**

#### **353A Power to search person, make medical examination, take photograph, finger-print or palm-print**

- (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 or her 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 or her aid and under his or her 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 the person 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, the person's photograph and finger-prints and palm-prints.

(3A), (3B) (Repealed)

(3C) A reference in this section to lawful custody is a reference to lawful custody of the police or any other authority. If a person is in lawful custody in a place other than a police station, the powers under this section of a constable or an officer of police may be exercised by the person in charge of the place or by another person who is normally supervised by that person.

(3D) The consent of the person in lawful custody is not required for the doing of any thing under this section.

(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) an offence under section 42 of the *Road Transport (Safety and Traffic Management) Act 1999* of driving a motor vehicle on a road or road related area (other than a road or road related area that is the subject of a declaration made under section 9 (1) (b) of the *Road Transport (General) Act 1999*) negligently occasioning death, negligently occasioning grievous bodily harm, furiously or recklessly or at a speed or in a manner that is dangerous to the public,
  - (c) an offence under any of the following provisions of the *Road Transport (Safety and Traffic Management) Act 1999*:
    - (i) section 9 (1), (2) (a) or (b), (3) (a) or (b), (4) (a) or (b), 15 (4) or 16,
    - (ii) section 12 (1) (a) or (b),
    - (iii) section 22 (2),
    - (iv) section 29 (2),
    - (v) section 43,
    - (vi) section 70,
  - (d) an offence prescribed, or of a kind or description prescribed, by the regulations.
- (8) (Repealed)

**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 Local Court,
- 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 Local Court, 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*.

**353AC Taking of finger-prints and palm-prints from persons issued penalty notices**

- (1) A police officer who serves a penalty notice on a person under the *Criminal Procedure Act 1986* may require the person to submit to having his or her finger-prints or palm-prints, or both, taken and may, with the person's consent, take the person's finger-prints or palm-prints, or both.
- (2) A requirement under this section must not be made of a person who is under the age of 18 years and any such person is not required to comply with a requirement under this section.



- (3) The Commissioner of Police must ensure that a finger-print or palm-print taken under this section is destroyed on payment of the penalty under the penalty notice.

**353AD Taking of finger-prints and palm-prints from persons required to attend court**

- (1) A police officer who serves a court attendance notice personally on a person who is not in lawful custody for an offence may require the person to submit to having his or her finger-prints or palm-prints, or both, taken and may, with the person's consent, take the person's finger-prints or palm-prints, or both.
- (2) A requirement under this section must not be made of a person who is under the age of 18 years and any such person is not required to comply with a requirement under this section.

**353AE Safeguards for exercise of powers to obtain finger-prints and palm-prints without arrest**

- (1) A police officer must, at the time of exercising a power to require finger-prints or palm-prints, or both, to be taken under section 353AC or 353AD, provide the person subject to the exercise of the power with the following:
- (a) evidence that the police officer is a police officer (unless the police officer is in uniform),
  - (b) the name of the police officer and his or her place of duty,
  - (c) the reason for the exercise of the power,
  - (d) a warning that, if the person fails to comply with the requirement, the person may be arrested for the offence concerned and that, while in custody, the person's finger-prints and palm-prints may be taken without the person's consent.
- (2) If 2 or more police officers are exercising a power, only one officer present is required to comply with this section.
- (3) However, if a person asks another police officer present for information as to the name of the police officer and his or her place of duty, the police officer must give to the person the information requested.

**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 the person was apprehended any razor, razor blade or other cutting weapon, the person shall, unless the justice before whom the person is brought is satisfied that the person 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 or she 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 or her for the purpose may hold the person so arrested in custody until he or she 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 or she 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 or she 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.

## **Part 10A Detention after arrest for purposes of investigation**

### **354 Objects of Part**

The objects of this Part are:

- (a) to provide for the period of time that a person who is under arrest may be detained by a police officer to enable the investigation of the person's involvement in the commission of an offence, and
- (b) to authorise the detention of a person who is under arrest for such a period despite any requirement imposed by law to bring the person before a Magistrate, authorised officer or other person or court without delay or within a specified period, and
- (c) to provide for the rights of a person so detained.

### **355 Definitions**

(1) In this Part:

**Aboriginal person** means a person who:

- (a) is a member of the Aboriginal race of Australia, and
- (b) identifies as an Aboriginal, and
- (c) is accepted by the Aboriginal community as an Aboriginal.

**authorised justice** means:

- (a) a Magistrate, or

(b) an authorised officer, or

(c) an authorised justice within the meaning of the [Search Warrants Act 1985](#).

**custody manager** means the police officer having from time to time the responsibility for the care, control and safety of a person detained at a police station or other place of detention.

**detention warrant** means a warrant issued under section 356G.

**investigation period** means the period provided for by section 356D.

**permanent Australian resident** means a person resident in Australia whose continued presence in Australia is not subject to any limitation as to time imposed by or in accordance with law.

**person of non-English speaking background** means a person who is born in a country outside Australia and whose first language is not English.

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

**Torres Strait Islander** means a person who:

(a) is a member of the Torres Strait Island race, and

(b) identifies as a Torres Strait Islander, and

(c) is accepted by the Torres Strait Island community as a Torres Strait Islander.

(2) A reference in this Part to a person who is under arrest or a person who is arrested includes a reference to a person who is in the company of a police officer for the purpose of participating in an investigative procedure, if:

(a) the police officer believes that there is sufficient evidence to establish that the person has committed an offence that is or is to be the subject of the investigation, or

(b) the police officer would arrest the person if the person attempted to leave, or

(c) the police officer has given the person reasonable grounds for believing that the person would not be allowed to leave if the person wished to do so.

(3) A person is not taken to be under arrest because of subsection (2) merely because the police officer is exercising a power under a law to detain and search the person or to require the person to provide information or to answer questions.

(4) For the purposes of this Part, a person ceases to be under arrest for an offence if the person is remanded by an authorised officer, Magistrate or court in respect of the offence.

### **356 Persons to whom Part applies**

- (1) This Part applies to a person, including a person under the age of 18 years, who is under arrest by a police officer for an offence. It is immaterial whether the offence concerned was committed before or after the commencement of this Part or within or outside the State.
- (2) This Part does not apply to a person who is detained under the *Intoxicated Persons Act 1979*.

### **356A Modification of application of Part to certain persons**

- (1) The regulations may make provision for or with respect to the modification of the application of this Part to:
  - (a) persons under the age of 18 years, or
  - (b) Aboriginal persons or Torres Strait Islanders, or
  - (c) persons of non-English speaking background, or
  - (d) persons who have a disability (whether physical, intellectual or otherwise).
- (2) Without limiting subsection (1), the regulations may provide for an investigation period for a person or class of persons referred to in that subsection that is shorter than the period provided for by section 356D.

### **356B Effect of Part on other powers and duties**

- (1) **Existing powers relating to arrest and other matters** This Part does not:
  - (a) confer any power to arrest a person, or to detain a person who has not been lawfully arrested, or
  - (b) prevent a police officer from asking or causing a person to do a particular thing that the police officer is authorised by law to ask or cause the person to do (for example, the power to require a person to submit to a breath analysis under Division 3 of Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999*), or
  - (c) independently confer power to carry out an investigative procedure.
- (2) **Certain evidentiary matters and rights not affected** Nothing in this Part affects:
  - (a) the operation of:
    - (i) the following provisions of the *Evidence Act 1995*:
      - section 84 (Exclusion of admissions influenced by violence and certain other conduct)

- section 85 (Criminal proceedings: reliability of admissions by defendants)
  - section 90 (Discretion to exclude admissions)
  - section 138 (Discretion to exclude improperly or illegally obtained evidence)
  - section 139 (Cautioning of persons), or
- (ii) any other provision of that Act, or
- (b) any law that permits or requires a person to be present at the questioning of another person who is under arrest (for example, the presence of a parent at the questioning by a police officer of the parent's child), or
- (c) the right of a person to refuse to participate in any questioning of the person or any other investigative procedure unless the person is required by law to do so, or
- (d) the right of a person to leave police custody if the person is not under arrest, or
- (e) the rights of a person under the [Bail Act 1978](#).

### **356C Detention after arrest for purposes of investigation**

- (1) A police officer may in accordance with this section detain a person, who is under arrest, for the investigation period provided for by section 356D.
- (2) A police officer may so detain a person for the purpose of investigating whether the person committed the offence for which the person is arrested.
- (3) If, while a person is so detained, the police officer forms a reasonable suspicion as to the person's involvement in the commission of any other offence, the police officer may also investigate the person's involvement in that other offence during the investigation period for the arrest. It is immaterial whether that other offence was committed before or after the commencement of this Part or within or outside the State.
- (4) The person must be:
- (a) released (whether unconditionally or on bail) within the investigation period, or
  - (b) be brought before a Magistrate, authorised officer or other person or court within that period, or if it is not practicable to do so within that period, as soon as practicable after the end of that period.
- (5) A requirement in another Part of this Act, the [Criminal Procedure Act 1986](#), the [Bail Act 1978](#) or any other relevant law that a person who is under arrest be taken before a Magistrate, authorised officer or other person or court, without delay, or within a specified period, is affected by this Part only to the extent that the extension of the period within which the person is to be brought before such a Magistrate, authorised

officer or other person or court is authorised by this Part.

- (6) If a person is arrested more than once within any period of 48 hours, the investigation period for each arrest, other than the first, is reduced by so much of any earlier investigation period or periods as occurred within that 48 hour period.
- (7) The investigation period for an arrest (the **earlier arrest**) is not to reduce the investigation period for a later arrest if the later arrest relates to an offence that the person is suspected of having committed after the person was released, or taken before a Magistrate, authorised officer or other person or court, in respect of the earlier arrest.

### **356D Investigation period**

- (1) The investigation period is a period that begins when the person is arrested and ends at a time that is reasonable having regard to all the circumstances, but does not exceed the maximum investigation period.
- (2) The maximum investigation period is 4 hours or such longer period as the maximum investigation period may be extended to by a detention warrant.

### **356E Determining reasonable time**

- (1) In determining what is a reasonable time for the purposes of section 356D (1), all the relevant circumstances of the particular case must be taken into account.
- (2) Without limiting the relevant circumstances that must be taken into account, the following circumstances (if relevant) are to be taken into account:
  - (a) the person's age, physical capacity and condition and mental capacity and condition,
  - (b) whether the presence of the person is necessary for the investigation,
  - (c) the number, seriousness and complexity of the offences under investigation,
  - (d) whether the person has indicated a willingness to make a statement or to answer any questions,
  - (e) the time taken for police officers connected with the investigation (other than police officers whose particular knowledge of the investigation, or whose particular skills, are necessary to the investigation) to attend at the place where the person is being detained,
  - (f) whether a police officer reasonably requires time to prepare for any questioning of the person,
  - (g) the time required for facilities for conducting investigative procedures in which the person is to participate (other than facilities for complying with section 281 of the

*Criminal Procedure Act 1986*) to become available,

- (h) the number and availability of other persons who need to be questioned or from whom statements need to be obtained,
  - (i) the need to visit the place where any offence concerned is believed to have been committed or any other place reasonably connected with the investigation of any such offence,
  - (j) the time during which the person is in the company of a police officer before and after the person is arrested,
  - (k) the time taken to complete any searches or other investigative procedures that are reasonably necessary to the investigation (including any search of the person or any other investigative procedure in which the person is to participate),
  - (l) the time required to carry out any other activity that is reasonably necessary for the proper conduct of the investigation.
- (3) In any criminal proceedings in which the reasonableness of any period of time that a person was detained under this Part is at issue, the burden lies on the prosecution to prove on the balance of probabilities that the period of time was reasonable.

**356F Certain times to be disregarded in calculating investigation period**

- (1) The following times (to the extent that those times are times during which any investigative procedure in which a person who is detained under this Part is to participate is reasonably suspended or deferred) are not to be taken into account in determining how much of an investigation period has elapsed:
- (a) any time that is reasonably required to convey the person from the place where the person is arrested to the nearest premises where facilities are available for conducting investigative procedures in which the person is to participate,
  - (b) any time that is reasonably spent waiting for the arrival at the place where the person is being detained of police officers, or any other persons prescribed by the regulations, whose particular knowledge of the investigation, or whose particular skills, are necessary to the investigation,
  - (c) any time that is reasonably spent waiting for facilities for complying with section 281 of the *Criminal Procedure Act 1986* to become available,
  - (d) any time that is required to allow the person (or someone else on the person's behalf) to communicate with a friend, relative, guardian, independent person, legal practitioner or consular official,
  - (e) any time that is required to allow such a friend, relative, guardian, independent person, legal practitioner or consular official to arrive at the place where the

person is being detained,

- (f) any time that is required to allow the person to consult at the place where the person is being detained with such a friend, relative, guardian, independent person, legal practitioner or consular official,
- (g) any time that is required to arrange for and to allow the person to receive medical attention,
- (h) any time that is required to arrange for the services of an interpreter for the person and to allow the interpreter to arrive at the place where the person is being detained or become available by telephone for the person,
- (i) any time that is reasonably required to allow for an identification parade to be arranged and conducted,
- (j) any time that is required to allow the person to rest or receive refreshments or to give the person access to toilet and other facilities as referred to in section 356U,
- (k) any time that is required to allow the person to recover from the effects of intoxication due to alcohol or another drug (or both),
- (l) any time that is reasonably required to prepare, make and dispose of any application for a detention warrant or any application for a search warrant that relates to the investigation,
- (m) any time that is reasonably required to carry out charging procedures in respect of the person.

- (2) In any criminal proceedings in which the question of whether any particular time was a time that was not to be taken into account because of this section is at issue, the burden lies on the prosecution to prove on the balance of probabilities that the particular time was a time that was not to be taken into account.

**356FA No person may be detained for period of time that is not reasonable**

- (1) Nothing in this Part authorises the detention of any person for a continuous period of time that is not reasonable having regard to all the circumstances of the case.
- (2) Without limiting subsection (1), the following periods of time are to be taken into account in determining whether a person has been detained for a continuous period of time that is not reasonable:
  - (a) such of the periods of time referred to in section 356F (1) as are relevant.

**356G Detention warrant to extend investigation period**

- (1) A police officer may, before the end of the investigation period, apply to an authorised justice for a warrant to extend the maximum investigation period beyond 4 hours.



- (2) The person to whom an application for a detention warrant relates, or the person's legal representative, may make representations to the authorised justice about the application.
- (3) The authorised justice may issue a warrant that extends the maximum investigation period by up to 8 hours.
- (4) The maximum investigation period cannot be extended more than once.
- (5) An authorised justice must not issue a warrant to extend the maximum investigation period unless satisfied that:
  - (a) the investigation is being conducted diligently and without delay, and
  - (b) a further period of detention of the person to whom the application relates is reasonably necessary to complete the investigation, and
  - (c) there is no reasonable alternative means of completing the investigation otherwise than by the continued detention of the person, and
  - (d) circumstances exist in the matter that make it impracticable for the investigation to be completed within the 4-hour period.

**356H Procedure for applying for and issuing detention warrant**

- (1) An application for a detention warrant may be made by the applicant in person or by telephone.
- (2) An application for a detention warrant made in person must be made in writing in the form prescribed by the regulations. The authorised justice must not issue the detention warrant unless the information given by the applicant in or in connection with the application is verified before the authorised justice on oath or affirmation or by affidavit. An authorised justice may administer an oath or affirmation or take an affidavit for the purposes of an application for a detention warrant.
- (3) An authorised justice must not issue a detention warrant on an application made by telephone unless satisfied that the warrant is required urgently and that it is not practicable for the application to be made in person. An application for a detention warrant made by telephone must be made by facsimile (instead of orally) if the facilities to do so are readily available for that purpose.
- (4) If it is not practicable for an application made by telephone to be made directly to an authorised justice, the application may be transmitted to the authorised justice by another person on behalf of the applicant.
- (5) An authorised justice who issues a detention warrant on an application made by telephone must:

- (a) complete and sign the warrant, and
  - (b) furnish the warrant to the person who made the application or inform that person of the terms of the warrant and of the date and time when it was signed.
- (6) If a detention warrant is issued on an application made by telephone and the applicant was not furnished with the warrant, the applicant is to complete a form of detention warrant in the terms indicated by the authorised justice under subsection (5) and write on it the name of that authorised justice and the date and time when the warrant was signed. A form of detention warrant so completed is taken to be a detention warrant issued in accordance with this section.
- (7) A detention warrant issued on an application made by telephone is to be furnished by the authorised justice by transmitting it by facsimile, if the facilities to do so are readily available. The copy produced by that transmission is taken to be the original document.
- (8) As soon as practicable after a detention warrant is issued, the custody manager for the person to whom the warrant relates:
- (a) must give the person a copy of the warrant, and
  - (b) must orally inform the person of the nature of the warrant and its effect.
- (9) In the case of an application for a detention warrant made by telephone, the applicant for the warrant must, within one day after the day on which the warrant is issued, give or transmit to the authorised justice concerned an affidavit setting out the information on which the application was based that was given to the authorised justice when the application was made.
- (10) In any criminal proceedings, the burden lies on the prosecution to prove on the balance of probabilities that the warrant was issued.
- (11) In this section, **facsimile** includes any electronic communication device that transmits information in a form from which written material is capable of being reproduced with or without the aid of any other device or article.

### **356I Information in application for detention warrant**

- (1) An authorised justice must not issue a detention warrant unless the application for the warrant includes the following information:
- (a) the nature of any offence under investigation,
  - (b) the general nature of the evidence on which the person to whom the application relates was arrested,
  - (c) what investigation has taken place and what further investigation is proposed,

- (d) the reasons for believing that the continued detention of the person is reasonably necessary to complete the investigation,
  - (e) the extent to which the person is co-operating in the investigation,
  - (f) if a previous application for the same, or substantially the same, warrant was refused, details of the previous application and of the refusal and any additional information required by section 356j,
  - (g) any other information required by the regulations.
- (2) The applicant must provide (either orally or in writing) such further information as the authorised justice requires concerning the grounds on which the detention warrant is being sought.
- (3) Nothing in this section requires an applicant for a detention warrant to disclose the identity of a person from whom information was obtained if the applicant is satisfied that to do so might jeopardise the safety of any person.

**356J Further application for detention warrant after refusal**

If an application by a person for a detention warrant is refused by an authorised justice, that person (or any other person who is aware of the application) may not make a further application for the same, or substantially the same, warrant to that or any other authorised justice unless the further application provides additional information that justifies the making of the further application.

**356K (Repealed)**

**356L Provisions relating to detention warrants**

- (1) An authorised justice who issues a detention warrant is to cause a record to be made of all relevant particulars of the grounds the authorised justice has relied on to justify the issue of the warrant.
- (2) The regulations may make provision for or with respect to:
- (a) the keeping of records in connection with the issue and execution of detention warrants, and
  - (b) the inspection of any such records, and
  - (c) any other matter in connection with any such records.
- (3) Any matter that might disclose the identity of a person must not be recorded under this section if the authorised justice is satisfied that to do so might jeopardise the safety of any person.
- (4) A detention warrant must be in the form prescribed by the regulations.

- (5) A detention warrant is not invalidated by any defect other than a defect that affects the substance of the warrant in a material particular.

**356M Custody manager to caution, and give summary of Part to, detained person**

- (1) As soon as practicable after a person who is detained under this Part comes into custody at a police station or other place of detention, the custody manager for the person must orally and in writing:
- (a) caution the person that the person does not have to say or do anything but that anything the person does say or do may be used in evidence, and
  - (b) give the person a summary of the provisions of this Part that is to include reference to the fact that the maximum investigation period may be extended beyond 4 hours by application made to an authorised justice and that the person, or the person's legal representative, may make representations to the authorised justice about the application.
- (2) The giving of a caution under subsection (1) (a) does not affect a requirement of any law that a person answer questions put by, or do things required by, a police officer.
- (3) After being given the information referred to in subsection (1) orally and in writing, the person is to be requested to sign an acknowledgment that the information has been so given.

**356N Right to communicate with friend, relative, guardian or independent person and legal practitioner**

- (1) Before any investigative procedure in which a person who is detained under this Part is to participate starts, the custody manager for the person must inform the person orally and in writing that he or she may:
- (a) communicate, or attempt to communicate, with a friend, relative, guardian or independent person:
    - (i) to inform that person of the detained person's whereabouts, and
    - (ii) if the detained person wishes to do so, to ask the person communicated with to attend at the place where the person is being detained to enable the detained person to consult with the person communicated with, and
  - (b) communicate, or attempt to communicate, with a legal practitioner of the person's choice and ask that legal practitioner to do either or both of the following:
    - (i) attend at the place where the person is being detained to enable the person to consult with the legal practitioner,
    - (ii) be present during any such investigative procedure.

- (2) If the person wishes to make any communication referred to in subsection (1), the custody manager must, as soon as practicable:
  - (a) give the person reasonable facilities to enable the person to do so, and
  - (b) allow the person to do so in circumstances in which, so far as is practicable, the communication will not be overheard.
- (3) The custody manager must defer for a reasonable period any investigative procedure in which the person is to participate:
  - (a) to allow the person to make, or attempt to make, a communication referred to in subsection (1), and
  - (b) if the person has asked any person so communicated with to attend at the place where the person is being detained:
    - (i) to allow the person communicated with to arrive at that place, and
    - (ii) to allow the person to consult with the person communicated with at that place.
- (4) If the person has asked a friend, relative, guardian or independent person communicated with to attend at the place where the person is being detained, the custody manager must allow the person to consult with the friend, relative, guardian or independent person in private and must provide reasonable facilities for that consultation.
- (5) If the person has asked a legal practitioner communicated with to attend at the place where the person is being detained, the custody manager must:
  - (a) allow the person to consult with the legal practitioner in private and must provide reasonable facilities for that consultation, and
  - (b) if the person has so requested, allow the legal practitioner to be present during any such investigative procedure and to give advice to the person.
- (6) Anything said by the legal practitioner during any such investigative procedure is to be recorded and form part of the formal record of the investigation.
- (7) An investigative procedure is not required to be deferred under subsection (3) (b) (i) for more than 2 hours to allow a friend, relative, guardian, independent person or legal practitioner that the person has communicated with to arrive at the place where the person is being detained.
- (8) An investigative procedure is not required to be deferred to allow the person to consult with a friend, relative, guardian, independent person or legal practitioner who does not arrive at the place where the person is being detained within 2 hours after

the person communicated with the friend, relative, guardian, independent person or legal practitioner. This does not affect the requirement to allow a legal practitioner to be present during an investigative procedure and to give advice to the person.

- (9) The duties of a custody manager under this section owed to a person who is detained under this Part and who is not an Australian citizen or a permanent Australian resident are in addition to the duties of the custody manager owed to the person under section 356O.
- (10) After being informed orally and in writing of his or her rights under this section, the person is to be requested to sign an acknowledgment that he or she has been so informed.

**356O Right of foreign national to communicate with consular official**

- (1) This section applies to a person who is detained under this Part and who is not an Australian citizen or a permanent Australian resident.
- (2) Before any investigative procedure in which a person to whom this section applies is to participate starts, the custody manager for the person must inform the person orally and in writing that he or she may:
  - (a) communicate, or attempt to communicate, with a consular official of the country of which the person is a citizen, and
  - (b) ask the consular official to attend at the place where the person is being detained to enable the person to consult with the consular official.
- (3) If the person wishes to communicate with such a consular official, the custody manager must, as soon as practicable:
  - (a) give the person reasonable facilities to enable the person to do so, and
  - (b) allow the person to do so in circumstances in which, so far as is practicable, the communication will not be overheard.
- (4) The custody manager must defer for a reasonable period any investigative procedure in which the person is to participate:
  - (a) to allow the person to make, or attempt to make, the communication referred to in subsection (2), and
  - (b) if the person has asked any consular official so communicated with to attend at the place where the person is being detained:
    - (i) to allow the consular official to arrive at that place, and
    - (ii) to allow the person to consult with the consular official.

- (5) If the person has asked a consular official communicated with to attend at the place where the person is being detained, the custody manager must allow the person to consult with the consular official in private and must provide reasonable facilities for that consultation.
- (6) An investigative procedure is not required to be deferred under subsection (4) (b) (i) for more than 2 hours to allow a consular official that the person has communicated with to arrive at the place where the person is being detained.
- (7) An investigative procedure is not required to be deferred to allow the person to consult with a consular official who does not arrive at the place where the person is being detained within 2 hours after the person communicated with the consular official.
- (8) After being informed orally and in writing of his or her rights under this section, the person is to be requested to sign an acknowledgment that he or she has been so informed.
- (9) This section does not apply if the custody manager did not know, and could not reasonably be expected to have known, that the person is not an Australian citizen or a permanent Australian resident.

**356P Circumstances in which certain requirements need not be complied with**

- (1) A requirement imposed on a custody manager under section 356N relating to a friend, relative, guardian or independent person need not be complied with if the custody manager believes on reasonable grounds that doing so is likely to result in:
  - (a) an accomplice of the person who is detained under this Part avoiding arrest, or
  - (b) the concealment, fabrication, destruction or loss of evidence or the intimidation of a witness, or
  - (c) hindering the recovery of any person or property concerned in the offence under investigation, or
  - (d) bodily injury being caused to any other person.
- (2) Further, in the case of a requirement that relates to the deferral of an investigative procedure, a requirement imposed on a custody manager under section 356N relating to a friend, relative, guardian or independent person need not be complied with if the custody manager believes on reasonable grounds that the investigation is so urgent, having regard to the safety of other persons, that the investigative procedure should not be deferred.

**356Q Provision of information to friend, relative or guardian**

- (1) The custody manager for a person who is detained under this Part must inform the

person orally of any request for information as to the whereabouts of the person made by a person who claims to be a friend, relative or guardian of the detained person.

- (2) The custody manager must provide, or arrange for the provision of, that information to the person who made the request unless:
- (a) the detained person does not agree to that information being provided, or
  - (b) the custody manager believes on reasonable grounds that the person requesting the information is not a friend, relative or guardian of the detained person, or
  - (c) the custody manager believes on reasonable grounds that doing so is likely to result in:
    - (i) an accomplice of the detained person avoiding arrest, or
    - (ii) the concealment, fabrication, destruction or loss of evidence or the intimidation of a witness, or
    - (iii) hindering the recovery of any person or property concerned in the offence under investigation, or
    - (iv) bodily injury being caused to any other person.

**356R Provision of information to certain other persons**

- (1) The custody manager for a person who is detained under this Part must inform the person orally of any request for information as to the whereabouts of the person made by a person who claims to be:
- (a) a legal practitioner representing the detained person, or
  - (b) in the case of a detained person who is not an Australian citizen or a permanent Australian resident, a consular official of the country of which the detained person is a citizen, or
  - (c) a person (other than a friend, relative or guardian of the detained person) who is in his or her professional capacity concerned with the welfare of the detained person.
- (2) The custody manager must provide, or arrange for the provision of, that information to the person who made the request unless:
- (a) the detained person does not agree to that information being provided, or
  - (b) the custody manager believes on reasonable grounds that the person requesting the information is not the person who he or she claims to be.



### **356S Provision of interpreter**

- (1) The custody manager for a person who is detained under this Part must arrange for an interpreter to be present for the person in connection with any investigative procedure in which the person is to participate if the custody manager has reasonable grounds for believing that the person is unable:
  - (a) because of inadequate knowledge of the English language, to communicate with reasonable fluency in English, or
  - (b) because of any disability, to communicate with reasonable fluency.
- (2) The custody manager must ensure that any such investigative procedure is deferred until the interpreter arrives.
- (3) However, the custody manager need not:
  - (a) arrange for an interpreter to be present if the custody manager believes on reasonable grounds that the difficulty of obtaining an interpreter makes compliance with the requirement not reasonably practicable, or
  - (b) defer any such investigative procedure if the custody manager believes on reasonable grounds that the urgency of the investigation, having regard to the safety of other persons, makes such deferral unreasonable.
- (4) If an interpreter is not available to be present for the person in connection with any investigative procedure in which the person is to participate, the custody manager must instead arrange for a telephone interpreter for the person.
- (5) The custody manager must ensure that any such investigative procedure is deferred until a telephone interpreter is available.
- (6) However, the custody manager need not:
  - (a) arrange for a telephone interpreter if the custody manager believes on reasonable grounds that the difficulty of obtaining such an interpreter makes compliance with the requirement not reasonably practicable, or
  - (b) defer any such investigative procedure if the custody manager believes on reasonable grounds that the urgency of the investigation, having regard to the safety of other persons, makes such deferral unreasonable.

### **356T Right to medical assistance**

The custody manager for a person who is detained under this Part must arrange immediately for the person to receive medical attention if it appears to the custody manager that the person requires medical attention or the person requests it on grounds that appear reasonable to the custody manager.

**356U Right to reasonable refreshments and facilities**

- (1) The custody manager for a person who is detained under this Part must ensure that the person is provided with reasonable refreshments and reasonable access to toilet facilities.
- (2) The custody manager for a person who is detained under this Part must ensure that the person is provided with facilities to wash, shower or bathe and (if appropriate) to shave if:
  - (a) it is reasonably practicable to provide access to such facilities, and
  - (b) the custody manager is satisfied that the investigation will not be hindered by providing the person with such facilities.

**356V Custody records to be maintained**

- (1) The custody manager for a person who is detained under this Part must open a custody record in the form prescribed by the regulations for the person.
- (2) The custody manager must record the following particulars in the custody record for the person:
  - (a) the date and time:
    - (i) the person arrived at the police station or other place where the custody manager is located, and
    - (ii) the person came into the custody manager's custody,
  - (b) the name and rank of the arresting officer and any accompanying officers,
  - (c) the grounds for the person's detention,
  - (d) details of any property taken from the person,
  - (e) if the person participates in any investigative procedure, the time the investigative procedure started and ended,
  - (f) details of any period of time that is not to be taken into account under section 356F (Certain times to be disregarded in calculating investigation period),
  - (g) if the person is denied any rights under this Part, the reason for the denial of those rights and the time when the person was denied those rights,
  - (h) the date and time of, and reason for, the transfer of the person to the custody of another police officer,
  - (i) details of any application for a detention warrant and the result of any such application,

- (j) if a detention warrant is issued in respect of the person, the date and time a copy of the warrant was given to the person and the person was informed of the nature of the warrant and its effect,
  - (k) the date and time the person is released from detention,
  - (l) any other particulars prescribed by the regulations.
- (3) The custody manager is responsible for the accuracy and completeness of the custody record for the person and must ensure that the custody record (or a copy of it) accompanies the person if the person is transferred to another location for detention.
- (4) The recording of any matters referred to in this section must be made contemporaneously with the matter recorded in so far as it is practicable to do so.
- (5) As soon as practicable after the person is released or taken before a Magistrate, authorised officer or other person or court, the custody manager must ensure that a copy of the person's custody record is given to the person.

**356W Detention after arrest for purposes of investigation may count towards sentence**

In passing sentence on a person convicted of an offence, a court may take into account any period during which the person was detained under this Part in respect of the offence and may reduce the sentence it would otherwise have passed.

**356X Regulations**

- (1) (Repealed)
- (2) The regulations may make provision for or with respect to the following:
  - (a) guidelines to be observed by police officers regarding the exercise or performance of powers, authorities, duties or functions conferred or imposed on police officers (including custody managers) by this Part,
  - (b) police officers who may act as custody managers,
  - (c) the keeping of records relating to persons who are detained under this Part, including the formal record of the conduct of investigative procedures in which such persons participate.

**356Y Review of Part**

- (1) The Minister is to review this Part to determine whether the policy objectives of the Part remain valid and whether the terms of the Part remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 12 months from

the commencement of this Part.

- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period referred to in subsection (2).

## **Part 10B Powers of search, powers of entry and discharge of persons in custody**

### **Division 1 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 *Weapons Prohibition Act 1998*, the *Firearms Act 1996* 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 1996*) 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 1996*), a spare barrel for any such firearm, or any ammunition for any such firearm, or
  - (a1) a prohibited weapon within the meaning of the *Weapons Prohibition Act 1998*, 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 or she is the commander of the aircraft, or
  - (b) a Magistrate or an authorised officer, on the basis of that suspicion, authorises the person in writing so to do,he or she 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 or she 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 or she 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 or she 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 or she 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.

## **Division 2 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](#).

### **357EB (Repealed)**

## **Division 3 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 Magistrate includes a reference to an authorised officer.
- (2) (Repealed)
- (3) Upon complaint made by a member of the police force to a 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 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 Magistrate in person or by telephone and may be made directly to the 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 Magistrate by a member of the police force who causes the complaint to be transmitted by another member of the police force to the Magistrate does not, if the 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 Magistrate being satisfied as to the matters referred to in subsection (3).
- (6) A Magistrate grants a warrant under subsection (3) by stating the terms of the warrant.
- (7) Where a Magistrate grants a warrant under subsection (3), the Magistrate shall cause a record to be made in writing in a form prescribed by the regulations 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 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 the regulations shall be made containing the following details:
- (a) the address of the dwelling-house the subject of the warrant,
  - (b) the name of the 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 the regulations 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 the regulations,
  - (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 the regulations.

(14) (Repealed)

**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](#).

### **358, 358A (Repealed)**

## **Division 4 Disposal of property in the custody of the police**

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

(1) If a dangerous article is seized and detained under section 357, 357H or 357I, a Local Court 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 1996](#), 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)

## **Division 5 Offence relating to escaped prisoners**

### **358C Harboursing escapee from another State or Territory**

Any person who, in this State, knowingly harbours, maintains or employs a prisoner who has escaped from lawful custody in another State or a Territory is liable to imprisonment for 3 years.

## **Part 11 Criminal responsibility—defences**

### **Division 1 Preliminary**

#### **359-407AA (Repealed)**

#### **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](#).

#### **408-416 (Repealed)**

### **Division 2 Lawful authority or excuse**

#### **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.

#### **417A Proof of exceptions**

- (1) Any exception, exemption, proviso, excuse or qualification to the offence (whether or not it is in the same provision with a description of an offence in an Act or statutory rule or document creating the offence) need not be specified or negated in an indictment or other process commencing proceedings.
- (2) The exception, exemption, proviso, excuse or qualification may be proved by the accused person.
- (3) If the exception, exemption, proviso, excuse or qualification is specified or negated in the indictment, court attendance notice or other process commencing proceedings,

the prosecutor is not required to prove it.

### **Division 3 Self-defence**

#### **418 Self-defence—when available**

- (1) A person is not criminally responsible for an offence if the person carries out the conduct constituting the offence in self-defence.
- (2) A person carries out conduct in self-defence if and only if the person believes the conduct is necessary:
  - (a) to defend himself or herself or another person, or
  - (b) to prevent or terminate the unlawful deprivation of his or her liberty or the liberty of another person, or
  - (c) to protect property from unlawful taking, destruction, damage or interference, or
  - (d) to prevent criminal trespass to any land or premises or to remove a person committing any such criminal trespass,and the conduct is a reasonable response in the circumstances as he or she perceives them.

#### **419 Self-defence—onus of proof**

In any criminal proceedings in which the application of this Division is raised, the prosecution has the onus of proving, beyond reasonable doubt, that the person did not carry out the conduct in self-defence.

#### **420 Self-defence—not available if death inflicted to protect property or trespass to property**

This Division does not apply if the person uses force that involves the intentional or reckless infliction of death only:

- (a) to protect property, or
- (b) to prevent criminal trespass or to remove a person committing criminal trespass.

#### **421 Self-defence—excessive force that inflicts death**

- (1) This section applies if:
  - (a) the person uses force that involves the infliction of death, and
  - (b) the conduct is not a reasonable response in the circumstances as he or she perceives them,but the person believes the conduct is necessary:

(c) to defend himself or herself or another person, or

(d) to prevent or terminate the unlawful deprivation of his or her liberty or the liberty of another person.

(2) The person is not criminally responsible for murder but, on a trial for murder, the person is to be found guilty of manslaughter if the person is otherwise criminally responsible for manslaughter.

#### **422 Self-defence—response to lawful conduct**

This Division is not excluded merely because:

(a) the conduct to which the person responds is lawful, or

(b) the other person carrying out the conduct to which the person responds is not criminally responsible for it.

#### **423 Offences to which Division applies**

(1) This Division applies to offences committed before or after the commencement of this Division, except as provided by this section.

(2) This Division does not apply to an offence if proceedings for the offence (other than committal proceedings) were instituted before the commencement of this Division.

#### **424-428 (Repealed)**

### **Part 11A Intoxication**

#### **428A Definitions**

In this Part:

**drug** includes a drug within the meaning of the [Drug Misuse and Trafficking Act 1985](#) and a poison, restricted substance or drug of addiction within the meaning of the [Poisons Act 1966](#).

**intoxication** means intoxication because of the influence of alcohol, a drug or any other substance.

**offence** includes an attempt to commit the offence.

**offence of specific intent** is defined in section 428B.

**relevant conduct** means an act or omission necessary to constitute the actus reus of an offence.

**self-induced intoxication** means any intoxication except intoxication that:

- (a) is involuntary, or
- (b) results from fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force, or
- (c) results from the administration of a drug for which a prescription is required in accordance with the prescription of a medical practitioner, a person authorised under the *Nurses Act 1991* to practise as a nurse practitioner, or dentist, or of a drug for which no prescription is required administered for the purpose, and in accordance with the dosage level recommended, in the manufacturer's instructions.

**428B Offences of specific intent to which Part applies**

- (1) An **offence of specific intent** is an offence of which an intention to cause a specific result is an element.
- (2) Without limiting the generality of subsection (1), the offences referred to in the Table to this section are examples of offences of specific intent.

**Table**

(a) an offence under the following provisions of this Act:

19A	Murder
27	Acts done to the person with intent to murder
28	Acts done to property with intent to murder
29	Certain other attempts to murder
30	Attempts to murder by other means
33	Wounding etc, with intent to do bodily harm or resist arrest
33A	Discharging loaded arms with intent
33B	Use of weapon to resist arrest etc
36	Causing a grievous bodily disease
37	Attempts to choke etc (garrotting)
38	Using chloroform etc to commit an offence
41	Administering poison etc with intent to injure or annoy
41A	Poisoning etc of water supply
47	Using etc explosive substance or corrosive fluid etc
48	Placing gunpowder near a building etc
49	Setting trap etc



55	Possessing etc gunpowder etc with intent to injure the person
61K	Assault with intent to have sexual intercourse
82	Administering drugs etc to herself by woman with child
83	Administering drugs etc to woman with intent
86	Kidnapping
87	Child abduction
99	Demanding money with intent to steal
100A	Blackmail by threat to publish etc
101	Threatening letters
102	Accusing or threatening to accuse of crime to extort money etc
103	Causing a person by violence or threats to execute deeds etc
110	Breaking, entering and assaulting with intent to murder etc
111	Entering dwelling-house
113	Breaking etc into any house etc with intent to commit serious indictable offence
114 (a) (c) (d)	Being armed etc with intent to commit offence
158	Destruction, falsification of accounts etc by clerk or servant
172	Trustees fraudulently disposing of property
174	Directors etc omitting certain entries
175	Director etc wilfully destroying etc books of company etc
176	Director or officer publishing fraudulent statements
178BB	Obtaining money etc by false or misleading statements
179	False pretences etc
180	Causing payment etc by false pretences etc
181	False pretence of title
184	Fraudulent personation
185	Inducing persons by fraud to execute instruments
190	Receiving etc cattle unlawfully killed, or carcass etc

196	Maliciously destroying or damaging property with intent to injure a person
198	Maliciously destroying or damaging property with the intention of endangering life
199	Threatening to destroy or damage property
200	Possession, custody or control of an article with intent to destroy or damage property
202 (c)	Interfering or damaging etc bed or bank of river with intent of obstructing etc navigation
205	Prejudicing the safe operation of an aircraft or vessel
210 (b)	Acting with intention of destroying etc aids to navigation
211	Criminal acts relating to railways
249C	Misleading documents or statements used or made by agents
249D	Corrupt inducements for advice
298	Demanding property on forged instruments
300	Making or using false instruments
301	Making or using copies of false instruments
302	Custody of false instruments etc
302A	Making or possession of implements for making false instruments
314	False accusations etc
315	Hindering investigation etc
317	Tampering etc with evidence
318	Making or using false official instrument to pervert the course of justice
319	General offence of perverting the course of justice
321 (1)	Corruption of witnesses and jurors
322	Threatening or intimidating judges, witnesses, jurors etc
323	Influencing witnesses and jurors
328	Perjury with intent to procure conviction or acquittal
333 (2)	Subornation of perjury

(b) an offence under the following provisions of this Act to the extent that an element of

the offence requires a person to intend to cause the specific result necessary for the offence:

57	(assault on persons preserving wreck)
58	(assault with intent to commit serious indictable offence on certain officers)
66B	(assaulting with intent to have sexual intercourse with child under 10)
66D	(assaulting with intent to have sexual intercourse with child between 10 and 16)
78I	(assault with intent to have homosexual intercourse with male under 10)
78L	(assault with intent to have homosexual intercourse with male between 10 and 18)
78O	(assault with intent to have homosexual intercourse with pupil etc)
91	(taking child with intent to steal)
94	(assault with intent to rob person)
95	(assault with intent to rob in circumstances of aggravation)
96	(assault with intent to rob with wounding)
97	(assault with intent to rob with arms)
98	(assault with intent to rob)
109	(entering with intent, or stealing etc in dwelling-house and breaking out)
126	(killing with intent to steal)
139	(destroys, damages, breaks with intent to steal)
140	(destroys, damages, breaks with intent to steal)
197	(dishonestly destroying or damaging property with a view to gain)
204	(destruction of, or damage to, an aircraft or vessel with intent)

(c) any other offence by or under any law (including the common law) prescribed by the regulations.

#### **428C Intoxication in relation to offences of specific intent**

(1) Evidence that a person was intoxicated (whether by reason of self-induced intoxication or otherwise) at the time of the relevant conduct may be taken into

account in determining whether the person had the intention to cause the specific result necessary for an offence of specific intent.

- (2) However, such evidence cannot be taken into account if the person:
- (a) had resolved before becoming intoxicated to do the relevant conduct, or
  - (b) became intoxicated in order to strengthen his or her resolve to do the relevant conduct.

**428D Intoxication in relation to other offences**

In determining whether a person had the mens rea for an offence other than an offence of specific intent, evidence that a person was intoxicated at the time of the relevant conduct:

- (a) if the intoxication was self-induced—cannot be taken into account, or
- (b) if the intoxication was not self-induced—may be taken into account.

**428E Intoxication in relation to murder and manslaughter**

If evidence of intoxication at the time of the relevant conduct results in a person being acquitted of murder:

- (a) in the case of intoxication that was self-induced—evidence of that intoxication cannot be taken into account in determining whether the person had the requisite mens rea for manslaughter, or
- (b) in the case of intoxication that was not self-induced—evidence of that intoxication may be taken into account in determining whether the person had the requisite mens rea for manslaughter.

**428F Intoxication in relation to the reasonable person test**

If, for the purposes of determining whether a person is guilty of an offence, it is necessary to compare the state of mind of the person with that of a reasonable person, the comparison is to be made between the conduct or state of mind of the person and that of a reasonable person who is not intoxicated.

**428G Intoxication and the actus reus of an offence**

- (1) In determining whether a person has committed an offence, evidence of self-induced intoxication cannot be taken into account in determining whether the relevant conduct was voluntary.
- (2) However, a person is not criminally responsible for an offence if the relevant conduct resulted from intoxication that was not self-induced.

#### **428H Abolition of common law relating to self-induced intoxication**

The common law relating to the effect of intoxication on criminal liability is abolished.

#### **428I Application of Part**

This Part applies to any offence (whether under this Act or otherwise) committed after the commencement of this Part.

#### **428J-428YB (Repealed)**

### **Part 11B**

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

### **Part 12 Sentences**

#### **429, 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 imprisonment 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 imprisonment for life for any offence to which this section applies except for the offence of murder, for an offence under 61JA

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 imprisonment for life, that offence is punishable by imprisonment 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 imprisonment for life to imprisonment 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) (Repealed)

#### **431B-447B (Repealed)**

### **Part 13**

#### **448-474 (Repealed)**

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

#### **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*.

**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*.
- (3) In this Part, a reference to a review of, or an inquiry into, a conviction or sentence includes a reference to a review of, or an inquiry into, any aspect of the proceedings giving rise to the conviction or sentence.

## **Division 2 Petitions to Governor**

### **474B Petitions to Governor**

A petition for a review of a conviction or sentence 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 sentence, 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:
    - (i) has been fully dealt with in the proceedings giving rise to the conviction or sentence (or in any proceedings on appeal from the conviction or sentence), or
    - (ii) has previously been dealt with under this Part or under the repealed provisions, or

(iii) has been the subject of a right of appeal (or a right to apply for leave to appeal) by the convicted person but no such appeal or application has been made, or

(iv) has been the subject of appeal proceedings commenced by or on behalf of the convicted person (including proceedings on an application for leave to appeal) where the appeal or application has been withdrawn or the proceedings have been allowed to lapse, and

(b) the Governor or the Minister is not satisfied that there are special facts or special circumstances that justify the taking of further action.

(3A) The Governor or the Minister may defer consideration of a petition if:

(a) the time within which an appeal may be made against the conviction or sentence (including an application for leave to appeal) is yet to expire, or

(b) the conviction or sentence is the subject of appeal proceedings (including proceedings on an application for leave to appeal) that are yet to be finally determined, or

(c) the petition fails to disclose sufficient information to enable the conviction or sentence to be properly considered.

(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 sentence 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 or sentence 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) After considering an application under section 474D or on its own motion:

(a) the Supreme Court may direct that an inquiry be conducted by a prescribed



person into the conviction or sentence, or

(b) the Supreme Court may refer the whole case to the Court of Criminal Appeal, to be dealt with as an appeal under the *Criminal Appeal Act 1912*.

(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:

(i) has been fully dealt with in the proceedings giving rise to the conviction or sentence (or in any proceedings on appeal from the conviction or sentence), or

(ii) has previously been dealt with under this Part or under the repealed provisions, or

(iii) has been the subject of a right of appeal (or a right to apply for leave to appeal) by the convicted person but no such appeal or application has been made, or

(iv) has been the subject of appeal proceedings commenced by or on behalf of the convicted person (including proceedings on an application for leave to appeal) where the appeal or application has been withdrawn or the proceedings have been allowed to lapse, and

(b) the Supreme Court is not satisfied that there are special facts or special circumstances that justify the taking of further action.

(3A) The Supreme Court may defer consideration of an application under section 474D if:

(a) the time within which an appeal may be made against the conviction or sentence (including an application for leave to appeal) is yet to expire, or

(b) the conviction or sentence is the subject of appeal proceedings (including proceedings on an application for leave to appeal) that are yet to be finally determined, or

(c) the application fails to disclose sufficient information to enable the conviction or sentence to be properly considered.

(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 or sentence 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) The prescribed person may also refer the matter (together with a copy of the report) to the Court of Criminal Appeal:
  - (a) for consideration of the question of whether the conviction should be quashed (in any case in which the prescribed person is of the opinion that there is a reasonable doubt as to the guilt of the convicted person), or
  - (b) for review of the sentence imposed on the convicted person (in any case in which the prescribed person is of the opinion that there is a reasonable doubt as to any matter that may have affected the nature or severity of the sentence).
- (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) or 474E (1) (b) following petition to Governor or application to Supreme Court**

On receiving a reference under section 474C (1) (b) or 474E (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 or sentence 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**

- (1) On receiving a reference under section 474H (2) (a), 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.
- (2) On receiving a reference under section 474H (2) (b), the Court is to deal with the matter so referred in the same way as it is required to deal with matter the subject of an application under section 474J (3), and section 474K applies to proceedings on the matter so referred as if the references in that section to an application under section 474J were references to a reference under section 474H (2) (b).

**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 Part 5 of Chapter 4 of the *Criminal Procedure Act 1986* 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 246 of the *Criminal Procedure Act 1986* 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 the person 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 246 of the *Criminal Procedure Act 1986* 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 imprisonment imposed shall not exceed 10 years, whether the penalty imposed is either a fine or a term of 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 246 of the *Criminal Procedure Act 1986* 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 246 of the *Criminal Procedure Act 1986* relating to 2 or more offences, he or she is not entitled to make an election under subsection (1) unless he or she 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 246 of

the *Criminal Procedure Act 1986*, 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 or her 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 or her 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 246 of the *Criminal Procedure Act 1986* 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 Former provisions relating to offences punishable by Justices and procedure before Justices generally**

### **Division 1 Interpretation**

#### **475C Effect of certain provisions**

On the commencement of this section, sections 476, 480, 481, 495, 496, 496A, 497 and 500 cease to have effect (except as provided by section 272 of the *Criminal Procedure Act 1986*).

### **Division 2 Indictable offences punishable summarily only by consent of the accused**

#### **476 Indictable offences punishable summarily with consent of accused person**

- (1) Where a person is charged before a Magistrate with an offence mentioned in subsection (6) the magistrate may require the person to state whether he or she

intends to plead guilty or not guilty to the charge, and if the person does not so state he or she shall be taken for the purposes of this section to have stated that he or she intends to plead not guilty.

- (2) Where a person states under subsection (1) that he or she 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 or she 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 or she 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 Division 5 of Part 2 of Chapter 3 of the *Criminal Procedure Act 1986* 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 imprisonment, 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 imprisonment, 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 imprisonment, 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.
- (9A) In this section, a reference to a felony is a reference to an offence that, immediately before the commencement of this subsection, was a felony.
- (9B) If, immediately before the commencement of this subsection, a conviction for an offence would have been a conviction for a felony, a conviction under this section for that offence is, for all purposes, taken to be a conviction for a serious indictable offence.
- (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 Division 3 of Part 2 of Chapter 3 of the *Criminal Procedure Act 1986*:
- (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 Division 3 of Part 2 of Chapter 3 of the *Criminal Procedure*

*Act 1986*, 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).

**477-479A (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 or she 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)**

**Division 3 Other offences punishable summarily**

**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) or (1A) may be disposed of in a summary manner before a Local Court.
- (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) or (1A) 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 179 of the *Criminal Procedure Act 1986* 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 a Local Court 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) (Repealed)

- (3) The provisions of section 179 of the *Criminal Procedure Act 1986* 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.
- (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 179 of the *Criminal Procedure Act 1986* 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 authorises a Local Court 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.

### **Part 14A Summary offences**

#### **Division 1 Larceny and similar offences**

**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 a Local Court to show in what manner he or she became possessed of the same, and if there is reasonable cause to believe that he or she has dishonestly come by the same, and if he or she fails to satisfy the Court before whom the case is heard that he or she 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 or she 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 by a Local Court, 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 or her possession any stolen dog, or the skin of any such dog, knowing the dog to have been stolen, shall, on conviction by a Local Court, 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 by a Local Court, 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 by a Local Court, 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 or her knowledge has been stolen, or is the skin of a stolen animal or bird, shall, on conviction by a Local Court, 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 by a Local Court, 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 a Local Court.

**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 by a Local Court, 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 by a Local Court, 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 by a Local Court, be liable to pay the value of the fish taken or destroyed, in addition to a fine of 0.1 penalty unit.

**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 by a Local Court, 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 by a Local Court, 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 a Local Court fails to satisfy them that he or she 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 by a Local Court, 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 by a Local Court, 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 by a Local Court 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 by a Local Court, be liable to imprisonment for 6 months, or to pay a fine of 5 penalty units, or both.

### **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 a Local Court, fails to satisfy them that he or she 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 the Local Court, 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 a Local Court, fails to satisfy them that he or she 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 the Local Court, 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, a Magistrate or an authorised officer.

**525 Stealing or damaging books and other things in public library and other places**

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 a council (within the meaning of the [Local Government Act 1993](#)), shall, on conviction by a Local Court, 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 the residents of any area (within the meaning of the [Local Government Act 1993](#)), as a reading-room, or library, shall be deemed a public library within the meaning of section 525.

**526A, 526B (Repealed)**

**527 Fraudulently appropriating or retaining property**

Whosoever:

fraudulently appropriates, to his or her 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 by a Local Court, be liable to imprisonment for six months, or to pay a fine of 5 penalty units, or both.

**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 Local Court to imprisonment for 6 months or to a fine of 4 penalty units.

**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 Local Court to imprisonment for 3 months, or to a fine of 2 penalty units.

**527C Persons unlawfully in possession of property**

- (1) Any person who:
- (a) has any thing in his or her 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 herself or not, or whether that thing is there for his or her 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, is liable on conviction before a Local Court:

- (a) if the thing is a motor vehicle or a motor vehicle part, to imprisonment for 1 year, or to a fine of 10 penalty units, or both, or
  - (b) in the case of any other thing, to imprisonment for 6 months, or to a fine of 5 penalty units, or both.
- (1A) A prosecution for an offence under subsection (1) involving the giving of custody of a motor vehicle to a person who is not lawfully entitled to possession of the motor vehicle may be commenced at any time within 2 years after the date of commission of the offence.
- (2) It is a sufficient defence to a prosecution for an offence under subsection (1) if the defendant satisfies the court that he or she had no reasonable grounds for suspecting that the thing referred to in the charge was stolen or otherwise unlawfully obtained.
- (3) In this section:

**motor vehicle** has the same meaning as it has in section 154AA.

**premises** includes any structure, building, vehicle, vessel, whether decked or undecked, or place, whether built on or not, and any part of any such structure, building, vehicle, vessel or place.

**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 by a Local Court, be liable to pay a fine of 5 penalty units.

## **Division 2 Miscellaneous offences**

### **529-545 (Repealed)**

#### **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 by a Local Court, 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.

#### **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) (Repealed)
      - (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 Local Court, 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

**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 Local Court, 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 Local Court, 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 the person is not legally bound to do or to abstain from doing what the person is legally entitled to do, shall be deemed to be an unlawful assembly.

**545D Unlawful making or possession of explosives**

Whosoever being charged before a Local Court with:

- (a) having made, or
- (b) knowingly having in his or her possession or under his or her control,

any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he or she did not make such substance, or did not have such substance in his or her possession or under his or her control, for a lawful purpose, does not satisfy the Local Court that he or she made the explosive substance, or had such substance in his or her possession or under his or her 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.

**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 1996*) 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 Local Court, 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.

#### **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 by a Local Court, be guilty in the same degree, and liable to the same forfeiture, and punishment, as the principal offender.

#### **546A Consorting with convicted persons**

Any person who habitually consorts with persons who have been convicted of indictable offences, if he or she knows that the persons have been convicted of indictable offences,

shall be liable on conviction before a Local Court to imprisonment for 6 months, or to a fine of 4 penalty units.

**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 Local Court 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.

**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 or her duty shall be liable on conviction before a Local Court to imprisonment for 12 months or to a fine of 10 penalty units, or both.

**547, 547AA (Repealed)**

**547A False statement respecting births, deaths or marriages**

- (1) Every person who wilfully gives to the Registrar of Births, Deaths and Marriages 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 by a Local Court 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 or her 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 by a Local Court 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.

### **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 Local Court 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 the person 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.

### **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 Local Court to imprisonment for 3 months, or to a fine of 2 penalty units.

## **Division 3 General**

### **548-555 (Repealed)**

### **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 or she 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 or she 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 or her which is an offence of which he or she 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**

### **556A-562 (Repealed)**

### **Part 15A Apprehended violence**



## Division 1 Definitions and offence

### 562A Definitions

(1) In this Part:

**apprehended domestic violence order** means an order under Division 1A.

**apprehended personal violence order** means an order under Division 1B.

**apprehended violence order** means:

- (a) an apprehended domestic violence order, or
- (b) an apprehended personal violence order.

**authorised justice** means (except in section 562H):

- (a) a Magistrate, or
- (b) a justice of the peace who is employed in the Attorney General's Department, or
- (c) an employee of the Attorney General's Department authorised by the Attorney General as an authorised justice for the purposes of 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.

**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.

**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.

- (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 married to the other person, or
  - (b) has or has had a de facto relationship, within the meaning of the [Property \(Relationships\) Act 1984](#), with the other person, or
  - (c) has or has had an intimate personal relationship with the other person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature, or
  - (d) is living or has lived in the same household or other residential facility as the other person, or
  - (e) has or has had a relationship involving his or her dependence on the ongoing paid or unpaid care of the other person, or
  - (f) is or has been a relative (within the meaning of section 4 (6)) of the other person.

**562AB Stalking or intimidation with intent to cause fear of physical or mental harm**

- (1) A person who stalks or intimidates another person with the intention of causing the other person to fear physical or mental harm is liable 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 physical or mental harm includes causing the person to fear physical or mental harm 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 physical or mental harm 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 physical or mental

harm.

## **Division 1A Apprehended domestic violence orders**

### **562AC Objects of Division**

- (1) The objects of this Division are:
  - (a) to ensure the safety and protection of all persons who experience domestic violence, and
  - (b) to reduce and prevent violence between persons who are in a domestic relationship with each other, and
  - (c) to enact provisions that are consistent with certain principles underlying the Declaration on the Elimination of Violence against Women.
- (2) This Division aims to achieve its objects by:
  - (a) empowering courts to make apprehended domestic violence orders to protect people from domestic violence, and
  - (b) ensuring that access to courts is as speedy, inexpensive, safe and simple as is consistent with justice.
- (3) In enacting this Division, Parliament:
  - (a) recognises that domestic violence, in all its forms, is unacceptable behaviour, and
  - (b) recognises that domestic violence is predominantly perpetrated by men against women and children, and
  - (c) recognises that domestic violence occurs in all sectors of the community.
- (4) A court that, or person who, exercises any power conferred by or under this Part in relation to domestic violence must be guided in the exercise of that power by the objects of this Division.

### **562AD Application for ADVO**

- (1) An application may be made, by way of complaint, for an apprehended domestic violence order for the protection of:
  - (a) a person against another person with whom he or she has a domestic relationship, or
  - (b) two or more persons against another person with whom at least one of those persons has a domestic relationship.
- (2) If the person or all of the persons for whose protection the order would be made does

or do not have a domestic relationship with the person against whom it is sought, the complaint is to be treated as an application for an apprehended personal violence order.

**562AE Court may make ADVO**

- (1) A court may, on complaint, make an apprehended domestic violence order if it is satisfied on the balance of probabilities that a person who has a domestic relationship with another person has reasonable grounds to fear and in fact fears:
  - (a) the commission by the other person of a personal violence offence against the person, or
  - (b) the engagement of the other 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 the other person in conduct in which the other person:
    - (i) intimidates the person or a person with whom the person 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 16 years, or
  - (b) the person is, in the opinion of the court, suffering from an appreciably below average general intelligence 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.

**562AF Summons for appearance or arrest of defendant in ADVO matters**

- (1) If a complaint for an apprehended domestic violence 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.
- (2) The authorised justice must issue a summons for the appearance of the defendant, unless the authorised justice issues a warrant for the arrest of the defendant.
- (3) The authorised justice may issue a warrant for the arrest of the defendant even though the defendant is not alleged to have committed an offence.
- (4) The authorised justice must 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 the order is sought will be put at risk unless the defendant is arrested for the purpose of being brought before the court.
- (5) A warrant may not be executed more than 12 months after the date on which it is issued, unless the court otherwise orders before the end of the 12-month period.
- (6) If the court is satisfied, by evidence on oath or by affidavit, that it is not reasonably practicable to serve a copy of a summons as provided by law, service of the copy of the summons may be effected in such other manner as the court directs.

**562AG Non-inclusion of protected person's residential address in ADVO or complaint for ADVO**

- (1) The address at which the protected person resides must not be stated in the complaint for an apprehended domestic violence order (or the application for an order relating to such an order), unless:
- (a) where the protected person is of or above the age of 16 years—the protected person consents to the address being included in the complaint, or
  - (b) where the complaint is made by a police officer—the police officer is satisfied that the defendant knows the address.
- (2) The address at which the protected person resides, or intends to reside, must not be stated in an apprehended domestic violence order (or an order relating to such an order), unless the court is satisfied that:
- (a) the defendant knows the address, or
  - (b) it is necessary to state the address in order to achieve compliance with the order and the personal safety of the protected person would not be seriously threatened, or damage would not be likely to be caused to any property of the protected person, by stating the address, or
  - (c) where the protected person is of or above the age of 16 years—the protected

person consents to the address being stated in the order.

(3) In this section:

**court** includes the registrar of a Local Court or the Registrar of the Children's Court.

**protected person** means the person for whose protection an apprehended domestic violence order is made or sought.

## **Division 1B Apprehended personal violence orders**

### **562AH Application for APVO**

- (1) An application may be made, by way of complaint, for an apprehended personal violence order for the protection of one or more persons against another person.
- (2) If the person (or at least one of the persons) for whose protection the order would be made has a domestic relationship with the person against whom it is sought, the complaint is to be treated as a complaint for an apprehended domestic violence order.

### **562AI Court may make APVO**

- (1) A court may, on complaint, make an apprehended personal 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 the other person of a personal violence offence against the person, or
  - (b) the engagement of the other 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 the other person in conduct in which the other person:
    - (i) intimidates the person, 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 16 years, or
  - (b) the person is, in the opinion of the court, suffering from an appreciably below average general intelligence 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.

**562AJ Summons for appearance or arrest of defendant in APVO matters**

- (1) If a complaint for an apprehended personal violence 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.
- (2) If the complaint was made by a police officer, the authorised justice must issue a summons for the appearance of the defendant, unless the authorised justice issues a warrant for the arrest of the defendant.
- (3) The authorised justice may issue a warrant for the arrest of the defendant even though the defendant is not alleged to have committed an offence.
- (4) The authorised justice must 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 the order is sought will be put at risk unless the defendant is arrested for the purpose of being brought before the court.
- (5) A warrant may not be executed more than 12 months after the date on which it is issued, unless the court otherwise orders before the end of the 12-month period.
- (6) If the court is satisfied, by evidence on oath or by affidavit, that it is not reasonably practicable to serve a copy of a summons as provided by law, service of the copy of the summons may be effected in such other manner as the court directs.

**562AK Discretion to refuse to issue process in APVO matters**

- (1) An authorised justice has a discretion to refuse to issue process where a complaint for an apprehended personal violence order is made, unless the complaint was made by a police officer.
- (2) The authorised justice may exercise the discretion in accordance with this section or may decline to exercise it. The authorised justice:
  - (a) exercises the discretion by deciding to issue neither a summons nor a warrant

referred to in section 562A), or

- (b) is taken to decline to exercise the discretion by deciding to issue such a summons or warrant.
- (3) The authorised justice may exercise the discretion if the authorised justice is satisfied that the complaint is frivolous, vexatious, without substance or has no reasonable prospect of success.
- (4) There is a presumption against exercising the discretion if the complaint discloses allegations of:
  - (a) a personal violence offence, or
  - (b) an offence under section 562AB, or
  - (c) harassment relating to the complainant's race, religion, homosexuality, transgender status, HIV/AIDS or other disability.
- (5) In determining whether or not to exercise the discretion, the authorised justice must take the following matters into account:
  - (a) the nature of the allegations,
  - (b) whether the matter is amenable to mediation or other alternative dispute resolution,
  - (c) whether the parties have previously attempted to resolve the matter by mediation or other means,
  - (d) the availability and accessibility of mediation or other alternative dispute resolution services,
  - (e) the willingness and capacity of each party to resolve the matter otherwise than through a complaint for an apprehended personal violence order,
  - (f) the relative bargaining powers of the parties,
  - (g) whether the complaint is in the nature of a cross application,
  - (h) any other matters that the authorised justice considers relevant.
- (6) If the authorised justice exercises the discretion, the authorised justice must record the reasons for doing so in writing.

**562AL Non-inclusion of protected person's residential address in APVO or complaint for APVO if health care provider**

- (1) The address at which a protected health care provider resides must not be stated in the complaint for an apprehended personal violence order (or the application for an



order relating to such an order), unless:

- (a) the protected health care provider consents to the address being included in the complaint or application, or
- (b) if the complaint is made by a police officer—the police officer is satisfied that the defendant knows the address.

(2) The address at which a protected health care provider resides, or intends to reside, must not be stated in an apprehended personal violence order (or an order relating to such an order), unless the court is satisfied that:

- (a) the defendant knows the address, or
- (b) it is necessary to state the address in order to achieve compliance with the order and the personal safety of the protected health care provider would not be seriously threatened, or damage would not be likely to be caused to any property of the protected health care provider, by stating the address, or
- (c) the protected health care provider consents to the address being stated in the order.

(3) If the address at which a protected health care provider resides or intends to reside must not be stated in a complaint, application or order because of subsection (1) or (2), the address at which the protected health care provider ordinarily provides health care services is to be stated instead in the complaint, application or order.

(4) In this section:

**court** includes the Clerk of a Local Court or the Registrar of the Children’s Court.

**protected health care provider** means a person who is employed or engaged to provide any care, treatment, advice or service in respect of the physical or mental health of any person for whose protection an apprehended personal violence order is made or sought.

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

### **562B (Repealed)**

#### **562BA Orders made with consent of parties**

- (1) A court may make an apprehended violence order under section 562AE or 562AI, or an interim apprehended violence order under section 562BB, without being satisfied as to the matters referred to in section 562AE, 562AI or 562BB (as appropriate) if the complainant and the defendant consent to the making of the order.
- (2) Such an order may be made whether or not the defendant admits to any or all of the particulars of the complaint.

- (3) Before making such an order, the court may conduct a hearing in relation to the particulars of the complaint only if:
  - (a) the order to be made by the court is final (that is, the order is not an interim apprehended violence order), and
  - (b) the court is of the opinion that the interests of justice require it to conduct the hearing.

**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.
- (1A) An interim order may be either an interim apprehended domestic violence order or an interim apprehended personal violence order.
- (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 practicable 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 562AE or 562AI as appropriate against the defendant (with or without variation). In that case, the interim order ceases to have effect when the order under section 562AE or 562AI as appropriate 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 562AE or 562AI as appropriate (in any other case).
- (6) An interim order has, while it remains in force, the same effect as an order made under section 562AE or 562AI as appropriate.

(7), (8) (Repealed)

**562BBA Interim orders made by registrar of court with consent**

- (1) The registrar of a Local Court or the Children's Court may, on complaint being made for an apprehended violence order, make an interim apprehended violence order if the registrar is satisfied that the complainant and the defendant consent to the making of the order.
- (2) Section 562BA applies in relation to the making of an order by the registrar of a court under this section in the same way as it applies to the making of an interim apprehended violence order by a court.
- (3) If an interim apprehended violence order is made by a registrar:
  - (a) the registrar is to summon the defendant to appear at a further hearing of the matter before a court as soon as practicable after the order is made, and
  - (b) the court may, at the further hearing or an adjourned hearing, confirm the order (with or without variation) or revoke the order.
- (4) An interim apprehended violence order made by a registrar is confirmed by the making of an order by a court under section 562AE or 562AI as appropriate against the defendant (with or without variation). The interim order ceases to have effect when the court order 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 court order under section 562AE or 562AI as appropriate (in any other case).
- (5) An interim apprehended violence order made by the registrar of a Local Court or the Children's Court under this section is taken to have been made by a Local Court or the Children's Court (as appropriate) and has effect accordingly.
- (6) Section 562GC applies to a registrar who makes an interim apprehended violence order under this section.
- (7) (Repealed)

**562BBB Extension of interim order by registrar of court with consent**

- (1) The registrar of a Local Court or the Children's Court may vary an interim apprehended violence order made by the court (or by a registrar of the court) by extending the period during which the order is to remain in force, but only if the registrar is satisfied that the complainant and the defendant consent to the extension.
- (2) Such a variation has effect as if it had been made by a Local Court or the Children's Court (as appropriate) and section 562GC applies in respect of the registrar accordingly.

(3) (Repealed)

**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 persons with whom person seeking protection has a domestic relationship**

- (1) 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.
- (2) Without limiting subsection (1), an order may be made for the protection of a child under the age of 16 years with whom the person for whose protection the order was applied for has a domestic relationship even though a complaint for the order was not made by a police officer.

**562BE Order must be made on guilty plea or guilt finding for certain offences**

- (1) If a person pleads guilty to, or is found guilty of, an offence against section 562AB or a domestic violence offence, the court must make an order under this Part for the protection of the person against whom the offence was committed, as if a complaint for an apprehended violence order had been made under this Part.
- (1A) If a person pleads guilty to, or is found guilty of, an offence against section 562AB or a domestic violence offence, the court may vary an order under this Part for the purpose of providing greater protection for the person against whom the offence was committed, as if an application to vary an apprehended violence order had been made under this Part.
- (2) However, the court need not make an order under this section if it is satisfied that it is not required (for example, because an order has already been made against the person or the person for whose protection the order would be made opposes the making of the order).
- (3) A reference in this section to a court extends to the District Court when exercising jurisdiction apart from under section 562G.
- (4) Without limiting the interpretation of the expression, a reference in this section to a finding of guilt includes a reference to the making of an order under section 10 of the [Crimes \(Sentencing Procedure\) Act 1999](#).

**562BF Order must be made on charge for certain offences**

- (1) When a person stands charged before a court with an offence that appears to the court to be an offence against section 562AB or a domestic violence offence, the court must make an interim apprehended violence order under section 562BB against the defendant for the protection of the person against whom the offence appears to have been committed, as if a complaint for an order had been made under section 562C.
- (2) If an interim order is made by the court, the court is to summon the defendant to appear at a further hearing of the matter on the determination of the charge against the person (instead of as soon as practicable after the order is made, as required by section 562BB (4) (a)).
- (3) However, the court need not make an order under this section if it is satisfied that it is not required (for example, because an order has already been made against the person or the person for whose protection the order would be made opposes the making of the order).
- (4) A reference in this section to a court extends to the District Court when exercising jurisdiction apart from under section 562G.

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

- (1) A complaint for an order:
  - (a) may be made orally or in writing to a justice of the peace, and
  - (b) shall be substantiated on oath before the justice of the peace.
- (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.
- (2A) Despite subsection (2), only a police officer can make a complaint for an order 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.
- (3) A police officer must make a complaint for an order if the police officer suspects or believes that any of the following offences has recently been or is being committed, or is imminent, or is likely to be committed, against the person for whose protection an order would be made:
  - (i) a domestic violence offence,
  - (ii) an offence against section 562AB,
  - (iii) an offence under section 227 (Child and young person abuse) of the *Children and*

*Young Persons (Care and Protection) Act 1998* (but only if the person is a child under the age of 16 years).

(3A) A police officer need not make a complaint for an order in the circumstances referred to in subsection (3) if the person for whose protection an order would be made is at least 16 years of age at the time and the police officer believes:

- (a) that the person intends to make the complaint, or
- (b) that there is good reason not to make the complaint.

However, if the police officer believes that there is good reason not to make the complaint, the police officer 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 179 of the *Criminal Procedure Act 1986*.

(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 sections 562AE and 562AI, 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:
  - (i) to any premises occupied by the protected person from time to time or to any specified premises occupied by the protected person,
  - (ii) to any place where the protected person works from time to time or to any specified place of work of the protected person,
  - (iii) to any 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 1996* or the *Weapons Prohibition Act 1998* held by the defendant.

**562DA Reasons to be given if order does not prohibit or restrict access to premises or place**

If application is made for an order that prohibits or restricts access by the defendant to any premises or place (as referred to in section 562D (1) (b)) and the court hearing proceedings in respect of the application decides to make an order without the prohibition or restriction sought, the court must explain the reasons for that decision.

**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:
  - (a) it is revoked, or
  - (b) it ceases to have effect under section 562BB (5), or
  - (c) the relevant complaint is withdrawn or dismissed,whichever first occurs.

**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.
- (2A) The application must set out the grounds on which the application is made and, in the case of a variation, the nature of the variation sought. This subsection does not limit the powers of the court.
- (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.
- (4A) The court may decline to hear an application for variation or revocation of an order if the court is satisfied that there has been no change in the circumstances on which the making of the order was based and that the application is in the nature of an appeal against the order.
- (4B) If there is more than one protected person under an order, the following additional provisions apply to the variation or revocation of the order under this section:
- (a) the order need not be varied or revoked in its application to all of the protected persons and can be varied or revoked in its application to any one or more of the protected persons,
  - (b) it is not necessary for all of the protected persons to have applied for the variation or revocation,
  - (c) if the application for variation or revocation was made by one of the protected persons, none of the other protected persons can be the subject of the variation or revocation unless the court is satisfied that:
    - (i) he or she is at least 16 years of age and has consented to the variation or



revocation, or

(ii) he or she is a child under the age of 16 years and (in the case of revocation) is no longer in need of protection or (in the case of variation) is no longer in need of greater protection than that which will be afforded by the order as proposed to be varied,

(d) if a child under the age of 16 years is one of the protected persons it does not matter that the application for variation or revocation was made by a person other than a police officer.

(4C) If a child under the age of 16 years is a protected person under an order made under section 562BD, the applicant for the order (even if he or she is not a protected person under the order) can apply for the variation or revocation of the order in its application to the child. The court is not to grant the application unless satisfied that the child is (in the case of revocation) no longer in need of protection or (in the case of variation) no longer in need of greater protection than that which will be afforded by the order as proposed to be varied.

(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.

(8) Despite subsection (6), the court may make an order extending the period during which the order is to remain in force without notice of the relevant application having been served on the defendant, if:

(a) the applicant lodged the application no later than 21 days before the day on which the order is due to expire, and

(b) the application is listed for mention before the court no later than 14 days after the day the application was lodged, and

(c) notice of the application has not been served on the defendant by the time the matter is heard by the court,

but, unless sooner revoked, such an order ceases to have effect 21 days after it is made or on an earlier date specified in the order. However, further orders may be made from time to time under this subsection before the order ceases to have effect.

#### **562FA Consideration of contact with children**

(1) A person who applies for, or for a variation of, an apprehended violence order must

inform the court of:

- (a) any relevant family contact order of which the person is aware, or
- (b) any pending application for a relevant family contact order of which the person is aware.

The court is required to inform the applicant of the obligation of the applicant under this subsection.

- (2) In deciding whether or not to make or vary an apprehended violence order, the court must:
  - (a) consider whether contact between the protected person, or between the defendant, and any child of either of those persons is relevant to the making or variation of the order, and
  - (b) have regard to any relevant family contact order of which the court has been informed.
- (3) An apprehended violence order, or a variation of such an order, is not invalid merely because of a contravention of this section.
- (4) Subsection (1) applies to applications made after the commencement of this section and subsection (2) applies to the making or variation of apprehended violence orders after that commencement.
- (5) In this section:

**application** for an order means a complaint for an order.

**apprehended violence order** includes an interim order under section 562BB, but does not include a telephone interim order.

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

**relevant family contact order** means a section 68R contact order (within the meaning of Division 11 of Part 7 of the [Family Law Act 1975](#) of the Commonwealth) that relates to contact between the protected person, or between the defendant, and any child of either of those persons.

#### **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) (Repealed)
  - (5) An order made by a Local Court for the purposes of this Part is not invalid on the ground that it was made in the mistaken belief that the defendant was of or above 18 years of age at the time the complaint was made.

**562GA, 562GB (Repealed)**

**562GC Explanation of order**

- (1) A court that makes an order must explain to the defendant and the protected person (if either of them is present at the time the order is made):
  - (a) the effect of the order (including any prohibitions and restrictions imposed by the order), and
  - (b) the consequences that may follow from a contravention of the order, and
  - (c) the rights of the defendant and the protected person in relation to the order.
- (2) A court that varies an order must explain to the defendant and the protected person (if either of them is present at the time the order is made):
  - (a) the effect of the variation, and
  - (b) the consequences that may follow from a contravention of the order as varied.
- (3) A court that makes or varies an order is also to cause a written explanation of the matters required to be explained under this section to be given to the defendant and protected person.
- (4) In so far as it is reasonably practicable to do so, an explanation under this section is to be given in a language that is likely to be readily understood by the person being given the explanation.

- (5) A failure to comply with this section in relation to an order or variation of order does not affect the validity of the order or variation.

### **562H Telephone interim orders**

- (1) **Application by telephone** A police officer may apply by telephone to an authorised justice for an interim apprehended violence order.
- (1A) Such an interim apprehended violence order may be either an interim apprehended domestic violence order or an interim apprehended personal 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 an order is necessary to ensure the safety of the person who would be protected by the order or to prevent substantial damage to any property of that person.
- (2A) **Obligation to apply for order in certain circumstances** The police officer attending the incident concerned must make an application under this section if the police officer suspects or believes that a domestic violence offence, or an offence under section 227 (Child and young person abuse) of the *Children and Young Persons (Care and Protection) Act 1998* against a child under the age of 16 years, has recently been or is being committed, or is imminent, or is likely to be committed, against the person for whose protection an order would be made.
- (2B) **Exceptions to requirement to apply for order** A police officer need not make an application for an order in the circumstances referred to in subsection (2A) if the person for whose protection an order would be made is at least 16 years of age at the time of the incident and the police officer believes:
- (a) that the person intends to make a complaint for an order, or
  - (b) that there is good reason not to make the application.
- However, if the police officer believes that there is good reason not to make the application, the police officer must make a written record of the reason.
- (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 that states that the defendant must not assault, molest, harass, threaten or otherwise interfere with the protected person. Nothing in this subsection affects section 562BC.
- (5) **Further terms of orders** If the police officer making the application for the telephone interim order has good reason to believe that the safety of the protected person is in imminent danger 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 or all of the following:
    - (i) any premises occupied by the protected person from time to time or any specified premises occupied by the protected person,
    - (ii) any place where the protected person works from time to time or any specified place of work of the protected person,
    - (iii) any 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) prohibiting or restricting the defendant from approaching the protected person, or any such premises or place, within 12 hours of consuming intoxicating liquor or illicit drugs,
  - (d) prohibiting the defendant from destroying or deliberately damaging or interfering with the protected person's property.

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.

- (5A) **Summons** A telephone interim order is taken, for the purposes of this Part, to be a complaint for an order under section 562C. The telephone interim order is to contain a summons for the appearance of the defendant at a hearing of the complaint by an appropriate court on a date specified in the order by the authorised justice who makes it (being a date that is as soon as practicable after the order is made).
- (6) **Recording of order** The authorised justice who makes a telephone interim order is to inform the applicant of the terms of the order, the date of the hearing of the complaint and the date and time when the order was made. The applicant is to complete a form of order in the terms so indicated and write on it the date of the hearing of the complaint, the name of the authorised justice and the date and time when the order 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 until midnight on the fourteenth day after the order is made, unless it is sooner revoked or it otherwise ceases to have effect.
- (9A) **Extended period in special circumstances** Despite subsection (9), a telephone interim order may be made under subsection (3) for an extended period lasting until midnight on the twenty-eighth day after the order is made (unless it is revoked or it otherwise ceases to have effect) if the authorised justice is satisfied that the Local Court closest to the place at which the application for the order is made is not sitting within the fourteen-day period following the making of the order.
- (9B) **Objection by defendant to extended period** An order may not be made under subsection (9A) for the extended period if the defendant:
- (a) is present at the place where the application is made, and
  - (b) objects, verbally or otherwise, when the application is made to the making of the order for the extended period.
- (9C) **Notification of defendant** A police officer must notify the defendant:
- (a) at the time the application is made if the defendant is present at the place the application is made, of the defendant's right to object under subsection (9B) to the making of the order for an extended period, and
  - (b) at the time the order is served, of the defendant's right to apply to have the extended period of the order reduced, or the terms of the order varied under subsection (9D).
- (9D) **Application for reduction or variation of extended period of the order** If the defendant objects to the extended period of the order, the defendant may apply to:
- (a) the authorised justice who made the order or any other authorised justice, or
  - (b) a Local Court,
- to have the extended period reduced, or the terms of the order varied.
- (9E) **Reduction or variation of extended period** On application by the defendant, an

authorised justice or a Local Court may reduce the extended period of the order or vary the terms of the order.

(9F) **Notification of application for reduction or variation** The extended period of a telephone interim order must not be reduced, or the terms of the order varied, unless notice of the application has been served on the Commissioner of Police.

(9G) **Notice of reduction or variation** Notice of any reduction or variation is to be served on the defendant, the protected person and the Commissioner of Police.

(10) **Court order** A telephone interim order ceases to have effect if a court makes an order against the defendant for the protection of the person protected by the telephone interim order. The telephone interim order ceases to have effect when the court order is made (in the case of a defendant who is present at court) or when the defendant is served under section 562J with a copy of the record of the order (in any other case).

(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, or arrest and take the person to a police station and there detain the person, until the order is made and served.

(13) **Excluded provisions** Sections 562C–562GC 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 16 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.

(15A) **Purported renewal or continuance** However, if a court purports to renew or continue a telephone interim order, the order is taken to be an interim apprehended violence order made by the court at that time. An authorised justice may at any time make an endorsement on the order to that effect and make any appropriate amendments to the order, but that action is not a necessary prerequisite to its status as an interim apprehended violence order. Further service of the order is not required.

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

**authorised justice** means:

- (a) a Magistrate, or
- (b) an authorised officer within the meaning of the *Criminal Procedure Act 1986*, or
- (c) a person who is employed in the Attorney General's Department 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.

#### **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) (Repealed)



- (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.
- (6) If:
- (a) a police officer believes on reasonable grounds that:
    - (i) a person has committed an offence against this section, or
    - (ii) a person, in respect of whom an alleged breach of this section has been reported to that or another police officer, has not committed an offence against this section, and
  - (b) that or another police officer:
    - (i) decides not to initiate criminal proceedings against the person, in respect of the alleged offence, whether or not the person has been arrested, or
    - (ii) decides not to proceed with criminal proceedings,
- the police officer must make a written record of the reasons for the decision.

**562J Service of copy of order**

- (1) The registrar 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 registrar 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 the registrar 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 registrar thinks fit.
- (2AA) If the defendant is present at the time the order or variation is made but the registrar is unable to serve a copy of the record personally on the defendant, the registrar is to arrange for a copy of the order to be sent by post to the defendant or to such other person as the registrar 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 registrar 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 (unless it is impracticable or unnecessary to do so) to be given to or sent by post to each 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 (Repealed)**

**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 (Repealed)**

**562N Costs**

(1) Subject to this section:

- (a) a court may, in proceedings under this Part, award costs to the complainant or the defendant, and
- (b) such costs are to be determined in accordance with Division 4 of Part 2 of Chapter 4 of the [Criminal Procedure Act 1986](#).

(2) A court is not to award costs against a complainant who is the person for whose benefit an apprehended domestic violence order is sought unless satisfied that the complaint was frivolous or vexatious. This subsection has effect despite any other Act or law.

(3) A court is not to award costs against a police officer who makes a complaint unless satisfied that the police officer made the complaint knowing it contained matter that was false or misleading in a material particular. This subsection has effect despite any other Act or law.

- (4) The following provisions have effect in relation to the District Court:
- (a) Subsection (1) applies to the District Court only when it is exercising original jurisdiction under section 562W.
  - (b) Division 4 of Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*, in its application to the District Court when exercising that jurisdiction, applies to the District Court in the same way as it applies to a Justice or Justices (and with any prescribed modifications).
  - (c) This section does not affect the operation of any provisions of the *Criminal Procedure Act 1986* or any other Act or law relating to the payment of costs in proceedings in an appeal to the District Court.

**562NA Measures to protect children in AVO proceedings**

- (1) If an order is sought or proposed to be made for the protection of a child under the age of 16 years, or an application is made for the variation or revocation of such an order, proceedings in relation to that order or application are to be heard in the absence of the public unless the court hearing the proceedings otherwise directs.
- (2) Even if proceedings referred to in this section are open to the public, the court hearing the proceedings may direct any person (other than a person who is directly interested in the proceedings) to leave the place where the proceedings are being heard during the examination of any witness.
- (3) In proceedings on an application for an order or for the variation or revocation of an order, a child under the age of 16 years should not be required to give direct evidence about a matter unless the court is of the opinion that in the absence of the child's evidence insufficient evidence about the matter will be adduced.
- (4) (Repealed)

**562NB Publication of names and identifying information about children under 16 involved in AVO proceedings**

- (1) The name of a child:
  - (a) for whose benefit or against whom an order is sought in any relevant proceedings, or
  - (b) who appears, or is reasonably likely to appear, as a witness before a court in any relevant proceedings, or
  - (c) who is, or is reasonably likely to be, mentioned or otherwise involved in any relevant proceedings,must not be published or broadcast before the proceedings are commenced or after

the proceedings have been commenced and before they are disposed of.

- (2) A person who publishes or broadcasts the name of a child in contravention of subsection (1) is guilty of an offence.

Maximum penalty: 200 penalty units or imprisonment for a period not exceeding 2 years or both (in the case of an individual) or 2,000 penalty units (in the case of a corporation).

- (3) Subsection (1) does not prohibit:

- (a) the publication or broadcasting of an official report of the proceedings of a court that includes the name of any child the publication or broadcasting of which would otherwise be prohibited by subsection (1), or
- (b) the publication or broadcasting of the name of a child with the consent of the court.

- (4) For the purposes of this section, a reference to the name of a child includes a reference to any information, picture or other material:

- (a) that identifies the child, or
- (b) that is likely to lead to the identification of the child.

- (5) The offence created by this section is an offence of strict liability.

- (6) In this section:

**child** means a person who is under the age of 16 years.

**court** includes the registrar of a Local Court or the Registrar of the Children's Court.

**relevant proceedings** means proceedings in or before a court under this Part for or relating to an apprehended violence order.

### **562NC Publication of names and identifying information about persons involved in ADVO proceedings**

- (1) A court may direct that the name of a person (other than a child to whom section 562NB applies):

- (a) for whose benefit or against whom an order is sought in any relevant proceedings, or
- (b) who appears, or is reasonably likely to appear, as a witness before a court in any relevant proceedings, or
- (c) who is, or is reasonably likely to be, mentioned or otherwise involved in any relevant proceedings,

must not be published or broadcast before the proceedings are commenced or after the proceedings have been commenced and before they are disposed of.

- (2) A person who publishes or broadcasts the name of a person in contravention of a direction under subsection (1) is guilty of an offence.

Maximum penalty: 200 penalty units or imprisonment for a period not exceeding 2 years or both (in the case of an individual) or 2,000 penalty units (in the case of a corporation).

- (3) Subsection (1) does not prohibit:

(a) the publication or broadcasting of an official report of the proceedings of a court that includes the name of any person the publication or broadcasting of which would otherwise be prohibited by subsection (1), or

(b) the publication or broadcasting of the name of a person with the consent of the person or of the court.

- (4) For the purposes of this section, a reference to the name of a person includes a reference to any information, picture or other material:

(a) that identifies the person, or

(b) that is likely to lead to the identification of the person.

- (5) The offence created by this section is an offence of strict liability.

- (6) A court may vary or revoke a direction given by a court under this section. However, only the District Court may vary or revoke a direction given by the District Court.

- (7) Nothing in this section affects section 562NB.

- (8) In this section:

**court** includes the registrar of a Local Court or the Registrar of the Children's Court.

**relevant proceedings** means proceedings in or before a court under this Part for or relating to an apprehended domestic violence order.

#### **562ND Right to presence of supportive person**

- (1) In this section:

**party** to a proceeding in relation to a complaint for or application relating to an order means the person for whose protection the order is sought or the defendant, but does not include a child to whom section 27 of the [Evidence \(Children\) Act 1997](#) applies in relation to the proceeding.

- (2) A party to a proceeding in relation to a complaint for or application relating to an

order who gives evidence in the proceeding is entitled to choose a person whom the party would like to have present near him or her when giving evidence.

- (3) Without limiting a party's right to choose such a person, that person:
  - (a) may be a parent, guardian, relative, friend or support person of the party, and
  - (b) may be with the party as an interpreter, for the purpose of assisting the party with any difficulty in giving evidence associated with a disability, or for the purpose of providing the party with other support.
- (4) To the extent that the court considers it reasonable to do so, the court must make whatever direction is appropriate to give effect to a party's decision to have such a person present near the party, and within the party's sight, when the party is giving evidence.
- (5) The court may permit more than one support person to be present with the party if the court thinks that it is in the interests of justice to do so.

#### **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), (3) (Repealed)

#### **562P, 562Q (Repealed)**

#### **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 external protection orders**

### **562RA Definitions**

In this Division:

**appropriate court**, in relation to an external protection 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 this Division for the registration of the order.

**external protection order** means an order made by a court of another State or Territory or New Zealand that has been made to prevent a person from acting in a manner specified in section 562AE or 562AI, and includes an order made by such a court that is of a kind prescribed by the regulations.

**registered external protection order** means an external protection order registered under this Division.

### **562S Application for registration of external protection order**

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

### **562T Registration of external protection order**

- (1) On receipt of an application under section 562S, the registrar of the appropriate court must:
  - (a) register the external protection order to which the application relates, or
  - (b) refer the external protection 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 external protection 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 registrar of the appropriate court must register an external protection order which has been adapted or modified under subsection (2).
  - (4) On registering an external protection order, the registrar of the appropriate court must provide the Commissioner of Police with a copy of the registered external protection order.
  - (5) Notice of the registration of an external protection 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 external protection 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 external protection order**

- (1) An external protection order which has been registered under section 562T:
  - (a) has the same effect as an order made under this Part, and
  - (b) may be enforced against a person as if it were an order which had been made under this Part 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 external protection order by a court of the State, Territory or country in which it was made after the order has been registered under section 562T has no effect in New South Wales.
- (3) An external protection order which has been registered under section 562T (and anything done to effect the registration of the order) is not invalid on the ground that the order has, due to the age of the defendant at the time the complaint was made, been registered in the wrong court.

**562V Variation etc of registered external protection orders**

- (1) In this section:

***prescribed person*** means:

- (a) a person for whose protection a registered external protection order has been made, or



- (b) a person against whom a registered external protection order has been made, or
  - (c) a police officer, or
  - (d) a person whom the appropriate court in which the external protection 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 external protection order as it applies in New South Wales,
  - (b) the extension or reduction of the period during which a registered external protection order has effect in its operation in New South Wales,
  - (c) the revocation of the registration of a registered external protection 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 external protection 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 external protection 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 external protection 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.

## **Division 4 Jurisdiction of and appeals to District Court**

### **562W Jurisdiction of District Court to issue AVO following dismissal of complaint by Local Court or Children's Court**

- (1) The District Court has original jurisdiction to issue an apprehended violence order,

where a complaint by or on behalf of the person for whose protection an order has been sought has been dismissed by a Local Court or the Children's Court.

- (2) An application (in this Part referred to as a complaint) by or on behalf of a person for whose protection an order is sought from the District Court must be made within 28 days after the date a Local Court or the Children's Court dismissed the earlier complaint.
- (3) The District Court may, without further hearing, admit in evidence any evidence that was admitted in the proceedings before the Local Court or Children's Court.
- (4) Further evidence may be given, but only with the leave of the District Court.
- (5) The District Court has jurisdiction to vary or revoke an order made by it.
- (6) The rules of the District Court may make provision for or with respect to the procedure to be followed in respect of proceedings in the District Court for an order (including the variation or revocation of an order).

**562WA Review and appeal provisions concerning making, variation or revocation of apprehended violence orders**

- (1) A defendant may make an application under Part 2 of the *Crimes (Local Courts Appeal and Review) Act 2001* for the annulment of an apprehended violence order made by a Local Court in the same way as a defendant may make an application under that Part for the annulment of a conviction or sentence arising from a court attendance notice dealt with under Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*.
- (2) A defendant may appeal to the District Court under Part 3 of the *Crimes (Local Courts Appeal and Review) Act 2001* against an apprehended violence order made by a Local Court or the Children's Court in the same way as a defendant may make an application under that Part against a conviction or sentence arising from a court attendance notice dealt with under Part 3 of Chapter 4 of the *Criminal Procedure Act 1986*.
- (3) In the case of an apprehended violence order made with the consent of the person against whom the order is made, an appeal referred to in subsection (2) may be made only by leave of the District Court.
- (4) A party to an apprehended violence order may appeal to the District Court under Part 3 of the *Crimes (Local Courts Appeal and Review) Act 2001* against any order of a Local Court or the Children's Court:
  - (a) to vary or revoke the apprehended violence order, or
  - (b) to refuse to vary or revoke the apprehended violence order,in the same way as a defendant may make an application under that Part against a

conviction or sentence arising from a court attendance notice dealt with under Part 2 of Chapter 4 of the *Criminal Procedure Act 1986*.

- (5) The *Crimes (Local Courts Appeal and Review) Act 2001* applies to an application or appeal arising under this section with such modifications as are made by or in accordance with the regulations under that Act.
- (6) For the purposes of this section and the *Crimes (Local Courts Appeal and Review) Act 2001*, an order made by the registrar of a Local Court or the Registrar of the Children's Court is taken to have been made by the Local Court or Children's Court, as the case requires.
- (7) In this section, **party** to an apprehended violence order means:
  - (a) the protected person (whether or not the complainant or applicant), but only if the protected person is of or above the age of 16 years, or
  - (b) if the complainant or applicant was a police officer, that or any other police officer, or
  - (c) the defendant or respondent.

#### **562WB Presumption against stay of order**

- (1) The lodging of a notice of appeal under section 562WA does not have the effect of staying the operation of the order concerned.
- (2) The original court may, on application by the defendant, stay the operation of the order, if satisfied that it is safe to do so, having regard to the need to ensure the safety of the protected person or any other person.
- (3) A stay on the operation of the order continues until the appeal is finally determined, subject to any order or direction of the District Court.
- (4) This section has effect despite section 562WA of this Act and section 63 of the *Crimes (Local Courts Appeal and Review) Act 2001*.
- (5) A stay on the operation of the order does not have effect if the appellant is in custody when the appeal is made, unless and until the appellant enters into a bail undertaking in accordance with the *Bail Act 1978*, or bail is dispensed with. In the application of the *Bail Act 1978* to the appellant, the appellant is taken to be an accused person who, because of the prohibitions and restrictions imposed by the order, is in custody.
- (6) In this section:

**original court**, in relation to an order, means:

  - (a) a Local Court, if the order was made by a Local Court or the registrar of a Local Court, or

- (b) the Children's Court, if the order was made by the Children's Court or the Registrar of the Children's Court.

#### **562WC Jurisdiction of District Court under this Part**

The jurisdiction conferred on the District Court by this Part is conferred on the Court in its criminal jurisdiction.

### **Division 5 Miscellaneous**

#### **562X Arrangements regarding classification of orders**

- (1) If a court is at any time unable to determine under which of Divisions 1A and 1B an apprehended violence order should be made, it may make the order under whichever Division it thinks fit.
- (2) If a court is at any time unable to determine under which of Divisions 1A and 1B an apprehended violence order was or should have been made, it may treat the order as having been made under whichever Division it thinks fit.
- (3) If an apprehended violence order is made or treated as having been made under either Division 1A or Division 1B but should have been made under the other Division, the order is not invalid on that ground and is taken to have been made under the other Division.

#### **562Y Parts 2 and 3 of [Crimes \(Local Courts Appeal and Review\) Act 2001](#)**

Except as expressly provided by this Act, nothing in this Part affects the operation that Parts 2 and 3 of the [Crimes \(Local Courts Appeal and Review\) Act 2001](#) would have if Division 4 of this Part had not been enacted.

#### **562Z Review of Part**

- (1) The Minister is to review this Part to determine whether the policy objectives of the Part remain valid and whether the terms of the Part remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 2 years from the commencement of this section.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period referred to in subsection (2).

### **Part 16 Miscellaneous enactments**

#### **563 Power to demand name and address**

- (1) A police officer may request a person whose name or address is, or whose name and address are, unknown to the officer to state his or her name or residential address (or

both) if the officer believes on reasonable grounds that the person may be able to assist in the investigation of an alleged indictable offence because the person was at or near the place where the alleged offence occurred, whether before, when, or soon after it occurred.

- (2) A police officer may make a request under subsection (1) only if before making the request the police officer:
- (a) provides evidence to the person that he or she is a police officer (unless the police officer is in uniform), and
  - (b) provides his or her name and place of duty, and
  - (c) informs the person of the reason for the request, and
  - (d) warns the person that failure to comply with the request may be an offence.
- (3) A person must not, without reasonable excuse (proof of which lies on the person), in response to a request made by a police officer in accordance with this section:
- (a) fail or refuse to comply with the request, or
  - (b) state a name that is false in a material particular, or
  - (c) state an address other than the full and correct address of his or her residence.

Maximum penalty: 2 penalty units.

- (4) A police officer may request a person to provide proof of the person's name and address.
- (5) Proceedings for an offence under this section are to be dealt with summarily by a Local Court.
- (6) Nothing in this section limits any powers, authorities, duties or functions that police officers may have apart from this section.

**564-573 (Repealed)**

**574 Prosecutions for blasphemy**

No person shall be liable to prosecution in respect of any publication by him or her 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 (Repealed)**

**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.

**575-578 (Repealed)**

**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.

**prescribed sexual offence** has the same meaning as in the [Criminal Procedure Act 1986](#).

**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, 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.

#### **578B Possession of child pornography**

- (1) In this section:

**child pornography** means a film, publication or computer game classified RC, or an unclassified film, publication or computer game that would, if classified, be classified RC, on the basis that it describes or depicts, in a way that is likely to cause offence to a reasonable adult, a person (whether or not engaged in sexual activity) who is a child under 16 or who looks like a child under 16.

**Classification Board** means the Classification Board established under the Commonwealth Act.

**classified** means classified under the Commonwealth Act.

**Commonwealth Act** means the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth.

**computer game, film and publication** each have the same meanings, respectively, as in the Commonwealth Act.

**law enforcement agency** has the same meaning as in section 13 of the *Criminal Records Act 1991*, and includes a person or body prescribed by the regulations for the purpose of this definition.

- (2) A person who has in his or her possession any child pornography is guilty of an

offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years (or both).

(3) Nothing in this section makes it an offence:

- (a) for any member or officer of a law enforcement agency to have any child pornography in his or her possession in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under any Act or law, or
- (b) for any person to have any child pornography in his or her possession in the exercise or performance of a power, function or duty relating to the classification of such material conferred or imposed on the person by or under any Act or law, or
- (c) for a person to have in his or her possession any film, publication or computer game that is classified other than as RC.

(4) Proceedings for an offence under this section:

- (a) are not to be commenced later than 2 years after the date of the alleged offence, and
- (b) in the case of a film, publication or computer game that is unclassified at the time of the alleged offence, are not to be commenced until the film, publication or computer game concerned has been classified, and
- (c) are to be dealt with summarily before a Local Court.

(4A) However, subsection (4) (b) does not prevent a person being arrested for, or charged with, an alleged offence against this section before the film, publication or computer game concerned has been classified.

(5) It is a defence to a prosecution under this section to prove:

- (a) that the defendant did not know, or could not reasonably be expected to have known, that the film, publication or computer game concerned is or contains pornographic material involving a child under 16, or
- (b) that the person depicted in the material was of or above the age of 16 at the time when the film, computer game or publication was made, taken, produced or published.

(6) In any proceedings under this section, a certificate issued under section 87 of the Commonwealth Act signed (or purporting to be signed) by the Director of the Classification Board (or by the Deputy Director of the Classification Board) and stating that the film, publication or computer game concerned is classified RC on the basis that it describes or depicts, in a way that is likely to cause offence to a reasonable



adult, a person (whether or not engaged in sexual activity) who is a child under 16 or who looks like a child under 16 is prima facie evidence of the matter stated in the certificate.

- (7) A court that convicts a person of an offence under this section may order that any child pornography in respect of which the offence was committed is to be destroyed or otherwise disposed of as the court thinks fit.

### **578C Publishing child pornography and indecent articles**

- (1) In this section:

**article** includes any thing:

- (a) that contains or embodies matter to be read or looked at, or
- (b) that is to be looked at, or
- (c) that is a record, or
- (d) that can be used, either alone or as one of a set, for the production or manufacture of any thing referred to in paragraphs (a), (b) or (c),

but it does not include:

- (e) any film that is classified (other than as RC or X) under the Commonwealth Act, or
- (f) any publication that is classified Unrestricted, Category 1 restricted or Category 2 restricted under the Commonwealth Act, or
- (g) any computer game that is classified (other than as RC) under the Commonwealth Act, or
- (h) any film, publication or computer game that is the subject of an exemption under Division 3 of Part 6 of the *Classification (Publications, Films and Computer Games) Enforcement Act 1995*.

**child pornography** has the same meaning as it has in section 578B.

**Commonwealth Act** means the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth.

**computer game, film and publication** each have the same meanings, respectively, as in the Commonwealth Act.

**publish** includes:

- (a) distribute, disseminate, circulate, deliver, exhibit, lend for gain, exchange, barter, sell, offer for sale, let on hire or offer to let on hire, or

(b) have in possession or custody, or under control, for the purpose of doing an act referred to in paragraph (a), or

(c) print, photograph or make in any other manner (whether of the same or of a different kind or nature) for the purpose of doing such an act.

**record** means a gramophone record or a wire or tape, or a film, and any other thing of the same or of a different kind or nature, on which is recorded a sound or picture and from which, with the aid of a suitable apparatus, the sound or picture can be produced (whether or not it is in a distorted or altered form).

(2) A person who publishes an indecent article (other than an indecent article that is child pornography) is guilty of an offence.

Maximum penalty: in the case of an individual—100 penalty units or imprisonment for 12 months (or both), and in the case of a corporation—200 penalty units.

(2A) A person who publishes an indecent article that is child pornography is guilty of an offence.

Maximum penalty: in the case of an individual—1,000 penalty units or imprisonment for 5 years (or both), or in the case of a corporation—2,000 penalty units.

(2B) A court that convicts a person of an offence under subsection (2A) may order forfeiture to the Crown of any computer used to publish the child pornography.

(2C) On the making of an order under subsection (2B) the computer becomes the property of the Crown.

(3) Nothing in this section makes it an offence for:

(a) a person to publish an indecent article for the purposes of an application for classification under the Commonwealth Act,

(b) for any member or officer of a law enforcement agency (within the meaning of the *Criminal Records Act 1991*) to publish an indecent article in the exercise or performance of a power, function or duty conferred or imposed on the member or officer by or under any Act or law.

(4) For the purposes of this section, an article may be indecent even though part of it is not indecent.

(5) Proceedings for an offence under subsection (2) are to be dealt with summarily before a Local Court.

(5A) Proceedings for an offence under subsection (2A) are not to be commenced later than 2 years after the date of the alleged offence.

(6) In any proceedings for an offence under this section in which indecency is in issue, the

opinion of an expert as to whether or not an article has any merit in the field of literature, art, medicine or science (and if so, the nature and extent of that merit) is admissible as evidence.

- (7) If a corporation contravenes, whether by act or omission, another provision of this section, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the provision if the person knowingly authorised or permitted the contravention.
- (8) A person may be proceeded against and convicted under a provision pursuant to subsection (7) whether or not the corporation has been proceeded against or been convicted under that provision.
- (9) Nothing in subsection (7) or (8) affects any liability imposed on a corporation for an offence committed by the corporation under a provision of this section.

**578D Police may enter and search premises for child pornography or indecent articles**

- (1) A police officer may apply to an authorised justice for the issue of a search warrant if the police officer believes on reasonable grounds that an offence under section 578B or 578C is being committed in or on any premises.
- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a police officer:
  - (a) to enter and search the premises concerned for evidence of an offence under section 578B or 578C, and
  - (b) to seize any thing 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](#).

**578E Offences relating to advertising or displaying products associated with sexual behaviour**

- (1) This section applies to products (such as articles, compounds, preparations or devices, but not printed matter) that are primarily concerned with, or intended to be used in connection with, sexual behaviour.
- (2) Any person who carries on, or who is engaged in, the business of selling or disposing of products to which this section applies must not:
  - (a) advertise, or cause another person to advertise, in any manner the nature of that

business, or

(b) exhibit or display any such products:

- (i) to a person who has not consented to or requested the exhibition or display, or
- (ii) in a manner so that they can be seen from outside the premises of the business by members of the public.

Maximum penalty: in the case of an individual—100 penalty units or imprisonment for 12 months (or both), and in the case of a corporation—200 penalty units.

- (3) Nothing in this section makes it an offence for a person who carries on (or who is engaged in) the business of selling or disposing of products to which this section applies to advertise the nature of that business to a person who carries on (or who is engaged in) a business or profession that ordinarily involves selling or disposing of, or advising on or prescribing the use of, such products.
- (4) This section does not apply:
  - (a) to any person who carries on (or who is engaged in) a business that sells or disposes of contraceptive devices or compounds (but not any other type of product to which this section applies), or
  - (b) to such persons, or classes of persons, as the Minister may, by notice published in the Gazette, specify for the purposes of this section.
- (5) A person can rely on the exemption provided by subsection (4) (a) only if the contraceptive devices or compounds are not displayed or exhibited to public view in any window or entrance to the premises of the business.
- (6) Proceedings for an offence under this section are to be dealt with summarily before a Local Court.

### **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 or her 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 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 or her counsel, attorney or agent or other person acting on his or her 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 or herself, his or her counsel, attorney or agent or other person acting on his or her 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 178 (Convictions, acquittals and other judicial proceedings) of the *Evidence Act 1995*, 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*.

**580B Abolition of offences of eavesdropping and being a common scold**

The common law offences of eavesdropping and being a common scold are abolished.

**580C Abolition of common law offences relating to brothels**

- (1) The common law offence of keeping a common bawdy house or brothel is abolished.
- (2) A person cannot be convicted after the commencement of this section of an offence referred to in subsection (1) whether committed before or after that commencement.
- (3) A person cannot be convicted after the commencement of this section of the common law offence of keeping a common, ill-governed and disorderly house, whether committed before or after that commencement, solely because:
  - (a) the relevant premises were used for the purposes of prostitution, or
  - (b) the person had control of or managed, or took part or assisted in the control or management of, premises used for the purposes of prostitution.

**580D Abolition of rule that husband and wife cannot be guilty of conspiracy**

Any common law rule that a husband and wife cannot be found guilty of conspiracy together is abolished.

**580E Abolition of distinction between felony and misdemeanour**

- (1) All distinctions between felony and misdemeanour are abolished.
- (2) In all matters in which a distinction has previously been made between felony and misdemeanour, the law and practice in regard to indictable offences is to be the law and practice applicable, immediately before the commencement of this section, to

misdemeanours.

- (3) Any proceedings for an offence that were commenced before the commencement of this section (being proceedings for an offence that was previously a felony or misdemeanour) are to continue to be dealt with, and to be disposed of, as if the *Crimes Legislation Amendment (Sentencing) Act 1999* had not been enacted.
- (4) Subject to the regulations, in any Act or instrument:
  - (a) a reference to a felony is taken to be a reference to a serious indictable offence, and
  - (b) a reference to a misdemeanour is taken to be a reference to a minor indictable offence.
- (5) This section does not affect the operation of any Act or instrument that restricts the commencement of proceedings against any person in respect of any offence.

#### **580F Abolition of penal servitude**

- (1) The punishment of penal servitude is abolished.
- (2) Any sentence of penal servitude that was in force, immediately before the commencement of this section, is to be taken to be a sentence of imprisonment and is to continue in force as such for the remainder of the term for which the sentence of penal servitude would, but for this section, have continued in force.
- (3) Subject to the regulations, in any Act or instrument, a reference to penal servitude is taken to be a reference to imprisonment.

#### **580G Abolition of imprisonment with light or hard labour**

- (1) The punishments of imprisonment with light labour and imprisonment with hard labour are abolished.
- (2) Any sentence of imprisonment with light labour or imprisonment with hard labour that was in force, immediately before the commencement of this section, is to be taken to be a sentence of imprisonment only and is to continue to have effect as such for the remainder of the term for which the sentence of imprisonment with light labour or imprisonment with hard labour would, but for this section, have had effect.

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

The Eleventh Schedule has effect.

#### **582 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary

or convenient to be prescribed for carrying out or giving effect to this Act.

## First Schedule (Repealed)

## Second Schedule

(Section 3)

Part 1.

Part 1A.

Sections 23, 34, 40, 61AA, 62 and 77 (in Part 3).

Sections 116, 118–124, 128–130, 163, 183, 191, 193 and 194 (in Part 4).

Sections 250 and 251 (in Part 5).

Section 310B (in Part 6A).

Sections 345–347 and 351 (in Part 9).

Parts 10, 10A, 10B, 11, 12 and 13A.

Sections 547A–547C (in Part 14).

Part 16.

## Third–Ninth Schedules (Repealed)

## Tenth Schedule

(Section 475A)

### 1 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 1A Crimes (Sexual Assault) Amendment Act 1981**

#### **1A Application of section 30 of Interpretation Act 1987**

Section 30 of the *Interpretation Act 1987* applies to and in respect of the abolition by section 63 of the common law offences of rape and attempted rape in the same way as it applies to and in respect of the repeal of an Act or statutory rule.

#### **1B Construction of certain references**

In any other Act or instrument made under an Act:

(a) a reference to rape, the crime of rape, the offence of rape or an offence under section 63 is to be read and construed as a reference to an offence under section 61B, 61C or 61D, and

(b) a reference to attempted rape, attempting to commit rape, attempting to commit the

crime of rape, attempting to commit the offence of rape or an offence under section 65 is to be read and construed as a reference to the offence of attempting to commit an offence under section 61B, 61C or 61D,

but a reference to a crime or misdemeanour which was punishable by death immediately before the commencement of the *Crimes (Amendment) Act 1955* is to be read and construed as not including a reference to an offence under section 61B, 61C or 61D.

### **1C Statement for purposes of section 30A of Interpretation Act 1987**

- (1) Clauses 1A and 1B re-enact (with modifications) section 4 of the *Crimes (Sexual Assault) Amendment Act 1981*.
- (2) Clauses 1A and 1B are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.
- (3) Clauses 1A and 1B are taken to have commenced on the commencement of the *Crimes (Sexual Assault) Amendment Act 1981*.

## **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.

### 12A Application of further amendments made by Crimes Amendment (Review of Convictions and Sentences) Act 1996

Part 13A, as amended by the *Crimes Amendment (Review of Convictions and Sentences)*

*Act 1996*, extends to convictions recorded and sentences imposed before the commencement of that Act.

## **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.

## **Part 7 Criminal Legislation Amendment Act 1995**

### **15 Forensic samples**

Section 353A, as amended by the *Criminal Legislation Amendment Act 1995*, extends to a person in lawful custody on the commencement of the amendment to section 353A made by that Act.

### **16 Apprehended violence orders—s 562G**

Section 562G, as amended by the *Criminal Legislation Amendment Act 1995*, extends to orders made by Local Courts before the commencement of the amendment to section 562G made by that Act.

### **17 Summons for appearance or arrest of defendant—s 562K**

Section 562K, as amended by the *Criminal Legislation Amendment Act 1995*, extends to warrants issued before the commencement of the amendment to section 562K made by that Act.

### **18 Registration of interstate restraint orders—s 562U**

Section 562U, as amended by the *Criminal Legislation Amendment Act 1995*, extends to orders registered before the commencement of the amendment to section 562U made by

that Act.

### **19 Abolition of offences of eavesdropping and being a common scold—s 580B**

Section 580B does not apply to an offence committed before the commencement of that section.

## **Part 8 Crimes Amendment (Apprehended Violence Orders) Act 1996**

### **20 Definitions**

In this Part:

**AVO Amendment Act 1996** means the *Crimes Amendment (Apprehended Violence Orders) Act 1996*.

**order** has the meaning given it in section 562A.

### **21 Order must be made on conviction for certain offences**

Section 562BE applies in respect of a conviction for an offence on or after the commencement of that section even if proceedings for the offence were commenced before the commencement of that section.

### **22 Order must be made on charge for certain offences**

Section 562BF does not apply in respect of proceedings before a court that the court started to hear before the commencement of that section. Section 562O continues to apply in respect of any such proceedings as if that section had not been amended by the AVO Amendment Act 1996.

### **23 Consent orders**

Subsection (3) of section 562BA (which was inserted by the AVO Amendment Act 1996) applies to any proceedings for an order of the kind referred to in section 562BA, whether the proceedings were commenced before, on or after the commencement of that subsection, but not to proceedings before a court that the court started to hear before the commencement of that subsection.

### **24 Specification of restricted premises or place in order**

The amendment to section 562D contained in the AVO Amendment Act 1996 extends to any order made before the commencement of that amendment that is the subject of an application for variation at any time on or after the commencement of that amendment.

### **25 Application for variation or revocation of order**

An amendment to section 562F contained in the AVO Amendment Act 1996 does not apply in respect of an application for variation or revocation of order that was made

before the commencement of that amendment.

## **26 Time limit for making of complaint for order by District Court**

- (1) Subsection (1) of section 562GA (which was inserted by the AVO Amendment Act 1996) does not apply in respect of a complaint for an order by the District Court that was made before the commencement of that subsection.
- (2) Subsection (1) of section 562GA applies to a complaint for an order by the District Court that is made on or after the commencement of that subsection, even if it relates to an earlier complaint that was dismissed by a Local Court or the Children's Court before the commencement of that subsection. For the purposes of the application of section 562GA to such an earlier complaint, the earlier complaint is taken to have been dismissed on the date of commencement of that subsection.

## **27 Proceedings for an order by District Court**

Subsections (2) and (3) of section 562GA (as inserted by the AVO Amendment Act 1996) apply to any proceedings in the District Court for an order that are commenced before, on or after the commencement of those subsections, except proceedings before the Court that the Court started to hear before the commencement of those subsections.

## **28 Telephone interim orders**

The amendments to section 562H (made by the AVO Amendment Act 1996) do not apply in respect of a telephone interim order that was made before the commencement of those amendments. Section 562H (as in force immediately before the commencement of those amendments) continues to apply in respect of such a telephone interim order.

## **29 Measures to protect children in AVO proceedings**

A provision of section 562NA (which was inserted by the AVO Amendment Act 1996), other than subsection (2), does not apply in respect of proceedings before a court that the court started to hear before the commencement of the provision. However, the remainder of any such proceedings are to be heard in the absence of the public if the court so directs.

## **Part 9**

**(Repealed)**

## **Part 9A Traffic Legislation Amendment Act 1997**

### **29A Regulations of a savings nature**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Traffic Legislation Amendment Act 1997*, but only in relation to the amendments made to this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of

assent to the Act concerned or a later date.

- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 10 Crimes Legislation Amendment Act 1997**

### **30 Offenders who are minors**

The amendment made to section 61S by the *Crimes Legislation Amendment Act 1997* does not apply in respect of an act or omission giving rise to proceedings for an offence that occurred before the amendment commenced.

### **31 Increase in time limit for prosecutions for offences relating to unlawful access to data in computer**

The amendment made to section 309 by the *Crimes Legislation Amendment Act 1997* does not apply in respect of an act or omission giving rise to proceedings for an offence referred to in that section that occurred before that amendment commenced.

### **32 Orders under section 353A (4)**

Section 353A (7) (b), as amended by the *Crimes Legislation Amendment Act 1997*, does not apply in relation to an offence found proved before the commencement of the amendment made to that paragraph by that Act.

### **33 Plea of autrefois convict or autrefois acquit**

Section 399 (2), as inserted by the *Crimes Legislation Amendment Act 1997*, does not apply to a plea of autrefois convict or autrefois acquit made before the commencement of that subsection.

## **Part 11 Crimes Amendment (Child Pornography) Act 1997**

### **34 Operation of amendments in relation to use or employment of a child for pornographic purposes**

Section 91G, as amended by Schedule 1 [2]-[4] to the *Crimes Amendment (Child Pornography) Act 1997*, does not apply in respect of an act giving rise to proceedings for an offence that occurred before that amendment commenced.



## **Part 12 Crimes Amendment (Detention after Arrest) Act 1997**

### **35 Application of Act**

Part 10A does not apply in respect of the arrest of a person before the commencement of that Part.

## **Part 13 Crimes Amendment (Diminished Responsibility) Act 1997**

### **36 Replacement of defence of diminished responsibility—application of new defence**

Section 23A, as substituted by the *Crimes Amendment (Diminished Responsibility) Act 1997*, does not apply to or in respect of a murder that is alleged to have been committed before that substitution. This Act continues to apply to and in respect of such an alleged murder as if the *Crimes Amendment (Diminished Responsibility) Act 1997* had not been enacted.

### **37 Application of requirement to give notice of defence**

Section 405AB, as inserted by the *Crimes Amendment (Diminished Responsibility) Act 1997*, does not apply to or in respect of a trial for murder if the murder is alleged to have been committed before the commencement of that section.

## **Part 14 Crimes Legislation Further Amendment Act 1998**

### **38 Power of registrar to extend interim apprehended violence orders**

The power conferred on a registrar of a court to vary an interim order by the amendment made to section 562BB by the *Crimes Legislation Further Amendment Act 1998* extends to interim orders made under that section before the commencement of that amendment.

### **39 Abolition of common law rule that husband and wife cannot be found guilty of conspiracy**

Section 580D, as inserted by the *Crimes Legislation Further Amendment Act 1998*, does not apply in respect of any act of, or omission by, a husband or wife if the act or omission occurred before the commencement of that section.

### **40 Other amendments**

An amendment made to section 428G or the Second Schedule by the *Crimes Legislation Further Amendment Act 1998* does not apply in respect of any trial commenced before the amendment commences.

## **Part 15 Road Transport (Safety and Traffic Management) Amendment**

## (Camera Devices) Act 1999

### 41 Application of amendments

- (1) Proceedings for offences committed, or alleged to have been committed, before the commencement of Schedule 2 to the *Road Transport (Safety and Traffic Management) Amendment (Camera Devices) Act 1999* are to be determined as if that Act had not been enacted.
- (2) Accordingly, the law (including any relevant provision of this Act) that would have been applicable to the proceedings had Schedule 2 to the *Road Transport (Safety and Traffic Management) Amendment (Camera Devices) Act 1999* not been enacted continues to apply to the proceedings as if that Act had not been enacted.

## Part 16 Crimes Amendment (Apprehended Violence) Act 1999

### 42 Definitions

- (1) In this Part:  
**amending Act** means the *Crimes Amendment (Apprehended Violence) Act 1999*.
- (2) Words and expressions used in this Part have the same meanings as in Part 15A.

### 43 Existing orders

- (1) An apprehended violence order in force immediately before the omission of section 562B by the amending Act is taken to be an apprehended violence order issued under Part 15A as amended by the amending Act.
- (2) An apprehended violence order in force immediately before the omission of section 562B by the amending Act is taken to be:
  - (a) an apprehended domestic violence order, if the protected person (or at least one of the protected persons) for whose protection the order was made has a domestic relationship with the person against whom it was issued, or
  - (b) an apprehended personal violence order, if the protected person (or each of the protected persons) for whose protection the order was made does not have a domestic relationship with the person against whom it was issued.
- (3) An order (other than an order referred to in subclause (1) or (2)) in force under Part 15A immediately before the commencement of an amendment made by the amending Act is taken to have been made under that Part as amended by the amending Act.
- (4) A registered interstate restraint order within the meaning of Part 15A immediately before its amendment by the amending Act is taken to be a registered external

protection order within the meaning of section 562RA as inserted by the amending Act.

#### **44 Existing complaints and applications**

- (1) A complaint for an apprehended violence order pending immediately before the omission of section 562B by the amending Act is taken to be:
  - (a) a complaint for an apprehended domestic violence order, if the protected person (or at least one of the protected persons) for whose protection the order is sought has a domestic relationship with the person against whom it is sought, or
  - (b) a complaint for an apprehended personal violence order, if the protected person (or each of the protected persons) for whose protection the order is sought does not have a domestic relationship with the person against whom it is sought.
- (2) An application (other than a complaint referred to in subclause (1)) pending under a provision of Part 15A immediately before the commencement of an amendment made by the amending Act is taken to have been made under that Part as amended by the amending Act.

#### **45 References to interstate restraint orders**

- (1) A reference (however expressed) in any other Act, in any instrument under any Act or in any other document of any kind to an interstate restraint order within the meaning of Part 15A is taken to be a reference to an external protection order within the meaning of section 562RA as inserted by the amending Act.
- (2) A reference (however expressed) in any other Act, in any instrument under any Act or in any other document of any kind to a registered interstate restraint order within the meaning of Part 15A is taken to be a reference to a registered external protection order within the meaning of section 562RA as inserted by the amending Act.

#### **46 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the amending Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the amending Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 17 Crimes Legislation Amendment Act 2000**

### **47 Application of amendments relating to geographical jurisdiction**

Part 1A and sections 178BA (3) and 178BB (2), as inserted by the *Crimes Legislation Amendment Act 2000*, do not apply in respect of any act or omission occurring before their commencement. Sections 3A and 3B (as in force before their repeal by that Act) continue to apply to any such act or omission.

## **Part 18 Crimes Legislation Amendment Act 2002**

### **48 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Crimes Legislation Amendment Act 2002* (but only to the extent that it amends this Act).
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to that Act or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 19 Crimes Amendment (Sexual Offences) Act 2003**

### **49 Defence under section 77 (2)**

Section 77 (2), as in force before its repeal by the *Crimes Amendment (Sexual Offences) Act 2003*, continues to apply to offences committed before its repeal.

### **50 Defence under section 91D (2)**

Section 91D (2), as in force before its repeal by the *Crimes Amendment (Sexual Offences) Act 2003*, continues to apply to offences committed before its repeal.

**51 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.

**52 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.

**53 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.

**54 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.

**55 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.