

# Summary Offences Act 1988 No 25

[1988-25]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Does not include amendments by**
  - [Law Enforcement \(Powers and Responsibilities\) Act 2002 No 103](#) (not commenced)
  - [Health Legislation Further Amendment Act 2004 No 87](#) (not commenced — to commence on 1.1.2005)
  - [Crimes Amendment \(Child Pornography\) Act 2004 No 95](#) (not commenced — to commence on 1.1.2005)
- **See also**
  - [Road Transport \(General\) Bill 2004](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 17 December 2004

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New South Wales

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# Summary Offences Act 1988 No 25



New South Wales

An Act with respect to conduct in public and other places; to repeal the *Offences in Public Places Act 1979*, the *Public Assemblies Act 1979* and the *Prostitution Act 1979*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Summary Offences Act 1988*.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Definitions

(1) In this Act:

**building** means a building or structure, or any part of a building or structure.

**church** means:

- (a) a building ordinarily used for Divine worship, and
- (b) any land occupied or used in connection with such a building.

**dwelling** means:

- (a) a building intended for occupation as a residence and being, or capable of being, so occupied, except where it is above, or attached to, a shop or commercial premises, and
- (b) such a building that is part of a retirement village or is among the buildings in which persons live as a religious or other private community, and
- (c) any land occupied or used in connection with a building referred to in paragraph (a) or (b).

**hospital** means:

- (a) a public hospital within the meaning of the *Health Services Act 1997* controlled by an area health service or the Crown, or
- (b) a statutory health corporation or affiliated health organisation within the meaning of that Act, or
- (c) an establishment within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988* or a nursing home within the meaning of the *Nursing Homes Act 1988*,

and any land or building occupied or used in connection with such a hospital, establishment or nursing home.

**knife** includes:

- (a) a knife blade, or
- (b) a razor blade, or
- (c) any other blade,

but does not include anything that is of a class or description declared by the regulations to be excluded from this definition.

**premises** includes a structure, building, vehicle, vessel or place, whether built on or not, and any part thereof.

**prohibited drug** has the same meaning as it has in the *Drug Misuse and Trafficking Act 1985*.

**prostitution** includes acts of prostitution between persons of different sexes or of the same sex, and includes:

- (a) sexual intercourse as defined in section 61H of the *Crimes Act 1900*, and
- (b) masturbation committed by one person on another,

for payment.

**public place** means:

- (a) a place (whether or not covered by water), or
- (b) a part of premises,

that is open to the public, or is used by the public whether or not on payment of money or other consideration, whether or not the place or part is ordinarily so open or used and whether or not the public to whom it is open consists only of a limited class of persons, but does not include a school.



**residence** includes a building in which a person resides as part of a private community.

**road** means a road within the meaning of the *Road Transport (General) Act 1999* (other than a road 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).

**road related area** means a road related area within the meaning of the *Road Transport (General) Act 1999* (other than a 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).

**school** means:

- (a) a government school or a registered non-government school within the meaning of the *Education Reform Act 1990*, and
- (b) a school providing education (whether secular or religious) at a pre-school or infants' school level or at a primary or secondary level, and
- (c) a place used for the purposes of an establishment commonly known as a child-minding centre or for similar purposes, and
- (d) the land, and any building, occupied by or in connection with the conduct of such a school or place,

and includes any part of such a school or place, but does not include any building that is occupied or used solely as a residence or solely for a purpose unconnected with the conduct of such a school or place.

**spray can** includes anything that is made or adapted for use for emitting a liquid or substance and that operates by means of air, gas or vapour pressure.

**spray paint** includes any liquid or other substance that is designed to stain, mark or corrode and to be applied from a spray can, and includes the spray can.

**vehicle** includes:

- (a) a motor vehicle (whether or not still capable of being driven), and
  - (b) a train or other vehicle used on a railway or monorail, and
  - (c) a caravan or anything else constructed to be drawn by a vehicle or animal.
- (2) For the purposes of this Act, a person who is in a vehicle in any place shall be taken to be in that place.
- (3) Section 8 of the *Crimes Act 1900* does not apply in relation to the expression "public place" in this Act.

## **Part 2 Offences in public and other places**

### **Division 1 Offensive behaviour**

#### **4 Offensive conduct**

- (1) A person must not conduct himself or herself in an offensive manner in or near, or within view or hearing from, a public place or a school.

Maximum penalty: 6 penalty units or imprisonment for 3 months.

- (2) A person does not conduct himself or herself in an offensive manner as referred to in subsection (1) merely by using offensive language.
- (3) It is a sufficient defence to a prosecution for an offence under this section if the defendant satisfies the court that the defendant had a reasonable excuse for conducting himself or herself in the manner alleged in the information for the offence.

#### **4A Offensive language**

- (1) A person must not use offensive language in or near, or within hearing from, a public place or a school.

Maximum penalty: 6 penalty units.

- (2) It is a sufficient defence to a prosecution for an offence under this section if the defendant satisfies the court that the defendant had a reasonable excuse for conducting himself or herself in the manner alleged in the information for the offence.
- (3) Instead of imposing a fine on a person, the court:
- (a) may make an order under section 8 (1) of the *Crimes (Sentencing Procedure) Act 1999* directing the person to perform community service work, or
  - (b) may make an order under section 5 (1) of the *Children (Community Service Orders) Act 1987* requiring the person to perform community service work, as the case requires.
- (4), (5) (Repealed)
- (6) However, the maximum number of hours of community service work that a person may be required to perform under an order in respect of an offence under this section is 100 hours.

#### **5 Obscene exposure**

A person shall not, in or within view from a public place or a school, wilfully and obscenely expose his or her person.

Maximum penalty: 10 penalty units or imprisonment for six months.

## **6 Obstructing traffic**

A person shall not, without reasonable excuse (proof of which lies on the person), wilfully prevent, in any manner, the free passage of a person, vehicle or vessel in a public place.

Maximum penalty: 4 penalty units.

### **6A Unauthorised entry of vehicle or boat**

A person must not, without reasonable excuse (proof of which lies on the person), enter any vehicle or boat in a public place without the consent of the owner or lawful occupier of the vehicle or boat.

Maximum penalty: 4 penalty units.

## **7 Damaging fountains**

A person shall not wilfully:

- (a) damage or deface, or
- (b) enter upon, or
- (c) cause any foreign material or substance to enter into, any part of a fountain erected in a public place.

Maximum penalty: 4 penalty units.

## **8 Damaging or desecrating protected places**

(1) In this section:

**protected place** means a shrine, monument or statue located in a public place, and (without limitation) includes a war memorial.

**war memorial** means a war memorial located in a public place, and (without limitation) includes:

- (a) the Anzac Memorial in Hyde Park, Sydney, being:
  - (i) the memorial building referred to in the [Anzac Memorial \(Building\) Act 1923](#), and
  - (ii) the land described in the Schedule to that Act, and
  - (iii) any other structure on that land, and
- (b) any other place prescribed under subsection (4) as a war memorial for the purposes of this section.

(2) A person must not wilfully damage or deface any protected place.

Maximum penalty: 20 penalty units.

(3) A person must not commit any nuisance or any offensive or indecent act in or on any war memorial.

Maximum penalty: 10 penalty units.

(4) The regulations may prescribe a place (within a public place) as a war memorial for the purposes of this section, comprising:

(a) a specified shrine, monument, statue or other structure or place, and

(b) a specified area (if any) within its vicinity.

#### **8A Climbing on or jumping from buildings and other structures**

(1) A person who risks the safety of any other person as a consequence of:

(a) abseiling, jumping or parachuting from any part of a building or other structure, or

(b) climbing down or up or on or otherwise descending (except as referred to in paragraph (a)) or ascending any part of a building or other structure, except by use of the stairs, lifts or other means provided for ascent or descent of it,

is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 3 months, or both.

(2) A person is not guilty of an offence under this section for doing anything if the person establishes that he or she had some reasonable excuse for doing it or did it for a lawful purpose.

(3) In this section:

**structure** includes a bridge, crane (whether mobile or not) and tower, but does not include a structure provided for climbing or jumping for recreational purposes.

#### **9 Defacing walls**

A person shall not:

(a) affix a placard or paper upon any premises, or

(b) wilfully mark, by means of chalk, paint or other material, any premises,

so that the placard, paper or marking is within view from a public place, unless he or she first obtained the consent, if the premises are occupied, of the occupier or person in charge of the premises or if the premises are unoccupied, of the owner or person in charge of the premises.

Maximum penalty: 4 penalty units.

**10** (Renumbered as sec 11B)

**10AA, 10AB** (Renumbered as secs 11E, 11F)

**10A Damaging and defacing property by means of spray paint**

- (1) A person must not, without reasonable excuse (proof of which lies on the person), wilfully damage or deface any premises or other property by means of spray paint.

Maximum penalty: 20 penalty units or imprisonment for 6 months.

- (2) Instead of imposing a fine on the person or sentencing the person to imprisonment, the court:
- (a) may make an order under section 8 (1) of the *Crimes (Sentencing Procedure) Act 1999* directing the person to perform community service work, being an order containing a recommendation of the kind referred to in section 91 of that Act, or
  - (b) may make an order under section 5 of the *Children (Community Service Orders) Act 1987* requiring the person to perform community service work, being an order containing a recommendation of the kind referred to in section 5 (1A) of that Act,
- as the case requires.
- (3) A court that convicts a person of an offence under this section must not sentence the person to imprisonment unless the person has previously been convicted of an offence under this section or section 10B on so many occasions that the court is satisfied that the person is a serious and persistent offender and is likely to commit such an offence again.

**10B Possession of spray paint**

- (1) A person must not have spray paint in the person's possession with the intention that it should be used to damage or deface premises or other property.

Maximum penalty: 10 penalty units or imprisonment for 3 months.

- (2) Instead of imposing a fine on the person or sentencing the person to imprisonment, the court:
- (a) may make an order under section 8 (1) of the *Crimes (Sentencing Procedure) Act 1999* directing the person to perform community service work, being an order containing a recommendation of the kind referred to in section 91 of that Act, or
  - (b) may make an order under section 5 of the *Children (Community Service Orders) Act 1987* requiring the person to perform community service work, being an order containing a recommendation of the kind referred to in section 5 (1A) of that Act,

as the case requires.

- (3) A court that convicts a person of an offence under this section must not sentence the person to imprisonment unless the person has previously been convicted of an offence under this section or section 10A on so many occasions that the court is satisfied that the person is a serious and persistent offender and is likely to commit such an offence again.
- (4) If a person is convicted of an offence under this section, the court may, in addition to any other penalty it may impose, make an order that the spray paint be forfeited to the Crown, and the spray paint is forfeited accordingly.

### **10C Sale of spray paint cans to persons under 18**

- (1) A person who sells a spray paint can to a person under the age of 18 years is guilty of an offence.

Maximum penalty: 10 penalty units.

- (2) It is a defence (proof of which lies on the person selling the spray paint can) to a prosecution for an offence under this section that the person selling the spray paint can believed on reasonable grounds that the person to whom the spray paint can was sold was of or above the age of 18 years.
- (3) If an employee contravenes subsection (1), the employer is taken to have contravened that subsection, whether or not the employee contravened the provision without the employer's authority or contrary to the employer's orders or instructions.
- (4) It is a defence to a prosecution against an employer for such a contravention if it is proved:
  - (a) that the employer had no knowledge of the contravention, and
  - (b) that the employer could not, by the exercise of due diligence, have prevented the contravention.
- (5) An employer may be proceeded against and convicted under subsection (1) by virtue of subsection (3) whether or not the employee has been proceeded against or convicted under subsection (1).
- (6) The regulations may provide that this section does not apply to or in relation to any specified class or description of spray paint can.
- (7) In this section:

***spray paint can*** means a spray can that contains spray paint.

## **11 Possession of liquor by minors**

- (1) A person under the age of 18 years is guilty of an offence if the person possesses or consumes any liquor in a public place, unless the person establishes that:
  - (a) the person was under the supervision of a responsible adult, or
  - (b) the person had a reasonable excuse for possessing or consuming the liquor.Maximum penalty: \$20.
- (2) A police officer may seize liquor in the possession of a person in a public place, if the officer suspects, on reasonable grounds, that:
  - (a) the person is under the age of 18 years, and
  - (b) the person is not under the supervision of a responsible adult, and
  - (c) the person does not have a reasonable excuse for possessing the liquor.
- (3) Liquor seized under this section is forfeited to the Crown.
- (4) Liquor may be seized under this section from a person's possession even though the person is under the age of criminal responsibility.
- (5) A person may not be arrested for an offence under subsection (1), except so far as may be necessary for the purpose of the administration of a caution by a police officer in relation to such an offence.
- (5A) A police officer who reasonably suspects that a person has committed an offence under subsection (1) may require that person:
  - (a) to state his or her full name and residential address, and
  - (b) to produce then, or at a police station within a reasonable time, documentary evidence that might reasonably be accepted as applying to the person and as proving that the person is at least 18 years of age.
- (5B) A person the subject of a requirement under subsection (5A) must not:
  - (a) refuse to state his or her full name and residential address, or
  - (b) state a false name or residential address, or
  - (c) without reasonable excuse, refuse or fail to produce evidence of age as referred to in subsection (5A) (b).Maximum penalty: \$20.
- (6) The regulations may make provision for or with respect to:

- (a) the procedure to be followed as regards the seizure of liquor under this section and the procedure to be followed after its seizure, and
- (b) without limiting paragraph (a), prescribing the circumstances in which, and the procedure by which, liquor seized under this section is to be returned, and
- (c) prescribing circumstances in which the other provisions of this section do not apply.

(7) In this section:

**liquor** has the same meaning as in the *Liquor Act 1982*, and includes any container containing liquor.

### **11A Violent disorder**

- (1) If 3 or more persons who are present together use or threaten unlawful violence 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 or threatening unlawful violence is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months.

- (2) It is immaterial whether or not the 3 or more persons use or threaten unlawful violence simultaneously.
- (3) No person of reasonable firmness need actually be, or be likely to be, present at the scene.
- (4) An offence under subsection (1) may be committed in private as well as in public places.
- (5) A person is guilty of an offence under subsection (1) only if he or she intends to use or threaten violence or is aware that his or her conduct may be violent or threaten violence.
- (6) Subsection (5) does not affect the determination for the purposes of subsection (1) of the number of persons who use or threaten violence.

(7) In this section:

**violence** means any violent conduct, so that:

- (a) 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).



## Division 2 Dangerous behaviour

### 11B Custody of offensive implement

- (1) A person shall not, without reasonable excuse (proof of which lies on the person), have in his or her custody an offensive implement in a public place or a school.

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

- (2) If a person is convicted of an offence under this section, the court may, in addition to any penalty it may impose, make an order that the offensive implement be forfeited to the Crown, and the implement is forfeited accordingly.

- (3) In this section:

***offensive implement*** means:

- (a) anything made or adapted for use for causing injury to a person, or
- (b) anything intended, by the person having custody of the thing, to be used to injure or menace a person or damage property.

### 11C Custody of knife in public place or school

- (1) A person must not, without reasonable excuse (proof of which lies on the person), have in his or her custody a knife in a public place or a school.

Maximum penalty:

- (a) 5 penalty units, or
- (b) in the case of a person dealt with once previously for a knife-related offence—10 penalty units or imprisonment for 12 months, or both, or
- (c) in the case of a person dealt with more than once previously for a knife-related offence—20 penalty units or imprisonment for 2 years, or both.
- (2) Without limitation, it is a reasonable excuse for the purposes of this section for a person to have custody of a knife, if:
- (a) the custody is reasonably necessary in all the circumstances for any of the following:
- (i) the lawful pursuit of the person's occupation,
- (ii) the preparation or consumption of food or drink,
- (iii) participation in a lawful entertainment, recreation or sport,
- (iv) the exhibition of knives for retail or other trade purposes,

- (v) an organised exhibition by knife collectors,
  - (vi) the wearing of an official uniform,
  - (vii) genuine religious purposes, or
- (b) the custody is reasonably necessary in all the circumstances during travel to or from or incidental to an activity referred to in paragraph (a), or
- (c) the custody is of a kind prescribed by the regulations.
- (3) However, it is not a reasonable excuse for the purposes of this section for a person to have custody of a knife solely for the purpose of self defence or the defence of another person.
- (4) For the purposes of subsection (1), a person is taken to have been dealt with previously for a knife-related offence if the person:
- (a) has been issued with a notice under section 29A in respect of the offence and the person has paid the amount specified in the notice or the amount specified in any process issued subsequent to such a notice, or
  - (b) has been convicted of the offence, or
  - (c) has been charged with the offence and the court hearing the charge has made an order in relation to the offence under section 10 of the [Crimes \(Sentencing Procedure\) Act 1999](#).
- (5) In this section, knife-related offence means:
- (a) an offence under this section or section 11B or 11E, or
  - (b) any other offence that is punishable on conviction by imprisonment for 2 years or more if a knife was used in the commission of the offence, or
  - (c) an offence under a law of the Commonwealth or of another State or of a Territory that is punishable on conviction by imprisonment for 2 years or more if a knife was used in the commission of the offence.
- (6) The regulations may provide that this section does not apply to or in relation to any specified class or description of knife.

#### **11D Parents who allow children to carry knives**

- (1) The parent of a child, being a child:
- (a) who is under the age of 18 years, and
  - (b) who commits an offence against section 11C,

is guilty of an offence if the parent knowingly authorised or permitted the child to commit the offence.

Maximum penalty: 5 penalty units.

- (2) The parent of a child may be proceeded against and dealt with under this section whether or not the child has been proceeded against or dealt with under section 11C.
- (3) Nothing in this section affects the liability of the parent's child for an offence committed by the child against section 11C.
- (4) If an act or omission constitutes an offence:
  - (a) under this section, and
  - (b) under section 11 of the *Children (Protection and Parental Responsibility) Act 1997*,  
the offender is not liable to be punished twice in respect of the act or omission.
- (5) In this section, **parent** of a child has the same meaning it has in the *Children (Protection and Parental Responsibility) Act 1997*.

#### **11E Wielding of knives in a public place or school**

- (1) A person who, without reasonable excuse (proof of which lies on the person):
  - (a) uses a knife, or
  - (b) carries a knife that is visible,in the presence of any person in a public place or a school in a manner that would be likely to cause a person of reasonable firmness present at the scene to fear for his or her personal safety is guilty of an offence.

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

- (2) No person of reasonable firmness need actually be, or be likely to be, present at the scene.

#### **11F Sale of knives to children**

- (1) A person who sells a knife to a child under the age of 16 years is guilty of an offence.

Maximum penalty: 50 penalty units.

- (2) It is a defence (proof of which lies on the person) to a prosecution for an offence under this section that the person selling the knife believed on reasonable grounds that the child was of or above the age of 16 years.
- (3) If an employee contravenes subsection (1), the employer is taken to have contravened that subsection, whether or not the employee contravened the provision

without the employer's authority or contrary to the employer's orders or instructions.

- (4) It is a defence to a prosecution against an employer for such a contravention if it is proved:
  - (a) that the employer had no knowledge of the contravention, and
  - (b) that the employer could not, by the exercise of due diligence, have prevented the contravention.
- (5) An employer may be proceeded against and convicted under subsection (1) by virtue of subsection (3) whether or not the employee has been proceeded against or convicted under subsection (1).
- (6) The regulations may provide that this section does not apply to or in relation to any specified class or description of knife.

## **Division 2A Loitering by convicted child sexual offenders**

### **11G Loitering by convicted child sexual offenders near premises frequented by children**

- (1) A person who is a convicted child sexual offender and who loiters, without reasonable excuse, in or near:
  - (a) a school, or
  - (b) a public place regularly frequented by children and in which children are present at the time of the loitering,is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

- (2) In this section:

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

**convicted child sexual offender** means a person who has been convicted, whether before or after the commencement of this section, of any of the following offences:

- (a) an offence involving sexual activity or acts of indecency that was committed in New South Wales against or in respect of a child and that was punishable by penal servitude or imprisonment for 12 months or more,
- (b) an offence under sections 91D–91G of the *Crimes Act 1900* (other than if committed by a child prostitute),
- (c) an offence under section 578B or 578C (2A) of the *Crimes Act 1900*,
- (c1) an offence an element of which is an intention to commit an offence referred to

in paragraph (a), (b) or (c),

- (d) an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in paragraphs (a)–(c),
- (e) an offence under a 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 paragraphs (a)–(d).

**conviction** includes a spent conviction.

- (3) For the purposes of this section, section 579 of the *Crimes Act 1900* does not apply to or in respect of an offence referred to in the definition of **convicted child sexual offender** in subsection (2).

## Division 2B Intimidatory use of vehicles and vessels

### 11H Intimidatory use of vehicles and vessels

- (1) A person must not operate a motorised vehicle or motorised vessel in a public place:
  - (a) in such a manner as to harass or intimidate another person, or
  - (b) in such a manner as would be likely to cause a person of reasonable firmness to fear for his or her personal safety.

Maximum penalty: 6 penalty units.

- (2) No person of reasonable firmness need actually be, or be likely to be, present at the scene.
- (3) A person is not liable to be convicted (in respect of the same act or omission) of both:
  - (a) an offence under this section, and
  - (b) an offence under section 4AA of the *Traffic Act 1909* or section 43 of the *Road Transport (Safety and Traffic Management) Act 1999*.

- (4) In this section:

**vehicle** includes:

- (a) anything on wheels, tracks or skis, other than a vehicle used on a railway, tramway or monorail, and
- (b) anything else declared by the regulations to be a vehicle for the purposes of this section.

**vessel** includes:

- (a) anything that is used, or is capable of being used, as a means of transportation on, under or immediately above water, and
- (b) anything else declared by the regulations to be a vessel for the purposes of this section.

## **Division 3 Miscellaneous**

### **12 Defence**

It is a sufficient defence to a prosecution for an offence under any of the provisions of this Part if the defendant satisfies the court that the act complained of in the information for the offence was done with lawful authority.

### **13 Particulars to be furnished**

(1) If a defendant charged with an offence under any of the provisions of this Part:

- (a) has requested the informant to furnish to the defendant reasonable particulars of the behaviour or conduct the subject of the charge, and
- (b) the informant, or some person on his or her behalf, has not so furnished those particulars,

the court before which the defendant is charged shall adjourn the charge pending the furnishing of those particulars or may dismiss the charge.

(2) If, at the hearing of a charge for an offence referred to in subsection (1):

- (a) the evidence discloses behaviour or conduct that constitutes such an offence, and
- (b) that behaviour or conduct is different from the behaviour or conduct of which particulars have been given to the defendant under subsection (1),

the court may, on the application of the defendant and if it is of the opinion that the defendant was deceived by those particulars, adjourn the hearing on such terms as it thinks fit.

## **Part 3 Prostitution**

### **14 Exclusion of matters dealt with under certain Acts**

In this Part:

***premises*** does not include:

- (a) the premises of a club registered under the [Registered Clubs Act 1976](#), or
- (b) licensed premises under the [Liquor Act 1982](#).

### **15 Living on earnings of prostitution**

- (1) A person shall not knowingly live wholly or in part on the earnings of prostitution of another person.

Maximum penalty: 10 penalty units or imprisonment for 12 months.

- (2) For the purposes of subsection (1), a person who is of or above the age of 18 years and who:

(a) lives with or is habitually in the company of, a reputed prostitute, and

(b) has no visible lawful means of support,

shall be taken knowingly to live wholly or in part on the earnings of prostitution of another person unless he or she satisfies the court before which he or she is charged with an offence under that subsection that he or she has sufficient lawful means of support.

- (3) A person does not contravene subsection (1) by living wholly or in part on earnings derived from a brothel if the person owns, manages or is employed in the brothel.

- (4) For the purposes of subsection (3), premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution.

### **15A Causing or inducing prostitution**

- (1) A person must not, by coercive conduct or undue influence, cause or induce another person to commit an act of prostitution.

- (2) A person must not, by coercive conduct or undue influence, cause or induce another person to surrender any proceeds of an act of prostitution.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

### **16 Prostitution or soliciting in massage parlours etc**

A person shall not use, for the purpose of prostitution or of soliciting for prostitution, any premises held out as being available:

(a) for the provision of massage, sauna baths, steam baths or facilities for physical exercise, or

(b) for the taking of photographs, or

(c) as a photographic studio,

or for services of a like nature.

Maximum penalty: 5 penalty units or imprisonment for 3 months.

### **17 Allowing premises to be used for prostitution**

(1) A person, being the owner, occupier or manager, or a person assisting in the management, of any premises held out as being available:

- (a) for the provision of massage, sauna baths, steam baths or facilities for physical exercise, or
- (b) for the taking of photographs, or
- (c) as a photographic studio,

or for services of a like nature, shall not knowingly suffer or permit the premises to be used for the purpose of prostitution or of soliciting for prostitution.

Maximum penalty: 50 penalty units or imprisonment for 12 months.

(2) A conviction under subsection (1) does not exempt the offender from any penalty or other punishment to which he or she may be liable for keeping or being concerned in keeping a disorderly house, or for the nuisance occasioned by it.

### **18 Advertising premises used for prostitution**

A person shall not, in any manner:

- (a) publish or cause to be published an advertisement, or
- (b) erect or cause to be erected any sign,

indicating that any premises are used or are available for use, or that a person is available, for the purposes of prostitution.

Maximum penalty: 6 penalty units or imprisonment for 3 months.

### **18A Advertising for prostitutes**

(1) A person shall not, in any manner, publish or cause to be published an advertisement for a prostitute.

Maximum penalty: 10 penalty units or imprisonment for 3 months.

(2) In this section, **advertisement for a prostitute** means an advertisement that indicates, or that can be reasonably taken to indicate, that:

- (a) employment for a prostitute is or may be available, or
- (b) a person is required for employment as a prostitute or to act as a prostitute, or
- (c) a person is required for employment in a position that involves, or may involve, acting as a prostitute.



### **19 Soliciting clients by prostitutes**

- (1) A person in a road or road related area shall not, near or within view from a dwelling, school, church or hospital, solicit another person for the purpose of prostitution.

Maximum penalty: 6 penalty units or imprisonment for 3 months.

- (2) A person shall not, in a school, church or hospital, solicit another person for the purpose of prostitution.

Maximum penalty: 6 penalty units or imprisonment for 3 months.

- (3) A person shall not, in or near, or within view from, a dwelling, school, church, hospital or public place, solicit another person, for the purpose of prostitution, in a manner that harasses or distresses the other person.

Maximum penalty: 8 penalty units or imprisonment for 3 months.

- (4) The provisions of this section are in addition to, and do not derogate from, any other law (including section 4).

- (5) In this section:

- (a) a reference to a person who solicits another person for the purpose of prostitution is a reference to a person who does so as a prostitute, and
- (b) a reference to soliciting includes a reference to soliciting from a motor vehicle, whether moving or stationary.

### **19A Soliciting prostitutes by clients**

- (1) A person in a road or road related area must not, near or within view from a dwelling, school, church or hospital, solicit another person for the purpose of prostitution.

Maximum penalty: 6 penalty units or imprisonment for 3 months.

- (2) A person must not, in a school, church or hospital, solicit another person for the purpose of prostitution.

Maximum penalty: 6 penalty units or imprisonment for 3 months.

- (3) A person must not, in or near, or within view from, a dwelling, school, church, hospital or public place, solicit another person, for the purpose of prostitution, in a manner that harasses or distresses the other person.

Maximum penalty: 8 penalty units or imprisonment for 3 months.

- (4) The provisions of this section are in addition to, and do not derogate from, any other law (including section 4).

- (5) In this section:

- (a) a reference to a person who solicits another person for the purpose of prostitution is a reference to a person who does so as a prospective client of a prostitute, and
- (b) a reference to soliciting includes a reference to soliciting from a motor vehicle, whether moving or stationary.

## 20 Public acts of prostitution

- (1) Each of the persons taking part in an act of prostitution:

- (a) in, or within view from, a school, church, hospital or public place, or
  - (b) within view from a dwelling,
- is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months.

- (2) Each of the persons taking part in an act of prostitution in a vehicle that is:

- (a) in, or within view from, a school, church, hospital or public place, or
- (b) within view from a dwelling,

is guilty of an offence whether or not the act of prostitution can be seen from outside the vehicle.

Maximum penalty: 10 penalty units or imprisonment for 6 months.

- (3) A person is not liable to be punished for an offence under both subsections (1) and (2) in respect of the same act of prostitution.

- (4) The provisions of this section are in addition to, and do not derogate from, any other law (including sections 4 and 5).

- (5) In this section:

**act of prostitution** includes sexual activity between persons of different sexes or of the same sex, comprising:

- (a) sexual intercourse as defined in section 61H of the *Crimes Act 1900*, or
  - (b) masturbation committed by one person on another,
- for payment.

## 21 Search warrant

- (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 section 16 or 17 is being contravened or, within 72 hours, will be contravened

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, and
  - (b) to arrest, search and bring before a Magistrate or an authorised officer within the meaning of the *Summary Offences Act 1988* any person who is, or appears to have been, contravening either section 16 or 17, and
  - (c) to seize any article that may be evidence of such a contravention.
- (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*.

## Part 3A Minors in sex clubs

### 21A Definitions

In this Part:

**declared sex club** means premises for the time being declared under this Part to be a sex club.

**live sex entertainment** means live public entertainment of a sexually explicit nature, such as striptease or actual or simulated sexual intercourse (whether or not involving audience participation).

**manager** of a declared sex club means a person having the management or control, or otherwise in charge, of the club.

**minor** means a person who has not attained the age of 18 years.

**public entertainment** means entertainment to which admission may ordinarily be gained by members of the public (whether or not the public to whom it is open consists only of a limited class of persons) on payment of money, or other consideration, as the price or condition of admission. Entertainment does not cease to be public entertainment merely because:

- (a) some (but not all) persons may be admitted to the entertainment otherwise than on payment of money, or other consideration, as the price or condition of admission, or
- (b) payment of money or other consideration, is demanded as the charge for a meal or

other refreshment, or for any other service or thing, before admission to the entertainment is granted or as the charge for the entertainment after admission to the entertainment has been granted.

**senior police officer** means a police officer of or above the rank of senior sergeant.

**21B Minister may declare premises to be sex club on application of senior police officer**

- (1) A senior police officer may apply to the Minister for premises to be declared a sex club under this Part.
- (2) The Minister may declare the premises to be a sex club under this Part if satisfied that:
  - (a) the premises are used solely or substantially for live sex entertainment, and
  - (b) there is no effective prohibition under the *Liquor Act 1982* or any other law on minors entering the premises.
- (3) The premises declared to be a sex club may include any area that is associated with any part of the premises used for live sex entertainment.
- (4) The Minister may rely on information supplied in the application for the declaration or any other information available to the Minister for the purposes of making the declaration.
- (5) The following provisions apply to the declaration of a sex club:
  - (a) the declaration must set out a description of the premises to which it relates,
  - (b) the declaration may be limited to circumstances specified in the declaration,
  - (c) the declaration may be revoked by the Minister at any time.
- (6) The Minister may delegate the powers conferred on the Minister by this section (other than this power of delegation).

**21C Notification of declaration of premises**

- (1) The declaration of any premises as a sex club is to be notified by any one or more of the following means:
  - (a) by publication of the declaration in the Gazette,
  - (b) by publication of the declaration in any newspaper circulating in the area in which the premises are located,
  - (c) by the service of notice of the declaration on the manager of the premises or a person who:

- (i) is entitled to any of the proceeds of the operation of the premises, or
  - (ii) is otherwise concerned in the management of the premises,
- (d) by affixing a notice of the declaration in a conspicuous place at the main entry point to the premises.

- (2) A declaration does not take effect until it has been notified by any one of those means.

### **21D Minors not permitted in declared sex clubs**

- (1) A person engaged in the operation of a declared sex club must not permit a minor to enter or remain in the club.

Maximum penalty: 20 penalty units.

- (2) A person is engaged in the operation of a declared sex club if:
- (a) the person is the manager of the club, or
  - (b) the person is employed to carry out duties in the club, or
  - (c) the person is entitled to any of the proceeds of the operation of the club or is otherwise concerned in the management of the club.
- (3) It is a defence to a prosecution for an offence under subsection (1) if it is proved that:
- (a) the person charged believed on reasonable grounds that the minor was of or above the age of 18 years, or
  - (b) the person charged had no knowledge that the minor was in the club and could not, by the exercise of due diligence, have prevented the minor from being in the club.

### **21E Notices to be displayed**

- (1) The manager of a declared sex club must ensure that there is continually displayed at each entry point to the club a notice that:
- (a) states that a minor is not permitted to enter the club, and
  - (b) is displayed in such a manner that it would be reasonable to expect that a person entering the club would be alerted to its contents.

Maximum penalty: 20 penalty units.

- (2) The regulations may make provision for or with respect to the size and content of such notices.

### **21F Police powers of entry**

- (1) If a police officer believes on reasonable grounds that a minor is in a declared sex club, the officer may, at any time of the day or night, enter the premises to ascertain whether an offence under this Part has been or is being committed.
- (2) A police officer exercising the power conferred by subsection (1) may, with or without assistance, break into the premises if entry is refused or is unreasonably delayed.
- (3) If a police officer is satisfied, on reasonable grounds, that a minor is in a declared sex club, the officer may remove the minor, or cause the minor to be removed, from the premises.
- (4) A person who wilfully delays or obstructs a police officer in the exercise of a power under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

- (5) In the exercise of a power conferred under this section, a police officer may request any person to answer any question relating to any suspected offence under this Part.

### **Part 3B Filming for indecent purposes**

#### **21G Filming for indecent purposes**

- (1) Any person who films, or attempts to film, another person to provide sexual arousal or sexual gratification, whether for himself or herself or for a third person, where the other person:
  - (a) is in a state of undress, or is engaged in a private act, in circumstances in which a reasonable person would reasonably expect to be afforded privacy, and
  - (b) does not consent to being filmed,is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

- (2) For the purposes of this section:
  - (a) a person **films another person** if the person causes one or more images (whether still or moving) of another person to be recorded or transmitted for the purpose of enabling himself or herself, or a third person, to observe those images (whether while the other person is being filmed or later), and
  - (b) a person is **engaged in a private act** if the person is engaged in using the toilet, showering or bathing, carrying on a sexual act of a kind not ordinarily done in public or any other like activity.

## **21H Installing device to facilitate filming for indecent purposes**

Any person who installs any device, or constructs or adapts the fabric of any building, vehicle, vessel, tent or temporary structure for the purpose of facilitating the installation or operation of any device, with the intention of enabling that or any other person to commit an offence under section 21G is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

## **Part 4 Public assemblies**

### **22 Definitions**

In this Part:

**Commissioner** means the Commissioner of Police.

**Court** means the Supreme Court or the District Court.

**organiser**, in relation to a public assembly in respect of which a notice has been given to the Commissioner as referred to in section 23 (1), means the person referred to in section 23 (1) (e) (i) by whom the notice is signed.

**public assembly** means an assembly held in a public place, and includes a procession so held.

**public place** means a public road, public reserve or other place which the public are entitled to use.

### **23 Authorised public assemblies**

- (1) For the purposes of this Part, a public assembly is an authorised public assembly if:
- (a) notice, in writing, of intention to hold the public assembly, addressed to the Commissioner, has been served on the Commissioner, and
  - (b) if a form of notice has been prescribed, the notice is in or to the effect of the prescribed form, and
  - (c) the notice contains the following particulars:
    - (i) the date on which it is proposed to hold the public assembly,
    - (ii) if the proposed public assembly is not a procession, a statement specifying the time and place at which it is intended that persons gather to participate in the proposed public assembly,
    - (iii) if the proposed public assembly is a procession, a statement specifying the time at which it is intended that the procession commence and the proposed route of the procession and, if it is intended that the procession should stop at

places along that route for the purpose of enabling persons participating in the procession to be addressed or for any other purpose, a statement specifying those places,

- (iv) the purpose for which the proposed public assembly is to be held,
  - (v) such other particulars as may be prescribed, and
- (d) the notice specifies the number of persons who are expected to be participants in the proposed public assembly, and
- (e) the notice:
- (i) is signed by a person who indicates in the notice that he or she takes responsibility for organising and conducting the proposed public assembly, and
  - (ii) specifies the address of that person for the service on him or her of any notice for the purposes of this Part, and
- (f) the Commissioner has notified the organiser of the public assembly that the Commissioner does not oppose the holding of the public assembly or:
- (i) if the notice was served on the Commissioner at least 7 days before the date specified in the notice as the date on which it is proposed to hold the public assembly—the holding of the public assembly is not prohibited by a Court under section 25 (1), or
  - (ii) if the notice was served on the Commissioner less than 7 days before that date—the holding of the public assembly is authorised by a Court under section 26.
- (2) Without prejudice to any other method of serving a notice referred to in subsection (1) on the Commissioner, such a notice may be served by leaving it with any member of the Police Force or such other person as may be prescribed at the address prescribed as the address of the office of the Commissioner.

#### **24 Participation in authorised public assembly**

If an authorised public assembly is held substantially in accordance with the particulars furnished with respect to it under section 23 (1) (c) and with any prescribed requirements, a person is not, by reason of any thing done or omitted to be done by the person for the purpose only of participating in that public assembly, guilty of any offence relating to participating in an unlawful assembly or the obstruction of any person, vehicle or vessel in a public place.

#### **25 Prohibition by a Court of a public assembly**

- (1) The Commissioner may apply to a Court for an order prohibiting the holding of a



public assembly in respect of which a notice referred to in section 23 (1) has been served if the notice was served 7 days or more before the date specified in the notice as the date on which it is proposed to hold the public assembly.

- (2) The Commissioner shall not apply for an order under subsection (1) relating to a public assembly in respect of which a notice referred to in section 23 (1) has been served unless:
- (a) the Commissioner has caused to be served on the organiser of the public assembly a notice, in writing, inviting the organiser to confer with respect to the public assembly with a member of the Police Force specified in the notice at a time and place so specified, or to make written representations to the Commissioner, with respect to the public assembly, within a time so specified, and
  - (b) if the organiser has, in writing, informed the Commissioner that he or she wishes so to confer, the Commissioner has made available to confer with the organiser at the time and place specified in the notice:
    - (i) the member of the Police Force specified in the notice, or
    - (ii) if that member of the Police Force is for any reason unavailable so to confer, another member of the Police Force, and
  - (c) the Commissioner has taken into consideration any matters put by the organiser at the conference and in any representations made by the organiser.
- (3) A notice referred to in subsection (2) (a) may be served on the organiser:
- (a) personally, or
  - (b) by telegram addressed to the organiser at the address, specified in the notice served on the Commissioner under section 23 (1) (e) (ii), as the address for the service of any notice for the purposes of this Part, or
  - (c) by leaving it with any person apparently of or above the age of 16 years at the address so specified.

## **26 Authorisation by a Court of a public assembly**

If:

- (a) a notice referred to in section 23 (1) is served on the Commissioner less than 7 days before the date specified in the notice as the date on which it is proposed to hold the public assembly referred to in the notice, and
- (b) the Commissioner has not notified the organiser of the public assembly that the Commissioner does not oppose the holding of the public assembly,

the organiser may apply to a Court for an order authorising the holding of the public

assembly.

## **27 Applications under section 25 or 26**

- (1) The Court to which an application in respect of a public assembly is made under section 25 (1) or 26 shall decide the application with the greatest expedition possible so as to ensure that the application is not frustrated by reason of the decision of the Court being delayed until after the date on which the public assembly is proposed to be held.
- (2) The decision of a Court on an application under section 25 (1) or 26 is final and is not subject to appeal.
- (3) Not more than one application may be made under section 25 (1) or 26 in respect of the same public assembly.

## **Part 4A Offences relating to places of detention**

### **27A Definitions**

In this Part:

**adult** means a person who is of or above the age of 18 years.

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

**correctional officer** means:

- (a) a correctional officer (within the meaning of the *Crimes (Administration of Sentences) Act 1999*), or
- (b) a person holding an authority under section 240 of the *Crimes (Administration of Sentences) Act 1999* to perform custodial duties.

**inmate** has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*, and includes an offender who is detained in a periodic detention centre.

**mentally incapacitated person** means a person who is incapable of managing his or her affairs.

**non-correctional member of staff** means:

- (a) a person employed in the Department of Corrective Services, or
- (b) a person employed at a managed correctional centre (within the meaning of the *Crimes (Administration of Sentences) Act 1999*),

but does not include a correctional officer.

**place of detention** means a correctional centre, correctional complex or periodic

detention centre within the meaning of the *Crimes (Administration of Sentences) Act 1999*.

**search observation staff member** means a non-correctional member of staff (or member of a class of such persons) prescribed by the regulations for the purposes of this definition.

## **27B Trafficking**

- (1) A person must not, without lawful authority, bring or attempt by any means whatever to introduce into any place of detention any spiritous or fermented liquor.

Maximum penalty: imprisonment for 6 months or 10 penalty units, or both.

- (2) A person must not, without lawful authority, bring or attempt by any means whatever to introduce into any place of detention any poison listed in Appendix D of Schedule Four, or in Schedule Eight, to the Poisons List in force under the *Poisons and Therapeutic Goods Act 1966*.

Maximum penalty: imprisonment for 2 years or 20 penalty units, or both.

- (3) Section 40 of the *Poisons and Therapeutic Goods Act 1966* applies to proceedings for an offence under subsection (2) in the same way as it applies to legal proceedings under that Act.

- (4) A person must not, without lawful authority, bring or attempt by any means whatever to introduce into any place of detention a quantity of any prohibited drug or prohibited plant within the meaning of the *Drug Misuse and Trafficking Act 1985* that constitutes a small quantity (or constitutes less than a small quantity) of the drug or plant concerned within the meaning of that Act.

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

- (5) Section 43 of the *Drug Misuse and Trafficking Act 1985* applies to proceedings for an offence under subsection (4) in the same way as it applies to legal proceedings under that Act.

- (6) (Repealed)

## **27C Introduction or supply of syringes**

- (1) A person:

(a) who brings or attempts by any means whatever to introduce a syringe into a place of detention, or

(b) who supplies or attempts by any means whatever to supply a syringe to an inmate who is in lawful custody,

is guilty of an offence.

Maximum penalty: imprisonment for 2 years.

- (2) A person is not guilty of an offence of bringing or attempting to introduce a syringe into a place of detention if the person satisfies the court that the officer in charge of the place of detention had consented to the person's bringing or introducing the syringe into the place of detention.
- (3) A person is not guilty of an offence of supplying or attempting to supply a syringe to an inmate in lawful custody if the person satisfies the court:
  - (a) that the supply was authorised on medical grounds by a registered medical practitioner, and
  - (b) if the inmate is in lawful custody in a place of detention, that the officer in charge of the place of detention had consented in writing to the supply.
- (4) (Repealed)
- (5) While absent from a place of detention in any of the circumstances referred to in section 38 (1) of the *Crimes (Administration of Sentences) Act 1999*, an inmate is taken to be in lawful custody for the purposes of an offence under this section only if the inmate is being escorted by a correctional officer (within the meaning of that section) or a police officer.
- (6) In this section, **syringe** means a hypodermic syringe, and includes:
  - (a) anything designed for use or intended to be used as part of such a syringe, and
  - (b) a needle designed for use or intended to be used in connection with such a syringe.

#### **27D Unlawful possession of offensive weapons or instruments**

- (1) A person must not, without reasonable excuse (proof of which lies on the person), have in his or her possession an offensive weapon or instrument in a place of detention.

Maximum penalty: imprisonment for 2 years or 50 penalty units, or both.
- (2) If a person is convicted of an offence under this section, the court may, in addition to any penalty it may impose, make an order that the offensive weapon or instrument be forfeited to the Crown, and the weapon or instrument is forfeited accordingly.
- (2A) (Repealed)
- (3) In this section, **offensive weapon or instrument** has the same meaning as it has in the *Crimes Act 1900*.

### **27DA Inmate possession of a mobile phone**

- (1) An inmate must not, without reasonable excuse (proof of which lies on the inmate), have in his or her possession in a place of detention a mobile phone or any part of it, a mobile phone SIM card or any part of it, or a mobile phone charger or any part of it.  
Maximum penalty: imprisonment for 2 years or 50 penalty units, or both.
- (2) In this section, **mobile phone** includes any device that may be used, in whole or in part, for the purpose of sending or receiving voice or other data over a mobile telephone network, whether or not it may be used for any other purpose.

### **27E Miscellaneous offences**

- (1) Any person who without lawful authority:
  - (a) loiters about or near any place of detention, or
  - (b) enters or attempts by any means whatever to enter any place of detention, or
  - (c) communicates, or attempts by any means whatever to communicate, with any inmate,

is guilty of an offence.

Maximum penalty: imprisonment for 6 months or 10 penalty units, or both.

- (2) Any person who without lawful authority:
  - (a) delivers or attempts to deliver anything to an inmate, or
  - (b) brings or attempts to bring anything into a place of detention, or
  - (c) conveys or attempts to convey anything out of a place of detention, or
  - (d) receives or attempts to receive anything for conveyance out of a place of detention, or
  - (e) secretes or leaves anything at any place (whether inside or outside a place of detention) for the purpose of its being found or received by an inmate,

is guilty of an offence.

Maximum penalty: imprisonment for 2 years or 20 penalty units, or both.

- (3) (Repealed)

### **27F Powers of correctional officers**

- (1) **Power to stop, detain and search persons** A correctional officer may stop, detain and search a person, and anything in the possession of or under the control of a person, if:

- (a) the person is in or in the immediate vicinity of a place of detention, and
  - (b) the correctional officer suspects on reasonable grounds that the person has in his or her possession or under his or her control anything that has been used, is being used or is intended to be used in or in connection with the commission of an offence under this Part.
- (2) **Power to stop, detain and search vehicles** A correctional officer may stop, detain and search a vehicle that is in or in the immediate vicinity of a place of detention if the correctional officer suspects on reasonable grounds that:
- (a) the vehicle contains anything that has been used, is being used or is intended to be used in or in connection with the commission of an offence under this Part, or
  - (b) the vehicle has been used, is being used or is intended to be used in or in connection with the commission of an offence under this Part.
- (3) **Power to detain for purpose of search by police** A correctional officer who stops and detains a person or a vehicle under this section (whether or not the correctional officer searches the person or vehicle) may request a police officer to conduct a search or a further search of the person or vehicle, and may detain the person or vehicle while waiting for the arrival of a police officer at the place where the person or vehicle is being detained for the police officer to conduct the search.
- (4) **Request to police to be made as soon as practicable** A request to a police officer under subsection (3) must be made as soon as practicable after the correctional officer stops and detains the person or vehicle, or searches the person or vehicle.
- (5) **Power of correctional officer to seize things** A correctional officer may seize all or part of a thing that the correctional officer suspects on reasonable grounds may provide evidence of the commission of an offence under this Part found as a result of a search under this section.
- (6) **Power to arrest** In respect of any offence under this Part, the powers of arrest of a police officer may be exercised by a correctional officer.
- (7) **Arrested person to be taken to police or to authorised justice** A correctional officer who arrests a person under this section must, as soon as practicable, take the person, and any property found on the person:
- (a) to a police officer, or
  - (b) before an authorised justice to be dealt with according to law.
- (8) Nothing in this section prevents the powers that may be exercised in relation to a person from being exercised in relation to a correctional officer.

## **27G Conduct of search**

- (1) A correctional officer, in conducting a search under section 27F, may direct a person to do any or all of the following:
  - (a) to submit to scanning by means of an electronic scanning device,
  - (b) to empty the pockets of the person's clothing,
  - (c) to remove any hat, gloves, coat, jacket or shoes worn by the person,
  - (d) to empty the contents of any bag or other thing, or to open any thing, that the person has with him or her, or has left in a vehicle,
  - (e) in the case of a visitor to the place of detention—to make available for inspection and search any item stored in a storage facility allocated to the visitor,
  - (f) in the case of a correctional officer or a non-correctional member of staff—to make available for inspection and search any room or locker that is under the officer's or member of staff's control at the place of detention,
  - (g) in the case of an adult accompanying a child or a mentally incapacitated person—to assist the child or mentally incapacitated person to co-operate with a search.
- (2) A correctional officer, in conducting a search under section 27F, may direct a person to produce:
  - (a) anything that the correctional officer has detected or seen during the search on or with the person, or in a vehicle in which the person is or was present, and has reasonable grounds to suspect may provide evidence of the commission of an offence under this Part, or
  - (b) anything detected during the search by an electronic detection device, or
  - (c) anything indicated by a dog reacting positively to its presence.
- (3) In conducting a search of a person under section 27F, a correctional officer:
  - (a) must conduct the search with due regard to dignity and self-respect and in as seemly a manner as is consistent with the conduct of an effective search, and
  - (b) must not direct a person to remove any item of clothing being worn by the person, other than a hat, gloves, coat, jacket or shoes, and
  - (c) must not search a person by running the officer's hands over the person's clothing.
- (4) A search of a person conducted by a correctional officer under section 27F must, if

practicable, be conducted by a correctional officer of the same sex as the person being searched or by a person of the same sex (being a non-correctional member of staff) under the direction of the correctional officer concerned.

- (5) A search of a child or of a mentally incapacitated person must be conducted in the presence of:
  - (a) an adult who accompanied the child or the mentally incapacitated person to the place of detention (or its immediate vicinity), or
  - (b) if there is no such adult—a search observation member of staff.
- (6) Regulations may be made for or with respect to the manner in which correctional officers are to conduct searches under section 27F.

#### **27H Use of dogs**

- (1) A correctional officer is authorised to use a dog to conduct any search under section 27F.
- (2) A correctional officer using a dog to conduct such a search is to take all reasonable precautions to prevent the dog touching a person.
- (3) A correctional officer is required to keep a dog under control when the officer is using the dog to conduct such a search.

#### **27I Use of reasonable force**

In exercising a function under this Part, a correctional officer may use such force as is reasonably necessary to exercise the function.

#### **27J Safeguards**

- (1) A correctional officer who detains a person in the exercise of a power under section 27F must not detain the person any longer than is reasonably necessary for the purpose, and in any event for no longer than 4 hours.
- (2) A correctional officer must, before exercising a power to detain, search or arrest a person under section 27F, or as soon as is reasonably practicable after exercising the power, provide the person subject to the exercise of the power with the following:
  - (a) evidence that the correctional officer is a correctional officer (unless the correctional officer is in uniform),
  - (b) the name of the correctional officer,
  - (c) the reason for the exercise of the power,
  - (d) a warning that failure or refusal to comply with a request or direction of the



correctional officer, in the exercise of the power, is an offence.

- (3) Subsection (2) extends to a direction given by a correctional officer to a person in the exercise of a power to stop, detain and search a vehicle.
- (4) A correctional officer is not required to comply with subsection (2) if the correctional officer believes on reasonable grounds that:
  - (a) the circumstances are of such urgency that complying with subsection (2) would render a search ineffective, or
  - (b) it is not reasonably possible to comply with subsection (2).

#### **27K Failure to comply with search**

A person must not, without reasonable excuse (proof of which lies on the person):

- (a) fail or refuse to comply with a request made, or a direction given, by a correctional officer under this Part, or
- (b) fail or refuse to produce anything detected or seen on or with the person, or in a vehicle in which the person was present at the time the thing was detected or seen, in a search when requested to do so by a correctional officer, or
- (c) resist or impede a search of a person or vehicle under this Part.

Maximum penalty: 10 penalty units.

#### **27L Part does not derogate from other powers**

- (1) Nothing in this Part limits any powers, authorities, duties or functions that correctional officers or police officers may have apart from this Part.
- (2) In particular, the fact that a police officer or correctional officer conducts a search of a person under this Part does not prevent the police officer or correctional officer from exercising, whether during or after the search, any other powers of search or seizure that the police officer or correctional officer may have.
- (3) Nothing in this Part limits any power under the *Crimes (Administration of Sentences) Act 1999* or any other law for a person to conduct a search of an inmate, a correctional officer, a non-correctional member of staff or any other person, or a vehicle.

#### **27M Admissibility of search evidence**

Evidence of a thing discovered during or as a result of a search carried out in accordance with this Part is not inadmissible merely because the thing is different in nature from a thing referred to in the reason given under section 27J (2) (c).

### **27N No personal liability for person conducting search under direction of correctional officer**

A search conducted by a person under and in accordance with the direction of a correctional officer as referred to in section 27G (4) does not, if the search would be lawful if conducted by a correctional officer, subject the person making the search personally to any action, liability, claim or demand.

### **27O Time within which proceedings may be taken**

Proceedings for an offence under this Part that are taken by the Commissioner of Corrective Services may be commenced at any time within 6 months from the time when the facts first come to the knowledge of the Commissioner.

## **Part 5 Police powers for public protection in public places and schools**

### **Division 1 Interpretation**

#### **28 Definitions**

In this Part:

**confiscated thing** means any thing that is confiscated under Division 3.

**dangerous implement** includes:

- (a) a knife, or
- (b) a firearm (within the meaning of the *Firearms Act 1996*), or
- (c) a prohibited weapon (within the meaning of the *Weapons Prohibition Act 1998*), or
- (d) an offensive implement within the meaning of section 11B,

but does not include anything that is of a class or description declared by the regulations to be excluded from this definition.

**electronic metal detection device** means an electronic device that is capable of detecting the presence of metallic objects.

**initial confiscation period**, in relation to a confiscated thing, means the period of 28 days after the thing is confiscated.

### **Division 2 Search powers**

#### **28A Power to search for knives and other dangerous implements**

- (1) If a police officer suspects on reasonable grounds that a person who is in a public place or a school has a dangerous implement in his or her custody, the police officer may request the person to submit to a search comprising any or all of the following

procedures:

- (a) a search of the person conducted by passing an electronic metal detection device over or in close proximity to the person's outer garments and to any bag or other personal effect that the person has with him or her and is within view,
  - (b) a search of the person conducted by quickly running the hands over the person's outer garments,
  - (c) an examination of any bag or other personal effect that the person has with him or her and is within view, so long as it can be examined with reasonable convenience to the person,
  - (d) in the case of a person who is in a school and is a student at the school, a search of the person's locker at the school and an examination of any bag or other personal effect that is inside the locker.
- (2) In conducting a search of a person under subsection (1), a police officer:
- (a) must not request the person to remove any item of clothing being worn by the person, other than a hat, gloves, coat or jacket, and
  - (b) may, if the police officer has asked the person to remove a coat or jacket, treat the person's outer garments as being the person's outer garments after the coat or jacket has been removed, and
  - (c) if reasonably possible to do so, should carry out any examination of a bag that the person has with him or her by allowing the person to hold the bag open and move the contents so that they can be more easily viewed by the police officer, and
  - (d) must, in the case of a search of a student in a school and if reasonably possible to do so, allow the student to nominate an adult who is on the school premises to be present during the search.
- (3) For the purposes of this section, the fact that a person is present in a location with a high incidence of violent crime may be taken into account in determining whether there are reasonable grounds to suspect that the person has a dangerous implement in his or her custody.
- (4) A police officer may request a person to submit to a search under subsection (1) only if 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 search, and

(d) warns the person that failure to submit to the search may be an offence.

(5) If a police officer has complied with subsection (4) in requesting that a person submit to a search and the person initially refuses to submit to the search, the police officer may again request the person to submit to the search and, in that case, must again warn the person that failure to submit to the search may be an offence.

(6) In conducting a search of a person under this section, a police officer may request that the person produce either or both of the following:

(a) any thing that the police officer has detected or seen on or with the person during the search and has reasonable grounds to suspect is a dangerous implement,

(b) any thing detected during the search by an electronic detection device that the device indicates is of a metallic nature,

but only if the police officer has warned the person that failure to produce any thing detected or seen by the police officer during the search may be an offence.

(7) A person must not, without reasonable excuse (proof of which lies on the person):

(a) fail or refuse to comply with a request made by a police officer in accordance with subsection (5) for the person to submit to a search, or

(b) fail or refuse to produce any thing detected or seen on or with the person in such a search when requested to do so by a police officer in accordance with subsection (6).

Maximum penalty: 5 penalty units.

(8) Regulations may be made for or with respect to the manner in which police officers are to conduct searches under this section.

(9) In this section, **locker** means a facility for the storage of a student's personal effects at a school.

### **Division 3 Confiscation powers**

#### **28B Confiscated knives and other dangerous implements**

(1) A police officer may, in a public place or a school:

(a) take possession of any thing that the police officer has reasonable grounds to suspect is a dangerous implement that is unlawfully in a person's custody, and

(b) confiscate the thing.

(2) Any confiscated thing is to be dealt with as follows:

(a) if provision is also made by or under this Act (other than this Division) or by or

under any other Act for the confiscation of the thing—the thing is to be dealt with as so provided and the provisions of sections 28C–28E of this Act do not apply to the confiscation,

(b) in any other case—the thing is to be dealt with in accordance with this Division.

### **28C Applications for return of confiscated things**

- (1) The person from whom a thing is confiscated under this Division or its owner may, within the initial confiscation period, apply to the Local Area Commander of Police in the area where the thing was confiscated for its return.
- (2) An application for the return of the confiscated thing must be in writing and state why the thing should in all the circumstances be returned.
- (3) If the person seeking the return of the confiscated thing is under the age of 18 years, the application for its return may be made only by a parent or guardian of the person, or a person who has lawful care or custody of the person, on his or her behalf.

### **28D Appeals to Local Court against refusals to return confiscated things**

- (1) If the Local Area Commander of Police fails or refuses to return a confiscated thing at the expiration of the initial confiscation period to a person who has made an application for its return under section 28C, the person may appeal against the failure or refusal to a Local Court within 28 days of the expiration of the initial confiscation period.
- (2) On hearing such an appeal, a Local Court may order that the confiscated thing:
  - (a) be forfeited to the Crown, or
  - (b) be returned to the applicant or some other appropriate person.
- (3) (Repealed)

### **28E Forfeiture of confiscated things**

- (1) A confiscated thing is forfeited to the Crown:
  - (a) if an application for the return of the thing is not made within the initial confiscation period—at the expiration of that period, or
  - (b) in a case where such an application is made within the initial confiscation period and the thing is not returned within that period:
    - (i) if an appeal under section 28D is not made within 28 days after the expiration of the initial confiscation period—at the expiration of that period, or
    - (ii) if an appeal under section 28D is made within 28 days after the expiration of the initial confiscation period—when an order made under section 28D (2) (a)

in respect of the thing takes effect.

- (2) The Local Area Commander of Police (or such other person as the Commissioner of Police may direct) may dispose of a confiscated thing forfeited to the Crown under this section in accordance with the directions of the Commissioner of Police.
- (3) In this section, a reference to the disposal of a confiscated thing includes a reference to the destruction of the thing.

## **Division 4 Powers to give directions**

### **28F Power to give reasonable directions in public places**

- (1) A police officer may give a direction to a person in a public place if the police officer has reasonable grounds to believe that the person's behaviour or presence in the place (referred to in this section as **relevant conduct**):
  - (a) is obstructing another person or persons or traffic, or
  - (b) constitutes harassment or intimidation of another person or persons, or
  - (c) is causing or likely to cause fear to another person or persons, so long as the relevant conduct would be such as to cause fear to a person of reasonable firmness, or
  - (d) is for the purpose of unlawfully supplying, or intending to unlawfully supply, or soliciting another person or persons to unlawfully supply, any prohibited drug, or
  - (e) is for the purpose of obtaining, procuring or purchasing any prohibited drug that it would be unlawful for the person to possess.
- (2) The other person or persons referred to in subsection (1) need not be in the public place but must be near that place at the time the relevant conduct is being engaged in.
- (3) Such a direction must be reasonable in the circumstances for the purpose of:
  - (a) reducing or eliminating the obstruction, harassment, intimidation or fear, or
  - (b) stopping the supply, or soliciting to supply, of the prohibited drug, or
  - (c) stopping the obtaining, procuring or purchasing of the prohibited drug.
- (4) A police officer may give a direction under subsection (1) only if before giving the direction 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 direction, and

(d) warns the person that failure to comply with the direction may be an offence.

(5) If a police officer has complied with subsection (4) in giving a direction to a person and the person fails to comply with the direction, the police officer may again give the direction and, in that case, must again warn the person that failure to comply with the direction may be an offence.

(6) A person must not, without reasonable excuse (proof of which lies on the person), fail to comply with a direction given in accordance with subsection (5).

Maximum penalty: 2 penalty units.

(7) A person is not guilty of an offence under subsection (6) unless it is established that the person persisted, after the direction concerned was made, to engage in the relevant conduct.

(7A) A police officer may give a direction under this section to persons comprising a group.

(7B) In the case of a direction that is given to a group of persons under subsection (1), the police officer is not required to repeat the direction, or to repeat the information and warning referred to in subsection (4), to each person in the group.

(7C) In the case of a direction that is given to a group of persons in accordance with subsection (5), the police officer is not required to repeat the direction, or to repeat the warning referred to in that subsection, to each person in the group.

(7D) However, just because the police officer is not required to repeat any such direction, information or warning does not in itself give rise to any presumption that each person in the group has received the direction, information or warning.

(8) For the purposes of subsection (1) (c), no person of reasonable firmness need actually be, or be likely to be, present at the scene.

(8A) For the purposes of this section, a reference to failing to comply with a direction includes a reference to refusing to comply with the direction.

(9) In this section:

**supply** has the same meaning as it has in the *Drug Misuse and Trafficking Act 1985*.

## **28G Limitation on exercise of police powers**

This Division does not authorise a police officer to give directions in relation to:

(a) an industrial dispute, or

- (b) an apparently genuine demonstration or protest, or
- (c) a procession, or
- (d) an organised assembly.

## Division 5 General

### 28H Admissibility of evidence of searches

Evidence of a thing discovered during or as a result of a search carried out in accordance with this Part is not inadmissible merely because the thing is a dangerous implement of a different nature from that referred to in the reason given under section 28A (4) (c).

### 28I Part does not derogate from other police powers

- (1) Nothing in this Part limits any powers, authorities, duties or functions that police officers may have apart from this Part.
- (2) In particular, the fact that a police officer conducts a search of a person under this Part does not prevent the police officer from exercising, whether during or after the search, any other powers of search or seizure that the police officer may have.

### 28J Offence of hunting on private land

- (1) In this section:

**animal** means any vertebrate animal but does not include a fish within the meaning of the [Fisheries Management Act 1994](#).

**hunt** an animal includes search for, pursue, trail, stalk or drive out the animal in order to capture, trap, harm or kill the animal.

**occupier** and **owner** have the same meanings as they have in the [Rural Lands Protection Act 1998](#).

**private land** has the same meaning as it has in the [Rural Lands Protection Act 1998](#).

- (2) A person who, without reasonable excuse (proof of which lies on the person) enters private land and hunts for any animal on the land, without the consent of the owner or occupier of the land, is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 12 months, or both.

- (3) Without limiting subsection (2), a person is taken to have reasonable excuse for the purposes of that section if:
  - (a) the person did not know that the land was private land, or
  - (b) the person is an Aboriginal person:



- (i) who is a member, or in the company of a member, of a Local Aboriginal Land Council and who is undertaking traditional cultural hunting within the area of the Council in accordance with a permit issued under section 48 of the *Aboriginal Land Rights Act 1983*, or
- (ii) who enters the land and hunts an animal pursuant to a native title right or interest that is the subject of an approved determination of native title or of a registered native title claim, or
- (c) the person enters the land and hunts animals in accordance with a duty imposed on the person under the *Rural Lands Protection Act 1998* or the *Wild Dog Destruction Act 1921* to suppress and destroy the animals, or
- (d) the person is of a class, or enters the land and hunts in the circumstances, prescribed by the regulations.

## Part 6 General

### 29 Penalty notices

- (1) A member of the Police Force to whom it appears that a person has committed an offence under section 11 may serve on the apparent offender a notice to the effect that, if it is not desired to have the matter determined by a court, the person served may, within a time specified in the notice, pay \$20 to an officer so specified.
- (2) A notice under this section may be served personally or by post.
- (3) If the amount of \$20 for an alleged offence under section 11 is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (4) Payment under this section shall not be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (5) This section shall be read as supplementing, and not as derogating from:
  - (a) any other provision of this Act or the regulations, or
  - (b) a provision of any other Act or of a regulation, by-law or ordinance under any other Act,in relation to proceedings which may be taken in respect of offences.

### 29A Penalty notices: sections 10C, 11C and 28F

- (1) A police officer to whom it appears that a person has committed an offence under section 10C, 11C or 28F may serve on the apparent offender a notice to the effect that, if it is not desired to have the matter determined by a court, the person served

may, within a time specified in the notice, pay an amount prescribed by the regulations to an officer so specified.

- (2) A notice under this section may be served personally or by post.
- (3) If the amount prescribed for an alleged offence under section 10C, 11C or 28F is paid under this section, no person is liable for any further proceedings for the alleged offence.
- (4) Payment under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affects or prejudices, any civil claim, action or proceeding arising out of the same occurrence.
- (5) This section is to be read as supplementing, and not as derogating from:
  - (a) any other provision of this Act or the regulations, or
  - (b) a provision of any other Act or statutory rule,in relation to proceedings which may be taken in respect of offences.
- (6) A notice may be issued under this section to a person in respect of an alleged offence under section 11C only if the person has not previously been dealt with for a knife-related offence as referred to in section 11C (4) and (5).

**29B Penalty notices: hunting on private land without consent of owner or occupier of the land**

- (1) A police officer to whom it appears that a person has committed an offence under section 28J may serve on the person a notice to the effect that, if it is not desired to have the matter determined by a court, the person may, within a time specified in the notice, pay an amount prescribed by the regulations to an officer so specified.
- (2) A notice under this section may be served personally or by post.
- (3) If the amount prescribed for an alleged offence under section 28J is paid under this section, no person is liable for any further proceedings for the alleged offence.
- (4) Payment under this section is not be regarded as an admission of liability for the purpose of, nor in any way affects or prejudices, any civil claim, action or proceeding arising out of the same occurrence.
- (5) This section is to be read as supplementing, and not as derogating from:
  - (a) any other provisions of this Act or the regulations, or
  - (b) a provision of any other Act or statutory rule,in relation to proceedings which may be taken in respect of offences.

### **30 No detention for certain offences**

No person shall be imprisoned or detained in a detention centre in consequence of failing to pay a pecuniary penalty for an offence under section 11 or in consequence of failing to pay an amount under a penalty notice issued in relation to such an offence.

#### **30A Compensation**

- (1) A court that convicts a person of an offence under section 8 (being an offence committed after the commencement of this section) may, in addition to any penalty imposed for the offence, order the person to pay an amount not exceeding 20 penalty units as the cost of, or as a contribution to the cost of, the repair or restoration of any damage caused by the action that resulted in the conviction.
- (2) An amount ordered to be paid under subsection (1) is to be paid to such person or body as the court orders, or in the absence of such an order to the Consolidated Fund.
- (3) An order for the payment of money under subsection (1) is taken to be a fine for the purposes of the *Fines Act 1996*.
- (4) An order by a court under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in any proceedings for an offence referred to in subsection (1) operates for the purposes of that subsection as a conviction for the offence.
- (5) The court may also, on the application of the convicted person and with the consent of the prosecutor, order that the person must, under the supervision of a person or class of persons designated by the court, personally repair or restore, or assist in the repair or restoration of, any damage caused by the action that resulted in the conviction, as an alternative to paying the whole or a specified part of an amount ordered to be paid by the person under subsection (1).
- (6) Compliance with an order under subsection (5) is, to the extent indicated in the order, taken to be satisfaction of the order under subsection (1).

### **31 Evidence as to road and road related area etc**

In proceedings for an offence under this Act, evidence that a certain place appeared at the time of the alleged offence to be a road or road related area or public place, or a dwelling, school, church or hospital, is prima facie evidence of that fact.

### **32 Proceedings for offences**

Proceedings for an offence under this Act may be taken before a Local Court.

### **33 Payment towards cost of repairing damage**

A person convicted of an offence under this Act is liable to pay such amount not exceeding an amount equal to 20 penalty units as the court may order as the cost of, or

contribution to, the repair or restoration of any damage caused by the action which resulted in the conviction.

### **34 Repeals**

Each Act specified in Schedule 1 is repealed.

### **34A Savings and transitional provisions**

Schedule 2 has effect.

### **35 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.

### **36-39 (Repealed)**

## **Schedule 1 Repeals**

(Section 34)

*Offences in Public Places Act 1979 No 63*

*Public Assemblies Act 1979 No 64*

*Prostitution Act 1979 No 71*

*Offences in Public Places (Amendment) Act 1987 No 38*

*Offences in Public Places (Further Amendment) Act 1987 No 131*

*Offences in Public Places (Juvenile Drinking) Amendment Act 1987 No 224*

## **Schedule 2 Savings and transitional provisions**

(Section 34A)

### **1 Regulations**

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Traffic Legislation Amendment Act 1997*, but only in relation to the amendments made to this Act

*Summary Offences Amendment (Minors in Sex Clubs) and Theatres and Public Halls Repeal Act 2001*

(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.

**2 Provision consequent on enactment of [Crimes Legislation Amendment \(Sentencing\) Act 1999](#)**

Section 37A of the *Correctional Centres Act 1952*, as in force immediately before its repeal by the [Crimes Legislation Amendment \(Sentencing\) Act 1999](#), continues to have effect in relation to any offence under section 37 or 38 of the *Correctional Centres Act 1952*, as so in force, as if it had not been repealed.