



Australian Capital Territory

## **Crimes Act 1900    No 40**

**Republication No 17 (RI)**

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Last amendment made by A2002-24  
(republication for commenced expiry)

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Crimes Act 1900* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 10 December 2002. It also includes any amendment, repeal or expiry affecting the republished law to 10 December 2002.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

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The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

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If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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Australian Capital Territory

# Crimes Act 1900

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An Act to consolidate the statutes relating to criminal law

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Crimes Act 1900*.

### 2 Application of Act

The provisions of this Act, so far as they can be applied, shall be in force with respect to all offences, whether at common law or by statute, whensoever committed and in whatsoever court tried.

### 3 Territorial application of Territory criminal law

- (1) An offence against a Territory law is committed if—
  - (a) all elements necessary to constitute the offence (disregarding any territorial considerations) exist; and
  - (b) a territorial nexus exists between the ACT and at least 1 element of the offence.
- (2) A territorial nexus exists between the ACT and an element of an offence if—
  - (a) the element is or includes an event occurring in the ACT; or
  - (b) the element is or includes an event that occurs outside the ACT but while the person alleged to have committed the offence is in the ACT.
- (3) The territorial nexus referred to in subsection (1) (b) (the *necessary territorial nexus*) shall be presumed to exist, but the presumption is rebuttable in accordance with subsection (4).
- (4) If a person charged with an offence disputes the existence of the necessary territorial nexus, the court shall proceed with the trial of the offence in the usual way and if at the conclusion of the trial the court, or, for a jury trial, the jury, is satisfied on the balance of

probabilities that the necessary territorial nexus does not exist, it shall, subject to subsection (5), make or return a finding to that effect and the charge is to be dismissed.

- (5) If the court, or, for a jury trial, the jury, would, disregarding territorial considerations, find the person not guilty of the offence (but not on the ground of mental illness), the court or jury shall make or return a finding of not guilty.
- (6) The issue of whether the necessary territorial nexus exists shall, if raised before the trial, be reserved for consideration at the trial.
- (7) A power or authority exercisable on reasonable suspicion that an offence has been committed may be exercised in the ACT if the person in whom the power or authority is vested suspects on reasonable grounds that the elements necessary to constitute the offence exist (whether or not that person suspects or has any ground to suspect that the necessary territorial nexus with the ACT exists).
- (8) This section applies to offences committed before or after the commencement of this section but does not apply to an offence if—
  - (a) the law under which the offence is created makes the place of commission (explicitly or by necessary implication) an element of the offence; or
  - (b) the law under which the offence is created is a law of extraterritorial operation and explicitly or by necessary implication excludes the requirement for a territorial nexus between the ACT and an element of the offence; or
  - (c) proceedings are pending at the commencement of this section in relation to the offence.
- (9) This section is in addition to and does not derogate from any other basis on which the courts of the Territory may exercise criminal jurisdiction.

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

(11) In this section:

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

*trial* includes a special hearing conducted in accordance with section 315.

#### 4 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or in other legislation.

For example, the signpost definition '*motor vehicle*—see the *Road Transport (Safety and Traffic Management) Act 1999*, dictionary.' means that the expression 'motor vehicle' is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

#### 5 Meaning of *loaded arms*

For this Act, a firearm, airgun or air pistol that is unlawfully presented at a person is taken, unless the contrary is proved, to be *loaded arms*.



**6 Reference to *the jury* read as reference to magistrate**

In a provision of this Act relating to an offence, a reference to *the jury* is, if a person charged with the offence is dealt with summarily, a reference to the magistrate.

**7 Notes**

A note included in this Act is explanatory and is not part of this Act.

*Note* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

**8 Public place etc**

If, by this or any other Act, any offence, conduct, or language, in a public place, or open and public place, or place of public resort, is made punishable, or a person guilty thereof is made liable by apprehension, the place shall be deemed public for the purposes of the enactment or taken to be otherwise within its meaning if the same, although a vessel or vehicle only, or a room, or field, or place, ordinarily private, was at the time used for a public purpose, or as a place of common resort, or was open to the public on the payment of money or otherwise.

**9 Abolition of distinctions between felony and misdemeanour**

All distinctions between felony and misdemeanour are abolished.

## Part 2                      Offences against the person

### 10      **When child born alive**

For this part, a child shall be taken to have been born alive if he or she has breathed and has been wholly born, whether or not he or she has had an independent circulation.

### 11      **No time limit on criminal responsibility for homicide**

- (1) Any rule of law that a death which occurs more than a year and a day after the injury that caused it is to be conclusively presumed not to have been caused by the injury, is abolished.
- (2) This section does not apply in respect of an injury received before the commencement of this section.

### 12      **Murder**

- (1) A person commits murder if he or she causes the death of another person—
  - (a) intending to cause the death of any person; or
  - (b) with reckless indifference to the probability of causing the death of any person.
- (2) A person who commits murder is guilty of an offence punishable, on conviction, by imprisonment for life.

### 13      **Trial for murder—provocation**

- (1) If, on a trial for murder—
  - (a) it appears that the act or omission causing death occurred under provocation; and
  - (b) apart from this subsection and the provocation, the jury would have found the accused guilty of murder;

the jury shall acquit the accused of murder and find him or her guilty of manslaughter.

- (2) For subsection (1), an act or omission causing death shall be taken to have occurred under provocation if—
- (a) the act or omission was the result of the accused's loss of self-control induced by any conduct of the deceased (including grossly insulting words or gestures) towards or affecting the accused; and
  - (b) the conduct of the deceased was such as could have induced an ordinary person in the position of the accused to have so far lost self-control—
    - (i) as to have formed an intent to kill the deceased; or
    - (ii) as to be recklessly indifferent to the probability of causing the deceased's death;

whether that conduct of the deceased occurred immediately before the act or omission causing death or at any previous time.

- (3) For the purpose of determining whether an act or omission causing death occurred under provocation, there is no rule of law that provocation is negated if—
- (a) there was not a reasonable proportion between the act or omission causing death and the conduct of the deceased that induced the act or omission; or
  - (b) the act or omission causing death did not occur suddenly; or
  - (c) the act or omission causing death occurred with any intent to take life or inflict grievous bodily harm.
- (4) If, on a trial for murder, there is evidence that the act or omission causing death occurred under provocation, the onus of proving beyond reasonable doubt that the act or omission did not occur under provocation lies on the prosecution.

- (5) This section does not exclude or limit any defence to a charge of murder.

#### **14 Trial for murder—diminished responsibility**

- (1) A person on trial for murder shall not be convicted of murder if, when the act or omission causing death occurred, the accused was suffering from an abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent cause or whether it was induced by disease or injury) that substantially impaired his or her mental responsibility for the act or omission.
- (2) An accused has the onus of proving that he or she is, under subsection (1), not liable to be convicted of murder.
- (3) A person who, apart from subsection (1), would be liable (whether as principal or accessory) to be convicted of murder is liable to be convicted of manslaughter.
- (4) The fact that a person is, under subsection (1), not liable to be convicted of murder does not affect the question whether any other person is liable to be convicted of murder in respect of the same death.
- (5) If, on a trial for murder, the accused contends—
- (a) that he or she is entitled to be acquitted on the ground that he or she was mentally ill at the time of the act or omission causing the death; or
  - (b) that he or she is, under subsection (1), not liable to be convicted of murder;

the prosecution may offer evidence tending to prove the other of those contentions and the court may give directions as to the stage of the proceedings when that evidence may be offered.

**15 Manslaughter**

- (1) Except if a law expressly provides otherwise, an unlawful homicide that is not, under section 12, murder shall be taken to be manslaughter.
- (2) A person who commits manslaughter is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

**16 Suicide etc—not an offence**

The rule of law that it is an offence for a person to commit, or to attempt to commit, suicide is abolished.

**17 Suicide—aiding etc**

- (1) A person who aids or abets the suicide or attempted suicide of another person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.
- (2) If—
  - (a) a person incites or counsels another person to commit suicide; and
  - (b) the other person commits, or attempts to commit, suicide as a consequence of that incitement or counselling;

the firstmentioned person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

**18 Prevention of suicide**

It is lawful for a person to use the force that is reasonable to prevent the suicide of another person or any act that the person believes on reasonable grounds would, if committed, result in the suicide of another person.

**19 Intentionally inflicting grievous bodily harm**

A person who intentionally inflicts grievous bodily harm on another person is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

**20 Recklessly inflicting grievous bodily harm**

A person who recklessly inflicts grievous bodily harm on another person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

**21 Wounding**

A person who intentionally wounds another person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

**22 Assault with intent to commit certain indictable offences**

A person who assaults another person with intent to commit another offence against this part punishable by imprisonment for a maximum period of 5 years or longer is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

**23 Inflicting actual bodily harm**

A person who intentionally or recklessly inflicts actual bodily harm on another person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

**24 Assault occasioning actual bodily harm**

A person who assaults another person and thereby occasions actual bodily harm is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

**25 Causing grievous bodily harm**

A person who, by any unlawful or negligent act or omission, causes grievous bodily harm to another person is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

**26 Common assault**

A person who assaults another person is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

**27 Acts endangering life etc**

(1) In this section:

*conveyance* means a vehicle (including an aircraft) or vessel of a kind used for transporting persons, animals or goods.

*public utility service* means—

- (a) the supply of electricity, gas or water; or
- (b) the supply of fuel; or
- (c) the collection and disposal of sewerage and other waste;

as a service to the public.

*transport facility* means a facility provided to permit the transportation of persons, animals or goods, whether by air or over land or water, or provided in connection with such transportation.

(2) For subsection (3) (g), an interference shall be taken to include any act or omission that, whether temporarily or permanently, damages, renders inoperative, obstructs, causes to malfunction or puts to an improper purpose.

(3) A person who intentionally and unlawfully—

- (a) chokes, suffocates or strangles another person so as to render that person insensible or unconscious or, by any other means, renders another person insensible or unconscious; or

- (b) administers to, or causes to be taken by, another person any stupefying or overpowering drug or poison or any other injurious substance likely to endanger human life or cause a person grievous bodily harm; or
- (c) uses against another person any offensive weapon likely to endanger human life or cause a person grievous bodily harm; or
- (d) discharges any loaded arms at another person or so as to cause another person reasonable apprehension for his or her safety; or
- (e) causes an explosion or throws, places, sends or otherwise uses any explosive device or any explosive, corrosive or inflammable substance in circumstances likely to endanger human life or cause a person grievous bodily harm; or
- (f) sets a trap or device for the purpose of creating circumstances likely to endanger human life or cause a person (including a trespasser) grievous bodily harm; or
- (g) interferes with any conveyance or transport facility or any public utility service in circumstances likely to endanger human life or cause a person grievous bodily harm; or
- (h) interferes with a prescribed traffic control device (within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999* in circumstances likely to endanger life or cause a person grievous bodily harm;

is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

- (4) A person who does an act referred to in subsection (3)—
  - (a) intending to commit an indictable offence against this part punishable by imprisonment for a maximum period exceeding 10 years; or



- (b) intending to prevent or hinder his or her lawful apprehension or detention or that of another person; or
- (c) intending to prevent or hinder a police officer from lawfully investigating an act or matter that reasonably calls for investigation by the officer;

is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

## **28 Acts endangering health etc**

- (1) In this section:

*conveyance, interferes with, public utility service and transport facility* have the same meanings as in section 27.

- (2) A person who intentionally and unlawfully—

- (a) administers to, or causes to be taken by, another person any poison or other injurious substance with intent to injure or cause pain or discomfort to that person; or
- (b) causes an explosion or throws, places, sends or otherwise uses any explosive device or any explosive, corrosive or inflammable substance in circumstances dangerous to the health, safety or physical wellbeing of another person; or
- (c) sets a trap or device for the purpose of creating circumstances dangerous to the health, safety or physical wellbeing of another person (including a trespasser); or
- (d) interferes with any conveyance or transport facility or any public utility service in circumstances dangerous to the health, safety or physical wellbeing of another person;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

**29 Culpable driving of motor vehicle**

(1) In this section:

*drug*—see the *Road Transport (Alcohol and Drugs) Act 1977*, dictionary.

(2) A person who, by the culpable driving of a motor vehicle, causes the death of another person is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

(3) A person who, by the culpable driving of a motor vehicle, causes grievous bodily harm to another person is guilty of an offence punishable, on conviction, by imprisonment for 4 years.

(4) For this section, a person shall be taken to drive a motor vehicle culpably if the person drives the vehicle—

(a) negligently; or

(b) while under the influence of alcohol, or a drug, to such an extent as to be incapable of having proper control of the vehicle.

(5) For this section, a person shall be taken to drive a motor vehicle negligently if the person fails unjustifiably and to a gross degree to observe the standard of care that a reasonable person would have observed in all the circumstances of the case.

(6) An information or indictment for an offence against subsection (2) or (3) shall specify the nature of the culpability, within the meaning of subsection (4), that is alleged.

(7) Nothing in subsection (6) renders inadmissible in proceedings for an offence against subsection (2) or (3) evidence that, apart from that subsection, would be admissible in the proceedings.

(8) Nothing in this section affects—

(a) the liability of a person to be convicted of murder or manslaughter or any other offence; or

(b) the punishment that may be imposed for such an offence.

*Note* Under the *Road Transport (General) Act 1999*, s 62 (Automatic disqualification for culpable driving), if a person is convicted, or found guilty, of an offence against this section, the person is automatically disqualified from holding or obtaining a driver licence.

- (9) A person who has been convicted or acquitted of an offence against subsection (2) or (3) is not liable to be convicted of any other offence against this Act on the same facts or on substantially the same facts.
- (10) Subject to section 49, a person is not liable to be convicted of an offence against subsection (2) or (3) if the person has been convicted or acquitted of any other offence on the same facts or on substantially the same facts.

### **30 Threat to kill**

If—

- (a) a person makes a threat to another person to kill that other person or any third person—
- (i) intending that other person to fear that the threat would be carried out; or
  - (ii) being reckless whether or not that other person would fear that the threat would be carried out; and
- (b) the threat is made—
- (i) without lawful excuse; and
  - (ii) in circumstances in which a reasonable person would fear that the threat would be carried out;

the firstmentioned person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

### **31 Threat to inflict grievous bodily harm**

If—

- (a) a person makes a threat to another person to inflict grievous bodily harm on that other person or any third person—
  - (i) intending that other person to fear that the threat would be carried out; or
  - (ii) being reckless whether or not that other person would fear that the threat would be carried out; and
- (b) the threat is made—
  - (i) without lawful excuse; and
  - (ii) in circumstances in which a reasonable person would fear that the threat would be carried out;

the firstmentioned person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

### **32 Demands accompanied by threats**

- (1) A person who—
  - (a) makes a demand of another person; or
  - (b) resists, prevents or hinders his or her lawful apprehension or detention, or that of another person; or
  - (c) prevents or hinders a police officer from lawfully investigating any act or matter that reasonably calls for investigation by the officer;

with a threat to kill or inflict grievous bodily harm on a person (other than the offender or an accomplice of the offender) is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

- (2) A person who—

- (a) makes a demand of another person; or
- (b) resists, prevents or hinders his or her lawful apprehension or detention, or that of another person; or
- (c) prevents or hinders a police officer from lawfully investigating any act or matter that reasonably calls for investigation by the officer;

with a threat to endanger the health, safety or physical wellbeing of a person (other than the offender or an accomplice of the offender) is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

### **33 Possession of object with intent to kill etc**

A person who—

- (a) has possession of an object capable of causing harm to another person; and
- (b) intends to use the object, or to cause or permit another person to use the object, unlawfully to kill another person or cause grievous bodily harm to another person;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

### **34 Forcible confinement**

A person who unlawfully confines or imprisons another person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

### **35 Stalking**

- (1) A person must not stalk someone with intent—
  - (a) to cause apprehension, or fear of harm, in the person stalked or someone else; or

- (b) to cause harm to the person stalked or someone else; or
- (c) to harass the person stalked.

Maximum penalty:

- (a) imprisonment for 5 years if—
    - (i) the offence involved a contravention of an injunction or other order made by a court; or
    - (ii) the offender was in possession of an offensive weapon; or
  - (b) imprisonment for 2 years in any other case.
- (2) For this section, a person stalks someone else (the *stalked person*) if, on at least 2 occasions, the person does 1 or more of the following:
- (a) follows or approaches the stalked person;
  - (b) loiters near, watches, approaches or enters a place where the stalked person resides, works or visits;
  - (c) keeps the stalked person under surveillance;
  - (d) interferes with property in the possession of the stalked person;
  - (e) gives or sends offensive material to the stalked person or leaves offensive material where it is likely to be found by, given to or brought to the attention of, the stalked person;
  - (f) telephones, sends electronic messages to or otherwise contacts the stalked person;
  - (g) sends electronic messages about the stalked person to anybody else;
  - (h) makes electronic messages about the stalked person available to anybody else;
  - (i) acts covertly in a way that could reasonably be expected to arouse apprehension or fear in the stalked person;

- (j) engages in conduct amounting to intimidation, harassment or molestation of the stalked person.
- (3) However, this section does not apply to reasonable conduct engaged in by a person as part of the person's employment if it is a function of the person's employment to engage in the conduct and the conduct is not otherwise unlawful.
- (4) Without limiting subsection (1), a person is also taken to have the intent mentioned in the subsection if the person knows that, or is reckless about whether, stalking the other person would be likely—
- (a) to cause apprehension or fear of harm in the person stalked or someone else; or
- (b) to harass the person stalked.
- (5) In a prosecution for an offence against subsection (1), it is not necessary to prove that the person stalked or someone else apprehended or feared harm or that the person stalked was harassed.
- (6) For this section:

*harm* means physical harm, harm to mental health, or disease, whether permanent or temporary.

*harm to mental health* includes psychological harm.

*physical harm* includes unconsciousness, pain, disfigurement and physical contact that might reasonably be objected to in the circumstances, whether or not there was an awareness of the contact at the time.

## 36 Torture

- (1) In this section:

*act of torture* means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person—

- (a) for such purposes as—

- (i) obtaining from the person or from a third person information or a confession; or
  - (ii) punishing the person for an act that the person or a third person has committed or is suspected of having committed; or
  - (iii) intimidating or coercing the person or a third person; or
- (b) for any reason based on discrimination of any kind;

but does not include an act arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the articles of the International Covenant on Civil and Political Rights (being the covenant a copy of the English text of which is set out in the *Human Rights and Equal Opportunity Commission Act 1986* (Cwlth), schedule 2.

(2) A person who—

- (a) is a public employee or acting in an official capacity; or
- (b) is acting at the instigation, or with the consent or acquiescence, of a public employee or a person acting in an official capacity;

and who commits an act of torture is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

### **37 Abduction of young person**

A person who unlawfully takes, or causes to be taken, an unmarried person under the age of 16 years out of the lawful control and against the will of a person having lawful control of the unmarried person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.



**38 Kidnapping**

A person who leads, takes or entices away or detains a person with intent to hold that person for ransom or for any other advantage to any person is guilty of an offence punishable, on conviction, by—

- (a) if that other person suffers any grievous bodily harm while being so led, taken or enticed away, or detained—imprisonment for 20 years; or
- (b) in any other case—imprisonment for 15 years.

**39 Neglect etc of children**

- (1) A person must not—
  - (a) ill-treat or abuse a child who is in the person's care; or
  - (b) neglect a child for whom he or she is caring or has parental responsibility.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (2) A person is not guilty of an offence referred to in subsection (1) (b) by reason only of failing to provide a thing for a child if the person did not provide the thing because he or she could not afford to do so.
- (3) A person must not, knowingly or recklessly, leave a child unattended in such circumstances and for such a time that the child could suffer injury or sickness or otherwise be in danger.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (4) A police officer, medical practitioner or child officer may act (including by entering any building, place or vehicle, with such force that is necessary and reasonable) if the police officer, medical practitioner or child officer reasonably believes—

- (a) that a child is being or has been ill-treated, abused or neglected as mentioned in subsection (1) or left unattended as mentioned in subsection (3); and
  - (b) that it is necessary to act immediately to safeguard the child.
- (5) An action does not lie against a person by reason of the person having acted under subsection (4) in good faith, without negligence and with reasonable care in the circumstances.
- (6) In this section:

*child officer* means an officer under the *Children and Young People Act 1999*, section 48.

*parental responsibility*, for a child, means all the duties, powers, responsibilities and authority parents ordinarily have by law in relation to their children.

#### **40 Unlawfully taking child etc**

A person who, by force or deception, leads, takes or entices away or detains a child under the age of 12 years—

- (a) intending unlawfully to deprive another person of the lawful control of the child; or
- (b) intending to steal any article on or about the person of the child;

is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

#### **41 Exposing or abandoning child**

A person who unlawfully abandons or exposes a child under the age of 2 years and thereby endangers the life or health of the child is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

**42 Child destruction**

A person who unlawfully and, either intentionally or recklessly, by any act or omission occurring in relation to a childbirth and before the child is born alive—

- (a) prevents the child from being born alive; or
- (b) contributes to the child's death;

is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

**43 Childbirth—grievous bodily harm**

A person who unlawfully and, either intentionally or recklessly, by any act or omission occurring in relation to a childbirth and before the child is born alive, inflicts grievous bodily harm on the child, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

**47 Concealment of birth**

- (1) A person who disposes of the dead body of a child (whether or not the child was born alive) with intent to conceal the child's birth is guilty of an offence punishable, on conviction, by imprisonment for 2 years.
- (2) It is a defence to a charge for an offence against subsection (1) if the accused satisfies the court or jury that the body disposed of had issued from the mother's body before the end of the 28th week of pregnancy.

**48 Misconduct with regard to corpses**

A person who—

- (a) indecently interferes with any dead human body; or
- (b) improperly interferes with, or offers any indignity to, any dead human body or human remains (whether buried or not);

is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

**49 Alternative verdicts**

If, on a trial for an offence against a provision specified in column 2 in an item in the following table, the jury is not satisfied that the accused is guilty of that offence but is satisfied that the accused is guilty of an offence against a provision specified in column 3 in that item, it may find the accused not guilty of the offence charged but guilty of the offence against the provision specified in column 3:

column 1 Item	column 2 offence charged	column 3 alternative offences
1	section 12 (2) (Murder)	(a) section 15 (2) (b) section 17 (1) (c) section 17 (2) (d) section 42 (e) section 47 (1)
2	section 15 (1) (Manslaughter)	(a) section 17 (1) (b) section 17 (2) (c) section 20 (d) section 25 (e) section 29 (2) (f) section 42 (g) section 47 (1)
3	section 19 (Intentionally inflicting grievous bodily harm)	(a) section 20 (b) section 21 (c) section 23 (d) section 43
4	section 20 (Recklessly inflicting	(a) section 23 (b) section 25

<b>column 1 Item</b>	<b>column 2 offence charged</b>	<b>column 3 alternative offences</b>
	grievous bodily harm)	(c) section 29 (3) (d) section 43
5	section 21 (Wounding)	(a) section 23 (b) section 24 (c) section 26
6	section 22 (2) (Assault with intent to commit indictable offence)	section 26
7	section 24 (Assault occasioning actual bodily harm)	section 26
8	section 27 (3) (b) (Administering drugs etc endangering life etc)	section 28 (2) (a)
9	section 27 (3) (e) (Causing explosions etc endangering life etc)	section 28 (2) (b)
10	section 27 (3) (f) (Setting traps endangering life etc)	section 28 (2) (c)
11	section 27 (3) (g) (Interfering with conveyances and endangering life etc)	section 28 (2) (d)

## Part 3 Sexual offences

### 50 Meaning of *sexual intercourse* in pt 3

In this part:

*sexual intercourse* means—

- (a) the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorised by law; or
- (b) the penetration, to any extent, of the vagina or anus of a person by an object, being penetration carried out by another person, except if that penetration is carried out for a proper medical purpose or is otherwise authorised by law; or
- (c) the introduction of any part of the penis of a person into the mouth of another person; or
- (d) cunnilingus; or
- (e) the continuation of sexual intercourse as defined in paragraph (a), (b), (c) or (d).

### 51 Sexual assault in the first degree

- (1) A person who inflicts grievous bodily harm on another person with intent to engage in sexual intercourse with that other person, or with a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 17 years.
- (2) A person who, acting in company with any other person, inflicts, or assists in inflicting, grievous bodily harm on a third person with the intent that the firstmentioned person, or any person with whom he or she is in company, should engage in sexual intercourse with that third person, or with any other person who is present or nearby, is

guilty of an offence punishable, on conviction, by imprisonment for 20 years.

## **52 Sexual assault in the second degree**

- (1) A person who inflicts actual bodily harm on another person with intent to engage in sexual intercourse with that other person, or with a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 14 years.
- (2) A person who, acting in company with any other person, inflicts, or assists in inflicting, actual bodily harm on a third person with the intent that the firstmentioned person, or any person with whom he or she is in company, should engage in sexual intercourse with that third person, or with any other person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 17 years.

## **53 Sexual assault in the third degree**

- (1) A person who unlawfully assaults, or threatens to inflict grievous or actual bodily harm on, another person with intent to engage in sexual intercourse with that other person, or with a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 12 years.
- (2) A person who, acting in company with any other person, unlawfully assaults, or threatens to inflict grievous or actual bodily harm on, a third person with the intent that the firstmentioned person, or any person with whom he or she is in company, should engage in sexual intercourse with that third person, or with any other person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

## **54 Sexual intercourse without consent**

- (1) A person who engages in sexual intercourse with another person without the consent of that other person and who knows that that

other person does not consent, or who is reckless as to whether that other person consents, to the sexual intercourse is guilty of an offence punishable, on conviction, by imprisonment for 12 years.

- (2) A person who, acting in company with any other person, engages in sexual intercourse with another person without the consent of that other person and who knows that that other person does not consent, or who is reckless as to whether that other person consents, to the sexual intercourse is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

### **55 Sexual intercourse with young person**

- (1) A person who engages in sexual intercourse with another person who is under the age of 10 years is guilty of an offence punishable, on conviction, by imprisonment for 17 years.
- (2) A person who engages in sexual intercourse with another person who is under the age of 16 years is guilty of an offence punishable, on conviction, by imprisonment for 14 years.
- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes that—
- (a) he or she believed on reasonable grounds that the person on whom the offence is alleged to have been committed was of or above the age of 16 years; or
- (b) at the time of the alleged offence—
- (i) the person on whom the offence is alleged to have been committed was of or above the age of 10 years; and
- (ii) the defendant was not more than 2 years older;
- and that that person consented to the sexual intercourse.

### **56 Maintaining a sexual relationship with young person**

- (1) In this section:



**adult** means a person who has attained the age of 18 years.

**sexual act** means an act that constitutes an offence against this part, but does not include an act referred to in section 55 (2) or 61 (2) if the person who committed the act establishes the matters referred to in section 55 (3) or 61 (3), as the case may be, that would be a defence if the person had been charged with an offence against section 55 (2) or 61 (2), as the case may be.

**young person** means a person who is under the age of 16 years.

- (2) A person who, being an adult, maintains a sexual relationship with a young person is guilty of an offence.
- (3) For subsection (2), an adult shall be taken to have maintained a sexual relationship with a young person if the adult has engaged in a sexual act in relation to the young person on 3 or more occasions.
- (4) In proceedings for an offence against subsection (2), evidence of a sexual act is not inadmissible by reason only that it does not disclose the date or the exact circumstances in which the act occurred.
- (5) Subject to subsection (6), a person who is convicted of an offence against subsection (2) is liable to imprisonment for 7 years.
- (6) If a person convicted under subsection (2) is found, during the course of the relationship, to have committed another offence against this part in relation to the young person (whether or not the person has been convicted of that offence), the offence against subsection (2) is punishable by imprisonment—
  - (a) if the other offence is punishable by imprisonment for less than 14 years—for 14 years; or
  - (b) if the other offence is punishable by imprisonment for a period of 14 years or more—for life.
- (7) Subject to subsection (8), a person may be charged in 1 indictment with an offence against subsection (2) and with another offence against this part alleged to have been committed by the person

during the course of the alleged relationship and may be convicted of and punished for any or all of the offences so charged.

- (8) Notwithstanding section 354 (1), where a person convicted of an offence against subsection (2) is sentenced to a term of imprisonment for that offence and a term of imprisonment for another offence against this part committed during the course of the relationship, the court shall not direct that those sentences be cumulative.
- (9) A prosecution for an offence against subsection (2) shall not be commenced except by, or with the consent of, the director of public prosecutions.

### **57 Act of indecency in the first degree**

A person who inflicts grievous bodily harm on another person with intent to commit an act of indecency on, or in the presence of, that other person, or a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

### **58 Act of indecency in the second degree**

A person who inflicts actual bodily harm on another person with intent to commit an act of indecency on, or in the presence of, that other person, or a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 12 years.

### **59 Act of indecency in the third degree**

A person who unlawfully assaults, or threatens to inflict grievous or actual bodily harm on, another person with intent to commit an act of indecency on, or in the presence of, that other person, or a third person who is present or nearby, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

**60 Act of indecency without consent**

- (1) A person who commits an act of indecency on, or in the presence of, another person without the consent of that person and who knows that that other person does not consent, or who is reckless as to whether that other person consents, to the committing of the act of indecency is guilty of an offence punishable, on conviction, by imprisonment for 5 years.
- (2) A person who, acting in company with any other person, commits an act of indecency on, or in the presence of, another person without the consent of that other person and who knows that that other person does not consent, or who is reckless as to whether that other person consents, to the committing of the act of indecency is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

**61 Acts of indecency with young people**

- (1) A person who commits an act of indecency on, or in the presence of, another person who is under the age of 10 years is guilty of an offence punishable, on conviction, by imprisonment for 12 years.
- (2) A person who commits an act of indecency on, or in the presence of, another person who is under the age of 16 years is guilty of an offence punishable, on conviction, by imprisonment for 10 years.
- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes that—
  - (a) he or she believed on reasonable grounds that the person on whom the offence is alleged to have been committed was of or above the age of 16 years; or
  - (b) at the time of the alleged offence—
    - (i) the person on whom the offence is alleged to have been committed was of or above the age of 10 years; and
    - (ii) the defendant was not more than 2 years older;

and that that person consented to the committing of the act of indecency.

## **62 Incest and similar offences**

- (1) A person who engages in sexual intercourse with another person, being a person who is under the age of 10 years and who is, to the knowledge of the firstmentioned person, his or her lineal descendant, sister, half-sister, brother, half-brother or stepchild, is guilty of an offence punishable, on conviction, by imprisonment for 20 years.
- (2) A person who engages in sexual intercourse with another person, being a person who is under the age of 16 years and who is, to the knowledge of the firstmentioned person, his or her lineal descendant, sister, half-sister, brother, half-brother or stepchild, is guilty of an offence punishable, on conviction, by imprisonment for 15 years.
- (3) A person who engages in sexual intercourse with another person, being a person who is of or above the age of 16 years and who is, to the knowledge of the firstmentioned person, his or her lineal ancestor, lineal descendant, sister, half-sister, brother or half-brother, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.
- (4) A person shall not be convicted of an offence against subsection (2) or (3) if there is evidence that he or she engaged in the act alleged to constitute the offence under the coercion of the person with whom the offence is alleged to have been committed unless that evidence is rebutted by the Crown.
- (5) A person charged with an offence against this section shall, unless there is evidence to the contrary, be presumed to have known at the time of the alleged offence that he or she and the person with whom the offence is alleged to have been committed were related in the way charged.

(6) In this section:

*stepchild*, in relation to a person, means a person in relation to whom the firstmentioned person stands in loco parentis.

### **63 Abduction**

A person who abducts another person by force or by any other means or who unlawfully detains another person with the intent that the other person should engage in sexual intercourse with the firstmentioned person or with a third person (whether within the ACT or otherwise) is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

### **64 Employment of young people for pornographic purposes**

(1) A person who employs or permits the employment, whether for reward or not, of a person who is under the age of 16 years (the *young person*)—

- (a) to engage in an act of a sexual nature, or to be in the presence of another person who is engaged in an act of a sexual nature, being an act that would, in the circumstances, offend a reasonable adult person; or
- (b) for the purpose of depicting or otherwise representing, by means of a film, photograph, drawing, audiotape, videotape or any other means, the young person as being engaged in, or as being in the presence of another person engaged in, an act of a sexual nature if the depiction or other representation of the young person in those circumstances would offend a reasonable adult person;

is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

(2) In subsection (1):

*an act of a sexual nature* means sexual intercourse or an act of indecency.

### **65 Possession of child pornography**

- (1) A person who knowingly has in his or her possession a film, photograph, drawing, audiotape, videotape or any other thing depicting or otherwise representing a young person engaged in, or in the presence of another person engaged in, an act of a sexual nature, being a depiction or representation that would offend a reasonable adult person, is guilty of an offence punishable, on conviction, by imprisonment for 5 years.
- (2) It is a defence to a prosecution for an offence against subsection (1) that the defendant reasonably believed that the person depicted or otherwise represented as a young person was not under the age of 16 years.
- (3) In this section:

*young person* means a person who is under the age of 16 years.

### **66 Using the Internet etc to deprave young people**

- (1) A person must not, using electronic means, suggest to a young person that the young person commit or take part in, or watch someone else committing or taking part in, an act of a sexual nature.

Maximum penalty:

- (a) for a 1st offence—imprisonment for 5 years; or
  - (b) for a 2nd or subsequent offence—imprisonment for 10 years.
- (2) A person must not, using electronic means, send or make available pornographic material to a young person.

Maximum penalty: 100 penalty units, imprisonment for 5 years or both.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant—
- (a) is an Internet service provider; and
  - (b) had no knowledge that the defendant's facilities were used to commit the offence.
- (4) It is not a defence to a prosecution for an offence against this section that the young person had consented to—
- (a) the suggestion being made; or
  - (b) the material being sent or made available.
- (5) However, it is a defence to a prosecution for an offence against this section if the defendant proves that the defendant believed on reasonable grounds that the young person to whom the suggestion was made, or the material was sent or made available, was at least 16 years old.

- (6) In this section:

*act of a sexual nature* means sexual intercourse or an act of indecency.

*classified*—see the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*.

*pornographic material* means material that has been, or is likely to be, classified RC, X or R.

*using electronic means* means using email, Internet chat rooms, SMS messages and real time audio/video.

*young person* means a person under 16 years old.

## 67 Consent

- (1) For sections 54, 55 (3) (b), 60 and 61 (3) (b) and without limiting the grounds on which it may be established that consent is negated, the consent of a person to sexual intercourse with another person, or

to the committing of an act of indecency by or with another person, is negated if that consent is caused—

- (a) by the infliction of violence or force on the person, or on a third person who is present or nearby; or
  - (b) by a threat to inflict violence or force on the person, or on a third person who is present or nearby; or
  - (c) by a threat to inflict violence or force on, or to use extortion against, the person or another person; or
  - (d) by a threat to publicly humiliate or disgrace, or to physically or mentally harass, the person or another person; or
  - (e) by the effect of intoxicating liquor, a drug or an anaesthetic; or
  - (f) by a mistaken belief as to the identity of that other person; or
  - (g) by a fraudulent misrepresentation of any fact made by the other person, or by a third person to the knowledge of the other person; or
  - (h) by the abuse by the other person of his or her position of authority over, or professional or other trust in relation to, the person; or
  - (i) by the person's physical helplessness or mental incapacity to understand the nature of the act in relation to which the consent is given; or
  - (j) by the unlawful detention of the person.
- (2) A person who does not offer actual physical resistance to sexual intercourse shall not, by reason only of that fact, be regarded as consenting to the sexual intercourse.
- (3) If it is established that a person who knows the consent of another person to sexual intercourse or the committing of an act of indecency has been caused by any of the means set out in subsection (1) (a) to (j), the person shall be deemed to know that the



other person does not consent to the sexual intercourse or the act of indecency, as the case may be.

**68 Sexual intercourse—people not to be presumed incapable by reason of age**

- (1) For this part, a person shall not, by reason only of his or her age, be presumed to be incapable of engaging in sexual intercourse with another person.
- (2) Subsection (1) shall not be construed so as to affect the operation of any law relating to the age when a child can be found guilty of an offence.

**69 Marriage no bar to conviction**

The fact that a person is married to a person on whom an offence against section 54 is alleged to have been committed shall be no bar to the conviction of the firstmentioned person for the offence.

**70 Alternative verdicts**

- (1) If, on the trial of a person for an offence against section 51 (1) or (2) or 57, the jury is satisfied that the accused inflicted actual bodily harm with the intent charged but is not satisfied that the harm was grievous bodily harm, it may find the accused not guilty of the offence charged but guilty of an offence against section 52 (1) or (2) or 58, as the case requires.
- (2) If, on the trial of a person for an offence against section 51 (2), 52 (2), 53 (2), 54 (2) or 60 (2), the jury is not satisfied that the accused is guilty of that offence but is satisfied that the accused is guilty of an offence against section 51 (1), 52 (1), 53 (1), 54 (1) or 60 (1), it may find the accused not guilty of the offence charged but guilty of an offence against section 51 (1), 52 (1), 53 (1), 54 (1) or 60 (1), as the case requires.
- (3) If, on the trial of a person for an offence against section 51 (1) or (2) or 57, the jury is satisfied that the accused inflicted grievous bodily

harm but is not satisfied that he or she did so with the intent charged, it may find the accused not guilty of the offence charged but guilty of an offence against section 19, 20 or 25.

- (4) If, on the trial of a person for an offence against section 52 (1) or (2) or 58, the jury is satisfied that the accused inflicted actual bodily harm but is not satisfied that he or she did so with the intent charged, it may find the accused not guilty of the offence charged but guilty of an offence against section 24.
- (5) If, on the trial of a person for an offence against section 55 (1), 61 (1) or 62 (1), the jury—
- (a) is not satisfied that the person in relation to whom the offence is alleged to have been committed was under 10 years of age when the offence is alleged to have been committed; but
  - (b) is satisfied that the accused is guilty of an offence against section 55 (2), 61 (2) or 62 (2), respectively;

the jury may find the accused not guilty of the offence charged but guilty of an offence against section 55 (2), 61 (2) or 62 (2), respectively.

### **71 Adding count for act of indecency**

In an indictment for an offence against section 54 a count may be added for an offence against section 60.

### **72 Indictment for act of indecency**

In an indictment for an offence against section 60 or 61 it shall not be necessary to describe the act constituting the act of indecency with which the accused is charged.

## Part 4 Female genital mutilation

### 73 Meaning of *female genital mutilation* for pt 4

In this part:

*female genital mutilation* means—

- (a) clitoridectomy or the excision of any other part of the female genital organs; or
- (b) infibulation or similar procedure; or
- (c) any other mutilation of the female genital organs.

### 74 Prohibition of female genital mutilation

- (1) A person shall not intentionally perform female genital mutilation on another person.

Maximum penalty: imprisonment for 15 years.

- (2) It is not a defence to a prosecution for an offence against this section that the person on whom the female genital mutilation was performed, or a parent or guardian of that person, consented to the mutilation.

### 75 Removal of child from ACT for genital mutilation

- (1) A person shall not take a child from the ACT, or arrange for a child to be taken from the ACT, with the intention of having female genital mutilation performed on the child.

Maximum penalty: imprisonment for 7 years.

- (2) In proceedings for an offence against subsection (1), if it is proved that—
  - (a) the defendant took a child, or arranged for a child to be taken, from the ACT; and

- (b) female genital mutilation was performed on the child while outside the ACT;

it will be presumed, in the absence of proof to the contrary, that the defendant took the child, or arranged for the child to be taken, from the ACT with the intention of having female genital mutilation performed on the child.

- (3) In this section:

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

**76 Exception—medical procedures for genuine therapeutic purposes**

- (1) It is not an offence against this part to perform a medical procedure that has a genuine therapeutic purpose or to take a person, or arrange for a person to be taken, from the ACT with the intention of having such a procedure performed on the person.

- (2) A medical procedure has a genuine therapeutic purpose only if—

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

(b) necessary for the health of the person on whom it is performed and it is performed by a medical practitioner.

- (3) A medical procedure that is performed as, or as part of, a cultural, religious or other social custom is not of itself to be regarded as being performed for a genuine therapeutic purpose.

- (4) In subsection (2) (a):

*midwife* means a person—

(a) registered as a midwife under the *Nurses Act 1988*; or

(b) deemed to be registered as a midwife under that Act because of the *Mutual Recognition Act 1992*(Cwlth), section 25.

**77 Exception—sexual reassignment procedures**

- (1) It is not an offence against this part to perform a sexual reassignment procedure or to take, or arrange for a person to be taken, from the ACT with the intention of having a sexual reassignment procedure performed on the person.
- (2) In subsection (1):

*sexual reassignment procedure* means a surgical procedure performed by a medical practitioner to give a female person, or a person whose sex is ambivalent, the genital appearance of a person of the opposite sex or of a particular sex (whether male or female).

## Part 5                      Sexual servitude

### 78     Definitions of *sexual servitude* and *sexual services*

(1) In this part:

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

*sexual servitude* is the condition of a person who provides sexual services and who, because of the use of force or a threat, is not free—

- (a) to stop providing sexual services; or
- (b) to leave the place or area where the person provides sexual services.

(2) For subsection (1), definition of *sexual servitude*, the question whether, because of the use of force or a threat, a person is not free to stop providing sexual services, or to leave the place or area where the person provides sexual services, is to be decided according to whether a reasonable adult would consider, in the circumstances, that the person is not free to stop or leave.

(3) In this section:

*threat* means—

- (a) a threat of force; or
- (b) a threat to cause a person's deportation; or
- (c) a threat of other detrimental action unless there are reasonable grounds for the threat.

**79 Sexual servitude offences**

- (1) A person commits an offence if—
- (a) the person's conduct causes someone else to enter into or remain in sexual servitude; and
  - (b) the person intends to cause, or is reckless about causing, someone else to enter into or remain in sexual servitude.

Maximum penalty:

- (a) for an aggravated offence—imprisonment for 19 years; or
- (b) in any other case—imprisonment for 15 years.

*Note* Aggravated offence is defined in s 81.

- (2) A person commits an offence if the person—
- (a) conducts a business that involves the sexual servitude of others; and
  - (b) knows that, or is reckless about whether, the business involves the sexual servitude of others.

Maximum penalty:

- (a) for an aggravated offence—imprisonment for 19 years; or
- (b) in any other case—imprisonment for 15 years.

*Note* Aggravated offence is defined in s 81.

- (3) In this section:

***conducts a business*** includes—

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

**80 Deceptive recruiting for sexual services**

A person commits an offence if the person, with the intention of inducing someone else to enter into an engagement to provide sexual services, deceives the other person about the fact that the engagement will involve the provision of sexual services.

Maximum penalty:

- (a) for an aggravated offence—imprisonment for 9 years; or
- (b) in any other case—imprisonment for 7 years.

*Note* Aggravated offence is defined in s 81.

**81 Increased penalty for aggravated offences**

- (1) An offence against section 79 or 80 is an aggravated offence if the offence was committed against a person younger than 18 years old.
- (2) If the prosecution intends to prove an aggravated offence, the charge must allege that the offence was committed against a person younger than 18 years old.
- (3) To prove an aggravated offence, the prosecution must prove that the defendant intended to commit, or was reckless about committing, the offence against a person younger than 18 years old.

**82 Alternative verdict if aggravated offence not proven**

If, on trial for an aggravated offence against section 79 or 80, the jury is not satisfied that the defendant is guilty of an aggravated offence, but is otherwise satisfied that the defendant is guilty of an offence against the section, it may find the defendant not guilty of the aggravated offence but guilty of an offence against the section.



## **Part 6**                      **Offences relating to property**

### **Division 6.1**              **Interpretation for part 6**

#### **83**      **Definitions for pt 6**

In this part:

*blackmail* means an offence against section 104.

*burglary* means an offence against section 93.

*deception* means any deception (whether deliberate or reckless) by words or conduct as to any matter of fact or law, and includes a deception as to the intentions of any person.

*explosive* means a substance or an article that is manufactured for the purpose of producing an explosion or that is intended by any person having it with him or her to be used for that purpose.

*firearm* includes an airgun and an airpistol.

*gain* means a gain of any property, whether temporary or permanent, and includes the keeping by a person of any property that he or she already has.

*handling*, in relation to stolen property, means an offence against section 105.

*imitation explosive* means an article, other than an explosive, that has the appearance of being or containing, or that may reasonably be taken to be or to contain, an explosive.

*imitation firearm* means an article, other than a firearm, that has the appearance of being a firearm, or that may reasonably be taken to be a firearm.

*instrument* means—

- (a) a document, whether of a formal or informal character; and

- (b) a card by means of which property or credit can be obtained; and
- (c) a disc, tape, soundtrack or other device on or in which information is recorded or stored by mechanical, electronic or other means.

**loss** means a loss of any property, whether temporary or permanent, and includes the failure by a person to receive any property he or she might otherwise have received.

**property** means any real or personal property, and includes—

- (a) a thing in action and any other intangible property, other than an incorporeal hereditament; and

*Note* A **thing** in action is an intangible personal property right recognised and protected by the law. Examples include debts, money held at a bank, shares, rights under a trust, copyright, and the right to sue for breach of contract.

- (b) a wild animal that is tamed or ordinarily kept in captivity; and
- (c) a wild animal that is not tamed nor ordinarily kept in captivity but that is—
  - (i) reduced into the possession of a person who has not lost or abandoned that possession; or
  - (ii) in the course of being reduced into the possession of a person.

**robbery** means an offence against section 91.

**theft** means an offence against section 89.

## **84 Stealing—interpretation**

For this part, a person shall be taken to steal if he or she dishonestly appropriates property belonging to another person with the intention of permanently depriving that other person of that property.

## **85 Property belonging to another—interpretation**

- (1) For this part, property shall be taken as belonging to any person who has possession or control of it or who has any proprietary right or interest in it (other than an equitable interest arising only from any agreement to transfer or grant an interest).
- (2) If any property is subject to a trust, a person having a right to enforce the trust shall be taken, for this part, to be a person to whom the property belongs and an intention to defeat the trust shall be treated as an intention to deprive any person having that right to the property.
- (3) If a person receives any property from or on account of another person and is under a legal obligation to that other person to retain and deal with that property or its proceeds in a particular way, the property or proceeds shall, for this part, be taken (as against the firstmentioned person) to be property belonging to that other person.
- (4) If a person obtains any property by the mistake of another person and is under a legal obligation to make restoration, in whole or in part, of the property or of the value of the property, the property or its proceeds shall, for this part, be taken (to the extent of that obligation and as against the firstmentioned person) to belong to the person entitled to the restoration and an intention not to make restoration shall be treated as an intention to deprive that person of that property.
- (5) The property of a corporation sole shall, for this part, be taken to belong to the corporation notwithstanding any vacancy in the corporation.

**86 Appropriation and dishonest appropriation—  
interpretation**

- (1) For this part, a person shall be taken to have appropriated property if—
  - (a) he or she obtains by deception the ownership, possession or control of the property for himself or herself or for any other person; or
  - (b) he or she adversely interferes with or usurps any of the rights of an owner of the property.
- (2) A person who has come by any property (whether innocently or not) without stealing it shall be taken to have adversely interfered with or usurped the rights of an owner of the property for subsection (1) (b) if he or she later keeps or deals with it as the owner.
- (3) For this part, a person may be taken to dishonestly appropriate property belonging to another person notwithstanding that the firstmentioned person is willing to pay for the property.
- (4) For this part, the appropriation by a person of property belonging to another person shall not be regarded as dishonest if—
  - (a) he or she appropriates the property in the belief that he or she has a lawful right to deprive the other person of the property on behalf of himself or herself or of a third person; or
  - (b) he or she appropriates the property in the belief that the appropriation will not cause any significant practical detriment to the interests of the person to whom the property belongs in relation to that property; or
  - (c) he or she appropriates the property in the belief that the other person would consent to the appropriation if the other person knew of it and of the circumstances in which it was done; or
  - (d) for property other than property held by the person as trustee or personal representative—he or she appropriates the property in

the belief that the person to whom the property belongs cannot be discovered by taking reasonable steps.

- (5) If a person acting in good faith believes himself or herself to be acquiring a right or interest in property that is or purports to be transferred for value to him or her, no later adverse interference with or usurpation of the rights in the property by the person shall, by reason of any defect in the title of the transferor, be taken to be a dishonest appropriation of the property.

### **87 Intention to deprive permanently—interpretation**

- (1) A person who appropriates property belonging to another person shall be taken, for this part, as having the intention to deprive the other person of that property permanently if his or her intention is to treat the property as his or her own to dispose of regardless of the rights of the other person.
- (2) For subsection (1), a person shall be taken to have an intention to treat property as his or her own to dispose of regardless of the rights of any other person to whom the property belongs if he or she borrows or lends the property for such a period and in such circumstances as to make the borrowing or lending equivalent to treating the property as his or her own.
- (3) Without limiting subsection (1), if a person who has possession or control (whether lawfully or not) of any property belonging to another person parts with that property for his or her own purposes and without the authority of the other person under a condition as to its return, being a condition that the firstmentioned person may not be able to perform, the firstmentioned person shall, for this part, be taken to have treated the property as his or her own to dispose of regardless of the rights of the other person.
- (4) Notwithstanding anything in this section, a person who appropriates a sum of money belonging to another person shall not be taken to have intended to deprive the other person of the money permanently

by reason only of the fact that he or she did not, at the time of the appropriation, intend to return the money *in specie*.

## **88 Stolen property—interpretation**

- (1) In this part, a reference to *stolen property* is a reference to—
- (a) any property that, before or after the commencement of the *Crimes (Amendment) Act (No. 2) 1986*, was—
    - (i) stolen, or obtained by blackmail, in the ACT; or
    - (ii) unlawfully taken or obtained in any place outside the ACT under such circumstances that if the taking or obtaining had occurred in the ACT it would, at the time it occurred, have constituted an offence against the law of the ACT;whether or not the property is in the state it was in when it was so stolen, taken or obtained; and
  - (b) any part of any property of the kind referred to in paragraph (a); and
  - (c) any other property in the hands of the thief or of a handler of the stolen property (or any part of it), being the proceeds of any disposal or realisation—
    - (i) of the whole or part of the stolen property; or
    - (ii) of any other proceeds of any earlier disposal or realisation of that property.
- (2) In this part, a reference to a *thief*, in relation to stolen property, includes a reference to a person who obtained the property by blackmail.
- (3) For this part, if—

- (a) stolen property is restored to the person from whom it was stolen or to any other person entitled to lawful possession or custody; or
- (b) the person from whom stolen property was stolen and any other person claiming from that person have otherwise ceased to have any right to restitution in respect of that property;

the property shall cease to be taken to be stolen property within the meaning of this part.

## **Division 6.2                      Theft and related offences**

### **89      Theft**

A person who steals is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

### **90      Minor theft**

A person who steals property the value of which does not exceed \$1 000 is guilty of an offence punishable, on conviction, by imprisonment for 6 months, a fine not exceeding 50 penalty units or both.

### **91      Robbery**

- (1) A person who steals and, immediately before or at the time of doing so, and in order to do so, uses force on another person, or puts or seeks to put another person in fear that he or she or any other person will be then and there subjected to force, is guilty of an offence punishable, on conviction, by imprisonment for 14 years.
- (2) A person who assaults another person with intent to rob is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

## 92 Armed robbery

A person who commits robbery and at the time of doing so has with him or her a firearm, an imitation firearm, an offensive weapon, an explosive or an imitation explosive is guilty of an offence punishable, on conviction, by imprisonment for 25 years.

## 93 Burglary

- (1) A person commits an offence if the person enters or remains in a building as a trespasser with intent—
- (a) to steal anything in the building; or
  - (b) to commit an offence involving an assault on anyone in the building; or
  - (c) to commit an offence involving damage to the building or any property in the building if the offence is punishable by imprisonment for 5 years or longer.

Maximum penalty: imprisonment for 14 years.

- (2) In this section:

**building** includes—

- (a) any part of a building; or
- (b) a vehicle or vessel in or on which someone lives, whether or not the vehicle or vessel is occupied at the particular time.

## 94 Aggravated burglary

A person who commits burglary and at the time of doing so has with him or her a firearm, an imitation firearm, an offensive weapon, an explosive or an imitation explosive is guilty of an offence punishable, on conviction, by imprisonment for 20 years.



## **95 Obtaining financial advantage by deception**

- (1) A person who by deception dishonestly obtains for himself or herself or another person a financial advantage is guilty of an offence punishable, on conviction, by imprisonment for 5 years.
- (2) For this section, a reference to a *person who obtains a financial advantage* is a reference to a person who—
  - (a) is allowed to borrow by way of overdraft or otherwise, or to take out any policy of insurance or annuity contract or obtains an improvement in the terms on which he or she is allowed to do so; or
  - (b) is given the opportunity to earn remuneration or greater remuneration in an office or employment.

## **96 Obtaining service by deception**

A person who by deception dishonestly obtains from another person the provision of a service for himself or herself or for any other person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

## **97 Evasion of liability by deception**

- (1) A person who by deception—
  - (a) dishonestly secures the remission of the whole or part of an existing liability of the person or of another person to make a payment; or
  - (b) dishonestly induces, with intent to make permanent default in whole or in part on any existing liability to make a payment, or with intent to enable another person to do so, the creditor or any person claiming payment on behalf of the creditor to defer the due date for a payment or otherwise to wait for payment or to forgo payment; or

(c) dishonestly obtains for himself or herself or for another person, or enables another person to obtain, any exemption from, or abatement of, liability to make a payment;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

(2) For subsection (1) (b), a person who is induced to take in payment a cheque or other security for money by way of conditional satisfaction of a pre-existing liability shall be taken to have been induced to wait for payment.

(3) In this section:

*liability* means a legally enforceable liability.

(4) Subsection (1) does not apply in relation to a liability to pay compensation for a wrongful act or omission, being a liability that has not been accepted or established.

## **98 Making off without payment**

(1) A person who, knowing that immediate payment for any goods supplied or services provided is required or expected from him or her, dishonestly makes off without having paid and with intent to avoid payment of the amount due, is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

(2) A person who dishonestly makes off without paying for goods supplied, or services provided, the value of which does not exceed \$1 000—

(a) knowing that he or she is required or expected to pay immediately; and

(b) intending to avoid payment of the amount due;

is guilty of an offence punishable, on conviction, by imprisonment for 6 months, a fine not exceeding 50 penalty units or both.

(3) Subsections (1) and (2) do not apply to or in relation to—

- (a) the supply of goods or the provision of a service where that supply or provision is contrary to law; or
  - (b) payment for the provision of a service where that payment is not legally enforceable.
- (4) In this section, a reference to *immediate payment* includes a reference to payment at the time of collecting goods in respect of which a service has been provided.

## **99 Valueless cheques**

- (1) A person commits an offence if the person obtains any goods, services, other property, credit, benefit or advantage, or discharges any debt or liability, by passing a cheque that is not paid on presentation.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) In the prosecution of a person for an offence against this section, the prosecution must establish beyond reasonable doubt that the defendant—
- (a) did not have reasonable grounds for believing that the cheque would be paid in full on presentation; or
  - (b) had an intention to defraud.
- (3) The fact that, when the cheque was passed, there were some funds to the credit of the account on which the cheque was drawn is not itself a defence.

## **100 False accounting**

- (1) A person who, with a view to gain for himself or herself or another person, or with intent to cause loss to another person, dishonestly—

- (a) destroys, defaces, conceals or falsifies any account or any record or document made or required for any accounting purpose; or
- (b) in furnishing information for any purpose produces or makes use of any account, or any record or document of the kind referred to in paragraph (a), that to his or her knowledge is misleading or false in a material particular;

is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

- (2) For this section, a person who makes or concurs in making in an account or other document an entry that is misleading or false in a material particular, or who omits or concurs in omitting a material particular from an account or other document, shall be taken to have falsified the account or document.

### **101 Liability of company officers**

- (1) If an offence committed by a body corporate against this division is proved to have been committed with the consent or connivance of any director or officer of the body corporate, the director or officer, as the case may be, is guilty of that offence as well as the body corporate and is liable to be proceeded against and punished accordingly.
- (2) If the affairs of a body corporate are managed by its members, this section applies in relation to the acts of a member of the body corporate in connection with his or her functions of management as if he or she were a director of the body corporate.

### **102 False statements by officers of associations**

- (1) An officer of an unincorporated association who, with intent to gain for himself or herself or another person or to cause loss to another person, dishonestly publishes or concurs in publishing a written statement or account that to his or her knowledge is misleading or

false in a material particular is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

- (2) If the affairs of an association are managed by its members, this section applies in relation to any statement that a member publishes or concurs in publishing in connection with his or her functions of management as if he or she were an officer of the association.
- (3) For this section, a person who has entered into a security for the benefit of an association shall be taken to be a creditor of the association.

### **103 Suppression etc of documents**

- (1) A person who dishonestly, with a view to gain for himself or herself or another person, or with intent to cause loss to another person, by deception procures the execution of a valuable security is guilty of an offence punishable, on conviction, by imprisonment for 7 years.
- (2) For subsection (1), the making, acceptance, endorsement, alteration, cancellation or destruction in whole or in part of a valuable security, and the signing or sealing of any paper or other material in order that it may be made or converted into, or used or dealt with as, a valuable security shall be taken to be the execution of a valuable security.
- (3) In this section:

*valuable security* means any document—

- (a) creating, transferring, surrendering or releasing any right to, in or over property; or
- (b) authorising the payment of money or delivery of any property; or
- (c) evidencing the creation, transfer, surrender or release of any right to, in or over property, or the payment of money or delivery of any property, or the satisfaction of any obligation.

## **104 Blackmail**

- (1) A person who, with a view to gain for himself or herself or another person, or with intent to cause loss to another person, makes any unwarranted demand with menaces is guilty of an offence punishable, on conviction, by imprisonment for 14 years.
- (2) For this section, a demand with a menace shall be taken to be unwarranted unless the person making the demand does so in the belief that he or she has reasonable grounds for making the demand and that the use of the menace is a proper means of enforcing the demand.

## **105 Handling stolen property**

- (1) A person who, dishonestly—
  - (a) receives stolen property; or
  - (b) has stolen property in his or her possession; or
  - (c) undertakes the reception, retention, removal, disposal or realisation of stolen property for the benefit of another person;and who knows or believes that property to be stolen property, is guilty of an offence punishable, on conviction, by imprisonment for 14 years.
- (2) Subsection (1) does not apply to or in relation to the handling of stolen property in the course of stealing that property.

## **106 Dishonest abstraction**

A person who dishonestly abstracts, causes to be wasted or diverted, or uses any electricity, gas or water with intent to cause loss to another person is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

### **107 Possession of housebreaking implements etc**

- (1) A person who, in any place other than his or her place of abode, has with him or her any article for use in the course of, or in connection with, any theft or burglary is guilty of an offence punishable, on conviction, by imprisonment for 3 years.
- (2) If a person is charged with an offence against this section, proof that he or she had with him or her an article made or adapted for use in committing a theft or burglary shall be evidence that he or she had it with him or her for that use.
- (3) If a person is convicted of an offence against subsection (1), any article of the kind referred to in that subsection that is in the custody or possession of the person shall be forfeited to the Territory.

### **108 Advertising for return of stolen property**

If any advertisement for the return of any property that has been stolen or lost is published and the advertisement uses any words to the effect that the person producing the property or any other person will be safe from prosecution or inquiry, the person who advertised for the return of the property and any person who printed or published the advertisement is guilty of an offence punishable, on conviction, by a fine not exceeding \$1 000.

### **109 Delivery of stolen property held by dealers**

- (1) If the owner of any stolen property makes a complaint to a magistrate that the property is in the possession of a dealer in second-hand goods or of any person who has advanced money on the security of the property, the magistrate may—
  - (a) issue a summons for the appearance of the dealer or person and for the production of the property; and
  - (b) order the dealer or person to deliver the property to the owner on payment by the owner of the sum (if any) that the magistrate thinks fit.

- (2) A dealer or person who refuses or fails to comply with an order made under subsection (1) (b), or who disposes of any property after he or she has been notified by the owner of the property that it is stolen, is liable to pay to the owner of the property the full value of the property as determined by a magistrate.

### **110 Disposal of stolen property**

- (1) If—
- (a) any property is lawfully held in the custody of a police officer; and
  - (b) a person is charged with having stolen the property; and
  - (c) the person so charged—
    - (i) cannot be found; or
    - (ii) is convicted, discharged or acquitted in relation to that charge;

a magistrate may make an order for the delivery of the property to the person who appears to be the owner of the property or, if the owner cannot be ascertained, may make any order with respect to the property that the magistrate thinks just.

- (2) Any order under subsection (1) shall not bar a person from recovering possession of the property in respect of which the order is made from the person to whom the property is delivered under the order by proceedings in a court of competent jurisdiction, being proceedings commenced within 6 months after the date when the order is made.

### **111 Taking vehicle without authority**

- (1) Subject to this section, a person who, without lawful authority or excuse, takes any vehicle for use by himself or herself or another person, or who drives or rides in or on a vehicle, knowing that vehicle to have been taken without lawful authority or excuse, is



guilty of an offence punishable, on conviction, by imprisonment for 5 years.

- (2) A person does not commit an offence against subsection (1) if he or she acted in the belief that—
- (a) he or she had lawful authority or excuse to do the act alleged to constitute the offence; or
  - (b) the owner of the vehicle would have consented to the doing of the act alleged to constitute the offence if the owner knew of it and of the circumstances in which it was done.
- (3) If, on the trial of a person for theft, the jury is not satisfied that the accused committed theft but is satisfied that the accused committed an offence against subsection (1), the jury may acquit him or her or her of theft and convict him or her of an offence against that subsection.
- (4) In this section:

*owner* includes a person in possession of a vehicle that is the subject of a hiring agreement or hire-purchase agreement.

*vehicle* means a motor vehicle, bicycle, aircraft or boat.

## **112 Proof of general deficiency in a case**

On the trial of a person for theft of money, it shall not be necessary to prove the theft by the person of any specific sum of money if there is proof of a general deficiency on the examination of the books of account or entries kept or made by him or her, or otherwise, and the jury is satisfied that he or she stole the deficient money, or any part of it.

## **113 Procedure and evidence**

- (1) Any number of persons may be charged in 1 indictment with reference to the same stolen property, with having stolen or with having at different times or at the same time handled all or any of

the stolen property, and the persons so charged may be tried together.

- (2) On the trial of 2 or more persons for jointly handling stolen property, the jury may find any of the accused guilty if it is satisfied that he or she handled all or any of the stolen property, whether or not he or she did so jointly with the other accused or with any of them.
- (3) In any proceedings for the theft of any property in the course of transmission (whether by post or otherwise), or for handling stolen property from such a theft, a statutory declaration made by any person that he or she despatched or received or failed to receive any goods or postal packet, or that any goods or postal packet when despatched or received by him or her were or was in a particular state or condition, shall be admissible as evidence of the facts stated in the declaration—
  - (a) if and to the extent to which oral evidence to the like effect would have been admissible in the proceedings; and
  - (b) if, at least 7 days before the hearing or trial, a copy of the declaration is given to the person charged, and that person has not, at least 3 days before the hearing or trial, or within any further time that the court may in special circumstances allow, given to the informant or the director of public prosecutions, as the case requires, written notice requiring the attendance at the hearing or trial of the person making the declaration.

#### **114 Verdict of ‘theft or handling’**

- (1) If, on the trial of a person charged with theft, or with any offence that involves stealing, and also with handling the property alleged to have been stolen, the jury find that the person either stole or handled that property but are unable to decide which of those offences was committed by him or her, the person shall not be entitled to acquittal but shall be convicted of theft.

- (2) On the trial of any 2 or more persons charged with theft and also with having handled stolen property, the jury may find all or any of those persons guilty of theft or of handling the property or part of the property, or may find any of those persons guilty of theft and the other or any of the others guilty of handling the property or part of the property.

## **Division 6.3                      Criminal damage to property**

### **115 Interpretation for div 6.3**

- (1) In this division:

*property* means any real or personal property (other than intangible property), and includes—

- (a) a wild animal that is tamed or ordinarily kept in captivity; and
  - (b) a wild animal that is not tamed or ordinarily kept in captivity but that is—
    - (i) reduced into the possession of a person who has not lost or abandoned that possession; or
    - (ii) in the course of being reduced into the possession of a person.
- (2) For this division, property shall be taken to belong to any person who—
- (a) has possession or control of it; or
  - (b) has any proprietary right or interest in it, other than an equitable interest arising only from an agreement to transfer or grant an interest; or
  - (c) has a charge on it.
- (3) If any property is subject to a trust, the trustee and any person having a right to enforce the trust shall, for this division, be taken to be the persons to whom the property belongs.

- (4) The property of a corporation sole shall, for this division, be taken to belong to the corporation notwithstanding any vacancy in the corporation.
- (5) For section 116 (Destroying or damaging property) and section 117 (Arson), a person who destroys or damages property shall be taken to have done so intentionally if he or she acted—
  - (a) with intent to destroy or damage any property; or
  - (b) in the knowledge or belief that his or her actions were likely to result in destruction of or damage to property.
- (6) For section 116 (Destroying or damaging property) and section 117 (Arson), a person who destroys or damages property shall be taken to have intended to endanger the life of another person by that destruction or damage if he or she acted—
  - (a) with intent to endanger the life of any other person; or
  - (b) in the knowledge or belief that his or her actions were likely to endanger the life of another person.

## **116 Destroying or damaging property**

- (1) A person who intentionally and without lawful excuse destroys or damages (otherwise than by means of fire or explosive) any property belonging to another person or to himself or herself and another person is guilty of an offence punishable, on conviction, by imprisonment for 10 years.
- (2) A person who destroys or damages (otherwise than by means of fire or explosive) any property with intent to endanger the life of another person by that destruction or damage is guilty of an offence punishable, on conviction, by imprisonment for 20 years.
- (3) A person who dishonestly, with a view to gain for himself or herself or another person, destroys or damages (otherwise than by means of fire or explosive) any property is guilty of an offence punishable, on conviction, by imprisonment for 15 years.

- (4) A person who, intentionally and without lawful excuse, and by means other than fire or explosive, destroys or damages property that—
- (a) belongs to another person, or to himself or herself and another person; and
  - (b) does not exceed \$1 000 in value;
- is guilty of an offence punishable, on conviction, by imprisonment for 6 months, a fine not exceeding 50 penalty units or both.

### **117 Arson**

- (1) A person who intentionally and without lawful excuse destroys or damages by means of fire or explosive any property belonging to another person or to himself or herself and another person is guilty of an offence punishable, on conviction, by imprisonment for 15 years.
- (2) A person who destroys or damages by means of fire or explosive any property with intent to endanger the life of another person by that destruction or damage is guilty of an offence punishable, on conviction, by imprisonment for 25 years.
- (3) A person who dishonestly, with a view to gain for himself or herself or another person, destroys or damages by means of fire or explosive any property is guilty of an offence punishable, on conviction, by imprisonment for 20 years.

### **118 Lawful excuse**

- (1) Without limiting the expression ‘lawful excuse’ in sections 116 (1) and 117 (1), a person charged with an offence against either of those provisions shall be taken as having a lawful excuse if, at the time he or she engaged in the conduct constituting the alleged offence, he or she believed that—

- (a) the property in relation to which the offence is alleged to have been committed belonged solely to himself or herself; or
- (b) he or she held a right or interest in that property that authorised him or her to engage in that conduct; or
- (c) the person he or she believed was entitled to consent to the destruction of or damage to that property had consented to that destruction or damage or would have consented if that person had known the circumstances of that destruction or damage;

or if he or she engaged in that conduct to protect any other property or a right or interest in any other property that he or she believed to be vested in himself or herself or any other person and, at the time he or she engaged in that conduct, he or she believed that—

- (d) the property, right or interest that he or she sought to protect was in immediate need of protection; and
  - (e) the means of protection adopted or proposed to be adopted by him or her were reasonable in all the circumstances.
- (2) For this section, a reference to *a right or interest* in property includes any right or privilege in or over land, whether created by grant, licence or otherwise.

### **118A Causing bushfires**

- (1) A person commits an offence if the person—
- (a) intentionally or recklessly causes a fire; and
  - (b) is reckless about the spread of the fire to vegetation on property belonging to someone else.

Maximum penalty: imprisonment for 15 years.

- (2) A person (*person A*) is not criminally responsible for an offence against this section in relation to the spread of a fire to vegetation on property (*the relevant property*) belonging to someone else if, when person A caused the fire—

- (a) the person entitled to consent to the risk of fire spreading to the relevant property had consented; or
- (b) person A believed that the person entitled to consent, or the person that person A believed was entitled to consent—
  - (i) had consented; or
  - (ii) would have consented if the person had known about the risk of fire spreading to the relevant property.

(3) In this section:

*causes* a fire—a person *causes* a fire if the person does any of the following:

- (a) lights a fire;
- (b) maintains a fire;
- (c) fails to contain or extinguish a fire that was lit by the person if it is not beyond the person's capacity to contain or extinguish it.

*spread*, of a fire, means spread of the fire beyond the capacity of the person who caused the fire to contain or extinguish it.

(4) The *Criminal Code 2001* applies to an offence against this section, even if the Code is not otherwise in force.

*Note* The Criminal Code, ch 2 sets out the general principles of criminal responsibility.

## **119 Defacing premises**

- (1) A person shall not—
  - (a) affix a placard or paper on any private premises; or
  - (b) wilfully mark, by means of chalk, paint or any other material, any private premises;unless the person has first obtained the consent—

- (c) if the premises are occupied—of the occupier or person in charge of the premises; or
- (d) if the premises are not occupied—of the owner or person in charge of the premises.

Maximum penalty: \$1 000, imprisonment for 6 months or both.

- (2) A person shall not, without lawful authority, affix a placard or paper on, or wilfully mark, by means of chalk, paint or any other material, any public street, road, footpath, bus shelter or other property of the Territory or the Commonwealth or of an authority or body constituted by or under a law of the Territory, the Commonwealth or another Territory.

Maximum penalty: \$1 000, imprisonment for 6 months or both.

## **120 Threats to destroy or damage property**

A person who, without lawful authority or excuse and in any manner, threatens—

- (a) to destroy or damage any property belonging to another person or to himself or herself and another person; or
- (b) to destroy or damage his or her own property in a manner that he or she knows or believes is likely to endanger the life of another person;

is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

## **121 Possession of article with intent to destroy property**

A person who has in his or her possession or control any substance or article that he or she intends to use, or that he or she intends to be used by another person, in committing an offence against section 116 or 117 is guilty of an offence punishable, on conviction, by imprisonment for 10 years.



## **122 Untrue representations**

A person who knowingly makes in any manner an untrue representation to any other person, being a representation that tends to give rise to apprehension for the safety of any person (including the person making the representation and the person to whom it is made) or property, or both, is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

## **123 Alternative verdict**

If, on the trial of a person for an offence against this division, the jury is not satisfied that the person is guilty of that offence but is satisfied that the person is guilty of another offence against this division carrying a lesser penalty than the offence charged, the jury may acquit the person of the offence charged and find him or her guilty of that other offence.

## **Division 6.4 Forgery and use of forged instruments**

### **124 Making of false instrument**

- (1) For this division, an instrument is false if it purports—
- (a) to have been made in the form in which it is made by a person who did not in fact make it in that form; or
  - (b) to have been made in the form in which it is made on the authority of a person who did not in fact authorise its making in that form; or
  - (c) to have been made in the terms in which it is made by a person who did not in fact make it in those terms; or
  - (d) to have been made in the terms in which it is made on the authority of a person who did not in fact authorise its making in those terms; or

- (e) to have been altered in any respect by a person who did not in fact alter it in that respect; or
  - (f) to have been altered in any respect on the authority of a person who did not in fact authorise the alteration in that respect; or
  - (g) to have been made or altered on a date when, or at a place where, or otherwise in circumstances in which, it was not in fact made or altered; or
  - (h) to have been made or altered by an existing person who did not in fact exist.
- (2) For this division, a person is to be treated as making a false instrument if the person alters an instrument so as to make it false in any respect (whether or not it is false in some other respect apart from that alteration).

### **125 Act or omission to a person's prejudice**

- (1) For this division, an act or omission is to a person's prejudice if, and only if, it is an act or omission that, if it occurs—
- (a) will result—
    - (i) in the person's temporary or permanent loss of property; or
    - (ii) in the person's being deprived of an opportunity to earn remuneration or greater remuneration; or
    - (iii) in the person's being deprived of an opportunity to obtain a financial advantage otherwise than by way of remuneration; or
  - (b) will result in any person being given an opportunity—
    - (i) to earn remuneration or greater remuneration from the firstmentioned person; or

- (ii) to obtain a financial advantage from the firstmentioned person otherwise than by way of remuneration; or
  - (c) will be the result of the person's having accepted a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, in connection with the person's performance of a duty.
- (2) In this division—
- (a) a reference to inducing a person to accept a false instrument as genuine, or a copy of a false instrument as a copy of a genuine instrument, includes a reference to causing a machine to respond to the instrument or copy as if it were a genuine instrument or a copy of a genuine instrument; and
  - (b) if—
    - (i) a machine so responds to an instrument or copy; and
    - (ii) the act or omission intended to be caused by the machine's so responding is an act or omission that, if it were an act or omission of a person, would be to a person's prejudice within the meaning of subsection (1);the act or omission intended to be caused by the machine's so responding shall be deemed to be an act or omission to a person's prejudice.

## **126 Forgery and use of forged instruments**

- (1) A person shall not make a false instrument with the intention that he or she, or another person, shall use it to induce another person to accept it as genuine, and by reason of so accepting it to do or not to do some act to that other person's, or to another person's, prejudice.  
Maximum penalty: imprisonment for 10 years.
- (2) A person shall not use an instrument that is, and that he or she knows to be, false, with the intention of inducing another person to

accept it as genuine, and by reason of so accepting it to do or not to do some act to that other person's, or to another person's, prejudice.

Maximum penalty: imprisonment for 10 years.

- (3) A person shall not make a copy of an instrument that is, and that he or she knows to be, a false instrument, with the intention that he or she, or another person, shall use it to induce another person to accept it as a copy of a genuine instrument and by reason of so accepting it to do or not to do some act to that other person's, or to another person's, prejudice.

Maximum penalty: imprisonment for 10 years.

- (4) A person shall not use a copy of an instrument that is, and that he or she knows to be, a false instrument, with the intention of inducing another person to accept it as a copy of a genuine instrument and by reason of so accepting it to do or not to do some act to that other person's, or to another person's, prejudice.

Maximum penalty: imprisonment for 10 years.

### **127 Possession of false instrument**

A person shall not have in his or her custody, or under his or her control, an instrument that is, and that he or she knows to be, false, with intention that the person or another shall use it to induce another person to accept it as genuine, and by reason of so accepting it to do or not to do some act to that other person's, or to another person's, prejudice.

Maximum penalty: imprisonment for 10 years.

### **128 Possession of machine etc**

- (1) A person shall not make, or have in his or her custody, or under his or her control, a machine or implement, or paper or other material, that is, and that he or she knows to be, designed or adapted for the making of a false instrument, with the intention that that person or another person shall make an instrument that is false and that that

person or another person shall use the instrument to induce another person to accept it as genuine, and by reason of so accepting it to do or not to do an act to that other person's, or to another person's, prejudice.

Maximum penalty: imprisonment for 10 years.

- (2) A person shall not, without lawful excuse, make or have in his or her custody, or under his or her control, a machine or implement, or paper or other material, that is and that the person knows to be designed or adapted for the making of a false instrument.

Maximum penalty: imprisonment for 2 years.

## **129 Forfeiture**

If—

- (a) a person is convicted of an offence against this division; or
- (b) a person is charged with an offence against this division and, under section 402 (1), the charge is dismissed or an order is made in respect of the person; or
- (c) under section 357, an offence against this division has been taken into account in passing sentence on a person;

the court may, in accordance with section 367, order that any articles used in relation to the offence be forfeited.

## **130 General allegation of intent sufficient**

In any proceedings for an offence against this division, if it is necessary to allege an intent to induce a person to accept a false instrument as genuine, or a copy of a false instrument as a copy of a genuine one, it is not necessary to allege that the accused intended so to induce a particular person.

## **Division 6.5 Offences relating to computers**

### **131 Interpretation for div 6.5**

(1) In this division:

*data* includes information, a computer program or part of a computer program.

(2) A reference in this division to data *stored* in a computer includes a reference to data entered or copied into the computer, whether temporarily or permanently.

### **132 Unlawful access to data in computer**

A person who, intentionally and without lawful authority or excuse, obtains access to data stored in a computer is guilty of an offence punishable, on conviction, by imprisonment for 2 years.

### **133 Damaging data in computers**

A person who intentionally or recklessly, and without lawful authority or excuse—

- (a) destroys, erases or alters data stored in, or inserts data into, a computer; or
- (b) interferes with, or interrupts or obstructs the lawful use of, a computer;

is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

### **134 Dishonest use of computers**

(1) A person who, by any means, dishonestly uses, or causes to be used, a computer or other machine, or part of a computer or other machine, with intent to obtain by that use a gain for himself or herself or another person, or to cause by that use a loss to another

person, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

(2) In this section:

*machine* means a machine designed to be operated by means of a coin, banknote, token, disc, tape or any identifying card or article.

## **Division 6.6                      Contamination of goods and related offences**

### **135    Definitions of *contaminate* and *goods***

In this division:

*contaminate*, for goods, includes—

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

*goods* includes a substance—

- (a) whether or not for human consumption; and
- (b) whether natural or manufactured; and
- (c) whether or not incorporated or mixed with other goods.

### **136    Meaning of economic loss**

In this part, economic loss caused through public awareness of the contamination of goods, or the possibility of contamination, includes economic loss caused through—

- (a) members of the public not buying or using the goods or similar goods; or
- (b) steps taken to avoid public alarm or anxiety or to avoid harm to members of the public.

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

A person must not contaminate goods with the intention of—

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

Maximum penalty: imprisonment for 10 years.

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

- (1) A person must not threaten that goods will be contaminated with the intention of—

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

Maximum penalty: imprisonment for 10 years.

- (2) For this section, a threat may be made by any conduct, and may be explicit or implicit and conditional or unconditional.

**139 Making false statements about contamination of goods with intent to cause public alarm or economic loss**

- (1) A person must not make a statement that the person believes to be false with the intention of—

- (a) inducing the person to whom the statement is made or others to believe that goods have been contaminated; and
- (b) in that way, either—
  - (i) causing public alarm or anxiety; or



- (ii) causing economic loss through public awareness of the contamination, or the possibility of contamination.

Maximum penalty: imprisonment for 10 years.

- (2) For this section, making a statement includes communicating information by any means.

#### **140 Territorial nexus for offences**

It is immaterial that the conduct of a person forming an offence against this division happened outside the jurisdiction if the person intended by the conduct—

- (a) to cause public alarm or anxiety in the ACT; or
- (b) to cause economic loss in the ACT through public awareness of the contamination, or the possibility of contamination.

### **Division 6.7 Offences relating to causing public alarm**

#### **140A Acting with intent to cause public alarm**

A person must not, with the intention of causing public alarm or anxiety—

- (a) do something that could endanger someone else's life or health; or
- (b) do something that, in the circumstances in which it is done, a reasonable person would suspect could endanger someone else's life or health (whether or not it could do so).

Maximum penalty: imprisonment for 10 years.

### **140B Threatening to act with intent to cause public alarm**

- (1) A person must not threaten to do something that could endanger someone else's life or health with the intention of causing public alarm or anxiety.

Maximum penalty: imprisonment for 10 years.

- (2) For this section, a threat may be made by any conduct, and may be explicit or implicit and conditional or unconditional.

### **140C Making false statements with intent to cause public alarm**

- (1) A person must not make a statement that the person believes to be false with the intention of—

(a) inducing the person to whom the statement is made or others to believe that something that could endanger someone else's life or health has been done; and

(b) in that way, causing public alarm or anxiety.

Maximum penalty: imprisonment for 10 years.

- (2) For this section, making a statement includes communicating information by any means.

### **140D Territorial nexus for offences**

It is immaterial that the conduct of a person forming an offence against this division happened outside the ACT if the person intended by the conduct to cause public alarm or anxiety in the ACT.

## **Division 6.8 Miscellaneous**

### **141 Hindering working of mines**

A person who, with intent to hinder the working of a mine—

- (a) causes water to be conveyed or permitted to enter the mine or any subterraneous passage communicating with the mine; or
- (b) obstructs, or otherwise interferes with any airway, waterway, drain, pit, level or shaft of the mine;

is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

#### **142 Removal of sea banks etc**

A person who without lawful authority or excuse removes any article or material fixed in or placed on the ground and used for securing a sea bank or seawall, or the bank, dam or wall of any river, canal, drain, aqueduct, marsh, reservoir, pool, port, harbour, dock, quay, wharf, jetty or lock is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

#### **143 Obstructing navigation of rivers**

A person who opens or draws up any floodgate or sluice or who in any way damages any navigable river or canal with intent to obstruct or prevent the navigation of the river or canal is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

#### **144 Offences in relation to railways**

A person who, with intent to obstruct, damage or destroy any railway engine, tender, carriage or truck—

- (a) deposits any article or material on or across a railway; or
- (b) removes or displaces any rail, sleeper or other thing belonging to a railway; or
- (c) moves or diverts, or fails to move or divert, any point or other machinery belonging to a railway; or
- (d) displays, masks or removes any signal or light on or near a railway;

or who does, or causes to be done, any other thing with that intent, is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

#### **145 Obstructing railway engines**

A person who, by any unlawful act, omission or neglect, obstructs, or causes to be obstructed, the passage or working of a railway engine or carriage on any railway is guilty of an offence punishable, on conviction, by imprisonment for 3 years.

#### **146 Alternative verdict**

If, on the trial of a person for an offence against section 144, the jury is not satisfied that the person is guilty of that offence but is satisfied that he or she is guilty of an offence against section 145, the jury may acquit the person of the offence charged and find him or her guilty of an offence against section 145.

#### **147 Displaying false signals**

A person who, with intent to endanger any vessel, masks, alters or removes any light or signal or displays any false light or signal is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

#### **148 Removing or concealing buoys etc**

A person who does any act with intent to cut away, cast adrift, remove, alter, deface, sink, destroy, damage or conceal any vessel, buoy, buoy-rope, perch or mark used or intended for the guidance of sailors or for the purposes of navigation is guilty of an offence punishable, on conviction, by imprisonment for 7 years.

#### **149 Removal of articles on public exhibition**

- (1) A person who without lawful authority or excuse removes from premises that are at any time open to the public any article that is

publicly exhibited, or kept for public exhibition, in or on those premises is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

- (2) Subsection (1) does not apply in relation to an article that is publicly exhibited, or kept for public exhibition, for the purpose of effecting a sale of, or any other commercial dealing with, the article or articles of that kind.
- (3) A person who removes an article from any premises in the belief that he or she has lawful authority or excuse to do so does not commit an offence against subsection (1).
- (4) In this section, a reference to *premises* includes a reference to any building or part of a building.

### **150 Being found with intent to commit offence**

- (1) A person who—
  - (a) is armed with any weapon or instrument, with intent to enter a building and to commit an offence in it; or
  - (b) has his or her face disguised, with intent to commit an offence; or
  - (c) enters, or is in or near, a building with intent to commit an offence;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years.

- (2) If a person is convicted of an offence against subsection (1), any weapon or any instrument or implement of housebreaking in the custody or possession of the person shall be forfeited to the Territory.
- (3) In this section:

*instrument* includes an imitation or replica of an instrument.

*weapon* includes an imitation or replica of a weapon.

### **151 Forcible entry on land**

A person who enters on land that is in the actual and peaceable possession of another person in a manner likely to cause a breach of the peace is guilty of an offence punishable, on conviction, by a fine not exceeding \$2 000, by imprisonment for 1 year or both.

### **152 Forcible detainer of land**

A person who, being in actual possession of land without any legal right to possession, holds possession of the land against any person legally entitled to possession of the land in a manner likely to cause a breach of the peace is guilty of an offence punishable, on conviction, by a fine not exceeding \$2 000, by imprisonment for 1 year or both.

### **153 Property of spouses**

- (1) The provisions of divisions 6.2 and 6.3 apply in relation to the parties to a marriage and to property belonging to either of those parties or to both of them jointly (whether or not because of an interest derived from the marriage) in the same way as they would apply if the parties were not married and any such interest subsisted independently of the marriage.
- (2) Subject to this section, a party to a marriage shall have the same right to bring proceedings against the other party in relation to any offence against a provision of division 6.2 or 6.3 as if the parties were not married and a person bringing any such proceedings shall be competent to give evidence for the prosecution at every stage of the proceedings.
- (3) Subject to this section, proceedings shall not be instituted against a person in respect of an offence relating to property that, at the time of the alleged offence, belonged to the spouse of that person, or for any attempt, incitement or conspiracy to commit such an offence,

without the written consent of the Attorney-General, the director of public prosecutions or a person authorised by the director of public prosecutions to give consent.

- (4) Subsection (3) does not apply to or in relation to proceedings against a person for an offence—
- (a) if that person is charged with committing the offence jointly with his or her spouse; or
  - (b) if that person and his or her spouse were, at the time of the alleged offence, living separately and apart.
- (5) Nothing in subsection (3) shall be taken to prevent the arrest, or the issue for a warrant for the arrest, of a person charged with an offence against a provision of division 6.2 or 6.3, or the remand in custody or on bail of a person charged with such an offence, if the arrest, if made without a warrant, is made, or the warrant is issued on any information laid, by a person other than the spouse of the firstmentioned person.

#### **154 Property of partners or joint owners**

- (1) If, in an indictment for an offence against this part, it is necessary to allege the ownership of property belonging to more than 1 person, whether as partners in trade, joint tenants or tenants in common, or to allege that property is in the possession or control of more than 1 person, it is sufficient to name 1 of those persons and to allege that the property belongs to, or is in the possession or control of, the person named and another, or others.
- (2) In subsection (1), a reference to a person includes a reference to a joint-stock company, an executor, an administrator or a trustee.

**155 Indictment for theft etc of deeds**

In an indictment for an offence against a provision of this part in relation to any document of title to land, or any part of a document of title to land, it shall be sufficient to allege that the document or the part of the document is or contains evidence of the title to the land, and to mention the person, or any of the persons, having an interest in the land, or in any part of the land.

**156 Allegations in indictment about stolen money or securities**

In an indictment for an offence against a provision of this part in relation to any property, being money or any valuable security, it shall be sufficient to describe the property as a certain amount of money, or as a certain valuable security, as the case may be, without specifying any particular kind of money or security, and the description shall be sustained by proof of the offence in relation to any money or valuable security even if it is agreed that part of the value of that money or security has been returned, or such part was in fact returned.



## Part 7                      Escape provisions

### 157    **Meaning of *lawful custody*—periodic detention**

For this part, a person who is serving a sentence by way of periodic detention shall not be deemed by reason only of that fact to be in lawful custody.

### 158    **Meaning of *detention during pleasure***

In this part, a reference to *detention during pleasure* is a reference to detention during the pleasure of the Governor-General, the Governor of a State or the Administrator of the Northern Territory, as the case requires.

### 159    **Aiding prisoner to escape**

A person who—

- (a) aids another person to escape, or to attempt to escape, from lawful custody in respect of an offence against a law of the Territory, a State or another Territory; or
- (b) aids another person who has been lawfully arrested in respect of such an offence to escape, or to attempt to escape, from that arrest; or
- (c) aids another person who is lawfully detained during pleasure in respect of such an offence to escape, or to attempt to escape, from that detention; or
- (d) conveys anything into a prison, lockup or other place of lawful detention with intent to facilitate the escape from there of another person who is in custody in respect of such an offence;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years, a fine of \$10 000 or both.

## **160 Escaping**

A person who has been lawfully arrested, is in lawful custody, or is lawfully detained during pleasure, in respect of an offence against a law of the Territory, a State or another Territory and who escapes from that arrest, custody or detention is guilty of an offence punishable, on conviction, by imprisonment for 5 years, a fine of \$10 000 or both.

## **161 Rescuing a prisoner from custody etc**

A person who—

- (a) rescues by force a person (other than a person referred to in paragraph (c) or (d)) from lawful custody in respect of an offence against a law of the Territory, a State or another Territory with which the person has been charged; or
- (b) rescues by force a person who has been lawfully arrested in respect of such an offence with which the person has not been charged from that arrest; or
- (c) rescues by force a person who is in lawful custody in any prison, lockup or other place of lawful detention in respect of such an offence from that prison, lockup or place; or
- (d) rescues by force a person who is lawfully detained during pleasure in respect of such an offence from that detention;

is guilty of an offence punishable, on conviction, by imprisonment for 14 years.

## **162 Person unlawfully at large**

A person who—

- (a) in accordance with a permission given under a law of the Territory, a State or another Territory, leaves a prison, lockup or other place of lawful detention where the person is in

custody, or is detained during pleasure, in respect of an offence against a law of the Territory, a State or another Territory; and

- (b) refuses or fails, without reasonable excuse, to return to that prison, lockup or place in accordance with that permission;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years, a fine of \$10 000 or both.

### **163 Permitting escape**

- (1) A person who—

- (a) is an officer of a prison, lockup or other place of lawful detention, a constable or a Commonwealth officer; and
- (b) is charged for the time being with the custody or detention of another person (including a person detained during pleasure) in respect of an offence against a law of the Territory, a State or another Territory; and
- (c) wilfully or negligently permits that other person to escape from that custody or detention;

is guilty of an offence punishable, on conviction, by imprisonment for 5 years, a fine of \$10 000 or both.

- (2) A constable or a Commonwealth officer who wilfully or negligently permits a person who has been lawfully arrested in respect of an offence against a law of the Territory, a State or another Territory to escape from that arrest is guilty of an offence punishable, on conviction, by imprisonment for 5 years, a fine of \$10 000 or both.

- (3) In this section:

*constable* and *Commonwealth officer* have the same respective meanings as in the *Crimes Act 1914* (Cwlth).

**164    Harboursing etc escapee**

A person who harbours, maintains or employs another person knowing that other person to have escaped from lawful custody or detention in respect of an offence against a law of the Territory, a State or another Territory is guilty of an offence punishable, on conviction, by imprisonment for 5 years, a fine of \$10 000 or both.

**165    Escaped prisoner—current sentence**

A person who commits an offence against section 160 or 162 shall, on being returned to lawful custody, undergo, in addition to any punishment imposed for that offence, the punishment that the person would have undergone if the person had not committed that offence.

**166    Failure to answer bail etc—offence**

(1) If—

(a) in accordance with a law in force in the ACT (other than the *Bail Act 1992*), a person arrested in respect of, or charged with, an offence against a law in force in the ACT has been—

(i) admitted to bail on an undertaking; or

(ii) released or discharged on entering into a recognisance, with or without a surety or sureties, on condition;

that he or she will attend, or appear before, a court at a specified time and place or at a time and place to be determined and of which he or she is to be notified; and

(b) he or she fails, without reasonable excuse, to so attend or appear;

the person is guilty of an offence punishable, on conviction, by imprisonment for a period not exceeding 2 years, a fine not exceeding \$20 000 or both.

- (2) The reference in subsection (1) to *an undertaking* or *a recognisance* includes a reference to an undertaking given or a recognisance entered into (as the case requires) following the instituting of an appeal.

## Part 8 Perjury and like offences

### 167 Perjury

Whosoever commits the crime of perjury shall be liable to imprisonment for 7 years.

### 168 Perjury with intent to procure conviction etc

Whosoever commits perjury with intent to procure the conviction, or acquittal, of any person for, or of, any offence punishable by imprisonment shall be liable to imprisonment for 14 years.

### 169 Conviction for false swearing on indictment for perjury

If, on the trial of any person for perjury, it appears that the offence does not amount in law to perjury, but is an offence against section 170, the jury may acquit him or her of the offence charged, and find him or her guilty of an offence against section 168, and he or she shall be liable to punishment accordingly.

### 170 False swearing not being perjury

Whosoever, before any person authorised to administer an oath, wilfully makes on oath any false statement, knowing the statement to be false, shall, if the offence does not amount in law to perjury, be liable to imprisonment for 5 years.

### 171 Contradictory statements on oath

If, on the trial of a person for perjury, or for wilfully making a false statement on oath not amounting to perjury, it appears that the accused has made 2 statements on oath, of which 1 is irreconcilably in conflict with the other, and the jury are of opinion that 1 of the statements was wilfully false, but they cannot say which of them was so, they may specially so find and that the accused is guilty of

perjury, or of wilful false swearing as the case may be, and he or she shall be liable to punishment accordingly.

### **172 Certain technical defects provided for**

If, on the trial of a person for perjury, or for wilfully making a false statement on oath not amounting to perjury, any affidavit, deposition, examination, or solemn declaration, offered in evidence, is wrongly intitled, or otherwise informal or defective, or the jurat to any such instrument is informal or defective, or any such deposition, if taken before a magistrate or coroner has no caption, or no proper caption, the accused shall not be entitled to an acquittal by reason of such omission, defect, or informality, but every such instrument, if otherwise admissible, may be given in evidence and used for all purposes of the trial.

### **173 False evidence by child not on oath**

- (1) Whosoever, being a child of tender years admitted to give evidence, though not on oath, under the provisions of this Act, gives any false evidence shall be guilty of an offence.
- (2) No prosecution shall be instituted for an offence against this section, without the leave of the court, or magistrate, before whom such evidence was given.

### **174 False statement in evidence on commission**

A person who, in giving any testimony (either orally or in writing) otherwise than on oath, if required to do so under an order under the *Evidence Act 1971*, section 85K (1) makes a statement—

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

is guilty of an offence punishable, on conviction, by imprisonment for 3 years.

### **175 Directing prosecution for perjury**

If any statement on oath has been made by any person in any suit, proceeding, or matter, pending in the Supreme Court, or before any judge of that court, the judge before whom the same was so made, may, if reasonable cause appears for so doing, direct the person to be prosecuted for perjury in respect of the statement and may thereupon require him or her forthwith to enter into an undertaking, with 1 or more surety or sureties, to take his or her trial for that offence at the next, or nearest practicable, sitting of the Supreme Court, and may also require any persons then present to enter into undertakings to prosecute, and give evidence, respectively, against the accused, and may commit any person in default of his or her entering into any such undertaking.

### **176 For restraining vexatious prosecutions**

- (1) No prosecution in respect of any such statement on oath, referred to in section 175, shall be instituted without the direction as in that section provided, or without the leave of the court, or that judge.
- (2) No prosecution in respect of any statement on oath made before any registrar, or district registrar in bankruptcy shall be instituted without the leave of a judge of the Supreme Court.

### **177 Application of laws**

The provisions of this Act shall apply to every false oath, declaration, or affirmation, declared by any law in force in the ACT to be perjury or made punishable as perjury and shall extend to every declaration made, or purporting, or intended to have been made, under any Act directing, or authorising the making of a solemn declaration, before any public or other functionary instead of an oath, or otherwise, although such declaration may not be in the form prescribed by such law.



**178 Saving of other punishments**

Nothing in this part shall prevent, or affect, any other punishment, or any forfeiture, provided under any Act.

**179 False accusation**

A person who charges another person falsely, or causes another person to be charged falsely, with an offence against a Territory law is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

## **Part 9** **Aiding and abetting, accessories, attempts, incitement and conspiracy**

### **180 Aiding and abetting**

A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly knowingly concerned in, or party to, the commission of an offence against a Territory law shall be deemed to have committed that offence and shall be punishable, on conviction, accordingly.

### **181 Accessory after the fact**

A person who receives or assists another person who is, to the knowledge of the firstmentioned person, guilty of an offence against a Territory law in order to enable that other person to escape punishment or to dispose of the proceeds of the offence is guilty of an offence punishable, on conviction, by—

- (a) if the firstmentioned offence is the crime of murder—imprisonment for life; or
- (b) if the firstmentioned offence is an offence referred to in section 92 or 94—imprisonment for 14 years; or
- (c) in any other case—imprisonment for 2 years.

### **182 Attempts**

A person who attempts to commit an offence against a Territory law is guilty of an offence punishable, on conviction, as if the attempted offence had been committed.

### 183 Incitement

A person who—

- (a) incites to, urges, aids or encourages; or
- (b) prints or publishes any writing that incites to, urges, aids or encourages;

the commission of, or the carrying on of any operation for or by the commission of, an offence against a Territory law is guilty of an offence punishable, on conviction, by—

- (c) if the firstmentioned offence is the crime of murder—imprisonment for life; or
- (d) in any other case—imprisonment for 1 year, a fine of \$2 000 or both.

### 184 Conspiracy

(1) A person who conspires with another person—

- (a) to commit—
  - (i) an offence against a Territory law; or
  - (ii) an offence against a law of a place outside the ACT, being an offence consisting of, or including, elements that, if present or occurring in the ACT, would constitute an offence against a Territory law; or
- (b) to prevent or defeat the execution or enforcement of a Territory law; or
- (c) to effect a purpose that is unlawful under a Territory law; or
- (d) to effect a lawful purpose by means that are unlawful under a Territory law;

is guilty of an offence punishable, on conviction, by imprisonment for 3 years.

- (2) Notwithstanding subsection (1), if a person is convicted of conspiring with another person to commit—
- (a) a serious Territory offence; or
  - (b) an offence against a law of a place outside the ACT, being an offence consisting of, or including, elements that, if present or occurring in the ACT, would constitute a serious Territory offence;
- the firstmentioned person is punishable as if he or she had committed that offence.
- (3) Subsection (1) (a) (ii) does not apply unless at least 1 of the parties is in the ACT at some time while the conspiracy subsists.
- (4) Subject to subsection (3), for the purpose of a prosecution for an offence against subsection (1) (a), it is immaterial whether the person charged or any other person with whom he or she is alleged to have conspired was in the ACT or elsewhere at the time of the alleged offence.
- (5) In subsection (2):
- serious Territory offence* means an offence against a Territory law punishable by imprisonment for a period exceeding 3 years.

## **Part 10**                      **Criminal investigation**

*Note for pt 10*

The *Legislation Act 2001*, s 171 deals with the application of client legal privilege.

### **Division 10.1**              **Preliminary**

#### **185**    **Definitions for pt 10**

In this part:

***assisting officer***, in relation to a warrant, means—

- (a) a police officer assisting in executing the warrant; or
- (b) a person who is not a police officer, but who has been authorised by the relevant executing officer to assist in executing the warrant.

***Commonwealth Crimes Act*** means the *Crimes Act 1914* (Cwlth).

***conveyance*** includes an aircraft, vehicle or vessel.

***evidential material*** means a thing relevant to an indictable offence or a thing relevant to a summary offence, including such a thing in electronic form.

***executing officer***, in relation to a warrant, means—

- (a) the police officer named in the warrant by the issuing officer as being responsible for executing the warrant; or
- (b) if that police officer does not intend to be present at the execution of the warrant—another police officer whose name has been written in the warrant by the police officer named under paragraph (a); or

- (c) another police officer whose name has been written in the warrant by the police officer named in the warrant under paragraph (b).

***frisk search*** means—

- (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

***issuing officer***, in relation to a warrant to search premises or a person or a warrant for arrest under this part, means—

- (a) a judge, the registrar or a deputy registrar of the Supreme Court; or
- (b) a magistrate; or
- (c) if authorised by the Chief Magistrate to issue such search warrants or arrest warrants (as the case may be)—the registrar or a deputy registrar of the Magistrates Court.

***offence*** means an offence against a Territory law.

***ordinary search*** means a search of a person or of articles in the possession of a person that may include—

- (a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes, socks and hat; and
- (b) an examination of those items.

***police station*** includes—

- (a) a police station of the Territory; and
- (b) a building occupied by the Australian Federal Police.

***premises*** includes a place and a conveyance.

***recently used conveyance***, in relation to a search of a person, means a conveyance that the person had operated or occupied at any time within 24 hours before the search commenced.

***seizable item*** means anything that would present a danger to a person or that could be used to assist a person to escape from lawful custody.

***strip search*** means a search of a person or of articles in the possession of a person that may include—

- (a) requiring the person to remove all of his or her garments; and
- (b) an examination of the person's body (but not of the person's body cavities) and of those garments.

***thing relevant to an indictable offence*** means—

- (a) anything with respect to which an indictable offence has been committed or is suspected, on reasonable grounds, to have been committed; or
- (b) anything that is suspected, on reasonable grounds, to afford evidence of the commission of an indictable offence; or
- (c) anything that is suspected, on reasonable grounds, to be intended to be used for the purpose of committing an indictable offence.

***thing relevant to a summary offence*** means—

- (a) anything with respect to which a summary offence has been committed or is suspected, on reasonable grounds, to have been committed; or
- (b) anything that is suspected, on reasonable grounds, to afford evidence of the commission of a summary offence; or
- (c) anything that is suspected, on reasonable grounds, to be intended to be used for the purpose of committing a summary offence.

*warrant* means a warrant under this part.

*warrant premises* means premises in relation to which a warrant is in force.

### **186 Application of pt 10**

- (1) This part is not intended to limit or exclude the operation of any other Territory law relating to—
  - (a) the search of persons or premises; or
  - (b) arrest and related matters; or
  - (c) the stopping, detaining or searching of conveyances; or
  - (d) the seizure of things.
- (2) To avoid any doubt, it is declared that even though another Territory law provides power to do 1 or more of the things referred to in subsection (1), a similar power given by this part may be used despite the existence of the power under the other law.

### **187 Application of Cwlth Crimes Act, pt 1C**

- (1) The Commonwealth Crimes Act, part 1C (Investigation of Commonwealth offences) and the schedule (Form of explanation under section 23V) apply to summary offences in the same way as they apply to indictable offences.

*Note* The Cwlth Crimes Act provisions apply to indictable offences against ACT laws if the investigating officer is a police officer (see s 23A (6) of that Act).

- (2) However, the provisions of the Commonwealth Crimes Act mentioned in subsection (1) do not apply to—
  - (a) an offence against the *Road Transport (Alcohol and Drugs) Act 1977*; or
  - (b) an infringement notice offence for the *Road Transport (General) Act 1999*, if the police officer concerned—



- (i) intends to serve an infringement notice under that Act for the offence on the offender concerned; or
  - (ii) intends to take no further action against the offender concerned in relation to the offence.
- (3) Also, the following provisions of the Commonwealth Crimes Act only apply under subsection (1) if the person being interviewed or questioned is under arrest (within the meaning of that Act, section 23B (Definitions), as applied by subsection (1)) for a summary offence:
- (a) section 23K (Persons under 18);
  - (b) section 23V (Tape recording of confessions and admissions).

## **Division 10.2      Preventative action**

### **188    Police powers of entry**

A police officer may enter premises, and may take the action that is necessary and reasonable to prevent the commission or repetition of an offence or of a breach of the peace or to protect life or property—

- (a) when invited onto the premises by a person who is or is reasonably believed to be a resident of the premises for the purpose of giving assistance to a person on the premises who has suffered, or is in imminent danger of suffering, physical injury at the hands of some other person; or
- (b) under a warrant issued under section 189; or
- (c) in circumstances of seriousness and urgency, in accordance with section 190.

### **189    Issue of warrant**

- (1) If a magistrate is satisfied, by information on oath, that—

- (a) there are reasonable grounds to suspect that a person on premises has suffered, or is in imminent danger of, physical injury at the hands of another person and needs assistance to prevent, or deal with, the injury; and
- (b) a police officer has been refused permission to enter the premises for the purpose of giving assistance to the firstmentioned person;

the magistrate may issue a warrant in writing authorising a police officer, with the assistance that is necessary and reasonable and by the force that is necessary and reasonable—

- (c) to enter the premises specified in the warrant at any time within 24 hours after the issue of the warrant; and
  - (d) subject to any conditions specified in the warrant, to take the action that is necessary to prevent the commission or repetition of an offence or of a breach of the peace or to protect life or property.
- (2) The police officer applying for a warrant shall give the further information about the grounds on which the warrant is sought, either orally on oath or by affidavit, that the magistrate requires.

## **190 Entry in emergencies**

A police officer may enter premises where the officer believes on reasonable grounds that—

- (a) an offence or a breach of the peace is being or is likely to be committed, or a person has suffered physical injury or there is imminent danger of injury to a person or damage to property; and
- (b) it is necessary to enter the premises immediately for the purpose of preventing the commission or repetition of an offence or a breach of the peace or to protect life or property.

## **191 Seizure of firearms—warrants and emergencies**

(1) If a police officer enters premises under section 188 (Police powers of entry), section 189 (Issue of warrant) or section 190 (Entry in emergencies), the police officer may seize any firearm, any ammunition for a firearm and any licence to possess or use a firearm—

- (a) in or on those premises; or
- (b) in or on a motor vehicle under the control of a person who ordinarily lives on those premises or is apparently connected with the circumstances giving rise to the entry of the police officer onto the premises;

if the police officer has reasonable grounds for believing that the seizure is necessary to prevent the commission or repetition of an offence or of a breach of the peace or to protect life or property.

(2) A firearm, ammunition or licence may be seized by a police officer under subsection (1)—

- (a) despite the fact that the owner of the firearm, ammunition or licence is unknown; or
- (b) irrespective of whether the owner of the firearm, ammunition or licence is connected with the circumstances giving rise to the entry of the police officer onto the premises.

(3) A police officer who is authorised under subsection (1) to seize a firearm, ammunition or licence in or on premises or in or on a motor vehicle may search the premises or the motor vehicle for any firearm, ammunition or licence and use the force that is reasonably necessary for the purpose.

(4) A firearm, ammunition or licence seized under subsection (1) must be returned to the licensee at the end of 60 days after the seizure if, before the end of that period—

- (a) a prosecution for an offence arising out of circumstances in which a police officer has entered premises under section 188 (Police powers of entry), section 189 (Issue of warrant) or section 190 (Entry in emergencies) has not been instituted; or
  - (b) an application for a protection order that is a domestic violence order (other than an emergency order) under the *Protection Orders Act 2001* has not been made.
- (5) However, a firearm, ammunition or licence seized under subsection (1) must not be returned if the registrar would otherwise be entitled under the *Firearms Act 1996* to be in possession of the firearm, ammunition or licence.
- (6) A word or expression used in the *Firearms Act 1996* has the same meaning in this section.

## **192 Seizure of firearms—protection orders**

- (1) In enforcing an order under the *Protection Orders Act 2001*, section 38 (5) (Firearms and final orders), section 56 (4) (Firearms and interim orders) or section 72 (2) (Firearms and emergency orders), a police officer may—
- (a) enter premises where the respondent named in the order is reasonably believed to be living or staying; and
  - (b) seize any firearm, any ammunition and any licence to possess or use a firearm—
    - (i) in or on the premises; or
    - (ii) in or on a motor vehicle under the control of someone who ordinarily lives on the premises or is apparently connected with the circumstances giving rise to the entry of the police officer onto the premises.
- (2) A firearm, ammunition or licence may be seized by a police officer under subsection (1)—

- (a) despite the fact that the owner of the firearm, ammunition or licence is unknown; or
  - (b) irrespective of whether the owner of the firearm, ammunition or licence is connected with the circumstances giving rise to the entry of the police officer onto the premises.
- (3) A police officer who is authorised under subsection (1) to seize a firearm, ammunition or licence in or on premises or in or on a motor vehicle may search the premises or the motor vehicle for any firearm, ammunition or licence and use the force that is reasonably necessary for the purpose.
- (4) Subsection (3) does not authorise a search at any time during the period commencing at 9 pm on a day and ending at 6 am on the following day unless the police officer is satisfied that—
- (a) it would not be practicable to conduct the search at another time; or
  - (b) it is necessary to do so to prevent the concealment, loss or destruction of the firearm, ammunition or licence.
- (5) If—
- (a) a firearm, ammunition or licence has been seized under subsection (1) for the purpose of executing an order under the *Magistrates Court Act 1930*, section 206D (2) or (4); and
  - (b) the licence has not been cancelled under the *Magistrates Court Act 1930*, section 206D (1) or suspended under that Act, section 206D (3);
- the firearm, ammunition or licence shall be returned to the licensee if—
- (c) the licensee produces to the registrar of firearms a certificate of the registrar of the Magistrates Court to the effect that the order is no longer in force; and

- (d) the registrar of firearms is not aware of any other court orders in force requiring the seizure of the firearm, ammunition or licence; and
  - (e) the registrar of firearms is not otherwise entitled under the *Firearms Act 1996* to be in possession of the firearm, ammunition or licence.
- (6) If a firearm is seized under subsection (1) and is not returned to the licensee in accordance with subsection (5), for the *Firearms Act 1996*, section 116, the firearm shall be taken to have been seized by a police officer in accordance with that Act.
- (7) An expression that is used in this section and in the *Firearms Act 1996* has, in this section, the same meaning as in that Act.

### **193 Power to conduct search of person for knife**

- (1) Subject to subsection (2), if a police officer suspects on reasonable grounds that a person who is in a public place or school has a knife in his or her possession, the police officer may—
- (a) conduct a frisk search or an ordinary search of the person; and
  - (b) seize any knife found as a result of the search.
- (2) A police officer may conduct a search of a person 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) informs the person of the reason for the search.
- (3) As soon as practicable after a search has been conducted under subsection (1), the police officer who conducted the search shall record the time, location and nature of the search.

## **Division 10.3          Search warrants**

### **194    When search warrants can be issued**

- (1) An issuing officer may issue a warrant to search premises if the officer is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or there will be within the next 72 hours, any evidential material at the premises.
- (2) An issuing officer may issue a warrant authorising an ordinary search or a frisk search of a person if the officer is satisfied by information on oath that there are reasonable grounds for suspecting that the person possesses, or will within the next 72 hours possess, any evidential material.
- (3) If the person applying for the warrant suspects that, in executing the warrant, it will be necessary to use firearms, the person shall state that suspicion, and the grounds for that suspicion, in the information.
- (4) If the person applying for the warrant is a police officer and has, at any time previously, applied for a warrant relating to the same person or premises, the person shall state in the information particulars of those applications and their outcome.
- (5) A warrant shall include statements of the following matters:
  - (a) the offence to which the warrant relates;
  - (b) a description of the warrant premises, or the name or description of the person to whom it relates;
  - (c) the kinds of evidential material that are to be searched for under the warrant;
  - (d) the name of the police officer who is to be responsible for executing the warrant (unless he or she inserts in the warrant the name of another police officer);

- (e) the period, not exceeding 7 days, that the warrant remains in force;
  - (f) subject to subsection (9), the times when the search is authorised.
- (6) For a warrant in relation to premises, the warrant shall state—
- (a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in subsection (5) (c)) found at the premises in the course of the search that the executing officer or an assisting officer believes on reasonable grounds to be—
    - (i) evidential material in relation to an offence to which the warrant relates; or
    - (ii) a thing relevant to another offence that is an indictable offence; andif the executing officer or an assisting officer believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence; and
  - (b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed if the executing officer or an assisting officer suspects on reasonable grounds that the person has any evidential material or seizable items in his or her possession.
- (7) For a warrant to search a person, the warrant shall state—
- (a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in subsection (5) (c)) found, in the course of the search, on or in the possession of the person or in a recently used conveyance, being a thing that the executing officer or an assisting officer believes on reasonable grounds to be—



- (i) evidential material in relation to an offence to which the warrant relates; or
- (ii) a thing relevant to another offence that is an indictable offence;

if the executing officer or an assisting officer believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence; and

- (b) the kind of search of a person that the warrant authorises.

- (8) Subsection (5) (e) does not prevent the issue of successive warrants in relation to the same premises or person.
- (9) A warrant shall not be expressed to authorise a search at any time during the period commencing at 9 pm on a day and ending at 6 am on the following day unless the issuing officer is satisfied that—
  - (a) it would not be practicable to conduct the search at another time; or
  - (b) it is necessary to do so to prevent the concealment, loss or destruction of evidence relating to the offence.
- (10) If the application for the warrant is made under section 205, this section applies as if—
  - (a) subsections (1) and (2) referred to 48 hours rather than 72 hours; and
  - (b) subsection (5) (e) referred to 48 hours rather than 7 days.

### **195 The things that are authorised by search warrant**

- (1) A warrant in force for the search of premises authorises the executing officer or an assisting officer—
  - (a) to enter the warrant premises and, if the premises are a conveyance, to enter the conveyance, wherever it is; and

- (b) to search for and record fingerprints found at the premises and to take samples of things found at the premises for forensic purposes; and
  - (c) to search the premises for the kinds of evidential material specified in the warrant, and to seize things of that kind found at the premises; and
  - (d) to seize other things found at the premises in the course of the search that the executing officer or an assisting officer believes on reasonable grounds to be—
    - (i) evidential material in relation to an offence to which the warrant relates; or
    - (ii) evidential material in relation to any indictable offence; if the executing officer or an assisting officer believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence; and
  - (e) to seize other things found at the premises in the course of the search that the executing officer or an assisting officer believes on reasonable grounds to be seizable items; and
  - (f) if the warrant so allows—to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or an assisting officer suspects on reasonable grounds that the person has any evidential material or seizable items in his or her possession.
- (2) A warrant in force for the search of a person authorises the executing officer or an assisting officer—
- (a) to search the person as specified in the warrant, things found in the possession of the person and any recently used conveyance for things of the kind specified in the warrant; and
  - (b) to—

- (i) seize things of that kind;
  - (ii) record fingerprints from things;
  - (iii) to take forensic samples from things;  
found in the course of the search; and
  - (c) to seize other things found in the course of the search on, or in the possession of, the person or in the conveyance that the executing officer or an assisting officer believes on reasonable grounds to be—
    - (i) evidential material in relation to an offence to which the warrant relates; or
    - (ii) a thing relevant to any indictable offence;  
if the executing officer or an assisting officer believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence; and
  - (d) to seize other things found in the course of the search that the executing officer or an assisting officer believes on reasonable grounds to be seizable items.
- (3) If the warrant states that it may be executed only during particular hours, the warrant shall not be executed outside those hours.
- (4) If the warrant authorises an ordinary search or a frisk search of a person, a search of the person different to that so authorised shall not be done under the warrant.
- (5) If things are seized under a warrant, the warrant authorises the executing officer to make the things available to officers of other agencies if it is necessary to do so for the purpose of investigating or prosecuting an offence to which the things relate.

**196 Availability of assistance and use of force in executing warrant**

In executing a warrant—

- (a) the executing officer may obtain the assistance that is necessary and reasonable in the circumstances; and
- (b) the executing officer, or a police officer assisting in executing the warrant, may use the force against persons and things that is necessary and reasonable in the circumstances; and
- (c) an assisting officer may use the force against things that is necessary and reasonable in the circumstances.

**197 Details of warrant to be given to occupier etc**

- (1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the executing officer or an assisting officer shall make available to that person a copy of the warrant.
- (2) If a warrant in relation to a person is being executed, the executing officer or an assisting officer shall make available to that person a copy of the warrant.
- (3) If a person is searched under a warrant in relation to premises, the executing officer or an assisting officer shall show the person a copy of the warrant.
- (4) The executing officer shall identify himself or herself to the person at the premises or the person being searched.
- (5) The copy of the warrant referred to in subsections (1) and (2) need not include the signature of the issuing officer or the seal of the relevant court.

**198 Specific powers available to police officers executing warrant**

- (1) In executing a warrant in relation to premises, the executing officer or an assisting officer may—
  - (a) for a purpose incidental to the execution of the warrant; or
  - (b) if the occupier of the premises consents in writing;  
take photographs (including video recordings) of the premises or of things at the premises.
- (2) If a warrant in relation to premises is being executed, the executing officer and the assisting officers may, if the warrant is still in force, complete the execution of the warrant after all of them temporarily cease its execution and leave the premises—
  - (a) for not more than 1 hour; or
  - (b) for a longer period if the occupier of the premises consents in writing.
- (3) If—
  - (a) the execution of a warrant is stopped by an order of a court; and
  - (b) the order is later revoked or reversed on appeal; and
  - (c) the warrant is still in force;the execution of the warrant may be completed.

**199 Use of equipment to examine or process things**

- (1) The executing officer or an assisting officer may bring to warrant premises any equipment reasonably necessary for the examination or processing of things found at the premises, to determine whether they are things that may be seized under the warrant.
- (2) If—

- (a) it is not practicable to examine or process them at the warrant premises; or
- (b) the occupier of the premises (or his or her representative) consents in writing;

the things may be moved to another place for examination or processing to determine whether they are things that may be seized under a warrant.

- (3) If things are moved to another place for the purpose of examination or processing under subsection (2), the executing officer shall, if practicable—
  - (a) inform the occupier of the address of the place and the time when the examination or processing will be carried out; and
  - (b) allow the occupier (or his or her representative) to be present during the examination or processing.
- (4) The executing officer or an assisting officer may operate equipment already at warrant premises to carry out the examination or processing of a thing found at the premises to determine whether it is a thing that may be seized under the warrant if the officer believes on reasonable grounds that—
  - (a) the equipment is suitable for the examination or processing; and
  - (b) the examination or processing can be carried out without damage to the equipment or the thing.

## **200 Use of electronic equipment at premises**

- (1) The executing officer or an assisting officer may operate electronic equipment at warrant premises to see whether evidential material is accessible by doing so if the officer believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

- (2) If the executing officer or an assisting officer, after operating the equipment, finds that evidential material is accessible by doing so, the officer may—
- (a) seize the equipment and any disk, tape or other associated device; or
  - (b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced; or
  - (c) if the material can be transferred to a disk, tape or other storage device that—
    - (i) is brought to the premises; or
    - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.
- (3) Equipment may only be seized under subsection (2) (a) if—
- (a) it is not practicable to put the material in documentary form under subsection (2) (b) or to copy the material under subsection (2) (c); or
  - (b) possession by the occupier of the equipment could constitute an offence.
- (4) If the executing officer or an assisting officer believes on reasonable grounds that—
- (a) evidential material may be accessible by operating electronic equipment at the premises; and
  - (b) expert assistance is required to operate the equipment; and

(c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

- (5) The executing officer or an assisting officer shall give notice to the occupier of the premises of his or her intention to secure the equipment and of the fact that the equipment may be secured for up to 24 hours.
- (6) The equipment may be secured—
- (a) for a period not exceeding 24 hours; or
  - (b) until the equipment has been operated by the expert;
- whichever happens first.
- (7) If the executing officer or assisting officer believes on reasonable grounds that expert assistance will not be available within 24 hours, he or she may apply to the issuing officer for an extension of that period.
- (8) The executing officer or assisting officer shall give notice to the occupier of the premises—
- (a) that the executing officer or assisting officer intends to apply for an extension under subsection (7); and
  - (b) that the occupier is entitled to be heard in relation to the application.
- (9) The occupier is entitled to be heard in relation to an application under subsection (7).
- (10) This division applies to the issuing of an extension on an application under subsection (7) in the same way as it applies to the issue of a warrant, with necessary changes.



## **201 Compensation for damage to electronic equipment**

- (1) If—
- (a) damage is caused to equipment as a result of it being operated under section 199 or 200; and
  - (b) the damage resulted from—
    - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care being exercised by the person operating the equipment;

compensation for the damage is payable to the owner of the equipment.

- (2) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises or the occupier's employees or agents, if they were available at the time, had provided any warning or guidance as to the appropriate operation of the equipment in the circumstances.

## **202 Copies of seized things to be provided**

- (1) If a police officer seizes from warrant premises—
- (a) a document, film, computer file or other thing that can be readily copied; or
  - (b) a storage device the information in which can be readily copied;

the officer shall, if requested to do so by the occupier of the premises (or another person apparently representing the occupier), give a copy of the thing or the information to the occupier or that person as soon as practicable after the seizure.

- (2) Subsection (1) does not apply if—
- (a) the seized item was seized under section 200 (2) (b) or (c); or

- (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

### **203 Occupier entitled to be present during search**

- (1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the person is, subject to the Commonwealth Crimes Act, part 1C entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

### **204 Receipts for things seized under warrant**

- (1) If a thing is seized under a warrant or moved under section 199 (2), the executing officer or an assisting officer shall provide a receipt for the thing.
- (2) If 2 or more things are seized or moved, they may be covered by a single receipt.

### **205 Warrants by telephone or other electronic means**

- (1) A police officer may make an application to an issuing officer for a warrant by telephone, telex, fax or other electronic means—
  - (a) in an urgent case; or
  - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The issuing officer may require communication by voice to the extent that is practicable in the circumstances.
- (3) An application under this section shall include all information required to be provided in an ordinary application for a warrant, but

the application may, if necessary, be made before the information is sworn.

- (4) If an application is made to an issuing officer under this section and the issuing officer, after considering the information and having received and considered the further information (if any) that the issuing officer required, is satisfied that—
- (a) a warrant in the terms of the application should be issued urgently; or
  - (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;
- the issuing officer may complete and sign the same form of warrant that would be issued under section 194.
- (5) If the issuing officer decides to issue the warrant, the issuing officer is to inform the applicant, by telephone, telex, fax or other electronic means, of the terms of the warrant, the day and the time when it was signed.
- (6) The applicant shall then complete a form of warrant in terms substantially corresponding to those given by the issuing officer, stating on the form the name of the issuing officer, the day and the time when the warrant was signed.
- (7) The applicant shall, not later than the day after the day of expiry of the warrant or the day after the day when the warrant was executed, whichever is the earlier, give or transmit to the issuing officer the form of warrant completed by the applicant and, if the information referred to in subsection (3) was not sworn, that information duly sworn.
- (8) The issuing officer is to attach to the documents provided under subsection (7) the form of warrant completed by the issuing officer.
- (9) If—

- (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and
- (b) the form of warrant signed by the issuing officer is not produced in evidence;

the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

## **206 Restrictions on personal searches**

A warrant may not authorise a strip search or a search of a person's body cavities.

## **Division 10.4 Powers to stop and search**

### **207 Stopping, searching and detaining people**

- (1) This section applies if a police officer suspects, on reasonable grounds, that—
  - (a) a person is carrying, or otherwise has in his or her possession, a thing (the *relevant thing*) relevant to an indictable offence or a thing stolen or otherwise unlawfully obtained; and
  - (b) it is necessary to exercise a power under subsection (2) to prevent the thing from being concealed, lost or destroyed; and
  - (c) it is necessary to exercise the power without the authority of a search warrant because the circumstances are serious and urgent.
- (2) If this section applies, the police officer may—
  - (a) stop and detain the person; and
  - (b) conduct a frisk search or ordinary search of the person for the relevant thing; and
  - (c) seize the thing if the officer finds it.

- (3) If, in the course of searching for the relevant thing, the police officer finds any evidential material, the officer may seize the material if the officer suspects, on reasonable grounds, that—
  - (a) it is necessary to seize it to prevent its concealment, loss or destruction; and
  - (b) it is necessary to seize it without the authority of a search warrant because the circumstances are serious and urgent.
- (4) A frisk search under this section may only be carried out by a person of the same sex as the person being searched.
- (5) As soon as possible after exercising a power under subsection (2), the police officer must make a written record of—
  - (a) the date, time and place of exercising the power; and
  - (b) details of its exercise; and
  - (c) any details of the person known to the police officer; and
  - (d) the grounds for suspecting the relevant matter mentioned in subsection (1).
- (6) The police officer must exercise his or her powers under this section subject to section 208.

## **208 How a police officer exercises a power under s 207**

In exercising a power under section 207 in relation to a person, a police officer must not detain the person for longer than is necessary and reasonable to conduct a frisk search or ordinary search of the person.

## **209 Stopping, searching and detaining conveyances**

- (1) This section applies if a police officer suspects, on reasonable grounds, that—

- (a) a thing relevant to an indictable offence or a thing stolen or otherwise unlawfully obtained, is in or on a conveyance; and
  - (b) it is necessary to exercise a power under subsection (2) to prevent the thing from being concealed, lost or destroyed; and
  - (c) it is necessary to exercise the power without the authority of a search warrant because the circumstances are serious and urgent.
- (2) If this section applies, the police officer may—
- (a) stop and detain the conveyance; and
  - (b) search the conveyance and any container in or on the conveyance, for the relevant thing; and
  - (c) seize the thing if he or she finds it there.
- (3) If, in the course of searching for the relevant thing, the police officer finds any evidential material, the police officer may seize the material if he or she suspects, on reasonable grounds, that—
- (a) it is necessary to seize it to prevent its concealment, loss or destruction; and
  - (b) it is necessary to seize it without the authority of a search warrant because the circumstances are serious and urgent.
- (4) The police officer shall exercise his or her powers under this section subject to section 210.

## **210 How a police officer exercises a power under s 209**

In exercising a power under section 209 in relation to a conveyance, a police officer—

- (a) may use the assistance that is necessary; and
- (b) shall search the conveyance in a public place or in some other place where members of the public have ready access; and

- (c) shall not detain the conveyance for longer than is necessary and reasonable to search it and any container found in or on the conveyance; and
- (d) may use the force that is necessary and reasonable in the circumstances, but shall not damage the conveyance or any container found in or on the conveyance by forcing open a part of the conveyance or container unless—
  - (i) any person apparently in charge of the conveyance has been given a reasonable opportunity to open that part or container; or
  - (ii) it is not possible to give any such person that opportunity.

## **Division 10.5          Arrest and related matters**

### **211    Requirement to provide name etc**

- (1) If—
  - (a) a police officer has reason to believe that an offence has been or may have been committed; and
  - (b) believes on reasonable grounds that a person may be able to assist him or her in inquiries in relation to that offence; and
  - (c) the name or address (or both) of that person is unknown to the officer;  
the officer—
  - (d) may request the person to provide his or her name or address (or both) to the officer; and
  - (e) if making such a request—shall inform the person of the reason for the request.
- (2) If a police officer—
  - (a) makes a request of a person under subsection (1); and

- (b) informs the person of the reason for the request; and
  - (c) complies with subsection (3) if the person makes a request under that subsection;
- the person shall not, without reasonable excuse—
- (d) refuse or fail to comply with the request; or
  - (e) give a name or address that is false in a material particular.
- (3) If a police officer who makes a request of a person under subsection (1) is requested by the person to provide to the person—
- (a) his or her name or the address of his or her place of duty; or
  - (b) his or her name and that address; or
  - (c) if he or she is not in uniform and it is practicable for the police officer to provide the evidence—evidence that he or she is a police officer;
- the police officer shall not—
- (d) refuse or fail to comply with the request; or
  - (e) give a name or address that is false in a material particular.
- (4) As soon as possible after making such a request, the police officer shall make a written record of the grounds for his or her belief.

Maximum penalty: \$500.

## **212 Power of arrest without warrant by police officers**

- (1) A police officer may, without warrant, arrest a person for an offence if the police officer suspects on reasonable grounds that—
- (a) the person has committed or is committing the offence; and
  - (b) proceedings by summons against the person would not achieve 1 or more of the following purposes:



- (i) ensuring the appearance of the person before a court in respect of the offence;
  - (ii) preventing a repetition or continuation of the offence or the commission of another offence;
  - (iii) preventing the concealment, loss or destruction of evidence relating to the offence;
  - (iv) preventing harassment of, or interference with, a person who may be required to give evidence in proceedings in respect of the offence;
  - (v) preventing the fabrication of evidence in respect of the offence;
  - (vi) preserving the safety or welfare of the person.
- (2) A police officer may, without warrant, arrest a person for a domestic violence offence if the police officer suspects on reasonable grounds that the person has committed or is committing the offence.
- (3) If—
- (a) a person has been arrested under subsection (1) or (2) in connection with an offence; and
  - (b) before the person is charged with the offence, the police officer in charge of the investigation into the offence does not have, or ceases to have, reasonable grounds to suspect that—
    - (i) the person committed the offence; or
    - (ii) for a person arrested under subsection (1)—holding the person in custody is necessary to achieve any of the purposes referred to in subsection (1) (b);
- the person shall forthwith be released from custody in respect of the offence.

- (4) A police officer may, without warrant, arrest a person whom he or she suspects on reasonable grounds has escaped from lawful custody to which the person is still liable in respect of an offence.

### **213 Arrest without warrant in possession**

- (1) This section applies if—
- (a) a warrant has been issued for the arrest of a person; and
  - (b) a police officer encounters the person or is otherwise in a position to arrest the person but is not carrying the warrant at the time.
- (2) If this section applies, the police officer may—
- (a) arrest the person; and
  - (b) for a warrant for the arrest of a person for the commission of an offence—cause the person (and any property found in the person's possession) to be brought before a magistrate to be dealt with according to law.

- (3) In this section:

**warrant** means an arrest warrant or a warrant of commitment issued under a law of the Territory, the Commonwealth, a State or another Territory.

### **214 Arrest of prisoner unlawfully at large**

- (1) A police officer may, without warrant, arrest a person whom the police officer suspects on reasonable grounds to be a prisoner unlawfully at large.
- (2) The police officer shall, as soon as practicable after the arrest, cause the person to be brought before a magistrate.
- (3) If the magistrate is satisfied that the person is a prisoner unlawfully at large, the magistrate may issue a warrant—

- (a) authorising a police officer or an escort under the *Custodial Escorts Act 1998* to convey the person to a prison or other place of detention specified in the warrant; and
  - (b) directing that the person, having been conveyed to that place in accordance with the warrant, be detained there to undergo the term of imprisonment or other detention that the person is required by law to undergo.
- (4) In this section:

*prisoner unlawfully at large* means a person who is at large (otherwise than because the person has escaped from lawful custody) at a time when the person is required by law to be detained under a law of the Territory, a State, or another Territory.

## **215 Power of arrest without warrant of person on bail**

- (1) A police officer may, without warrant, arrest a person who has been admitted to bail in the ACT, a State or another Territory, subject to conditions, if the officer believes on reasonable grounds that the person—
  - (a) has failed to comply with a bail condition; or
  - (b) will not comply with a bail condition.
- (2) If a police officer arrests a person under subsection (1), the officer shall cause the person to be brought before a court as soon as is practicable.
- (3) If a person is brought before a court under subsection (2), the court may—
  - (a) for a person originally admitted to bail in the ACT—exercise the same powers in relation to the person in relation to bail (or dispensing with bail) as it has in relation to other accused persons in custody; or

- (b) for a person originally admitted to bail in a State or another Territory—
  - (i) release the person unconditionally; or
  - (ii) admit the person to bail subject to the conditions that the court thinks fit; or
  - (iii) remand the person in custody for a reasonable time pending the obtaining of a warrant for the arrest of the person from the State or Territory where the person was admitted to bail.
- (4) A release referred to in subsection (3) (b) (i) does not affect the operation of the bail order or the conditions of the bail imposed in the other State or Territory.

**216 Arrest for breach of bail conditions by person outside ACT**

- (1) This section applies if a police officer believes on reasonable grounds that—
  - (a) a person who has been admitted to bail in the ACT subject to conditions has breached those conditions; and
  - (b) the person is in a State or another Territory.
- (2) If this section applies, an issuing officer may, on the information of the police officer—
  - (a) issue a warrant to arrest the person in that State or other Territory and bring him or her before a court in the ACT; or
  - (b) issue a summons for the person's appearance before a court in the ACT.

**217 Arrest without warrant for offences committed outside ACT**

- (1) This section applies to an offence against the law of a State or another Territory consisting of an act or omission which, if it occurred in the ACT, would constitute an indictable offence.
- (2) A police officer may, without warrant, at any hour of the day or night, arrest a person whom he or she suspects on reasonable grounds to have committed an offence to which this section applies.
- (3) If a police officer arrests a person under subsection (2), the officer shall cause the person to be brought before a magistrate as soon as is practicable.
- (4) If a person is brought before a magistrate under subsection (3), the magistrate may—
  - (a) discharge the person; or
  - (b) commit the person to custody, or admit the person to bail, pending—
    - (i) the execution under a law of the Commonwealth of a warrant for the person's arrest; or
    - (ii) the person's discharge or release under subsection (7).
- (5) A police officer may exercise any power under this division in relation to a person arrested under this section as if the person had been arrested and was being held in custody in relation to the commission of an offence against a Territory law.
- (6) If a person is committed to custody under this section and a warrant for the person's apprehension is subsequently presented for execution, he or she shall be delivered in accordance with the terms of the warrant to the custody of the person executing it.
- (7) If—
  - (a) a person is admitted to bail under this section; and

- (b) before the person has complied with conditions of that bail, a warrant for his or her arrest is executed under a law of the Commonwealth;

the person is to be taken, at the time the warrant is executed, to be released from that bail and to have complied with the bail conditions, other than any condition with which the person had (before that time) failed to comply without reasonable excuse.

- (8) If—
- (a) a person has been committed to custody or admitted to bail under this section; and
- (b) a warrant for the arrest of the person is not executed within 7 days after the person is committed to custody or admitted to bail;

a magistrate may, by order, discharge the person from custody or release the person from bail.

- (9) In this section:

*warrant* means a warrant issued under a law of the Territory, the Commonwealth, a State or another Territory, and includes a provisional warrant.

## **218 Power of arrest without warrant by other persons**

- (1) A person who is not a police officer may, without warrant, arrest another person if he or she believes on reasonable grounds that the other person is committing or has just committed an offence.
- (2) A person who arrests another person under subsection (1) shall, as soon as practicable after the arrest, arrange for the other person, and any property found on the other person, to be delivered into the custody of a police officer.

## **219 Warrants for arrest**

- (1) An issuing officer shall not issue a warrant for the arrest of a person for an offence as a result of an information laid before the officer unless—
  - (a) the information is on oath; and
  - (b) subject to subsection (3), the informant has given the issuing officer an affidavit setting out the reasons why the warrant is sought, including the following reasons:
    - (i) the reasons why it is believed that the person committed the offence;
    - (ii) the reasons why it is claimed that proceedings by summons would not achieve 1 or more of the purposes set out in section 212 (1) (b);
  - (c) if the issuing officer has requested further information about the reasons for which the issue of the warrant is sought—that information has been provided to the officer; and
  - (d) the issuing officer is satisfied that there are reasonable grounds for the issue of the warrant.
- (2) If the issuing officer issues a warrant, he or she shall write on the affidavit which of the reasons specified in the affidavit, and any other reasons, the officer has relied on as justifying the issue of the warrant.
- (3) Subsection (1) (b) does not apply if the issuing officer is informed that the warrant is sought for the purpose of making a request for the extradition of a person from a foreign country.
- (4) This section does not apply to the issue of a warrant under the *Bail Act 1992*, section 49 (1) (Failure to answer bail).

## **220 Power to enter premises to arrest offender**

- (1) Subject to subsection (3), if—
- (a) an officer has, under a warrant, power to arrest the person for an offence; and
  - (b) the officer believes on reasonable grounds that the person is on any premises;

the police officer may enter the premises, using the force that is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the person or arresting the person.

- (2) Subject to subsection (3), if—
- (a) an officer has the power under section 212 to arrest the person without warrant for an offence; and
  - (b) the offence is an indictable offence or relevant summary offence; and
  - (c) the police officer believes on reasonable grounds that the person is on any premises;

the police officer may enter the premises, using the force that is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the person or arresting the person.

- (3) A police officer shall not enter a dwelling house under subsection (1) or (2) at any time during the period commencing at 9 pm on a day and ending at 6 am on the following day unless the executing officer believes on reasonable grounds that—
- (a) it would not be practicable to arrest the person, either at the dwelling house or elsewhere, at another time; or
  - (b) it is necessary to do so to prevent the concealment, loss or destruction of evidence relating to the offence.



(4) In this section:

*dwelling house* includes a conveyance, and a room in a hotel, motel, boarding house or club, where people ordinarily sleep at night.

*relevant summary offence* means—

- (a) an offence against any of the following sections of this Act:
- section 90 (Minor theft)
  - section 380 (Possession of offensive weapons)
  - section 381 (Possession of offensive weapon with intent);  
or
- (b) an offence against the *Road Transport (Alcohol and Drugs) Act 1977*, section 19 (Prescribed blood alcohol concentration exceeded).

## **221 Use of force in making arrest**

- (1) A person shall not, in the course of arresting another person for an offence, use more force, or subject the other person to greater indignity, than is necessary and reasonable to make the arrest or to prevent the escape of the other person after the arrest.
- (2) Without limiting the operation of subsection (1), a police officer shall not, in the course of arresting a person for an offence do anything that is likely to cause the death of, or grievous bodily harm to, the person, unless—
- (a) the officer believes on reasonable grounds that it is necessary to do so to protect life or to prevent serious injury to the officer or another person; and
- (b) if the person is attempting to escape arrest by fleeing—the person has, if practicable, been called on to surrender and the officer believes on reasonable grounds that the person cannot be apprehended in any other way.

## **222 Persons to be informed of grounds of arrest**

- (1) A person who arrests another person for an offence shall inform the other person, at the time of the arrest, of the offence for which the other person is being arrested.
- (2) It is sufficient if the other person is informed of the substance of the offence, and it is not necessary that this be done in language of a precise or technical nature.
- (3) Subsection (1) does not apply to the arrest of the other person if—
  - (a) the other person should, in the circumstances, know the substance of the offence for which he or she is being arrested; or
  - (b) the other person's actions make it impracticable for the person making the arrest to inform the other person of the offence for which he or she is being arrested.

## **223 Power to conduct frisk search of arrested person**

- (1) A police officer who arrests a person for an offence, or who is present at such an arrest, may, if the police officer suspects on reasonable grounds that it is prudent to do so to ascertain whether the person is carrying any seizable items—
  - (a) conduct a frisk search of the person at or soon after the time of arrest; and
  - (b) seize any seizable items found as a result of the search.
- (2) The police officer may arrange for another police officer to conduct the frisk search if, having regard to section 240 (Conduct of ordinary searches and frisk searches), the officer considers that it would be more appropriate for the other officer to conduct the frisk search.

- (3) The other police officer is authorised—
  - (a) to conduct the frisk search; and
  - (b) to seize any seizable items found as a result of the search.

#### **224 Power to conduct ordinary search of arrested person**

- (1) If a police officer suspects on reasonable grounds that a person who has been arrested is carrying—

- (a) evidential material in relation to any offence; or
- (b) a seizable item;

the police officer may conduct an ordinary search of the person at or soon after the time of arrest, and seize any such thing found as a result of the search.

- (2) The police officer may arrange for another police officer to conduct the ordinary search if, having regard to section 240 (Conduct of ordinary searches and frisk searches), the officer considers that it would be more appropriate for the other officer to conduct the frisk search.

- (3) The other police officer is authorised—

- (a) to conduct the ordinary search; and
- (b) to seize anything mentioned in subsection (1) found as a result of the search.

#### **225 Power to conduct search of arrested person's premises**

A police officer who arrests a person at premises for an offence, or who is present at such an arrest, may seize things in plain view at those premises that the police officer believes on reasonable grounds to be—

- (a) evidential material in relation to any offence; or
- (b) seizable items.

## **226 Power to conduct search at police station**

- (1) If—
- (a) a person has been brought to a police station following arrest for an offence; and
  - (b) an ordinary search of the person has not been conducted;
- a police officer may conduct an ordinary search of the person.
- (2) If—
- (a) a person is in lawful custody in a police station; and
  - (b) a police officer—
    - (i) of the rank of sergeant or higher; or
    - (ii) who is for the time being in charge of the police station;suspects on reasonable grounds that it is prudent to do so to ascertain whether the person is carrying any evidential material in relation to any offence or seizable items;
- the police officer may cause a frisk search or an ordinary search of the person to be conducted.
- (3) If a person is searched under this section and as a result of the search is found to be carrying—
- (a) evidential material in relation to any offence; or
  - (b) a seizable item;
- the police officer conducting the search may seize that thing.
- (4) If a person is searched under this section, the police officer who conducts or causes the search to be conducted shall make a record of the reasons for the search and of the type of search.

## **227 Power to conduct strip search**

- (1) Subject to this section, if a person arrested for an offence is brought to a police station, a police officer may conduct a strip search of the person.
- (2) A strip search may be conducted if—
  - (a) a police officer suspects on reasonable grounds that the person has in his or her possession—
    - (i) evidential material in relation to that or another offence; or
    - (ii) a seizable item; or
  - (b) the police officer suspects on reasonable grounds that a visual inspection of the person's body will provide evidence of the person's involvement in an offence;and—
  - (c) the police officer suspects on reasonable grounds that it is necessary to conduct a strip search of the person to recover that thing or to discover that evidence; and
  - (d) a police officer of the rank of superintendent or higher has approved the conduct of the search.
- (3) Subject to section 228, a strip search may also be conducted if the person consents in writing.
- (4) Subject to section 228, a strip search may be conducted in the presence of a medical practitioner who may assist in the search.
- (5) The approval may be obtained by telephone, telex, fax or other electronic means.
- (6) A police officer who gives or refuses to give an approval under subsection (2) (d) shall make a record of the decision and of the reasons for the decision.

- (7) The force that is necessary and reasonable in the circumstances may be used to conduct a strip search under subsection (2).
- (8) Any item of a kind referred to in subsection (2) (a) that is found during a strip search may be seized.

## **228 Rules for conduct of strip search**

- (1) A strip search—
  - (a) shall be conducted in a private area; and
  - (b) subject to subsection (6), shall be conducted by a police officer who is of the same sex as the person being searched; and
  - (c) subject to subsections (3) and (4), shall not be conducted in the presence or view of a person who is of the opposite sex to the person being searched; and
  - (d) shall not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search; and
  - (e) shall not be conducted on a person who is under 10; and
  - (f) if the person being searched is at least 10 but under 18, or is incapable of managing his or her affairs—
    - (i) may only be conducted if the person has been arrested and charged or if a court orders that it be conducted; and
    - (ii) shall be conducted in the presence of a parent or guardian of the person being searched or, if that is not acceptable to the person, in the presence of another person (other than a police officer) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person; and
  - (g) shall not involve a search of a person's body cavities; and

- (h) shall not involve the removal of more garments than the police officer conducting the search believes on reasonable grounds to be necessary to determine whether the person has in his or her possession the item searched for or to establish the person's involvement in the offence; and
  - (i) shall not involve more visual inspection than the police officer believes on reasonable grounds to be necessary to establish the person's involvement in the offence.
- (2) In deciding whether to make an order referred to in subsection (1) (f), the court shall have regard to—
- (a) the seriousness of the offence; and
  - (b) the age or any disability of the person; and
  - (c) any other matters the court thinks fit.
- (3) A strip search may be conducted in the presence of a medical practitioner of the opposite sex to the person searched if a medical practitioner of the same sex as the person being searched is not available within a reasonable time.
- (4) Subsection (1) (c) does not apply to a parent, guardian or personal representative of the person being searched if the person being searched has no objection to the person being present.
- (5) If any of a person's garments are seized as a result of a strip search, the person shall be provided with adequate clothing.
- (6) If a strip search of a person is to be conducted and no police officer of the same sex as that person is available to conduct the search, any other person—
- (a) of the same sex as the person to be searched; and
  - (b) who has been requested to conduct the search by a police officer;
- may conduct the search.

- (7) No action or proceeding, civil or criminal, lies against a person who conducts a strip search under a request under subsection (6) in respect of a strip search that would have been lawful if conducted by a police officer.

## **229 Safekeeping of things seized**

- (1) A police officer who seizes a thing as a result of searching a person in lawful custody under this division shall—
- (a) make a record of the thing seized, including a description of it and the date when it was seized; and
  - (b) give the thing seized and the record of it to the police officer for the time being in charge of the police station where the person was searched.
- (2) A police officer for the time being in charge of a police station is responsible for the safekeeping of any thing seized as a result of a search of a person in lawful custody under this part conducted at that place.
- (3) A police officer who has responsibility for the safekeeping of a thing under subsection (2) shall, on release of the person from whom it was seized, take reasonable steps to return the thing to that person or to the owner of the thing if that person is not entitled to possession, unless the thing affords evidence in relation to an offence.
- (4) If a thing is not returned to the person from whom it was seized or the owner under subsection (3), the police officer responsible for the safekeeping of the thing shall—
- (a) make a note on the record made under subsection (1) (a) indicating the thing has been retained; and
  - (b) take reasonable steps to give a copy of that record to the person from whom the thing was seized.



## **230 Taking fingerprints, recordings, samples of handwriting or photographs**

- (1) In this section and in sections 231 and 232:

*identification material*, in relation to a person, means prints of the person's hands, fingers, feet or toes, recordings of the person's voice, samples of the person's handwriting or photographs (including video recordings) of the person, but does not include tape recordings made under the Commonwealth Crimes Act, section 23U or 23V.

- (2) A police officer shall not—

- (a) take identification material from a person who is in lawful custody in respect of an offence except in accordance with this section; or
- (b) require any other person to submit to the taking of identification material, but nothing in this paragraph prevents such a person consenting to the taking of identification material.

- (3) If a person is in lawful custody for an offence, a police officer of the rank of sergeant or higher, or for the time being in charge of a police station, may take identification material from the person, or cause identification material from the person to be taken, if any 1 or more of the following paragraphs apply:

- (a) the identification material is prints of the person's fingers or photographs of the person;
- (b) the person consents in writing;
- (c) the police officer believes on reasonable grounds that it is necessary to do so to—
  - (i) establish who the person is; or
  - (ii) identify the person as the person who committed the offence; or

- (iii) provide evidence of, or relating to, the offence;
  - (d) the police officer suspects on reasonable grounds that the person has committed another offence and the identification material is to be taken for the purpose of identifying the person as the person who committed the other offence or of providing evidence of, or relating to, the other offence.
- (4) A police officer may use the force that is necessary and reasonable in the circumstances to take identification material from a person under this section.
- (5) Subject to this section, a police officer shall not take identification material from a suspect who—
- (a) is incapable of managing his or her affairs; and
  - (b) has not been arrested and charged;
- unless a court orders that the material be taken.
- (6) In deciding whether to make such an order, the court shall have regard to—
- (a) the seriousness of the offence; and
  - (b) the age or any disability of the person; and
  - (c) any other matters as the court thinks fit.
- (7) The taking of identification material from a person who is incapable of managing his or her affairs shall be done in the presence of—
- (a) a parent or guardian of the person; or
  - (b) if the parent or guardian of the person is not acceptable to the person—another person (other than a police officer) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person.

- (8) Despite this section, identification material may be taken from a person who—
- (a) is not a suspect; and
  - (b) is incapable of managing his or her affairs;
- if a court orders that the material be taken.
- (9) In deciding whether to make an order, the court shall have regard to the matters set out in subsection (6).
- (10) Despite this section, identification material may be taken from a person who—
- (a) is at least 18; and
  - (b) is capable of managing his or her affairs; and
  - (c) is not a suspect;
- if the person consents in writing.
- (11) A police officer may only take identification material from a person under 18 in accordance with the *Children and Young People Act 1999*, section 84 (Identifying material).

### **231 Destruction of identification material**

- (1) If—
- (a) identification material is taken under section 230; and
  - (b) a period of 12 months has elapsed since the material was taken; and
  - (c) proceedings in respect of an offence to which the identification material relates have not been instituted or have been discontinued;

the material shall be destroyed as soon as practicable.

- (2) If identification material has been taken from a person under section 230 and—
- (a) the person is found to have committed an offence to which the identification material relates, but no conviction is recorded; or
  - (b) the person is acquitted of such an offence and—
    - (i) no appeal is lodged against the acquittal; or
    - (ii) an appeal is lodged against the acquittal and the acquittal is confirmed or the appeal is withdrawn;

the identification material shall be destroyed as soon as practicable, unless an investigation or proceedings in relation to another offence to which the identification material relates is pending.

- (3) On application by a police officer, a magistrate may, if satisfied that there are special reasons for doing so in relation to particular identification material, extend—
- (a) the period of 12 months referred to in subsection (1); or
  - (b) that period as previously extended under this subsection.

### **232 Offence of refusing to allow identification material to be taken**

- (1) If a person is convicted of an offence, the judge or magistrate presiding at the proceedings where the person was convicted may order—
- (a) the person to attend a police station; or
  - (b) that a police officer be permitted to attend on the person in a place of detention;

within 1 month after the conviction to allow impressions of the person's fingerprints or a photograph of the person to be taken in accordance with the order.

- (2) A person shall not, without reasonable excuse, refuse or fail to allow impressions or a photograph to be taken under an order under subsection (1).

Maximum penalty: \$10 000, imprisonment for 12 months or both.

### **233 Identification parades—general**

- (1) This section applies to identification parades held in relation to offences.
- (2) Subject to subsection (3) and to section 234, an identification parade—
- (a) may be held if the suspect agrees; or
  - (b) shall be held if—
    - (i) the suspect has requested that an identification parade be held; and
    - (ii) it is reasonable in the circumstances to do so.
- (3) An identification parade shall not be held unless the suspect has been informed that—
- (a) he or she is entitled to refuse to take part in the parade; and
  - (b) if he or she refuses to take part in the parade without reasonable excuse, evidence of that refusal and of any identification of the suspect by a witness as a result of having seen a photograph or of having seen the suspect otherwise than during an identification parade may be given in any subsequent proceedings in relation to an offence; and
  - (c) in addition to any requirement under section 234, a legal representative or other person of the suspect's choice may be present while the person is deciding whether to take part in the parade, and during the holding of the parade, if arrangements for that person to be present can be made within a reasonable time.

- (4) The giving of the information referred to in subsection (3) shall be recorded by a video recording or an audio recording.
- (5) An identification parade shall be arranged and conducted in a way that will not unfairly prejudice the suspect.
- (6) Without limiting the intent of subsection (5), an identification parade shall be arranged and conducted in accordance with the following rules:
  - (a) the parade shall consist of at least 9 persons;
  - (b) each of the persons who is not the suspect shall—
    - (i) resemble the suspect in age, height and general appearance; and
    - (ii) not have features that will be visible during the parade that are markedly different from those of the suspect as described by the witness before viewing the parade;
  - (c) unless it is impracticable for another police officer to arrange or conduct the parade, no police officer who has taken part in the investigation relating to the offence may take part in the arrangements for, or the conduct of, the parade;
  - (d) no person in the parade is to be dressed in a way that would obviously distinguish him or her from the other participants;
  - (e) if it is practicable to do so, numbers should be placed next to each participant to allow the witness to make an identification by indicating the number of the person identified;
  - (f) the parade may take place so that the witness can view the parade without being seen if the witness requests that it take place in that way and—
    - (i) a legal representative or other person of the suspect's choice is present with the witness; or
    - (ii) the parade is recorded by a video recording;

- (g) nothing is to be done that suggests or is likely to suggest to a witness which member of the parade is the suspect;
- (h) if the witness so requests—members of the parade may be required to speak, move or adopt a specified posture but, if this happens, the witness shall be reminded that the members of the parade have been chosen on the basis of physical appearance only;
- (i) the suspect may select where he or she wishes to stand in the parade;
- (j) if more than 1 witness is to view the parade—
  - (i) each witness shall view the parade alone; and
  - (ii) the witnesses are not to communicate with each other at a time after arrangements for the parade have commenced and before each of them has viewed the parade; and
  - (iii) the suspect may change places in the parade after each viewing;
- (k) each witness shall be told that—
  - (i) the suspect may not be in the parade; and
  - (ii) if he or she is unable to identify the suspect with reasonable certainty he or she shall say so;
- (l) the parade shall be recorded by a video recording if it is practicable to do so and, if that is done, a copy of the video recording shall be made available to the suspect or his or her legal representative as soon as it is practicable to do so;
- (m) if the parade is not recorded by a video recording—
  - (i) the parade shall be photographed in colour; and
  - (ii) a print of a photograph of the parade that is at least 250mm x 200mm in size shall be made available to the suspect or his or her legal representative; and

- (iii) the police officer in charge of the parade shall take all reasonable steps to record everything said and done at the parade and shall make a copy of the record available to the suspect or his or her legal representative;
  - (n) the suspect may have present during the holding of the parade a legal representative or other person of his or her choice if arrangements for that person to be present can be made within a reasonable time.
- (7) The following questions are to be decided according to the common law:
  - (a) whether or not evidence of a suspect having refused to take part in an identification parade is admissible;
  - (b) if evidence of the refusal is admissible—what inferences (if any) may be drawn by a court or jury from the refusal;
  - (c) whether, after such a refusal, evidence of alternative methods of identification is admissible.
- (8) If a witness is, under the supervision of a police officer, to attempt to identify a suspect otherwise than during an identification parade, the police officer shall ensure that the attempted identification is done in a way that is fair to the suspect.

### **234 Identification parades for suspects under 18 etc**

- (1) An identification parade shall not be held for a suspect who is under 10.
- (2) An identification parade must not be held for a suspect who is incapable of managing his or her affairs unless a court orders that it be held.
- (3) An identification parade must not be held for a suspect who—
  - (a) is at least 10 but under 18; and
  - (b) is capable of managing his or her affairs;



unless 1 of the following paragraphs applies:

- (c) the suspect agrees to or requests in writing the holding of the parade and a parent or guardian of the suspect agrees in writing to the holding of the parade or, if the parent or guardian is not acceptable to the suspect, another person (other than a police officer) who is capable of representing the interests of the suspect and who, as far as is practicable in the circumstances, is acceptable to the suspect agrees in writing to the holding of the parade;
- (d) if—
  - (i) 1 of those persons agrees in writing to the holding of the parade but the other does not; and
  - (ii) a court orders that the parade be held.
- (4) In deciding whether to make an order under subsection (2) or (3), the court shall have regard to—
  - (a) the seriousness of the offence; and
  - (b) the age or any disability of the person; and
  - (c) any other matters as the court thinks fit.
- (5) An identification parade for a suspect who is under 18 or who is incapable of managing his or her affairs shall be held in the presence of—
  - (a) a parent or guardian of the suspect; or
  - (b) if the parent or guardian is not acceptable to the suspect—another person (other than a police officer) who is capable of representing the interests of the suspect and who, as far as is practicable in the circumstances, is acceptable to the suspect.

### **235 Identification by means of photographs**

- (1) If a suspect is in custody in respect of an offence or is otherwise available to take part in an identification parade, a police officer investigating the offence shall not show photographs, or composite pictures or pictures of a similar kind, to a witness for the purpose of establishing, or obtaining evidence of, the identity of the suspect unless—
  - (a) the suspect has refused to take part in an identification parade; or
  - (b) the holding of an identification parade would be—
    - (i) unfair to the suspect; or
    - (ii) unreasonable in the circumstances.
- (2) If a police officer investigating an offence shows photographs or pictures to a witness for the purpose of establishing, or obtaining evidence of, the identity of a suspect, whether or not the suspect is in custody, the following rules apply:
  - (a) the police officer shall show to the witness photographs or pictures of at least 9 different persons;
  - (b) each photograph or picture of a person who is not the suspect shall be of a person who—
    - (i) resembles the suspect in age and general appearance; and
    - (ii) does not have features visible in the photograph or picture that are markedly different from those of the suspect as described by the witness before viewing the photographs or pictures;
  - (c) the police officer shall not, in doing so, act unfairly towards the suspect or suggest to the witness that a particular photograph or picture is the photograph or picture of the suspect or of a person who is being sought by the police in respect of an offence;

- (d) if practicable, the photograph or picture of the suspect shall have been taken or made after he or she was arrested or was considered as a suspect;
  - (e) the witness shall be told that a photograph or picture of the suspect may not be amongst those being seen by the witness;
  - (f) the police officer shall keep, or cause to be kept, a record identifying each photograph or picture that is shown to the witness;
  - (g) the police officer shall notify the suspect or his or her legal representative in writing that a copy of the record is available for the suspect;
  - (h) the police officer shall retain the photographs or pictures shown, and shall allow the suspect or his or her legal representative, on application, an opportunity to inspect the photographs or pictures.
- (3) If—
- (a) a photograph or picture of a person who is suspected in relation to the commission of an offence is shown to a witness; and
  - (b) the photograph was taken or the picture made after the suspect was arrested or was considered to be a suspect; and
  - (c) proceedings in relation to the offence referred to in paragraph (a) or another offence arising out of the same course of conduct for which the photograph was taken or picture made are brought against the suspect before a jury; and
  - (d) the photograph or picture is admitted into evidence;
- the jury shall be informed that the photograph was taken or the picture made after the suspect was arrested or was considered as a suspect.

- (4) If a suspect is in custody in respect of an offence, a police officer investigating the offence shall not show a composite picture or a picture of a similar kind to a witness for the purpose of assisting the witness to describe the features of the suspect.
- (5) If, after a police officer investigating an offence has shown to a witness a composite picture or a picture of a similar kind for the purpose referred to in subsection (4)—
- (a) a suspect comes into custody in respect of the offence; and
  - (b) an identification parade is to be held in relation to the suspect;
- the police officer in charge of the investigation of the offence may, unless doing so would be unfair to the suspect or be unreasonable in the circumstances, request the witness to attend the identification parade and make the necessary arrangements for the witness to attend.
- (6) If, after the witness has been shown a composite picture or a picture of a similar kind for the purpose referred to in subsection (4), a person is charged with the offence, the police officer in charge of investigating the offence shall, on application by that person or his or her legal representative, provide him or her with particulars of any such picture shown to the witness and the comments (if any) of the witness about the picture.
- (7) If a suspect is in custody in respect of an offence and a police officer investigating the offence wishes to investigate the possibility that a person other than the suspect committed the offence, subsection (4) does not prevent a police officer from taking action referred to in that subsection for the purpose of assisting a witness to describe the features of a person other than the suspect.

### **236 Identification procedures if more than 1 suspect**

A police officer shall undertake a separate identification process for each of 2 or more suspects if—

- (a) the officer is attempting to ascertain—
  - (i) which of the suspects committed an offence; or
  - (ii) if the suspects may have been jointly involved in the offence—the identities of the suspects; and
- (b) for that purpose, the officer intends to conduct an identification parade or to identify a person by showing a photograph or a picture of a suspect to a person.

### **237 Descriptions**

- (1) If a description of a suspect is given to a police officer in relation to an offence, the police officer shall ensure that a record of the description is made and that the record is retained until any proceedings in respect of the offence are completed.
- (2) Subject to subsection (4), a police officer shall, if requested to do so by a person who has been charged with an offence, provide the person with the name of every person who, to the knowledge of the police officer, claims to have seen, at or about the time of the commission of the offence, a person who is suspected of being involved in its commission.
- (3) If—
  - (a) a record of a description of a person is made under subsection (1); and
  - (b) the person is charged with an offence to which the description relates;

a police officer must notify the person or his or her legal representative in writing that a copy of the record, and of any other record of a description that the police officer knows about of a

person who is suspected of being involved in the commission of the offence, is available for the person.

- (4) If the police officer suspects on reasonable grounds that providing the name of a person under subsection (2) could—
- (a) place the person in danger; or
  - (b) expose the person to harassment or unreasonable interference;
- the police officer is not required to provide the name of the person.

### **238 Examination**

- (1) In this section:

*examination* means an examination of the body of the person charged and includes the taking of samples of the person's blood, saliva or hair.

- (2) An examination of a person under this section may be conducted if—
- (a) the person consents; or
  - (b) an order is made under subsection (3).
- (3) If a person (the *person charged*) is in lawful custody on a charge of committing an offence and a magistrate is satisfied, on the balance of probabilities, that the offence—
- (a) is of such a nature; and
  - (b) has been committed under such circumstances;

that there are reasonable grounds for believing that an examination of the person charged will afford evidence as to the commission of the offence, the magistrate may order an examination of the person.

- (4) If the person charged is not present at the time that the order is made, a copy of the order shall be given to the person.

- (5) If an order is made under subsection (3) or a person charged consents to an examination, a police officer may request a medical practitioner to carry out the examination and, if the medical practitioner agrees to carry it out, shall give the medical practitioner a copy of the order.
- (6) A medical practitioner carrying out an examination may be assisted by 1 or more persons acting under the direction of the medical practitioner.
- (7) An examination of the person charged—
- (a) shall be carried out in circumstances affording reasonable privacy to the person; and
  - (b) for an examination which includes the external examination of the genital or anal area, the buttocks, or, for a female, the breasts—shall not be carried out in the presence or in view of a person of the opposite sex to the person being examined; and
  - (c) shall not be carried out in the presence or view of a person whose presence is not necessary for the purposes of the examination; and
  - (d) shall not involve the removal of more clothing than is necessary for carrying out the examination; and
  - (e) shall not involve more visual inspection than is necessary for carrying out the examination.
- (8) Subsection (7) does not prevent an examination being carried out by a medical practitioner of the opposite sex to the person being examined.
- (9) A medical practitioner carrying out an examination under this section, an assistant of the medical practitioner or a police officer, may use reasonable force to enable the examination to be carried out including the prevention of loss, destruction or contamination of a sample.

- (10) Samples taken from a person charged with an offence shall be destroyed as soon as practicable after the conclusion of the proceedings relating to the offence and the exhaustion of any right of appeal.
- (11) No action or proceeding, civil or criminal, lies against—
- (a) a person who conducts, or assists in conducting, an examination under this section (including such a person who uses reasonable force as provided in subsection (9)); or
  - (b) a police officer who uses reasonable force as provided in that subsection.
- (12) This section does not apply to a person to whom the *Children and Young People Act 1999*, section 84 (Identifying material) applies.

## **Division 10.6            General**

### **239    Assisting officers—search and arrest of persons**

An assisting officer who is not a police officer is not authorised by this part to assist in searching or arresting a person.

### **240    Conduct of ordinary searches and frisk searches**

An ordinary search or a frisk search of a person under this part shall, if practicable, be conducted by a person of the same sex as the person being searched.

### **241    Announcement before entry**

- (1) Subject to subsection (3), a police officer shall, before any person enters premises under a warrant, for the purpose of executing an order mentioned in section 192 (1) or to arrest a person—
- (a) announce that he or she is authorised to enter the premises; and
  - (b) give any person at the premises an opportunity to allow entry to the premises.



- (2) A police officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of a person (including a police officer); or
  - (b) that the effective execution of the warrant, order or arrest is not frustrated.
- (3) This section does not apply to an entry made under section 190.

#### **242 Offence of making false statements in warrants**

A person shall not make, in an application for a warrant, a statement that the person knows to be false or misleading in a material particular.

Maximum penalty: imprisonment for 2 years.

#### **243 Offences relating to telephone warrants**

A person shall not—

- (a) state in a document that purports to be a form of warrant under section 205 the name of an issuing officer unless that officer issued the warrant; or
- (b) state on a form of warrant under that section a matter that, to the person's knowledge, departs in a material particular from the form authorised by the issuing officer; or
- (c) purport to execute, or present to a person, a document that purports to be a form of warrant under that section that the person knows—
  - (i) has not been approved by an issuing officer under that section; or
  - (ii) to depart in a material particular from the terms authorised by an issuing officer under that section; or

- (d) give to an issuing officer a form of warrant under that section that is not the form of warrant that the person purported to execute.

Maximum penalty: imprisonment for 2 years.

#### **244 Return of seized knife or thing**

- (1) If a knife is seized under section 193, the person from whom it was seized or, if that person is under 16 years of age, his or her parent or guardian is entitled to have the knife returned if—
  - (a) a prosecution for an offence against section 382 in respect of that knife has not been commenced before the end of 60 days after the seizure; or
  - (b) a prosecution for an offence against section 382 in respect of that knife has been commenced before the end of 60 days after the seizure and the prosecution (and any appeal to a court in relation to that prosecution) has been completed without the knife having been forfeited under section 248.
- (2) Subject to any contrary order of a court, if a police officer seizes a thing under division 10.2, 10.3 or 10.4, the police officer shall return it if—
  - (a) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
  - (b) if the thing was seized under section 207 (Stopping, searching and detaining people) or section 209 (Stopping, searching and detaining conveyances)—
    - (i) the reason for its seizure no longer exists or it is decided that it is not to be used in evidence; or
    - (ii) the period of 60 days after its seizure ends;whichever first occurs;

unless the thing is forfeited or forfeitable to the Territory or is the subject of a dispute as to ownership.

- (3) If a thing is seized under section 207 (Stopping, searching and detaining people) or section 209 (Stopping, searching and detaining conveyances), at the end of the 60 days specified in subsection (1) the police officer shall take reasonable steps to return the thing to the person from whom it was seized or to the owner if that person is not entitled to possess it unless—
- (a) proceedings in respect of which the thing may afford evidence were instituted before the end of the 60 days and have not been completed (including an appeal to a court in relation to those proceedings); or
  - (b) the police officer may retain the thing because of an order under section 245; or
  - (c) the police officer is otherwise authorised (by a law, or an order of a court, of the Commonwealth or of the Territory) to retain, destroy or dispose of the thing.

#### **245 Magistrates Court may permit thing to be retained**

- (1) If a thing is seized under section 207 (Stopping, searching and detaining people) or section 209 (Stopping, searching and detaining conveyances), and—
- (a) before the end of 60 days after the seizure; or
  - (b) before the end of a period previously specified in an order of a court under this section;

proceedings in respect of which the thing may afford evidence have not commenced, the police officer may apply to the Magistrates Court for an order that he or she may retain the thing for a further period.

- (2) If the court is satisfied that it is necessary for the police officer to continue to retain the thing—

- (a) for the purposes of an investigation as to whether an offence has been committed; or
- (b) to enable evidence of an offence to be secured for the purposes of a prosecution;

the court may order that the police officer may retain the thing for a period specified in the order.

- (3) Before making the application, the police officer shall—
  - (a) take reasonable steps to discover who has an interest in the retention of the thing; and
  - (b) if it is practicable to do so, notify each person who the police officer believes to have such an interest of the proposed application.

#### **247 Laws relating to taking forensic samples not affected**

Nothing in this part is intended to limit or exclude the operation of a Territory law relating to the taking of forensic samples (excluding identification material as defined in section 230).

#### **248 Forfeiture of knife**

- (1) A knife that has been seized under section 193 shall be forfeited to the Territory if the person from whom the knife was seized—
  - (a) was convicted of an offence against section 382 in respect of that knife; or
  - (b) was charged with an offence against section 382 in respect of that knife that was dealt with under section 402.
- (2) If there are reasonable grounds for believing that the person who was in possession of a knife forfeited under subsection (1) was the owner of the knife, it may be destroyed or disposed of in the way the commissioner of police directs.

- (3) If there are reasonable grounds for believing that the person who was in possession of a knife forfeited under subsection (1) was not the owner of the knife, it may be destroyed or disposed of in the way the commissioner of police directs if—
- (a) 6 months have elapsed since the person was found guilty of an offence against section 382 in relation to the knife; and
  - (b) reasonable attempts have been made to ascertain the whereabouts of the owner of the knife.

#### **249 Seizure of forfeited articles**

- (1) A member of the police force may, without warrant, seize any article that is forfeited, or that he or she has reasonable grounds for believing is forfeited, under any law in force in the ACT and take that article before the Magistrates Court.
- (2) If any article is brought before the court under subsection (1), the court may, subject to the giving of the notice (if any) to the person (if any) that the court directs, order that the article be condemned or delivered to the person that the court is satisfied is entitled to the article.
- (3) If a prosecution is pending in relation to an article, the court shall not make an order under subsection (2) in relation to the article until the prosecution is determined.
- (4) All articles condemned under subsection (2) as forfeited shall be transferred to the public trustee to be dealt with under section 250.

#### **250 Forfeited articles to be dealt with by public trustee**

If articles are transferred to the public trustee under section 249 (4), the public trustee shall, subject to any direction by the Minister given in a particular case—

- (a) sell or otherwise dispose of the articles; and

- (b) apply the proceeds of the sale or disposition in payment of the public trustee's remuneration and other costs, charges and expenses of the kind referred to in section 251 payable to or incurred by him or her in connection with the sale or disposition; and
- (c) pay the remainder of those proceeds to the trust fund as required by the *Proceeds of Crime Act 1991*, section 34.

### **251 Costs etc payable to public trustee**

- (1) The regulations may make provision in relation to—
  - (a) the costs, charges and expenses incurred in connection with; and
  - (b) the public trustee's remuneration in respect of;the performance or exercise by the public trustee of functions, duties or powers under section 249.
- (2) If there are no regulations in relation to a matter referred to in subsection (1)—
  - (a) the regulations referred to in the *Proceeds of Crime Act 1991*, section 59 apply, so far as they are applicable, and with appropriate changes, in relation to the matter; and
  - (b) a reference in subsection (1) to regulations is a reference to the regulations referred to in the *Proceeds of Crime Act 1991*, section 59.

### **252 When case not to be proceeded with gaoler to discharge prisoner on certificate from Attorney-General etc**

The Attorney-General may, in respect of any person under committal for trial, and in all cases if any person is remanded to prison, and if he or she may in his or her discretion think fit not further to proceed, transmit at any time a certificate to the judges of the Supreme Court, any one of whom may by warrant direct the

gaoler in whose custody the prisoner, or person under remand, may be to discharge him or her from custody in respect of the offence mentioned in the warrant, and, if the gaoler neglects so to do, he or she shall be liable to a fine of \$100, to be recovered by action of debt in the name of the Attorney-General.

*Note* If a form is approved under s 443 (Approved forms) for a certificate or warrant, the form must be used.

## Part 11 Investigation of extraterritorial offences

### 253 Interpretation for pt 11

(1) In this part:

*appropriate authority*, in relation to a State or another Territory, means an authority exercising in relation to the police force of that State or Territory functions corresponding to those of the commissioner of police in relation to the Australian Federal Police.

*corresponding law* means a law of a State or another Territory declared under section 254 to be a corresponding law.

*night* means the period commencing at 7 pm in each evening and ending at 7 am in the following morning.

*offence to which this Act applies* means an indictable offence against the law of a reciprocating State (being an offence arising from an act, omission or state of affairs that, if done or occurring in the ACT would attract criminal liability under the law of the ACT).

*owner*, in relation to an object, includes a person entitled to possession of the object.

*premises* means a building, structure or place (whether or not built on and whether enclosed or unenclosed), and includes an aircraft, vessel or vehicle.

*reciprocating State* means a State or another Territory—

- (a) where a corresponding law is in force; and
- (b) in relation to which arrangements are in force under section 258.



**search warrant** means a warrant under this part authorising a search of premises.

**telephone** includes any telecommunication device.

- (2) For this part—
- (a) anything obtained by the commission of an offence, used for the purpose of committing an offence, or in respect of which an offence has been committed; or
  - (b) anything that may afford evidence of the commission of an offence; or
  - (c) anything intended to be used for the purpose of committing an offence;

is an object relevant to the investigation of the offence.

## **254 Declaration of corresponding law**

- (1) The Executive may, in writing, declare a law of a State or another Territory to be a corresponding law.
- (2) A declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

## **255 Issue of search warrants**

- (1) If, on the application of a police officer, a magistrate is satisfied that there are reasonable grounds to believe—
  - (a) that an offence to which this Act applies has been, or is intended to be, committed; and
  - (b) that there is in any premises an object relevant to the investigation of that offence;

the magistrate may issue a search warrant in respect of those premises.

- (2) An application for the issue of a search warrant may be made either personally or by telephone.
- (3) The grounds of an application for a search warrant shall be verified by affidavit.
- (4) An application for the issue of a search warrant shall not be made by telephone unless in the opinion of the applicant a search warrant is urgently required and there is insufficient time to make the application personally.
- (5) If an application for the issue of a search warrant is made by telephone—
  - (a) the applicant shall inform the magistrate of his or her name and of his or her rank and number in the police force, and the magistrate, on receiving that information, is entitled to assume, without further inquiry, that the applicant is a police officer; and
  - (b) the applicant shall inform the magistrate of the grounds on which he or she seeks the issue of the search warrant; and
  - (c) if it appears to the magistrate from the information given by the applicant that there are proper grounds for the issue of a search warrant—he or she shall inform the applicant of the facts on which he or she relies as grounds for the issue of the warrant, and shall not proceed to issue the warrant unless the applicant undertakes to make an affidavit verifying those facts; and
  - (d) if the applicant gives the undertaking—the magistrate may then make out, and sign, a search warrant, noting on the warrant the facts on which he or she relies as grounds for the issue of the warrant; and
  - (e) the search warrant shall be deemed to have been issued, and shall come into force, when signed by the magistrate; and

- (f) the magistrate shall inform the applicant of the terms of the warrant; and
  - (g) the applicant shall, as soon as practicable after the issue of the warrant, forward to the magistrate an affidavit verifying the facts referred to in paragraph (c).
- (6) A magistrate by whom a search warrant is issued shall file the warrant, or a copy of the warrant, and the affidavit verifying the grounds on which the application for the warrant was made, in the Magistrates Court.

### **256 Authority given by search warrant**

- (1) A search warrant authorises any police officer, with the assistants that he or she thinks necessary, to enter and search the premises in respect of which the warrant was issued and anything in those premises.
- (2) Subject to any direction by a magistrate authorising execution of a search warrant at night, or during specified hours of the night, it shall not be executed at night.
- (3) A police officer, or a person assisting him or her, may use the force that is reasonably necessary for the execution of a search warrant.
- (4) A police officer executing a search warrant may seize and remove any object that he or she believes on reasonable grounds to be relevant to the investigation of the offence in relation to which the warrant was issued.
- (5) An object seized and removed under subsection (4) shall be dealt with in accordance with arrangements in force under section 258.
- (6) A police officer who executes a search warrant—
  - (a) shall prepare a notice containing—
    - (i) his or her own name and rank; and

- (ii) the name of the magistrate who issued the warrant and the date and time of its issue; and
    - (iii) a description of any objects seized and removed under the warrant; and
  - (b) shall, as soon as practicable after execution of the warrant, give the notice to the occupier of the premises in respect of which the warrant was issued or leave it for him or her in a prominent position on those premises.
- (7) A search warrant, if not executed at the end of 1 month from the date of its issue, shall then expire.

#### **257 Offence of hindering execution of search warrant**

A person who, without lawful excuse, hinders a police officer, or a person assisting him or her, in the execution of a search warrant shall be guilty of an offence punishable, on conviction, by imprisonment for a period not exceeding 6 months, a fine not exceeding \$2 000 or both.

#### **258 Ministerial arrangements for transmission and return of objects seized under pt 11 or corresponding law**

- (1) The Attorney-General may enter into arrangements with a Minister of State of a State or another Territory to whom the administration of a corresponding law is committed under which—
- (a) objects seized under this part that may be relevant to the investigation of an offence against the law of the State or Territory in which the corresponding law is in force—
    - (i) are to be transmitted to the appropriate authority of that State or Territory for the purposes of investigation of, or proceedings in respect of, that offence; and
    - (ii) when no longer required for the purposes of any such investigation or proceedings, are (unless disposed of by

order or direction of a court) to be returned to the commissioner of police; and

- (b) objects seized under the corresponding law that may be relevant to the investigation of an offence against the Territory law—
- (i) are to be transmitted to the commissioner of police; and
  - (ii) when no longer required for the purposes of investigation of an offence or proceedings in respect of an offence, are (unless disposed of by order or direction of a court) to be returned to the appropriate authority of the State or Territory where they were seized.
- (2) The owner of an object returned to the commissioner of police under arrangements under subsection (1) is entitled to the return of the object.
- (3) The right given by subsection (2) is enforceable by action in detinue in any court of competent jurisdiction.
- (4) In this section:

***commissioner of police*** means the Commissioner of Police of the Australian Federal Police.

## Part 12 Procedure, evidence, verdict etc

### 259 Meaning of *statute* and *Act* in indictments etc

In all indictments and informations, and all criminal pleadings and proceedings, the word *statute*, and the word *Act*, used to indicate an enactment shall each include an Imperial Act as well as an Act.

### 260 What defects do not vitiate indictment

No indictment shall be held bad or insufficient for want of an averment of any matter unnecessary to be proved, or necessarily implied, nor for the omission of the words ‘as appears by the record’, or ‘with force and arms’, or ‘against the peace’, nor for the insertion or omission of the words ‘against the form of the statute’, nor for designating any person by a name of office, or other descriptive appellation, instead of his or her proper name, nor for omitting to state the time when the offence was committed, nor for stating the time wrongly, if time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or a day that never happened, nor for want of a proper or perfect venue, or a proper or formal conclusion, nor for want of or imperfection in any addition of the accused, nor for want of any statement of the value or price of any matter or thing, or the amount of damage, or injury, in any case if such value, or price, or amount, is not of the essence of the offence.

### 261 Formal objections—when to be taken

Every objection to an indictment, for any formal defect apparent on the face of it, shall be taken by demurrer or motion to quash the indictment before the jury are sworn, and every court before which any such objection is taken may thereupon cause the indictment to

be forthwith amended, and afterwards the trial shall proceed as if no such defect had appeared.

### **262 Judgment on demurrer to indictment**

In all cases the judgment against the accused on demurrer shall be that he or she ‘answer over’ to the charge.

### **263 Traversing indictment**

- (1) No traverse shall in any case be allowed, or trial postponed, or time to plead to the indictment given, unless the court shall so order.
- (2) If the judge is of opinion that the accused ought to be allowed time, either to prepare for his or her defence, or otherwise, the judge shall postpone the trial on the terms that to him or her seems meet, and may respite the recognisances of the prosecutor and witnesses accordingly.

### **264 Orders for amendment of indictment, separate trial and postponement of trial**

- (1) If, before trial, or at any stage of a trial, it appears to the court that the indictment is defective, the court shall make the order for the amendment of the indictment that the court thinks necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without injustice.
- (2) If, before trial, or at any stage of a trial, the court is of opinion that a person accused may be prejudiced or embarrassed in his or her defence because of being charged with more than 1 offence in the same indictment, or that for any other reason it is desirable to direct that the person should be tried separately for 1 or more offences charged in an indictment, the court may order a separate trial of a count or counts of the indictment.

- (3) If, before trial, or at any stage of a trial, the court is of opinion that the postponement of the trial of a person accused is expedient as a consequence of the exercise of a power of the court under this Act to amend an indictment or to order a separate trial of a count, the court shall make any order that appears necessary.
- (4) If an order of the court is made under this section for a separate trial, or for the postponement of a trial—
  - (a) if the order is made during a trial—the court may order that the jury are to be discharged from giving a verdict on the count or counts the trial of which is postponed, or on the indictment, as the case may be; and
  - (b) the procedure on the separate trial of a count and the procedure on the postponed trial shall be the same in all respects (if the jury has been discharged), as if the trial had not commenced; and
  - (c) the court may make the order as to admitting the accused person to bail and as to the variation of bail arrangements and otherwise that the court thinks fit.
- (5) A power of the court under this section shall be in addition to and not in derogation of any other power of the court for the same or similar purposes.

## **265 Amended indictment**

If an indictment is amended, a note of the order for amendment shall be endorsed on the indictment, and the indictment in its amended form shall be treated as the indictment for the purposes of the trial and for the purposes of all proceedings in connection therewith or consequent thereon.



**266 Verdict and judgment valid after amendment**

Every verdict, and judgment, given after the making of any amendment under this Act, shall be of the same force and effect, as if the indictment had originally been in the words, and form, in which it is after the amendment.

**267 Form of record after amendment**

If it is necessary at any time to draw up a formal record, in any case where an amendment has been made, the record may be drawn up in the words and form of the amended indictment, without noticing the fact of amendment.

**268 Respite undertakings on postponement**

If the trial is postponed the court may respite the undertakings of the prosecutor and witnesses requiring them severally to appear and prosecute, or give evidence, at the time and place to which the trial is so postponed.

**269 Separate offences—when can be joined**

In every case counts may be inserted in the same indictment, against the same person, for any number of distinct offences of the same kind, not exceeding 3, committed against the same person if no more than 6 months have elapsed between the first and last of those offences.

**270 Accessories may be charged together in 1 indictment**

For any offence, any number of accessories to the offence, whether before or after the fact, may be charged with substantive offences in the same indictment, and be tried together, although the principal offender is not included in the indictment, or is not in custody or amenable to justice.

### **271 Indictment charging previous offence also**

In an indictment for an offence committed after a previous conviction for an offence, whether indictable or punishable on summary conviction, it shall be sufficient, after charging the subsequent offence, to state that the accused was at a certain time and place convicted of an indictable offence, or an offence punishable on summary conviction, as the case may be, without particularly describing the previous offence.

### **272 Property of partners or joint owners**

- (1) If, in any indictment, it is necessary to mention, for any purpose, any partners, joint tenants or tenants in common, it shall be sufficient to describe them by naming 1 of them, and referring to the rest as ‘another’, or ‘others’, as the case may be.
- (2) This section shall extend to all joint-stock companies, executors, administrators, and trustees.

### **273 Description of written instruments**

If a written, or printed, instrument, or instrument partly written and partly printed, is the subject of an indictment, or it is necessary to make an averment in an indictment respecting such instrument, it shall be sufficient to describe the instrument by any name or designation by which the instrument is usually known, or by the purport of it, without setting out any copy of it, or otherwise describing it, and without stating its value.

### **274 General averment of intent to defraud or injure**

- (1) If it is necessary to allege an intent to defraud, or injure, it shall be sufficient to allege that the accused did the act with the intent, without alleging an intent to defraud, or injure, any particular person.

- (2) In an indictment for doing an act fraudulently, or for a fraudulent purpose, it shall not be necessary to state what was the fraudulent intent, or purpose.

### **275 Indictment for murder or manslaughter**

In an indictment for murder, or manslaughter, it shall not be necessary to set out the way in which, or the means by which, the death alleged was caused, but it shall be sufficient in an indictment for murder to charge that the accused did murder the deceased, and in an indictment for manslaughter to charge that the accused did kill the deceased.

### **276 Form of indictment against accessories to murder**

In an indictment against an accessory to murder, or manslaughter, it shall be sufficient to charge the offence of the principal in the way specified, and then to charge the accused as an accessory.

### **277 Addition of count for assault**

In an indictment for an offence against the person, if the offence includes an assault, a count may be added for the assault.

### **278 Indictment for perjury**

In an indictment for perjury it shall be sufficient to allege that the accused on a certain day and at a certain place, before a person named, falsely swore, or falsely declared, or affirmed, the matter charged as false, stating the substance only of the matter, and averring that the matter was so sworn, declared or affirmed, on an occasion when the truth of the matter was material, without specifying the occasion, or showing how the matter was material, or what was the cause or trial or inquiry (if any) pending, or the judicial, or official, character of the person administering the oath, or taking the declaration, or affirmation, charged as false.

### **279 Indictments for conspiracy**

- (1) In an indictment for conspiracy it shall not be necessary to state any overt act, and each defendant in any case of conspiracy, whether or not 2 or more defendants are included in the same indictment, may be charged separately, in any count, as having conspired with divers persons, of whom it shall be sufficient to name 1 only, or as having conspired with 1 other named person only, and may be convicted on such count on proof of his or her having unlawfully conspired for the purpose alleged with any 1 such person.
- (2) No more than 3 counts against the same defendant shall be inserted in any such indictment, and that the court may, in any case before plea pleaded, order the particulars to be given, that to the court shall seem meet, and that if conspiracies substantially different are charged in the same indictment, the prosecutor may be put to his or her election as to the one on which he or she will proceed.

### **280 Arraignment etc on charge of previous conviction**

- (1) No person shall be arraigned, in respect of any previous conviction charged in any indictment, unless he or she is convicted of the subsequent offence charged therein.
- (2) On conviction he or she shall forthwith be arraigned, and the jury shall be charged as to the previous conviction, or convictions, and the trial shall proceed in respect thereof.

### **281 Plea of not guilty**

If any person arraigned on an indictment pleads not guilty, he or she shall, without further form, be deemed to have put himself or herself on the country for trial, and the court shall, in the usual way, order a jury for his or her trial accordingly.

### **282 Refusal to plead**

If any person being so arraigned stands mute, or will not answer directly to the indictment, the court may order a plea of not guilty to

be entered on behalf of the person, and the plea so entered shall have the same effect as if he or she had actually pleaded not guilty.

**283 Plea of autrefois convict etc**

In any plea of autrefois convict, or of autrefois acquit, it shall be sufficient for the accused to allege that he or she has been lawfully convicted, or acquitted, as the case may be, of the offence charged in the indictment, without specifying the time or place of the previous conviction or acquittal.

**284 Practice as to entering the dock**

In every case the presiding judge shall have power to order the accused to enter the dock, or usual place of arraignment, or to allow him or her to remain on the floor of the court, and in either case to sit down, as the judge shall see fit.

**285 Accused may be defended by legal practitioner**

Every accused person shall, in all courts, be admitted to make full answer and defence by a legal practitioner, and in every case may reserve his or her address until the close of the evidence for the defence, and in the latter case, all evidence in reply for the Crown shall be given before such address.

**286 Right to inspect depositions on trial**

Every accused person shall be entitled on his or her trial to inspect, without fee or reward, all depositions taken against him or her and returned into, or that shall be in, the court before which he or she is under trial.

**287 Power of judge to record verdict of acquittal**

- (1) If, on the trial of a person for an offence against this Act or any other Territory law, the judge would have power to direct the jury to

return a verdict of acquittal in respect of that offence, the judge may, instead of giving such a direction, make an order—

- (a) discharging the jury from returning a verdict in respect of that offence; and
  - (b) recording a verdict of acquittal in respect of that offence.
- (2) An order under subsection (1) shall, for all purposes, have the same effect as a verdict of acquittal returned by a jury.

### **288 Notice of alibi**

- (1) If a defendant is committed for trial for an indictable offence, the committing magistrate shall—
- (a) inform the defendant of the requirements of subsections (2), (3), (4) and (6); and
  - (b) cause a copy of this section to be given to the defendant.
- (2) On a trial on indictment the defendant shall not, without the leave of the court, adduce evidence in support of an alibi or assert in any statement made by him or her under section 405 that he or she has an alibi unless, before the end of the period of 14 days commencing on the date of the committal of the defendant for trial, he or she gives notice of particulars of the alibi.
- (3) On a trial on indictment the defendant shall not, without the leave of the court, call any other person to give evidence in support of an alibi unless—
- (a) the notice given under subsection (2) includes the name and address of the person or, if the name or address is not known to the defendant at the time he or she gives the notice, any information in his or her possession that might be of material assistance in finding the person; and
  - (b) if the name or the address is not included in the notice—the court is satisfied that the defendant before giving the notice

took, and after giving the notice continued to take, all reasonable steps to ascertain the name or address; and

- (c) if the name or the address is not included in the notice, but the defendant subsequently ascertains the name or address or receives information that might be of material assistance in finding the person—the defendant forthwith gives notice of the name, address or other information, as the case may be; and
  - (d) if the defendant is notified by or on behalf of the Crown that the person has not been found by the name or at the address given by the defendant—the defendant forthwith gives notice of any information that might be of material assistance in finding the person and that is then in his or her possession, or on subsequently receiving any such information, forthwith gives notice of it.
- (4) A notice purporting to be given under this section on behalf of the defendant by his or her legal practitioner shall, unless the contrary is proved, be deemed to be given with the authority of the defendant.
  - (5) Any evidence tendered to disprove an alibi may, subject to any direction by the court, be given before or after evidence is given in support of the alibi.
  - (6) A notice under this section shall be given in writing addressed to the director of public prosecutions.
  - (7) In this section:

*evidence in support of an alibi* means evidence tending to show that by reason only of the presence of the defendant at a particular place or in a particular area at a particular time he or she was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission.

**289 Abolition of presumption of marital coercion**

Any presumption of law that an offence committed by a wife in the presence of her husband is committed under the coercion of the husband is abolished.

**290 Incriminating statements admissible though on oath**

No incriminating statement by the accused, offered in evidence in any case, if the statement was made voluntarily, and before any charge preferred against him or her, shall be rejected, because of the statement having been on oath.

**291 Evidence of previous conviction charged in indictment**

No evidence of any previous conviction, charged in an indictment, shall be offered, except in reply to evidence of character, unless the accused is convicted of the subsequent offence charged in the indictment.

**292 Proof of lawful authority or excuse**

If, by this Act, doing a particular act or having a specified article or thing in possession without lawful authority or excuse, is made or expressed to be an offence, the proof of lawful authority or excuse shall lie on the accused.

**293 On trial for perjury presumption of authority to administer oath etc**

On any trial for perjury the person before whom the perjury is alleged to have been committed shall be presumed to have had authority to administer the oath, or take the declaration, or affirmation, unless the contrary is shown.

**294 Order of closing addresses**

- (1) In a trial on indictment, the closing address for the defence may be given after the closing address for the prosecution.



- (2) If, in the closing address for the defence in a trial on indictment, relevant facts are asserted that are not supported by any evidence that is before the jury, the prosecution may, with the leave of the court, address the jury further in reply to any such assertion.

### **295 Witnesses in mitigation**

After the conviction of an accused person in any case, and before sentence passed, the court may if it sees fit, as well on application by the Crown as by or on behalf of the accused, summon witnesses and examine them on oath, in respect of any matter in extenuation of his or her offence.

### **296 Conviction for alternative offence**

If, on the trial of a person for an offence, it appears that the facts in evidence amount in law to another offence, he or she may notwithstanding be found guilty of and sentenced for the firstmentioned offence, and in that case shall not be liable to be prosecuted for the secondmentioned offence on the same facts but the court may discharge the jury from giving any verdict on the trial, and direct the person to be indicted for the secondmentioned offence.

### **297 After trial for offence, if alternative verdict possible, no further prosecution**

No person tried for an offence, in any case where under this Act he or she may be acquitted of the offence but be found guilty of some other offence, shall be liable to prosecution on the same facts for the other offence.

### **298 On trial for any offence—verdict of attempt**

If on the trial of a person for any offence the jury are not satisfied that he or she is guilty, but are satisfied that he or she is guilty of an attempt to commit, or of an assault with intent to commit, the same, they may acquit him or her of the offence charged, and find him or

her guilty of the attempt, or assault, and he or she shall be liable to punishment accordingly.

**299 Multiple alternative verdicts**

If—

- (a) a person is on trial for an offence against this Act; and
- (b) under this Act, the jury may find the accused not guilty of the offence charged but guilty of another offence against this Act; and
- (c) there is more than 1 other offence of which the accused may be found guilty;

then, notwithstanding any other provision of this Act, the accused is not liable to be convicted of more than 1 such other offence.

## **Part 13**                      **Unfitness to plead, mental illness and mental dysfunction**

### **Division 13.1**              **Preliminary**

#### **300**    **Definitions for pt 13**

In this part:

*accused*, for a person before the Magistrates Court, means the defendant.

*court* means the Supreme Court.

*defendant*—see the *Magistrates Court Act 1930*, section 5 (1).

*mental dysfunction* means a disturbance or defect, to a substantially disabling degree, of perceptual interpretation, comprehension, reasoning, learning, judgment, memory, motivation or emotion.

*mental health order* means a mental health order under the *Mental Health (Treatment and Care) Act 1994*.

*mental illness*—see the *Mental Health (Treatment and Care) Act 1994*, section 4.

*serious offence* means—

- (a) an indictable offence involving actual or threatened violence;  
or
- (b) an offence against section 27 (3) or (4).

*special hearing* means a hearing conducted in accordance with section 315.

*tribunal* means the mental health tribunal.

### **301 Limitation on orders and detention—non-acquittals**

- (1) If, under section 318 (2) or 319 (2), the Supreme Court makes an order that the accused be detained in custody until the tribunal orders otherwise, the court shall indicate whether, if the special hearing had been normal criminal proceedings against a person who was fit to be tried for and convicted of the offence with which the accused is charged, it would have imposed a sentence of imprisonment.
- (2) If, under subsection (1), the Supreme Court indicates that it would have imposed a sentence of imprisonment, it shall nominate a term in respect of that offence, that is the best estimate of the sentence it would have considered appropriate if the special hearing had been normal criminal proceedings against a person who was fit to be tried for that offence and the person had been found guilty of that offence.

### **302 Limitation on orders and detention—acquittals**

- (1) If, under section 323 or 324, the Supreme Court makes an order that the accused be detained in custody until the tribunal orders otherwise, the court shall indicate whether, if the accused had not been acquitted, it would have imposed a sentence of imprisonment.
- (2) If, under subsection (1), the Supreme Court indicates that it would have imposed a sentence of imprisonment, it shall nominate a term in respect of that offence, that is the best estimate of the sentence it would have considered appropriate if the accused were a person who had been found guilty of that offence.

### **303 Limitation on Supreme Court orders**

The Supreme Court shall not order that an accused be detained for a period greater than the term nominated by it under section 301 or 302, as the case may be.

### **304 Limitation on orders and detention—dismissal of charge**

- (1) If under section 328 or 329, the Magistrates Court makes an order that the accused be detained in custody until the tribunal orders otherwise, the Magistrates Court shall indicate whether, if the charges against the accused had not been dismissed and the accused were a person who had been found guilty of the offence, it would have imposed a sentence of imprisonment.
- (2) If, under subsection (1), the Magistrates Court indicates that it would have imposed a sentence of imprisonment, it shall nominate a term in respect of that offence, that is the best estimate of the sentence it would have considered appropriate if the accused were a person who had been found guilty of that offence.

### **305 Limitation on orders and detention—Magistrates Court**

- (1) If under section 335, the Magistrates Court makes an order that the accused be detained in custody until the tribunal orders otherwise, the Magistrates Court shall indicate whether, if the hearing had been a normal criminal hearing against a person who was fit to be tried for and convicted of the offence with which the accused is charged, it would have imposed a sentence of imprisonment.
- (2) If, under subsection (1), the Magistrates Court indicates that it would have imposed a sentence of imprisonment, it shall nominate a term in respect of that offence, that is the best estimate of the sentence it would have considered appropriate if the hearing had been a normal criminal hearing against a person who was fit to be tried for that offence and the person had been found guilty of that offence.

### **306 Limitation on Magistrates Court orders**

The Magistrates Court shall not order that an accused be detained for a period greater than the term nominated by it under section 304 (2) or 305 (2).

### **307 How relevant court may inform itself**

For sections 301, 302, 304 and 305, in determining the sentence it would have imposed, the relevant court may inform itself and consider the evidence and submissions that it would were the court determining the sentence to be imposed in normal criminal proceedings.

### **308 Criteria for detention**

For this part, other than division 13.5 (except section 335), in making a decision which could include an order for detention, the Supreme Court or Magistrates Court shall consider the following criteria:

- (a) the nature and extent of the accused's mental dysfunction or mental illness, including the effect it is likely to have on the person's behaviour in the future;
- (b) whether or not, if released—
  - (i) the accused's health and safety is likely to be substantially impaired; or
  - (ii) the accused is likely to be a danger to the community;
- (c) the nature and circumstances of the offence with which the accused is charged;
- (d) the principle that a person should not be detained in prison unless no other reasonable option is available;
- (e) any recommendation made by the tribunal as to how the accused should be dealt with.

### **309 Assessment whether emergency detention required**

- (1) If, in proceedings before the Magistrates Court, it has reasonable grounds for believing that an accused requires immediate treatment or care by reason of his or her being mentally dysfunctional or mentally ill, the Magistrates Court may, without requiring the accused to submit to the jurisdiction of the tribunal, order that—
  - (a) the accused be taken by a police officer, or an escort under the *Custodial Escorts Act 1998*, to an approved health facility for examination by a medical practitioner for the purpose of determining whether the accused is mentally dysfunctional or mentally ill; and
  - (b) the accused may only be released into the custody of a police officer—
    - (i) by the person in charge of the approved health facility; or
    - (ii) if the accused is found to be mentally dysfunctional or mentally ill requiring detention and care—by the person in charge of an approved health facility or approved mental health facility where the accused is detained for care; and
  - (c) on being so released, the accused be dealt with in 1 of the following ways:
    - (i) subject to subsection (2) and despite the Bail Act, be admitted to bail by an authorised officer;
    - (ii) despite the Bail Act, be held in the custody of a police officer who shall cause the accused to be brought before a court as soon as practicable for the purpose of the court determining whether or not to grant bail;
    - (iii) be dealt with by an authorised officer in accordance with the Bail Act.

- (2) If, when making an order under subsection (1) (c) (i), the Magistrates Court specifies terms and conditions on which bail is to be granted, an authorised officer may only grant bail subject to those terms and conditions.
- (3) If, under this section, an accused who is taken to an approved health facility—
- (a) is released or discharged from the approved health facility or, if detained for care, an approved mental health facility, otherwise than into the custody of a police officer; or
  - (b) leaves the approved health facility or approved mental health facility, otherwise than in the custody of a police officer;

a police officer may arrest the accused without warrant for the purposes of the terms of the order being satisfied.

- (4) In this section:

*approved health facility*—see the *Mental Health (Treatment and Care) Act 1994*, section 4.

*approved mental health facility*—see the *Mental Health (Treatment and Care) Act 1994*, section 4.

*authorised officer*—see the Bail Act, section 3 (1).

*Bail Act* means the *Bail Act 1992*.

## **Division 13.2 Unfitness to plead**

### **310 Referral to tribunal**

- (1) If—
- (a) a person has been committed for trial for an indictable offence; and
  - (b) the issue of fitness to plead to the charge is raised by a party to the proceedings or by the Supreme Court; and



- (c) the court is satisfied that there is a question as to the person's fitness to plead to the charge;

the court shall order the person to submit to the jurisdiction of the tribunal to enable the tribunal to determine whether or not the person is fit to plead to the charge.

- (2) If the Supreme Court makes an order under subsection (1), it shall adjourn the proceedings to which the order relates and shall make any orders it considers appropriate, including the granting of bail to the person who is the subject of the order.

- (3) If, on the hearing of an information laid before the Magistrates Court—

- (a) the issue of fitness to plead is raised by a party to the proceedings or by the Magistrates Court; and

- (b) the Magistrates Court is satisfied that there is a question as to the person's fitness to plead;

the Magistrates Court shall order the person to submit to the jurisdiction of the tribunal to enable the tribunal to determine whether or not the person is fit to plead.

### **311 Person found fit to plead**

If the tribunal notifies the Supreme Court that it has determined that a person who is the subject of an order under section 310 (1) is fit to plead to a charge—

- (a) the proceedings brought against the person in respect of the offence charged shall continue in accordance with ordinary criminal procedures; or

- (b) if the court considers it appropriate—

- (i) the court shall discharge the jury originally empanelled for the proceedings and empanel a new jury; and

- (ii) the proceedings shall recommence in accordance with ordinary criminal procedures.

### **312 Action pending determination by tribunal**

If—

- (a) an accused is charged with a serious offence or a non-serious offence; and
- (b) the Supreme Court has made an order under section 310 (1); and
- (c) a jury has been empanelled for the proceedings;

the court may, having regard to the time that is likely to be taken by the tribunal before it makes its determination, discharge the jury.

### **313 Temporary unfitness to plead—non-serious offence**

- (1) This section applies if—
  - (a) an accused is charged with an offence other than a serious offence; and
  - (b) the Supreme Court has made an order under section 310 (1) in relation to the accused; and
  - (c) the tribunal notifies the court that it has determined that the accused is unfit to plead to a charge but is likely to become fit within 12 months after the determination.
- (2) If this section applies, the Supreme Court shall—
  - (a) if a jury has been empanelled—discharge the jury; and
  - (b) make the orders it considers appropriate in relation to the accused; and
  - (c) adjourn the proceedings.

- (3) The orders the Supreme Court may make under subsection (2) (b) include the following:
- (a) an order requiring the accused to be detained in custody;
  - (b) an order requiring the accused to submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order.

### **314 Temporary unfitness to plead—serious offence**

- (1) This section applies if—
- (a) an accused is charged with a serious offence; and
  - (b) the Supreme Court has made an order under section 310 (1) in relation to the accused; and
  - (c) the tribunal notifies the court that it has determined that the accused is unfit to plead to the charge but is likely to become fit within 12 months after the determination.
- (2) If this section applies, the Supreme Court shall—
- (a) if a jury has been empanelled—discharge the jury; and
  - (b) order that the accused be detained in custody or released on bail; and
  - (c) adjourn the proceedings.

### **315 Special hearings**

- (1) The Supreme Court shall conduct a special hearing in relation to an accused who is the subject of an order under section 310 (1), if the tribunal notifies the court that—
- (a) it has determined that the accused is unfit to plead to a charge and is unlikely to become fit within 12 months after the determination; or

- (b) having determined that the accused was unfit to plead to a charge but was likely to become fit within 12 months after the determination, it has determined that, the period of 12 months having elapsed, the accused remains unfit to plead.
- (2) If subsection (1) (a) applies, the Supreme Court shall, if a jury has been empanelled, discharge the jury.

### **316 Nature and conduct of special hearing**

- (1) Subject to this section, the Supreme Court shall conduct a special hearing as nearly as possible as if it were an ordinary criminal proceeding.
- (2) A special hearing shall be a trial by jury—
  - (a) unless—
    - (i) the Supreme Court is satisfied that the accused is capable of making an election to have a special hearing to be a trial by a single judge without a jury before the court first fixes a date for the hearing; and
    - (ii) the accused makes the election before that date; or
  - (b) unless—
    - (i) the Supreme Court is satisfied that the accused is incapable of making the election mentioned in paragraph (a) (i); and
    - (ii) before the court first fixes a date for the hearing, any guardian of the accused notifies the court that, in his or her opinion, it is in the best interests of the accused for the special hearing to be a trial by a single judge without a jury.
- (3) If section 315 (1) applies, the Supreme Court shall—
  - (a) unless satisfied that the accused is capable of making an election under subsection (2) (a) (i); or

- (b) if satisfied that—
- (i) the accused is incapable of making an election under subsection (2) (a) (i); and
  - (ii) a guardian has not been appointed by the guardianship tribunal under the *Guardianship and Management of Property Act 1991*, who has power to make an election of that kind;

direct that tribunal to appoint a guardian with power to make an election of that kind.

- (4) If—
- (a) the accused makes an election under subsection (2) (a) (ii); or
  - (b) a guardian notifies the Supreme Court under subsection (2) (b) (ii);

the special hearing shall be by single judge without a jury.

- (5) Despite subsection (2) (b), if before the date fixed by the Supreme Court for the hearing—

- (a) the court is satisfied that the accused is capable of making the election mentioned in subsection (2) (a) (i); and
- (b) the accused notifies the court that he or she objects to the special hearing being a trial by a single judge without a jury;

the special hearing shall be a trial by jury.

- (6) Unless the Supreme Court otherwise orders, the accused shall have legal representation at a special hearing.
- (7) A determination by the tribunal that the accused is unfit to plead to the charge is not to be taken to be an impediment to his or her being represented at a special hearing.
- (8) At a special hearing, the accused is to be taken to have pleaded not guilty in respect of the offence charged.

- (9) If a special hearing is a trial by jury, the Supreme Court shall, at the commencement of the hearing, explain to the jury—
- (a) the meaning of unfitness to plead; and
  - (b) that the accused is unfit to plead to the charge in accordance with ordinary criminal procedures; and
  - (c) that the purpose of the special hearing is to ensure that, despite the unfitness of the accused to plead in accordance with ordinary criminal procedures, the accused should be acquitted unless it can be proved beyond reasonable doubt that, on the evidence available, the accused committed the acts that constitute the offence; and
  - (d) the actions that are available to the jury under section 317; and
  - (e) the legal and practical consequences of those actions.

### **317 Verdicts available at special hearing**

- (1) At a special hearing that is a trial by jury, the jury shall, if satisfied beyond reasonable doubt that the accused committed the acts that constitute the offence charged, advise the court accordingly.
- (2) If the jury is not satisfied in accordance with subsection (1)—
  - (a) the jury shall return a verdict of not guilty in respect of the offence charged; and
  - (b) the accused shall be dealt with as though the jury had returned that verdict at an ordinary trial.
- (3) If, at a special hearing by a single judge without a jury, the judge is not satisfied beyond reasonable doubt that the accused committed the acts that constitute the offence charged—
  - (a) the judge shall find the accused not guilty of the offence charged; and

- (b) the accused shall be dealt with as if the accused had been found not guilty at an ordinary trial.
- (4) An advice under subsection (1)—
  - (a) does not constitute a basis in law for the recording of any conviction for the offence charged; and
  - (b) constitutes a bar to further prosecution of the accused for any offence in respect of the acts that were alleged to constitute the offence charged.

### **318 Non-acquittal at special hearing—non-serious offence**

- (1) This section applies if—
  - (a) an accused is charged with an offence other than a serious offence; and
  - (b) at a special hearing that is a trial—
    - (i) by a single judge without a jury—the judge is satisfied beyond reasonable doubt that the accused committed the acts that constitute the offence charged; or
    - (ii) by jury—the jury advises the court under section 317 (1).
- (2) If this section applies, the Supreme Court may make the orders that it considers appropriate, including the following:
  - (a) that the accused be detained in custody until the tribunal orders otherwise;
  - (b) that the accused submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order.

### **319 Non-acquittal at special hearing—serious offence**

- (1) This section applies if—
  - (a) an accused is charged with a serious offence; and

- (b) at a special hearing that is a trial—
  - (i) by a single judge without a jury—the judge is satisfied beyond reasonable doubt that the accused committed the acts which constitute the offence charged; or
  - (ii) by jury—the jury advises the court under section 317 (1).
- (2) If this section applies, the Supreme Court shall order that the accused be detained in custody until the tribunal orders otherwise unless, in consideration of the criteria for detention in section 308, it is satisfied that it is more appropriate to order that the accused submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order.
- (3) If the Supreme Court is satisfied under subsection (2), it shall make an order accordingly.

## **Division 13.3 Acquittal on grounds of mental impairment**

### **320 Acquittal on grounds of mental impairment**

- (1) An accused is entitled to be acquitted of an indictable offence on the grounds of mental impairment if it is established on the balance of probabilities that, at the time of the alleged offence, the accused was, as a result of mental dysfunction or mental illness—
  - (a) incapable of knowing what he or she was doing; or
  - (b) incapable of understanding that what he or she was doing was wrong.
- (2) The onus of establishing that an accused is entitled to be acquitted on the ground of mental impairment lies on the party seeking the acquittal.
- (3) Evidence adduced by the prosecution to establish that an accused is entitled to be acquitted on the grounds of mental impairment is inadmissible except with the leave of the Supreme Court.



### **321 Plea of not guilty by reason of mental impairment**

If an accused pleads not guilty by reason of mental impairment, the Supreme Court shall enter a verdict of not guilty on that ground with respect to the offence charged if—

- (a) the court considers the verdict appropriate; and
- (b) the prosecution agrees to the entering of the verdict.

### **322 Explanation to jury**

If, on the trial by jury of an accused charged with an indictable offence, evidence is adduced that tends to establish that the accused is entitled to be acquitted on the grounds of mental impairment, the court shall explain to the jury the verdicts that may be returned at the trial and the legal and practical consequences of those verdicts.

### **323 Court orders following acquittal—non-serious offence**

- (1) If an accused has been charged with an indictable offence other than a serious offence and is acquitted on the grounds of mental impairment, the Supreme Court may—
  - (a) make an order requiring the accused to submit to the jurisdiction of the tribunal to enable the tribunal to make recommendations as to how he or she should be dealt with; or
  - (b) make any other orders it considers appropriate.
- (2) If—
  - (a) the Supreme Court makes an order under subsection (1) (a); and
  - (b) the tribunal notifies the court of its recommendations;the court shall, in consideration of the tribunal's recommendations, make any further orders it considers appropriate.

- (3) The orders the Supreme Court may make under subsections (1) and (2) include the following:
- (a) that the accused be detained in custody until the tribunal orders otherwise;
  - (b) that the accused submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order.

### **324 Court orders following acquittal—serious offence**

- (1) If an accused is charged with a serious offence and is acquitted on the grounds of mental impairment, the Supreme Court shall order that the accused be detained in custody until the tribunal orders otherwise unless, in consideration of the criteria for detention in section 308, it is satisfied that it is more appropriate to order that the accused submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order.
- (2) If the Supreme Court is satisfied under subsection (2), it shall make an order accordingly.

## **Division 13.4 Dismissal by Magistrates Court on grounds of mental impairment**

### **325 Meaning of *serious offence* in div 13.4**

In this division:

*serious offence* means—

- (a) an offence involving actual or threatened violence; or
- (b) an offence against section 27 (3) or (4).

### **326 Dismissal on grounds of mental impairment**

- (1) An accused is entitled to have charges against him or her dismissed on the grounds of mental impairment if it is established on the

balance of probabilities that, at the time of the alleged offence, the accused was, as a result of mental dysfunction—

- (a) incapable of knowing what he or she was doing; or
  - (b) incapable of understanding that what he or she was doing was wrong.
- (2) The onus of establishing that the accused is entitled to have charges against him or her dismissed on the grounds of mental impairment lies on the party seeking the dismissal.
- (3) Evidence adduced by the prosecution to establish that the accused is entitled to have charges against him or her dismissed on the grounds of mental impairment is inadmissible except with the leave of the Magistrates Court.

### **327 Plea of not guilty by reason of mental impairment**

If an accused pleads not guilty by reason of mental impairment, the Magistrates Court shall find the accused not guilty on that ground with respect to the offence charged if—

- (a) the Magistrates Court considers the finding appropriate; and
- (b) the prosecution agrees to the finding.

### **328 Magistrates Court orders following dismissal— non-serious offence**

- (1) If an accused has been charged with an offence other than a serious offence and the charges are dismissed on the ground of mental impairment, the Magistrates Court may—
- (a) make an order requiring the accused to submit to the jurisdiction of the tribunal to enable the tribunal to make recommendations as to how he or she should be dealt with; or
  - (b) make any other orders it considers appropriate.

- (2) If—
- (a) the Magistrates Court makes an order under subsection (1) (a);  
and
  - (b) the tribunal notifies the Magistrates Court of its recommendations;
- the Magistrates Court shall, in consideration of the tribunal's recommendations, make any further orders it considers appropriate.
- (3) The orders the Magistrates Court may make under subsections (1) and (2) include the following:
- (a) that the accused be detained in custody until the tribunal orders otherwise;
  - (b) that the accused submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order.

**329 Magistrates Court orders following dismissal—serious offence**

- (1) If an accused is charged with a serious offence and the charges against him or her are dismissed on the ground of mental impairment, the Magistrates Court shall order that the accused be detained in custody until the tribunal orders otherwise unless, in consideration of the criteria for detention in section 308, it is satisfied that it is more appropriate to order that the accused submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order.
- (2) If the Magistrates Court is satisfied as mentioned in subsection (1), it shall make an order accordingly.

## **Division 13.5                      Referral of mentally dysfunctional or mentally ill persons to tribunal following conviction**

### **330    Application of div 13.5**

This division applies if—

- (a) a person has been convicted of an offence in the Supreme Court or Magistrates Court; and
- (b) that court is satisfied that the convicted person is mentally dysfunctional or mentally ill.

### **331    Referral to tribunal**

- (1) If this division applies, the relevant court may, before sentencing the convicted person, order him or her to submit to the jurisdiction of the tribunal to enable the tribunal—
  - (a) to determine whether or not the person is mentally dysfunctional or mentally ill; and
  - (b) if the tribunal determines that the person is mentally dysfunctional or mentally ill—to make recommendations as to how the person should be dealt with.
- (2) If the tribunal notifies the relevant court that a convicted person is mentally dysfunctional or mentally ill, the court shall, in consideration of the tribunal's recommendations, make any order it considers appropriate.
- (3) The orders that the court may make under subsection (2) include an order that the person submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order.

- (4) If the relevant court orders a person who is found by the tribunal to be mentally dysfunctional or mentally ill to be sentenced to a period of imprisonment, the court shall not order the person to be imprisoned for a period greater than any period of imprisonment to which the person could have been sentenced, apart from that finding.

## **Division 13.6 Summary proceedings against mentally dysfunctional or mentally ill persons**

### **332 Application of div 13.6**

This division applies to criminal proceedings (not including committal proceedings) with respect to—

- (a) summary offences; and
- (b) indictable offences that may be heard and determined summarily.

### **333 Indictable offences heard and determined summarily**

Proceedings to which this division applies with respect to an indictable offence shall be heard and determined summarily if—

- (a) the Magistrates Court is satisfied that the accused is unable, by reason of mental dysfunction or mental illness, to elect to have the case heard summarily; and
- (b) the prosecution agrees to the offence being heard and determined summarily.

### **334 Powers of Magistrates Court**

- (1) This section applies where, in proceedings to which this division applies before the Magistrates Court, that court is satisfied that—
- (a) the accused is mentally dysfunctional or mentally ill; and

- (b) on an outline of the facts to be alleged in the proceedings, or any other evidence the Magistrates Court considers relevant, it would be appropriate to deal with the person under this division.
- (2) If this section applies, the Magistrates Court may by order—
- (a) dismiss the charge and require the accused to submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order; or
- (b) dismiss the charge unconditionally.
- (3) In determining whether to make an order under subsection (2) (a) or (b), the Magistrates Court shall have regard to—
- (a) the nature and seriousness of the mental dysfunction or mental illness; and
- (b) the period for which the mental dysfunction or mental illness is likely to continue; and
- (c) the extent to which by reason of the accused's mental dysfunction or mental illness the accused is likely to do serious harm to himself or herself or others; and
- (d) whether the tribunal could make an order under the *Mental Health (Treatment and Care) Act 1994*, section 26 or 27; and
- (e) the seriousness of the alleged offence; and
- (f) the antecedents of the accused; and
- (g) the effectiveness of any order previously made under subsection (2) (a) or (b), including to the extent to which—
- (i) the order assisted the accused to obtain appropriate treatment and care for his or her mental dysfunction or mental illness; and
- (ii) access to that treatment and care has enabled the accused to modify his or her behaviour, being behaviour of a kind

that has previously resulted in the accused having been charged with an offence.

- (4) Despite subsection (2), the Magistrates Court may only make an order under that subsection in relation to proceedings with respect to an indictable offence that may be heard and determined summarily with the consent of the director of public prosecutions.
- (5) If the Magistrates Court makes an order under subsection (2) (a), the order operates as a stay of proceedings, or of further proceedings, against the accused in relation to the offence.
- (6) If the Magistrates Court makes an order under subsection (2), that court shall not make an order under section 350, 402 or 403 or part 19 in relation to the offence.
- (7) An order under subsection (2) does not constitute a finding that an offence has or has not been committed.
- (8) In proceedings to which this section applies, to determine whether an accused is mentally dysfunctional or mentally ill, the Magistrates Court may make any orders it considers appropriate, including the following:
  - (a) that the accused submit to the jurisdiction of the tribunal;
  - (b) that the proceedings be adjourned;
  - (c) that the person be released on bail.
- (9) If the Magistrates Court makes an order under subsection (8) (a), the tribunal shall notify the Magistrates Court about each of the matters referred to in subsection (3) (a) to (d).

### **335 Fitness to plead—Magistrates Court**

- (1) This section applies to an indictable offence that can be heard and determined summarily if the Magistrates Court is of the opinion that the case can properly be disposed of summarily having regard to—
  - (a) any relevant representations made by the accused; and



- (b) any relevant representations made by the prosecutor in the presence of the accused; and
  - (c) the circumstances and, in particular, the degree of seriousness of the case; and
  - (d) any other circumstances that appear to the Magistrates Court to make it more appropriate for the case to be dealt with on indictment rather than summarily.
- (2) If this section applies and—
- (a) the tribunal determines that the accused charged with a serious offence is unfit to plead; and
  - (b) after hearing the charge, the Magistrates Court is satisfied beyond reasonable doubt that the accused committed the acts that constitute the offence;

the Magistrates Court shall order that the accused be detained in custody until the tribunal orders otherwise unless, in consideration of the criteria for detention in section 308, it is satisfied that it is more appropriate to order that the accused submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order.

- (3) If, under subsection (2), the Magistrates Court is satisfied that it is more appropriate to order that the accused submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order, it shall make an order to that effect.
- (4) If this section applies and—
- (a) the tribunal determines that the accused charged with an offence other than a serious offence is unfit to plead; and
  - (b) after hearing the charge, the Magistrates Court is satisfied beyond reasonable doubt that the accused committed the acts which constitute the offence;

the Magistrates Court may make any orders it considers appropriate, including the following:

- (c) that the accused be detained in custody until the tribunal orders otherwise;
  - (d) that the accused submit to the jurisdiction of the tribunal to enable the tribunal to make a mental health order.
- (5) The Magistrates Court shall conduct a hearing under this section as nearly as possible as if it were a normal criminal proceeding.
- (6) In a hearing under this section—
- (a) if legal representation is available to the accused—the accused shall have legal representation unless the Magistrates Court otherwise orders; and
  - (b) the accused is to be taken to have pleaded not guilty in respect of the offence charged.
- (7) If the Magistrates Court is satisfied beyond reasonable doubt that the accused committed the acts that constitute the offence, its finding—
- (a) does not constitute a basis in law for the recording of any conviction for the offence charged; and
  - (b) constitutes a bar to further prosecution of the accused for any offence in respect of the acts that were alleged to constitute the offence charged.
- (8) In this section:
- serious offence* means—
- (a) an offence involving actual or threatened violence; or
  - (b) an offence against section 27 (3) or (4).

### **336 How Magistrates Court may be informed**

For this division, the Magistrates Court may inform itself as it considers appropriate.

*Note* The *Legislation Act 2001*, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

## Part 14 Intoxication

### 337 Application of pt 14

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

### 338 Interpretation for pt 14

(1) In this part:

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

(2) For this part, intoxication is self-induced unless it came about—

- (a) involuntarily; or
- (b) as a result of fraud, sudden or extraordinary emergency, accident, reasonable mistake, duress or force; or
- (c) from the administration of a drug for which a prescription is required and that was administered in accordance with the directions of the medical practitioner or dentist who prescribed the drug; or
- (d) from the administration of a drug for which no prescription is required and that was administered—
  - (i) for a purpose recommended by the manufacturer; and
  - (ii) in accordance with the dosage level recommended in the manufacturer's instructions.

### 339 Intoxication in relation to offences

Evidence of self-induced intoxication cannot be considered in determining whether an act or omission that is an element of an offence was intended or voluntary.

## **Part 15 Sentences**

### **Division 15.1 General principles and procedures**

#### **340 Meaning of *victim* in pt 15**

In this part:

*victim*, in relation to an offence, means—

- (a) a person (the *primary victim*) who suffers harm—
  - (i) in the course of, or as the result of, the commission of the offence; or
  - (ii) in the course of assisting a police officer in the exercise of the officer's power to arrest a person in respect of the commission of the offence or to take action to prevent the commission of the offence; or
- (b) if a primary victim dies as a result of the commission of the offence—any person who was financially or psychologically dependent on the primary victim immediately before his or her death.

#### **341 Purposes for which sentence imposed**

The only purposes for which a sentence may be imposed are—

- (a) to punish the offender to an extent and in a way that is just and appropriate in all the circumstances; or
- (b) to deter the offender or other persons from committing the same or a similar offence; or
- (c) to rehabilitate the offender; or

- (d) to make it clear that the community, acting through the court, denounces the type of conduct in which the offender engaged; or
- (e) to protect the community from the offender; or
- (f) a combination of 2 or more of the purposes referred to in paragraphs (a) to (e).

### **342 Matters to which court to have regard**

- (1) In determining the sentence to be imposed on a person, the matters to which a court shall have regard include, but are not limited to, such of the following matters as are relevant and known to the court:
  - (a) the nature and circumstances of the offence;
  - (b) other offences (if any) that are required or permitted to be taken into account;
  - (c) if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character—that course of conduct;
  - (d) if the personal circumstances of any victim of the offence were known to the offender at the time of committing the offence—those circumstances;
  - (e) any injury, loss or damage resulting from the offence;
  - (f) any action the person may have taken to make reparation for any injury, loss or damage resulting from the offence;
  - (g) the degree of responsibility of the person for the commission of the offence;
  - (h) the degree to which the person has cooperated, or undertaken to cooperate, with law enforcement agencies in the investigation of the offence or other offences;

- (i) the cultural background, character, antecedents, age, means and physical or mental condition of the person;
  - (j) the probable effect that any sentence or order under consideration would have on any of the person's family or dependants;
  - (k) whether the person was affected by a drug or alcohol and the circumstances in which the person became so affected;
  - (l) the degree to which the offence was the result of provocation, duress or entrapment;
  - (m) whether the recording of a conviction or the imposition of a particular sanction would be likely to cause particular hardship to the person;
  - (n) a jury recommendation for mercy;
  - (o) whether the person is voluntarily seeking treatment for any physical or mental condition that may have contributed to the commission of the offence;
  - (p) whether the person was in a position of trust or authority at the time of the commission of the offence;
  - (q) current sentencing practice;
  - (r) whether the person has pleaded guilty and, if so, the stage of the proceedings at which the person did so or indicated an intention to do so;
  - (s) whether the person has demonstrated remorse;
  - (t) the reason or reasons why the person committed the offence;
  - (u) whether the person has paid the prescribed penalty in accordance with an offence notice served, under section 441, on him or her for an offence.
- (2) Without limiting subsection (1), in determining whether a sentence or order under section 402 (1) or 403 (1) is appropriate in respect of

an offence against a Territory law, the court shall have regard to the nature and severity of the conditions that may be imposed on, or may apply to, the person, under that sentence or order.

### **343 Victim impact statements**

- (1) A court determining the sentence to be imposed in respect of an offence—
  - (a) shall have regard to any victim impact statement tendered in respect of the offence; and
  - (b) shall not draw any inference about the harm suffered by a victim from the fact that a victim impact statement is not tendered in respect of the offence.
- (2) The prosecutor shall not tender a victim impact statement to the court unless—
  - (a) the victim has consented in writing; and
  - (b) a copy of the statement has been given to the defence.
- (3) The defence may cross-examine the victim about the contents of a victim impact statement.
- (4) In this section:

***court*** means the Supreme Court or the Magistrates Court.

***defence*** means—

- (a) the legal practitioner representing the offender; or
- (b) if the offender is not so represented—the offender.

***harm*** includes—

- (a) physical injury; and
- (b) mental injury or emotional suffering (including grief); and
- (c) pregnancy; and



- (d) economic loss; and
- (e) substantial impairment of rights accorded by law.

*offence* means an indictable offence for which the maximum penalty is a term of imprisonment for a term of at least 5 years (whether or not any other penalty, including a fine, may be imposed).

*victim impact statement* means a statement, signed by a victim, containing particulars of any harm suffered by the victim as a result of an offence.

#### **344 Matters not to be taken into account**

The court shall not, in determining the sentence to be imposed on a person, increase the severity of the sentence that would otherwise be imposed because of any of the following:

- (a) legislation that has not come into operation;
- (b) any alleged offences that the person has not admitted in accordance with section 357;
- (c) that the person chose not to give evidence on oath;
- (d) that the person may have committed perjury or been guilty of contempt of court during the course of proceedings;
- (e) the person's behaviour in court;
- (f) that the person chose to plead not guilty.

#### **345 Restriction on imposing sentences of imprisonment**

- (1) A court shall not pass a sentence of imprisonment on any person for an offence against a Territory law unless the court, after having considered all other available penalties, is satisfied that no other penalty is appropriate in all the circumstances of the case.

- (2) If a court passes a sentence of imprisonment on a person for an offence against a Territory law, the court shall—
  - (a) state the reasons for its decision that no other sentence is appropriate; and
  - (b) cause those reasons to be entered in the records of the court.
- (3) The failure of a court to comply with the provisions of this section does not invalidate any sentence.
- (4) This section applies subject to any contrary intention in the law creating the offence.

### **346 Sentences—imprisonment and fines**

If a person is convicted of an offence against a provision of this Act, the penalty for which is a fine or a term of imprisonment, the court may, if it thinks fit, impose both penalties on the person.

### **347 Fine instead of imprisonment**

- (1) Subject to subsection (2), when imposing a penalty on a person in respect of an offence against part 6, being an offence punishable by imprisonment for a period not exceeding 15 years, the Supreme Court may, if it considers a fine to be an appropriate penalty in all the circumstances of the case, impose a fine on the person in addition to or instead of sentencing the person to imprisonment.
- (2) A fine imposed under subsection (1) in respect of an offence shall not exceed—
  - (a) if the offence is punishable by imprisonment for period exceeding 12 months but not exceeding 2 years—
    - (i) if the offender is an individual—\$5 000; or
    - (ii) in any other case—\$25 000; and
  - (b) if the offence is punishable by imprisonment for a period exceeding 2 years but not exceeding 5 years—

- (i) if the offender is an individual—\$10 000; or
- (ii) in any other case—\$50 000; and
- (c) if the offence is punishable by imprisonment for a period exceeding 5 years but not exceeding 10 years—
  - (i) if the offender is an individual—\$20 000; or
  - (ii) in any other case—\$100 000; and
- (d) if the offence is punishable by imprisonment for a period exceeding 10 years—
  - (i) if the offender is an individual—\$30 000; or
  - (ii) in any other case—\$150 000.

### **348 Fines**

Before imposing a fine on a person for an offence against a Territory law, the court shall take into account the financial circumstances of the person, if those circumstances can be ascertained, in addition to any other matters that the court is required or permitted to take into account.

### **349 Theft of motor vehicle—cancellation of licence**

- (1) If—
  - (a) a person is convicted of the offence of stealing or attempting to steal a motor vehicle or of an offence against section 111 (1) in relation to a motor vehicle; or
  - (b) a person is charged with an offence referred to in paragraph (a) and, under section 402 (1), the charge is dismissed or an order is made in respect of the person; or
  - (c) under section 357, an offence referred to in paragraph (a) has been taken into account when passing sentence on a person;the court may, by order—

- (d) if the person holds a driver licence under the *Road Transport (Driver Licensing) Act 1999*—disqualify the person from holding or obtaining a driver licence for the period the court considers appropriate; or
- (e) if the person does not hold a driver licence under that Act—disqualify the person from obtaining a driver licence for the period the court considers appropriate.

*Note* The effect of disqualification is set out in the *Road Transport (General) Act 1999*, s 66.

- (2) If the court makes an order under this section, the court must give particulars of the order to the road transport authority.

### **350 Reparation orders**

- (1) If—
  - (a) a person is convicted of an offence against a Territory law; or
  - (b) a person is charged with an offence against a Territory law and, under section 402 (1), the charge is dismissed or an order is made in respect of the person; or
  - (c) under section 357, an offence has been taken into account in passing sentence on a person;

then, in addition to imposing a penalty on, or otherwise dealing according to law with, the person (the *offender*) the court may order the offender to make reparation to any person, by way of a payment of money or otherwise, in respect of any loss suffered or any expense incurred by that person as a direct result of the commission of the offence.

- (2) A person who has suffered loss or incurred expense as a direct result of the commission of an offence referred to in subsection (1) may, before the court passes sentence on the offender, apply to the court for an order referred to in subsection (1).

*Note* If a form is approved under s 443 (Approved forms) for an application, the form must be used.

- (3) Without limiting subsection (1), if an offence referred to in subsection (1) relates to stolen property, the court may, subject to the following subsections, make any of the following orders:
- (a) an order that any person having possession, custody or control of the stolen property restore it to any person entitled to recover it from him or her;
  - (b) on the application of a person entitled to recover from the offender any other property directly or indirectly representing the stolen property (as being the proceeds of any disposal or realisation of the stolen property or of property directly or indirectly representing the stolen property)—an order that the property be delivered or transferred to the applicant;
  - (c) on the application of a person who, if the stolen property were in the possession of the offender, would be entitled to recover it from the offender—an order that an amount not exceeding the value of the stolen property be paid to the applicant by the offender.
- (4) A person is not entitled to recover, under orders made under this section in respect of stolen property, amounts that, in the aggregate, exceed the value of the property.
- (5) If the court makes an order under subsection (3) (a) for the restoration of any property and it appears to the court that the offender has sold the property to a purchaser who was acting in good faith, or has borrowed money on the security of the property from a lender so acting, the court may, on the application of the purchaser or lender, order the offender to pay the applicant an

amount not exceeding the amount paid for the purchase by the applicant, or the amount owed to the applicant in respect of the loan, as the case requires.

- (6) If an offender contravenes an order under this section (other than an order for the payment of money), the person in whose favour the order was made may apply to the court for an order under subsection (7) to be made against the offender.
- (7) On application under subsection (6), the court may make an order for the payment of money against the offender in substitution for the contravened order.
- (8) If the court makes an order under this section for the payment of money, the court may order that—
  - (a) the amount be paid by specified instalments; and
  - (b) the offender give security, with or without sureties, to the satisfaction of a specified officer of the court for the payment of the amount or of each instalment of the amount.
- (9) The *Magistrates Court Act 1930*, sections 249 to 253 apply in relation to a security referred to in subsection (8) (b) ordered by the Magistrates Court as if it were a security given under that Act.
- (10) If—
  - (a) the court has ordered under subsection (8) (a) that an amount be paid by instalments; and
  - (b) default is made in the payment of any 1 instalment;subsection (11) applies in relation to that order as if it were for the payment of the whole amount then remaining unpaid.
- (11) An order under this section may be enforced as if it were a final judgment of the court.
- (12) Notwithstanding any other Territory law, a person is not liable to imprisonment for contravening an order under this section unless

compliance with the order was a condition of the discharge under section 402, or release under section 403, of the offender.

(13) An order shall not be made under this section unless, in the opinion of the court, the relevant facts sufficiently appear from evidence given at the trial or from the available documents, together with submissions made by or on behalf of any person in connection with any proposed order.

(14) In this section:

*available documents* means any written statements or admissions that were made for use and that would have been admissible as evidence at a trial, the depositions taken at any committal proceedings and any written statements or admissions used as evidence in those proceedings.

(15) Nothing in this section shall be construed as abolishing or affecting any cause of action that any person may have for the recovery of goods or property or to recover damages for, or to be indemnified against, any loss suffered or expense incurred, but in any proceedings in relation to any such loss or expense the court shall have regard to any amount paid under an order under this section.

(16) In this section:

*loss*—see section 83.

*stolen property*—see section 88.

### **351 Judgment after sentence deferred**

If a person is convicted of an offence and sentence is deferred, the court before which he or she was tried, or the Supreme Court, may pronounce judgment against him or her at any time afterwards.

### **352 When sentence takes effect**

If a court passes a sentence, the sentence shall, subject to this part, take effect from the date when it is passed unless the court otherwise orders.

### **353 Provision for passing sentences of less duration than those fixed**

- (1) If, by this Act, an offender is made liable to imprisonment for life or to imprisonment for a fixed term, the court may nevertheless pass a sentence of imprisonment of less duration.
- (2) Subsection (1) does not prevent the directing of the offender to enter into recognisances to keep the peace and be of good behaviour, nor the making of any orders under this Act or under another Territory law.
- (3) If, by any section of this Act, an offender is made liable to a fine of any fixed amount, the court may nevertheless inflict a fine of less amount.

### **354 Concurrent and cumulative sentences**

- (1) Every term of imprisonment (except a term imposed in default of payment of a fine or sum of money or a term imposed on a person in respect of an offence committed while in custody) shall, unless the court otherwise directs, be served concurrently with any uncompleted part of any sentence of imprisonment imposed on that person, whether before or at the same time as that term.
- (2) If a court sentences a person to a term of imprisonment in default of payment of a fine or sum of money, the term shall, unless the court otherwise directs, be served—
  - (a) cumulatively on any uncompleted sentence or sentences of imprisonment imposed on that person in default of payment of a fine or sum of money; and



- (b) concurrently with any other uncompleted part of any sentence of imprisonment imposed on that person.
- (3) If a court sentences a person to a term of imprisonment in respect of an offence committed while in custody, the term shall, unless the court otherwise directs, be served cumulatively on any uncompleted sentence or sentences of imprisonment imposed on that person, whether before or at the same time as that term.
- (4) A court that imposes a term of imprisonment for an offence against the law of the Territory on a person already serving a sentence or sentences of imprisonment for an offence against the law of the Territory, the Commonwealth, a State or another Territory, shall direct when the new term commences which shall be no later than immediately after—
- (a) if a nonparole period or pre-release period (as defined in the *Crimes Act 1914* (Cwlth), part 1B) was fixed in respect of the sentence or the last of those sentences—the end of the period so fixed; and
- (b) in any other case—the completion of the sentence or the last of those sentences.
- (5) A court may direct that part of a sentence be served concurrently with or cumulatively on another sentence.
- (6) If a court directs that 2 or more sentences shall be cumulative, they shall take effect one after another as the court directs or, in default of any direction, in accordance with the sequence in which the convictions are recorded.
- (7) In this section:
- (a) a reference to a *fine* includes a reference to a pecuniary penalty, an amount in respect of costs or any other amount ordered to be paid by a person for or in respect of an offence; and

- (b) a reference to any *uncompleted part* of any sentence of imprisonment includes a reference to the remainder of a period for which a child has been committed to an institution by an order under the *Children and Young People Act 1999*, section 96 (1) (k) or (l); and
- (c) a reference to a term or sentence of imprisonment in default of payment of a fine or sum of money includes a reference to a period for which a fine defaulter is committed to prison under the *Magistrates Court Act 1930*, section 154D.

### 355 Sentences of imprisonment and uncompleted juvenile detention orders

- (1) In imposing a defined sentence on an adult who is, at the time of sentencing, the subject of a C&YP Act order, a court must—
  - (a) in deciding the length of the defined sentence, take into account any remaining period during which the C&YP Act order would remain in force if not discharged under paragraph (b); and
  - (b) discharge the C&YP Act order accordingly.

- (2) In this section:

*adult* means someone who is 18 years old or older.

*C&YP Act order* means an order under the *Children and Young People Act 1999*, section 96 (1) (g), (h), (i), (j), (k) or (l).

*defined sentence*, in relation to an adult, means a sentence that would be likely to bring the adult into contact with other adult offenders, including—

- (a) a sentence of imprisonment; and
- (b) a periodic detention order under the *Periodic Detention Act 1995*, section 4 (Power to order periodic detention); and

- (c) a community service order under section 408 (Directions to perform work).

**356 Previous sentences to be noted in new sentence**

If an additional, or cumulative, sentence is passed, the fact of the previous sentence, or sentences, specifying the date, or dates, thereof, and of the term, or terms, of sentence shall be entered on the minutes and record of the sentence lastly passed.

**357 Outstanding charges may be taken into account when passing sentence**

- (1) If a person is convicted of an offence, other than an offence punishable by imprisonment for life, and the court is satisfied that—
- (a) a document in the form approved under section 443 (Approved forms) for this section has been filed in court in relation to the convicted person; and
  - (b) the document has been signed by—
    - (i) the director of public prosecutions or a person authorised in writing by the director; and
    - (ii) the convicted person; and
  - (c) the document contains a list of other offences (other than offences punishable by imprisonment for life) that the convicted person is alleged to have committed; and
  - (d) a copy of the document has been given to the convicted person; and
  - (e) in all the circumstances of the case it is proper to do so;

the court may, with the consent of the prosecutor and before passing sentence on the person for the offence of which he or she is convicted, ask the person whether he or she admits his or her guilt in respect of all or any of the offences specified in the list and wishes

those offences to be taken into account in passing sentence upon him or her.

- (2) If a person referred to in subsection (1) asks the court to take into account any offence in passing sentence for the offence of which he or she has been convicted, the court may take that firstmentioned offence into account in passing sentence.
- (3) The court shall not take into account under this section any indictable offence that it would not have jurisdiction to try even if the defendant consented to the court hearing and determining proceedings for the offence or the prosecutor requested the court to hear and determine those proceedings.
- (4) If the court decides to take an offence into account under subsection (2), the sentence passed by the court on the person shall not exceed the maximum sentence that may be passed in respect of the offence of which the person is convicted.
- (5) The court shall certify on the document referred to in subsection (1) the offences (if any) that have been taken into account in passing sentence on the person to whom the document relates for an offence of which that person is convicted, and proceedings or further proceedings shall not be taken against that person in respect of any offence so certified unless his or her conviction is quashed or set aside.
- (6) An admission of guilt made by a person under this section in respect of an offence shall not be admissible in evidence in any proceedings or further proceedings taken against that person in respect of that offence.
- (7) If, under this section, an offence is taken into account in passing sentence on a person in respect of another offence of which he or she is convicted, the person shall not, because of the firstmentioned offence being so taken into account, be regarded, for any purpose as having been convicted of that firstmentioned offence.

- (8) Where, under this section, an offence is taken into account in passing sentence on a person in relation to another offence of which he or she is convicted—
- (a) reference may be made to the fact that the firstmentioned offence was so taken into account in, or in relation to, any criminal proceedings if reference may lawfully be made to the fact that the person was convicted of the secondmentioned offence; and
  - (b) evidence may be given of the fact that the firstmentioned offence was so taken into account in, or in relation to, any criminal proceedings if evidence may lawfully be given of the fact that the person was convicted of the secondmentioned offence.
- (9) For subsection (8), the fact that an offence was taken into account in passing sentence on a person in respect of another offence of which he or she is convicted may be proved in the same way as the conviction of the person may be proved.
- (10) For this section, a reference to *passing sentence* includes a reference to—
- (a) deferring the passing of a sentence; and
  - (b) making an order under section 402 (1); and
  - (c) making an order under the *Crimes Act 1914* (Cwlth), section 19B (1); and
  - (d) making a decision or an order to remand in custody or to remand and release, on conditions or otherwise.

### **358 Appeal if promised cooperation not forthcoming**

- (1) If a sentence or a nonparole period is reduced because of the person's promised cooperation, of the kind referred to in section 342 (1) (h), the court shall—

- (a) in relation to the sentence—specify the reason for the reduction and the sentence that would have been imposed apart from the reduction; and
  - (b) in relation to the nonparole period—specify the reason for the reduction and the period that would have been fixed apart from the reduction.
- (2) If—
- (a) a sentence or nonparole period is reduced because the person has undertaken to cooperate with law enforcement agencies; and
  - (b) after sentence, the person does not cooperate in accordance with the undertaking;
- the director of public prosecutions may, at any time while the person is under sentence, if the director is of the opinion that it is in the interests of the administration of justice to do so, appeal against the inadequacy of the sentence or of the nonparole period.
- (3) The court hearing the appeal—
- (a) if it is satisfied that the person has failed entirely to cooperate in accordance with the undertaking—shall substitute for the reduced sentence or nonparole period the sentence or nonparole period that would have been imposed on, or fixed in respect of, the person apart from the reduction; and
  - (b) if it is satisfied that the person has failed in part to cooperate in accordance with the undertaking—may substitute for the reduced sentence or nonparole period the sentence or nonparole period it thinks appropriate.
- (4) The sentence or nonparole period that may be substituted under subsection (3) (b) shall not exceed that that may be imposed or fixed under subsection (3) (a).

### **359 Court to explain sentence**

- (1) If a court passes a sentence of imprisonment on a person for an offence against a Territory law and fixes a nonparole period in respect of the sentence, it shall explain or cause to be explained to the person, in language likely to be readily understood by the person, the purpose and consequences of fixing that nonparole period including, in particular, an explanation—
  - (a) that service of the sentence will entail a period of imprisonment of not less than the nonparole period and, if a parole order is made, a period of service in the community to complete service of the sentence; and
  - (b) that, if a parole order is made, the order will be subject to conditions; and
  - (c) of the consequences that may follow if the person fails, without reasonable excuse, to fulfil those conditions; and
  - (d) that the parole order may be amended or revoked.
- (2) If a court passes a sentence of imprisonment on a person for an offence against a Territory law but gives a direction under section 403 (1) (b) in respect of that sentence, it shall explain or cause to be explained to the person, in language likely to be readily understood by the person, the purpose and consequences of giving that direction including, in particular, an explanation—
  - (a) that service of the sentence will entail a period of imprisonment equal to the prerelease period (if any) specified in that direction and a period of service in the community equal to the balance of the sentence; and
  - (b) of the conditions to which that direction is subject; and
  - (c) of the consequences that may follow if the person fails, without reasonable excuse, to fulfil those conditions; and

(d) that any recognisance given in accordance with that direction may be discharged or varied under section 405.

(3) If—

(a) a court explains or causes to be explained to a person, in accordance with subsection (1) or (2), the matters specified in that subsection; and

(b) that person is to serve a term of imprisonment;

the registrar of the court shall provide or cause to be provided to that person, or his or her legal representative, a written record of those matters.

### **360 Time held in custody to count**

(1) If an offender is sentenced to a term of imprisonment in respect of an offence, any period of time during which he or she was held in custody in relation to proceedings for that offence or proceedings arising from those proceedings shall be reckoned as a period of imprisonment already served under the sentence.

(2) Subsection (1) does not apply—

(a) to a period of custody of less than 1 day; or

(b) to a sentence of imprisonment of less than 1 day; or

(c) to a sentence of imprisonment that has been wholly suspended or to the suspended part of a partly suspended sentence of imprisonment.



- (3) If a person charged with a series of offences committed on different occasions has been in custody continuously since arrest, the period of custody for subsection (1) shall be reckoned from the time of his or her arrest even if he or she is not convicted of the offence with respect to which he or she was first arrested or other offences in the series.

### **361 Sentence to be adjusted if no remission laws apply**

If an offender's sentence is to be served in a prison of a State or another Territory where sentences are not subject to remission or reduction, the court imposing the sentence shall take that fact into account in determining the length of the sentence and shall adjust the sentence accordingly.

## **Division 15.2 Pre-sentence reports**

### **362 Meaning of *authorised officer* in div 15.2**

In this division:

*authorised officer* means a public servant who is authorised in writing by the chief executive for this division.

### **363 Court may order pre-sentence reports**

- (1) If a court finds a person guilty of an offence it may, before passing sentence, order an authorised officer to prepare a pre-sentence report in respect of the offender and adjourn the proceedings to enable the report to be prepared.
- (2) A pre-sentence report may be presented to the court either orally or in written form.
- (3) A court shall not order a pre-sentence report in respect of a person before the court finds that person guilty of an offence unless the person has indicated that he or she proposes to plead guilty to the offence.

- (4) The authorised officer shall conduct any investigation that he or she thinks appropriate or that is directed by the court.

**364 Contents of pre-sentence report**

- (1) The authorised officer shall, so far as practicable, include in a pre-sentence report particulars of each of the following matters that, on investigation, appear to be relevant to sentence:
- (a) the age of the offender;
  - (b) the social history and background (including cultural background) of the offender;
  - (c) the medical and psychiatric history of the offender;
  - (d) the offender's educational background;
  - (e) the offender's employment history;
  - (f) the circumstances of any offences of which the offender has been found guilty and in respect of which the offender is to be sentenced;
  - (g) the extent to which the offender is complying, or has complied, with any sentence;
  - (h) the offender's financial circumstances;
  - (i) any special needs of the offender;
  - (j) any courses, programs, treatment, therapy or other assistance that is available to the offender and from which he or she may benefit;
  - (k) the authorised officer's opinion about—
    - (i) the offender's attitude to the offence; and
    - (ii) the offender's propensity to commit further offences;
  - (l) any other facts that the authorised officer considers to be relevant.

- (2) The authorised officer shall include in the report any other matter relevant to the sentencing of the offender that the court has directed to be set out in the report.

### **365 Circulation of pre-sentence report**

The authorised officer shall, before the court passes sentence, provide a copy of any written pre-sentence report to—

- (a) the prosecutor; and
- (b) any legal practitioner representing the offender; and
- (c) if—
  - (i) the court has so directed; or
  - (ii) the offender is not legally represented;the offender.

### **366 Right of cross-examination on pre-sentence report**

The prosecution and the defence may cross-examine the author of a pre-sentence report on its contents.

## Part 16 Proceedings after sentence

### 367 Procedure on forfeiture

- (1) If, under a provision of this Act, a court may order the forfeiture of an article, the court shall—
  - (a) if the court is of the view that it is desirable to make further inquiries with respect to the article—order that notice of the proposed forfeiture be given to the persons that the court directs; or
  - (b) in any other case—order that the article be forfeited to the Crown.
- (2) After hearing such of the persons to whom notice under subsection (1) was given as appear, the court shall—
  - (a) if it is satisfied that the article should be forfeited—order that the article be forfeited to the Crown; or
  - (b) in any other case—order that the article be delivered to the person that the court is satisfied is entitled to the article.
- (3) If a prosecution is pending in relation to an article, the court shall not make an order under subsection (2) in relation to the article until the prosecution is determined.
- (4) All articles forfeited under subsection (2) shall be dealt with as directed by the Attorney-General, and pending his or her direction, may be detained in the custody that the court directs.

**368 Common law forfeiture in offences abolished**

- (1) No inquest, conviction, or judgment, in respect of any offence, shall cause any escheat or forfeiture of lands or goods.
- (2) There shall be no forfeiture of any chattel that may have moved to, or caused, the death of any human being for or in respect of the death.

**369 Disabilities of offence**

After the conviction of an offender for any offence, until he or she has endured the punishment to which he or she was sentenced, or the punishment (if any) substituted for that punishment, or the unremitted portion of the punishment, or has received a free pardon for his or her offence, he or she shall be incapable of holding, or being elected or appointed to any office, or of exercising any electoral or municipal franchise.

**370 Effect of reversing judgment**

On the avoidance or vacating of the conviction of any such person, or reversal of the judgment against him or her, the provisions of sections 368 and 369, and of section 350, shall, with respect to the person, determine, and every order made for the payment of money out of his or her property shall become of no effect, and he or she shall be restored to all that he or she may have lost thereby.

**371 What not sufficient to stay or reverse judgment**

- (1) No judgment after verdict, in any case, shall be stayed or reversed for want of a similitur, nor because the jury process was awarded to a wrong officer, nor for any misnomer, or misdescription, of the officer returning such process, or of any juror, nor because any person served on the jury who was not returned as a juror.
- (2) Nor shall any verdict be affected, because of the jury not having been instructed that the accused might, on the evidence, be convicted of a less offence than the offence charged.

- (3) If the offence charged is created by statute, or subjected to a greater degree of punishment by any statute, the indictment shall after verdict be sufficient, if it described the offence in the words of the statute.

### **372 Pronouncing proper judgment**

No judgment shall be reversed, or avoided, for any error in law in the sentence imposed, but it shall be competent for the judges of the Supreme Court, in case of any such error, either to pronounce the judgment and sentence that is authorised by law, or to remit the record to the other court, in order that the court may pronounce the judgment and sentence that is authorised by law.

### **373 New trials regulated**

A new trial may be granted for any offence, for any cause for which a new trial may now be granted, in respect of all, or some, or 1 only, of the defendants if 2 or more are included in the same indictment, although all are not present, nor are parties to the motion, nor have been tried.

## Part 17                      Offences punishable    summarily and summary    procedure generally

### 374    Summary offences

An offence against this Act that is—

- (a) not punishable by imprisonment; or
- (b) punishable by imprisonment for a term not exceeding 12 months;

is punishable on summary conviction.

### 375    Summary disposal of certain cases

(1) This section applies in relation to any offence against a Territory law, being—

- (a) a common law offence; or
- (b) an offence punishable by imprisonment for a term not exceeding—
  - (i) if the offence relates to money or other property—14 years; or
  - (ii) in any other case—10 years.

(2) If—

- (a) a person (the *defendant*) is before the Magistrates Court charged with an offence in relation to which this section applies; and
- (b) the court is of the opinion that it has no jurisdiction, apart from this section, to hear and determine the charge summarily; and

(c) for a charge relating to money or to property other than a motor vehicle—the amount of the money or the value of the property does not, in the opinion of the court, exceed \$10 000;

the court may proceed in accordance with subsections (3) to (12).

(3) The court may invite the defendant to plead guilty or not guilty to the charge.

(4) If the defendant pleads guilty to the charge, the court may accept or reject the plea.

(5) If—

(a) the defendant does not plead to the charge when invited to do so under subsection (3); or

(b) a plea of guilty to the charge is rejected under subsection (4);

the defendant shall be taken to have pleaded not guilty to the charge.

(6) If—

(a) the defendant pleads or is to be taken to have pleaded not guilty to a charge; and

(b) the court is of the opinion that the case can properly be disposed of summarily; and

(c) the defendant has consented to its being so disposed of;

the court may hear and determine the charge summarily and may sentence or otherwise deal with the defendant according to law.

(7) If—

(a) the court accepts a plea of guilty to a charge; and

(b) the court is of the opinion that the case can properly be disposed of summarily; and

(c) the defendant has consented to its being so disposed of;



the court may sentence or otherwise deal with the defendant according to law.

- (8) Before forming an opinion whether or not a case can properly be disposed of summarily, the court shall have regard to—
- (a) any relevant representations made by the defendant; and
  - (b) any relevant representations made by the prosecutor in the presence of the defendant; and
  - (c) whether, if the defendant were found guilty or the defendant's plea of guilty has been accepted by the court, the court is, under this section, empowered to impose an adequate penalty, having regard to the circumstances and, in particular, to the degree of seriousness of the case; and
  - (d) any other circumstances that appear to the court to make it more appropriate for the case to be dealt with on indictment rather than summarily.
- (9) If the court accepts a plea of guilty to a charge, and—
- (a) the court is of the opinion that the case cannot properly be disposed of summarily; or
  - (b) the defendant has not consented to its being so disposed of;
- the *Magistrates Court Act 1930*, section 90A (5) to (10) applies in relation to the defendant as if the court had accepted a plea of guilty to the charge under that section.
- (10) If the court disposes of a case summarily under this section and convicts the defendant of the offence, then, subject to subsections (11) and (12), but notwithstanding any other Territory law, the court may not impose a sentence of imprisonment exceeding 2 years nor impose a fine exceeding \$5 000.
- (11) If, under this section, the court disposes of a case summarily and convicts a defendant who, at the time of the commission of the offence of which he or she was convicted, had not attained the age

of 18 years, then, subject to subsection (12), but notwithstanding any other Territory law, the court may not impose a sentence of imprisonment exceeding 6 months nor impose a fine exceeding \$1 000.

(12) If—

- (a) the court disposes of a case summarily under this section and convicts the defendant of an offence; and
- (b) the maximum penalty prescribed for the offence by the law creating that offence (the *prescribed penalty*) is less than the maximum penalty that the court, under subsection (10) or (11), as the case requires, is authorised to impose;

the court shall not impose on the defendant a penalty that exceeds the prescribed penalty.

### **376 Saving of other summary jurisdiction**

Nothing in this part affects the operation of any other law in force in the ACT by which jurisdiction is given to the Magistrates Court.

### **377 Certificate of dismissal**

If the Magistrates Court has heard and determined a charge under section 375 and has dismissed the charge, the magistrate constituting the court or the registrar of the court shall, if so requested by the person charged, give that person a certificate signed by the magistrate or registrar stating the fact of the dismissal.

### **378 Summary conviction or dismissal bar to indictment**

- (1) A conviction on a charge disposed of summarily under section 375 has the same effect as a conviction on indictment for the offence would have had and a person who is so convicted is not afterwards liable to prosecution for the same cause.

- (2) The dismissal by the Magistrates Court of an information heard and determined by the court under section 375 has the same effect as an acquittal of the person charged in a trial on indictment.

### **379 Misbehaviour at public meetings**

- (1) A person shall not, in any premises where a public meeting is being held, behave in a manner that disrupts, or is likely to disrupt, the meeting.

Maximum penalty: \$1 000, imprisonment for 6 months or both.

- (2) If a person presiding at any public meeting reasonably believes that another person in the premises where the meeting is being held is behaving in a manner that is disrupting, or is likely to disrupt, the meeting, the person so presiding may request any member of the police force who is present to remove the other person and the member of the police force may remove that other person accordingly.

### **380 Possession of offensive weapons and disabling substances**

- (1) A person who, without reasonable excuse, has in his or her possession, in a public place, in circumstances likely to cause alarm, an offensive weapon or a disabling substance is guilty of an offence punishable, on conviction, by a fine of \$1 000, imprisonment for 6 months or both.

- (2) In subsection (1):

*disabling substance* means any anaesthetising or other substance made for use for disabling a person, or intended for that use by the person who has it in his or her possession.

**381 Possession of offensive weapons and disabling substances with intent**

(1) A person who has on his or her person an offensive weapon or a disabling substance, in circumstances indicating intent to use the weapon or substance to commit an offence involving actual or threatened violence, is guilty of an offence punishable, on conviction, by a fine of \$2 000, imprisonment for 1 year or both.

(2) In subsection (1):

*disabling substance* means any anaesthetising or other substance made for use for disabling a person, or intended for that use by the person who has it in his or her possession.

**382 Possession of knife in public place or school**

(1) A person shall not, without reasonable excuse, have a knife in his or her possession in a public place or school.

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

(2) Without limiting what may constitute a reasonable excuse, it is a reasonable excuse for a person to have a knife in his or her possession in a public place or school if—

- (a) the possession is necessary or reasonable for, or for a purpose incidental to—
  - (i) the lawful pursuit of the person's occupation; or
  - (ii) the preparation or consumption of food; or
  - (iii) participation in a lawful entertainment, recreation or sport; or
  - (iv) the exhibition of knives for retail or other trade purposes; or
  - (v) an organised exhibition by knife collectors; or

- (vi) the wearing of an official uniform; or
- (vii) religious purposes; or
- (b) the possession is of a prescribed kind.
- (3) It is not a reasonable excuse for a person to have a knife in his or her possession in a public place or school solely for the purpose of self-defence or the defence of another person.

### **383 Sale of knife to person under 16**

- (1) A person shall not sell a knife to a person under 16 years old.  
Maximum penalty: 10 penalty units, imprisonment for 6 months or both.
- (2) In this section:  
*sell* includes—
  - (a) barter or exchange; and
  - (b) offer or expose for sale, barter or exchange; and
  - (c) supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit; and
  - (d) supply, or offer to supply, gratuitously but with a view to gaining or maintaining custom, or otherwise with a view to commercial gain.

### **384 Retail supplier of knives to display sign**

- (1) A person who sells knives by retail must ensure that a sign complying with subsections (2), (3) and (4) is clearly visible to a person at the place, or each place, where such a sale is made.  
Maximum penalty: 5 penalty units.

- (2) The sign must display at least the following words in the following sequence:

‘It is an offence to sell a knife to a person under the age of 16.

Proof of age may be required.’.

- (3) The lettering of the words stated in subsection (2) must be at least 8mm in height.
- (4) The dimensions of the sign must not be less than 210mm x 145mm.
- (5) Subsection (1) does not apply to a person, or a knife, of a kind specified in, or ascertained in accordance with, the regulations.

### **385 Laying of poison**

A person shall not lay any poison that endangers, or is likely to endanger, the life of any domestic animal or bird.

Maximum penalty: \$1 000, imprisonment for 6 months or both.

### **386 Unlawful possession**

- (1) A person who—
- (a) has any money or goods in his or her custody or in the custody of another person; or
  - (b) has any money or goods in or on any premises, whether the money or goods is or are in or on those premises for his or her own use or for the use of another person; or
  - (c) gives custody of any money or goods to a person who is not lawfully entitled to possession of the money or goods;

being money or goods that is or are reasonably suspected of having been stolen or otherwise unlawfully obtained, shall be guilty of an offence punishable, on conviction before a magistrate, by a fine not exceeding \$1 000, imprisonment not exceeding 6 months or both.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant satisfies the court that he or she had no reasonable grounds for suspecting that the money or goods in relation to which the offence is alleged to have been committed was or were stolen or otherwise unlawfully obtained.
- (3) If—
- (a) a person convicted of an offence in respect of money or goods under subsection (1) is the owner of that money or those goods; or
  - (b) the identity of the owner of any money or goods suspected of having been stolen or otherwise unlawfully obtained without the consent of the owner is not ascertained before the end of the period of 3 months commencing on the date when a person was convicted of an offence against subsection (1) in respect of that money or those goods;
- then—
- (c) for money—the money shall be paid to the Territory; and
  - (d) for goods—the goods may be sold by public auction and any proceeds of the sale shall be paid to the Territory.
- (4) If, at any time after the end of the period of 3 months referred to in subsection (3), the owner of the money or goods referred to in subsection (3) (b) claims the money or the goods, an amount equal to the amount of that money shall be paid to him or her by the Territory, or the goods shall be returned to him or her or, if the goods have been sold, an amount equal to the proceeds of the sale shall be paid to him or her by the Territory.
- (5) In this section:
- premises* includes any building, structure, vehicle or vessel, or any place, whether built upon or otherwise, and any part of a building, structure, vehicle, vessel or place.

**387 Making false invoice**

A person who fraudulently prepares, causes to be prepared or produces an invoice, receipt or document containing a false statement, with intent to induce the belief that anything was not stolen or otherwise unlawfully obtained or to prevent anything from being seized on suspicion of being stolen or otherwise unlawfully obtained or from being produced in evidence concerning an alleged offence, is guilty of an offence punishable, on conviction, by a fine not exceeding \$200, imprisonment for 3 months or both.

**388 Application of compensation**

For private property, the compensation for the damage or injury done shall be paid to the party aggrieved, and for property of a public nature, or if any public right is concerned, shall be applied as the magistrate thinks fit.

**389 Obstruction of stream etc**

A person shall not place any obstruction in any stream, river or lake, being an obstruction that is likely to endanger the safety of any person.

Maximum penalty: \$1 000, imprisonment for 6 months or both.

**390 Entrance to cellars etc**

The owner or occupier of any premises in or on which there is any cellar, manhole or other similar place having an entrance that opens into, on or near a public place shall have and maintain in good repair a rail, gate, fence or cover effectively enclosing that entrance and shall not permit that entrance to remain open for longer than is reasonably necessary.

Maximum penalty: \$1 000, imprisonment for 6 months or both.



**391 Fighting**

A person shall not fight with another person in a public place.

Maximum penalty: \$1 000.

**392 Offensive behaviour**

A person shall not in, near, or within the view or hearing of a person in, a public place behave in a riotous, indecent, offensive or insulting manner.

Maximum penalty: \$1 000.

**393 Indecent exposure**

A person who offends against decency by the exposure of his or her person in a public place, or in any place within the view of a person who is in a public place, commits an offence.

Maximum penalty: 20 penalty units, imprisonment for 1 year or both.

**394 Noise abatement directions**

- (1) If it appears to a police officer that offensive noise is being, or has at any time during the previous 30 minutes been, emitted from any premises, he or she may—
  - (a) direct the person whom he or she believes to be the occupier of those premises to cause the emission of the noise to cease; or
  - (b) direct any person whom he or she believes to be making, or contributing to the making of, the noise to cease making, or contributing to the making of, the noise;or he or she may give directions under both paragraphs (a) and (b).
- (2) A person to whom a direction referred to in subsection (1) (a) is given shall not, without reasonable excuse—

- (a) fail to cause the emission from the premises of the noise in respect of which the direction was given to cease promptly; or
- (b) at any time within 6 hours after the time when the direction was given, cause, permit or allow any offensive noise to be emitted from the premises.

Maximum penalty: \$1 000, imprisonment for 6 months or both.

- (3) A person to whom a direction referred to in subsection (1) (b) is given shall not, without reasonable excuse—
  - (a) fail to promptly cease making, or contributing to the making of, the noise in respect of which the direction was given; or
  - (b) at any time within 6 hours after the time when the direction was given, make, or contribute to the making of, any offensive noise emitted from the premises.

Maximum penalty: \$1 000, imprisonment for 6 months or both.

- (4) A person shall not be convicted of an offence against this section unless the prosecution establishes that the noise to which the alleged offence relates was an offensive noise.
- (5) If a police officer believes on reasonable grounds that a person has committed an offence against subsection (2) or (3), the officer may seize anything (other than an animal) that the officer suspects on reasonable grounds was used in, or in connection with, committing the offence.
- (6) However, the police officer may seize the thing under subsection (5) only if the police officer has told the person, before the offence against subsection (2) or (3) was committed, that failure to comply with the direction, or resumption of conduct contrary to the direction within 6 hours after the direction was given, may lead to the thing being seized.

- (7) If a police officer seizes anything under subsection (5), the officer must give the occupier of the premises, or the person from whom the thing was seized, a written notice that—
- (a) describes the thing seized; and
  - (b) states the police station where the thing will be taken; and
  - (c) states that the thing may be claimed from that police station not earlier than 48 hours after the seizure.
- (8) If a police officer seizes anything under subsection (5), then, not earlier than 48 hours after the seizure, the occupier of the premises from which the thing was seized, or the owner of the thing, is entitled to its return from the police station where the thing has been taken if the person produces the notice under subsection (7) or anything else that provides satisfactory proof that the person is entitled to its possession.
- (9) However, if—
- (a) a person is charged with an offence against this section; and
  - (b) the chief police officer or director of public prosecutions believes, on reasonable grounds, that something seized by a police officer under subsection (5) may provide evidence of the offence;
- no-one is entitled to its return until the prosecution for the offence has been finally decided.
- (10) In this section:
- offensive noise*** means noise that, because of its level or nature, or the time when it is made, or any other circumstances, is likely to be harmful or offensive to, or to interfere unreasonably with the comfort or repose of, persons who are—
- (a) if the noise is made in premises other than a public place—  
outside the premises; or

- (b) if the noise is made in premises that are a public place—within or outside the premises.

*premises* include any place, vehicle or vessel.

### **395 Bogus advertisements**

- (1) A person shall not publish nor cause to be published a bogus advertisement, knowing the advertisement to be bogus.

Maximum penalty: \$1 000, imprisonment for 6 months or both.

- (2) In subsection (1):

*bogus advertisement* means an advertisement or notice containing any statement or representation that is false or misleading in a material particular with respect to—

- (a) any matter related to birth, death, engagement to be married, marriage or employment; or
- (b) any matter concerning a person or the property of a person, other than the person who published the advertisement or caused it to be published.

### **396 Public mischief**

- (1) A person who, by any means, makes any representation, creates any circumstance or does any other act intended to make it appear falsely that a situation exists, or an event has occurred, that calls for investigation or action by a police officer or emergency services officer is, if the representation, circumstance or act comes to the knowledge of a police officer or emergency services officer, guilty of an offence punishable, on conviction, by a fine of \$2 000, imprisonment for 1 year or both.

- (2) In subsection (1):

*emergency services officer* means—

- (a) an ambulance officer; or

- (b) a member of the fire brigade; or
- (c) a member of the bush fire council; or
- (d) an officer of any other emergency service.

### **397 Apprehended violence or injury—recognisance to keep the peace etc**

- (1) In every case of apprehended violence by any person to the person of another, or of his or her spouse or child, or of apprehended injury to his or her property, a magistrate may on the complaint of the person apprehending the violence or injury, issue a summons or warrant as in any case of apprehended violence to the person, if at present security is required to keep the peace, and a magistrate may examine the complainant, and defendant, and their witnesses, as to the truth of the matter alleged, and, if it appears that the apprehension alleged is reasonable, but not otherwise, the magistrate may require the defendant to enter into a recognisance to keep the peace, with or without sureties, as in any case of a like nature.
- (2) If in any such case the defendant has spoken any offensive or defamatory words to or of the complainant, on an occasion when a breach of the peace might have been induced thereby, he or she may be required by the magistrate to enter into a recognisance, with or without sureties, to be of good behaviour for a term not exceeding 6 months, and, in default of its being entered into forthwith, the defendant may be imprisoned for 3 months, unless such recognisance is sooner entered into.
- (3) The magistrate, in every such case, may award costs to either complainant or defendant, to be recovered as costs in summary jurisdiction cases are recoverable.

### **398 Alternative methods of proceeding before magistrate**

If by this Act a person is made liable to imprisonment, or to pay a sum of money, on conviction before a magistrate, the person may be proceeded against and convicted in a summary way under this Act,

so far as it is applicable, or under any law in force in the ACT regulating proceedings on summary convictions, and every provision contained in any such law shall be applicable to the proceedings as if it were incorporated in this Act.

### **399 General averment of intent to defraud or injure**

In any proceeding before a magistrate if it is necessary to allege an intent to defraud, or to injure, it shall be sufficient to allege that the accused did the act with such intent, without alleging an intent to defraud or to injure any particular person.

### **400 Sentence may be for less term or fine of less amount than that fixed**

If by any section of this Act an offender is for any offence made liable to imprisonment for a fixed term or to a fine of any fixed amount the magistrate may nevertheless pass a sentence of imprisonment of less duration or inflict a fine of less amount.

### **401 Application of forfeitures and penalties**

- (1) Every sum forfeited for the amount of any injury shall be assessed by the convicting magistrate, and paid to the party aggrieved, except if he or she is unknown, in which case the sum shall be applied in the same way as a penalty.
- (2) Every sum imposed as a penalty by a magistrate, whether in addition to such amount, or otherwise, shall be applied as directed by the Acts in force for the time being providing for the application of penalties.
- (3) If several persons have joined in the commission of the same offence, and on conviction are severally adjudged to forfeit a sum equivalent to the amount of the injury done, no greater sum shall be paid to the party aggrieved than such amount, and the remaining sum or sums forfeited shall be applied in the same way as any penalty imposed by a magistrate is applied.

## Part 18

# Conditional release of offenders

### 402 Conditional release of offenders without proceeding to conviction

- (1) If—
- (a) a person is charged before a court of the Territory with an offence against a Territory law; and
  - (b) the court is satisfied that the charge is proved but is of opinion, having regard to—
    - (i) the character, antecedents, age, health or mental condition of the person; or
    - (ii) the extent (if any) to which the offence is of a trivial nature; or
    - (iii) the extent (if any) to which the offence was committed under extenuating circumstances;that it is inexpedient to inflict any punishment, or to inflict any punishment other than a nominal punishment, or that it is expedient to release the person on probation;
- the court may dismiss the charge or, without proceeding to conviction, by order, direct that the person be discharged on his or her giving security, with or without sureties, by recognisance or otherwise, to the satisfaction of the court, that—
- (c) he or she will be of good behaviour for the period, not exceeding 3 years, that the court specifies in the order; and
  - (d) he or she will, during the period so specified, comply with the conditions (if any) that the court thinks fit to specify in the order, which conditions may include—

- (i) the condition that the offender will, during the period so specified, be subject to the supervision on probation under a person, for the time being, appointed in accordance with the order; and
  - (ii) the condition that the offender will obey all reasonable directions of a person so appointed; and
  - (iii) the condition that the offender will comply with an order made under section 350.
- (2) If a person has been discharged under an order made under subsection (1) on the condition that he or she will be of good behaviour for a period specified in the order (*the period of good behaviour*) and information is laid before a magistrate, whether before or after the end of the period of good behaviour, alleging that the person has, during the period of good behaviour—
- (a) failed to be of good behaviour; or
  - (b) failed to comply with a condition specified in the order in accordance with subsection (1) (d);
- the magistrate may issue a summons directing the person to appear before the court by which the person was discharged at a time specified in the summons and show cause why the person should not be dealt with by that court under this section, or, if the information is laid on oath, may issue a warrant for the arrest of the person and for the person to be brought before that court to be dealt with under this section.
- (3) If a person who has been discharged by an order made under subsection (1) appears before the court by which the person was discharged on summons or warrant issued under subsection (2), the court may, if it is satisfied that the person has, during the period of good behaviour—
- (a) failed to be of good behaviour; or



- (b) failed to comply with a condition specified in that order in accordance with subsection (1) (d);

impose on the person any penalty that the court would, if the person had then and there been convicted of the offence with which he or she was originally charged, be empowered to impose or make any order (including an order under subsection (1) or an order under section 403 (1)) that the court would, if he or she had then and there been convicted of the offence of which he or she was originally charged, be empowered to make.

- (4) If a recognisance that was entered into in accordance with an order made under subsection (1) is varied under section 405, a corresponding variation shall be deemed to have been made in the terms of that order, and subsections (3) and (4) apply to and in relation to that order—
- (a) if the period specified in the order in accordance with subsection (1) (c) is to be deemed to have been varied—as if references in subsections (3) and (4) to that period were read as references to that period as it is to be deemed to have been varied; and
- (b) if the conditions specified in the order in accordance with subsection (1) (d) are to be deemed to have been varied (whether by the alteration of such a condition or the addition of a further condition)—as if references in subsections (3) and (4) to a condition so specified were read as references to a condition included in those conditions as they are to be deemed to have been varied.
- (5) If a person is dealt with under subsection (3) the court may, in addition to imposing a penalty on the person or making an order against the person, order that any recognisance given by him or her or by a surety for him or her shall be estreated and that any other security given by or in respect of him or her shall be enforced.

**403 Conditional release of offenders**

- (1) Subject to this section, if a person is convicted of an offence against a Territory law, the court by which he or she is convicted may, if it thinks fit, by order—
- (a) release the person without passing sentence upon him or her on his or her giving security, with or without sureties, by recognisance or otherwise, to the satisfaction of the court that—
    - (i) he or she will be of good behaviour for the period the court specifies in the order; and
    - (ii) he or she will, during the period so specified, comply with the conditions (if any) that the court thinks fit to specify in the order, which conditions may include—
      - (A) the condition that the offender will, during the period so specified, be subject to the supervision on probation under a person, for the time being appointed in accordance with the order; and
      - (B) the condition that the offender will obey all reasonable directions of a person so appointed; and
      - (C) the condition that the offender will comply with an order made under section 350; and
    - (iii) he or she will pay to the Territory the penalty (if any) that the court specifies in the order on or before a date specified in the order or by specified instalments as provided in the order; or
  - (b) sentence the person to a term of imprisonment but direct that the person be released, on him or her giving a like security to that referred to in paragraph (a), either forthwith or after he or she has served a specified part of the sentence imposed on him or her.

- (2) A court shall not release a person under subsection (1) on condition that the person perform unpaid community work.
- (3) If a person is convicted of an offence in respect of which a fine might be imposed on the person instead of imprisonment, subsection (1) does not authorise the court by which he or she is convicted, when directing that the person be released as provided in subsection (1) (a), to require the person to give security for the payment of a penalty exceeding the maximum amount of the fine that might be so imposed.
- (4) Subsection (1) does not authorise the Magistrates Court, when directing that a person be released as provided in subsection (1) (a), to require the person to give security for the payment of a penalty if the offence of which the person has been convicted is an offence in respect of which the court is empowered to sentence the person to imprisonment but the maximum term of imprisonment to which the court may sentence the person is less than 6 months.
- (5) If a court releases a person under subsection (1) (a) on his or her giving security for the payment of a penalty, the provisions of the *Fines and Penalties Act 1901*, section 4 do not apply to or in relation to the penalty so required to be paid.
- (6) If a court makes an order for the release of a person on his or her giving security for the payment of a penalty, the court shall specify in the order the person to whom and the place where the penalty, or each instalment of the penalty, as the case may be, is to be paid.
- (7) The maximum amount of the penalty that a court may specify in respect of an offence in an order made under subsection (1) in relation to a person is—
  - (a) if the offence is punishable by a fine—the amount of the maximum fine that the court is empowered to impose on the person for the offence; or
  - (b) if the offence is not punishable by a fine—

- (i) for the Supreme Court—\$10 000; or
- (ii) for the Magistrates Court—\$2 000.

#### **404 Failure to comply with condition of recognisance or release**

- (1) If a person has been released under an order made under section 403 on the condition that he or she will be of good behaviour for a period specified in the order in accordance with section 403 (1) (a) (i) (*the period of good behaviour*) and information is laid before a magistrate, whether before or after the end of the period of good behaviour, alleging that—
  - (a) the person has failed during the period of good behaviour to comply with a condition specified in the order in accordance with section 403 (1) (a) (ii); or
  - (b) the person has failed to pay, as provided in the order, the penalty or an instalment of the penalty for the payment of which he or she has given security; or
  - (c) the person has been convicted, whether within or outside the ACT, of an offence committed during the period of good behaviour;

the magistrate may issue a summons directing the person to appear before the court by which he or she was so released at a time specified in the summons and show cause why he or she should not be dealt with by that court under this section or, if the information is laid on oath, may issue a warrant for the arrest of the person and for his or her being brought before the court by which he or she was so released to be dealt with under this section.

- (2) The *Magistrates Court Act 1930*, sections 28 and 29 apply to and in relation to a summons or information under subsection (1).
- (3) If a person is arrested under a warrant under subsection (1) that requires him or her to be brought before the Supreme Court and the

Supreme Court is not sitting at the time of his or her arrest, the person shall be brought before a magistrate who may admit the person to bail in accordance with the provisions of the *Bail Act 1992* or direct that he or she be kept in the custody that the magistrate directs until he or she can be brought before the Supreme Court to be dealt with under this section.

- (4) If a person who has been released under an order made under section 403 appears before the court on summons or warrant issued under subsection (1) or as a result of having been committed to be dealt with by the court under subsection (3), the court, if it is satisfied that—
- (a) the person has failed during the period of good behaviour to comply with a condition specified in the order in accordance with section 403 (1) (a) (ii); or
  - (b) the person has failed to pay, as provided in the order, the penalty or an instalment of the penalty for the payment of which he or she has given security; or
  - (c) the person has been convicted, whether within or outside the ACT, of an offence committed during the period of good behaviour;
- may—
- (d) if the person was released without sentence having been passed on him or her—impose on the person any penalty that the court would, if the person had then and there been convicted of the offence with which he or she was originally charged, be empowered to impose or make any order (including an order under section 403 (1)) that the court would, if he or she had then and there been convicted of the offence of which he or she was originally charged, be empowered to make; or
  - (e) if the person having been sentenced, was released forthwith or after he or she had served a specified part of the sentence imposed on him or her—commit the person to prison to

undergo imprisonment for the term, being a term not exceeding the sentence or the balance of that sentence, as the case requires, or make any order (including an order under section 403 (1)) that the court would, if he or she had then and there been sentenced for the offence of which he or she was originally charged, be empowered to make.

- (5) If the court commits to prison a person who had served part of his or her sentence, the order for his or her release from prison shall, if the period of good behaviour has not elapsed, be deemed to have been revoked.
- (6) If a person who has been released under section 403 (1) is convicted by the Supreme Court of an offence committed during the period of good behaviour, the Supreme Court may, on convicting the person and in addition to dealing with the person for the offence of which he or she is convicted, deal with the person in the same way as it or the Magistrates Court, as the case may be, could deal with the person if he or she were before whichever of those courts is the appropriate court under a summons or warrant issued under subsection (1).
- (7) If a person who has been released under section 403 (1) is convicted by the Magistrates Court of an offence committed during the period of good behaviour, the Magistrates Court may, on convicting the person and in addition to dealing with the person for the offence of which he or she is convicted—
  - (a) if the person had been so released by an order of the Supreme Court—commit him or her to be dealt with by the Supreme Court under this section and then deal with him or her in the same way as a magistrate may deal with a person brought before him or her under subsection (3); or
  - (b) if the person had been so released by order of the Magistrates Court—deal with the person in the same way as it could deal with the person if he or she were before the Magistrates Court under a summons or warrant issued under subsection (1).

- (8) If a person is dealt with by the court under this section, the court may, in addition to the imposition of a penalty or to so dealing with him or her, but subject to subsection (9), order that any recognisance given by him or her or by a surety for him or her shall be estreated and that any other security given by or in respect of him or her shall be enforced.
- (9) If a person who has been released under section 403 (1) on giving security for the payment of a penalty is dealt with by the court under this section, the person and any surety—
- (a) ceases to be liable to pay any part of the penalty that remains unpaid; and
  - (b) is not entitled to recover any part of the penalty that has already been paid.
- (10) If a recognisance that was entered into in accordance with an order made under section 403 (1) is varied under section 405, a corresponding variation shall be deemed to have been made in the terms of that order, and subsections (1) to (9) apply to and in relation to that order—
- (a) if the period specified in the order in accordance with section 403 (1) (a) (i) is to be deemed to have been varied—as if references in those subsections to that period were read as references to that period as it is to be deemed to have been varied; and
  - (b) if the conditions specified in the order in accordance with section 403 (1) (a) (ii) are to be deemed to have been varied (whether by the alteration of such a condition or the addition of a further condition)—as if references in subsections (1) to (9) to a condition so specified were read as references to a condition included in those conditions as they are to be deemed to have been varied; and
  - (c) if the provisions of the order with respect to the amount of the penalty, or the way in which the penalty or the instalments of

the penalty are to be paid have been varied or the amount of each instalment of the penalty has been varied—as if references in subsections (1) to (9) to failure to pay, as provided in the order, the penalty or an instalment of the penalty were read as references to failure to pay, as provided in the order as it is to be deemed to have been varied, the penalty or an instalment of the penalty.

#### **405 Power to discharge or vary conditions of recognisance**

- (1) If a person has given a recognisance under section 402 or 403, the court before which the person is bound by his or her recognisance may—
  - (a) on application by an authorised person, the person who has given the recognisance or his or her surety; and
  - (b) on being satisfied that the conduct of the person bound by the recognisance has been such as to make it unnecessary that he or she should remain bound by the recognisance;

discharge the recognisance and any surety given in respect of the recognisance.

- (2) If a person has given a recognisance under section 402 or 403, an authorised person, the person who has given the recognisance or his or her surety may apply to the court before which the person is bound by the recognisance for a variation of the terms of the recognisance including a reduction of the amount of penalty that is to be paid by the person who has given the recognisance or a variation of the way in which the penalty or the instalments of penalty are to be paid by that person.
- (3) On application being made to a court under subsection (2), the court may, if satisfied that notice as required by subsection (5) or (6) has been given and after hearing the applicant and any person to whom notice has been so given, vary, if it thinks fit to do so, the terms of



the recognisance in all or any of the following ways, that is to say, by:

- (a) extending or reducing the duration of the recognisance;
  - (b) altering the conditions of the recognisance;
  - (c) inserting additional conditions in the recognisance;
  - (d) reducing the amount of the penalty that is to be paid by the person;
  - (e) altering the way in which the penalty or the instalments of penalty are to be paid.
- (4) A court shall not extend the duration of a recognisance given by a person under section 402 beyond the period of 3 years from the date of the order under that section discharging the person.
- (5) If an application is made under subsection (1) or (2) by an authorised person, the authorised person shall cause notice of the application and of the time and place fixed for the hearing of the application to be served on the person who has given the recognisance and, if that person has a surety in respect of the recognisance, on the surety.
- (6) If an application is made under subsection (1) or (2) by a person who has given a recognisance or by his or her surety, the person making the application shall cause notice of the application, and of the time and place fixed for the hearing of the application, to be served on the director of public prosecutions or on a person authorised by the director of public prosecutions, and—
- (a) if the application is made by a surety—on the person who has given the recognisance; or
  - (b) if the application is made by the person who has given the recognisance and that person has a surety—on his or her surety.

- (7) If notice of an application is served on a surety under subsection (5) or (6), the surety may appear on the hearing or further hearing of the application and show cause before the court why he or she should not continue to be bound by the terms of the recognisance.
- (8) If a court varies the terms of a recognisance, a person who is a surety in respect of the recognisance continues to be bound by the recognisance as so varied except that—
- (a) if the recognisance is varied by extending its duration—he or she is not bound after the end of the period for which he or she had agreed to be bound when he or she entered into the recognisance; and
  - (b) if the recognisance is varied by altering a condition—he or she is not bound by that condition as altered; and
  - (c) if the recognisance is altered by the addition of a condition—he or she is not bound by the additional condition;
- unless he or she agrees to be bound by the recognisance as so varied.
- (9) If the court varies a recognisance by altering a condition of the recognisance, the court shall direct the extent (if any) to which a surety in respect of the recognisance is to continue to be bound by the condition as it existed before the alteration and the condition as it so existed shall be deemed, after the variation of the recognisance, to bind the surety to that extent but not otherwise.
- (10) In this section:
- (a) **authorised person** means the Attorney-General or a person appointed under the *Supreme Court Act 1933*, section 68 (1) to prosecute indictable offences triable before the Supreme Court; and
  - (b) references to a variation of the way in which the instalments of penalty are to be paid by a person include references to a variation of the amount of any instalments of the penalty.

**406 Recovery of amounts if recognisances estreated**

- (1) If the Supreme Court has, under section 404 (8), made an order that a recognisance given by a person or by a surety for him or her be estreated, the order shall, on being filed by the registrar of that court, be deemed to have the same effect as if the order were a judgment by the Supreme Court in favour of the Territory against the person who has given the security or his or her surety for the amount for which the person or the surety was bound, and the like proceedings may be taken for the enforcement of the order as if it were such a judgment.
- (2) If the Magistrates Court has under section 402 (5) or 404 (8), made an order that a recognisance given by a person or by a surety for him or her be estreated, the order shall, on being filed by the registrar of the Magistrates Court, be deemed to have the same effect as if it were a judgment entered by the registrar of the Magistrates Court on a claim by the Territory for recovery of the amount for which the person who has given the recognisance or the surety was bound, and the like proceedings may be taken for the enforcement of the order as if it were a judgment entered on such a claim.

## Part 19 Community service orders

### 407 Definitions for pt 19

In this part:

**community corrections officer** means a community corrections officer under the *Supervision of Offenders (Community Service Orders) Act 1985*.

**community service order** means an order made by a court under section 408.

**offender** means a person in respect of whom a community service order is in force.

**officer of the court** means—

- (a) in relation to a community service order made by the Supreme Court—the registrar of the Supreme Court; and
- (b) in relation to a community service order made by the Magistrates Court—the registrar of the Magistrates Court.

**supervisor** means a supervisor under the *Supervision of Offenders (Community Service Orders) Act 1985*.

### 408 Directions to perform work

- (1) If a person who has attained the age of 18 years is convicted of an offence against a Territory law punishable by imprisonment, the court may, if it thinks fit, instead of sentencing the person to imprisonment, by order—
  - (a) direct him or her to perform unpaid work for the number of hours, being a number that is a multiple of 8, not less than 24 and not more than 208, that the court specifies; and

- (b) require him or her to report to a community corrections officer within the time (if any) the court specifies; and
  - (c) direct that he or she be released from custody forthwith.
- (2) Nothing in subsection (1) affects the power of a court—
- (a) to order an offender to make restitution of property; or
  - (b) to direct an offender to pay compensation to an aggrieved person; or
  - (c) to make an order for costs against an offender; or
  - (d) disqualify the person from holding or obtaining a driver licence under the *Road Transport (Driver Licensing) Act 1999* for the period the court considers appropriate; or
  - (e) to order the forfeiture of any property; or
  - (f) to impose a fine on an offender; or
  - (g) to make an order in respect of an offender under section 403 (1) (a).

*Note* The effect of disqualification (mentioned in par (d)) is set out in the *Road Transport (General) Act 1999*, s 66.

- (3) If the court makes an order mentioned in subsection (2) (d), the court must give particulars of the order to the road transport authority.
- (4) If a community service order has been made, the officer of the court shall—
- (a) cause the order to be reduced to writing; and
  - (b) cause a copy of the order to be given to the offender and another copy to be given to a community corrections officer.

*Note* If a form is approved under s 443 (Approved forms) for an order, the form must be used.

- (5) If a court—
- (a) makes more than 1 community service order in respect of the same offender; or
  - (b) makes a community service order while another community service order is in force in respect of the relevant offender;
- the court may direct that the hours specified in the last-made order be worked concurrently with or in addition to any hours to be worked under any other community service order in force in respect of the offender.
- (6) The number of hours for which an offender in respect of whom 2 or more community service orders are in force may, after the date when the later or last of those orders was made, be required to perform unpaid work under those orders shall not exceed, in the aggregate, 208.

**409 Circumstances in which a community service order may be made**

- (1) A court shall not make a community service order in respect of a person unless—
- (a) the person consents; and
  - (b) the person submits himself or herself to a medical examination by a duly qualified medical practitioner, if so required by the court; and
  - (c) the court is satisfied that—
    - (i) the person is a suitable person to perform work under such an order; and
    - (ii) work of a suitable nature will be provided for the person.
- (2) Before making a community service order, the court shall explain to the person in respect of whom the order is to be made—

- (a) the effect that the proposed order would have; and
  - (b) the consequences of noncompliance with the order and of the commission of an offence against section 410 (1); and
  - (c) that the court has the power to review the order on the application of a community corrections officer or of the offender.
- (3) For subsection (1) (c), the court may have regard to—
- (a) the report of a community corrections officer; and
  - (b) if a person has submitted to a medical examination by a duly qualified medical practitioner as required by the court—the report of that medical practitioner in respect of that examination.

#### **410 Obligations of offender and consequences of failure to comply**

- (1) An offender who, without reasonable excuse, refuses or fails to—
- (a) comply with a community service order; or
  - (b) inform a community corrections officer of any change in his or her address; or
  - (c) comply with the directions of a community corrections officer with regard to the performance of work under a community service order; or
  - (d) perform work under a community service order in a satisfactory manner; or
  - (e) comply with any reasonable request of a supervisor while performing work under a community service order;
- is guilty of an offence and shall be dealt with in accordance with this section.

- (2) If it appears to a community corrections officer that an offender has committed an offence against subsection (1), the officer may lay an information before a magistrate in respect of that offence.
- (3) If an information has been laid before a magistrate under subsection (2), the magistrate may cause a summons to be issued requiring the offender to appear, at a time and place to be fixed, before the court that made the community service order to answer to the information and to be further dealt with according to law.
- (4) If the offender fails to appear before a court in answer to a summons issued in accordance with subsection (3), the court shall adjourn the proceedings and may issue a warrant for the apprehension of the offender and for the offender to be brought before that court.
- (5) Subject to subsection (6), if an offender appears or is brought before a court under this section and the court is satisfied that the offender has committed an offence against subsection (1), the court may make 1 or more of the following orders:
  - (a) an order extending the period during which the relevant community service order is to remain in force;
  - (b) an order varying the relevant community service order by increasing the number of hours for which the offender is required to perform unpaid work under the community service order;
  - (c) an order requiring the offender to perform work under the relevant community service order other than the work he or she has been performing;
  - (d) an order revoking the relevant community service order;
  - (e) an order that the offender pay a penalty not exceeding \$1 000.
- (6) If—
  - (a) an offender appears or is brought before a court under this section; and



- (b) the court is satisfied that the offender has committed an offence against subsection (1) but is of the opinion that an order should not be made under subsection (5);

the court may decline to make such an order and may instead admonish the offender in respect of that offence.

- (7) If under subsection (5) a court revokes a community service order that was made in respect of a person under section 408 (1), the court may make any other order in respect of that person that it thinks fit, being an order that the court would, if the person were then before the court for sentence for the offence in respect of which the community service order was made, be empowered to make, and in making such an order the court shall have regard to—

- (a) any work performed by that person under the community service order; and
- (b) any fine imposed on the person in respect of that offence; and
- (c) any other order made in respect of the person in relation to that offence.

- (8) A community service order shall not be varied under subsection (5) (b) so that the relevant offender would be required to perform, after the time when the variation took effect, unpaid work under the order for a total period exceeding 208 hours.

#### **411 Community service order to cease to have effect after 12 months except if period extended**

- (1) Subject to subsection (2) and section 410 (5), a community service order, unless earlier discharged, shall cease to have effect on the end of the period of 12 months commencing on the date when the order was made.
- (2) On the application of a community corrections officer, a court that made a community service order may extend the period during which the order is to have effect if, having regard to circumstances

that have arisen since the order was made, it appears to the court to be in the interests of justice to do so.

- (3) If an application is made to a court under subsection (2) by a community corrections officer, the court shall issue a summons to the relevant offender to appear before it on the hearing of the application and, if he or she does not appear in answer to the summons, shall adjourn the hearing of the application and may issue a warrant for the apprehension of the offender and for the offender to be brought before the court.

#### **412 Revocation and variation of community service order and variation of nature of work**

- (1) On the application of an offender or a community corrections officer, the court that made the relevant community service order may—
  - (a) revoke the order; or
  - (b) vary the order by substituting a lesser number of hours for that specified in the order;

if, having regard to circumstances that have arisen since the order was made, it appears to the court to be in the interests of justice to do so.

- (2) If, under subsection (1), a court revokes a community service order that was made in respect of a person under section 408 (1), the court may make any other order in respect of that person that it thinks fit, being an order that the court would, if the offender were then before the court for sentence for the offence in respect of which the community service order was made, be empowered to make, and in making such an order the court shall have regard to any work performed by that person under the community service order.
- (3) On the application of an offender, the court that made the relevant community service order may direct a community corrections

officer to arrange for the offender to do work other than the work he or she has been doing under the community service order.

- (4) If an application is made to a court under subsection (1) by a community corrections officer, the court shall issue a summons to the offender to appear before it on the hearing of the application and, if he or she does not appear in answer to the summons, the court shall adjourn the hearing of the application and may issue a warrant for the apprehension of the offender and for the offender to be brought before the court.
- (5) If an application is made to a court under this section by an offender, the officer of the court shall cause notice of the application and of the time and place fixed for the hearing of the application to be served on a community corrections officer.

#### **413 Power of court if offender convicted of further offence**

- (1) If, after a community service order has been made, the relevant offender—
  - (a) is convicted by the Supreme Court of an offence; or
  - (b) is committed to the Supreme Court under subsection (3) (b);the Supreme Court may deal with him or her in relation to the community service order in the same way as it or the Magistrates Court, as the case may be, could deal with him or her under section 410 if he or she had committed an offence under section 410 (1).
- (2) The powers of the Supreme Court under subsection (1) with respect to a person who has been convicted by that court of an offence are in addition to its powers to deal with him or her in relation to that offence.
- (3) If, after a community service order has been made, the relevant offender is convicted by the Magistrates Court of an offence, then,

in addition to dealing with the offender in relation to that offence, the court—

- (a) may, if the community service order was made by that court, deal with the offender in the same way as it could deal with him or her under section 410 if he or she had committed an offence against section 410 (1) in relation to the community service order; or
  - (b) shall, if the community service order was made by the Supreme Court, commit the offender to the Supreme Court to be dealt with in accordance with subsection (1).
- (4) If, under subsection (3) (b), the Magistrates Court commits an offender to the Supreme Court, the Magistrates Court may admit him or her to bail in accordance with the provisions of the *Bail Act 1992* or direct that he or she be kept in the custody that the Magistrates Court directs until he or she can be brought before the Supreme Court.
- (5) If a court deals with a person under this section, the court shall have regard to any work performed by that person under the relevant community service order.

#### **414 Apprehension of offender about to leave ACT**

- (1) If a magistrate is satisfied by information on oath that there are reasonable grounds for believing that an offender is about to leave the ACT with the intention of avoiding any of the requirements of a community service order, of this part or of the *Supervision of Offenders (Community Service Orders) Act 1985*, the magistrate may issue a warrant for the apprehension of the offender and for the offender to be brought before the Magistrates Court.
- (2) A warrant under subsection (1) shall—
  - (a) be in writing signed by the magistrate issuing it; and

- (b) be directed to all police officers or to a named police officer; and
  - (c) state shortly the matters of the information on which it is founded.
- (3) A warrant under subsection (1) may be issued on a Sunday as on any other day.
- (4) A person who has been apprehended under a warrant issued under this section shall be brought before the Magistrates Court as soon as practicable after he or she is taken into custody.

#### **415 Power of court in relation to offender about to leave ACT**

- (1) If the Magistrates Court is satisfied that an offender brought before it under section 414 is about to leave the ACT with the intention of avoiding any of the requirements of the relevant community service order, of this part or the *Supervision of Offenders (Community Service Orders) Act 1985*, the court—
- (a) may, if the community service order was made by that court, deal with the offender in the same way as it could deal with him or her under section 410 if he or she had committed an offence against section 410 (1) in relation to the community service order; or
  - (b) shall, if the community service order was made by the Supreme Court, remand him or her in custody to be brought before the Supreme Court.
- (2) If an offender has been brought before the Supreme Court under subsection (1) (b), the court may deal with the offender in the same way as it could deal with him or her under section 410 if he or she had committed an offence against section 410 (1) in relation to the relevant community service order.

**416 Service of documents**

A document that is required or permitted under this Act to be served on or given to a person may be served or given—

- (a) by delivering a copy of the document to the person; or
- (b) by leaving a copy of the document at the last-known place of residence or business of the person with a person apparently resident or employed at that place and apparently over the age of 16 years.

**417 Power of court if offender apprehended under pt 19**

- (1) If an offender is apprehended and brought before a court in accordance with this part, otherwise than in accordance with section 403, the court has the same power to remand the offender in custody, admit the offender to bail or order the discharge of the offender on recognisance as it has in respect of a defendant.
- (2) If an offender fails to comply with the condition of a recognisance entered into for this part, the court has the same powers as it would have if at the time the offender entered into the recognisance he or she had been a defendant.

**418 Power of court in certain circumstances on revoking community service order**

If—

- (a) a court, under section 410 (5) or 412 (1), revokes a community service order that was made in respect of a person under section 408 (1); and
- (b) the court proposes to make an order in respect of that person under section 410 (7) or 412 (2);

then, pending the making of that order, the court has the same powers in relation to that person as it would have if, at the time of

revocation of the community service order, it had made a finding of guilt against him or her of an offence.

#### **419 Discharge of community service order**

For this Act and the *Supervision of Offenders (Community Service Orders) Act 1985*, an offender shall be taken to have discharged a community service order if he or she has worked or is, under that Act, to be taken to have worked, under the order for the number of hours specified in the order.

#### **420 Jurisdiction of Supreme Court**

Jurisdiction is vested in the Supreme Court to hear and determine matters under this part relating to a community service order made by that court.

## Part 20                      Inquiries into convictions

### Division 20.1              Preliminary

#### 421    Definitions for pt 20

In this part:

*Full Court* means the Supreme Court constituted by a Full Court.

*inquiry* means an inquiry under this part into a person's conviction for an offence (whether summarily or on indictment).

*registrar* means the registrar of the Supreme Court.

*relevant proceeding*, in relation to an offence, means a prosecution or other proceeding in relation to the offence, including an appeal in relation to the finding of a court in relation to the offence.

### Division 20.2              How to start inquiry

#### 422    Grounds for ordering inquiry

- (1) An inquiry may be ordered under this part into the conviction of a person for an offence only if—
  - (a) there is a doubt or question about whether the person is guilty of the offence; and
  - (b) the doubt or question relates to—
    - (i) any evidence admitted in a relevant proceeding; or
    - (ii) any material fact that was not admitted in evidence in a relevant proceeding; and
  - (c) the doubt or question could not have been properly addressed in a relevant proceeding; and



- (d) there is a significant risk that the conviction is unsafe because of the doubt or question; and
- (e) the doubt or question cannot now be properly addressed in an appeal against the conviction; and
- (f) if an application is made to the Supreme Court for an inquiry in relation to the conviction—an application has not previously been made to the court for an inquiry in relation to the doubt or question; and
- (g) it is in the interests of justice for the doubt or question to be considered at an inquiry.

**Example for par (a) to (e)**

John has been convicted of murder. Expert evidence that blood found on John's jacket shortly after the murder was almost certain to be the victim's blood was the main evidence connecting John with the murder.

Later DNA testing, by a method developed after all proceedings in relation to the conviction had been finalised (and the time for making any appeal had lapsed), shows that the blood is almost certainly *not* the victim's blood. This gives rise to a doubt or question about the blood evidence that could not have been (and cannot now be) properly addressed in any relevant proceeding in relation to the murder, and a significant risk that the conviction is unsafe.

- (2) The inquiry is limited to matters stated in the order for the inquiry.
- (3) If the inquiry is ordered by the Supreme Court, the court may set limits on the inquiry under subsection (2) despite anything in the application for the inquiry.

#### **423 Executive order for inquiry**

The Executive may order an inquiry on its own initiative.

#### **424 Supreme Court order for inquiry**

- (1) The Supreme Court may order an inquiry on application by the convicted person, or by someone else on the convicted person's behalf.

- (2) The registrar must give a copy of an application for an inquiry to the Attorney-General.
- (3) The Supreme Court may consider a written submission by the Attorney-General or the director of public prosecutions (or both) in relation to the application.
- (4) Proceedings on an application are not judicial proceedings.
- (5) If the Supreme Court orders an inquiry, the registrar must give a copy of the order to the Attorney-General.

#### **425 Rights and duties in relation to orders for inquiry**

- (1) This division does not create a right to the order of an inquiry, and does not create a duty to order an inquiry.
- (2) Without limiting subsection (1), there is no right of appeal in relation to a decision whether to order an inquiry.

### **Division 20.3                      Inquiry procedure**

#### **426 Application of Inquiries Act**

The *Inquiries Act 1991* applies to an inquiry, subject to this division.

#### **427 Appointment of board of inquiry**

- (1) If an inquiry is ordered, the Executive must appoint a board of inquiry under the *Inquiries Act 1991*.
- (2) The inquiry must be stated in the appointment to be in relation to the matter stated in the order, and in relation to no other matter.
- (3) The board of inquiry must be constituted by a judge of the Supreme Court or a magistrate.
- (4) A judge or magistrate who has been involved in any way (whether as judge or magistrate, or in another capacity) in a relevant proceeding in relation to the offence, or in any investigation in

relation to the acts or omissions alleged to constitute the offence, must not be appointed to constitute the board of inquiry.

#### **428 Report by board**

- (1) After finishing an inquiry, the board must give a copy of a written report of the inquiry to the registrar.
- (2) Together with the report, the board must give to the registrar, for safe-keeping, any documents or things held by the board for the purpose of the inquiry.
- (3) Even if the board does not comply with subsection (2), the Supreme Court may exercise its powers under division 20.4 in relation to the report.
- (4) The *Inquiries Act 1991*, sections 14 (Reports of boards) and 14A (Tabling of reports) do not apply to the inquiry.

### **Division 20.4 Supreme Court orders following inquiry report**

#### **429 Publication of report**

- (1) The registrar must give a copy of the report of a board of inquiry appointed under division 20.3 to the Attorney-General and the convicted person, together with a copy of any order under this section.
- (2) The Supreme Court may make an order that the report, or particular parts of the report—
  - (a) must not be disclosed to anyone else by—
    - (i) the Territory; or
    - (ii) the convicted person (except to obtain legal advice or representation); or
    - (iii) someone else who obtains a copy of the report; or

- (b) may be disclosed only to particular people or on stated conditions (for example, a condition requiring the consent of the court).
- (3) The Supreme Court may make an order under this section only if it considers that it is in the interests of justice, having regard to the public interest and the interests of the convicted person.
- (4) An order under this section may be enforced in the same way as any other order of the Supreme Court.

#### **430 Action on report by Supreme Court**

- (1) The Full Court must consider the report of a board into an inquiry.
- (2) Having regard to the report, the Full Court must, by order—
  - (a) confirm the conviction; or
  - (b) confirm the conviction and recommend that the Executive pardon the convicted person or remit the convicted person's sentence under section 433 (Grant of pardon) or section 434 (Remission of penalties); or
  - (c) quash the conviction; or
  - (d) quash the conviction and order a new trial.
- (3) The registrar must give a copy of the order, together with any reasons given for the order, to the Attorney-General and the convicted person.
- (4) This section does not give the convicted person a right to an order of the Full Court mentioned in subsection (2) (b) or (d), or to an Executive pardon or remission.

#### **431 Nature of Supreme Court proceedings**

- (1) In considering whether to make an order under this part about a report, the Supreme Court—

- (a) may have regard only to matters stated in the report, or to documents or things given to the registrar with the report; and
  - (b) must not hear submissions from anyone.
- (2) The consideration of whether to make an order under this part is not a judicial proceeding.

## **Division 20.5          Application to earlier convictions**

### **432    Inquiries about earlier convictions**

This part applies in relation to a conviction for an offence even if the conviction happened before the commencement of this part.

## Part 21 Grant of pardon and remission of penalties

### 433 Grant of pardon

- (1) The Executive may, in writing, grant to a person a pardon in respect of an offence of which that person has been convicted.
- (2) A pardon granted to a person under subsection (1) in respect of an offence discharges the person from any further consequences of the conviction for that offence.

### 434 Remission of penalties

The Executive may, in writing, remit, in whole or in part, a sentence of imprisonment imposed on, a fine or other monetary penalty ordered to be paid by, or a forfeiture of property ordered to be forfeited by, a person on conviction for an offence against a Territory law.

## Part 22                      Miscellaneous

### **434A Application of certain sections of Commonwealth Crimes Act to Territory laws**

The provisions of the *Crimes Act 1914* (Cwlth), sections 13, 15, 17, 19A, 21B and 21C, so far as they are applicable, apply in relation to all Territory laws as if a Territory law were a law of the Commonwealth.

### **434B Joinder of charges**

- (1) Charges against the same person for any number of offences against the same provision of a Territory law may be joined in the same information or summons if the charges are founded on the same facts or form, or are part of, a series of offences of the same or a similar character.
- (2) If a person is convicted of 2 or more offences mentioned in subsection (1), and the offences relate to doing or failing to do the same act, the court may impose 1 penalty in relation to both or all the offences, but the penalty must not exceed the total of the maximum penalties that could be imposed if a separate penalty were imposed in relation to each offence.

### **435 Protection of persons acting under Act**

- (1) All actions against any person, for anything done, or reasonably supposed to have been done under this Act, shall be commenced within 6 months after the fact committed, and written notice of any such action, and of the cause of it, shall be given to the defendant 1 month at least before commencement of the action, and in any such action the defendant may plead the general issue, and give the special matter in evidence.

- (2) No plaintiff shall recover in any such action, if a tender of sufficient amends was made before action brought, or if a sufficient sum is paid into court, on behalf of the defendant, after action brought.
- (3) If a verdict passes for the defendant, or the plaintiff becomes nonsuit, or discontinues his or her action after issue joined, or if on demurrer, or otherwise, judgment is given against the plaintiff, the defendant shall recover costs as between solicitor and client.

#### **436 No court fees to be taken in criminal cases**

It shall not be lawful to receive any court fees, for the issuing of process on behalf of a person charged with an offence nor to receive a fee from any such person in relation to bail or for issuing any writ, or recording any appearance, or plea to an indictment, or discharging any recognisance.

#### **437 Power of courts to bring prisoners before them**

- (1) Every court or judge, for any trial or prosecution, shall have power, by written order directed to any gaoler, to cause any prisoner to be brought before the court or judge, under secure conduct, to be tried, or examined, or to give evidence, before the court or judge, or before any other court, or any magistrate, and immediately after the prisoner's trial, or examination, or his or her having so given evidence, to be returned to his or her former custody.
- (2) Nothing in this section shall affect the power of a court of gaol delivery, sitting for the delivery of a gaol, to cause any prisoner to be brought before it for any purpose, without order in writing.

#### **438 Witnesses neglecting to attend trial and captured under warrant may be admitted to bail**

If a person bound by recognisance, or served with a subpoena, to attend as a witness in any court at a trial, who has failed to appear when called in open court, either at the trial, or on the day appointed for the trial, has been captured under a warrant issued by the court,



bail may be taken before any magistrate for his or her appearance at the trial.

#### **439 Supreme Court judges may prescribe forms of indictments etc**

- (1) The judges of the Supreme Court, or any 2 of them, may from time to time frame and prescribe forms of indictments, records, informations, depositions, convictions, warrants, recognisances, and proceedings, in all courts, and before all magistrates, in respect of any of the offences and matters mentioned in this Act, and every such form, so prescribed, shall be sufficient for the purpose, and be deemed sufficiently to state the offence, or matter, for or in respect of which it is framed.
- (2) A form prescribed under this section is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

#### **440 Prosecutions for blasphemy**

No person shall be liable to prosecution in respect of any publication by him or her, orally or otherwise, of words or matter charged as blasphemous, if the publication is by way of argument, or statement, and not for the purpose of scoffing or reviling, nor of violating public decency, nor in any way tending to a breach of the peace.

#### **441 Offence notices**

- (1) If a police officer—
  - (a) is satisfied as to the identity of a person who has attained the age of 18 years; and
  - (b) reasonably believes that the person has committed a prescribed offence;

he or she may serve an offence notice on the person.

- (2) An offence notice shall—

- (a) specify the nature of the alleged prescribed offence; and
  - (b) specify the date and time when, and the place where, the prescribed offence is alleged to have been committed; and
  - (c) contain a statement to the effect that, if the alleged offender pays the prescribed penalty within 60 days after the date of service of the notice, no further action will be taken in respect of that offence; and
  - (d) specify the place where and the way in which the prescribed penalty may be paid; and
  - (e) contain the other particulars (if any) that are prescribed.
- (3) If the prescribed penalty is paid in accordance with the offence notice—
- (a) any liability of the person in respect of the alleged prescribed offence shall be deemed to be discharged; and
  - (b) no further proceedings shall be taken in respect of the alleged offence; and
  - (c) the person shall not be regarded as having been convicted of the alleged offence.
- (4) Any substance, equipment or object seized under any Act in connection with the alleged offence that would have been liable to forfeiture in the event of a conviction shall, on payment of the prescribed penalty in accordance with the offence notice, be forfeited to the Territory.
- (5) Subject to subsection (3), nothing in this section shall be construed as affecting the institution or prosecution of proceedings for a prescribed offence.
- (6) Notwithstanding subsection (3) (b) and (c), if—
- (a) a person pays the prescribed penalty in accordance with an offence notice; and

- (b) a conviction for the relevant prescribed offence would constitute a breach of conditions of—
- (i) bail; or
  - (ii) a recognisance to be of good behaviour; or
  - (iii) parole;

the person shall be dealt with as if he or she had breached the relevant conditions.

- (7) The commissioner of police may extend, by the period the commissioner thinks fit, the period of 60 days referred to in subsection (2) (c) on receipt, before the end of that period, of a written request to do so from a person who has been served with an offence notice.
- (8) If a person who has been served with an offence notice fails to pay the prescribed penalty—
- (a) within 60 days after the date of service of the notice; or
  - (b) if an extension of time has been granted under subsection (7), within that period;

the commissioner of police shall cause an information, in writing and on oath, to be laid before a magistrate commencing proceedings against the person in respect of the offence to which the offence notice relates.

- (9) If an information is laid before a magistrate in accordance with subsection (8), the magistrate shall issue his or her warrant in the first instance for the arrest of the person in accordance with the *Magistrates Court Act 1930*, section 42 (1).
- (10) In this section:

***prescribed offence*** means an offence against this Act, section 394 or the *Liquor Act 1975*, section 84 (1).

***prescribed penalty*** means 1 penalty unit.

**442 Change of venue**

In any criminal proceeding, if it is made to appear to the court—

- (a) that a fair or unprejudiced trial cannot otherwise be had; or
- (b) that for any other reason, it is expedient so to do;

the Supreme Court may change the venue, and direct the trial to be had in the other district, or at the particular place, that the court thinks fit, and may for that purpose make all the orders that justice appears to require.

**443 Approved forms**

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

**444 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

## Schedule 1 Domestic violence offences

(see dict)

<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 description of offence</b>
1	12	murder
2	15	manslaughter
3	19	intentionally inflicting grievous bodily harm
4	20	recklessly inflicting grievous bodily harm
5	21	wounding
6	22	assault with intent to commit certain indictable offences
7	23	inflicting actual bodily harm
8	24	assault occasioning actual bodily harm
9	25	causing grievous bodily harm
10	26	common assault
11	27	acts endangering life etc
12	28	acts endangering health etc
13	29	culpable driving of motor vehicle
14	30	threat to kill
15	31	threat to inflict grievous bodily harm
16	32 (1) (a)	make demand with threat to kill or inflict grievous bodily harm
17	32 (2) (a)	make demand with threat to endanger health etc
18	33	possession of object with intent to kill etc
19	34	forcible confinement
20	35	stalking
21	37	abduction of young person
22	38	kidnapping
23	51	sexual assault in the first degree
24	52	sexual assault in the second degree
25	53	sexual assault in the third degree
26	54	sexual intercourse without consent
27	55	sexual intercourse with young person

**Schedule 1** Domestic violence offences

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<b>column 1 item</b>	<b>column 2 provision</b>	<b>column 3 description of offence</b>
28	57	act of indecency in the first degree
29	58	act of indecency in the second degree
30	59	act of indecency in the third degree
31	60	act of indecency without consent
32	61	acts of indecency with young people
33	62	incest or similar offences
34	63	abduction
35	116	destroying or damaging property
36	117	arson
37	121	possession of article with intent to destroy property
38	150 (1) (a)	being armed with weapon etc with intent to commit offence
39	151	forcible entry on land
40	380	possession of an offensive weapons
41	381	possession of an offensive weapon with intent
42	392	offensive behaviour

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## Dictionary

(see s 4)

***aggravated offence***, for part 5 (Sexual servitude)—see section 81.

***bail undertaking*** means an undertaking given by a person charged with an offence to obtain bail in relation to the offence.

***child***—

- (a) means a person who has not attained the age of 18 years; and
- (b) in relation to a person, includes a child—
  - (i) who normally or regularly resides with the person; or
  - (ii) of whom the person is a guardian.

***de facto spouse***, in relation to a person, means a person of the opposite sex to the firstmentioned person who is living with the firstmentioned person as that person's husband or wife although not legally married to the firstmentioned person.

***director of public prosecutions*** means—

- (a) the director of public prosecutions appointed under the *Director of Public Prosecutions Act 1990*; or
- (b) the director of public prosecutions appointed under the *Director of Public Prosecutions Act 1983* (Cwlth);

as the case requires.

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

**domestic violence offence** means behaviour directed at a relevant person that is or was an offence against—

- (a) the *Protection Orders Act 2001*, section 34 (which is about contravening protection orders) in relation to a domestic violence order; or
- (b) a provision of this Act mentioned in schedule 1 (which deals with domestic violence crimes); or
- (c) a provision of part 9 (Aiding and abetting, accessories, attempts, incitement and conspiracy) of this Act in relation to an offence against a provision mentioned in schedule 1; or
- (d) any of the following provisions of the *Road Transport (Safety and Traffic Management) Act 1999*:
  - (i) section 6 (1) (which is about negligent driving);
  - (ii) section 7 (1) (which is about furious, reckless or dangerous driving);
  - (iii) section 8 (1) or (2) (which are about menacing driving).

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

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

**knife** includes—

- (a) a knife blade; and
- (b) a razor blade; and
- (c) any other blade;

but does not include a knife of a class or description excluded from this definition by the regulations.



**loaded arms** means any firearm, airgun or air pistol that is loaded with any projectile or missile, whether or not the firearm, airgun or air pistol is capable of being discharged.

**medical practitioner** means a person—

- (a) who is registered under the *Medical Practitioners Act 1930*; or
- (b) who is to be deemed to be registered under that Act because of the *Mutual Recognition Act 1992* (Cwlth), section 25.

**motor vehicle**—see the *Road Transport (Safety and Traffic Management) Act 1999*, dictionary.

**offensive weapon** means—

- (a) anything made or adapted for use, or capable of being used, for causing injury to or incapacitating a person; or
- (b) anything intended for that use by the person who is carrying it or otherwise has it in his or her possession;

and includes an imitation or replica of an offensive weapon.

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

**relative**, of a person (the **original person**)—

- (a) means the original person's—
  - (i) father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law or mother-in-law; or
  - (ii) son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law or daughter-in-law; or
  - (iii) brother, sister, half-brother, half-sister, stepbrother, stepsister, brother-in-law or sister-in-law; or
  - (iv) uncle, aunt, uncle-in-law or aunt-in-law; or

- (v) nephew, niece or cousin; and
- (b) includes someone who would have been a relative of a kind mentioned in paragraph (a) if the original person had been legally married to the original person's de facto spouse (if any); and
- (c) includes someone who has been a relative of a kind mentioned in paragraph (a) or (b) of the original person.

**relevant person**, in relation to a person (the **original person**), means—

- (a) a spouse of the original person; or
- (b) a relative of the original person; or
- (c) a child of a spouse of the original person; or
- (d) someone who normally lives, or normally lived, in the same household as the original person (other than as a tenant or boarder).

**school** means—

- (a) a school or college established or maintained by or on behalf of the Territory; or
- (b) a school or college registered or provisionally registered under the *Education Act 1937*.

**sexual services**, for part 5 (Sexual servitude)—see section 78.

**sexual servitude**, for part 5 (Sexual servitude)—see section 78.

**spouse** includes former spouse, de facto spouse and former de facto spouse.

**trustee** means a trustee on some express trust howsoever created, and includes the heir or personal representative of such trustee, and every other person on whom the duty of such trust shall have devolved, and also any official manager, assignee, liquidator, or

other like officer, acting under any Act relating to joint-stock companies or to bankruptcy or insolvency.

***trust fund*** means the confiscated assets trust fund established by the *Proceeds of Crime Act 1991*, section 33.

***vessel*** means any ship or vessel used in or intended for navigation, other than an undecked boat.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

This Act was originally a NSW Act—the *Crimes Act 1900* No 40 (NSW).

The Act was in force in NSW immediately before 1 January 1911 (the date of establishment of the ACT) and was continued in force by the *Seat of Government Acceptance Act 1909* (Cwlth), s 6.

Under the *Seat of Government (Administration) Act 1910* (Cwlth), s 4, the Act had effect in the ACT as if it were an ACT law (subject to ordinances made under the *Seat of Government (Administration) Act 1910*).

The *Australian Capital Territory (Self Government) Act 1988* (Cwlth) converted certain former NSW laws in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on self-government (11 May 1989).

Under the *Crimes Legislation (Status and Citation) Act 1992*, this Act became, for all purposes, a law made by the ACT Legislative Assembly. This completed the process of making the former NSW law fully into an ACT law.

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

After 11 May 1989 and before 10 November 1999, Acts commenced on their notification day unless otherwise stated (see *Australian Capital Territory (Self Government) Act 1988* (Cwlth), s 25).

#### NSW legislation

##### **Crimes Act 1900 No 40**

notified 31 October 1900

commenced 31 October 1900

as amended by

#### Commonwealth legislation

##### **Crimes Ordinance 1942 No 12**

notified 28 May 1942

commenced 28 May 1942

##### **Crimes Ordinance 1944 No 1**

notified 20 January 1944

commenced 20 January 1944

## Endnotes

3 Legislation history

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**Crimes Ordinance 1951 No 14**

notified 14 December 1951  
commenced 14 December 1951

**Crimes Ordinance 1963 No 11**

notified 23 May 1963  
commenced 23 May 1963

**Crimes Ordinance 1968 No 4**

notified 14 March 1968  
commenced 15 March 1968

**Crimes Ordinance 1970 No 40**

notified 22 October 1970  
commenced 22 October 1970

**Crimes Ordinance 1971 No 2**

notified 25 February 1971  
s 8 commenced 29 March 1971  
remainder commenced 1 March 1971

**Crimes Ordinance 1974 No 17**

notified 17 April 1974  
commenced 17 April 1974

**Crimes (Amendment) Ordinance 1978 No 45**

notified 21 December 1978  
commenced 21 December 1978

**Crimes (Amendment) Ordinance 1979 No 1**

notified 31 January 1979  
commenced 31 January 1979

**Crimes (Amendment) Ordinance 1983 No 27 (as am by Crimes (Amendment) Ordinance (No 2) 1983 No 45; Crimes (Amendment) Ordinance (No 2) 1985 No 16)**

notified 22 September 1983  
commenced 22 September 1983

**Crimes (Amendment) Ordinance (No 3) 1983 No 55**

notified 18 November 1983  
commenced 18 November 1983

**Crimes (Amendment) Ordinance 1984 No 32**

notified 29 June 1985  
commenced 29 June 1985

**Crimes (Amendment) Ordinance (No 2) 1984 No 78**

notified 19 December 1984  
commenced 19 December 1984

**Crimes (Amendment) Ordinance 1985 No 11**

notified 8 March 1985  
commenced 12 August 1985 (Cwlth Gaz 1985 No S313)

**Crimes (Amendment) Ordinance (No 2) 1985 No 16**

notified 17 April 1985  
s 6 (1) commenced 22 September 1983  
remainder commenced 17 April 1985

**Crimes (Amendment) Ordinance (No 3) 1985 No 40**

notified 5 September 1985  
commenced 5 September 1985

**Crimes (Amendment) Ordinance (No 4) 1985 No 44**

notified 13 September 1985  
ss 1, 3, 4, 5 (2), 12 (1) commenced 13 September 1985  
remainder commenced 1 January 1986

**Crimes (Amendment) Ordinance (No 5) 1985 No 62**

notified 28 November 1985  
commenced 28 November 1985

**Magistrates Court Ordinance 1985 No 67 sch pt 1**

notified 19 December 1985  
commenced 1 February 1986 (Cwlth Gaz 1986 No G3)

**Crimes (Amendment) Ordinance (No 6) 1985 No 75**

notified 20 December 1985  
commenced 20 December 1985

**Children's Services (Miscellaneous Amendments) Ordinance 1986 No 14**

notified 4 June 1986  
commenced 26 Apr 1988 (Cwlth Gaz 1988 No S116)

## Endnotes

3 Legislation history

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**Crimes (Amendment) Ordinance 1986 No 15**

notified 6 June 1986  
commenced 1 July 1986

**Crimes (Amendment) Ordinance (No 2) 1986 No 27 (as am by Crimes (Amendment) Ordinance (No 3) 1986 No 37)**

notified 31 July 1986  
commenced 31 July 1986

**Domestic Violence (Miscellaneous Amendments) Ordinance 1986 No 53 s 3**

notified 4 September 1986  
commenced 1 October 1986 (Cwlth Gaz 1986 No S484)

**Crimes (Amendment) Ordinance (No 4) 1986 No 57 (as am by Ord 1987 No 3)**

notified 3 October 1986  
commenced 3 October 1986

**Magistrates Court (Amendment) Ordinance (No 3) 1986 No 74**

notified 14 November 1986  
commenced 14 November 1986

**Crimes (Amendment) Ordinance 1987 No 3**

notified 11 February 1987  
commenced 11 February 1987

**Crimes (Amendment) Ordinance 1988 No 44**

notified 27 July 1988  
commenced 27 July 1988

**Crimes (Amendment) Ordinance (No 2) 1988 No 75**

notified 19 October 1988  
ss 1-3, 7-9 commenced 19 October 1988  
remainder commenced 19 December 1988 (Gaz 1988 No S384)

**Crimes (Amendment) Ordinance 1990 No 1**

notified 23 May 1990  
commenced 23 May 1990

**Crimes (Amendment) Ordinance (No 2) 1990 No 2**

notified 23 May 1990  
commenced 15 June 1990



**Evidence (Amendment) Ordinance 1990 No 4**

notified 27 June 1990  
commenced 27 June 1990

**Self-Government (Consequential Amendments) Ordinance 1990 No 5**

notified 27 June 1990  
s 1, s 2 commenced 27 June 1990  
remainder commenced 1 July 1990

**Legislation after becoming Territory enactment****Crimes (Amendment) Act (No 3) 1990 No 66**

notified 24 December 1990 (Gaz 1990 No S98)  
s 1, s 3 commenced 24 December 1990 (s 3 (1))  
remainder commenced 6 February 1991 (s 3 (2) and Gaz 1991 No S5)

**Weapons (Consequential Amendments) Act 1991 No 9 sch**

notified 3 April 1991 (Gaz 1991 No S19)  
s 1, s 2 commenced 3 April 1991 (s 2 (1))  
sch commenced 3 October 1991 (s 2 (2))

**Crimes (Amendment) Act 1991 No 18**

notified 10 May 1991 (Gaz 1991 No S36)  
commenced 10 May 1991

**Magistrates and Coroner's Courts (Registrar) Act 1991 No 44 s 9**

notified 20 September 1991 (Gaz 1991 No S95)  
s 1, s 2 commenced 20 September 1991 (s 2 (1))  
s 9 commenced 25 September 1991 (s 2 (2) and Gaz 1991 No S103)

**Crimes (Amendment) Act (No 2) 1991 No 78**

notified 11 December 1991 (Gaz 1991 No S139)  
ss 1-3 commenced 11 December 1991 (s 2 (1))  
remainder commenced 11 June 1992 (s 2 (3))

**Crimes (Amendment) Act (No 3) 1991 No 90**

notified 24 December 1991 (Gaz 1991 No S155)  
commenced 24 December 1991

## Endnotes

3 Legislation history

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**Proceeds of Crime (Consequential Amendments) Act 1991 No 104**

notified 10 January 1992 (Gaz 1992 No S162)  
s 1, s 2 commenced 10 January 1992 (s 2 (1))  
remainder commenced 10 February 1992 (s 2 (2) and see Gaz 1992 No S21)

**Crimes (Amendment) Act (No 4) 1991 No 120**

notified 10 January 1992 (Gaz 1992 No S162)  
commenced 10 January 1992

**Crimes (Amendment) Act (No 5) 1991 No 122**

notified 10 January 1992 (Gaz 1992 No S162)  
commenced 10 January 1992

**Crimes Legislation (Status and Citation) Act 1992 No 6**

notified 28 May 1992 (Gaz 1992 No S59)  
commenced 28 May 1992

**Bail (Consequential Amendments) Act 1992 No 9 pt 2**

notified 28 May 1992 (Gaz 1992 No S59)  
s 1, s 2 commenced 28 May 1992 (s 2 (1))  
pt 2 commenced 28 November 1992 (s 2 (3))

**Statute Law Revision (Miscellaneous Provisions) Act 1992 No 23  
sch 1**

notified 4 June 1992 (Gaz 1992 No S71)  
commenced 4 June 1992

**Crimes (Amendment) Act 1992 No 35**

notified 8 July 1992 (Gaz 1992 No S103)  
commenced 8 July 1992

**Prostitution (Consequential Amendments) Act 1992 No 65 s 4**

notified 1 December 1992 (Gaz 1992 No S208)  
s 1, s 2 commenced 1 December 1992 (s 2 (1))  
s 4 commenced 1 June 1993 (s 2 (3))

**Crimes (Amendment) Act (No 2) 1992 No 76**

notified 24 December 1992 (Gaz 1992 No S236)  
commenced 24 December 1992

**Crimes (Amendment) Act 1993 No 3**

notified 1 March 1993 (Gaz 1993 No S23)  
commenced 1 March 1993

**Crimes (Amendment) Act (No 2) 1993 No 73**

notified 22 October 1993 (Gaz 1993 No S215)  
ss 1-3 commenced 22 October 1993 (s 3 (1))  
remainder commenced 15 November 1993 (s 3 (2) and Gaz 1993  
No S230)

**Supreme Court (Amendment) Act (No 2) 1993 No 91 sch 3**

notified 17 December 1993 (Gaz 1993 No S258)  
commenced 17 December 1993 (s 2)

**Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 21**

notified 30 June 1994 (Gaz 1994 No S121)  
s 1, s 2 commenced 30 June 1994 (s 2 (1))  
sch 1 pt 21 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

**Crimes (Amendment) Act 1994 No 46**

notified 7 September 1994 (Gaz 1994 No S177)  
ss 1-3 commenced 7 September 1994 (s 2 (1))  
remainder commenced 6 February 1995 (s 2 (2) and Gaz 1995 No S33)

**Crimes (Amendment) Act (No 2) 1994 No 75**

notified 23 November 1994 (Gaz 1994 No S247)  
ss 1-3 commenced 23 November 1994 (s 2 (1))  
remainder commenced 1 December 1994 (s 2 (2) and Gaz 1994  
No S270)

**Acts Revision (Victims of Crime) Act 1994 No 84 pt 3**

notified 15 December 1994 (Gaz 1994 No S280)  
s 1, s 2 commenced 15 December 1994 (s 2 (1))  
pt 3 commenced 15 June 1995 (s 2 (3))

**Intoxicated Persons (Consequential Amendments) Act 1994 No 86 s 4**

notified 15 December 1994 (Gaz 1994 No S280)  
s 1, s 2 commenced 15 December 1994 (s 2 (1))  
s 4 commenced 15 June 1995 (s 2 (2))

## Endnotes

3 Legislation history

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**Statutory Offices (Miscellaneous Provisions) Act 1994 No 97 sch pt 1**

notified 15 December 1994 (Gaz 1994 No S280)  
s 1, s 2 commenced 15 December 1994 (s 2 (1))  
sch pt 1 commenced 15 December 1994 (s 2 (2) and Gaz 1994  
No S293)

**Evidence (Amendment) Act 1994 No 98 s 7**

notified 15 December 1994 (Gaz 1994 No S280)  
commenced 15 December 1994 (s 2)

**Crimes (Amendment) Act 1995 No 2**

notified 19 June 1995 (Gaz 1995 No S115)  
commenced 19 June 1995 (s 2)

**Periodic Detention Act 1995 No 3 pt 5 div 2**

notified 19 June 1995 (Gaz 1995 No S115)  
s 1, s 2 commenced 19 June 1995 (s 2 (1))  
pt 5 div 2 commenced 1 September 1995 (s 2 (2) and Gaz 1995  
No S222)

**Crimes (Amendment) Act (No 2) 1995 No 49**

notified 18 December 1995 (Gaz 1995 No S306)  
ss 1-3 commenced 18 December 1995 (s 2 (1))  
remainder commenced 18 June 1996 (s 2 (3))

**Crimes (Amendment) Act (No 3) 1995 No 50**

notified 18 December 1995 (Gaz 1995 No S306)  
ss 1-3 commenced 18 December 1995 (s 2 (1))  
remainder commenced 1 December 1997 (s 2 (2) and Gaz 1997  
No S385)

**Crimes (Amendment) Act 1996 No 31**

notified 1 July 1996 (Gaz 1996 No S130)  
commenced 1 July 1996 (s 2)

**Crimes (Amendment) Act (No 2) 1996 No 36**

notified 10 July 1996 (Gaz 1996 No S160)  
commenced 10 July 1996 (s 2)

**Firearms Act 1996 No 74 sch 3**

notified 20 December 1996 (Gaz 1996 No S328)  
s 1, s 2 commenced 20 December 1996 (s 2 (1))  
sch 3 commenced 17 May 1997 (s 2 (2) and Gaz 1997 No S135)

**Crimes (Amendment) Act 1997 No 10**

notified 16 May 1997 (Gaz 1997 No S131)  
commenced 16 May 1997 (s 2)

**Crimes (Amendment) Act (No 2) 1997 No 23**

notified 29 May 1997 (Gaz 1997 No S136)  
ss 1-3 commenced 29 May 1997 (s 2 (1))  
remainder commenced 30 May 1997 (s 2 (2) and Gaz 1997 No S149)

**Motor Traffic (Amendment) Act (No 2) 1997 No 52 pt 4**

notified 19 September 1997 (Gaz 1997 No S264)  
ss 1-3 commenced 19 September 1997 (s 2 (1))  
pt 4 commenced 2 March 1998 (s 2 (2) and see Gaz 1997 No S427)

**Crimes (Amendment) Act (No 3) 1997 No 86**

notified 21 November 1997 (Gaz 1997 No S359)  
ss 1-3 commenced 21 November 1997 (s 2 (1))  
remainder commenced 11 December 1997 (s 2 (2) and Gaz 1997  
No S410)

**Legal Practitioners (Consequential Amendments) Act 1997 No 96  
sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

**Crimes (Amendment) Act (No 4) 1997 No 117**

notified 24 December 1997 (Gaz 1997 No S420)  
commenced 24 December 1997 (s 2)

**Crimes (Amendment) Act 1998 No 9**

notified 10 June 1998 (Gaz 1998 No S160)  
commenced 10 June 1998 (s 2)

**Crimes (Amendment) Act (No 2) 1998 No 22**

notified 10 July 1998 (Gaz 1998 No S190)  
commenced 10 July 1998 (s 2)

## Endnotes

3 Legislation history

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**Crimes (Amendment) Act (No 3) 1998 No 29**

notified 10 July 1998 (Gaz 1998 No S190)  
s 1, s 2 commenced 10 July 1998 (s 2 (1))  
remainder commenced 1 January 1999 (s 2 (2) and see Gaz 1998 No 50)

**Crimes (Amendment) Act (No 4) 1998 No 57**

notified 27 November 1998 (Gaz 1998 No S207)  
commenced 27 November 1998

**Custodial Escorts (Consequential Provisions) Act 1998 No 67 pt 4**

notified 23 December 1998 (Gaz 1998 No S212)  
s 1, s 2 commenced 23 December 1998 (s 2 (1))  
pt 4 commenced 23 December 1998 (s 2 (2) and Gaz 1998 No 51)

**Crimes (Amendment) Act (No 5) 1998 No 71**

notified 23 December 1998 (Gaz 1998 No S212)  
commenced 23 December 1998 (s 2)

**Crimes (Amendment) Act 1999 No 32**

notified 25 June 1999 (Gaz 1999 No S34)  
ss 1-4 commenced 25 June 1999 (s 2 (1))  
remainder commenced 1 October 1999 (s 2 (2))

**Motor Traffic (Amendment) Act (No 2) 1999 No 50 sch**

notified 17 September 1999 (Gaz 1999 No S54)  
ss 1-3 commenced 17 September 1999 (s 2 (1))  
sch commenced 6 October 1999 (s 2 (2) and Gaz 1999 No S58)

**Children and Young People (Consequential Amendments) Act 1999 No 64 sch 2**

notified 10 November 1999 (Gaz 1999 No 45)  
s 1, s 2 commenced 10 November 1999 (s 2 (1))  
sch 2 commenced 10 May 2000 (s 2 (2))

**Crimes Amendment Act (No 2) 1999 No 71**

notified 15 December 1999 (Gaz 1999 No 50)  
commenced 15 December 1999 (s 2)

**Road Transport Legislation Amendment Act 1999 No 79 sch 3**

notified 23 December 1999 (Gaz 1999 No S65)  
s 1, s 2 commenced 23 December 1999 (IA s 10B)  
sch 3 commenced 1 March 2000 (s 2 and see Gaz 2000 No S5)

**Victims of Crime (Financial Assistance) (Amendment) Act 1999 No 91 sch 2**

notified 23 December 1999 (Gaz 1999 No S65)  
s 1, s 2 commenced 23 December 1999 (IA s 10B)  
sch 2 commenced 24 December 1999 (s 2 (2) and Gaz 1999 No S69)

**Crimes Amendment Act 2000 No 3**

notified 9 March 2000 (Gaz 2000 No 10)  
commenced 9 March 2000 (s 2)

**Crimes Amendment Act 2000 (No 2) No 56**

notified 5 October 2000 (Gaz 2000 No 40)  
s 1, s 2 commenced 5 October 2000 (IA s 10B)  
remainder (ss 3-4) commenced 5 April 2001 (IA s 10E)

**Crimes Amendment Act 2000 (No 3) No 58**

notified 5 October 2000 (Gaz 2000 No 40)  
commenced 5 October 2000 (s 2)

**Utilities (Consequential Provisions) Act 2000 No 66 sch 1 pt 3**

notified 20 December 2000 (Gaz 2000 No S68)  
s 1, s 2 commenced 20 December 2000 (IA s 10B)  
sch 1 pt 3 commenced 1 January 2001 (Gaz 2000 No S69)

**Crimes Amendment Act 2000 (No 4) No 85**

notified 21 December 2000 (Gaz 2000 No S69)  
commenced 21 December 2000 (s 2)

**Crimes Amendment Act 2001 No 8**

notified 8 March 2001 (Gaz 2001 No 10)  
commenced 8 March 2001 (s 2)

**Bail Amendment Act 2001 No 25 pt 3**

notified 24 May 2001 (Gaz 2001 No 21)  
pt 3 commenced 24 May 2001 (s 2)

## Endnotes

3 Legislation history

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**Legislation (Consequential Amendments) Act 2001 No 44 pt 90**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 90 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Statute Law Amendment Act 2001 (No 2) No 56 pt 3.12**

notified 5 September 2001 (Gaz 2001 No S65)  
amdt 3.239 commenced 12 September 2001 (s 2 (2))  
pt 3.12 commenced 5 September 2001 (s 2 (1))

**Crimes Legislation Amendment Act 2001 No 63 pt 4**

notified 10 September 2001 (Gaz 2001 No S66)  
s 1, s 2 commenced 10 September 2001 (IA s 10B)  
pt 4 commenced 27 September 2001 (s 2 (2) and CN 2001 No 3)

**Justice and Community Safety Legislation Amendment Act 2001  
No 70 sch 1**

notified LR 14 September 2001  
amds commenced 14 September 2001 (s 2 (5))

**Crimes Amendment Act 2001 (No 2) No 75**

notified LR 14 September 2001  
commenced 14 September 2001 (s 2)

**Protection Orders (Consequential Amendments) Act 2001 No 90  
sch 1 pt 3**

notified LR 27 September 2001  
s 1, s 2 commenced 27 September 2001 (LA s 75)  
sch 1 pt 3 commenced 27 March 2002 (s 2, see Protection Orders Act  
2001 s 3 and LA s 79)

**Crimes Amendment Act 2002 No 3**

notified LR 14 March 2002  
commenced 14 March 2002 (s 2)

**Crimes (Bushfires) Amendment Act 2002 No 9**

notified LR 13 May 2002  
s 1, s 2 commenced 13 May 2002 (LA s 75)  
remainder commenced 14 May 2002 (s 2)



**Legislation Amendment Act 2002 No 11 pt 2.12**

notified LR 27 May 2002

s 1, s 2 commenced 27 May 2002 (LA s 75)

pt 2.12 commenced 28 May 2002 (s 2 (1))

**Crimes (Abolition of Offence of Abortion) Act 2002 No 24**

notified LR 9 September 2002

commenced 9 September 2002 (s 2)

**4 Amendment history****Preliminary**

pt 1 hdg am 2001 No 8 amdt 1.1

hdg before s 1 om 1983 No 27 (as am by 1985 No 16)

**Name of Act**s 1 am 1951 No 14; 1968 No 4; 1971 No 2; 1974 No 17  
sub 1983 No 27  
am 1992 No 6  
sub 2001 No 8 amdt 1.2**Application of Act**s 2 orig s 2 am 1983 No 27  
om 2001 No 8 amdt 1.2  
pres s 2 (prev s 3) am 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)**Territorial application of Territory criminal law**s 3 orig s 3 renum as s 2  
pres s 3 (prev s 3A) ins 1995 No 2  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 4 om 1983 No 27 (as am by 1985 No 16)

**Dictionary**s 4 orig s 4 am 1971 No 2; 1983 No 27 (as am by 1983 No 45);  
1983 No 55; 1984 No 78; 1985 No 40; 1985 No 44; 1990  
No 5; 1991 No 104; 1991 No 120; 1992 No 9; 1992 No 23;  
1995 No 2; 1995 No 50; 1997 No 23; 1997 No 96; 1998  
No 22; 1999 No 79 sch 3; 2000 No 85 s 4; 2001 No 8 amdt  
1.3, amdt 1.4  
defs reloc to dict 2001 No 8 amdt 1.4  
om 2001 No 8 amdt 1.5  
ins 2001 No 8 amdt 1.6

## Endnotes

### 4 Amendment history

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#### **Meaning of *loaded arms***

s 5 om 1990 No 2  
ins 2001 No 8 amdt 1.6

#### **Reference to *the jury* read as reference to magistrate**

s 6 om 1985 No 44  
ins 2001 No 8 amdt 1.6

#### **Notes**

s 7 am 1983 No 27  
om 1985 No 44  
ins 2001 No 8 amdt 1.6

#### **Abolition of distinctions between felony and misdemeanour**

s 9 am 1968 No 4  
sub 1978 No 45; 1983 No 27

#### **Offences against the person**

pt 2 hdg orig pt 2 hdg om 1968 No 4  
pres pt 2 hdg (prev pt 3 hdg) sub 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)

#### **When child born alive**

s 10 am 1968 No 4; 1978 No 45  
om 1983 No 27  
ins 1990 No 2

#### **No time limit on criminal responsibility for homicide**

s 11 om 1968 No 4  
ins 1990 No 2  
sub 1995 No 2

#### **Murder**

s 12 om 1968 No 4  
ins 1990 No 2

#### **Trial for murder—provocation**

s 13 om 1968 No 4  
ins 1990 No 2

#### **Trial for murder—diminished responsibility**

s 14 om 1968 No 4  
ins 1990 No 2

#### **Manslaughter**

s 15 om 1968 No 4  
ins 1990 No 2

#### **Suicide etc—not an offence**

s 16 om 1968 No 4  
ins 1990 No 2

hdg before s 17 om 1983 No 27 (as am by 1985 No 16)

**Suicide—aiding etc**

s 17 om 1983 No 27  
ins 1990 No 2

**Prevention of suicide**

s 18 am 1983 No 27  
sub 1990 No 2

**Intentionally inflicting grievous bodily harm**

s 19 am 1983 No 27  
sub 1990 No 2

**Recklessly inflicting grievous bodily harm**

s 20 sub 1990 No 2

**Wounding**

s 21 am 1983 No 27  
sub 1990 No 2

**Assault with intent to commit certain indictable offences**

s 22 sub 1990 No 2

**Inflicting actual bodily harm**

s 23 sub 1990 No 2

**Assault occasioning actual bodily harm**

s 24 am 1983 No 27  
sub 1990 No 2

**Causing grievous bodily harm**

s 25 am 1983 No 27  
sub 1990 No 2

hdg before s 26 om 1983 No 27 (as am by 1985 No 16)

**Common assault**

s 26 am 1983 No 27  
om 1988 No 75  
ins 1990 No 2

hdg before s 27 om 1983 No 27 (as am by 1985 No 16)

**Acts endangering life etc**

s 27 am 1968 No 4  
sub 1990 No 2  
am 1999 No 79 s 5 sch 3

## Endnotes

### 4 Amendment history

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#### **Acts endangering health etc**

s 28 am 1968 No 4  
sub 1990 No 2

#### **Culpable driving of motor vehicle**

s 29 am 1983 No 27  
sub 1990 No 2  
am 1990 No 5; 1999 No 79 s 5 sch 3

#### **Threat to kill**

s 30 am 1983 No 27  
om 1988 No 75  
ins 1990 No 2

hdg before s 31 om 1983 No 27 (as am by 1985 No 16)

#### **Threat to inflict grievous bodily harm**

s 31 am 1983 No 27  
sub 1990 No 2

hdg before s 32 om 1983 No 27 (as am by 1985 No 16)

#### **Demands accompanied by threats**

s 32 am 1983 No 27  
sub 1990 No 2

#### **Possession of object with intent to kill etc**

s 33 am 1983 No 27  
sub 1990 No 2

#### **Discharging loaded arms with intent**

s 33A ins 1983 No 27  
om 1990 No 2

#### **Use of weapon to resist arrest etc**

s 33B ins 1983 No 27  
om 1990 No 2

#### **Forcible confinement**

s 34 am 1983 No 55  
sub 1990 No 2

#### **Stalking**

s 35 orig s 35 renum as s 36  
pres s 35 (prev s 34A) ins 1996 No 36  
sub 2000 No 85 s 5  
am 2001 No 75 s 4; LA R8 (see 2001 No 75 s 5)  
renum R9 LA (see 2001 No 63 s 43)

**Torture**

s 36 orig s 36 renum as s 37  
pres s 36 (prev s 35) am 1983 No 27  
sub 1990 No 2  
am 1994 No 38  
renum R9 LA (see 2001 No 63 s 43)

**Abduction of young person**

s 37 orig s 37 renum as s 38  
pres s 37 (prev s 36) om 1983 No 55  
ins 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)

**Kidnapping**

s 38 orig s 38 renum as s 40  
pres s 38 (prev s 37) am 1983 No 27  
sub 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)

**Neglect etc of children**

s 39 orig s 39 renum as s 41  
pres s 39 (prev s 37A) ins 1999 No 64 s 4 sch 2  
renum R9 LA (see 2001 No 63 s 43)

**Unlawfully taking child etc**

s 40 orig s 40 renum as s 42  
pres s 40 (prev s 38) am 1983 No 27  
sub 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)

**Exposing or abandoning child**

s 41 orig s 41 renum as s 43  
pres s 41 (prev s 39) am 1983 No 27  
sub 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)

**Child destruction**

s 42 orig s 42 renum as s 44  
pres s 42 (prev s 40) sub 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)

**Childbirth—grievous bodily harm**

s 43 orig s 43 renum as s 45  
pres s 43 (prev s 41) am 1983 No 27  
sub 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Abortion—abolition of common law offence**

s 44 orig s 44 renum as s 46  
pres s 44 (prev s 42) am 1983 No 27  
sub 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)  
sub 2002 No 24 s 3  
exp 9 December 2002 (s 44 (2))

#### **Procuring another's miscarriage**

s 45 orig s 45 renum as s 47  
pres s 45 (prev s 43) am 1983 No 27  
sub 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)  
om 2002 No 24 s 3

#### **Procuring drugs etc to procure miscarriage**

s 46 orig s 46 renum as s 48  
pres s 46 (prev s 44) am 1983 No 27  
om 1988 No 44  
ins 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)  
om 2002 No 24 s 3

#### **Concealment of birth**

s 47 orig s 47 renum as s 49  
pres s 47 (prev s 45) om 1988 No 44  
ins 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)

#### **Misconduct with regard to corpses**

s 48 orig s 48 am 1983 No 27  
om 1990 No 2  
pres s 48 (prev s 46) am 1983 No 27  
sub 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)

#### **Alternative verdicts**

s 49 orig s 49 om 1990 No 2  
pres s 49 (prev s 47) am 1983 No 27  
sub 1990 No 2  
am 1992 No 23  
renum R9 LA (see 2001 No 63 s 43)

#### **Sexual offences**

pt 3 hdg orig pt 3 hdg renum as pt 2 hdg  
pres pt 3 hdg (prev pt 3A hdg) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

**Meaning of *sexual intercourse* in pt 3**

s 50 orig s 50 am 1983 No 27  
om 1990 No 2  
pres s 50 (prev s 92) om 1971 No 2  
ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

**Sexual assault in the first degree**

s 51 orig s 51 am 1983 No 27  
om 1990 No 2  
pres s 51 (prev s 92A) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

**Sexual assault in the second degree**

s 52 orig s 52 om 1990 No 2  
pres s 52 (prev s 92B) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

**Culpable driving**

s 52A ins 1963 No 11  
sub 1979 No 1  
om 1990 No 2

**Sexual assault in the third degree**

s 53 orig s 53 om 1990 No 2  
pres s 53 (prev s 92C) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

**Sexual intercourse without consent**

s 54 orig s 54 om 1990 No 2  
pres s 54 (prev s 92D) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 55 om 1983 No 27 (as am by 1985 No 16)

**Sexual intercourse with young person**

s 55 orig s 55 am 1983 No 27  
om 1990 No 2  
pres s 55 (prev s 92E) ins 1985 No 62  
am 1995 No 2  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 56 om 1983 No 27 (as am by 1985 No 16)

**Maintaining a sexual relationship with young person**

s 56 orig s 56 om 1990 No 2  
pres s 56 (prev s 92EA) ins 1991 No 90  
am 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Act of indecency in the first degree**

s 57 orig s 57 am 1983 No 27  
om 1990 No 2  
pres s 57 (prev s 92F) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

#### **Act of indecency in the second degree**

s 58 orig s 58 am 1983 No 27  
om 1990 No 2  
pres s 58 (prev s 92G) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

#### **Act of indecency in the third degree**

s 59 orig s 59 am 1983 No 27  
om 1990 No 2  
pres s 59 (prev s 92H) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

#### **Act of indecency without consent**

s 60 orig s 60 om 1983 No 27  
pres s 60 (prev s 92J) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 61 om 1983 No 27 (as am by 1985 No 16)

#### **Acts of indecency with young people**

s 61 orig s 61 am 1974 No 17  
om 1990 No 2  
pres s 61 (prev s 92K) ins 1985 No 62  
am 1995 No 2  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 62 om 1983 No 27 (as am by 1985 No 16)

#### **Incest and similar offences**

s 62 orig s 62 om 1985 No 62  
pres s 62 (prev s 92L) ins 1985 No 62  
am 1986 No 27 (as am by 1986 No 37); 1990 No 5; 1995 No 2;  
2001 No 63 s 43  
renum R9 LA (see 2001 No 63 s 43)

#### **Abduction**

s 63 orig s 63 am 1968 No 4  
om 1985 No 62  
pres s 63 (prev s 92M) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)



**Employment of young people for pornographic purposes**

s 64 orig s 64 sub 1951 No 14  
om 1985 No 62  
pres s 64 (prev s 92NA) ins 1987 No 3  
renum R9 LA (see 2001 No 63 s 43)

**Possession of child pornography**

s 65 orig s 65 am 1983 No 27  
om 1985 No 62  
pres s 65 (prev s 92NB) ins 1991 No 120  
renum R9 LA (see 2001 No 63 s 43)

**Using the Internet etc to deprave young people**

s 66 orig s 66 am 1983 No 27  
om 1985 No 62  
pres s 66 (prev s 92NC) ins 2001 No 75 s 6  
renum R9 LA (see 2001 No 63 s 43)

**Consent**

s 67 orig s 67 am 1968 No 4  
om 1985 No 62  
pres s 67 (prev s 92P) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

**Sexual intercourse—people not to be presumed incapable by reason of age**

s 68 orig s 68 am 1983 No 27  
om 1985 No 62  
pres s 68 (prev s 92Q) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

**Marriage no bar to conviction**

s 69 orig s 69 sub 1951 No 14  
om 1985 No 62  
pres s 69 (prev s 92R) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

**Alternative verdicts**

s 70 orig s 70 sub 1951 No 14  
am 1984 No 78  
om 1985 No 62  
pres s 70 (prev s 92S) ins 1985 No 62  
am 1990 No 2; 1995 No 2  
renum R9 LA (see 2001 No 63 s 43)

**Adding count for act of indecency**

s 71 orig s 71 sub 1951 No 14  
am 1983 No 27  
om 1985 No 62  
pres s 71 (prev s 92T) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Indictment for act of indecency**

s 72 orig s 72 sub 1951 No 14  
am 1983 No 27  
om 1985 No 62  
pres s 72 (prev s 92U) ins 1985 No 62  
renum R9 LA (see 2001 No 63 s 43)

#### **Carnal knowledge of idiot or imbecile**

s 72A ins 1951 No 14  
am 1983 No 27  
om 1985 No 62

#### **Female genital mutilation**

pt 4 hdg orig pt 4 hdg renum as pt 6 hdg  
pres pt 4 hdg (prev pt 3B hdg) ins 1995 No 50  
renum R9 LA (see 2001 No 63 s 43)

#### **Meaning of female genital mutilation for pt 4**

s 73 orig s 73 sub 1951 No 14  
am 1983 No 27  
om 1985 No 62  
pres s 73 (prev s 92V) ins 1995 No 50  
renum R9 LA (see 2001 No 63 s 43)

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

s 74 orig s 74 sub 1951 No 14  
am 1983 No 27  
om 1985 No 62  
pres s 74 (prev s 92W) ins 1995 No 50  
renum R9 LA (see 2001 No 63 s 43)

#### **Removal of child from ACT for genital mutilation**

s 75 orig s 75 sub 1951 No 14  
om 1985 No 62  
pres s 75 (prev s 92X) ins 1995 No 50  
renum R9 LA (see 2001 No 63 s 43)

#### **Exception—medical procedures for genuine therapeutic purposes**

s 76 orig s 76 sub 1951 No 14  
am 1983 No 27  
om 1985 No 62  
pres s 76 (prev s 92Y) ins 1995 No 50  
renum R9 LA (see 2001 No 63 s 43)

#### **Exception—sexual reassignment procedures**

s 77 orig s 77 sub 1951 No 14  
om 1985 No 62  
pres s 77 (prev s 92Z) ins 1995 No 50  
renum R9 LA (see 2001 No 63 s 43)

**Consent no defence in certain cases**

s 77A ins 1951 No 14  
om 1985 No 62

**Sexual servitude**

pt 5 hdg orig pt 5 hdg om 1986 No 15  
ins 1991 No 78  
renum as pt 7 hdg  
pres pt 5 hdg (prev pt 3C hdg) ins 2001 No 8 s 4  
renum R9 LA (see 2001 No 63 s 43)

**Definitions of *sexual servitude* and *sexual services***

s 78 orig s 78 sub 1951 No 14  
om 1985 No 62  
pres s 78 (prev s 92ZA) ins 2001 No 8 s 4  
renum R9 LA (see 2001 No 63 s 43)

**Incest by male**

s 78A ins 1951 No 14  
am 1983 No 27  
om 1985 No 62

**Incest by male, attempts**

s 78B ins 1951 No 14  
om 1985 No 62

**Incest by female**

s 78C ins 1951 No 14  
am 1983 No 27  
om 1985 No 62

**Defences**

s 78D ins 1951 No 14  
om 1985 No 62

**Removal from guardianship etc**

s 78E ins 1951 No 14  
om 1985 No 62

**Rape or attempt—verdict of incest or attempt**

s 78F ins 1951 No 14  
om 1985 No 62

**Sanction of Attorney-General**

s 78G ins 1951 No 14  
om 1985 No 62

hdg before s 79 om 1983 No 27 (as am by 1985 No 16)

## Endnotes

### 4 Amendment history

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#### **Sexual servitude offences**

s 79 orig s 79 am 1983 No 27  
om 1985 No 62  
pres s 79 (prev s 92ZB) ins 2001 No 8 s 4  
renum R9 LA (see 2001 No 63 s 43)

#### **Deceptive recruiting for sexual services**

s 80 orig s 80 am 1983 No 27  
om 1985 No 62  
pres s 80 (prev s 92ZC) ins 2001 No 8 s 4  
renum R9 LA (see 2001 No 63 s 43)

#### **Increased penalty for aggravated offences**

s 81 orig s 81 am 1983 No 27  
om 1985 No 62  
pres s 80 (prev s 92ZD) ins 2001 No 8 s 4  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 82 om 1983 No 27 (as am by 1985 No 16)

#### **Alternative verdict if aggravated offence not proven**

s 82 orig s 82 am 1983 No 27  
om 1990 No 2  
pres s 82 (prev s 92ZE) ins 2001 No 8 s 4  
renum R9 LA (see 2001 No 63 s 43)

#### **Offences relating to property**

pt 6 hdg orig pt 6 hdg om 1983 No 27  
pres pt 6 hdg (prev pt 4 hdg) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

#### **Interpretation for part 6**

div 6.1 hdg (prev pt 4 div 1 hdg) renum R9 LA (see 2001 No 63 s 43 and  
2001 No 90 amdt 1.40)

#### **Definitions for pt 6**

s 83 orig s 83 am 1983 No 27  
om 1990 No 2  
pres s 83 (prev s 93) om 1971 No 2  
ins 1983 No 27  
sub 1985 No 44  
am 1986 No 15; 2001 No 8 amdt 1.7  
renum R9 LA (see 2001 No 63 s 43)

#### **Stealing—interpretation**

s 84 orig s 84 am 1983 No 27  
om 1990 No 2  
pres s 84 (prev s 94) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 85 om 1983 No 27 (as am by 1985 No 16)

**Property belonging to another—interpretation**

s 85 orig s 85 sub 1951 No 14  
om 1990 No 2  
pres s 85 (prev s 95) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 86 om 1983 No 27 (as am by 1985 No 16)

**Appropriation and dishonest appropriation—interpretation**

s 86 orig s 86 am 1983 No 27  
om 1985 No 62  
pres s 86 (prev s 96) am 1983 No 27; 1983 No 55  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Intention to deprive permanently—interpretation**

s 87 orig s 87 am 1983 No 27  
om 1985 No 62  
pres s 87 (prev s 97) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Stolen property—interpretation**

s 88 orig s 88 om 1985 No 62  
pres s 88 (prev s 98) am 1983 No 27  
sub 1985 No 44  
am 1986 No 27; 1987 No 3  
renum R9 LA (see 2001 No 63 s 43)

**Theft and related offences**

div 6.2 hdg (prev pt 4 div 2 hdg) renum R9 LA (see 2001 No 63 s 43 and  
2001 No 90 amdt 1.40)

**Theft**

s 89 orig s 89 am 1983 No 27  
om 1985 No 62  
pres s 89 (prev s 99) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Minor theft**

s 90 orig s 90 sub 1985 No 62  
om 1990 No 2  
pres s 90 (prev s 99A) ins 1995 No 49  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Kidnapping**

s 90A ins 1963 No 11  
om 1990 No 2

#### **Robbery**

s 91 orig s 91 am 1983 No 27  
om 1990 No 2  
pres s 91 (prev s 100) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

#### **Procuring etc female under 21**

s 91A ins 1951 No 14  
am 1970 No 40; 1983 No 27  
om 1985 No 62

#### **Procuring female by drugs**

s 91B ins 1951 No 14  
am 1970 No 40; 1983 No 27  
om 1985 No 62

#### **Male living on earnings of prostitution**

s 91C ins 1951 No 14  
om 1985 No 62

#### **Employment etc in brothel of girl under 18**

s 91D ins 1951 No 14  
am 1983 No 27  
om 1985 No 62

hdg before s 92 om 1983 No 27 (as am by 1985 No 16)

#### **Armed robbery**

s 92 orig s 92 renum as s 50  
pres s 92 (prev s 101) am 1983 No 27; 1983 No 55  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

#### **Employment of young person for prostitution**

s 92N ins 1985 No 62  
om 1992 No 65

#### **Burglary**

s 93 orig s 93 om 1971 No 2  
prev s 93 renum as s 83  
pres s 93 (prev s 102) am 1983 No 27; 1983 No 55  
sub 1985 No 44; 2001 No 63 s 12  
renum R9 LA (see 2001 No 63 s 43)

**Delivery of stolen goods held by dealers**

s 93A ins 1983 No 55  
om 1985 No 44

**Disposal of stolen goods etc**

s 93B ins 1983 No 55  
om 1985 No 44

hdgs before s 94 om 1983 No 27 (as am by 1985 No 16)

**Aggravated burglary**

s 94 orig s 94 renum as s 84  
pres s 94 (prev s 103) am 1983 No 27; 1983 No 55  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Obtaining financial advantage by deception**

s 95 orig s 95 renum as s 85  
pres s 95 (prev s 104) om 1983 No 55  
ins 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Robbery—threat of violence to third person**

s 95A ins 1983 No 55  
om 1985 No 44

**Obtaining service by deception**

s 96 orig s 96 renum as s 86  
pres s 96 (prev s 105) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Evasion of liability by deception**

s 97 orig s 97 renum as s 87  
pres s 97 (prev s 106) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Making off without payment**

s 98 orig s 98 renum as s 88  
pres s 98 (prev s 107) am 1983 No 27  
sub 1985 No 44  
am 1995 No 49; R9 LA (see 2001 No 63 s 43)  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 99 om 1983 No 27 (as am by 1985 No 16)

## Endnotes

### 4 Amendment history

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#### **Valueless cheques**

s 99 orig s 99 renum as s 89  
pres s 99 (prev s 107A) ins 2001 No 63 s 13  
renum R9 LA (see 2001 No 63 s 43)

#### **False accounting**

s 100 orig s 100 renum as s 91  
pres s 100 (prev s 108) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

#### **Liability of company officers**

s 101 orig s 101 renum as s 92  
pres s 101 (prev s 109) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

#### **False statements by officers of associations**

s 102 orig s 102 renum as s 93  
pres s 102 (prev s 110) am 1968 No 4  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

#### **Suppression etc of documents**

s 103 orig s 103 renum as s 94  
pres s 103 (prev s 111) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

#### **Blackmail**

s 104 orig s 104 om 1983 No 55  
prev s 104 renum as s 95  
pres s 104 (prev s 112) sub 1944 No 1; 1963 No 11  
am 1978 No 45; 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

#### **Handling stolen property**

s 105 orig s 105 renum as s 96  
pres s 105 (prev s 113) sub 1963 No 11  
am 1978 No 45; 1983 No 27  
sub 1985 No 44  
am 1986 No 27  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 106 om 1983 No 27 (as am by 1985 No 16)



**Dishonest abstraction**

- s 106 hdg orig s 106 hdg renum as s 97 hdg  
pres s 106 hdg (prev s 114 hdg) sub 2000 No 66 sch 1 pt 3
- s 106 orig s 106 renum as s 97  
pres s 106 (prev s 114) am 1983 No 27; 1983 No 55  
sub 1985 No 44  
am 2000 No 66 sch 1 pt 3  
renum R9 LA (see 2001 No 63 s 43)

**Possession of housebreaking implements etc**

- s 107 orig s 107 renum as s 98  
pres s 107 (prev s 116) sub 1985 No 44  
am 1990 No 5; LA 8A (see 2001 No 63 s 43)  
renum R9 LA (see 2001 No 63 s 43)

**Advertising for return of stolen property**

- s 108 orig s 108 renum as s 100  
pres s 108 (prev s 117) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Delivery of stolen property held by dealers**

- s 109 orig s 109 renum as s 101  
pres s 109 (prev s 118) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Disposal of stolen property**

- s 110 orig s 110 renum as s 102  
pres s 110 (prev s 119) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Taking vehicle without authority**

- s 111 orig s 111 renum as s 103  
pres s 111 (prev s 120) am 1963 No 11; 1984 No 78  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Proof of general deficiency in a case**

- s 112 orig s 112 renum as s 104  
pres s 112 (prev s 124) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Procedure and evidence**

- s 113 orig s 113 renum as s 105  
pres s 113 (prev s 125) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Verdict of ‘theft or handling’**

s 114 orig s 114 renum as s 106  
pres s 114 (prev s 126) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

#### **Criminal damage to property**

div 6.3 hdg (prev pt 4 div 3 hdg) renum R9 LA (see 2001 No 63 s 43 and  
2001 No 90 amdt 1.40)

#### **Interpretation for div 6.3**

s 115 orig s 115 renum as s 155  
pres s 115 (prev s 127) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)  
am 2002 No 9 s 4

hdg before s 116 om 1983 No 27 (as am by 1985 No 16)

#### **Destroying or damaging property**

s 116 orig s 116 renum as s 107  
pres s 116 (prev s 128) sub 1985 No 44  
am 1995 No 49  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 117 om 1983 No 27 (as am by 1985 No 16)

#### **Arson**

s 117 orig s 117 renum as s 108  
pres s 117 (prev s 129) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

#### **Lawful excuse**

s 118 orig s 118 renum as s 109  
pres s 118 (prev s 130) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

#### **Causing bushfires**

s 118A ins 2002 No 9 s 5

#### **Defacing premises**

s 119 orig s 119 renum as s 110  
pres s 119 (prev s 131) sub 1985 No 44  
am 1986 No 57; 1990 No 5  
renum R9 LA (see 2001 No 63 s 43)

#### **Threats to destroy or damage property**

s 120 orig s 120 renum as s 111  
pres s 120 (prev s 132) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Possession of article with intent to destroy property**

s 121 orig s 121 am 1983 No 27  
sub 1985 No 44  
om 1986 No 57  
pres s 121 (prev s 133) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Untrue representations**

s 122 orig s 122 am 1983 No 27  
sub 1985 No 44  
om 1986 No 57  
pres s 122 (prev s 134) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Alternative verdict**

s 123 orig s 123 om 1983 No 27  
ins 1985 No 44  
om 1986 No 57  
pres s 123 (prev s 135) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Forgery and use of forged instruments**

div 6.4 hdg (prev pt 4 div 3A hdg) ins 1986 No 15  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

**Making of false instrument**

s 124 orig s 124 renum as s 112  
pres s 124 (prev s 135A) ins 1986 No 15  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 125 om 1983 No 27 (as am by 1985 No 16)

**Act or omission to a person's prejudice**

s 125 orig s 125 renum as s 113  
pres s 125 (prev s 135B) ins 1986 No 15  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 126 om 1983 No 27 (as am by 1985 No 16)

**Forgery and use of forged instruments**

s 126 orig s 126 renum as s 114  
pres s 126 (prev s 135C) ins 1986 No 15  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Possession of false instrument**

s 127 orig s 127 renum as s 115  
pres s 127 (prev s 135D) ins 1986 No 15  
renum R9 LA (see 2001 No 63 s 43)

#### **Possession of machine etc**

s 128 orig s 128 renum as s 116  
pres s 128 (prev s 135E) ins 1986 No 15  
renum R9 LA (see 2001 No 63 s 43)

#### **Forfeiture**

s 129 orig s 129 renum as s 117  
pres s 129 (prev s 135F) ins 1986 No 15  
renum R9 LA (see 2001 No 63 s 43)

#### **General allegation of intent sufficient**

s 130 orig s 130 renum as s 118  
pres s 130 (prev s 135G) ins 1986 No 15  
renum R9 LA (see 2001 No 63 s 43)

#### **Offences relating to computers**

div 6.5 hdg (prev pt 4 div 3B hdg) ins 1992 No 23  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

#### **Interpretation for div 6.5**

s 131 orig s 131 renum as s 119  
pres s 131 (prev s 152 and s 135H) ins as s 152 1990 No 66  
renum as s 135H 1992 No 23; renum as s 131 R9 LA (see 2001  
No 63 s 43)

#### **Unlawful access to data in computer**

s 132 orig s 132 renum as s 120  
pres s 132 (prev s 153 and s 135J) ins as s 153 1990 No 66  
renum as s 135J 1992 No 23; renum as s 132 R9 LA (see 2001  
No 63 s 43)

#### **Damaging data in computers**

s 133 orig s 133 renum as s 121  
pres s 133 (prev s 154 and s 135K) ins as s 154 1990 No 66  
renum as s 135K 1992 No 23; renum as s 133 R9 LA (see 2001  
No 63 s 43)

hdg before s 134 om 1983 No 27 (as am by 1985 No 16)

#### **Dishonest use of computers**

s 134 orig s 134 renum as s 122  
pres s 134 (prev s 115, s 155 and s 135L) am 1983 No 27  
sub 1985 No 44  
renum as s 155 1991 No 90; renum as s 135L 1992 No 23;  
renum as s 134 R9 LA (see 2001 No 63 s 43)

**Contamination of goods and related offences**

div 6.6 hdg (prev pt 4 div 3C hdg) ins 2000 No 3 s 4  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

**Definitions of *contaminate* and *goods***

s 135 orig s 135 renum as s 123  
pres s 135 (prev s 135M) ins 2000 No 3 s 4  
renum R9 LA (see 2001 No 63 s 43)

**Meaning of economic loss**

s 136 orig s 136 renum as s 141  
pres s 136 (prev s 135N) ins 2000 No 3 s 4  
renum R9 LA (see 2001 No 63 s 43)

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

s 137 orig s 137 renum as s 142  
pres s 137 (prev s 135O) ins 2000 No 3 s 4  
renum R9 LA (see 2001 No 63 s 43)

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

s 138 orig s 138 renum as s 143  
pres s 138 (prev s 135P) ins 2000 No 3 s 4  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 139 om 1983 No 27 (as am by 1985 No 16)

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

s 139 orig s 139 renum as s 144  
pres s 139 (prev s 135Q) ins 2000 No 3 s 4  
renum R9 LA (see 2001 No 63 s 43)

**Territorial nexus for offences**

s 140 orig s 140 renum as s 145  
pres s 140 (prev s 135R) ins 2000 No 3 s 4  
renum R9 LA (see 2001 No 63 s 43)

**Offences relating to causing public alarm**

div 6.7 hdg (prev div 6.6A hdg) ins 2002 No 3 s 4  
renum R11 LA (see 2001 No 90 amdt 1.40)

**Acting with intent to cause public alarm**

s 140A ins 2002 No 3 s 4

**Threatening to act with intent to cause public alarm**

s 140B ins 2002 No 3 s 4

**Making false statements with intent to cause public alarm**

s 140C ins 2002 No 3 s 4

## Endnotes

### 4 Amendment history

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#### **Territorial nexus for offences**

s 140D ins 2002 No 3 s 4

#### **Miscellaneous**

div 6.8 hdg (prev pt 4 div 4 hdg) renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)  
(prev div 6.7 hdg) renum R11 LA (see 2001 No 90 amdt 1.40)

#### **Hindering working of mines**

s 141 orig s 141 om 1983 No 27  
prev s 141 renum as s 146  
pres s 141 (prev s 136) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

#### **Removal of sea banks etc**

s 142 orig s 142 om 1983 No 27  
prev s 142 renum as s 147  
pres s 142 (prev s 137) sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

#### **Obstructing navigation of rivers**

s 143 orig s 143 om 1983 No 27  
prev s 143 renum as s 148  
pres s 143 (prev s 138) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 144 om 1983 No 27 (as am by 1985 No 16)

#### **Offences in relation to railways**

s 144 orig s 144 renum as s 149  
pres s 144 (prev s 139) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

#### **Obstructing railway engines**

s 145 orig s 145 renum as s 150  
pres s 145 (prev s 140) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

#### **Alternative verdict**

s 146 orig s 146 renum as s 151  
pres s 146 (prev s 141) om 1983 No 27  
ins 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Displaying false signals**

s 147 orig s 147 renum as s 152  
pres s 147 (prev s 142) om 1983 No 27  
ins 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 148 om 1983 No 27 (as am by 1985 No 16)

**Removing or concealing buoys etc**

s 148 orig s 148 renum as s 153  
pres s 148 (prev s 143) om 1983 No 27  
ins 1985 No 44  
am 1996 No 51  
renum R9 LA (see 2001 No 63 s 43)

**Removal of articles on public exhibition**

s 149 orig s 149 renum as s 154  
pres s 149 (prev s 144) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 150 om 1983 No 27 (as am by 1985 No 16)

**Being found with intent to commit offence**

s 150 orig s 150 renum as s 155  
pres s 150 (prev s 145) sub 1985 No 44  
am 1990 No 5; 2001 No 8 amdt 1.8  
renum R9 LA (see 2001 No 63 s 43)

**Forcible entry on land**

s 151 orig s 151 renum as s 156  
pres s 151 (prev s 146) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Offences relating to computers**

pt 4 div 5 hdg ins 1990 No 66  
om 1992 No 23

hdg before s 152 om 1983 No 27 (as am by 1985 No 16)

## Endnotes

### 4 Amendment history

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#### **Forcible detainer of land**

s 152 orig s 152 am 1983 No 27  
om 1985 No 44  
ins 1990 No 66  
renum and reloc as s 135H 1992 No 23  
(prev s 358AA) ins 1988 No 75  
renum and reloc as s 152 1991 No 78  
renum as s 158 R9 LA (see 2001 No 63 s 43)  
pres s 152 (prev s 147) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

#### **Property of spouses**

s 153 orig s 153 am 1983 No 27  
om 1985 No 44  
ins 1990 No 66  
renum and reloc as s 135J 1992 No 23  
(prev s 358AB) ins 1988 No 75  
renum and reloc as s 153 1991 No 78  
renum as s 159 R9 LA (see 2001 No 63 s 43)  
pres s 153 (prev s 148) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 154 om 1983 No 27 (as am by 1985 No 16)

#### **Property of partners or joint owners**

s 154 orig s 154 am 1983 No 27  
om 1985 No 44  
ins 1990 No 66  
renum and reloc as s 135K 1992 No 23  
(prev s 358AC) ins 1988 No 75  
renum and reloc as s 154 1991 No 78  
renum as s 160 R9 LA (see 2001 No 63 s 43)  
pres s 154 (prev s 149) am 1983 No 27  
sub 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

#### **Unlawfully using another's vehicle or boat**

s 154A ins 1963 No 11  
am 1983 No 27  
om 1985 No 44

#### **Fraudulent abstraction, waste etc of electricity**

s 154B ins 1984 No 78  
om 1985 No 44

hdgs before s 155 om 1983 No 27 (as am by 1985 No 16)



**Indictment for theft etc of deeds**

s 155 orig s 155 om 1985 No 44  
 ins 1990 No 66  
 renum and reloc as s 135L 1992 No 23  
 (prev s 358AD) ins 1988 No 75  
 renum and reloc as s 155 1991 No 78  
 renum as s 161 R9 LA (see 2001 No 63 s 43)  
 pres s 155 (prev s 150) am 1983 No 27  
 sub 1985 No 44  
 renum R9 LA (see 2001 No 63 s 43)

**Allegations in indictment about stolen money or securities**

s 156 orig s 156 am 1983 No 27  
 om 1985 No 44  
 (prev s 358AE) ins 1988 No 75  
 renum and reloc as s 156 1991 No 78  
 renum as s 162  
 pres s 156 (prev s 151) sub 1985 No 44  
 renum R9 LA (see 2001 No 63 s 43)

**Escape provisions**

pt 7 hdg (prev pt 5 hdg) renum R9 LA (see 2001 No 63 s 43)

**Meaning of *lawful custody*—periodic detention**

s 157 orig s 157 am 1983 No 27  
 om 1985 No 44  
 (prev s 358AF) ins 1988 No 75  
 renum and reloc as s 157 1991 No 78  
 renum as s 163  
 pres s 157 (prev s 151A) ins 1995 No 3  
 renum R9 LA (see 2001 No 63 s 43)

**Meaning of *detention during pleasure***

s 158 orig s 158 am 1983 No 27  
 om 1985 No 44  
 (prev s 358AG) ins 1988 No 75  
 renum and reloc as s 158 1991 No 78  
 renum as s 164  
 pres s 158 (prev s 358AG and s 152) ins as s 358AG 1988  
 No 78;  
 renum as s 152 1991 No 78; renum as s 158 R9 LA (see 2001  
 No 63 s 43)

hdg before s 159 om 1983 No 27 (as am by 1985 No 16)

## Endnotes

### 4 Amendment history

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#### **Aiding prisoner to escape**

s 159 orig s 159 am 1983 No 27  
om 1985 No 44  
(prev s 358AH) ins 1988 No 75  
renum and reloc as s 159 1991 No 78  
renum as s 165  
pres s 159 (prev s 153) ins 1990 No 66  
renum R9 LA (see 2001 No 63 s 43)

#### **Escaping**

s 160 orig s 160 am 1983 No 27  
om 1985 No 44  
(prev s 358AI) ins 1988 No 75  
renum and reloc as s 160 1991 No 78  
renum as s 166  
pres s 160 (prev s 154) ins 1990 No 66  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 161 om 1983 No 27 (as am by 1985 No 16)

#### **Rescuing a prisoner from custody etc**

s 161 orig s 161 om 1985 No 44  
pres s 161 (prev s 115 and prev s 155) am 1983 No 27  
sub 1985 No 44  
renum as s 155 1991 No 90  
renum as s 161 R9 LA (see 2001 No 63 s 43)

hdg before s 162 om 1983 No 27 (as am by 1985 No 16)

#### **Person unlawfully at large**

s 162 orig s 162 om 1985 No 44  
pres s 162 (prev s 358AE and prev s 156) ins as s 358AE 1988  
No 75  
renum as s 156 1991 No 78  
renum as s 162 R9 LA (see 2001 No 63 s 43)

hdg before s 163 om 1983 No 27 (as am by 1985 No 16)

#### **Permitting escape**

s 163 orig s 163 am 1983 No 27  
om 1985 No 44  
pres s 163 (prev s 358AF and prev s 157) ins as s 358AF 1988  
No 75  
renum as s 157 1991 No 78  
renum as s 163 R9 LA (see 2001 No 63 s 43)

hdg before s 164 om 1983 No 27 (as am by 1985 No 16)

**Harbouring etc escapee**

s 164 orig s 164 om 1985 No 44  
pres s 164 (prev s 358AG and prev s 158) ins as s 358AG 1988  
No 75  
renum as s 158 1991 No 78  
renum as s 164 R9 LA (see 2001 No 63 s 43)

**Escaped prisoner—current sentence**

s 165 orig s 165 am 1983 No 27  
om 1985 No 44  
pres s 165 (prev s 358AH and prev s 159) ins as s 358AH 1988  
No 75  
renum as s 159 1991 No 78  
renum as s 165 R9 LA (see 2001 No 63 s 43)

**Failure to answer bail etc—offence**

s 166 orig s 166 am 1983 No 27  
om 1985 No 44  
pres s 166 (prev s 358AI and prev s 160) ins as s 358AI 1988  
No 75  
renum as s 160 1991 No 78  
renum as s 166 R9 LA (see 2001 No 63 s 43)

**Perjury and like offences**

pt 8 hdg orig pt 8 hdg renum as pt 9 hdg  
pres pt 8 hdg (prev pt 7 hdg) renum R9 LA (see 2001 No 63  
s 43)

**Perjury**

s 167 orig s 167 om 1985 No 44  
pres s 167 (prev s 327) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

**Perjury with intent to procure conviction etc**

s 168 orig s 168 am 1983 No 27  
om 1985 No 44  
pres s 168 (prev s 328) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

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

s 169 orig s 169 am 1983 No 27  
om 1985 No 44  
pres s 169 (prev s 329) renum R9 LA (see 2001 No 63 s 43)

**False swearing not being perjury**

s 170 orig s 170 am 1983 No 27  
om 1985 No 44  
pres s 170 (prev s 330) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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

s 171 orig s 171 om 1985 No 44  
pres s 171 (prev s 331) renum R9 LA (see 2001 No 63 s 43)

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

s 172 orig s 172 am 1983 No 27  
om 1985 No 44  
pres s 172 (prev s 332) am 1983 No 55  
renum R9 LA (see 2001 No 63 s 43)

#### **False evidence by child not on oath**

s 173 orig s 173 am 1983 No 27  
om 1985 No 44  
pres s 173 (prev s 333) am 1983 No 27; 1983 No 55  
renum R9 LA (see 2001 No 63 s 43)

#### **False statement in evidence on commission**

s 174 orig s 174 am 1983 No 27  
om 1985 No 44  
pres s 174 (prev s 334) om 1983 No 27  
ins 1990 No 4  
renum R9 LA (see 2001 No 63 s 43)

#### **Directing prosecution for perjury**

s 175 orig s 175 am 1983 No 27  
om 1985 No 44  
pres s 175 (prev s 340) am 1983 No 27; 1992 No 9  
renum R9 LA (see 2001 No 63 s 43)

#### **For restraining vexatious prosecutions**

s 176 orig s 176 am 1983 No 27  
om 1985 No 44  
pres s 176 (prev s 341) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

#### **Directors etc cheating or defrauding**

s 176A ins 1984 No 78  
om 1985 No 44

#### **Application of laws**

s 177 orig s 177 om 1985 No 44  
pres s 177 (prev s 342) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

#### **Saving of other punishments**

s 178 orig s 178 om 1985 No 44  
pres s 178 (prev s 343) renum R9 LA (see 2001 No 63 s 43)

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

s 178A ins 1963 No 11  
om 1985 No 44

**Valueless cheques**

s 178B ins 1983 No 55  
om 1985 No 44

**Obtaining money etc by deception**

s 178C ins 1983 No 55  
om 1985 No 44

**Obtaining money etc by false or misleading statements**

s 178D ins 1983 No 55  
om 1985 No 44

**Obtaining credit by fraud**

s 178E ins 1983 No 55  
om 1985 No 44

hdg before s 179 om 1983 No 27 (as am by 1985 No 16)

**False accusation**

s 179 orig s 179 am 1963 No 11; 1983 No 27  
om 1985 No 44  
pres s 179 (prev s 344) am 1983 No 27  
sub 1988 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Aiding and abetting, accessories, attempts, incitement and conspiracy**

pt 9 hdg orig pt 9 hdg om 1988 No 75  
pres pt 9 hdg (prev pt 8 hdg) sub 1988 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Aiding and abetting**

s 180 orig s 180 am 1963 No 11  
om 1985 No 44  
pres s 180 (prev s 345) om 1983 No 27  
ins 1988 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Accessory after the fact**

s 181 orig s 181 om 1985 No 44  
pres s 181 (prev s 346) om 1983 No 27  
ins 1988 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Attempts**

s 182 orig s 182 am 1963 No 11  
om 1985 No 44  
pres s 182 (prev s 347) om 1983 No 27  
ins 1988 No 75  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Incitement**

s 183 orig s 183 sub 1963 No 11  
am 1983 No 27  
om 1985 No 44  
pres s 183 (prev s 348) om 1983 No 27  
ins 1988 No 75  
renum R9 LA (see 2001 No 63 s 43)  
pars renum R11 LA

#### **Conspiracy**

s 184 orig s 184 am 1983 No 27  
om 1985 No 44  
pres s 184 (prev s 349) am 1983 No 27  
sub 1988 No 75  
renum R9 LA (see 2001 No 63 s 43)

#### **Criminal investigation**

pt 10 hdg sub 1983 No 55; 1988 No 75; 1991 No 78  
pt 10 hdg note ins 2002 No 11 amdt 2.21

#### **Preliminary**

div 10.1 hdg (prev pt 10 div 1 hdg) ins 1984 No 32  
sub 1991 No 78; 1994 No 75  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

#### **Definitions for pt 10**

s 185 orig s 185 am 1983 No 27  
om 1985 No 44  
pres s 185 (prev s 349AA) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)  
def *medical practitioner* om 1995 No 50 s 6  
def *ordinary search* am 1997 No 10 s 4  
def *summary offence* am 2001 No 56 amdt 3.239  
om 2002 No 11 amdt 2.22

hdg before s 186 om 1983 No 27 (as am by 1985 No 16)

#### **Application of pt 10**

s 186 orig s 186 am 1983 No 27; 1984 No 78  
om 1985 No 44  
pres s 186 (prev s 349AB) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 187 om 1983 No 27 (as am by 1985 No 16)

#### **Application of Cwlth Crimes Act, pt 1C**

s 187 orig s 187 om 1985 No 44  
pres s 187 (prev s 349AC) ins 2001 No 63 s 14  
renum R9 LA (see 2001 No 63 s 43)

**Preventative action**

div 10.2 hdg (prev pt 10 div 1A hdg) ins 1988 No 75  
om 1991 No 78  
ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

**Police powers of entry**

s 188 orig s 188 am 1983 No 27; 1984 No 78  
om 1985 No 44  
pres s 188 (prev s 349A) ins 1986 No 53  
am 1987 No 3  
renum R9 LA (see 2001 No 63 s 43)

**Issue of warrant**

s 189 orig s 198 am 1983 No 27; 1984 No 78  
om 1985 No 44  
pres s 189 (prev s 349B) ins 1986 No 53  
am 1987 No 3  
renum R9 LA (see 2001 No 63 s 43)

**Receiving etc goods stolen out of New South Wales**

s 189A ins 1951 No 14  
am 1983 No 27; 1984 No 78  
om 1985 No 44

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

s 189B ins 1984 No 78  
om 1985 No 44

**Entry in emergencies**

s 190 orig s 190 am 1983 No 27; 1984 No 78  
om 1985 No 44  
pres s 190 (prev s 349C) ins 1986 No 53  
renum R9 LA (see 2001 No 63 s 43)

**Seizure of firearms—warrants and emergencies**

s 191 orig s 191 om 1985 No 44  
pres s 191 (prev s 349D) ins 1991 No 9  
am 1992 No 35; 1996 No 74; 1997 No 23; R9 LA (see 2001 No 63 s 43)  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.31)  
am 2001 No 90 amdt 1.30

**Seizure of firearms—protection orders**

s 192 hdg sub 2001 No 90 amdt 1.32  
s 192 orig s 192 om 1985 No 44  
pres s 192 (prev s 349DA) ins 1997 No 23  
renum R9 LA (see 2001 No 63 s 43)  
am 2001 No 90 amdt 1.33

## Endnotes

### 4 Amendment history

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#### **Power to conduct search of person for knife**

s 193 orig s 193 om 1985 No 44  
pres s 193 (prev s 349DB) ins 1998 No 22  
renum R9 LA (see 2001 No 63 s 43)

#### **Search warrants**

div 10.3 hdg (prev pt 10 div 2 hdg) ins 1984 No 32  
sub 1994 No 75  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

hdgs before s 194 om 1983 No 27 (as am by 1985 No 16)

#### **When search warrants can be issued**

s 194 orig s 194 om 1985 No 44  
pres s 194 (prev s 349E) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

#### **The things that are authorised by search warrant**

s 195 orig s 195 om 1985 No 44  
pres s 195 (prev s 349F) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 196 om 1983 No 27 (as am by 1985 No 16)

#### **Availability of assistance and use of force in executing warrant**

s 196 orig s 196 am 1963 No 11  
om 1968 No 4  
pres s 196 (prev s 349G) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

#### **Details of warrant to be given to occupier etc**

s 197 orig s 197 am 1963 No 11; 1983 No 27  
om 1985 No 44  
pres s 197 (prev s 349H) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

#### **Specific powers available to police officers executing warrant**

s 198 am 1963 No 11; 1983 No 27  
om 1985 No 44  
pres s 198 (prev s 349J) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

#### **Use of equipment to examine or process things**

s 199 orig s 199 am 1983 No 27  
om 1985 No 44  
pres s 199 (prev s 349K) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)



**Use of electronic equipment at premises**

s 200 orig s 200 am 1963 No 11; 1983 No 27  
om 1985 No 44  
pres s 200 (prev s 349L) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Compensation for damage to electronic equipment**

s 201 orig s 201 am 1963 No 11; 1983 No 27  
om 1985 No 44  
pres s 201 (prev s 349M) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Copies of seized things to be provided**

s 202 orig s 202 am 1963 No 11; 1983 No 27  
om 1985 No 44  
pres s 202 (prev s 349N) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 203 om 1983 No 27 (as am by 1985 No 16)

**Occupier entitled to be present during search**

s 203 orig s 203 am 1963 No 11; 1983 No 27  
om 1985 No 44  
pres s 203 (prev s 349P) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Receipts for things seized under warrant**

s 204 orig s 204 am 1963 No 11; 1983 No 27  
om 1985 No 44  
pres s 204 (prev s 349Q) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 205 om 1983 No 27 (as am by 1985 No 16)

**Warrants by telephone or other electronic means**

s 205 orig s 205 om 1971 No 26  
pres s 205 (prev s 349R) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Restrictions on personal searches**

s 206 orig s 206 om 1971 No 26  
pres s 206 (prev s 349S) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Powers to stop and search**

div 10.4 hdg (prev pt 10 div 3 hdg) ins 1994 No 75  
sub 2001 No 63 s 15  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

## Endnotes

### 4 Amendment history

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#### **Stopping, searching and detaining people**

s 207 orig s 207 om 1971 No 26  
pres s 207 (prev s 349SA) ins 2001 No 63 s 16  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 208 om 1983 No 27 (as am by 1985 No 16)

#### **How a police officer exercises a power under s 207**

s 208 orig s 208 om 1985 No 44  
pres s 208 (prev s 349SB) ins 2001 No 63 s 16  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 209 om 1983 No 27 (as am by 1985 No 16)

#### **Stopping, searching and detaining conveyances**

s 209 hdg (prev s 349T hdg) sub 2001 No 63 s 17  
s 209 orig s 209 am 1983 No 27  
om 1985 No 44  
pres s 209 (prev s 349T) ins 1994 No 75  
am 2001 No 63 s 18  
renum R9 LA (see 2001 No 63 s 43)

#### **How a police officer exercises a power under s 209**

s 210 orig s 210 am 1983 No 27  
om 1985 No 44  
pres s 210 (prev s 349U) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

#### **Arrest and related matters**

div 10.5 hdg (prev pt 10 div 4 hdg) ins 1994 No 75  
sub 2001 No 63 s 15  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

hdg before s 211 om 1983 No 27 (as am by 1985 No 16)

#### **Requirement to provide name etc**

s 211 orig s 211 am 1983 No 27  
om 1985 No 44  
pres s 211 (prev s 349V) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

#### **Power of arrest without warrant by police officers**

s 212 orig s 212 am 1983 No 27  
om 1985 No 44  
pres s 212 (prev s 349W) ins 1994 No 75  
am 1997 No 23; 2001 No 63 ss 19-23  
renum R9 LA (see 2001 No 63 s 43)

**Arrest without warrant in possession**

s 213 orig s 213 am 1983 No 27  
om 1985 No 44  
pres s 213 (prev s 349X) ins 1994 No 75  
am 1998 No 67  
renum R9 LA (see 2001 No 63 s 43)

**Arrest of prisoner unlawfully at large**

s 214 orig s 214 am 1983 No 27  
om 1985 No 44  
pres s 214 (prev s 349Y) ins 1994 No 75  
am 1998 No 67; 2001 No 63 s 24  
renum R9 LA (see 2001 No 63 s 43)

**Power of arrest without warrant of person on bail**

s 215 orig s 215 am 1983 No 27  
om 1985 No 44  
pres s 215 (prev s 349Z) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Arrest for breach of bail conditions by person outside ACT**

s 216 orig s 216 am 1983 No 27  
om 1985 No 44  
pres s 216 (prev s 349ZA) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Arrest without warrant for offences committed outside ACT**

s 217 orig s 217 am 1983 No 27  
om 1985 No 44  
pres s 217 (prev s 349ZB) ins 1994 No 75  
am 2001 No 63 s 25  
renum R9 LA (see 2001 No 63 s 43)

**Power of arrest without warrant by other persons**

s 218 orig s 218 am 1983 No 27  
om 1985 No 44  
pres s 218 (prev s 349ZC) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Warrants for arrest**

s 219 orig s 219 am 1983 No 55  
om 1985 No 44  
pres s 219 (prev s 349ZD) ins 1994 No 75  
am 2001 No 25 s 18  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Power to enter premises to arrest offender**

s 220 orig s 220 om 1985 No 44  
pres s 220 (prev s 349ZE) ins 1994 No 75  
am 2001 No 63 s 26, s 27  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 221 om 1983 No 27 (as am by 1985 No 16)

#### **Use of force in making arrest**

s 221 orig s 221 am 1983 No 27  
om 1985 No 44  
pres s 221 (prev s 349ZF) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

#### **Persons to be informed of grounds of arrest**

s 222 orig s 222 am 1983 No 27  
om 1985 No 44  
pres s 222 (prev s 349ZG) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

#### **Power to conduct frisk search of arrested person**

s 223 orig s 223 am 1983 No 27  
om 1985 No 44  
pres s 223 (prev s 349ZH) ins 1994 No 75  
am 2001 No 63 s 28, s 29  
renum R9 LA (see 2001 No 63 s 43)

#### **Power to conduct ordinary search of arrested person**

s 224 orig s 224 am 1983 No 27  
om 1985 No 44  
pres s 224 (prev s 349ZJ) ins 1994 No 75  
am 1997 No 10; 2001 No 63 s 30, s 31  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 225 om 1983 No 27 (as am by 1985 No 16)

#### **Power to conduct search of arrested person's premises**

s 225 orig s 225 am 1983 No 27  
om 1985 No 44  
pres s 225 (prev s 349ZK) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

#### **Power to conduct search at police station**

s 226 orig s 226 am 1983 No 27  
om 1985 No 44  
pres s 226 (prev s 349ZL) ins 1994 No 75  
am 1997 No 10  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 227 om 1983 No 27 (as am by 1985 No 16)

**Power to conduct strip search**

s 227 orig s 227 om 1985 No 44  
pres s 227 (prev s 349ZM) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 228 om 1983 No 27 (as am by 1985 No 16)

**Rules for conduct of strip search**

s 228 orig s 228 am 1983 No 27  
om 1985 No 44  
pres s 228 (prev s 349ZN) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Safekeeping of things seized**

s 229 orig s 229 om 1985 No 44  
pres s 229 (prev s 349ZO) ins 1997 No 10  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 230 om 1983 No 27 (as am by 1985 No 16)

**Taking fingerprints, recordings, samples of handwriting or photographs**

s 230 orig s 230 am 1983 No 27  
om 1985 No 44  
pres s 230 (prev s 349ZP) ins 1994 No 75  
am 1999 No 64 s 4 sch 2; 2001 No 63 s 32  
renum R9 LA (see 2001 No 63 s 43)

**Destruction of identification material**

s 231 orig s 231 om 1985 No 44  
pres s 231 (prev s 349ZQ) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Offence of refusing to allow identification material to be taken**

s 232 orig s 232 om 1985 No 44  
pres s 232 (prev s 349ZR) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Identification parades—general**

s 233 orig s 233 om 1985 No 44  
pres s 233 (prev s 349ZS) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Identification parades for suspects under 18 etc**

s 234 orig s 234 om 1985 No 44  
pres s 234 (prev s 349ZT) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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hdg before s 235 om 1983 No 27 (as am by 1985 No 16)

#### **Identification by means of photographs**

s 235 orig s 235 om 1968 No 4  
pres s 235 (prev s 349ZU) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

#### **Identification procedures if more than 1 suspect**

s 236 orig s 236 am 1983 No 27  
om 1985 No 44  
pres s 236 (prev s 349ZV) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

#### **Descriptions**

s 237 orig s 237 am 1983 No 27  
om 1985 No 44  
pres s 237 (prev s 349ZW) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

#### **Examination**

s 238 orig s 238 am 1983 No 27  
om 1985 No 44  
pres s 238 (prev s 349ZX) ins 1994 No 75  
sub 1996 No 31  
am 1999 No 64 s 4 sch 2; 2001 No 56 amdt 3.240  
renum R9 LA (see 2001 No 63 s 43)

#### **General**

div 10.6 hdg (prev pt 10 div 5 hdg) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

#### **Assisting officers—search and arrest of persons**

s 239 orig s 239 am 1983 No 27  
om 1985 No 44  
pres s 239 (prev s 349ZY) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

#### **Conduct of ordinary searches and frisk searches**

s 240 orig s 240 am 1968 No 4  
om 1985 No 44  
pres s 240 (prev s 349ZZ) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

#### **Announcement before entry**

s 241 orig s 241 am 1983 No 27  
om 1985 No 44  
pres s 241 (prev s 349ZZA) ins 1994 No 75  
am 1997 No 23  
renum R9 LA (see 2001 No 63 s 43)

**Offence of making false statements in warrants**

s 242 orig s 242 am 1983 No 27  
om 1985 No 44  
pres s 242 (prev s 349ZZB) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

**Offences relating to telephone warrants**

s 243 orig s 243 am 1983 No 27  
om 1985 No 44  
pres s 243 (prev s 349ZZC) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 244 om 1983 No 27 (as am by 1985 No 16)

**Return of seized knife or thing**

s 244 orig s 244 am 1983 No 27  
om 1985 No 44  
pres s 244 (prev s 349ZZD) ins 1994 No 75  
am 1998 No 22; 2001 No 63 s 33, s 34  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 245 om 1983 No 27 (as am by 1985 No 16)

**Magistrates Court may permit thing to be retained**

s 245 orig s 245 am 1983 No 27; 1984 No 78  
om 1985 No 44  
pres s 245 (prev s 349ZZE) ins 1994 No 75  
am 2001 No 63 s 35  
renum R9 LA (see 2001 No 63 s 43)

**Law relating to legal professional privilege not affected**

s 246 orig s 246 am 1983 No 27  
om 1985 No 44  
pres s 246 (prev s 349ZZF) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)  
om 2002 No 11 amdt 2.23

hdg before s 247 om 1983 No 27 (as am by 1985 No 16)

**Laws relating to taking forensic samples not affected**

s 247 orig s 247 am 1983 No 27  
om 1985 No 44  
pres s 247 (prev s 349ZZG) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 248 om 1983 No 27 (as am by 1985 No 16)

## Endnotes

### 4 Amendment history

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#### **Forfeiture of knife**

s 248 orig s 248 am 1983 No 27  
om 1985 No 44  
pres s 248 (prev s 349ZZH) ins 1998 No 22  
renum R9 LA (see 2001 No 63 s 43)

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

s 248A ins 1984 No 78  
om 1985 No 44

hdg before s 249 om 1983 No 27 (as am by 1985 No 16)

#### **Seizure of forfeited articles**

s 249 orig s 249 om 1985 No 44  
pres s 249 (prev s 350) om 1983 No 27  
ins 1983 No 55  
am 1985 No 67; 1986 No 15; 1991 No 104  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 250 om 1983 No 27 (as am by 1985 No 16)

#### **Forfeited articles to be dealt with by public trustee**

s 250 orig s 250 om 1986 No 15  
pres s 250 (prev s 350A) ins 1991 No 104  
renum R9 LA (see 2001 No 63 s 43)

#### **Costs etc payable to public trustee**

s 251 orig s 251 am 1983 No 27  
om 1986 No 15  
pres s 251 (prev s 350B) ins 1991 No 104  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 252 om 1983 No 27 (as am by 1985 No 16)

#### **When case not to be proceeded with gaoler to discharge prisoner on certificate from Attorney-General etc**

s 252 orig s 252 om 1986 No 15  
pres s 252 (prev s 358) am 2001 No 44 amdts 1.993-1.995  
renum R9 LA (see 2001 No 63 s 43)

#### **Investigation of extraterritorial offences**

pt 11 hdg (prev pt 10A hdg) ins 1994 No 75  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 253 om 1983 No 27 (as am by 1985 No 16)



**Interpretation for pt 11**

s 253 orig s 253 om 1983 No 27  
 pres s 253 (prev s 358A) ins 1984 No 32  
 am 1990 No 5; 1994 No 75; 2001 No 44 amdt 1.996, amdt  
 1.997  
 renum R9 LA (see 2001 No 63 s 43)

**Declaration of corresponding law**

s 254 orig s 254 om 1983 No 27  
 pres s 254 (prev s 358AA) ins 2001 No 44 amdt 1.998  
 renum R9 LA (see 2001 No 63 s 43)

hdg before s 255 om 1983 No 27 (as am by 1985 No 16)

**Issue of search warrants**

s 255 orig s 255 am 1983 No 27; 1983 No 55  
 om 1986 No 15  
 pres s 255 (prev s 358B) ins 1984 No 32  
 am 1985 No 67  
 renum R9 LA (see 2001 No 63 s 43)

hdg before s 256 om 1983 No 27 (as am by 1985 No 16)

**Authority given by search warrant**

s 256 orig s 256 am 1983 No 27  
 om 1986 No 15  
 pres s 256 (prev s 358C) ins 1984 No 32  
 renum R9 LA (see 2001 No 63 s 43)

**Offence of hindering execution of search warrant**

s 257 orig s 257 am 1983 No 27  
 om 1986 No 15  
 pres s 257 (prev s 358D) ins 1984 No 32  
 renum R9 LA (see 2001 No 63 s 43)

**Ministerial arrangements for transmission and return of objects seized under pt 11 or corresponding law**

s 258 orig s 258 am 1983 No 27  
 om 1986 No 15  
 pres s 258 (prev s 358E) ins 1984 No 32  
 am 1994 No 75  
 renum R9 LA (see 2001 No 63 s 43)

**Procedure, evidence, verdict etc**

pt 12 hdg (prev pt 11 hdg) renum R9 LA (see 2001 No 63 s 43)

**Meaning of *statute* and *Act* in indictments etc**

s 259 orig s 259 om 1983 No 27  
 pres s 259 (prev s 359) renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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hdg before s 260 om 1983 No 27 (as am by 1985 No 16)

#### **What defects do not vitiate indictment**

s 260 orig s 260 om 1983 No 27  
pres s 260 (prev s 360) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

#### **Formal objections—when to be taken**

s 261 orig s 261 om 1983 No 27  
pres s 261 (prev s 362) renum R9 LA (see 2001 No 63 s 43)

#### **Judgment on demurrer to indictment**

s 262 orig s 262 om 1983 No 27  
pres s 262 (prev s 363) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

#### **Traversing indictment**

s 263 orig s 263 om 1983 No 27  
pres s 263 (prev s 364) renum R9 LA (see 2001 No 63 s 43)

hdg before s 264 om 1983 No 27 (as am by 1985 No 16)

#### **Orders for amendment of indictment, separate trial and postponement of trial**

s 264 orig s 264 om 1983 No 27  
pres s 264 (prev s 365) sub 1963 No 11  
am 1992 No 9  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 265 om 1983 No 27 (as am by 1985 No 16)

#### **Amended indictment**

s 265 orig s 265 am 1983 No 27  
om 1986 No 15  
pres s 265 (prev s 366) sub 1963 No 11  
renum R9 LA (see 2001 No 63 s 43)

#### **Verdict and judgment valid after amendment**

s 266 orig s 266 am 1983 No 27  
om 1986 No 15  
pres s 266 (prev s 367) renum R9 LA (see 2001 No 63 s 43)

#### **Form of record after amendment**

s 267 orig s 267 am 1983 No 27  
om 1986 No 15  
pres s 267 (prev s 368) renum R9 LA (see 2001 No 63 s 43)

**Respite undertakings on postponement**

s 268 orig s 268 om 1986 No 15  
pres s 268 (prev s 369) am 1990 No 5; 1992 No 9  
renum R9 LA (see 2001 No 63 s 43)

**Separate offences—when can be joined**

s 269 orig s 269 am 1983 No 27  
om 1986 No 15  
pres s 269 (prev s 370) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

**Accessories may be charged together in 1 indictment**

s 270 orig s 270 am 1983 No 27  
om 1986 No 15  
pres s 270 (prev s 371) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 271 om 1983 No 27 (as am by 1985 No 16)

**Indictment charging previous offence also**

s 271 orig s 271 am 1983 No 27  
om 1986 No 15  
pres s 271 (prev s 372) renum R9 LA (see 2001 No 63 s 43)

**Property of partners or joint owners**

s 272 orig s 272 am 1983 No 27  
om 1986 No 15  
pres s 272 (prev s 373) am 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Description of written instruments**

s 273 orig s 273 am 1983 No 27  
om 1986 No 15  
pres s 273 (prev s 374) renum R9 LA (see 2001 No 63 s 43)

**General averment of intent to defraud or injure**

s 274 orig s 274 am 1983 No 27  
om 1986 No 15  
pres s 274 (prev s 375) renum R9 LA (see 2001 No 63 s 43)

**Indictment for murder or manslaughter**

s 275 orig s 275 am 1983 No 27  
om 1986 No 15  
pres s 275 (prev s 376) am 1983 No 55; 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Form of indictment against accessories to murder**

s 276 orig s 276 am 1983 No 27  
om 1986 No 15  
pres s 276 (prev s 378) am 1983 No 27; 1983 No 55  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 277 om 1983 No 27 (as am by 1985 No 16)

#### **Addition of count for assault**

s 277 orig s 277 am 1983 No 27  
om 1986 No 15  
pres s 277 (prev s 380) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

#### **Indictment for perjury**

s 278 orig s 278 am 1983 No 27  
om 1986 No 15  
pres s 278 (prev s 392) renum R9 LA (see 2001 No 63 s 43)

hdg before s 279 om 1983 No 27 (as am by 1985 No 16)

#### **Indictments for conspiracy**

s 279 orig s 279 om 1983 No 27  
pres s 279 (prev s 393) renum R9 LA (see 2001 No 63 s 43)

#### **Arraignment etc on charge of previous conviction**

s 280 orig s 280 am 1983 No 27; 1983 No 55  
om 1986 No 15  
pres s 280 (prev s 394) renum R9 LA (see 2001 No 63 s 43)

#### **Plea of not guilty**

s 281 orig s 281 am 1983 No 27  
om 1986 No 15  
pres s 281 (prev s 395) renum R9 LA (see 2001 No 63 s 43)

#### **Refusal to plead**

s 282 orig s 282 am 1983 No 27  
om 1986 No 15  
pres s 282 (prev s 396) renum R9 LA (see 2001 No 63 s 43)

#### **Plea of autrefois convict etc**

s 283 orig s 283 am 1983 No 27  
om 1986 No 15  
pres s 283 (prev s 399) renum R9 LA (see 2001 No 63 s 43)

hdg before s 284 om 1983 No 27 (as am by 1985 No 16)

**Practice as to entering the dock**

s 284 orig s 284 am 1983 No 27  
om 1986 No 15  
pres s 284 (prev s 400) am 1983 No 27; 1987 No 3  
renum R9 LA (see 2001 No 63 s 43)

**Accused may be defended by legal practitioner**

s 285 orig s 285 am 1983 No 27  
om 1986 No 15  
pres s 285 (prev s 402) am 1997 No 96  
renum R9 LA (see 2001 No 63 s 43)

**Right to inspect depositions on trial**

s 286 orig s 286 am 1983 No 27  
om 1986 No 15  
pres s 286 (prev s 403) renum R9 LA (see 2001 No 63 s 43)

**Power of judge to record verdict of acquittal**

s 287 orig s 287 am 1983 No 55  
om 1986 No 15  
pres s 287 (prev s 404) om 1971 No 2  
ins 1984 No 78  
renum R9 LA (see 2001 No 63 s 43)

**Notice of alibi**

s 288 orig s 288 am 1983 No 27  
om 1986 No 15  
pres s 288 (prev s 406) om 1971 No 2  
ins 1984 No 78  
am 1997 No 96  
renum R9 LA (see 2001 No 63 s 43)

**Abolition of presumption of marital coercion**

s 289 orig s 289 am 1983 No 27; 1983 No 55  
om 1986 No 15  
pres s 289 (prev s 407) om 1971 No 2  
ins 1999 No 71 s 4  
renum R9 LA (see 2001 No 63 s 43)

**Incriminating statements admissible though on oath**

s 290 orig s 290 am 1983 No 27  
om 1986 No 15  
pres s 290 (prev s 411) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

**Evidence of previous conviction charged in indictment**

s 291 orig s 291 am 1983 No 27  
om 1986 No 15  
pres s 291 (prev s 414) renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Proof of lawful authority or excuse**

s 292 orig s 292 am 1983 No 27  
om 1986 No 15  
pres s 292 (prev s 417) renum R9 LA (see 2001 No 63 s 43)

hdg before s 293 om 1983 No 27 (as am by 1985 No 16)

#### **On trial for perjury presumption of authority to administer oath etc**

s 293 orig s 293 am 1983 No 27  
om 1986 No 15  
pres s 293 (prev s 423) renum R9 LA (see 2001 No 63 s 43)

hdg before s 294 om 1983 No 27 (as am by 1985 No 16)

#### **Order of closing addresses**

s 294 orig s 294 am 1983 No 27; 1984 No 78  
om 1986 No 15  
pres s 294 (prev s 423A) ins 1998 No 57  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 295 om 1983 No 27 (as am by 1985 No 16)

#### **Witnesses in mitigation**

s 295 orig s 295 om 1983 No 27  
pres s 295 (prev s 424) renum R9 LA (see 2001 No 63 s 43)

hdg before s 296 om 1983 No 27 (as am by 1985 No 16)

#### **Conviction for alternative offence**

s 296 orig s 296 om 1983 No 27  
pres s 296 (prev s 425) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

#### **After trial for offence, if alternative verdict possible, no further prosecution**

s 297 orig s 297 om 1983 No 27  
pres s 297 (prev s 426) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 298 om 1983 No 27 (as am by 1985 No 16)

#### **On trial for any offence—verdict of attempt**

s 298 orig s 298 am 1983 No 27  
om 1986 No 15  
pres s 298 (prev s 427) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 299 om 1983 No 27 (as am by 1985 No 16)

**Multiple alternative verdicts**

s 299 orig s 299 om 1983 No 27  
pres s 299 (prev s 427A) ins 1990 No 2  
renum R9 LA (see 2001 No 63 s 43)

**Unfitness to plead, mental illness and mental dysfunction**

pt 13 hdg (prev pt 11A hdg) ins 1994 No 46  
renum R9 LA (see 2001 No 63 s 43)

**Preliminary**

div 13.1 hdg (prev pt 11A div 1 hdg) ins 1994 No 46  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

**Definitions for pt 13**

s 300 orig s 300 om 1983 No 27  
pres s 300 (prev s 428B) ins 1994 No 46  
am 1999 No 32 s 5  
renum R9 LA (see 2001 No 63 s 43)

**Limitation on orders and detention—non-acquittals**

s 301 orig s 301 om 1983 No 27  
pres s 301 (prev s 428C) ins 1994 No 46  
sub 1999 No 32 s 6  
renum R9 LA (see 2001 No 63 s 43)

**Limitation on orders and detention—acquittals**

s 302 orig s 302 om 1983 No 27  
pres s 302 (prev s 428CA) ins 1999 No 32 s 6  
renum R9 LA (see 2001 No 63 s 43)

**Limitation on Supreme Court orders**

s 303 orig s 303 om 1983 No 27  
pres s 303 (prev s 428CB) ins 1999 No 32 s 6  
renum R9 LA (see 2001 No 63 s 43)

**Limitation on orders and detention—dismissal of charge**

s 304 orig s 304 om 1983 No 27  
pres s 304 (prev s 428CC) ins 1999 No 32 s 6  
renum R9 LA (see 2001 No 63 s 43)

**Limitation on orders and detention—Magistrates Court**

s 305 orig s 305 om 1983 No 27  
pres s 305 (prev s 428CD) ins 1999 No 32 s 6  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Limitation on Magistrates Court orders**

s 306 orig s 306 om 1983 No 27  
pres s 306 (prev s 428CE) ins 1999 No 32 s 6  
renum R9 LA (see 2001 No 63 s 43)

#### **How relevant court may inform itself**

s 307 orig s 307 om 1983 No 27  
pres s 307 (prev s 428CF) ins 1999 No 32 s 6  
renum R9 LA (see 2001 No 63 s 43)

#### **Criteria for detention**

s 308 orig s 308 om 1983 No 27  
pres s 308 (prev s 428D) ins 1994 No 46  
am 1999 No 32 s 7  
renum R9 LA (see 2001 No 63 s 43)

#### **Assessment whether emergency detention required**

s 309 orig s 309 om 1983 No 27  
pres s 309 (prev s 428DA) ins 1999 No 32 s 8  
renum R9 LA (see 2001 No 63 s 43)

#### **Unfitness to plead**

div 13.2 hdg (prev pt 11A div 2 hdg) ins 1994 No 46  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

#### **Referral to tribunal**

s 310 orig s 310 om 1983 No 27  
pres s 310 (prev s 428E) ins 1994 No 46  
am 1999 No 32 s 9  
renum R9 LA (see 2001 No 63 s 43)

#### **Person found fit to plead**

s 311 orig s 311 om 1983 No 27  
pres s 311 (prev s 428F) ins 1994 No 46  
renum R9 LA (see 2001 No 63 s 43)

#### **Action pending determination by tribunal**

s 312 orig s 312 om 1983 No 27  
pres s 312 (prev s 428FA) ins 1999 No 32 s 10  
renum R9 LA (see 2001 No 63 s 43)

#### **Temporary unfitness to plead—non-serious offence**

s 313 orig s 313 om 1983 No 27  
pres s 313 (prev s 428G) ins 1994 No 46  
am 1999 No 32 s 11  
renum R9 LA (see 2001 No 63 s 43)



**Temporary unfitness to plead—serious offence**

s 314 orig s 314 om 1983 No 27  
pres s 314 (prev s 428H) ins 1994 No 46  
am 1999 No 32 s 12  
renum R9 LA (see 2001 No 63 s 43)

**Special hearings**

s 315 orig s 315 om 1983 No 27  
pres s 315 (prev s 428I) ins 1994 No 46  
am 1999 No 32 s 13  
renum R9 LA (see 2001 No 63 s 43)

**Nature and conduct of special hearing**

s 316 orig s 316 om 1983 No 27  
pres s 316 (prev s 428J) ins 1994 No 46  
am 1999 No 32 s 14; R9 LA (see 2001 No 63 s 43)  
renum R9 LA (see 2001 No 63 s 43)

**Verdicts available at special hearing**

s 317 orig s 317 om 1983 No 27  
pres s 317 (prev s 428K) ins 1994 No 46  
am 1999 No 32 s 15; R9 LA (see 2001 No 63 s 43)  
renum R9 LA (see 2001 No 63 s 43)

**Non-acquittal at special hearing—non-serious offence**

s 318 orig s 318 om 1983 No 27  
pres s 318 (prev s 428L) ins 1994 No 46  
am 1999 No 32 s 16  
renum R9 LA (see 2001 No 63 s 43)

**Non-acquittal at special hearing—serious offence**

s 319 orig s 319 om 1983 No 27  
pres s 319 (prev s 428M) ins 1994 No 46  
am 1999 No 32 s 17  
renum R9 LA (see 2001 No 63 s 43)

**Acquittal on grounds of mental impairment**

div 13.3 hdg (prev pt 11A div 3 hdg) ins 1994 No 46  
am 1999 No 32 s 18  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

**Acquittal on grounds of mental impairment**

s 320 orig s 320 om 1983 No 27  
pres s 320 (prev s 428N) ins 1994 No 46  
am 1999 No 32 s 19  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Plea of not guilty by reason of mental impairment**

s 321 orig s 321 om 1983 No 27  
pres s 321 (prev s 428O) ins 1994 No 46  
am 1999 No 32 s 20  
renum R9 LA (see 2001 No 63 s 43)

#### **Explanation to jury**

s 322 orig s 322 om 1983 No 27  
pres s 322 (prev s 428P) ins 1994 No 46  
am 1999 No 32 s 21  
renum R9 LA (see 2001 No 63 s 43)

#### **Court orders following acquittal—non-serious offence**

s 323 orig s 323 om 1983 No 27  
pres s 323 (prev s 428Q) ins 1994 No 46  
am 1999 No 32 s 22  
renum R9 LA (see 2001 No 63 s 43)

#### **Court orders following acquittal—serious offence**

s 324 orig s 324 om 1983 No 27  
pres s 324 (prev s 428R) ins 1994 No 46  
am 1999 No 32 s 23  
renum R9 LA (see 2001 No 63 s 43)

#### **Dismissal by Magistrates Court on grounds of mental impairment**

div 13.4 hdg (prev pt 11A div 3A hdg) ins 1999 No 32 s 24  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

#### **Meaning of *serious offence* in div 13.4**

s 325 orig s 325 om 1983 No 27  
pres s 325 (prev s 428RA) ins 1999 No 32 s 24  
renum R9 LA (see 2001 No 63 s 43)

#### **Dismissal on grounds of mental impairment**

s 326 orig s 326 om 1983 No 27  
pres s 326 (prev s 428RB) ins 1999 No 32 s 24  
renum R9 LA (see 2001 No 63 s 43)

#### **Plea of not guilty by reason of mental impairment**

s 327 orig s 327 renum as s 167  
pres s 327 (prev s 428RC) ins 1999 No 32 s 24  
renum R9 LA (see 2001 No 63 s 43)

#### **Magistrates Court orders following dismissal—non-serious offence**

s 328 orig s 328 renum as s 168  
pres s 328 (prev s 428RD) ins 1999 No 32 s 24  
renum R9 LA (see 2001 No 63 s 43)

**Magistrates Court orders following dismissal—serious offence**

s 329 orig s 329 renum as s 169  
pres s 329 (prev s 428RE) ins 1999 No 32 s 24  
renum R9 LA (see 2001 No 63 s 43)

**Referral of mentally dysfunctional or mentally ill persons to tribunal following conviction**

div 13.5 hdg (prev pt 11A div 4 hdg) ins 1994 No 46  
am 1999 No 32 s 25  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

**Application of div 13.5**

s 330 orig s 330 renum as s 170  
pres s 330 (prev s 428S) ins 1994 No 46  
am 1999 No 32 s 26  
renum R9 LA (see 2001 No 63 s 43)

**Referral to tribunal**

s 331 orig s 331 renum as s 171  
pres s 331 (prev s 428T) ins 1994 No 46  
am 1999 No 32 s 27  
renum R9 LA (see 2001 No 63 s 43)

**Summary proceedings against mentally dysfunctional or mentally ill persons**

div 13.6 hdg (prev pt 11A div 5 hdg) ins 1994 No 46  
am 1999 No 32 s 28  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

**Application of div 13.6**

s 332 orig s 332 renum as s 172  
pres s 332 (prev s 428U) ins 1994 No 46  
renum R9 LA (see 2001 No 63 s 43)

**Indictable offences heard and determined summarily**

s 333 orig s 333 renum as s 173  
pres s 333 (prev s 428V) ins 1994 No 46  
am 1999 No 32 s 29  
renum R9 LA (see 2001 No 63 s 43)

**Powers of Magistrates Court**

s 334 orig s 334 renum as s 174  
pres s 334 (prev s 428W) ins 1994 No 46  
am 1999 No 32 s 30; R9 LA (see 2001 No 63 s 43)  
renum R9 LA (see 2001 No 63 s 43)

**Fitness to plead—Magistrates Court**

s 335 orig s 335 om 1983 No 27  
pres s 335 (prev s 428WA) ins 1999 No 32 s 31  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **How Magistrates Court may be informed**

s 336 orig s 336 om 1983 No 27  
pres s 336 (prev s 428X) ins 1994 No 46  
renum R9 LA (see 2001 No 63 s 43)  
sub 2002 No 11 amdt 2.24

#### **Intoxication**

pt 14 hdg (prev pt 11B hdg) ins 2000 No 58 s 4  
renum R9 LA (see 2001 No 63 s 43)  
pt 14 ch 1 hdg sub 1951 No 14  
om 1983 No 27 (as am by 1985 No 16)  
pt 14 ch 2 hdg om 1974 No 17

#### **Application of pt 14**

s 337 orig s 337 om 1983 No 27  
pres s 337 (prev s 428XA) ins 2000 No 58 s 4  
renum R9 LA (see 2001 No 63 s 43)

#### **Interpretation for pt 14**

s 338 orig s 338 om 1983 No 27  
pres s 338 (prev s 428XB) ins 2000 No 58 s 4  
renum R9 LA (see 2001 No 63 s 43)

#### **Intoxication in relation to offences**

s 339 orig s 339 om 1983 No 27  
pres s 339 (prev s 428XC) ins 2000 No 58 s 4  
renum R9 LA (see 2001 No 63 s 43)

#### **Sentences**

pt 15 hdg (prev pt 12 hdg) renum R9 LA (see 2001 No 63 s 43)

#### **General principles and procedures**

div 15.1 hdg (prev pt 12 div 1 hdg) ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

#### **Meaning of *victim* in pt 12**

s 340 orig s 340 renum as s 175  
pres s 340 (prev s 428Y) ins 1994 No 84  
renum R9 LA (see 2001 No 63 s 43)

#### **Purposes for which sentence imposed**

s 341 orig s 341 renum as s 176  
pres s 341 (prev s 429) sub 1951 No 14  
om 1986 No 14  
ins 1993 No 73  
sub 1998 No 9  
renum R9 LA (see 2001 No 63 s 43)

**Matters to which court to have regard**

- s 342 orig s 342 renum as s 177  
pres s 342 (prev s 429A) ins 1993 No 73  
am 1997 No 10; 1997 No 117; 1998 No 9; R9 LA (see 2001 No 63 s 43)  
renum R9 LA (see 2001 No 63 s 43)

**Victim impact statements**

- s 343 orig s 343 renum as s 178  
pres s 343 (prev s 429AB) ins 1994 No 84  
renum R9 LA (see 2001 No 63 s 43)

**Matters not to be taken into account**

- s 344 orig s 344 renum as s 179  
pres s 344 (prev s 429B) ins 1993 No 73  
am 1998 No 9; R9 LA (see 2001 No 63 s 43)  
renum R9 LA (see 2001 No 63 s 43)

**Restriction on imposing sentences of imprisonment**

- s 345 orig s 345 renum as s 180  
pres s 345 (prev s 429C) ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)

**Sentences—imprisonment and fines**

- s 346 orig s 346 renum as s 181  
pres s 346 (prev s 430) am 1968 No 4  
om 1983 No 27  
ins 1983 No 55  
renum R9 LA (see 2001 No 63 s 43)

**Fine instead of imprisonment**

- s 347 orig s 347 renum as s 182  
pres s 347 (prev s 431) om 1968 No 4  
ins 1985 No 44  
renum R9 LA (see 2001 No 63 s 43)

**Fines**

- s 348 orig s 348 renum as s 183  
pres s 348 (prev s 431A) ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)

**Theft of motor vehicle—cancellation of licence**

- s 349 orig s 349 renum as s 184  
pres s 349 (prev s 432) om 1983 No 27  
ins 1986 No 57  
am 1997 No 52; 1999 No 79 s 5 sch 3  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Reparation orders**

s 350 orig s 350 om 1983 No 27  
ins 1983 No 55  
renum as s 249  
pres s 350 (prev s 437) am 1983 No 27; 1985 No 44  
sub 1986 No 57  
am 1990 No 1; 1991 No 18; 1999 No 91 s 12; 2001 No 44 amdt  
1.999, amdt 1.1000; R9 LA (see 2001 No 63 s 43)  
renum R9 LA (see 2001 No 63 s 43)

#### **Judgment after sentence deferred**

s 351 orig s 351 om 1983 No 27  
ins 1983 No 55  
om 1994 No 86  
pres s 351 (prev s 441) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 352 om 1983 No 27 (as am by 1985 No 16)

#### **When sentence takes effect**

s 352 orig s 352 am 1983 No. 27; 1984 No 78; 1986 No 53  
om 1994 No 75  
pres s 352 (prev s 441A) ins 1983 No 27  
am 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)

#### **Offences committed outside Territory—power of arrest**

s 352A ins 1984 No 78  
om 1994 No 75

#### **Provision for passing sentences of less duration than those fixed**

s 353 orig s 353 am 1983 No 27  
om 1994 No 75  
pres s 353 (prev s 442) sub 1963 No 11  
am 1974 No 17; 1986 No 57  
renum R9 LA (see 2001 No 63 s 43)

#### **Power to search and medically examine a person and take fingerprints etc**

s 353A ins 1944 No 1  
am 1984 No 78; 1991 No 122  
om 1994 No 75

hdg before s 354 om 1983 No 27 (as am by 1985 No 16 )

**Concurrent and cumulative sentences**

s 354 orig s 354 om 1983 No 27  
ins 1983 No 55  
am 1984 No 78  
om 1988 No 75  
ins 1991 No 78  
sub 1993 No 3  
am 1999 No 50 s 20 sch; 1999 No 79 s 5 sch 3  
om 2001 No 63 s 36  
pres s 354 (prev s 443) am 1983 No 27  
sub 1986 No 57; 1993 No 73  
am 1998 No 29; 1999 No 64 s 4 sch 2  
renum R9 LA (see 2001 No 63 s 43)

**Sentences of imprisonment and uncompleted juvenile detention orders**

s 355 orig s 355 om 1983 No 27  
pres s 355 (prev s 444) am 1983 No 27  
om 1986 No 57  
ins 1997 No 86  
sub 1999 No 64 s 4 sch 2  
renum R9 LA (see 2001 No 63 s 43)

**Previous sentences to be noted in new sentence**

s 356 orig s 356 om 1983 No 27  
pres s 356 (prev s 446) renum R9 LA (see 2001 No 63 s 43)

**Outstanding charges may be taken into account when passing sentence**

s 357 orig s 357 om 1983 No 27  
pres s 357 (prev s 448) sub 1983 No 27  
am 1985 No 16; 2001 No 44 amdt 1.1001  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 358 om 1983 No 27 (as am by 1985 No 16)

**Appeal if promised cooperation not forthcoming**

s 358 orig s 358 renum as s 252  
pres s 358 (prev s 449) om 1983 No 27  
ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 359 om 1983 No 27 (as am by 1985 No 16)

**Court to explain sentence**

s 359 orig s 359 renum as s 259  
pres s 359 (prev s 450) om 1983 No 27  
ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Time held in custody to count**

s 360 orig s 360 renum as s 260  
pres s 360 (prev s 451) om 1983 No 27  
ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)

#### **Sentence to be adjusted if no remission laws apply**

s 361 orig s 361 om 1983 No 27  
pres s 361 (prev s 452) om 1983 No 27  
ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)

#### **Pre-sentence reports**

div 15.2 hdg (prev pt 12 div 2 hdg) ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

#### **Meaning of *authorised officer* in div 15.2**

s 362 orig s 362 renum as s 261  
pres s 362 (prev s 453) om 1974 No 17  
ins 1993 No 73  
am 1994 No 38  
renum R9 LA (see 2001 No 63 s 43)

#### **Court may order pre-sentence reports**

s 363 orig s 363 renum as s 262  
pres s 363 (prev s 454) om 1974 No 17  
ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)

#### **Contents of pre-sentence report**

s 364 orig s 364 renum as s 263  
pres s 364 (prev s 455) om 1974 No 17  
ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)

#### **Circulation of pre-sentence report**

s 365 orig s 365 renum as s 264  
pres s 365 (prev s 456) om 1974 No 17  
ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)

#### **Right of cross-examination on pre-sentence report**

s 366 orig s 366 renum as s 265  
pres s 366 (prev s 457) am 1983 No 27  
om 1990 No 1  
ins 1993 No 73  
renum R9 LA (see 2001 No 63 s 43)

#### **Proceedings after sentence**

pt 16 hdg (prev pt 13 hdg) renum R9 LA (see 2001 No 63 s 43)



**Procedure on forfeiture**

s 367 orig s 367 renum as s 266  
pres s 367 (prev s 464) om 1983 No 27  
ins 1986 No 15  
renum R9 LA (see 2001 No 63 s 43)

**Common law forfeiture in offences abolished**

s 368 orig s 368 renum as s 267  
pres s 368 (prev s 465) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

**Disabilities of offence**

s 369 orig s 369 renum as s 268  
pres s 369 (prev s 466) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

**Effect of reversing judgment**

s 370 orig s 370 renum as s 269  
pres s 370 (prev s 468) am 1990 No 5  
renum R9 LA (see 2001 No 63 s 43)

**What not sufficient to stay or reverse judgment**

s 371 orig s 371 renum as s 270  
pres s 371 (prev s 472) renum R9 LA (see 2001 No 63 s 43)

**Pronouncing proper judgment**

s 372 orig s 372 renum as s 271  
pres s 372 (prev s 473) renum R9 LA (see 2001 No 63 s 43)

**New trials regulated**

s 373 orig s 373 renum as s 272  
pres s 373 (prev s 474) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

**Offences punishable summarily and summary procedure generally**

pt 17 hdg (prev pt 14 hdg) sub 1983 No 55  
renum R9 LA (see 2001 No 63 s 43)

**Summary offences**

s 374 orig s 374 renum as s 273  
pres s 374 (prev s 476) am 1942 No 12  
sub 1951 No 14; 1974 No 17  
am 1983 No 27  
sub 1985 No 40  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Summary disposal of certain cases**

s 375 orig s 375 renum as s 274  
pres s 375 (prev s 477) sub 1951 No 14  
am 1963 No 11  
sub 1974 No 17  
am 1983 No 27  
sub 1985 No 40  
am 1985 No 67; 1985 No 75  
renum R9 LA (see 2001 No 63 s 43)

#### **Saving of other summary jurisdiction**

s 376 orig s 376 renum as s 275  
pres s 376 (prev s 479) om 1951 No 14  
ins 1974 No 17  
am 1985 No 40; 1985 No 67  
renum R9 LA (see 2001 No 63 s 43)

#### **Certificate of dismissal**

s 377 orig s 377 om 1983 No 27  
pres s 377 (prev s 480) sub 1951 No 14; 1974 No 17  
am 1983 No 27; 1985 No 40; 1985 No 67; 1991 No 44  
renum R9 LA (see 2001 No 63 s 43)

#### **Summary conviction or dismissal bar to indictment**

s 378 orig s 378 renum as s 276  
pres s 378 (prev s 481) sub 1951 No 14; 1974 No 17  
am 1983 No 27; 1985 No 40; 1985 No 67  
renum R9 LA (see 2001 No 63 s 43)

#### **Misbehaviour at public meetings**

s 379 orig s 379 om 1985 No 62  
pres s 379 (prev s 482) om 1974 No 17  
ins 1983 No 55  
renum R9 LA (see 2001 No 63 s 43)

#### **Possession of offensive weapons and disabling substances**

s 380 hdg (prev s 493 hdg) sub 2001 No 8 amdt 1.9  
s 380 orig s 380 renum as s 277  
pres s 380 (prev s 493) am 1983 No 27  
sub 1987 No 3  
am 2001 No 8 amdt 1.10  
renum R9 LA (see 2001 No 63 s 43)

#### **Possession of offensive weapons and disabling substances with intent**

s 381 (prev s 494 hdg) sub 2001 No 8 amdt 1.11  
orig s 381 om 1985 No 62  
pres s 381 (prev s 494) am 1983 No 27; 1984 No 78  
sub 1987 No 3  
am 2001 No 8 amdt 1.12  
renum R9 LA (see 2001 No 63 s 43)

**Possession of knife in public place or school**

s 382 orig s 382 om 1985 No 44  
pres s 382 (prev s 495) am 1983 No 27  
om 1987 No 3  
ins 1998 No 22  
renum R9 LA (see 2001 No 63 s 43)

**Sale of knife to person under 16**

s 383 orig s 383 om 1985 No 44  
pres s 383 (prev s 496) am 1983 No 27  
om 1987 No 3  
ins 1998 No 22  
renum R9 LA (see 2001 No 63 s 43)

**Retail supplier of knives to display sign**

s 384 orig s 384 am 1983 No 27  
om 1985 No 44  
pres s 384 (prev s 497) am 1983 No 27; 1983 No 55  
om 1985 No 40  
ins 2000 No 56 s 4  
renum R9 LA (see 2001 No 63 s 43)

**Laying of poison**

s 385 orig s 385 am 1983 No 27  
om 1985 No 44  
pres s 385 (prev s 510A) ins 1983 No 55  
renum R9 LA (see 2001 No 63 s 43)

**Unlawful possession**

s 386 orig s 386 om 1985 No 44  
pres s 386 (prev s 527A) ins 1983 No 55  
am 1987 No 3; 1990 No 5  
renum R9 LA (see 2001 No 63 s 43)

**Making false invoice**

s 387 orig s 387 om 1985 No 44  
pres s 387 (prev s 527B) ins 1984 No 78  
renum R9 LA (see 2001 No 63 s 43)

**Application of compensation**

s 388 orig s 388 om 1985 No 44  
pres s 388 (prev s 543) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

**Obstruction of stream etc**

s 389 orig s 389 om 1985 No 44  
pres s 389 (prev s 544) om 1983 No 27  
ins 1983 No 55  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Entrance to cellars etc**

s 390 orig s 390 om 1986 No 15  
pres s 390 (prev s 545) om 1983 No 27  
ins 1983 No 55  
renum R9 LA (see 2001 No 63 s 43)

#### **Fighting**

s 391 orig s 391 om 1983 No 27  
pres s 391 (prev s 545A) ins 1992 No 76  
renum R9 LA (see 2001 No 63 s 43)

#### **Offensive behaviour**

s 392 orig s 392 renum as s 278  
pres s 392 (prev s 546A) ins 1983 No 55  
renum R9 LA (see 2001 No 63 s 43)

#### **Indecent exposure**

s 393 orig s 393 renum as s 279  
pres s 393 (prev s 546B) ins 1983 No 55  
am 2001 No 63 s 38  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 394 om 1983 No 27 (as am by 1985 No 16)

#### **Noise abatement directions**

s 394 orig s 394 renum as s 280  
pres s 394 (prev s 546C) ins 1983 No 55  
am 2001 No 63 ss 39-41  
renum R9 LA (see 2001 No 63 s 43)

#### **Bogus advertisements**

s 395 orig s 395 renum as s 281  
pres s 395 (prev s 546D) ins 1987 No 3  
renum R9 LA (see 2001 No 63 s 43)

#### **Public mischief**

s 396 orig s 396 renum as s 282  
pres s 396 (prev s 546E) ins 1987 No 3  
renum R9 LA (see 2001 No 63 s 43)

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

s 397 orig s 397 om 1983 No 27  
pres s 397 (prev s 547) am 1983 No 27; 1988 No 44  
renum R9 LA (see 2001 No 63 s 43)

#### **Alternative methods of proceeding before magistrate**

s 398 orig s 398 om 1983 No 27  
pres s 398 (prev s 548) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

**General averment of intent to defraud or injure**

s 399 orig s 399 renum as s 283  
 pres s 399 (prev s 551) am 1983 No 2  
 renum R9 LA (see 2001 No 63 s 43)

**Sentence may be for less term or fine of less amount than that fixed**

s 400 orig s 400 renum as s 284  
 pres s 400 (prev s 553) am 1983 No 27  
 renum R9 LA (see 2001 No 63 s 43)

**Application of forfeitures and penalties**

s 401 orig s 401 om 1983 No 27  
 pres s 401 (prev s 555) am 1983 No 27  
 renum R9 LA (see 2001 No 63 s 43)

**Conditional release of offenders**

pt 18 hdg (prev pt 15 hdg) sub 1971 No 2  
 renum R9 LA (see 2001 No 63 s 43)

**Conditional release of offenders without proceeding to conviction**

s 402 orig s 402 renum as s 285  
 pres s 402 (prev s 556A) ins 1942 No 12  
 sub 1971 No 2  
 am 1985 No 67; 1986 No 57 (as am by 1987 No 3); 1995 No 2  
 renum R9 LA (see 2001 No 63 s 43)

**Conditional release of offenders**

s 403 orig s 403 renum as s 286  
 pres s 403 (prev s 556B) ins 1971 No 2  
 am 1985 No 67; 1986 No 57; 1990 No 5; 1993 No 73; R9 LA  
 (see 2001 No 63 s 43)  
 renum R9 LA (see 2001 No 63 s 43)

**Failure to comply with condition of recognisance or release**

s 404 orig s 404 om 1971 No 2  
 ins 1984 No 78  
 renum as s 287  
 pres s 404 (prev s 556C) ins 1971 No 2  
 am 1985 No 67; 1992 No 9  
 renum R9 LA (see 2001 No 63 s 43)

**Power to discharge or vary conditions of recognisance**

s 405 orig s 405 om 1994 No 98  
 pres s 405 (prev s 556D) ins 1971 No 2  
 am 1985 No 16; 1993 No 91; 1995 No 2  
 renum R9 LA (see 2001 No 63 s 43)

hdg before s 406 om 1983 No 27 (as am by 1985 No 16)

## Endnotes

### 4 Amendment history

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#### **Recovery of amounts if recognisances estreated**

s 406 orig s 406 om 1971 No 2  
ins 1984 No 78  
renum as s 288  
pres s 406 (prev s 556E) ins 1971 No 2  
am 1985 No 67; 1986 No 74; 1990 No 5; 1991 No 44; 1995  
No 2  
renum R9 LA (see 2001 No 63 s 43)

#### **Community service orders**

pt 19 hdg (prev pt 15A hdg) ins 1985 No 11  
renum R9 LA (see 2001 No 63 s 43)

#### **Definitions for pt 19**

s 407 orig s 407 om 1971 No 2  
ins 1999 No 71 s 4  
renum as s 289  
pres s 407 (prev s 556F) ins 1985 No 11  
am 1985 No 67; 1991 No 44; 1994 No 97  
renum R9 LA (see 2001 No 63 s 43)

#### **Directions to perform work**

s 408 orig s 408 om 1971 No 2  
pres s 408 (prev s 556G) ins 1985 No 11  
am 1985 No 67; 1986 No 57; 1994 No 97; 1998 No 29; 1999 No  
79 s 5 sch 3; 2001 No 44 amdt 1.1002, amdt 1.1003  
renum R9 LA (see 2001 No 63 s 43)

#### **Circumstances in which a community service order may be made**

s 409 orig s 409 om 1971 No 2  
pres s 409 (prev s 556J) ins 1985 No 11  
am 1994 No 97  
renum R9 LA (see 2001 No 63 s 43)

#### **Obligations of offender and consequences of failure to comply**

s 410 orig s 410 om 1971 No 2  
pres s 410 (prev s 556K) ins 1985 No 11  
am 1986 No 57; 1994 No 97  
renum R9 LA (see 2001 No 63 s 43)

#### **Community service order to cease to have effect after 12 months except if period extended**

s 411 orig s 411 renum as s 290  
pres s 411 (prev s 556L) ins 1985 No 11  
am 1994 No 97  
renum R9 LA (see 2001 No 63 s 43)

**Revocation and variation of community service order and variation of nature of work**

s 412 orig s 412 om 1971 No 2  
pres s 412 (prev s 556M) ins 1985 No 11  
am 1994 No 97; 1998 No 29  
renum R9 LA (see 2001 No 63 s 43)

**Power of court if offender convicted of further offence**

s 413 orig s 413 om 1971 No 2  
pres s 413 (prev s 556N) ins 1985 No 11  
am 1985 No 67; 1992 No 9  
renum R9 LA (see 2001 No 63 s 43)

**Apprehension of offender about to leave ACT**

s 414 orig s 414 renum as s 291  
pres s 414 (prev s 556P) ins 1985 No 11  
am 1985 No 67  
renum R9 LA (see 2001 No 63 s 43)

**Power of court in relation to offender about to leave ACT**

s 415 orig s 415 om 1971 No 2  
pres s 415 (prev s 556Q) ins 1985 No 11  
am 1985 No 67  
renum R9 LA (see 2001 No 63 s 43)

**Service of documents**

s 416 orig s 416 om 1983 No 27  
pres s 416 (prev s 556S) ins 1985 No 11  
renum R9 LA (see 2001 No 63 s 43)

**Power of court if offender apprehended under pt 19**

s 417 orig s 417 renum as s 292  
pres s 417 (prev s 556T) ins 1985 No 11  
renum R9 LA (see 2001 No 63 s 43)

**Power of court in certain circumstances on revoking community service order**

s 418 orig s 418 om 1971 No 2  
pres s 418 (prev s 556U) ins 1985 No 11  
renum R9 LA (see 2001 No 63 s 43)

**Discharge of community service order**

s 419 orig s 419 om 1971 No 2  
pres s 419 (prev s 556V) ins 1985 No 11  
renum R9 LA (see 2001 No 63 s 43)

**Jurisdiction of Supreme Court**

s 420 orig s 420 am 1983 No 27; 1983 No 55  
om 1985 No 44  
pres s 420 (prev s 556W) ins 1985 No 11  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

### 4 Amendment history

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#### **Inquiries into convictions**

pt 20 hdg (prev pt 17 hdg) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

#### **Preliminary**

div 20.1 hdg (prev div 17.1 hdg) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

#### **Definitions for pt 20**

s 421 orig s 421 om 1983 No 55  
pres s 421 (prev s 557A) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

#### **How to start inquiry**

div 20.2 hdg (prev div 17.2 hdg) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

#### **Grounds for ordering inquiry**

s 422 orig s 422 om 1983 No 27  
pres s 422 (prev s 557B) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

#### **Executive order for inquiry**

s 423 orig s 423 renum as s 293  
pres s 423 (prev s 557C) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

#### **Supreme Court order for inquiry**

s 424 orig s 424 renum as s 295  
pres s 424 (prev s 557D) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 425 om 1983 No 27 (as am by 1985 No 16)

#### **Rights and duties in relation to orders for inquiry**

s 425 orig s 425 renum as s 296  
pres s 425 (prev s 557E) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

#### **Inquiry procedure**

div 20.3 hdg (prev div 17.3 hdg) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

#### **Application of Inquiries Act**

s 426 orig s 426 renum as s 297  
pres s 426 (prev s 557F) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)



**Appointment of board of inquiry**

s 427 orig s 427 renum as s 298  
pres s 427 (prev s 557G) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 428 om 1983 No 27 (as am by 1985 No 16)

**Report by board**

s 428 orig s 428 am 1992 No 9; 1997 No 96  
om 2001 No 70 amdt 1.6  
pres s 428 (prev s 557H) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

**Supreme Court orders following inquiry report**

div 20.4 hdg (prev div 17.4 hdg) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

**Application**

s 428A ins 1994 No 46  
sub 1998 No 71  
om 1999 No 32 s 4

hdg before s 429 om 1983 No 27 (as am by 1985 No 16)

**Publication of report**

s 429 orig s 429 renum as s 341  
pres s 429 (prev s 557I) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 430 om 1983 No 27 (as am by 1985 No 16)

**Action on report by Supreme Court**

s 430 orig s 430 renum as s 346  
pres s 430 (prev s 557J) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

**Nature of Supreme Court proceedings**

s 431 orig s 431 renum as s 347  
pres s 431 (prev s 557K) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

**Application to earlier convictions**

div 20.5 hdg (prev div 17.5 hdg) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43 and 2001 No 90 amdt 1.40)

hdg before s 432 om 1983 No 27 (as am by 1985 No 16)

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### **Inquiries about earlier convictions**

s 432 orig s 432 renum as s 349  
pres s 432 (prev s 557L) ins 2001 No 63 s 42  
renum R9 LA (see 2001 No 63 s 43)

### **Grant of pardon and remission of penalties**

pt 21 hdg (prev pt 15B hdg) ins 1991 No 90  
renum R9 LA (see 2001 No 63 s 43)

### **Grant of pardon**

s 433 orig s 433 om 1983 No 27  
pres s 433 (prev s 557) ins 1991 No 90  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 434 om 1974 No 17

### **Remission of penalties**

s 434 orig s 434 om 1974 No 17  
pres s 434 (prev s 558) ins 1991 No 90  
renum R9 LA (see 2001 No 63 s 43)

### **Miscellaneous**

pt 22 hdg (prev pt 16 hdg) renum R9 LA (see 2001 No 63 s 43)

### **Application of certain sections of Commonwealth Crimes Act to Territory laws**

s 434A ins 2002 No 11 amdt 2.25

### **Joinder of charges**

s 434B ins 2002 No 11 amdt 2.25

### **Protection of persons acting under Act**

s 435 orig s 435 om 1974 No 17  
pres s 435 (prev s 563) am 1997 No 96  
renum R9 LA (see 2001 No 63 s 43)

### **No court fees to be taken in criminal cases**

s 436 orig s 436 om 1974 No 17  
pres s 436 (prev s 564) am 1983 No 55; 1992 No 9  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 437 om 1983 No 27 (as am by 1985 No 16)

### **Power of courts to bring prisoners before them**

s 437 orig s 437 renum as s 350  
pres s 437 (prev s 565) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 438 om 1983 No 27 (as am by 1985 No 16)

**Witnesses neglecting to attend trial and captured under warrant may be admitted to bail**

s 438 orig s 438 om 1985 No 44  
pres s 438 (prev s 566) am 1983 No 27  
renum R9 LA (see 2001 No 63 s 43)

hdg before ss 439 om 1983 No 27 (as am by 1985 No 16)

**Supreme Court judges may prescribe forms of indictments etc**

s 439 orig s 439 om 1994 No 46  
pres s 439 (prev s 567) am 1983 No 27; 2001 No 44 amdt  
1.1004, amdt 1.1005  
renum R9 LA (see 2001 No 63 s 43)

hdg before ss 440 om 1983 No 27 (as am by 1985 No 16)

**Prosecutions for blasphemy**

s 440 orig s 440 om 1983 No 27  
pres s 440 (prev s 574) renum R9 LA (see 2001 No 63 s 43)

hdg before s 441 om 1983 No 27 (as am by 1985 No 16)

**Offence notices**

s 441 orig s 441 renum as s 351  
pres s 441 (prev s 575) am 1983 No 27  
om 1985 No 44  
ins 1997 No 117  
renum R9 LA (see 2001 No 63 s 43)

hdg before s 442 om 1983 No 27 (as am by 1985 No 16)

**Change of venue**

s 442 orig s 442 renum as s 353  
pres s 442 (prev s 577) renum R9 LA (see 2001 No 63 s 43)

hdg before s 443 om 1983 No 27 (as am by 1985 No 16)

**Approved forms**

s 443 orig s 443 renum as s 354  
pres s 442 (prev s 578) ins 1991 No 90  
sub 2001 No 44 amdt 1.1006  
renum R9 LA (see 2001 No 63 s 43)  
(4)-(7) exp 12 September 2002 (s 443 (7))

## Endnotes

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#### **Regulation-making power**

s 444 orig s 444 renum as s 355  
pres s 444 (prev s 579) ins 2001 No 44 amdt 1.1006  
renum R9 LA (see 2001 No 63 s 43)

#### **Transitional**

pt 23 hdg ins 2002 No 11 amdt 2.26  
om R16 LA

#### **Operation and meaning of s 434A**

s 445 om 1971 No 2  
ins 2002 No 11 amdt 2.26  
exp 27 November 2002 (s 445 (2))

s 446 renum (see endnote 6)

s 447 om 1986 No 57

hdgs before s 448 om 1983 No 27 (as am by 1985 No 16)

ss 448-452 renum (see endnote 6)

hdg before s 453 om 1983 No 27 (as am by 1985 No 16)

s 453, s 454 renum (see endnote 6)

hdg before s 455 om 1974 No 17

s 455, s 456 renum (see endnote 6)

hdg before s 457 om 1983 No 27 (as am by 1985 No 16)

s 457 renum (see endnote 6)

hdg before s 458 om 1983 No 27 (as am by 1985 No 16)

s 458 om 1983 No 27

hdg before s 459 am 1974 No 17  
om 1983 No 27 (as am by 1985 No 16)

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s 459	am 1968 No 4 om 1974 No 17
s 460	om 1974 No 17
s 461	om 1983 No 27
s 462	om 1983 No 27
s 463	om 1983 No 27
s 464	renum (see endnote 6)
hdg before s 465	om 1983 No 27 (as am by 1985 No 16)
s 465, s 466	renum (see endnote 6)
s 467	om 1983 No 27
s 468	renum (see endnote 6)
s 469	om 1983 No 27
hdg before s 470	om 1983 No 27 (as am by 1985 No 16)
<b>Proceedings when question reserved</b>	
s 470	am 1992 No 9; 1997 No 96 om 2001 No 70 amdt 1.6
hdg before s 471	om 1983 No 27 (as am by 1985 No 16)
s 471	om 1983 No 27
hdg before s 472	om 1983 No 27 (as am by 1985 No 16)
s 472, s 473	renum (see endnote 6)
hdg before s 474	om 1983 No 27 (as am by 1985 No 16)
s 474	renum (see endnote 6)

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hdg before s 475 om 1983 No 27 (as am by 1985 No 16)

**Executive or judge may direct inquiry**

s 475 am 1983 No 27; 1990 No 5  
om 2001 No 63 s 37

s 476, s 477 renum (see endnote 6)

**Common law offences may be dealt with summarily by consent**

s 477A ins 1983 No 27  
om 1985 No 40

**Certain offences not to be dealt with summarily**

s 478 sub 1951 No 14; 1974 No 17  
om 1985 No 40

ss 479-482 renum (see endnote 6)

s 483 om 1974 No 17

s 484 om 1974 No 17

s 485 om 1974 No 17

s 486 om 1974 No 17

s 487 om 1974 No 17

s 488 om 1974 No 17

s 489 om 1974 No 17

s 490 om 1974 No 17

s 491 om 1974 No 17

s 492 om 1974 No 17

hdg before s 493 om 1983 No 27 (as am by 1985 No 16)

ss 493-497 renum (see endnote 6)

s 498            am 1983 No 27  
                  om 1987 No 3

**Certificate or conviction a bar to other proceedings**

s 499            sub 1963 No 11  
                  om 1987 No 3

s 500            am 1983 No 27  
                  om 1987 No 3

hdg before s 501 om 1983 No 27 (as am by 1985 No 16)

**Unlawfully driving, using, marking or possessing cattle**

s 501            am 1983 No 27  
                  sub 1983 No 55  
                  om 1985 No 44

s 502            am 1983 No 27  
                  om 1985 No 44

s 503            am 1983 No 27  
                  om 1985 No 44

s 504            am 1983 No 27  
                  om 1985 No 44

s 505            am 1983 No 27  
                  om 1985 No 44

s 506            am 1983 No 27  
                  om 1985 No 44

s 507            am 1983 No 27  
                  om 1985 No 44

s 508            am 1983 No 27  
                  om 1985 No 44

s 509            am 1983 No 27  
                  om 1985 No 44

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s 510 am 1983 No 27  
om 1985 No 44

s 511 am 1983 No 27  
om 1985 No 44

s 512 am 1983 No 27  
om 1985 No 44

hdg before s 513 om 1983 No 27 (as am by 1985 No 16)

s 513 am 1983 No 27; 1983 No 55  
om 1985 No 44

s 514 am 1983 No 27  
om 1985 No 44

s 515 am 1983 No 27; 1983 No 55  
om 1985 No 44

s 516 am 1983 No 55  
om 1985 No 44

s 517 am 1983 No 27; 1983 No 55  
om 1985 No 44

s 518 am 1983 No 27; 1983 No 55  
om 1985 No 44

s 519 am 1983 No 27  
om 1985 No 44

s 520 am 1983 No 27  
om 1985 No 44

s 521 am 1983 No 27  
om 1985 No 44

hdg before s 522 om 1983 No 27 (as am by 1985 No 16)



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- s 522 am 1983 No 27; 1983 No 55  
om 1985 No 44
- s 523 am 1983 No 55  
om 1985 No 44
- s 524 am 1983 No 27  
om 1985 No 44
- hdg before s 525 om 1983 No 27 (as am by 1985 No 16)
- s 525 am 1983 No 27  
om 1985 No 44
- s 526 om 1985 No 44
- Unlawfully using vehicle or boat**  
s 526A ins 1963 No 11  
am 1983 No 27  
om 1985 No 44
- hdg before s 527 om 1983 No 27 (as am by 1985 No 16)
- s 527 am 1983 No 27  
om 1985 No 44
- hdg before s 528 om 1983 No 27 (as am by 1985 No 16)
- s 528 am 1983 No 27  
om 1985 No 44
- hdg before s 529 om 1983 No 27 (as am by 1985 No 16)
- s 529 am 1983 No 27  
om 1985 No 44
- hdgs before s 530 om 1983 No 27 (as am by 1985 No 16)
- s 530 om 1985 No 44

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### 4 Amendment history

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s 531 am 1983 No 27  
om 1985 No 44

hdg before s 532 om 1983 No 27 (as am by 1985 No 16)

s 532 am 1983 No 27; 1983 No 55  
om 1985 No 44

s 533 am 1983 No 27  
om 1985 No 44

s 534 am 1983 No 27  
om 1985 No 44

s 535 am 1983 No 27  
om 1985 No 44

s 536 am 1983 No 27  
om 1985 No 44

s 537 am 1983 No 27  
om 1985 No 44

s 538 am 1983 No 27  
om 1985 No 44

hdg before s 539 om 1983 No 27 (as am by 1985 No 16)

s 539 am 1983 No 27  
om 1985 No 44

s 540 am 1983 No 27  
om 1985 No 44

hdg before s 541 om 1983 No 27 (as am by 1985 No 16)

s 541 am 1983 No 27  
om 1985 No 44

- s 542            am 1983 No 27  
                  om 1985 No 44
- hdg before s 543 om 1983 No. 27 (as am by 1985 No 16 )
- s 543            renum (see endnote 6)
- hdg before s 544 om 1983 No 27 (as am by 1985 No 16)
- s 544, s 545     renum (see endnote 6)
- hdg before s 546 om 1983 No 27 (as am by 1985 No 16)
- Defacing premises**
- s 546            om 1983 No 27  
                  ins 1983 No 55  
                  om 1985 No 44
- hdg before s 547 om 1983 No 27 (as am by 1985 No 16)
- s 547            renum (see endnote 6)
- hdg before s 548 om 1983 No 27 (as am by 1985 No 16)
- s 548            renum (see endnote 6)
- hdg before s 549 om 1983 No 27 (as am by 1985 No 16)
- s 549            om 1983 No 27
- hdg before s 550 om 1983 No 27 (as am by 1985 No 16)
- s 550            am 1983 No 27  
                  om 1985 No 44
- s 551            renum (see endnote 6)
- hdg before s 552 om 1983 No 27 (as am by 1985 No 16)

## Endnotes

### 4 Amendment history

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s 552 am 1983 No 27  
om 1991 No 18

hdg before s 553 om 1983 No 27 (as am by 1985 No 16)

s 553 renum (see endnote 6)

hdg before s 554 om 1983 No 27 (as am by 1985 No 16)

#### **Hard or light labour**

s 554 sub 1951 No 14  
am 1963 No 11; 1983 No 27; 1985 No 67  
om 1986 No 57

hdg before s 555 om 1983 No 27 (as am by 1985 No 16)

s 555 renum (see endnote 6)

hdg before s 556 om 1983 No 27 (as am by 1985 No 16)

s 556 am 1983 No 27; 1984 No 78  
om 1991 No 18

#### **Effect of payment of fine etc where community service order made**

s 556H ins 1985 No 11  
am 1985 No 67  
om 1998 No 29

#### **Effect of compliance with, or revocation of, certain community service orders**

s 556R ins 1985 No 11  
am 1985 No 67  
om 1998 No 29

s 557 om 1971 No 2

s 558 om 1971 No 2

s 559 am 1951 No 14  
om 1971 No 2

s 560 om 1971 No 2

**Forfeiture of recognizance etc**

s 561 sub 1951 No 14  
om 1971 No 2

s 562 om 1971 No 2

ss 563-567 renum (see endnote 6)

s 568 om 1983 No 27

s 569 om 1983 No 27

s 570 om 1983 No 27

s 571 om 1983 No 27

s 572 om 1983 No 27

s 573 om 1983 No 27

s 574, s 575 renum (see endnote 6)

s 576 om 1983 No 55

ss 577-579 renum (see endnote 6)

**Transitional**

pt 17 hdg ins 1999 No 79 s 5 sch 3  
om R9 LA  
ins 2001 No 90 amdt 1.34  
om R11 LA

**Expiry—Motor Traffic Act**

s 580 (prev s 578) ins 1999 No 79 s 5 sch 3  
renum 2001 No 44 amdt 1.1007  
sub 2001 No 90 amdt 1.34  
exp 27 March 2002 (see s 580)

**Domestic violence offences**

sch 1 orig sch 1 om 2001 No 8 amdt 1.13  
pres sch 1 (prev sch 2) om 1985 No 44  
ins 1997 No 23  
sub 2001 No 90 amdt 1.35  
renum R9 LA (see 2001 No 63 s 43)

## Endnotes

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#### **Domestic violence offences under Crimes Act 1900**

sch 2 renum as sch 1

sch 3 am 1990 No 5  
om 2001 No 44 amdt 1.1008

sch 4 om 1985 No 44

#### **Forms**

sch 5 om 1983 No 55  
ins 1985 No 11  
am 1985 No 67; 1990 No 5; 1995 No 2; 1998 No 29  
om 2001 No 44 amdt 1.1008

#### **Form of list of other offences charged**

sch 6 om 1974 No 17  
ins 1983 No 27  
am 1985 Nos 16 and 67  
om 2001 No 44 amdt 1.1008

sch 7 om 1983 No 27

#### **Dictionary**

dict ins 2001 No 8 amdt 1.14  
defs reloc from s 4 2001 No 8 amdt 1.4  
def **domestic violence offence** am 2001 No 70 amdt 1.5  
par (ca) exp 1 January 2002 (s 580)  
pars renum R9 LA  
sub 2001 No 90 amdt 1.36  
par (e) exp 27 March 2002 (see s 580 and 2001 No 90  
amdt 1.34)  
def **household member** om 2001 No 90 amdt 1.37  
def **relative** sub 2001 No 90 amdt 1.38  
def **relevant person** ins 2001 No 90 amdt 1.39

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1992 No 35	8 July 1992
2	Act 1993 No 93	31 January 1994
3	Act 1996 No 36	30 November 1996
4	Act 1997 No 117	1 June 1998
5	Act 1998 No 71	28 February 1999
6	Act 1999 No 64	10 November 1999
7	Act 2001 No 56	12 September 2001
8	Act 2001 No 75	3 October 2001
9*	<u>Act 2001 No 90</u>	7 January 2002
10	<u>Act 2002 No 3</u>	15 March 2002
11	Act 2002 No 3	27 March 2002
12	Act 2002 No 9	14 May 2002
13	Act 2002 No 11	28 May 2002
14	Act 2002 No 24	9 September 2002
15	Act 2002 No 24	13 September 2002
16	Act 2002 No 24	28 November 2002
17	Act 2002 No 24	10 December 2002

## Endnotes

6 Renumbered provisions

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## 6 Renumbered provisions

as made by the *Crimes Legislation Amendment Act 2001* No 63 pt 4 and under the *Legislation Act 2001*

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3	Application	2
3A	Territorial application of the criminal law of the Territory	3
4	Dictionary	4
5	Meaning of loaded arms	5
6	Reference to the jury read as reference to magistrate	6
7	Notes	7
8	Public place etc	8
9	Abolition of distinctions between felony and misdemeanour	9
<b>Part 3</b>	<b>Offences against the person</b>	<b>Part 2</b>
10	When child born alive	10
11	No time limit on criminal responsibility for homicide	11
12	Murder	12
13	Trial for murder—provocation	13
14	Trial for murder—diminished responsibility	14
15	Manslaughter	15
16	Suicide etc—not an offence	16
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19	Intentionally inflicting grievous bodily harm	19



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22	Assault with intent to commit certain indictable offences	22
23	Inflicting actual bodily harm	23
24	Assault occasioning actual bodily harm	24
25	Causing grievous bodily harm	25
26	Common assault	26
27	Acts endangering life etc	27
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30	Threat to kill	30
31	Threat to inflict grievous bodily harm	31
32	Demands accompanied by threats	32
33	Possession of object with intent to kill etc	33
34	Forcible confinement	34
34A	Stalking	35
35	Torture	36
36	Abduction of young person	37
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37A	Neglect etc of children	39
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42	Abortion—abolition of common law offence	44
43	Procuring another's miscarriage	45
44	Procuring drugs etc to procure miscarriage	46

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47	Alternative verdicts	49
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92H	Act of indecency in the third degree	59
92J	Act of indecency without consent	60
92K	Acts of indecency with young persons	61
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92M	Abduction	63
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92T	Adding count for act of indecency	71
92U	Indictment for act of indecency	72
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113	Handling stolen property	105
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